

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

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

**DAVID EATON AND SPENCER WELLS'S RESPONSE TO
LEHOTSKY KELLER COHN LLP'S MOTION FOR SANCTIONS AGAINST THE
SPECIAL COMMITTEE OF RHODIUM ENTERPRISES, INC.'S BOARD OF
DIRECTORS AND ITS COUNSEL BARNES & THORNBURG LLP, OR, IN THE
ALTERNATIVE, FOR PAYMENT OF FEES AND EXPENSES UNDER SECTION 328**

¹ Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



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David Eaton and Spencer Wells, in their capacities as former members of the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the “Special Committee”), one of the debtors in the above-captioned chapter 11 cases (collectively, the “Debtors” or “Rhodium”), file this response to the Motion for Sanctions [ECF No. 2303] (the “Motion”) filed by Lehotsky Keller Cohn LLP (“LKC”).

I. INTRODUCTION

1. The Court should deny the Motion. The Special Committee at all times acted reasonably and in good faith in objecting to LKC’s final fee application (the “Fee Application”), and did so in a manner consistent with its fiduciary duties.

2. This dispute arises out of the resolution of the Debtors’ chapter 11 cases, which were funded primarily through a settlement between the Debtors and Whinstone U.S., Inc. (“Whinstone”), pursuant to which Whinstone acquired certain of the Debtors’ assets and the Debtors and Whinstone settled their claims against one another. Mr. Eaton and Mr. Wells, in their capacities as former members of the Board of Directors of Rhodium, helped guide the Debtors through these chapter 11 cases, including overseeing negotiations of, and approving, the Debtors’ settlement with Whinstone. Notably, all creditors were paid in full on their allowed secured and general unsecured claims, including post-petition interest—a rare outcome in bankruptcy proceedings. LKC served as special litigation counsel to the Debtors in their dispute with Whinstone.

3. Following the Whinstone settlement, LKC filed its Fee Application seeking approximately \$11.5 million in total fees and expenses based on its interpretation of its revised engagement letter with the Debtors. That agreement—which this Court approved—includes a possible success fee turning on whether Rhodium was ultimately sold in a settlement, and on the amount of (i) any energy credits recovered by the Debtors from Whinstone, and (ii) any additional

damages recovered by the Debtors from Whinstone not attributable to energy credits. The Debtors and LKC agreed that if Whinstone acquired the Debtors in a transaction that resolved the Debtors' dispute with Whinstone, the Debtors and LKC would negotiate in good faith the portion of the transaction value to the Debtors allocable to (i) the energy credits and (ii) the additional damages. The Debtors and LKC further agreed that if they were unable to agree on an allocation, this Court would resolve the dispute. In its Fee Application, LKC asserted it was owed a success fee of approximately \$8.9 million.

4. The Debtors reached a different, reasonable calculation of LKC's success fee, and the Special Committee, acting on the Debtors' behalf solely due to a perceived conflict of the Debtors' bankruptcy counsel, filed an objection to LKC's Fee Application (the "Objection"). The Special Committee, in coordination with the Debtors' counsel and their officers and other directors, filed its Objection in the ordinary course of these chapter 11 cases, in an exercise of its fiduciary duties, pursuant to the Debtors' statutory authority to scrutinize and object to fee applications under 11 U.S.C. § 330, and in accordance with the dispute-resolution mechanism set forth in LKC's revised engagement letter.

5. Following a four-day evidentiary hearing, the Court approved LKC's Fee Application and awarded LKC \$11,671,994.33 for compensation and reimbursement of expenses. That order has been appealed. ECF Nos. 2213 and 2214. LKC now seeks an additional award of more than \$1.5 million in attorneys' fees and expenses through its Motion.²

² LKC has also filed an adversary complaint and administrative expense claim seeking recovery of the same fees and expenses. See ECF No. 2299, Adv. Proc. No. 26-3051.

6. LKC's request for additional compensation is meritless under all three avenues LKC pursues: (i) sanctions under 28 U.S.C. § 1927; (ii) sanctions under the Court's inherent authority; and (iii) attorneys' fees and expenses under 11 U.S.C. § 328.

7. **First**, LKC's request for sanctions against the Special Committee under Section 1927 fails at the start because that statute provides courts authority to sanction attorneys, not represented parties. Because the Special Committee unquestionably is a represented party, the Court cannot sanction it under Section 1927.

8. **Second**, LKC's request for sanctions under the Court's inherent authority is equally unmeritorious because the Special Committee acted in good faith throughout these chapter 11 cases, and LKC does not satisfy the demanding standard required to impose inherent-authority sanctions. The Special Committee's objections to LKC's Fee Application were grounded in the Debtors' reasonable interpretation of LKC's revised engagement letter and a legitimate dispute over the calculation of LKC's success fee. The Special Committee asserted a colorable breach of fiduciary duty claim against LKC on the Debtors' behalf in an abundance of caution to preserve it under Fifth Circuit precedent that requires parties to raise such claims in connection with fee applications. And the Special Committee properly filed its objection publicly in compliance with federal law and 11 U.S.C. § 107, which establishes a strong presumption in favor of public access to court records.

9. **Third**, LKC's request for additional compensation under 11 U.S.C. § 328 is barred by Supreme Court precedent that prohibits counsel retained by the bankruptcy estates from collecting attorneys' fees and expenses for defending their own fee applications. The request under Section 328 also fails because LKC seeks compensation for anticipated services performed for itself.

10. The Special Committee exercised the Debtors’ statutory and contractual rights—and fulfilled its fiduciary duties—by objecting to LKC’s sizeable Fee Application and presenting the dispute to this Court for resolution, precisely as LKC’s revised engagement letter contemplated and LKC agreed. The Court’s ultimate approval of LKC’s Fee Application, which the Special Committee does not seek to relitigate here, does not retroactively transform the Special Committee’s good-faith conduct in connection with the success fee dispute into sanctionable behavior, and LKC cannot circumvent the Supreme Court’s prohibition on counsel retained by the bankruptcy estates recovering “fees on fees” through its Motion. The Court should deny the Motion in its entirety.

II. FACTUAL BACKGROUND

A. **The Debtors and LKC entered into a revised engagement letter that expressly contemplated the Debtors resolving their dispute with Whinstone through a sale of assets.**

11. Between February 19 and March 18, 2025, the Debtors and Whinstone engaged in mediation to resolve their dispute, including the claims that LKC had been retained to pursue on the Debtors’ behalf. ECF No. 1732-2 ¶ 4. LKC participated in preparing information for the Debtors relating to settlement strategy and rough numbers estimating potential settlement amounts. *Id.* ¶ 6. However, while LKC attended initial mediation meetings, it was not present or actively involved in later settlement discussions between the Debtors and Whinstone, including the final settlement meetings where the parties ultimately achieved a resolution or discussed potential allocation of settlement funds. Ex. A, Nov. 3, 2025 Hr’g Tr. at 128:10–11, 129:20–130:2.

12. On March 4, the Debtors and LKC entered into a revised engagement letter, which this Court approved, describing a possible success fee turning on whether Rhodium was ultimately sold in a settlement, and on the amount of (i) any energy credits recovered by the Debtors from Whinstone, and (ii) any additional damages recovered by the Debtors from Whinstone not

attributable to energy credits. ECF No. 835 at 15. This agreement provided that if Whinstone acquired the Debtors in a transaction that resolved the Debtors' dispute with Whinstone, the Debtors and LKC would determine in good faith the portion of the transaction value allocable to the energy credits and damages. *Id.* Further, the agreement expressly provided that if the Debtors and LKC were unable to agree on an allocation, this Court would resolve the dispute:

[I]f 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 the 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 15 (emphasis added).

B. The Debtors entered into a settlement agreement with Whinstone that included a sale and purchase of assets.

13. As the mediation process progressed, it became apparent that the best way to “provide a return” for both stakeholders and creditors was through an asset sale. Ex. A, Nov. 3, 2025 Hr’g Tr. at 206:8–14. The Debtors worked with the Ad Hoc Group of SAFE Parties (the “SAFE AHG”) to negotiate a settlement agreement with Whinstone (the “Settlement Agreement”), which included a deal with Whinstone that was ultimately memorialized in a Purchase and Sale Agreement (the “PSA”). ECF Nos. 1530-2, 1732 ¶ 15. LKC did not actively participate in this negotiation. Ex. A Nov. 3, 2025 Hr’g Tr. at 128:10–11, 129:20–130:2. Pursuant to the PSA, Whinstone acquired certain of the Debtors' assets, and the Debtors and Whinstone also settled their claims against one another. *Id.* ¶ 17.

14. Under the PSA, Whinstone agreed to pay the Debtors a “Purchase Price” of \$185 million to buy the assets and resolve all claims. ECF No. 1530-3 at 11–12. However, the PSA did

not specify what portion of the Purchase Price was for the purchase of the assets (tangible assets) versus resolution of claims (intangible assets). *Id.* Instead, the PSA required the Debtors to prepare and deliver to Whinstone an IRS Form 8594 (an “Allocation Statement”) allocating the \$185 million among the tangible and intangible assets in accordance with Section 1060 of the Internal Revenue Code. *Id.* at 7–8.

15. Pursuant to Section III(2) of the Settlement Agreement, “clos[ing] the transactions contemplated by that [PSA] between [the] Debtors . . . and Whinstone” was “a condition to entering into this Agreement.” ECF No. 1530–2 at 8. This included the Allocation Statement. ECF No. 1530-3 at 6–7. The PSA anticipated this transaction taking weeks as it provided Whinstone 15 days to object to the Debtors’ Allocation Statement. ECF No. 1530–3 at 7. In the event Whinstone were to object to the Allocation Statement, the parties were then required to “attempt in good faith to resolve any dispute.” *Id.*

C. The Debtors attempted to negotiate in good faith the amount of LKC’s success fee.

16. Following the Whinstone settlement, the Debtors engaged with LKC and attempted to agree on the amount of its success fee. Ex. A, Nov. 3, 2025 Hr’g Tr. at 24:7–10. However, while LKC’s revised engagement letter required the parties to determine payment allocations in good faith, it did not provide “a real playbook” for doing so, which resulted in different, but reasonable, interpretations of the success fee. *Id.* at 23:8–13.

17. In May 2025, LKC reached out to the Special Committee offering to settle the success fee for \$8.1 million, using a \$100 million starting point as the estimated gross amount attributed to settled claims against Whinstone under the Settlement Agreement before further allocation under LKC’s revised engagement letter. Ex. B, Nov. 3, 2025 Hr’g Ex. 201.007–08. The Special Committee countered with \$3.8 million, using a \$75 million starting point as the

estimated value of the settled claims against Whinstone. *Id.* The Special Committee calculated \$50 million for energy credits and allocated the rest as damages. *Id.*

18. Between May and July 2025, the Special Committee continued to try to negotiate the success fee with LKC, informing it that the Debtors were still preparing an Allocation Statement that would value the Debtors' claims lower than LKC's \$100 million estimate. ECF No. 1530 ¶ 20. The parties also disputed the amounts attributable to the components of the gross estimated amount attributable to claims, including the value attributable to Winter Storm Uri and Building D claims, which LKC acknowledged were uncertain. Ex. A, Nov. 3, 2025 Hr'g Tr. at 21:1–25; 116:19–117:3.

19. Not content to wait until the Debtors harmonized the tax allocation with Whinstone, LKC propounded discovery against the Debtors, its own clients, under Rule 2004 of the Federal Rules of Bankruptcy Procedure on August 7. ECF No. 1515. LKC's discovery sought extensive information related to the tax allocation. *Id.* at 7.

20. On August 13, the Special Committee, on the Debtors' behalf, requested that LKC withdraw its discovery requests. ECF No. 1529-2. The next day, LKC moved for a status conference on its Rule 2004 discovery requests, ECF No. 1529, and the Special Committee moved to quash LKC's discovery requests.

D. LKC filed its Fee Application.

21. Approximately one week later, on August 22, LKC filed its Fee Application. ECF No. 1560. Based on its calculation of the success fee, LKC sought approximately \$11.5 million

in fees and expenses—\$8,913,600 for the success fee and \$2,505,848.50 for discounted hourly fees. *Id.* at 17.³

22. The Debtors asked LKC to consent to an extension of their deadline to file objections to LKC’s Fee Application because they had not yet finalized the Whinstone Purchase Price allocation. ECF No. 1633-3 ¶ 22. The Debtors informed LKC that the Debtors would be required to include a claim for breach of fiduciary duty in any objection to the Fee Application. ECF No. 1529-2 at 3.

23. Because LKC refused the request, the Debtors filed an emergency motion for an extension of time on September 10. ECF No. 1626.

E. The Special Committee, on the Debtors’ behalf, raised reasonable objections to LKC’s Fee Application.

24. After careful review of LKC’s Fee Application, the Special Committee, acting on the Debtors’ behalf solely due to a perceived conflict of the Debtors’ counsel, filed its Objection to the Fee Application. ECF No. 1732. The Special Committee raised several objections to LKC’s Fee Application, including: (i) LKC’s success fee calculation was overstated because the Whinstone settlement was primarily an asset sale; (ii) the Fee Application included unrecoverable fees for work performed by Porter Hedges; and (iii) the Fee Application was premature. *Id.* ¶¶ 35–49. The Special Committee also asserted a claim against LKC on the Debtors’ behalf for breach of fiduciary duty, noting that it did so in an abundance of caution so as not to waive it. *Id.* ¶¶ 50–59.

³ Altogether, the total amount represents a blended rate of almost \$4,000 per hour, which is four times the average hourly rate of LKC professionals who worked on this matter.

F. After certain payments to LKC, additional settlement negotiations, and a hearing, the Court approved LKC’s Fee Application.

25. While litigating the Fee Application, the Special Committee caused the Debtors to pay LKC \$765,000 after determining what was “unequivocally due.” Ex. C, Oct. 15, 2025 Hr’g Tr. at 16:10–15. After the Court suggested the Debtors could pay more, the Special Committee promptly caused the Debtors to pay LKC an additional \$950,000 based on what the Special Committee could determine was a power credit. Ex. A, Nov. 3, 2025 Hr’g Tr. at 18:12–16.

26. The Special Committee also continued negotiating with LKC in good faith to resolve its Fee Application in full. In November, the Special Committee offered to cause the Debtors to pay \$7.1 million to LKC for the success fee to settle the dispute. Ex. D, Nov. 26, 2025 Email from Jon Cohn. LKC rejected this offer, and the Special Committee then offered \$7.4 million for the success fee *and* agreed to pay the hourly fees and expenses of LKC and its counsel, Porter Hedges, to end the dispute. *Id.* However, LKC again rejected this offer and refused to continue with settlement negotiation. *Id.*

27. With the hearing on LKC’s Fee Application approaching, the Special Committee decided to withdraw the Debtors’ breach of fiduciary duty claim against LKC to streamline discovery and limit the scope of the issues in dispute. Ex. E, Withdrawal Email.

28. Ultimately, the parties could not agree on a success fee, so the issue was tried at a four-day evidentiary hearing. At the conclusion of the hearing, the Court approved LKC’s Fee Application and awarded LKC \$11,671,994.33 for compensation and reimbursement of expenses. ECF No. 2198. The Court directed the Debtors to disburse the unpaid amount of \$7,630,460.98, which they did on January 14, 2026. ECF Nos. 2198 and 2268. The order was appealed. ECF Nos. 2213 and 2214.

G. LKC moved for sanctions and filed claims against the Special Committee.

29. Despite the Court's order approving LKC's Fee Application, the Debtors' payment to LKC of all unpaid amounts, and the Debtors' payment in full to all unsecured creditors, with post-petition interest, on February 13, 2026, LKC filed its Motion for Sanctions seeking an additional \$1.5 million in fees and expenses in the form of sanctions against the Special Committee and its counsel. Mot. ¶ 87. In the alternative, LKC seeks additional attorneys' fees and expenses for defending its Fee Application. *Id.* ¶¶ 82–86.⁴

III. ARGUMENT

A. The Court cannot sanction the Special Committee under 28 U.S.C. § 1927 because the Special Committee is a represented party.

30. Putting aside the fact that LKC has not identified any conduct warranting sanctions, LKC's request for sanctions against the Special Committee under 28 U.S.C. § 1927 fails at the outset because such sanctions are not available against a represented party like the Special Committee. The Court should deny LKC's request under Section 1927 for this reason alone.

31. By its terms, Section 1927 empowers courts to sanction only attorneys, not represented parties:

Any ***attorney or other person admitted to conduct cases*** in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. 1927 (emphasis added).

⁴ LKC has also filed an adversary proceeding and administrative claim. See ECF No. 2305. LKC is effectively seeking to recover the costs of defending its own Fee Application through three different mechanisms.

32. Confirming this plain text, the Supreme Court has held that “sanctions under 28 U.S.C. § 1927 [may] address the wrongdoing of only [a party’s] attorneys, rather than of [the party] itself.” *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, n.2 (2017). Likewise, the Fifth Circuit has acknowledged that Section 1927 “does not apply to represented parties, but only to ‘any attorney or other person admitted to conduct cases.’” *Smith Int’l, Inc. v. Tex. Commerce Bank*, 844 F.2d 1193, 1197 (5th Cir. 1988); *see also Matta v. May*, 118 F.3d 410, 413–14 (5th Cir. 1997) (“§ 1927 sanctions are, by the section’s plain terms, imposed only on offending attorneys; clients may not be ordered to pay such awards.”). And bankruptcy courts routinely refuse to sanction parties under Section 1927. *See, e.g., In re Feldman*, 597 B.R. 448, 466 (Bankr. E.D.N.Y. 2019) (denying sanctions motion against debtor in part because “a party represented by counsel, even if the party is an attorney, is not subject to sanctions under 28 U.S.C. § 1927”).

33. As it must, LKC acknowledges that the Special Committee is a represented party. Indeed, the first sentence of LKC’s Motion states that LKC moves for sanctions against the Special Committee “and its counsel” (Mot. at 1), and LKC refers to “counsel for the Special Committee” throughout the remainder of its Motion (*id.* ¶¶ 30, 39, 50, 65, 76).

34. Because sanctions against a represented party are unavailable under Section 1927, the Court should deny LKC’s request for such sanctions against the Special Committee even before it reaches the merits of LKC’s allegations.

B. LKC cannot meet the high bar for inherent-authority sanctions in the face of the Special Committee’s good-faith conduct.

35. The Court should also deny LKC’s request for sanctions under the Court’s inherent authority because the Special Committee acted reasonably and in good faith in challenging LKC’s Fee Application. To meet its burden to show that inherent-authority sanctions are warranted, LKC must prove, by clear and convincing evidence, that the Special Committee either (i) acted in bad-

faith or (ii) willfully abused the judicial process. *In re Prof'l Fee Matters Concerning Jackson Walker Law Firm*, 663 B.R. 335, 346 (Bankr. S.D. Tex. 2024). LKC cannot make either showing because neither occurred.

i. The Court exercises its inherent power to sanction litigants with restraint and discretion.

36. Federal courts have the inherent power “to sanction a litigant for bad-faith conduct.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 35 (1991). In particular, Section 105(a) of the Bankruptcy Code gives bankruptcy courts the ability to sanction “in conjunction with their inherent power to implement the Bankruptcy Code and prevent abuses of bankruptcy process.” *In re SkyPort Global Commc'ns, Inc.*, 528 B.R. 297, 322 (S.D. Tex. 2015) (quotations omitted).

37. Courts must, however, exercise their inherent power to sanction circumspectly. In this Circuit, a court may impose sanctions under its inherent authority only when it makes a specific finding of bad faith or willful abuse of judicial process supported by clear and convincing evidence. *In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). “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.” *Miller v. Dunn*, 774 F. Supp. 3d 806, 818 (N.D. Tex. 2024), *aff'd sub nom.*, 2025 WL 3231718, at *1 (5th Cir. Nov. 19, 2025) (citations and quotations omitted). Abuse of judicial process includes “maneuvers or schemes which would have the effect of undermining the integrity of the bankruptcy system.” *In re Rodriguez*, 652 B.R. 750, 760 (Bankr. S.D. Tex. 2023). LKC, as the movant, “bears the burden to justify the exercise of the Court’s inherent power to sanction.” *Michael v. Boutwell*, 138 F. Supp. 3d 761, 784 (N.D. Miss. 2015).

38. The Supreme Court “has cautioned that ‘because of their very potency, inherent powers must be exercised with restraint and discretion.’” *Elliott v. Tilton*, 64 F.3d 213, 217 (5th Cir. 1995) (quoting *Chambers*, 501 U.S. at 44). Specifically, inherent powers granted by

Section 105 must “be exercised only in a manner consistent with the provisions of the Bankruptcy Code.” *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986). Inherent powers do “not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.” *Id.*

39. Because a bankruptcy court’s “discretion to impose sanctions under its inherent authority is limited,” bad faith is judged by “necessarily stringent” standards. *Pressey v. Patterson*, 898 F.2d 1018, 1021 (5th Cir. 1990). Bad faith “requires more than just meritless claims.” *Miller v. Dunn*, 774 F. Supp. 3d 806, 819 (N.D. Tex. 2024), *aff’d*, 2025 WL 3231718 (5th Cir. Nov. 19, 2025). It requires (i) “a finding that the plaintiff filed [a] suit for purposes of harassment or delay, or for other improper reasons;” (ii) a “finding that the plaintiff filed a meritless lawsuit and withheld material evidence in support of a claim;” or (iii) “a finding that a party was delaying or disrupting the litigation or hampering enforcement of a court order.” *Miller*, 774 F. Supp. 3d at (quotations omitted). A “court’s mere suspicions do not add up to clear and convincing evidence of . . . bad faith.” *In re Moore*, 739 F.3d at 731; *see also In re Parsley*, 384 B.R. 138, 183 (Bankr. S.D. Tex. 2008) (refusing to impose sanctions because court could not find “clear and convincing evidence that the conduct . . . transcended from merely negligent bungling to full-blown bad faith”).

40. Examples of bad-faith conduct that has warranted the rare imposition of inherent-authority sanctions on parties in bankruptcy cases include (i) surreptitiously filing bankruptcy petitions with the intent to harm interested parties, *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008); (ii) misusing the bankruptcy court’s filing system to file documents that attack others or vent personal grievances instead of presenting proper facts and legal arguments, *In re Haney*, 2022 WL 412809, at *24 (Bankr. N.D. Ala. Feb. 10, 2022); and (iii) knowingly violating a

bankruptcy court’s confirmation order, *In re Cleveland Imaging & Surgical Hosp., L.L.C.*, 26 F.4th 285, 297 (5th Cir. 2022). Nothing close to such circumstances occurred here.

ii. The Special Committee’s objections to LKC’s Fee Application were reasonable and made pursuant to the Debtors’ statutory and contractual rights.

41. LKC portrays the Special Committee’s Objection as a “malicious” “smear campaign” consisting of “baseless accusations,” “frivolous” claims, “spurious attacks,” “abusive tactics,” and “vexatious litigation conduct.” Mot. at 1–4. These characterizations ignore reality.

42. The Special Committee, acting on the Debtors’ behalf, raised substantive, good-faith arguments pursuant to the rights afforded to a debtor under Section 330 of the Bankruptcy Code and LKC’s revised engagement letter. Section 330 authorizes a bankruptcy court, “on its own motion or ***on the motion of . . . any other party in interest***,” to “award compensation that is less than the amount of compensation that is requested.” 11 U.S.C. § 330(a)(2) (emphasis added). Similarly, LKC’s revised engagement letter provided that if the Debtors and LKC were unable to agree on the amount of LKC’s success fee, this Court would resolve the dispute. ECF No. 835 at 15.

43. The Special Committee exercised the Debtors’ statutory and contractual right—and its own fiduciary obligation—to scrutinize LKC’s Fee Application. It did not argue that LKC deserved nothing. *See* ECF No. 1732 ¶ 1 (acknowledging that LKC was “unquestionably” entitled to fees for its services and offering to pay the undisputed \$600,000 component of the success fee immediately). Instead, it reasonably contended that LKC’s calculation of its success fee was unsupported and premature based on the Special Committee’s interpretation of LKC’s revised engagement letter and the facts. *See generally id.* at 14–22. The Special Committee neither “conscious[ly]” committed “a wrong because of dishonest purpose or moral obliquity,” *Miller*,

774 F. Supp. 3d at 818, nor did anything that might “undermin[e] the integrity of the bankruptcy system,” *In re Rodriguez*, 652 B.R. at 760.

a. Objections to final fee applications are authorized under 11 U.S.C. § 330(a)(2) and routine.

44. The Bankruptcy Code provides a uniform scheme for retaining and compensating attorneys under 11 U.S.C. §§ 327–330. First, under Section 327(a), a debtor must obtain the bankruptcy court’s approval to employ counsel. 11 U.S.C. § 327(a). Then, under Section 330(a)(1)(A), an attorney who has been retained and employed may request “reasonable compensation for actual, necessary services rendered.” *Id.* § 330(a)(1)(A). Next, as noted above, the bankruptcy court may exercise its discretion, upon motion or *sua sponte*, to “award compensation that is less than the amount of compensation that is requested.” *Id.* § 330(a)(2).

45. Objections challenging the amount of compensation requested are not only expressly authorized under Section 330(a)(2) but common. *See, e.g., Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015) (debtors’ parent company objected to fee application filed by debtors’ counsel); *Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner)*, 783 F.3d 266 (5th Cir. 2015) (secured creditor objected to fees sought by debtor’s counsel); *In re Digerati Technologies, Inc.*, 537 B.R. 317 (Bankr. S.D. Tex. 2015) (U.S. Trustee and creditors objected to debtor’s counsel’s fee application, resulting in reduction of fees requested by counsel). In addition, lump-sum settlements—as here—often give rise to disputes over contingency fees because such settlements often do not align neatly with the fee arrangements. *See, e.g., In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 233–35 (5th Cir. 2008) (dispute arose over allocation of a lump-sum settlement among individual attorneys representing clients on contingency fee basis in mass tort litigation); *Anglo-Dutch Petroleum Int’l, Inc. v. Greenberg Peden, P.C.*, 352 S.W.3d

445, 449–52 (Tex. 2011) (dispute arose between client and attorney over scope of contingency fee arrangement following lump-sum settlement payment from complex oil and gas lawsuit).

46. LKC’s Motion proceeds from the false premise that the Special Committee’s refusal to accept LKC’s success fee calculation was an act of bad faith. In reality, the Special Committee’s Objection to LKC’s Fee Application is the sort of motion expressly authorized by Section 330. It was the **only** way—indeed, the mandated way—for the Special Committee to proceed given the inability to resolve the success fee dispute consensually.

47. Granting LKC’s request for sanctions would have material, process-chilling consequences beyond these cases. If parties in interest face the prospect of being sanctioned for exercising their statutory right to challenge fee applications in good faith under Section 330(a)(2), debtors, fiduciaries, and other stakeholders may be deterred from raising objections to fee applications in future bankruptcy proceedings. Independent directors who serve on special committees and bring decades of restructuring experience to bear in advising distressed companies would be particularly chilled, forced to weigh the risk of retaliatory sanctions against their fiduciary obligation to scrutinize professional fees on behalf of the estate. Such a result would undermine the fee-review process that Congress established and that bankruptcy courts depend upon to protect the interests of debtors and their stakeholders. The Court should decline LKC’s invitation to employ the Court’s inherent sanctions power in a manner that would discourage the very oversight that the Bankruptcy Code requires.

b. LKC’s revised engagement letter expressly contemplated judicial resolution of the amount of LKC’s success fee.

48. On top of Section 330, LKC’s own revised engagement letter expressly anticipated the possibility that the parties would be unable to agree on the amount of LKC’s success fee, and provided that such a dispute would be resolved by this Court. Section (d) of the letter provides in

relevant part: “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.***” ECF No. 835 at 15 (emphasis added). Rhodium’s General Counsel, Charles Topping, testified that Section (d) was included “to make explicit the way in which the success fee would be determined in the event . . . there was a transaction that resulted in a sale of Rhodium’s assets.” Ex. A, Nov. 3, 2025 Hr’g Tr. at 193:6–12. Given that such language exists in LKC’s approved retention and revised engagement letter, LKC has no basis to argue that a fee dispute was unforeseeable or the type of “subsequent developments [] *incapable* of being anticipated at the time the engagement was approved.” *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012).

49. The Special Committee’s decision to object to LKC’s Fee Application and present the parties’ dispute regarding the amount of LKC’s success fee to the Court was not unexpected or made in bad faith; it was contemplated by the parties and was the very dispute-resolution mechanism that their agreement established. In accordance with LKC’s revised engagement letter and in good faith, the Special Committee objected to only certain components of LKC’s Fee Application and presented the Debtors’ position to the Court for adjudication. *See generally* ECF 1732 at 14–20. LKC’s revised engagement letter required good-faith negotiation followed by judicial resolution—precisely what occurred.

c. The Special Committee reasonably argued that LKC’s success fee calculation was overstated because the Whinstone settlement was primarily an asset sale.

50. The Special Committee substantively objected to LKC’s Fee Application primarily on the ground that LKC’s success fee calculation was inflated because it failed to account for the reality of the Whinstone settlement: the settlement was primarily a sale of assets, not a recovery

on the Debtors' litigation claims. ECF No. 1732 ¶¶ 3, 15, 39, 42–45. This position was reasonably based in fact.

51. As these chapter 11 cases proceeded, it became clear that the best resolution for all stakeholders would involve an asset sale. Rhodium's General Counsel testified that as the mediation between the Debtors and Whinstone progressed, "it started to become apparent to us that it would be very difficult to get exit financing on our terms. At that point . . . what we saw as the best way to provide a return to our Stakeholders, provide a return to our Creditors was starting to emerge as the solution of an asset sale." Ex. A, Nov. 3, 2025 Hr'g Tr. at 206:7–17. The Debtors' restructuring advisors worked with Rhodium, the SAFE AHG, and Whinstone to come to an agreement on an asset sale that brought concrete value into the estates. See ECF No. 1732 at 15–16.

52. The Special Committee's contention that LKC's success fee calculation was exaggerated because the Whinstone settlement was primarily an asset sale was not manufactured. The Debtors' Settlement Agreement with Whinstone did not specify what part of the lump-sum payment corresponded with the sale of assets or recoveries on the Debtors' claims. And LKC's revised engagement letter itself recognized the possibility that the Debtors' dispute with Whinstone would be resolved through a transaction in which Whinstone acquired all or substantially all of the Debtors' Rockdale assets, and that the Debtors and LKC would not be able to agree on LKC's resulting success fee. ECF No. 835 at 15–16.

53. The Special Committee's position also was supported by evidence. The testimony of Rhodium's General Counsel quoted above supported the Special Committee's position that the nature of the transaction with Whinstone evolved from a litigation settlement into primarily an asset sale driven by the Debtors' restructuring circumstances (particularly, their inability to obtain

exit financing on acceptable terms)—a fact with direct implications for the allocation of the \$185 million in transaction value and, in turn, the success fee calculation. The Debtors’ Chief Financial Officer, Kevin Hays, also testified that the \$75 million damages figure proposed by the Special Committee for calculating LKC’s success fee was consistent with the presentation made to Rhodium’s Board in March 2025—a presentation made well before any controversy arose over LKC’s success fee—and that the same figure was used in the Debtors’ proposed tax allocation to Whinstone. Ex. F, Dec. 3, 2025 Hr’g Tr. at 203:6–206:25.

54. Mr. Eaton, one of the Special Committee members, explained that the \$75 million allocation was, in his view, “at the very top end” of a reasonable range, but that the Special Committee accepted it because it served two important purposes: it “recognized the good work that LKC had done” by providing adequate compensation, and it “would comply with the contract” by producing a fee allocation consistent with the Debtors’ proposed tax allocation to Whinstone. Ex. G, Dec. 11, 2025 Hr’g Tr. at 14:14–15:3. Mr. Eaton further noted that an “independent third-party valuation” had been conducted of the business assets sold to Whinstone, which came out at a range between \$173 million and \$207 million with a midpoint of \$190 million, “which was in fact very close to what [the Debtors] had achieved in the final settlement.” *Id.* at 14:2–7.

55. In arguing that the Whinstone settlement was not driven primarily by the Debtors’ litigation claims, the Special Committee legitimately contended that the preliminary settlement projections relied on by LKC to support its success fee calculation were just estimates, not final and binding settlement figures. ECF No. 1732 ¶¶ 37–41. Those pre-mediation projections were prepared by LKC itself, in coordination with the Debtors’ CFO, to facilitate discussions by Rhodium’s Board concerning strategy and settlement authority for conducting settlement negotiations. ECF No. 1732-2 ¶¶ 5–7. The projections were rough, risk-weighted estimates of

potential claim values. *Id.* They were used for settlement discussions “solely centered around the value of the business” and were never presented to or agreed upon by Whinstone or intended to serve as a binding allocation of settlement proceeds. *Id.* at 9:4–5; ECF No. 1732 ¶ 40. Mr. Eaton testified that “the data that was used [for settlement discussions] was created for much different purposes before it was transferred over to apply to the settlement of success fees, and I think it substantially overweigh[ed] the value of litigation claims.” Ex. G, Dec. 11, 2025 Hr’g Tr. at 8:8–15. Indeed, Rhodium’s General Counsel testified that the Board’s estimate of damages moved from \$100 million to \$75 million as circumstances evolved, demonstrating the projection’s preliminary nature. Ex. A, Nov. 3, 2025 Hr’g Tr. at 21:4–8.

56. The Special Committee’s argument that the Whinstone settlement was primarily an asset sale—and that the Debtors’ preliminary, one-sided estimate of litigation damages was not a proper basis for calculating LKC’s success fee—was a reasonable, good-faith position well within the bounds of legitimate advocacy. Because LKC was not present at or actively involved in the later settlement negotiations with Whinstone that ultimately resulted in a resolution, it had no way of knowing what allocations were discussed regarding potential litigation damages.

d. The Special Committee reasonably argued that LKC’s Fee Application included unrecoverable fees for work performed by Porter Hedges.

57. The Special Committee also objected to LKC’s Fee Application on the ground that it included unrecoverable fees for work by LKC’s counsel, Porter Hedges. ECF No. 1732 ¶¶ 46–49. This, too, was a reasonable objection.

58. LKC’s Fee Application presented \$200,100.98 in Porter Hedges charges as lump-sum expense line items with no details regarding time, rates, qualifications, or the nature of the work performed. ECF No. 1560 at Ex. F. Because LKC never provided the underlying Porter Hedges invoices to the Debtors until the eve of trial, the Debtors could not assess whether the

expense was actual and necessary as dictated by Section 330. As the Debtors' General Counsel testified: "[W]e had never received invoices . . . for the Porter Hedges amounts, so there was no way to determine if those amounts were reasonable." Ex. A, Nov. 3, 2025 Hr'g Tr. at 190:18–21.

59. Section 330 allows the bankruptcy court to award a professional retained under Section 327 "reimbursement for **actual, necessary** expenses." 11 U.S.C. § 330(a)(1)(B) (emphasis added). LKC's bare-bones presentation of the Porter Hedges charges made it impossible for the Debtors to conduct this analysis, let alone determine whether such charges by Porter Hedges were necessary for the administration of the estate, and the Special Committee justifiably objected to the inclusion of these charges in LKC's Fee Application.

e. The Special Committee reasonably argued that LKC's Fee Application was premature.

60. In addition to the substantive arguments discussed above, the Special Committee argued that LKC's Fee Application was premature. ECF No. 1732 ¶¶ 42–45. This position also was reasonable and supported by evidence.

61. In support of this position, the Special Committee submitted a sworn declaration from the Debtors' tax advisor, Mark Wheeler, stating that the Whinstone transaction implicated six separate taxpayers and required attribution of revenue to each entity based on the specific assets sold, the hosting agreements held, and the settlement of claims asserted. ECF No. 1732-1 ¶¶ 6–7. Mr. Wheeler also testified that under the Internal Revenue Code and the PSA, the Debtors and Whinstone were required to allocate the Purchase Price using the residual method prescribed by 26 U.S.C. § 1060 and Treasury Regulations thereunder. *Id.* ¶ 8. He further testified that the allocation should ideally be resolved before negotiating with LKC to "ensure a single set of operative facts regarding the allocation of [the] purchase price." *Id.* ¶¶ 26–27. He also acknowledged that while reaching a different allocation for purposes of the LKC dispute would

not “violate the PSA,” the tax filings “would have to be considered as well.” Ex. F, Dec. 3, 2025 Hr’g Tr. at 119:19–120:5.

62. Supported by Mr. Wheeler’s testimony, the Special Committee’s position was straightforward: Because the PSA required the allocations be “accurate and consistent with the record,” it was reasonable to seek consistency between that allocation and the fee calculation before finalizing LKC’s success fee. ECF No. 1732 ¶ 44. The Special Committee did not argue that the Court should never determine the amount of LKC’s success fee or award LKC a success fee—only that the Court should wait to do so until the Debtors and Whinstone agreed on or otherwise resolved the tax allocation to achieve such objectives.

iii. The Special Committee asserted a breach of fiduciary duty claim against LKC on the Debtors’ behalf in good faith.

63. The record establishes that the breach of fiduciary claim asserted against LKC by the Special Committee on the Debtors’ behalf was colorable and asserted to avoid waiver, not as a “malicious campaign of publicly attacking and defaming LKC.” Mot. at 1. The Special Committee did not assert the claim “for purposes of harassment or delay, or for other improper reasons,” and LKC does not even argue that the Special Committee “withheld material evidence” regarding the claim. *Miller*, 774 F. Supp. 3d at 819.

a. The Special Committee asserted the breach of fiduciary duty claim to avoid waiver after LKC refused to extend the Special Committee’s time to object to LKC’s Fee Application.

64. The Special Committee’s good faith in asserting a breach of fiduciary duty claim against LKC on the Debtors’ behalf is demonstrated by its candor regarding the reason it asserted the claim. In its Objection, the Special Committee stated: “*Res judicata* can and does bar a debtor’s claims against a third party seeking fees in a bankruptcy case if those claims are not asserted in connection with the fee application. Accordingly, as part of this Objection, the Special Committee

was required to assert, at a minimum, any affirmative claims against LKC related to the Fee Application and LKC's representation of the Debtors in this case." ECF No. 1732 ¶¶ 50–51 (citations omitted).

65. Before asserting the breach of fiduciary duty claim, the Special Committee sought to extend the Debtors' time to object to LKC's Fee Application to allow for further investigation and potential negotiations. *Id.* ¶ 5. LKC, however, refused this request, leaving the Special Committee with no option but to assert the claim as part of its Objection to avoid waiver under Fifth Circuit precedent. Obj. ¶ 5; see *In re Intellogic Trace, Inc.*, 200 F.3d 382, 386–391 (5th Cir. 2000) (holding that *res judicata* barred trustee's malpractice claims where they were not asserted in an objection to a fee application but they had arose from the same nucleus of operative facts).

66. As the Special Committee's Objection made clear, it raised the breach of fiduciary duty claim out of an abundance of caution to preserve it—not for purposes of harassment or delay.

b. The breach of fiduciary duty claim was colorable.

67. The breach of fiduciary duty claim asserted by the Special Committee against LKC was reasonably based in law and fact. The elements of such a claim under Texas law are (i) the existence of a fiduciary duty; (ii) breach of the duty; (iii) causation; and (iv) damages. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017). The Special Committee alleged in good faith that (1) a "fiduciary duty exists between a lawyer and . . . client," and "Rhodium engaged LKC and LKC's attorneys represented . . . the Debtors;" (2) LKC breached its fiduciary duty to Rhodium by demanding fees "in such a manner that, if Rhodium acquiesced, would create substantial liability;" (3) "[m]aking the payment that LKC demand[ed] would cause Rhodium to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder;" and (4) "LKC caused damage to the Debtors" by "shar[ing] the Debtors'

privileged information without [their] consent,” “forc[ing] the Debtors to incur legal fees,” and “subject[ing] the Debtors to heightened scrutiny by the Internal Revenue Service or other parties.” ECF No. 1732 ¶¶ 54–58. These allegations were supported by the sworn declaration of Rhodium’s General Counsel. ECF No. 1732-2.

68. LKC does not and cannot offer clear and convincing evidence that the Special Committee asserted the breach of fiduciary claim for an improper reason. LKC claims that the Special Committee’s counsel “admitted he could not articulate any factual basis” for the claim. Mot. ¶ 65 (citing ECF No. 1633 at 6). Yet, in the very filing that LKC cites to support this statement, LKC conceded that the Special Committee’s counsel explained that LKC’s actions created “audit risk with the IRS.” ECF No. 1633 ¶ 14.

69. LKC also asserts, without support, that the Special Committee later withdrew the claim “because it knew” the claim was “baseless.” Mot. ¶ 66. But dismissal—let alone voluntary withdrawal—of a claim does “not establish that the . . . claim was frivolous, unreasonable, or groundless.” *Dean v. Riser*, 240 F.3d 505, 512 (5th Cir. 2001). A party may decide to withdraw a claim “for reasons other than lack of merit.” *McCollum v. Jacobs Eng’g Grp., Inc.*, 992 F. Supp. 2d 680, 686 (S.D. Miss. 2014). Here, the Special Committee withdrew the breach of fiduciary duty claim to streamline discovery and narrow the issues for the Court to resolve. *Cf. In re Rodriguez*, 652 B.R. 750, 762 (Bankr. S.D. Tex. 2023) (sanctioning attorney where she “openly conceded that she had no basis asserting her numerous maritime law theories”); *In re Parsley*, 384 B.R. 138, 180 (Bankr. S.D. Tex. 2008) (finding attorney acted in bad faith because he misrepresented to the court that a motion “was a good motion” despite “clear and convincing evidence that [he] had actual knowledge of the inaccurate factual allegations” in the motion).

70. The Special Committee filed a colorable claim for breach of fiduciary duty against LKC and later withdrew it for efficiency. Relying solely on mischaracterized quotations and conclusory allegations, LKC offers no evidence that the Special Committee asserted the claim to harass LKC or for any other improper purpose.

c. Federal and bankruptcy laws required the Special Committee to file the breach of fiduciary claim publicly.

71. LKC complains that “the Special Committee publicly filed [the] breach of fiduciary claim and refused to file it under seal.” Mot. ¶ 65. But the Special Committee properly filed the claim publicly because nothing about it warranted sealing.

72. “[F]ederal courts have long recognized the strong common law presumption in favor of public access to court proceedings and records.” *In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This presumption is codified in Section 107 of the Bankruptcy Code, which provides that a paper filed in a bankruptcy case and the dockets of a bankruptcy court are public records. 11 U.S.C. § 107(a). Section 107 permits the sealing of bankruptcy filings only in limited circumstances “to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.” *In re Gen. Homes Corp.*, 181 B.R. at 903. “For a bankruptcy court to seal court records pursuant to its discretionary authority to limit public access to papers, the court must specifically find that the interest of secrecy outweighs the presumption in favor of access.” *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. 429, 440 (Bankr. S.D. Tex. 2009). In these very cases, the Court expressed concern about unnecessary sealing when addressing the Special Committee’s motion for a protective order. Ex. H, Oct. 30, 2025 Hr’g Tr. at 4:19–25 (“I’m not going to seal the entire hearing . . . I’m going to only seal those portions of the hearing that need to be sealed.”).

73. Nothing in the Special Committee’s Objection warranted sealing under Section 107(b). The Objection merely laid out the nonconfidential, factual allegations necessary to assert a breach of fiduciary duty claim against LKC. ECF No. 1732 ¶¶ 50–59. LKC may have preferred that the Special Committee file the claim under seal, but that preference did not allow the Special Committee to do so. “[A]greement of the parties, by itself, is not sufficient to trump the public’s presumptive right of access.” *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. at 441 (quotations omitted).

74. If LKC believed the breach of fiduciary duty claim warranted sealing, it could have and should have moved the Court to place the claim under seal. Likely recognizing that it could not meet its “burden of establishing [the] scandalous and defamatory character” of the claim, LKC never filed a motion to seal. *Id.* at 440. Even now, LKC offers no evidence to “demonstrate extraordinary circumstances and a compelling need to [have] obtain[ed] protection.” *Id.*

75. Further, LKC was the first party to place materials regarding its conduct into the public record. ECF No. 1529-2. In good faith, the Special Committee sent LKC a private letter outlining its concerns, and LKC subsequently filed that same letter, and the Special Committee’s draft objection to the Fee Application, with the Court. *See generally* ECF No. 1529-2.

iv. The Special Committee’s litigation conduct was routine and reasonable.

76. LKC’s Motion is devoid—because none exists—of the clear and convincing evidence necessary to establish that the Special Committee engaged in “vexatious” litigation conduct.

77. Vexatious conduct is “conduct that evidences bad faith, motive, or reckless disregard of the duty owed to the courts.” *In re Ruth*, 473 B.R. 152, 166 (Bankr. S.D. Tex. 2012) (omitted quotations). It “implies not only that a litigant knew a position was unfounded, but that his purpose was to create trouble or expense for the opposing party.” *Walters v. Tenant*

Background Search, 849 F. App'x 476, 479 (5th Cir. Mar. 12, 2021). In *In re Ruth*, the court denied a request for sanctions for alleged vexatious litigation conduct where the movants “ha[d] not provided evidence of any multiplicity of litigation or costs in their case,” and the “filing of th[e] challenged claim ha[d] not led to extensive examinations or any court filings outside of the normal litigation process.” *In re Ruth*, 473 B.R. at 167.

78. Such is the case here. LKC provides no evidence of “particular misconduct” required for the Court to make a finding of multiplicity of litigation or costs outside of the normal process for litigating final fee applications. *Id.* at 166. The Special Committee’s litigation conduct was not vexatious—it was routine and done in good faith.

79. **First**, as explained, fee application objections are a routine aspect of bankruptcy practice and have minimal impact on case administration because “even if no objection ha[s] been lodged, th[e] Court has an independent duty to examine all fee requests made by counsel.” *In re King*, 546 B.R. 682, 701 (Bankr. S.D. Tex. 2016).

80. **Second**, as also explained, the Special Committee’s objections to LKC’s Fee Application and breach of fiduciary duty claim were reasonably based in law and fact. *Supra* § III(B)(ii)-(iii).

81. **Third**, contrary to LKC’s allegation that the Special Committee engaged in “discovery gamesmanship,” Mot. ¶ 80, the Special Committee properly used the judicial process in good faith. For example, when LKC served Rule 30(b)(6) topics, the Special Committee participated in the “iterative and cooperative” conferral process, discussing with LKC for more than a week about the 30(b)(6) representatives it was willing to produce, as well as the topics on which those representatives would testify. Ex. H, Oct. 30, 2025 Hr’g Tr. at 8:21–9:2, 10:21. When LKC later sought to cover a topic “broader than [the Special Committee] anticipated based on

conferrals to date,” the Special Committee “responded to that in turn to ensure that [LKC] g[o]t the discovery they need[ed].” *Id.* at 11:2–11.

82. Further, when the Debtors refused to produce their Chief Executive Officer, Chase Blackmon, for deposition on the ground that LKC failed to provide adequate notice, the Special Committee proactively informed the Court of its intent not to produce the Debtors’ CEO on that basis, underscoring its commitment to transparency rather than gamesmanship. Ex. C, Oct. 15, 2025 Hr’g Tr. at 17:2–10. As the Special Committee noted to the Court, difficulties in the discovery process arose because “it [was] just a little bit faster under the timeframe,” not due to any deliberate obstruction. Ex. H, Oct. 30, 2025 Hr’g Tr. at 11:11.

83. ***Lastly***, the Special Committee continued to engage in good-faith negotiations to settle the success fee dispute without further litigation. The Special Committee made two additional offers to settle the dispute during the litigation, one for \$7.1 million for the success fee and another for \$7.4 million for the success fee ***and*** the hourly fees and expenses of LKC and Porter Hedges. Ex. D, Nov. 26, 2025 Email from Jon Cohn. LKC rejected both offers and refused to continue in settlement negotiations. *Id.*

84. LKC points to no case law supporting imposing inherent-authority sanctions against the Special Committee. The only three cases LKC cites that discuss courts sanctioning parties under their inherent authority for “vexatious” litigation conduct bear no resemblance to the circumstances here. *See Chambers*, 501 U.S. at 56 (sanctioning party for acting “in defiance of [a] preliminary injunction” and ignoring “repeated timely warnings . . . from . . . the court that his conduct was sanctionable”); *In re Cano*, 410 B.R. 506, 555 (Bankr. S.D. Tex. 2009) (sanctioning party for “violat[ing] court orders confirming chapter 13 plans”); *Day v. Amoco Chemicals Corp.*, 595 F. Supp. 1120, 1122, 1126 (S.D. Tex. 1984) (stating that future sanctions may be proper

because the court had “granted defendant’s motion to dismiss with prejudice on the ground that plaintiff’s case was frivolous and malicious”). Because LKC offers no evidence of bad faith or vexatious litigation conduct by the Special Committee, the Court should deny LKC’s request for inherent-authority sanctions.

C. ASARCO bars LKC’s attempt to collect attorneys’ fees and expenses for defending its Fee Application under 11 U.S.C. § 328.

85. The Court should deny LKC’s alternative request for additional fees and expenses under 11 U.S.C. § 328 because it is a transparent attempt at circumventing the core principle in *Baker Botts L.L.P. v. ASARCO LLC*, in which the Supreme Court held that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee applications. 576 U.S. at 135; *see also In re Vaughn*, 660 B.R. 827, 869 (Bankr. S.D. Ohio 2024) (“It is well-established that time spent defending a fee application is non-compensable.”); *In re Huepenbecker*, 546 B.R. 381, 383 (Bankr. W.D. Mich. 2015) (“[B]ankruptcy courts may not award attorney fees to counsel employed by the bankruptcy estate for work performed in defending a fee application.”).

86. In *ASARCO*, the Supreme Court affirmed the Fifth Circuit’s reversal of a bankruptcy court’s award of attorneys’ fees and expenses for the cost of defending the attorneys’ own final fee application. *Id.* at 125. The Fifth Circuit reasoned that “the American Rule—the rule that each side must pay its own attorney’s fees—applies absent explicit statutory . . . authority to the contrary,” and that “the Code contains no statutory provision for the recovery of attorney fees for *defending* a fee application.” *Id.* (quotations omitted). Agreeing with the Fifth Circuit, the Supreme Court held that Section 330(a)(1) of the Bankruptcy Code “does not permit bankruptcy courts to award compensation for such litigation” because it “does not explicitly override the American Rule with respect to fee-defense litigation.” *Id.* at 135.

87. LKC suggests that *ASARCO* is limited to the Section 330 context. Mot. at 22 n.4. Not so. The Supreme Court’s reasoning in *ASARCO* applies equally to Section 328 because that provision does not explicitly “provid[e] for the recovery of attorney fees for *defending* a fee application.” See *ASARCO*, 576 U.S. at 126. Other bankruptcy courts have so held. See, e.g., *In re Boomerang Tube, Inc.*, 548 B.R. 69, 72 (Bankr. D. Del. 2016) (denying request for approval of fee defense provision in retention applications of counsel because, “like section 330, [section 328] is not a specific and explicit statute which authorize[s] the award of a reasonable attorney’s fee, fees, or litigation costs”) (quotations omitted); see also *In re Danner*, 2012 WL 3205242, at *4 (B.A.P. 9th Cir. July 31, 2012) (“The operative words [of § 328(a)] are ‘may’ and ‘reasonable.’”); *In re Raocore Tech., LLC*, 2025 WL 828880, at *4 (Bankr. D.D.C. Feb. 20, 2025) (quoting *Boomerang*) (addressing fees arrangements under Section 328 and noting that “[a]n engagement agreement is a contract ‘subject to objection by other parties and is ultimately subject to approval (and modification) by the Court.’”).⁵

88. In addition to being barred by *ASARCO*, LKC’s request for additional compensation under Section 328 is meritless because LKC seeks compensation for services performed for itself, not for the Debtors. In *In re Boomerang Tube, Inc.*, the court noted that “section 328(a) permits only approval of fees or expenses for performing services for the” trustee

⁵ Even if *ASARCO* were limited to Section 330, LKC’s argument for additional compensation under Section 328 still flies directly in the face of the American Rule. The “basic point of reference when considering the award of attorney’s fees is the bedrock principle known as the American Rule: Each litigant pays his own attorney’s fees, win or lose, unless a statute or contract provides otherwise.” *ASARCO*, 135 S.Ct. at 2164 (quoting *Hardt v. Reliance Std. Life Ins. Co.*, 560 U.S. 242, 252–53 (2010)). Any departure or exception to the American Rule must be “specific and explicit” and must “authorize the award of ‘a reasonable attorney’s fee,’ ‘fees,’ or ‘litigation costs,’ and usually refer to a ‘prevailing party’ in the context of an ‘adversarial action.’” *Id.* at 2164. Here, LKC’s court-approved revised engagement letter does not expressly award either party its attorneys’ fees or expenses incurred in litigating any such fee dispute—it only contemplates and provides a dispute resolution mechanism.

or a committee of creditors or equity security holders. 548 B.R. at 78. Because “the expenses sought” in the retention applications before the court would have been “for services performed for the professionals, not for the [applicable] Committee,” the court concluded that “the fee defense provision [in the applications was] not a reasonable term of employment for serving as Committee Counsel.” The same is true here.

89. Further, Section 328 only permits a court to “allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove 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) (emphasis added). LKC has not met this “weightier burden of proving that the subsequent developments were incapable of being anticipated at the time the engagement was approved.” *In re ASARCO*, 702 F.3d at 258. To the contrary, LKC bargained for the court-approved revised engagement letter, which explicitly stated that fee disputes would be submitted to the Court. ECF No. 835 at 15. LKC fails to explain why such a fee dispute was incapable of being anticipated, and the record shows just the opposite.

90. Because *ASARCO* makes clear that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee applications, and because LKC seeks compensation for anticipated services performed for itself, LKC is not entitled to additional compensation under Section 328.

IV. CONCLUSION

91. For these reasons, the Special Committee respectfully asks that the Court deny the Motion.

Dated: March 6, 2026

Respectfully Submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on March 6, 2026, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ Travis A. McRoberts
Travis A. McRoberts

EXHIBIT A

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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1 HOUSTON, TEXAS; MONDAY, NOVEMBER 3, 2025

2 (Call to Order)

3 THE COURT: All right. It is Monday, November
4 3rd, 2025. We're here in case number 24-90448, Rhodium
5 Encore. There are various matters pending.

6 First, let's get appearances, and then we will
7 proceed to talk about how we're going to conduct the
8 hearing. So let's just get appearances first in the
9 courtroom, and then we'll get them --

10 MR. WOLFSHOHL: Good afternoon, Your Honor.
11 Joshua Wolfshohl from Porter Hedges, on behalf of Lehotsky
12 Keller Cohn, who I'll call LKC. And I've also got Jon Cohn,
13 Will Thompson, Todd Disher, and Jacob Richards from LKC as
14 well.

15 MR. SCHMELTZ: Good afternoon, Your Honor. Trace
16 Schmeltz from Barnes & Thornburg, for the Special Committee
17 of the Board of Directors of Rhodium. My partners, Katie
18 Matsoukas and Paige Lohse, are here with me in the
19 courtroom. Chuck Topping, the General Counsel for Rhodium,
20 is here with us, as are Chase Blackmon, the CEO of Rhodium,
21 here at counsel table, and Kevin Hays, the CFO of Rhodium.
22 For the Special Committee, my client, David Eaton, is here
23 in court. And obviously, you recognizes Ms. Tomasco as
24 well.

25 THE COURT: All right. Let's get appearances on

SPECIALCOMMITTEE_00004

1 the phone.

2 MS. SCHULTZ: Good afternoon, Your Honor. Sarah
3 Schultz and Mitchell Hurley, Akin Gump Strauss Hauer & Feld,
4 on behalf of the Ad Hoc Group of SAFE Parties.

5 MR. POTTER: Good afternoon, Your Honor. Chase
6 Potter and Anna Richardson on behalf of the Transcend Group.

7 MR, ALLARD: Nathaniel Allard of McDermott Will &
8 Schulte, for the Official Committee of Unsecured Creditors.

9 THE COURT: Okay. We've got 25 people on the
10 line, including the ABI Project recording this. So let's
11 first talk about how we're going to conduct the hearing, and
12 then we'll get started.

13 MR. SCHMELTZ: So, as Your Honor can appreciate
14 the dispute between counsel and client, and there's
15 privileged information that's been produced in the matter,
16 certainly there are communications between LKC on the one
17 hand, and Debtors on the other. We have some concern not
18 about -- I mean, obviously here in this courtroom, and with
19 the constituents in the bankruptcy, but to have a broader
20 waiver for people who aren't in the bankruptcy, beyond this
21 bankruptcy matter, right, is of concern to us. And so we
22 had asked for an order sealing, which I understand you
23 indicated we could invoke on an as-needed basis.

24 I believe, at least from the best I could tell,
25 keeping up with your roll call, that all the people who are

1 on the call at the moment are constituencies -- constituents
2 in the bankruptcy, who have signed the protective order, and
3 in that --

4 THE COURT: Except for the ABI Project.

5 MR. SCHMELTZ: Except for the ABI Project, and I
6 don't really know how to deal with the ABI Project as a
7 practical matter, but I suppose -- I suppose that's
8 something we can deal with. But you know, we're content in
9 this realm that these are people that need to hear most of
10 what goes on.

11 I believe there are only one or two documents I'm
12 aware of that we have had a dispute over privilege on that
13 may come up today, and those are things where the
14 communication doesn't involve LKC to client, and it was a --
15 we had, moving very quickly and trying to be transparent, we
16 had some documents get out that were privileged, that we've
17 tried to claw back. And I'm aware of one or two that they
18 have used in depositions, that we have attempted to claw
19 back, that we may have a dispute over. I don't know if we
20 still do.

21 MR. WOLFSHOHL: I think that we -- I'm trying to
22 remember. I don't -- I think there might only be one
23 document that's subject to a clawback that we included, and
24 we included it in a redacted form.

25 MR. SCHMELTZ: Okay.

1 MR. WOLFSHOHL: I think that's right. But we're
2 not waiving the ability to argue that it shouldn't be clawed
3 back, and that we should use it in the entirety, but I don't
4 think we really have much of an issue.

5 THE COURT: Okay. Is that fair?

6 MR. THOMPSON: It may come up with a witness, Your
7 Honor, but I don't see any reason to fight about the
8 clawback right now.

9 MR. SCHMELTZ: Will, that's the document you and I
10 have already talked about? It's -- without getting on the
11 record what it is, it's the one --

12 MR. THOMPSON: I believe that's correct.

13 MR. SCHMELTZ: Okay. And we can deal with that
14 one document when it comes up, and we will. I think beyond
15 that, if things proceed as I expect them to, we are
16 comfortable proceeding the way we have. And I would imagine
17 if something comes up, you know, we've got a raft of people
18 who will tell me to jump up --

19 THE COURT: Well, there are three more people who
20 joined. I'm going to close, once we make these
21 announcements, I'm going to go ahead and lock the conference
22 room so nobody can hear. And then what I can do is I can
23 just mute the courtroom so only the people in the courtroom
24 will hear, to the extent that we get to a situation where
25 you don't want to do that.

1 MR. SCHMELTZ: And then we, mindful of Your
2 Honor's schedule, thought that it might make sense to put
3 our case on through declaration. And so we filed
4 declarations, and asked for leave for them to be entered in
5 this matter. They're all witnesses that Counsel has had the
6 opportunity to depose, and they're all here, subject to
7 cross-examination, as we know they need to be, and we would
8 ask that we proceed on that basis. I think it will expedite
9 things. And you'll get a preview in my opening of what
10 those people will be saying. And certainly, if Your Honor
11 were to want to hear, you know, more about it from them on
12 direct, we're happy to do that, too.

13 THE COURT: Okay. Yeah, and we'll leave that up
14 to -- you know, we'll do it on a case-by-case basis. I'm
15 not going to issue a ruling on that at this point.

16 Okay. So who is on here from the 512 area code?
17 512, last four digits --

18 MS. MATES: Your Honor --

19 THE COURT: Yes?

20 MS. MATES: This is Rhonda Mates for Imperium, the
21 Blackmons, and Nathan Nichols.

22 THE COURT: All right. Thank you, Ms. Mates.

23 Okay. How about 925?

24 MS. FAIRBAIRN: Nina Fairbairn, for the Transcend
25 Group.

1 THE COURT: And 954?

2 MR. ROCHMAN: Good afternoon, Your Honor. This is
3 Matthew Rochman on behalf of Liquid Mining Fund I, Liquid
4 Mining Fund II, and Liquid Mining Fund III.

5 THE COURT: Okay. And then -- I guess that's it.

6 All right. So I think I have everyone who is on,
7 and I'm going to go ahead and lock the conference room.

8 Okay. And then, the only -- I think other than
9 the ABI Project, everybody appears to have a -- a role in
10 this.

11 All right. Mr. Wolfshohl?

12 MR. WOLFSHOHL: Your Honor, I heard what you said
13 about taking up the designation of, I guess, the
14 declarations earlier, and just doing that in sequence.

15 THE COURT: Right.

16 MR. WOLFSHOHL: Both sides filed some pre-trial
17 motions as well. Do you want to take those up when they
18 come up (indiscernible)

19 THE COURT: Yeah, I want to take them up when they
20 come up. And I don't know to what extent we're going to be
21 able to get done today, but you know, I'm trying to find
22 some more time to finish up, to the extent we can't get done
23 today.

24 MR. WOLFSHOHL: Okay. Thank you, Your Honor.

25 THE COURT: All right. So it's your motion. I

1 don't know who's going to take the lead. Mr. Thompson?

2 MR. THOMPSON: Thank you, Your Honor. Because I
3 have some slides just for the opening, because there are
4 some sealed documents mentioned in them (indiscernible)

5 THE COURT: Do you want to (indiscernible)

6 MR. THOMPSON: Thank you, Your Honor. And may it
7 please the Court, Will Thompson from Lehotsky Keller Cohn.
8 We're here on what I hope will be a relatively simple
9 matter. The is our fee application.

10 Your Honor will recall, looking at slide 2, there
11 are a few different pieces to this success fee and fee
12 application formula. The first one is, I think, undisputed.
13 It's under paragraph A of the engagement letter, it's a
14 \$600,000 payment based on the victory in the motion to
15 assume proceedings. My understanding from the other side is
16 that's not disputed, and so I think we have that locked in.

17 Looking at our next slide, the next component is
18 the success fee related to the energy credits. This formula
19 is slightly more involved, but not very. It's 5% on the
20 first \$5 million, which comes out to \$250,000, plus 1% on
21 anything else that is allocated to energy credit damages.

22 The final component of the success fee is 10% of
23 the remaining non-energy credit damages.

24 So to put this all together, we need to figure
25 out, or the Court needs to figure out, I'm sorry to say, how

1 much money to allocate to damages in total. And then of
2 that, how much is energy credits, how much is the rest of
3 it? And that's what's shown on slide 5 here. It's kind of
4 a two-step allocation process.

5 Now, I know that Your Honor has received an
6 incredible amount of briefing on this topic, and various
7 motions related to it.

8 THE COURT: Forty-eight since last Friday night.
9 So --

10 MR. THOMPSON: I'm sure we all apologize to the
11 Court for that.

12 THE COURT: I only have two eyes.

13 MR. THOMPSON: At the beginning of this dispute
14 about the fee application, Your Honor I think probably read
15 quite a bit about an agreed tax allocation that should occur
16 between Whinstone and Rhodium. We heard about how we
17 couldn't do our fee application until that was over. Well,
18 it turns out there is no agreed tax allocation on that. I
19 think Your Honor has a motion before the Court.

20 THE COURT: Mr. Lockhart is listening.

21 MR. THOMPSON: Well, I'm sure Mr. Rosten will ably
22 argue that motion for his side, and I'm sure my friends on
23 the Rhodium side will argue it for their side. But that is,
24 you know, not an issue that I think can stand in the way of
25 our fee application, because it's just not resolved, I think

1 contrary to maybe some people's expectations.

2 So the first key thing to figure out is how much
3 of the \$185 million goes to damages versus what I call the
4 business. We didn't build the business. We're not claiming
5 a piece of the business. We did contribute on the
6 litigation front, and think our success fee is tied to the
7 damages, whatever they are, that came through in that
8 settlement. The number we put before Your Honor, I think
9 this is public, is \$100 million. And I'm not going to
10 describe too much about why, but Your Honor understands a
11 lot of that is under seal, and that my friends on the other
12 side have put forward \$75 million.

13 What I think the evidence will show is that \$100
14 million is a much more reasonable number. It's based on
15 input from Counsel not just at my law firm, but also at the
16 Stris law firm, that it was a number presented to the
17 Rhodium Board, and that they were considering this actively
18 at the time all relevant decisions were made. I think the
19 evidence will show that the \$75 million number did not come
20 from the litigation team, did not come from a lawyer. It
21 came from some non-legal professionals who, for various
22 business reasons, wanted to lower that number to get a
23 settlement done related to the business side of things.

24 The next slide, on slide 8 is some of that
25 information that's under seal, but you can obviously see

1 where we're getting this number, and how the line in the
2 total is fairly close to what we actually achieved in the
3 total PSA, and that's one of our bases for using that \$100
4 million number.

5 Now, of course, because we're trying to divide
6 \$185 million between the business and damages, we also need
7 to know something about the state of the business, and what
8 was going on at that time. This is also under seal on slide
9 9, but Your Honor can read what sorts of considerations were
10 affecting the value of the business as the Board was
11 thinking about it.

12 THE COURT: All right, hold on. Let me just take
13 a look at it.

14 Okay. Go ahead.

15 MR. THOMPSON: And so I think Your Honor may have
16 just been reading slides 9 and 10, and you know, I think the
17 evidence will show that those risks in fact came to
18 fruition, that there was not going to be the kind of
19 business value people had hoped there would be because of
20 those circumstances.

21 Moving on to slide 11, Your Honor, we also need to
22 look at the allocation for energy credits. This is -- I
23 think the evidence is going to be a bit strange around this,
24 to be quite frank. This is the issue we previewed last
25 week, where we talked to the corporate representative who

1 was designated on the topic about the success fee and our
2 engagement letter, and the Debtors did not actually have
3 someone who was able to testify about the Debtors' position
4 on how much money should be allocated to energy credits.
5 That's led to the dispute with this late disclosed expert
6 witness and his report, and either that will be stricken, or
7 Your Honor will hear all about it in the testimony.

8 But there is an issue on this slide that shows I
9 think the consistent advice from the litigation team
10 regarding the energy credits was that we would not -- Just
11 one moment. I want to make sure I'm allowed to say this.

12 Okay. With no objection from Mr. Schmeltz, the
13 consistent advice from the litigation team was that we would
14 not recover on energy credits related to Winter Storm Uri
15 unless we were able to plead and prove fraud. I think the
16 evidence on this is fairly simple. Rhodium had contracts
17 that we contended entitled them to these energy credits.
18 Winter Storm Uri occurred, the price of electricity goes to
19 the roof. Your Honor probably remembers all of this. But
20 there was a settlement between Whinstone and Rhodium related
21 to all the claims having to do with Uri.

22 So the claims we would want to bring to recover
23 those energy credits had all been compromised via settlement
24 agreement. That would obviously be a pretty good defense
25 unless we could rescind that agreement via fraudulent

1 inducement. And so that's why we advised that, you know, we
2 weren't going to win on those claims unless we were able to
3 plead and prove fraud. And then also, there were
4 considerations related to exemplary damages that, of course,
5 require a tort claim like fraudulent inducement, and not
6 just breach of contract. And that's really the point we're
7 trying to drive home on slide 12. If we're not allowed to
8 pursue fraudulent inducement, and the evidence will show,
9 you know, we could not, as the publicly filed complaint will
10 reveal, then there were going to be no recoveries for Winter
11 Storm Uri energy credits.

12 There is also still a dispute about a smaller
13 number related to our hourly fees. I think it's fair to say
14 that the lion's share of that is Porter Hedges' expenses,
15 Mr. Wolfshohl, and that the -- I think there's basically
16 just one conceptual distinction there, which is are we able
17 to recover the expenses from paying Porter Hedges to help us
18 through this bankruptcy process? The engagement letter that
19 Your Honor has approved in a previous order clearly allows
20 as reasonable expenses, among other things, legal advice on
21 retention and compensation matters, I think --

22 THE COURT: So I wasn't able to find this, so I'd
23 like to see their fees broken out into retention -- all fees
24 related to retention, all fees related to the fee apps, all
25 fees related to the objection. All right? So -- And then

1 the third, just miscellaneous. And I know there's not going
2 to be complete overlap, but just I'm doing it for ASARCO.

3 MR. THOMPSON: Sure. And is it the objection to
4 the fee app (indiscernible) Is that right? When you said --
5 The last category I think you said it was the
6 (indiscernible)

7 THE COURT: Yeah, no, it's the retention, the fee
8 app, then time spent on the objection to the fee app.

9 MR. THOMPSON: Understood. Yeah, we can
10 (indiscernible)

11 THE COURT: And then, just miscellaneous. And I
12 just want to make sure -- I just want to look at ASARCO with
13 respect to that, because ASARCO is just that one category.

14 MR. THOMPSON: No, no, that's fair enough. I
15 think the vast majority of what's included in the actual fee
16 app does not relate to the objection, because it was
17 (indiscernible)

18 THE COURT: Right. I just -- yeah.

19 MR. THOMPSON: But we can break it down, as you
20 said. That's not a problem.

21 THE COURT: Right. Okay. That's the only --

22 MR. THOMPSON: We'll of course confirm and get it
23 the way Your Honor put it.

24 THE COURT: Right.

25 MR. THOMPSON: But that is my understanding, that

1 for the time period we're talking about, this is related to
2 the updated retention order.

3 THE COURT: Right, right.

4 MR. THOMPSON: And then, the last kind of point
5 here, Your Honor, is I think Your Honor also received a fair
6 amount of briefing around allegations of misconduct or
7 breaches of various duties. Your Honor may have seen on the
8 docket all of that has been withdrawn. We were able to
9 avoid pursuing discovery on that topic because our friends
10 on the other side have withdrawn all such allegations. And
11 so those should not be at issue, and we ought to be able to
12 get to the heart of the matter, which is, in light of the
13 work that our firm has done, how much of the value is
14 attributable to damages, and how much of that goes to energy
15 credits versus the other.

16 Thank you very much, Your Honor. We appreciate
17 your time on this.

18 MR. SCHMELTZ: Your Honor (indiscernible) star
19 screen (indiscernible)

20 THE COURT: Sure.

21 MR. SCHMELTZ: I'm going to try just to put one
22 slide up, and keep this super simple, Your Honor. But while
23 we're looking for that, I kind of want to start where this
24 ended, almost where it ended. And the overriding theme that
25 you'll hear from the witnesses and testimony from the

1 Special Committee is that the Debtors in the Special
2 Committee wanted to pay a fair compensation to a law firm
3 that did terrific work for the Debtors, that we continue to
4 want to pay fair compensation to a law firm that did
5 terrific work for the Debtors. We've got some disagreement
6 with how they've handled this dispute. Rather than squawk
7 about that before the Court, we thought let's get to the
8 numbers, and try to get that fair compensation.

9 Your Honor knows we paid the first part of the
10 success fee because it was undisputed, \$600,000. Your Honor
11 noted we could probably do a little better than that. So we
12 went back to the drawing board, and we thought if everything
13 was a power credit under our \$75 million allocation to
14 damages, that would be \$950,000 more. So we paid that, and
15 then we paid the Porter Hedges invoices to the extent they
16 didn't seem duplicative. But we didn't actually have the
17 invoices themselves. We didn't get them until they were put
18 in as trial exhibits. We didn't even get them in discovery.

19 And we asked for backup. We said, hey, we need to
20 pay reasonable expenses, and we asked, effectively, for
21 exactly what Your Honor just asked for, but we didn't get
22 it. But we're more than happy to pay Porter Hedges for good
23 work that Porter Hedges did, that fits under the engagement
24 letter. We're duty bound as Debtors in a bankruptcy to make
25 sure we do good due diligence on that number, and we were

1 not able to get the diligence we wanted. We remain ready to
2 pay those fees.

3 What this dispute is really about is what is fair
4 and reasonable and proportionate. And Your Honor is far
5 more aware of this than I am because you presided over the
6 trial, but LKC is one of three law firms that represented
7 the Debtors in the Whinstone litigation. They co-lead
8 counsel with Stris & Maher, and of course Quinn Emanuel was
9 involved. And the Stris & Maher firm, since inception of
10 this bankruptcy, has received about \$7 million in
11 compensation. Quinn Emanuel, as Debtors' Counsel, has
12 received about the same. So far, until the last couple of
13 payments of \$600,000 and \$950,000, LKC had received about
14 \$2.4, \$2.5 million, the last couple of payments bring them
15 up to \$4 million.

16 If you took their fee application of \$8.9 million,
17 and you back out about \$1.5 million from it, they're asking
18 for about another \$7.5 million on top of the \$4 million that
19 they have received. That would put them at about \$11.5
20 million. And of course, they got a success fee because they
21 gave a discount to the Debtors, as you'll hear from Chuck
22 Topping. Well, that would give them, you know, about an
23 eight times premium on the savings that they made, and it
24 would put them in a position of being largely
25 disproportionate to other professionals doing the same

1 (indiscernible)

2 THE COURT: But why are we talking about
3 proportionality? I thought we're talking about what the
4 contract says.

5 MR. SCHMELTZ: And so the contract, at the end of
6 the day, in part boils down to a good faith allocation of
7 damages, and a good faith effort to allocate between the
8 power credit, or provision B, and the 10%, provision C. And
9 so I'm just framing it a little bit so that you have a sense
10 of what I'm about to say next.

11 Katie, if we can just put that chart up on the
12 screen? And let's -- You can make that as full screen as
13 possible for those of us with older eyes. Thank you.

14 The Rhodium Board considered, as Mr. Thompson
15 noted, a claims analysis going into the mediation. That
16 claims analysis was originally fleshed out on February 12th,
17 before a February 19th mediation. It was refined again on
18 February 16th in a Board meeting, and then it was refined
19 another time after the first round of mediation occurred.
20 And the world sort of shifted in that mediation from being a
21 settlement of litigation to a sale of assets, with some
22 settlement of litigation attached.

23 And so numbers moved, and success fees moved, or
24 ratings of success. But at the end of the day, the Debtors
25 had, and you'll hear this from Kevin Hays, the CFO, it's in

1 his declaration, and of course he'll be here for cross-
2 examination, that the risk-weighted damages as things
3 continued to unfold moved from prior to mediation to after
4 mediation, from \$100 million to \$75 million. Which is a
5 pretty normal thing to do when you're seeing -- It's sort of
6 like putting your house on the market, and nobody comes to
7 buy it, and so you think I've got to move the price, you
8 reevaluate. And the Debtors did that, and the Debtors
9 continued to evaluate the strength of their claims. And
10 you'll hear testimony that one claim in particular, which
11 has a big damage figure, which is Building D at the bottom
12 of that chart, went from 1.40%, to another point up to 50%,
13 and then dropped back down to 20%.

14 Building D kind of proves what this case is about.
15 And you know, in a contract where you have allocation of
16 power credits or other things, what you see on this chart is
17 the strongest claims -- and I mean claims. I don't mean
18 damages like attorney's fees and the like, I mean actual
19 claims, are the ERCOT curtailment, no Uri, and ERCOT
20 curtailment/Uri, 70% and 60% likelihood of success on the
21 base claims alone. And then a business shutdown case,
22 because Whinstone shut Rhodium out of business, and the
23 Court already found that was actionable, that's an 80%
24 chance of success. Those are the three more than likely to
25 succeed claims that went into mediation in this case.

1 You're going to hear a lot of testimony about
2 Winter Storm Uri. We have a difference of opinion over what
3 was mediated, but at the end of the day, the Whinstone
4 settlement was a settlement of any and all claims for all
5 time. So what do you -- And then you have this chart shows
6 Building D \$165 million at 20%, \$33 million. The chart
7 they're relying on in their claim has that same claim at 40%
8 chance of success, \$66 million.

9 And just think about that one for a minute. \$66
10 million is far and away the greatest percentage claim. It's
11 50% of the claim. In their claim chart, the claims are \$125
12 million total, and they've discounted it back to \$100.
13 That's 50% of those claims for a claim that those lawyers
14 projected was a 60% chance of losing. And you'll hear
15 testimony that those same lawyers agreed to move that
16 percentage chance of success from 40% win to 20% win,
17 meaning 50% of the claim on which they want 10% value is a
18 claim they projected an 80% chance of losing.

19 In all of this -- And of course they want to box
20 out the Winter Storm Uri claims as, you know, not cognizable
21 because that makes a much bigger percentage go into that
22 bucket that's capped. But you'll hear testimony from Mr.
23 Topping that the reason the cap existed was because those
24 power credit claims were known, were pretty darn certain,
25 and were claims that were really well developed. His intent

1 was, and the Debtor's intent was to incent their lawyers,
2 and align their incentives in order to get this discount,
3 but certainly not to pay them a raft of a premium on a claim
4 that was already developed. That 10% premium was for them
5 to go out and find new claims, and see if they could drive
6 new value, and if they could drive real value, they would
7 get that additional 10%.

8 That's what this fight really comes down to. And
9 the reason I lead with some proportionality and some
10 fairness, is what you're being asked to determine is in a
11 contract that talks about an allocation but doesn't have a
12 real playbook for it, what's going to be a fair and
13 reasonable way to come out here? And we would suggest at
14 the close of the evidence that Your Honor would conclude
15 that the bulk of the claims fall under power credits, and
16 that a reasonable allegation somewhere between \$2 and \$4.3
17 million for them. And that claims like Building D, on which
18 there is an 80% chance of losing, shouldn't be included in
19 that allocation at all. You shouldn't drive 10% to a loser.
20 And Your Honor will learn that the Whinstone settlement
21 itself provides that each party will bear its own attorney's
22 fees and costs, so that what I call fluff in the middle of
23 attorney's fees and costs wouldn't get allocated at all to
24 damages.

25 You'll hear from Chris Wheeler on sort of another

1 point that Mr. Thompson raised, that the tax allocation
2 mattered. You had \$185 million to allocate, and the numbers
3 have to add up. The Debtors have been consistent in having
4 that \$75 million that they allocated to damages in this
5 March board meeting I have up on the screen, and have used
6 that number throughout. Your Honor will hear evidence that
7 in May of 2025, as soon as Rhodium made an allocation
8 proposal to Whinstone, the Special Committee attempted to
9 resolve this matter based on that allocation with LKC. I'm
10 not asking you to to hear that evidence because I want you
11 to find liability or attribute a number to it. I'm raising
12 it because it's been raised in their pleadings that there
13 were no negotiations, and no one's talked to them, and that
14 this thing has dragged out.

15 That \$75 million, though, you're going to hear
16 could have moved throughout the tax allocation. And as late
17 as September this year, in the tax allocation, Your Honor
18 has our pleading in front of you -- well, not in front of
19 you now, but you have it on the motion to enforce the
20 purchase sale agreement, the Debtors obtained a valuation of
21 their hard assets that they had sold, and found that that
22 valuation was \$10 million higher than the book value that
23 they had proposed originally in the tax allocation. Well,
24 there are three buckets in the tax allocation, hard assets,
25 contracts, and the settlement. So there are two ways to

1 find \$10 million. One would be to take it out of the \$75
2 million in damages, and the other would be to take it out of
3 those contracts that were sold. You're going to hear
4 testimony that those contracts were valued at \$180 million.

5 THE COURT: And what contracts are you talking
6 about?

7 MR. SCHMELTZ: There are these power contracts
8 that Rhodium had with Whinstone, that allowed Rhodium to
9 have the lowest costs of any of its competitors for power.
10 But that caused a lot of pain to Whinstone because Whinstone
11 was losing money on those contracts. And so a big component
12 of the settlement, of course, was Whinstone wanting to get
13 out of those contracts, effectively paying to cancel them.
14 And so if Rhodium were inclined to play games with this
15 damages allocation, as the hard assets go up in value,
16 either the contracts have to come down \$10 million in value,
17 or the damages come down in value. You'll hear testimony
18 from Kevin Hays and Chris Wheeler that they didn't take it
19 out of damages. They took it out of contracts to keep the
20 number in balance, but to ensure that we could continue to
21 act in good faith with a consistent number. So I'm telling
22 you two things. One, the Debtors have been consistent with
23 their \$75 -- maybe I'm telling you three things. The
24 Debtors have been consistent with the \$75 million allocation
25 to damages. The Debtors and the Special Committee have

1 reached out to try to resolve this matter and get it paid on
2 that same \$75, and the Debtors haven't changed that \$75
3 million when they could have.

4 And then finally, one last time, as you can see
5 from this chart, the strong claims are the power claims and
6 business shutdown. There is nothing else on this that they
7 went to mediation on and settled, that had the chance of
8 winning, and those did. It makes really good sense to pay
9 out a success fee on those kind of dollars, and you can
10 allocate \$75 million, and it's right at \$73 if you do the --
11 If you take the base amounts, \$29 million, \$36 million, and
12 \$8 million, you're right at \$73 million, which is in our \$75
13 million range, and we're more than happy to pay a success
14 fee on that.

15 Appreciate your time, Your Honor.

16 MR. THOMPSON: Thank you, Your Honor. Assuming
17 we're finished with openings, I think LKC will invoke the
18 rule, and call our first witness.

19 THE COURT: Okay. Who's going to be testifying?

20 MR. SCHMELTZ: You know, I've got a lot of people
21 who are representatives and testifiers. I mean, honestly,
22 Mr. Eaton's our representative for the Special Committee,
23 he's going to be testifying. Mr. Topping is a
24 representative for the Debtors, and he's going to be
25 testifying. And then I have two executives from the client,

1 or from Rhodium who are going to be testifying.

2 THE COURT: So who do you want to leave the room?

3 MR. SCHMELTZ: I suppose I need I need these two
4 gentlemen to leave, because I can't live without Chuck, and
5 I'd like Mr. Eaton as my client rep here. I have a weird
6 dual client-rep role. I have Debtors and Special Committee
7 (indiscernible) My apologies.

8 UNIDENTIFIED SPEAKER: No, that's okay.

9 MR. SCHMELTZ: Or you can thank me later
10 (indiscernible)

11 THE COURT: Any objection to having two client
12 reps?

13 MR. WOLFSHOHL: That's fine, Your Honor.

14 THE COURT: Okay.

15 MR. DISHER: Your Honor, good afternoon. Todd
16 Disher, for Lehotsky Keller Cohn. Our first witness is Mr.
17 Jonathan Cohn, so I'd call him to the stand, please. While
18 he's going --

19 THE COURT: Is there anybody on the line who is
20 going to be an expert, testifying?

21 MR. SCHMELTZ: Oh, I do -- My apologies. I have
22 both, Mr. Wheeler, and I have (indiscernible) these two
23 gentlemen are testifying (indiscernible)

24 THE COURT: Okay. So --

25 MR. SCHMELTZ: They probably should go as well.

1 THE COURT: Yeah.

2 MR. SCHMELTZ: I'm sorry. I'm a little

3 (indiscernible) Sorry, guys.

4 Oh, yeah, Michael Rosten and Chris Wheeler are

5 both --

6 THE COURT: They just left.

7 MR. SCHMELTZ: Yes.

8 THE COURT: Okay.

9 All right. Come up, Mr. Cohn.

10 MR. DISHER: Your Honor, while he's taking the
11 stand, just logistically, I don't want to violate any
12 sealing order or anything like that, so we filed a bunch of
13 exhibits under seal. Would you prefer for us to use hard
14 copies?

15 THE COURT: Yeah, I think that makes more sense,
16 to use hard copies.

17 MR. DISHER: Okay. And Mr. Cohn, do you have a
18 copy of our witness -- or our exhibit binder?

19 And then as we're eliciting testimony throughout
20 the day, again, I'm certainly not intending to violate any
21 type of order, so if anybody has any objection to the
22 testimony that we're eliciting and needs us to go under seal
23 or whatever, please just let me know.

24 MR. SCHMELTZ: I think we've worked pretty
25 collaboratively on this, and we'll continue to do so.

1 MR. DISHER: Have you been sworn in?

2 THE COURT: All right. Mr. Cohn, would you raise
3 your right hand?

4 Do you solemnly swear or affirm to tell the truth,
5 the whole truth, and nothing but the truth?

6 MR. COHN: I do, Your Honor.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. DISHER:

10 Q Good afternoon, Mr. Cohn. Will you please introduce
11 yourself to Judge Perez?

12 A Good afternoon, Judge Perez. I'm Jonathan Cohn from
13 LKC.

14 Q Mr. Cohn, what is your current profession?

15 A I'm an attorney at the LKC law firm.

16 Q How long have you been a lawyer?

17 A Let's see, I graduated law school in 1997, clerked for
18 a year. I was in Portland at the time, so I didn't get
19 sworn in until I moved back to New York. I believe that was
20 spring of 1999.

21 Q And just briefly on your education, just undergrad, law
22 school?

23 A I went to undergrad at the Wharton School, University
24 of Pennsylvania, where I concentrated in finance and
25 accounting, and then went to law school at Harvard.

1 Q Great. Quick overview of your career trajectory since
2 graduating from Harvard?

3 A Clerked in the Ninth Circuit for Judge O'Scannlain,
4 went back to my hometown, New York, where for the better
5 part of two years I was an associate at Wachtell Lipton.
6 Then clerked for Justice Thomas on the U.S. Supreme Court,
7 worked at Sidley Austin in D.C. for a couple years before
8 going to the Department of Justice, where I held a few
9 different jobs, the last of which was the Head of Civil
10 Appellate, as a Deputy Assistant Attorney General. After
11 that, went back to Sidley as a partner for about 14 years
12 before LKC.

13 Q Why did you join LKC?

14 A I had an opportunity to work with some really good
15 friends, Scott Keller, Steve Lehotsky, with their litigation
16 juggernaut, and the chance to work with you and Will
17 Thompson, too.

18 Q Well, I appreciate that. I'll remind you that you are
19 under oath.

20 All right. Let's jump into the dispute. So tell me
21 about Rhodium. When did you first get introduced to
22 Rhodium?

23 A That would have been May of 2023.

24 Q Who made the introduction?

25 A Peter Stris, of Stris & Maher.

1 Q How do you know, or how did you know Peter Stris before
2 that point?

3 A Through college. He and I both did college debate.

4 Q When Mr. Stris approached you, what was the status of
5 the relationship between Whinstone and Rhodium?

6 A At that point, there was not yet litigation. It seemed
7 like things were getting heated. If I recall, there was an
8 exchange of letters between Peter Stris and Foley, Rob
9 Slovak, but there wasn't yet litigation.

10 Q Okay. Why did Mr. Stris contact you in particular?

11 A In addition to the fact that we had been friends and he
12 had followed my career, he mentioned two things. One, there
13 was an interest in the client to bolster the litigation team
14 going up against a large litigation powerhouse at Foley.
15 Also, the client wanted to have a Texas presence, and one of
16 our main offices is in Austin, not far from the Rockdale
17 facility.

18 Q Once Mr. Stris introduced you to Rhodium, what happened
19 next?

20 A I was introduced to Mr. Topping and Mr. Chase Blackmon.

21 Q Did you discuss terms of a potential engagement?

22 A We did.

23 Q What did your original engagement letter say about the
24 fees that would be paid to LKC for its work in this matter?

25 A Very similar to the current engagement letter, with, as

1 Mr. Topping put it previously, some minor clarifying
2 changes. We provided discounts on our hourly fees, 20% to
3 30% depending upon volume. And at the time, one difference
4 was there was a fixed fee for my time so that I wouldn't
5 have to keep track of my hours, and I was very appreciative
6 of that. I hate keeping track of hours. The discount, and
7 then in exchange, there was the success fee, which
8 essentially has remained the same.

9 Q Okay. And you've mentioned the progression of your
10 engagement agreement. As we sit here today, as the Court
11 knows, we're operating under a different engagement as
12 opposed to that original one back in 2023?

13 A Yes. That's my understanding.

14 Q And if you look in your binder, at Exhibit 2 --

15 A I'm with you.

16 Q What is this document?

17 A This looks like the current operative engagement letter
18 that I signed on March 4th, 2025.

19 THE COURT: Do you have a binder?

20 MR. DISHER: May I approach?

21 THE COURT: Yes.

22 MR. DISHER: Would you like a copy, too

23 (indiscernible)

24 THE COURT: (indiscernible)

25 MR. DISHER: Your Honor, at this point, I'd offer

1 LKC Exhibit 2 into evidence.

2 THE COURT: Any objection?

3 MR. SCHMELTZ: None, Your Honor.

4 THE COURT: Okay. Exhibit 2 is admitted.

5 BY MR. DISHER:

6 Q Okay. So Mr. Cohn, just to reorient ourselves, what is
7 Exhibit 2?

8 A Exhibit 2 is the current operative engagement letter,
9 which I believe the Court entered.

10 Q And today, we're going to be talking a lot about the
11 success fee contained in Exhibit 2. Could you just give us
12 an overview of the various components of the success fee as
13 they're laid out in Exhibit 2?

14 A Sure. And this is on page 2. It's the A, B, and C,
15 starting in the middle of the page. The first component is
16 the \$600,000 for prevailing on the motion to assume. The
17 second component relates to the energy credits, 5% for the
18 first \$5 million and 1% after that. The third component is
19 the 10% for any additional damages, including, for instance,
20 exemplary damages and attorney's fees.

21 Q Great. You mentioned energy credits. Could you please
22 tell Judge Perez what are the energy credits contemplated
23 under the engagement agreement?

24 A That relates to the ability of Whinstone to sell power
25 back to the grid when the price of energy reaches a certain

1 point. It was profitable to do so in certain circumstances.

2 Above a certain threshold, Whinstone was obligated to give

3 those credits, the profits of those sales, back to Rhodium.

4 Q Did Whinstone do that?

5 A They did not.

6 Q Right. And now lastly, on Exhibit 2, I want to talk

7 about the reasonable expenses for various professionals.

8 I'll direct your attention to the first full paragraph on

9 page 2. Do you have an understanding about why this

10 provision is included in exhibit number two?

11 A So in particular, the provision about the legal

12 expenses and legal advice retention, that language?

13 Q Yes.

14 A That actually is one of the changes, compared to the

15 earlier versions of the engagement letter. We negotiated

16 that with Debtors, and that related to the fact that we had

17 to retain Porter Hedges to help us with legal advice

18 matters. As the Court is aware, there were some issues with

19 our prior engagement letter. We retained Porter Hedges to

20 help us through that process.

21 Q Okay, great. Thank you. We can leave Exhibit 2 for

22 now. I want to talk a bit more broadly about LKC's work for

23 Rhodium. We can be brief, but I just want to kind of hit

24 the high points. Let's start before the bankruptcy filing.

25 What sort of litigation did LKC do for Rhodium before the

1 bankruptcy began?

2 A It started in State Court in Milam County. Not long
3 after we got engaged, Whinstone shut down our power. We had
4 to get a TRO. So Will Thompson went to the courthouse, and
5 essentially camped out in the library until Judge Youngblood
6 showed up and signed the TRO. After that, there was a
7 hearing on I guess you'd call it a TI, not a PI in Texas, a
8 hearing on the temporary injunction in which Will and
9 attorneys from Stris & Maher successfully got the injunction
10 that we needed for Rhodium to survive.

11 Q If the team of LKC and Stris had not been successful in
12 obtaining those two emergency reliefs, what would have
13 happened to Rhodium?

14 A It would have died.

15 Q Did the Stris and LKC litigation team have to go get
16 emergency relief again?

17 A They did.

18 Q And what caused that to happen?

19 A There was another shutdown. I think it was in January
20 of 2024. Once again, Whinstone shut down our power.

21 Q Were LKC and Stris successful in getting that emergency
22 relief?

23 A They were indeed. We prevailed before an emergency
24 arbitrator.

25 Q Did Stris and LKC have to get emergency relief against

1 Whinstone on behalf of Rhodium yet again?

2 A We did. The injunction we got from the emergency
3 arbitrator had some temporal limit, so we had to go to the -
4 - I'll call it a permanent arbitrator to get relief one more
5 time.

6 Q All right. Then bankruptcy occurs, and I'm sure the
7 Judge is familiar with this, it, but just brief overview of
8 what work LKC has done on behalf of Rhodium in this
9 bankruptcy proceeding.

10 A We prepared for, and then conducted, along with Stris &
11 Maher, the trial on the motion to assume.

12 Q Great. And we prevailed on that motion?

13 A We did.

14 Q So we've talked about defensive measures. What about
15 offensive measures? Has LKC -- or had LKC taken steps to go
16 on offense for Rhodium?

17 A We did, almost from the beginning. As soon as
18 Whinstone started shutting down our power, we began thinking
19 about potential affirmative claims.

20 Q Great. Let's talk about those claims. If we go to
21 Exhibit 12 in your binder, are you familiar with the chart
22 that's contained in Exhibit 12?

23 A I am.

24 Q What is it?

25 A This is a chart that the entire litigation team

1 prepared in advance of a Board meeting that Rhodium had, the
2 Debtors had on February 12th. I think we prepared this -- I
3 mean, we started working on it before then, but I think we
4 prepared this on February 11th.

5 MR. DISHER: Your Honor, we would offer Exhibit 12
6 in evidence.

7 THE COURT: Any objection?

8 MR. SCHMELTZ: None.

9 THE COURT: It's admitted.

10 BY MR. DISHER:

11 Q Okay. So let's talk about Exhibit 12. We're going to
12 cover this document in length today. Was Exhibit 12 a
13 creation solely of the LKC legal team?

14 A No, no, this was the joint legal team of LKC and Stris
15 & Maher.

16 Q And what was the reason for putting this chart
17 together?

18 A The Debtors asked us to put it together. They wanted
19 us to put together our best collective judgment on the
20 litigation odds in advance of that Board meeting they had on
21 February 12th.

22 Q Okay. And this is the result of that combined effort?

23 A Yes, sir.

24 Q All right. I want to walk through the claims just to
25 give Judge Perez some context about what these numbers mean.

1 So under the column of issue, do you see that?

2 A Yes.

3 Q There's various different entries. Are these the
4 different claims that Rhodium was considering pursuing
5 against Whinstone?

6 A Yes.

7 Q Okay. Let's look at the first one, shutdowns. What is
8 that?

9 A That relates to the two aforementioned shutdowns. When
10 Whinstone shut down our power, we were unable to mine
11 Bitcoin. As a result, we had damages. And we used Dr.
12 Milkovich, the expert that we had used in the motion to
13 assume trial, to work with us in trying to calculate how
14 much Bitcoin we lost because of the shutdowns. That added
15 up to \$8 million, roughly.

16 Q Great. So just to be clear, the base amount here is
17 the total number of damages as projected by Stris, LKC, and
18 Dr. Milkovich?

19 A That's correct.

20 Q All right. Let's look at the next entry, water. What
21 is that entry for?

22 A We had a water agreement with Whinstone in which
23 they're supposed to provide us with water, which you needed
24 to cool the facilities to more efficiently mine Bitcoin.
25 The water we got was filthy. At one point, a dead fish

1 showed up in the water that we were using. The lack of
2 quality water made the Bitcoin mining inefficient, and on
3 some occasions we didn't use the water at all because of the
4 poor quality. As a result of not having good water, we
5 mined fewer bitcoin. This number was also given to us
6 working with Dr. Milkovich.

7 Q Great. So like with shutdowns, the base amount here is
8 the combined effort of Stris, LKC, and Dr. Milkovich?

9 A That is correct.

10 Q All right. Then next, we see three entries related to
11 ERCOT. Do you see that?

12 A I do.

13 Q What are those entries?

14 A So the first two relate squarely to energy credits.
15 The one, the first one is energy credits not including
16 Winter Storm Uri, the second is energy credits for Winter
17 Storm Uri, and the third relates to something which might or
18 might not have been considered, energy credits 4CP. That
19 relates to there are four peak periods in the year when
20 energy is at its highest usage. My understanding is if you
21 reduce your demand for the energy, then the following year
22 there's a deduction in your transmission expenses. It's not
23 an energy credit per se, it's not selling stuff back to the
24 grid, but we had a colorful argument that because of the
25 financial benefit, Whinstone should have passed it on to

1 Rhodium as well. That's the 4CP.

2 Q Okay. Why did the Stris-LKC team break out these three
3 different components of the ERCOT potential damages?

4 A Because in our view, the chance of success was
5 different for each of the three.

6 Q Okay. Were the legal claims related to the ERCOT-Uri
7 energy credits, did they have a different consideration as
8 compared to the ERCOT curtailment credits that did not
9 relate to Uri?

10 A They did.

11 Q How so?

12 A The Debtors, then Rhodium, signed a release after
13 Winter Storm Uri. Chad Harris, the Whinstone CEO, made a
14 representation that Whinstone never received any energy
15 credits to give to Rhodium. Based upon that representation,
16 and as I understand it some other factors, the Rhodium
17 executives signed a release, a settlement giving up any
18 claim to the Uri credits in exchange for some nominal
19 amount, \$1 million, maybe \$2 million.

20 Q Okay. So in other words, Rhodium had signed a release
21 purporting to give away any claim that it would have had to
22 those Uri energy credits?

23 A That is correct.

24 Q Okay. So given that release, how did the legal team
25 here think that Rhodium might be able to recover those

1 damages?

2 A Our only way we thought to recover those damages was to
3 file a fraud claim, and argue fraud. In our view, Mr.
4 Harris, with all due respect, lied to the executives when he
5 said that Whinstone did not receive any energy credits. In
6 fact, they did receive energy credits. That was a
7 misrepresentation. But more than that, our executives
8 relied on that representation. In our view, that
9 representation was justifiable. It was reasonable. Their
10 reliance on Mr. Harris was justifiable reliance.

11 Q So in the view of the LKC and Stris litigation team, in
12 order to recover those Uri energy credits, Rhodium would
13 have had to plead and prove fraud?

14 A Plead and prove fraud, and that involves pleading and
15 proving the justifiable reliance.

16 Q Is that analysis by the LKC and Stris team reflected on
17 Exhibit 12 anywhere?

18 A It is. So in the comments section, we said explicitly
19 this, and that refers to the odds, this assumes we are
20 allowed to plead and prove fraud.

21 Q Great. And we are going to talk at length about the
22 Uri energy credits, but I want to finish out the rest of
23 this chart first. The next item on the list is the block of
24 the Temple sale. You see that?

25 A I do.

1 Q What was that potential claim?

2 A In addition to the Rockdale facility, Debtors operated
3 a facility in Temple. They wanted to sell it. They were
4 close to a deal, as I understand it. There was a tentative
5 deal to sell it for over \$100 million. That deal fell apart
6 when Whinstone filed a fraud claim against, among other
7 entities, Rhodium Renewables, which owned and ran the Temple
8 facilities.

9 In our view, the fraud claim was frivolous to start,
10 but it was especially specious with respect to Rhodium
11 Renewables, which didn't even exist at the time of the
12 alleged fraud. But because of that allegation, the deal
13 fell apart, they didn't get the \$100 million. Instead, they
14 sold it as part of this bankruptcy for around half that
15 amount. The \$50 million base amount is roughly the
16 difference between what Rhodium thought it could sell Temple
17 for and what it eventually sold Temple for.

18 Q And if we look at the base success fee for the block of
19 Temple sale, we see 5%. Is that right?

20 A Yes.

21 Q Did the Stris and LKC teams jointly collaborate to come
22 up with these base success figures?

23 A They did. We did.

24 Q Okay. So this 5% given to the block of Temple sale,
25 does that mean that the block of Temple sale was somehow

1 like a frivolous claim?

2 A No. In our view, it was a colorable claim. We were
3 being cautious, we were being conservative. We are aware
4 that it is difficult to prove a claim where the chain of
5 causation involves a filing in court. So the odds were
6 stacked against us. We thought we had a good claim. We had
7 not yet had discovery, but we appropriately discounted the
8 odds.

9 Q The next three issues all relate to fees. Do you see
10 that?

11 A I do.

12 Q What are those three issues about?

13 A So three different buckets of fees. The one for which
14 we have the highest base success rate was the attorney's
15 fees pre-bankruptcy and this stuff, State Court arbitration
16 for breach of contract. Under Texas law, we would get
17 attorney's fees for a breach of contract claim, and a
18 declaratory judgment. We thought those fees had a high
19 likelihood of being recovered.

20 Then, less likely would be the fees for the assumption
21 motion. The assumption motion, in essence, addressed
22 Whinstone's argument that the contracts had been terminated,
23 which was an affirmative defense they had raised against our
24 breach of contract. So it's very much related to a breach
25 of contract, but not quite the breach of contract, so in the

1 collective judgment of the litigation team, we discounted
2 those odds more.

3 Q Great.

4 A The third bucket is non-litigation. That seemed like
5 more of a stretch. In essence, we would have to show that
6 the non-litigation professional fees were proximately caused
7 by Whinstone forcing us into bankruptcy with the shutdowns,
8 the bad water, and the deprivation of energy credits, and
9 the other stuff they did.

10 Q Okay. Thank you. And related to the professional
11 fees, I see there is a comment in red. Do you see that?

12 A Yes.

13 Q And it's referring to a number from Andrew's email.

14 A Yes.

15 Q Who is Andrew?

16 A I'm probably going to butcher his last name, but it's
17 Andrew Popescu of Province. I believe he's the Vice
18 President there.

19 Q Okay. So he provided some of the information that went
20 into that line item?

21 A He did. He provided us -- he provided us the
22 information for the bankruptcy fees, both attorney's fees
23 and non-litigation. He also gave us the Building D amount.
24 I believe those are the numbers we got from Province.

25 Q Okay. So let's talk about Building D. That's the next

1 issue down here. What is the potential claim related to
2 Building D?

3 A So in the motion to assume, the Court had heard about
4 the energy contracts that Debtors had on Buildings B and C.
5 In addition to those contracts, they had a contract with
6 Whinstone in Building D, also in Rockdale, different
7 building. After the parties entered into a contract, Chad
8 Harris sent an email in which he said he was resending the
9 agreement. I think he meant rescinding the agreement. It
10 was an anticipatory repudiation of that contract, and
11 Whinstone never gave Rhodium that power. So if they had
12 that power, they could have mined more Bitcoin.

13 We asked Province to calculate the value of those
14 energy contracts, and they gave us a number. Or they
15 actually gave us two numbers. They first gave us \$165, they
16 later gave us \$195. We had the \$165, and that was the
17 number given to us by Province as to the value of the
18 Building D contract claims.

19 Q Okay, great. And then, the last line item is Riot's
20 tortious interference with Rhodium contracts. What's that
21 about?

22 A It was our understanding that Riot was directing
23 Whinstone to take actions against us even before their deal
24 closed. We had not yet had discovery on this, but we
25 thought we would have a colorable tortious interference

1 claim against Riot.

2 Q Why is it listed as \$0 there?

3 A Because in our view, it probably wouldn't increase the
4 overall damages we recovered. It would just give us an
5 additional road to recover, to collect those damages.

6 Q All right. Great. Thank you. Thank you for walking
7 through that. I failed to ask you one question about the
8 energy curtailments. Where did you get the base amounts
9 that went into those damage estimations?

10 A That was provided to us by our ERCOT expert, Mr.
11 Charles Griffey, who was working with Liz Brannen from Stris
12 & Maher.

13 Q Okay. So I just want to sum up who provided input to
14 this chart at Exhibit 12? I heard the Stris litigation
15 team. Correct?

16 A Yes, sir.

17 Q And certainly the LKC litigation team.

18 A Yes.

19 Q The folks from Province.

20 A Yes.

21 Q And the -- oh, and two retained experts, right, Mr.
22 Griffey and Dr. Milkovich?

23 A That is correct.

24 Q Okay. Now under the expected value column, we see a
25 total of \$158 million.

1 A Yes, I see that.

2 Q To get to that, the team who created this chart first
3 had to assign base success percentages. Do you see that?

4 A I do.

5 Q Okay. So how does the base amount relate to the base
6 success percentage? And what are you trying to calculate by
7 combining those?

8 A So the base amount is the amount that we expected to
9 get if we won. The base success percentage was our
10 collective best judgment on the odds of winning each of
11 those claims.

12 Q Who calculated the base success percentages that we see
13 on Exhibit 12?

14 A No one person. It was a series of conversations that
15 the Stris & Maher LKC joint litigation team had. We just
16 tried to do our best to give our collective judgment as to
17 what the odds are.

18 Q Do you think that the base success percentages listed
19 here are conservative estimates?

20 A I do. I do. Look, I mean, if you asked me to take the
21 over or under, I would probably take the over. But I'm not
22 going to deviate. I think that these are collectively our
23 best judgment, though probably a little conservative.

24 Q Okay. All right. Finally, the expected value, \$158
25 million. So just to be clear, what does that \$158 million

1 figure represent?

2 A That represents the amount that the litigation team
3 collectively thought we would get if we litigated these
4 claims. If we litigated and we had a judgment, our expected
5 value of that was \$158 million.

6 Q Okay, great. Let's turn to Exhibit 8 briefly. So just
7 to -- and maybe you answered this already, but why did the
8 Stris and LKC litigation team create the chart at Exhibit
9 12?

10 A We did that because the Debtors asked us to do so.

11 Q Okay. And if we look at Exhibit 8, you've seen this
12 email before?

13 A I have.

14 Q What does this email -- or what is this e-mail?

15 A It's a whole e-mail chain which I guess covers -- well,
16 the first email is November 20th. But in essence, this is
17 the email chain which, among other things, asks us to put
18 together our chart, the one we put together.

19 Q So this is the email that asks the litigation team to
20 create the chart that we looked at in Exhibit 12?

21 A That is correct.

22 Q All right.

23 A And this would be on the page 1 of 3 (indiscernible)

24 MR. DISHER: All right. Your Honor, I offer
25 Exhibit 12.

1 THE COURT: Any objection?

2 MR. SCHMELTZ: No objection, Your Honor.

3 THE COURT: All right. Exhibit 12 is admitted.

4 BY MR. DISHER:

5 Q Okay. So --

6 MR. DISHER: Excuse me, I did mean 8. Exhibit
7 number 8. Thank you.

8 THE COURT: Yeah, I was looking at number 8.

9 Any objection to Exhibit number 8?

10 MR. SCHMELTZ: I heard 8. I don't know what he
11 said. I heard it -- I thought it was 8.

12 THE COURT: Yeah.

13 MR. SCHMELTZ: No objection.

14 THE COURT: Exhibit 8 is admitted.

15 BY MR. DISHER:

16 Q All right. So Exhibit 8 makes the ask, Exhibit 12 is
17 the result of the litigation team's effort, and then the
18 litigation team sends the chart on Exhibit 12 back to the
19 senior management at Rhodium. Right?

20 A That is correct.

21 Q Okay. What does the senior management of Rhodium do
22 with the chart that y'all have created at Exhibit 12?

23 A They put it into a PowerPoint presentation, which they
24 then used at a Board meeting on February 12th.

25 Q I'd ask you to turn to Exhibit 14, please.

1 A I got it.

2 Q Are you familiar with what Exhibit 14 is?

3 A I am.

4 Q What is it?

5 A This is the PowerPoint presentation I mentioned.

6 Q So this is the PowerPoint presentation material created
7 for the Board meeting on February 12th, 2025?

8 A Correct.

9 MR. DISHER: Your Honor, I would offer Exhibit 14.

10 THE COURT: Any objection to Exhibit 14?

11 MR. SCHMELTZ: None. Thank you, Your Honor.

12 THE COURT: All right. Exhibit 14 will be
13 admitted.

14 BY MR. DISHER:

15 Q So Mr. Cohn, I want to start with slide number 3. The
16 title is Litigation Value.

17 A Yes.

18 Q What is this chart?

19 A Most of this chart is the same thing as the chart we
20 had just looked at, in which we give our expected value of
21 \$158 million. The only differences are the last two lines,
22 the discount rate line and the EOI 2025 expected collection
23 line.

24 Q And if we look at the expected value before we go to
25 the discount rate, that's \$158 million. Right?

1 A Yes.

2 Q And that's the same \$158 million that the litigation
3 team came up with in its work in Exhibit 12?

4 MR. SCHMELTZ: Objection. Leading.

5 THE COURT: Why don't you ask your question again?

6 MR. DISHER: Sure.

7 BY MR. DISHER:

8 Q How does the \$158 million figure on slide 3 relate to
9 the work that the litigation team did reflected in Slide 12?

10 A It's the same number. The chart is the same, except
11 for those last two lines.

12 Q Let's talk about the last two lines. Did you insert
13 those last two lines?

14 A No, I did not.

15 Q Did somebody from Stris insert those last two lines?

16 A No.

17 Q Did somebody from LKC insert those last two lines?

18 A No.

19 Q Okay. Who inserted them?

20 A Probably Kevin Hays, the CFO.

21 Q The first one says, "Discount rate, 25%." What do you
22 -- What is your understanding of what that means?

23 A I'm not entirely sure. He wanted to apply a discount
24 rate to take into account some risks, like the time value of
25 money and other stuff. I didn't fully understand it, one,

1 because you have prejudgment interest for the time value of
2 money, and the rate he used is different from what he used
3 the previous day, and different from rates that Province had
4 used. But he wanted to apply a discount rate, and this is
5 the 25%.

6 Q You mentioned different than a discount rate he used
7 the previous day. Let's look at that. That's back at
8 Exhibit 8.

9 A I'm with you.

10 Q Is the different discount rate he used the previous day
11 reflected in Exhibit 8?

12 A It is. On page 103 in that chart, he has the second to
13 last line as discount rate, and he applied 20%.

14 Q He applied a 20% discount rate. But if we look back at
15 Exhibit 14, what is the discount rate he applied for the
16 February 12th Board material?

17 A 25%.

18 Q Just to be clear about one thing, in the slide on
19 February 14th, the commentary, Mr. Hays carried the
20 commentary over.

21 A Correct, yep.

22 Q (indiscernible) that you did?

23 A Correct. All the commentary is the same, including
24 that line, "This assumes we're allowed to plead and prove
25 fraud."

1 Q Okay. Did Mr. Hays include prejudgment interest?

2 A No, he did not.

3 Q Did you object at the time to the 25% discount rate
4 that Mr. Hays used here?

5 A No.

6 Q Why not?

7 A It didn't really matter too much for me. I mean, I
8 figured he had his business reasons, he wanted to be
9 cautious. I was not going to argue with him over it. And
10 frankly, at the time, I didn't think that this PowerPoint
11 presentation would be relevant for things like the LKC
12 success fee, so it just wasn't top of mind.

13 Q Once Mr. Hays applies the 25% discount rate, what is
14 the resulting number?

15 A \$126.4 million.

16 Q And what is your understanding of what that number
17 represents?

18 A That is the expected value of the litigation claims
19 reduced by his discount rate.

20 Q Did Mr. Hays make any other changes to the expected
21 value rate in the Board material presented on February 12th?

22 A Not to the expected value, but he did have a chart on
23 the previous page.

24 Q Okay. So if we go back to slide 2, what are your
25 understandings about what other changes Mr. Hays made to the

1 damages calculations?

2 A So his expected value post-discount was \$126.4 million.

3 He then made two additional changes. One is he reduced

4 \$126.4 million to \$125 million. And the second thing is he

5 built a range of plus or minus \$25 million, and that's

6 reflected in his commentary.

7 Q Okay, so let's break that down. \$126.4 on slide 3.

8 You said the first change was what?

9 A He reduced the \$126.4 to \$125.

10 Q Why?

11 A I don't know. Maybe he might have wanted a round

12 number. But Mr. Hays can speak about Mr. Hays' thoughts.

13 Q Fair enough. And then, the second change that Mr. Hays

14 made was what?

15 A He then built a range of plus or minus \$25 million.

16 Q Is that range reflected on slide 2?

17 A It is. So on slide 2, there's that chart which shows

18 risk damages, which means the same thing, I think, as

19 litigation value. Under commentary, he states risked

20 estimates from LCK, that means LKC/Stris plus or minus \$25

21 million.

22 Q Do you know why he did that?

23 A I think he wanted to -- Again, Mr. Hays can speak to

24 Mr. Hays. But I think he wanted to give the business a

25 range, because it's unpredictable.

1 Q What damage number does LKC use in its fee application
2 that's currently pending in front of the Court?

3 A We used the low end of that range, the \$100 million.

4 Q And we'll talk about that briefly. After the February
5 12th Board meeting, have you seen -- Well, let me actually
6 ask one question. Is it your understanding that this
7 material was in fact presented to the Rhodium Board of
8 Directors on February 12th?

9 A Correct.

10 Q Have you seen any other attempts to try to calculate
11 the litigation value created subsequent to the February 12th
12 board meeting?

13 A I have.

14 Q What subsequent attempts have you seen?

15 A I've seen a few sets of different numbers. So one was
16 a few days later. I think it was either at or right after
17 the February 16th Board meeting, Kevin sent me a spreadsheet
18 which was identical to the spreadsheet on page three, except
19 he reduced the odds of Building D from 40% to 20%.

20 Q Did Mr. Hays say why he did that?

21 A I think he said he wanted something that was more
22 pessimistic, more cautious, something along those lines.

23 Q Do you --

24 MR. SCHMELTZ: I'd move to strike as non-
25 responsive. He asked what Mr. Hays said, and the witness

1 said, "I think." So I'd just move to strike as non-
2 responsive.

3 THE COURT: Overruled.

4 BY MR. DISHER:

5 Q Did Mr. Hays consult with you before lowering the odds
6 on Building D from 40% to 20%?

7 A No, he did not.

8 Q To the best of your understanding, did Mr. Hays consult
9 with anybody on the LKC team before reducing the odds from
10 40% to 20%?

11 A To the best of my understanding, he did not.

12 Q To the best of your understanding, did Mr. Hays consult
13 with anybody from the Stris litigation team before he
14 reduced the percentages from 40% to 20%?

15 A To the best of my understanding, he did not.

16 Q What effect did lowering the Building D success rate
17 from 40% to 20% have on the expected value?

18 A It reduced it from \$66 to \$33, so a \$33 million
19 deduction. That reduced the total expected value from \$158
20 to \$125, and then after the discount of 35%, you would have
21 \$100 million as the expected collection.

22 Q So even with the reduction in Building D, the resultant
23 expected value with the discount rate was how much?

24 A \$100 million.

25 Q Have you seen any other charts that have attempted to

1 calculate the litigation value that Rhodium had against
2 Whinstone?

3 A Yes. So the next one would be on February 18th.
4 Debtors' management asked the litigation team to put
5 together more optimistic numbers. So we had Kevin's more
6 pessimistic numbers, and management asked us to have more
7 optimistic numbers. And with that assignment, we obliged.
8 We put together more optimistic numbers.

9 Q Why did the senior executives at Rhodium ask the
10 litigation team to put together more optimistic numbers?

11 A I think they wanted to see what more optimistic numbers
12 would look like before heading into the mediation with
13 Whinstone.

14 Q If we turn to Exhibit 13, do you see that?

15 A Yes, sir.

16 Q Just kind of walk the Court through what is Exhibit 13?

17 A Exhibit 13 is an email that I sent to Debtors'
18 management, and some other attorneys on the team, and
19 Michael Robinson, Patty Tomasco, in which I mentioned that
20 we followed through with their ask, and we ran the
21 spreadsheets with more optimistic numbers.

22 Q Do we see those more optimistic numbers in the
23 attachments to the email marked as Exhibit 13?

24 A We do. Yes, we do.

25 Q Okay. So the first chart in Exhibit 13, what is that?

1 A The first chart, that's the extremely optimistic
2 scenario in which we win everything. The basic success
3 percentage is 100% for everything.

4 Q Just note, what is the first comment that's listed in
5 this new chart?

6 A It says, "This assumes we are allowed to plead and
7 prove fraud."

8 Q What was the thinking behind including that comment
9 there?

10 A We were very insistent that we would not have much of a
11 chance of prevailing on the Uri credits unless we could
12 plead and prove fraud. As I made clear to them, the odds of
13 winning would likely go to zero if we could not argue fraud.

14 Q Okay. Then, the second chart in Exhibit 13, what's
15 that?

16 A The second chart, that's Kevin's chart, with the more
17 pessimistic numbers in which he reduced the Building D odds
18 from 40% to 20%.

19 Q And then finally, the third chart in Exhibit 13, what's
20 that?

21 A That is another optimistic scenario in which we took
22 the original numbers we gave the Board on February 12th, and
23 made, I believe, two changes to make the numbers more
24 optimistic. That's what this chart shows.

25 Q And again, why did you create this chart?

1 A We did it because the Debtors' management wanted rosier
2 predictions, something more optimistic heading into the
3 mediation.

4 MR. DISHER: All right. Your Honor, I would offer
5 Exhibit 13.

6 THE COURT: Any objection?

7 MR. SCHMELTZ: No objection.

8 THE COURT: Exhibit 13 is admitted.

9 BY MR. DISHER:

10 Q Okay, so rosier predictions. Let's go back to the
11 email that you sent attaching the rosier predictions. Okay?

12 A Yeah.

13 Q Now after you, in conjunction with the litigation team,
14 came up with these rosier predictions, what was your best
15 estimation about the damages range?

16 A It stayed the same. The litigation team still
17 collectively thought that the numbers it provided on
18 February 12th were the best numbers, the most reasonable
19 numbers. Those are our collective best judgment.

20 Q And just to be clear, how did those numbers on February
21 12th relate to the rosier numbers you put together on
22 February 18th?

23 A They were lower. Our best judgment was \$158 million.
24 The rosier numbers were \$183 million.

25 Q Okay. Now, contemporaneous with this, did you see any

1 additional attempts to try to value the damages claims?

2 A Yes. Only in discovery, we learned that in March, the
3 Board had another meeting with another PowerPoint, and we
4 got that in discovery.

5 Q How did the numbers in that March PowerPoint relate to
6 the numbers that y'all came up with on February 12th?

7 A They were lower. So those numbers, it used Kevin's
8 more pessimistic numbers, which resulted in an expected
9 value of \$100 million. And the chart is the same, it shows
10 \$100 million. But then in calculating the range, Kevin
11 reduces the \$100 million to \$75 million.

12 Q Why did he do that?

13 A Don't know.

14 Q Did he consult with you before doing that?

15 A No.

16 Q To the best of your knowledge, did he consult with
17 anybody at LKC before doing that?

18 A No.

19 Q What about the Stris team?

20 A He did not.

21 Q Okay. Let's move to the actual calculation in our fee
22 application. Okay?

23 A Okay.

24 THE COURT: Before we do that, we've been going
25 for about an hour-and-a-half, why don't we take a five-

1 minute break?

2 MR. DISHER: Okay.

3 THE COURT: Do you need water. Do you have water
4 there?

5 MR. COHN: I do. Thank you, sir.

6 THE COURT: All right. We'll be in recess. Come
7 back at 3:30.

8 (Brief recess.)

9 (Back on the record.)

10 THE COURT: We're back on the record in case
11 number 24-90448.

12 Go ahead, Mr. Cohn.

13 MR. DISHER: Mr. Cohn, are you ready to proceed?

14 MR. COHN: Yes, sir.

15 MR. DISHER: Okay, thanks.

16 BY MR. DISHER:

17 Q We were just turning to the calculation included in the
18 LKC fee application. If you go back to Exhibit number 2,
19 please --

20 A I'm with you.

21 Q And feel free to use this as your guide. I just want
22 you to explain to Judge Perez how LKC calculated the
23 different components of its success fee included in the fee
24 application pending in front of the Court.

25 A Certainly. So the first component, the \$600,000, is

1 undisputed. That's part of it. The rest of the success
2 fee, roughly \$8.3 million comes from paragraphs B and C.
3 What we did was we proceeded in two steps. The first thing
4 was calculating the total litigation value, and we used \$100
5 million for the reasons that we talked about.

6 Q Let me pause you right there. \$100 million of what?

7 A Of the \$185. So the Whinstone settlement was \$185
8 million. We assigned \$100 to litigation value.

9 Q And why did you assign \$100 million to the litigation
10 value?

11 A We used the low end of that range on the February 12th
12 PowerPoint, even though if you look at the two numbers that
13 are part of that low end, it adds up to roughly \$175
14 million.

15 Q Let's maybe pause there. Let's go to Exhibit 14 and
16 look at the chart that you're talking about.

17 A Okay. I'm with you.

18 Q And again, sorry to interrupt --

19 A No worries.

20 Q But go ahead and explain to the Court how LKC
21 calculated the \$100 million that it uses in its fee
22 application.

23 A Well, no, this is definitely more helpful. Okay. So
24 there is the total asset value, which is the sum of two
25 numbers. There is the risk damages, which is litigation

1 value, and there's ongoing business value, DCF, discounted
2 cash flow. That's the value of the underlying business, and
3 there's a range for each, and then there's a total for the
4 range. The total for the range, the total asset value is
5 roughly \$175 million to roughly \$325 million. We used that
6 low end of \$175 million, which is roughly \$10 million less
7 than the \$185 million purchase price. Although the total
8 asset value is less than the total purchase price, to be
9 conservative, we used only the \$100 million for risk damages
10 at the low end of that range.

11 Q Okay. All right. So first step, allocate \$100 million
12 to damages. Let's go to the second step you mentioned.
13 What was the second step that LKC went through in
14 calculating its success fee?

15 A We then had to take that \$100 million, and separate it
16 out into the two parts. There is the energy credit part,
17 and there is the additional damages part. So for that one,
18 we basically just did math, using --

19 Q And again, let me pause you there. Let's turn to the
20 next slide. It might help our discussion.

21 A Okay.

22 Q So please continue. How did LKC allocate an amount to
23 the energy credits?

24 A We used the numbers that were on the chart that the
25 litigation team put together, and we added together two

1 numbers. One is -- And do we have the chart in front of us?

2 It might be easier if I --

3 Q It should be slide 3 of Exhibit 14.

4 A Okay. Slide 3 of Exhibit 14 -- yeah, this is
5 definitely easier. All right. So there's the ERCOT
6 curtailment no Uri, which had an expected value of \$25.2
7 million. Then the ERCOT 4CP had an expected value of \$1
8 million. The sum of those numbers is \$26.2 million. We
9 left out the Uri curtailment because we were never allowed
10 to plead and prove fraud.

11 Q We'll talk about that in a minute.

12 A So without that, it's \$26.2 in expected value. But to
13 compare apples to apples, we then used Kevin's 25% discount
14 rate. If you have that discount rate applied to \$26.2 or
15 \$26.2 divided by 1.25, you end up with \$20.96.

16 Q Let me pause you there. And if we flip back to Exhibit
17 2, which is the engagement agreement -- See that?

18 A I do.

19 Q So paragraph B is related to interview credits, so how
20 much did LKC allocate to paragraph B of the success fee?

21 A \$20.96 million.

22 Q What about paragraph C? How much did LKC allocate to
23 paragraph C?

24 A Roughly \$79 million. It's the difference between \$100
25 million and \$20.96, so that would be \$79.04 million.

1 Q Thank you. Okay. Let's talk about the Uri credits.

2 Why did LKC -- why did LKC not add the value of the Uri

3 credits to its calculation?

4 A We were never allowed to plead, prove, argue fraud.

5 Q Why not?

6 A The Special Committee directed us not to do so.

7 Q Do you have any understanding about why they told you

8 not to pursue a fraud claim?

9 A I did. I do.

10 Q And what is that understanding?

11 A So it began with they wanted to conclude an

12 investigation into whether or not Rhodium's executives had

13 acted reasonably or unreasonably in relying upon Mr.

14 Harris's misrepresentations. Akin, Mitch Hurley had sent a

15 letter to the Special Committee contending that the

16 executives had acted unreasonably, had breached the business

17 judgment rule and their fiduciary duties by signing that

18 release. In his view, it was unreasonable to sign that

19 release.

20 Q Did LKC and Stris prepare a version of the complaint

21 that included the fraud claims?

22 A We did.

23 Q If we turn to Exhibit number 6?

24 A I got it.

25 Q Do you know what Exhibit number 6 is?

1 A Yeah. Exhibit 6 is the redline of the draft complaint
2 reflecting the changes when we were told to remove the fraud
3 claim.

4 THE COURT: Your Honor, we offer Exhibit number 6.

5 MR. SCHMELTZ: No objection.

6 THE COURT: All right. Exhibit number 6 is
7 admitted.

8 BY MR. DISHER:

9 Q And again, you were instructed to remove the fraud
10 claim by whom?

11 A By the Special Committee.

12 Q If you turn to Exhibit number 5 --

13 A I'm with you.

14 Q What is Exhibit number 5?

15 A This is the cover email to the amended complaint which
16 knocked out the fraud claim, and all the allegations
17 regarding fraud and reliance.

18 Q Let's look at what you say in the email. You say,
19 "Independent directors requested that the complaint not
20 plead the Uri fraud claims," you talked about that. "We
21 still seek the same amount of energy credits, and this draft
22 still says Chad lied." What do you mean when you say, "We
23 still seek the same amount of energy credits?"

24 A We're still seeking the same amount of damages.

25 Q In your mind, is there a distinction between seeking

1 damages and recovering damages?

2 A Absolutely. I mean, Plaintiffs can and do seek a whole
3 lot of things. It's one thing to seek money. It's quite
4 another to actually recover it in litigation.

5 Q How does the fact that the complaint no longer asserts
6 a count of fraud affect, in your opinion, the ability to
7 recover damages for those Uri energy credits?

8 A As I told the Special Committee, and anyone else on
9 phone calls, emails, the odds of recovering the energy
10 credits likely go to zero. We needed to overcome the
11 settlement agreement, the release, and the only way we could
12 think of to overcome it was with the fraud claim.

13 Q Your email goes on, the next sentence says, "We just
14 don't call it fraud." What did you mean by that sentence?

15 A What I mean is we took out the fraud claim, and the
16 allegations that underlie the fraud claim, including that
17 there was reliance.

18 Q The next sentence says, "We can amend at a later date
19 if we want to add back the fraud claim." Did I read that
20 right?

21 A You did.

22 Q What do you mean by that?

23 A Well, we were hoping that we would eventually have the
24 ability to add back the fraud claim. So we had it in there.
25 We had that sentence in there.

1 Q Did you ever amend the complaint to add back the fraud
2 claim?

3 A We did not.

4 Q Did you ever get authorization to amend the complaint
5 to add back the fraud claim?

6 A We did not.

7 Q Did you want to amend the complaint to add back the
8 fraud claim?

9 A Very much so.

10 Q Why?

11 A For three reasons, and this is all documented and
12 memorialized. But number one, we thought it was a good
13 claim. We thought we would collect the compensatory
14 damages. I think we had the odds handicapped at around 60%
15 of recovering those credits, and we wanted to do that. That
16 was the first reason, to get that money back. The second
17 reason was we thought we had a pretty good argument about
18 exemplary damages as well, and with fraud, we could get
19 exemplary damages. That chart conservatively ballparks the
20 exemplaries at one-to-one. We thought we could at least get
21 one-to-one, maybe more.

22 The third reason was if we had a complaint in which we
23 showed that Chad Harris had lied, that he had committed
24 fraud, then that would weaken one of their key witnesses,
25 and that would be useful overall. By contrast, if the issue

1 was our own executives had acted unreliably, unreasonably,
2 unjustifiably, that would hurt their credibility.

3 Q And who was advocating for making that latter argument,
4 that our executives acted unreasonably?

5 A That was the Special Committee. Do you know if
6 anything ever came of that argument that the Special
7 Committee had against our executives?

8 A I do.

9 Q What happened?

10 A Well, we learned in discovery a couple of things.
11 Number one, on April 19th, Mr. Schmeltz sent a letter to the
12 lawyers for the executives contending that they indeed had
13 acted unjustifiably, unreasonably, they had violated the
14 business judgment rule and breached their fiduciary duties
15 by signing that release. He claimed they failed to do even
16 minimal diligence, and therefore violated the duty of care.
17 That's the first thing.

18 Q And if -- Well, let me pause you there. If we go to
19 Exhibit 19 in the binder --

20 A I'm with you.

21 Q Is this the letter that you were referring to?

22 A Yes, it is.

23 Q And this is the letter that we received in discovery in
24 this matter?

25 A Yes, it is.

1 MR. DISHER: Your Honor, I would offer Exhibit 19.

2 MR. SCHMELTZ: No objection.

3 THE COURT: Exhibit 19 is admitted.

4 BY MR. DISHER:

5 Q Okay. And I interrupted you again. What was the next
6 thing that you saw related to how the potential claims
7 against the senior directors of Rhodium proceeded?

8 A We learned this just recently, in Mr. Thompson's
9 deposition of Mr. Eaton. And Mr. Eaton testified that in
10 fact, the Special Committee -- Well, I don't know who
11 actually does this, but -- whether it's the Special
12 Committee or the Debtors or the executives. But they sought
13 insurance money under the D&O policy against the insurers,
14 and one of the bases they had for getting this money from
15 the insurers was the Uri release. And in fact, they did get
16 \$8.5 million from the insurers, and Mr. Eaton said he had
17 not done an allocation, didn't know how much of that was
18 attributable to the Uri fraud claim. But they asserted --
19 I'm sorry, the Uri fiduciary duty claim. They hadn't done
20 the allocation. But \$8.5 million was obtained from the
21 insurance companies, and one of the claims that was
22 presented to the insurance companies was the Uri release,
23 the contention that they violated their fiduciary duties.

24 Q How does the fact that the Special Committee presented
25 a claim to the insurance company related to the actions of

1 the Rhodium senior directors, how does that relate to your
2 ability to potentially seek a fraud claim against Whinstone
3 and Chad Harris?

4 A You can't have it both ways. You cannot simultaneously
5 argue that there was reasonable reliance, which you need for
6 the fraud claim, and unreasonable reliance, which they
7 asserted to the insurance companies under the D&O policy.

8 Q So which route did the Special Committee pick? Fraud,
9 or claim against the directors and officers?

10 MR. SCHMELTZ: Your Honor, that calls for
11 speculation.

12 THE COURT: Why don't you rephrase your question.
13 I don't know what you mean by which route they picked.

14 BY MR. DISHER:

15 Q So based on your understanding of looking through the
16 documents, contemporaneous conversations, the discovery that
17 we have received in this matter, did the Special Committee
18 decide to pursue a fraud claim against Whinstone and
19 Rhodium?

20 A They did not.

21 MR. SCHMELTZ: Your Honor, I'd just object to the
22 relevance of Mr. Cohn's conclusion, reviewing documents,
23 what he thought. It's not relevant. They're going to have
24 -- Mr. Eaton's here, they've got witnesses -- this is
25 irrelevant.

1 THE COURT: I mean, I think it's relevant to the
2 ability to assert the fraud claim. So I'll let it in.

3 BY MR. DISHER:

4 Q Did the Special Committee pursue a D&O claim against
5 the senior directors of Rhodium?

6 A They did.

7 Q Okay. So we've talked about the success fee component.
8 of our engagement agreement. The fee application also seeks
9 some amount of hourly fees and expenses?

10 A That is correct.

11 Q What are those hourly fees and expenses for?

12 A So there are two things. There are the hourly fees
13 from LKC, and those were for supporting the Debtor's own
14 motion on the revised retention application. We spent some
15 time supporting that motion. That's about \$60,000 in fees.

16 Q What else?

17 A The second thing is the Porter Hedges expenses, which
18 were -- I think all of it, or almost all of it were for the
19 work they did either on helping us with the application
20 itself, or supporting Debtors' motion against the SAFEs.

21 Q If you turn to Exhibit 21, please?

22 A I'm with you.

23 Q Do you know what Exhibit 21 contains?

24 A This appears to be the Porter Hedges invoices for the
25 period in question underlying our fee application.

1 MR. DISHER: Your Honor, we offer Exhibit 21.

2 THE COURT: Any objection?

3 MR. SCHMELTZ: Yes, Your Honor. This wasn't
4 produced to us in discovery. The first we saw of it was
5 when it appeared on an exhibit list this past week, in the
6 period of what Your Honor said we were meant to do was be
7 fully transparent, open kimono. This is about the least
8 open kimono you can do. Not only did they not give it in
9 discovery, but it's something that we asked for way back
10 when, when we first saw these numbers and had questions
11 about whether or not Porter Hedges fees were reasonable, and
12 whether they were related to the (indiscernible)

13 MR. WOLFSHOHL: Your Honor, I don't think that
14 that's accurate. I don't think there were any discovery
15 requests that covered them. And when he talks about asking
16 for them, they did put them at issue by objecting, but there
17 was never any -- I mean, this was not anything that anybody
18 was hiding. We put it on the witness and exhibit list, or
19 on the exhibit list timely. That's all that is required to
20 be done. If they had picked up the phone and said, hey,
21 Josh, send us your invoices, we would have done it
22 immediately.

23 So this is not -- I mean, I don't believe that
24 this is subject to any request.

25 MR. SCHMELTZ: (indiscernible) they produced in

1 this matter seven documents. Seven. There is no world in
2 which they didn't know (indiscernible) no matter what. Even
3 if I had my head completely in the sand, these are the
4 documents at issue. And not only have we had conversations
5 about them, and we sought them early, but this is the very
6 kind of thing that you would say, hey, I've got to produce
7 those (indiscernible)

8 MR. WOLFSHOHL: They definitely did not request
9 them orally. I mean, if they had asked for them, we would
10 have given them. There's nothing (indiscernible)

11 THE COURT: I'm going to allow it. Exhibit 21 is
12 admitted.

13 BY MR. DISHER:

14 Q Mr. Cohn, did you have a chance to review the invoices
15 contained in Exhibit 21?

16 A Yes.

17 Q And just to be clear, your understanding is LKC has in
18 fact paid all of these invoices to Porter Hedges?

19 A Yes, indeed.

20 Q And these invoices form at least a part of the fees
21 that LKC is seeking, fees and expenses, excuse me, that LKC
22 is seeking in the fee application that's pending in front of
23 the Court?

24 A That is correct.

25 Q Okay.

1 MR. SCHMELTZ: I'd just like to interrupt and just
2 ask for reconsideration of (indiscernible) ask for documents
3 concerning the retention (indiscernible)

4 THE COURT: File a motion. I've ruled.

5 MR. SCHMELTZ: We did. We have. It's on file.

6 THE COURT: All right.

7 MR. SCHMELTZ: This is one of those --

8 THE COURT: I'll consider it.

9 MR. SCHMELTZ: Thank you, Your Honor. I
10 appreciate it. I don't mean to -- I just want to make sure
11 -- I really wanted to make sure the record was complete.

12 THE COURT: I think, you know, we're going to try
13 this. We're not going to --

14 MR. SCHMELTZ: It's fair. I just wanted the
15 record to be complete. I understand, Your Honor.

16 THE COURT: Yeah, we're going to try this. We're
17 not going to fool around. Let's go.

18 BY MR. DISHER:

19 Q Okay. Two final topics, should be brief. First, once
20 LKC files its fee application that's pending in front of the
21 Court, did it meet any resistance from the Special
22 Committee?

23 A It did.

24 Q What is your understanding about exactly what the
25 Special Committee is disputing in our fee application?

1 A I understand in short, one, they contend that the
2 amount of the \$185 that should be allocated to litigation
3 value should be \$75 million instead of \$100 million. And
4 then second, they dispute the amount of energy credits that
5 should be considered. And in specific, they contend that
6 the Uri energy credits should be considered.

7 Q Let's break those down. So first on the \$100 million
8 versus \$75 million, what is your understanding for why the
9 Special Committee claims that only \$75 million should be
10 allocated to damages?

11 A I don't fully understand it, and they can put on their
12 case. But my understanding is they're looking at the March
13 presentation in which Kevin uses pessimistic numbers and the
14 discount to get to \$100 million, and then decides to lop off
15 another \$25 million.

16 Q Okay. Now of the \$75 million that the Special
17 Committee asserts, how much of that do they claim should be
18 allocated to energy credits?

19 A Based upon their motion for partial payment, they're
20 saying that all \$75 million should be energy credits.

21 Q If we look back at the damages chart, what was the
22 total amount of expected value of all of the energy credits
23 combined?

24 A So it was, without Uri, \$26.2. And the expected value
25 of the Uri, including the exemplaries, which would not even

1 be energy credits, they're exemplaries, that was \$29. So it
2 was \$26.2 plus I guess 60% of \$29, which is roughly \$18
3 million, so about \$44 million it would be.

4 Q Okay. And so the Special Committee is allocating all
5 of that amount to energy credits, and more?

6 A Plus another \$31 million.

7 Q So more than the total amount of energy credits in the
8 numbers that we've looked at?

9 A A lot more, yes.

10 Q Okay. What about the hourly fees and expenses? Do you
11 have any understanding about the Special Committee's
12 objections to those?

13 A I do. And -- Well, again, I think they should speak
14 for themselves. But they didn't want to pay the Porter
15 Hedges amount, the \$200,000, on the view that they were not
16 reasonable. And they objected to paying the \$60,000 or so
17 that LKC spent supporting the Debtors' own motion.

18 Q And do you know what the basis for their objection is?

19 A They -- I read their brief, but I can't tell you I
20 understand it.

21 Q All right. I want to turn to, lastly, have you done
22 any attempts to come up with alternative calculations to the
23 potential success fee that LKC is due under the contract?

24 A I did.

25 Q If I remember your testimony right, when LKC did the

1 calculation that is in the application, it made how many
2 assumptions?

3 A Well, it made two assumptions, the \$100 million, ,and
4 then the allocation to -- you know, the energy credits.

5 Q Did you run the numbers making any different
6 assumptions?

7 A I did. I took some assumptions that were worse for us,
8 and some assumptions that were better for us.

9 Q Okay. Let's talk about did you attempt to calculate
10 what the success fee would have been if the litigation value
11 was only \$75 million, and the Uri credits should be
12 included?

13 A I did.

14 Q What was that amount?

15 A The total success fee would be over \$6.4 million.

16 Q Have you ever seen that number presented to the Court
17 by the Special Committee?

18 A Not even close.

19 Q How did you get with that? How did you get to that,
20 excuse me?

21 A I just used the same formulas. You use the \$75
22 million, and then for the energy credits, it might make
23 sense to look at the numbers in the chart, but in essence
24 you take the full expected value of all the energy credits,
25 including Uri, and then to compare apples to apples, you

1 have to discount it by the same discount rate, the 25%. You
2 take and divide it by 1.25, and then whatever the number
3 ended up being, \$44 million or thereabouts, you plug that
4 in, and then you just run it with the math. The first 5%
5 million, you get 5%. Thereafter it's 1%, and any additional
6 damages are 10%. You run it through that spreadsheet, and
7 then you add \$600,000, the net result of all that is over
8 \$6.4 million.

9 Q And just as a reminder, what is the total amount of the
10 success fee that we're seeking in our current fee
11 application?

12 A It's \$8.9 million.

13 Q Now, I believe you said you've recently also done some
14 calculations about maybe more aggressive assumptions.

15 A I did.

16 Q Can you tell Judge Perez about that?

17 A I did. So after reviewing the expert report of the
18 proposed expert, I noticed that he was using the most
19 optimistic numbers of all, which were on that February 18th
20 spreadsheet, which we provided the Debtors, and they asked
21 for the more aggressive. I used those numbers, and the
22 \$183, and I plugged those into the chart, and that gave us
23 numbers -- It depended if you use Uri or not. But those
24 numbers were in the \$13 to \$15 million range.

25 Q So using the numbers that the Special Committee's

1 expert used, what was your resulting figure for our success
2 fee?

3 A Depends if you use Uri. But the range I believe was
4 \$13.-something to \$15.3 million.

5 Q Okay. But just to be clear, LKC is not attempting to
6 adjust the calculation of its success fee that is currently
7 in the application pending in front of the Court?

8 A That is correct. We stand by our numbers.

9 MR. DISHER: Your Honor, I pass the witness.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY MR. SCHMELTZ:

13 Q Mr. Cohn, your fee application seeks \$8,913,600 in
14 success fees. Right?

15 A That's correct.

16 Q Take \$600,000 off of that. You've already been paid
17 the \$600,000. Right?

18 A Actually, I don't know if the Court entered the order
19 in that one, but we did receive a wire.

20 Q So you've already been paid that amount. Right?

21 A With a gap, yeah, sure. Yes.

22 Q So that's \$8,313,600 that would be at issue. Right?

23 A I think it's \$8,319,600.

24 Q It's not \$8,913,600, and we take \$600 off that, it's
25 \$8,313 -- right, \$600?

1 A I don't have the numbers in front of me. I can't
2 recall if it's \$8,313,000 or \$8,319,000, but let's just call
3 it roughly \$8.3 million.

4 Q Now, that's -- of course, I think you testified using
5 your \$100 million number. Right?

6 A That's correct.

7 Q In your biggest disagreement with the \$100 million
8 versus the \$75 million, if I understand your testimony
9 correctly, it's that Kevin Hays made that adjustment in a
10 March 2025 Board presentation, without consulting with
11 members of the litigation team about the adjustment. Do I
12 understand your prior testimony correctly, sir?

13 A No. You said that's the biggest issue. The biggest
14 issue is not that he didn't ask me. The bigger issue is
15 that I his numbers are just unreliable and wrong.

16 Q And his numbers include the adjustment to Winter Storm
17 Uri by reducing the 40% success rate down to 20%. Right?

18 A I think you meant to say Building D.

19 Q I did 100% mean Building D. Thank you. That is an
20 issue you have with his numbers, that he reduced the success
21 percentage from 40% to 20% on Building D. Right?

22 A That's one issue, yes.

23 Q Are you aware that your partner, Will Thompson, signed
24 off on that change in a Board meeting?

25 MR. DISHER: Objection. Foundation.

1 BY MR. SCHMELTZ:

2 A I'm aware that's not correct.

3 Q We'll get into that later. You object to the use of a
4 25% discount rate in that -- in Mr. Hays' number. Right?

5 A I wouldn't say that because we used his 25% discount
6 rate in getting to our numbers. I do think that's an
7 aggressive discount rate. But he's the business guy. He
8 wanted to use it, he used it starting on February 12th, and
9 we incorporate that.

10 Q Other than the Building D change then, there's not
11 anything else that you thought was unreliable about Kevin
12 Hays' numbers. Right?

13 A That's incorrect.

14 Q What else did you think was unreliable about Kevin
15 Hays' numbers?

16 A Well, it depends on which spreadsheet you're looking
17 at. But if you're looking at the March spreadsheet, after
18 he reduced the Building D odds, and then applied the 25%
19 discount rate, he then lopped off another \$25 million, the
20 gap from \$100 million expected value to the \$75 million.

21 Q So your big disagreements with him are the Building D
22 change, and lopping off the additional \$25 million. Right?

23 A That's fair.

24 Q Okay. Certainly, you would agree with me that your
25 client has a right to analyze what it thinks it's settling

1 and for how much it thinks it's settling for. Right?

2 A Has a right to analyze what it's settling? I'm not
3 sure I fully understand the question.

4 Q Your client was assessing the potential for settling
5 with Riot-Whinstone at the time of that March presentation.
6 Right?

7 A That's right. And you would agree with me your client
8 has a right to lean into its professionals in any way it
9 sees fit to assess that settlement. Right?

10 A I'm not sure I'm getting what lean is. But if you're
11 asking if they have the right to talk to their
12 professionals, certainly.

13 Q And your client isn't obligated to give you a call, to
14 ask if you think the number that it's settling for includes
15 \$50, \$75, or \$100 million in damages, are they?

16 A That's correct.

17 Q And your client was also represented by Chuck Topping,
18 General Counsel, at the time of that presentation. Right?

19 A That's fair.

20 Q And your client was represented by Quinn Emanuel at the
21 time of that presentation. Right?

22 A Yes.

23 Q So if your client's March 2025 assessment of the
24 damages, and what its damages were worth didn't include LKC
25 or Stris, that's not problematic by itself, is it?

1 A I would say it's problematic.

2 Q Now, your methodology took \$100 million, and subtracted
3 \$20,960,000 from that to get an amount to which you apply
4 the 10% rate for that bucket C success fee. Right?

5 A I wouldn't phrase it quite that way, but I think we're
6 on the same page. If you want me to say it differently, I
7 can.

8 Q I don't want you to say it differently. Your number
9 for power credits was \$20,960,000. Right?

10 A For energy credits?

11 Q For energy credits.

12 A Yeah, \$20.96 million. That's correct. And your number
13 for the non-energy credits, to which you applied the 10%
14 rate, was \$79,400,000. Right?

15 A No, sir. Your math is --

16 Q \$79,004,000. Right?

17 A No, no. \$40,000.

18 Q You're right. You're right. I'm stumbling over a
19 number there. But \$79 million and change. Right?

20 A We can go with that one.

21 Q And you get that \$79 million and change by subtracting
22 \$20,960,000 from \$100 million. Right?

23 A That's right.

24 Q Okay. Let's use your number, \$20,960,000 for energy
25 credits. Okay? Let's use that number. If you subtract

1 that from \$75 million instead of \$100 million, you get
2 \$54,040,000. Okay?

3 A Okay.

4 Q And at 10%, that's \$5.4 million of a success fee.
5 Right?

6 A Your math is right, but there's a premise that you have
7 that is incorrect.

8 Q And that's give or take \$3 million off of the number
9 you drive using \$100 million. Isn't that right?

10 A Can you give me the numbers again? We have \$8.9 and
11 the other number is -- ?

12 Q \$5.4.

13 A That would be a \$3.5 million difference.

14 Q So by using your base, you drive a much bigger success
15 fee than by using the base that your client viewed as its
16 damages as of March 2025, well before there was a dispute
17 here. Right?

18 A Well, like I said, your premise is wrong.

19 Q But you would agree with the numbers. Right?

20 MR. WOLFSHOHL: I'm just, I'm going to object.

21 THE COURT: I don't understand the numbers. If
22 the difference is \$25 million, and it's 10%, that's \$2.5.
23 So I don't know where the \$3.5 comes from.

24 MR. SCHMELTZ: So it doesn't shake out that way,
25 Your Honor, because it is -- First you calculate the energy

1 credits --

2 THE COURT: Right. And you're assuming you're
3 calculating the same energy credits. So really, the
4 difference is between the \$75 and the \$100, is just on the
5 \$25 million difference.

6 MR. SCHMELTZ: If you took that, Your Honor, and
7 you have -- So the difference is \$50 -- It's \$54 million,
8 right, instead of \$79 million (indiscernible) \$25 million
9 difference.

10 THE COURT: Okay. All right.

11 MR. WOLFSHOHL: Object. Vague, foundation.

12 MR. SCHMELTZ: So I can just go back and say
13 (indiscernible)

14 THE COURT: Yeah, because I was not following you
15 there.

16 MR. SCHMELTZ: That's fine.

17 MR. COHN: May I explain what I was trying to say,
18 or --

19 THE COURT: No, no. Let him ask a question.

20 BY MR. SCHMELTZ:

21 Q Under your model, using \$100 million, you have
22 \$20,960,000 allocated to power credits. Correct?

23 A Yes, that's right.

24 Q And \$100 minus \$20,960,000 we have established is
25 \$79,040,000. Right?

1 A That's still the answer, yes.

2 Q And your model applies 10% to that number. Right?

3 A That's correct.

4 Q To get \$7,904,000 in bucket C success fees. Right?

5 A I think there might have been a zero missing in there,
6 but we could say roughly \$7.9 million.

7 Q \$7,904,000.

8 A Yeah, that's right.

9 Q No zeros missing. And to Your Honor's point, under a
10 \$75 million number, that bucket C would be \$5,404,000.

11 Right?

12 A No. Not if you were doing it accurately.

13 Q \$75 million minus \$20,960,000 is \$54,040,000. Right?

14 A The math is right, but the methodology is incorrect.

15 Q In your fee application, you say in paragraph 36, you
16 have a paragraph about additional damages, and you say those
17 additional damages are \$79.04 million, the difference
18 between \$100 million and \$20.96 million. Right?

19 A Yes.

20 Q And so similarly, if you used a \$75 million base, the
21 difference for the additional damages, you would take the
22 difference between \$75 million and \$20.96 million. Right?

23 A Like I said, your math is right, but your methodology
24 is incorrect.

25 Q I'm just using your methodology. Right?

1 A No, you're not.

2 Q Let's take a look. You have a -- You I think said to
3 Mr. Disher that the number, if you used \$75 million and you
4 included the power credits, that would be about a \$6-plus
5 million success fee. Did I understand that correctly?

6 A Not entirely. So if you were to assume that the proper
7 number is \$75 million, and you were to assume the Uri energy
8 credits, and you did the math and methodology correctly, you
9 would end up with over \$6.4 million. And when you say the
10 math and methodology correctly, you have applied a 25%
11 discount rate -- pardon me, to the energy credits. Correct?

12 A That's part of it. We use the same 25% discount rate
13 that Kevin used to compare apples to apples.

14 Q You don't use a 25% discount rate, though, to the
15 \$79,040,000 that makes up the basis for a discount.
16 damages, do you?

17 A No, we did. Because we used his number, the \$100
18 million, and you get to the \$100 million only by using his
19 25% discount rate.

20 Q I see. So you, for energy credits, you double count --
21 You take 25% once to get to the \$100 million, and then you
22 take 25% again and add it to the energy credits. Right?

23 A No. That's not right. It's not double counting.

24 Q You do apply a 25% discount to the energy credits as
25 well, don't you?

1 A We want to compare apples to apples. So the \$100
2 million is the result of, among other adjustments, this 25%
3 discount rate. When you go from the numbers in the chart to
4 the \$100 million, you go through the 25% discount rate. To
5 compare apples to apples, if you're going to use the energy
6 credit numbers in the chart, you have to apply the same 25%
7 discount rate.

8 Q But the numbers in the chart drive the \$100 million.
9 So why aren't you -- You're not using -- I just want to be
10 clear, you're not applying a 25% discount rate to the
11 \$79,040,000. Right?

12 A No, you are. Because you only get to the \$100 million
13 by taking the \$158, applying that discount rate, which gets
14 you to \$126.4, and you then reduce it by \$1.4 to get to his
15 \$125, and then you have the range getting him down to the
16 \$100. You only get to the \$100 by using the 25% discount
17 rate.

18 Q If you take the same --

19 A It's the transitive property of math. You could also
20 use the numbers that you have in the chart, and then --

21 Q Sir, I'm fine. I don't --

22 A Okay, sure.

23 Q I think it was your testimony that you didn't agree
24 with the 25% discount rate, and I think you also testified
25 to Mr. Disher that you didn't think Kevin Hays discussed

1 that discount rate with anyone on your team. Is that
2 correct?

3 A I didn't say disagree with it. We apply it. I think
4 it's aggressive, I wouldn't do it. I don't think it's
5 economically supported, and I can walk through the reasons
6 why, but we ended up using it anyway.

7 Q And I think you also testified that you didn't think
8 Mr. Hays consulted with anyone on your team before using
9 that discount rate. Right?

10 MR. DISHER: Objection. Mis-states the testimony.

11 MR. COHN: Right. It's a little bit different --

12 THE COURT: Wait, wait, wait. Hold on.

13 MR. COHN: I'm sorry. I'm sorry.

14 THE COURT: I'm going to overrule that objection.

15 You can answer the question.

16 BY MR. SCHMELTZ:

17 A I guess it comes down to the word "consult." If I
18 recall, either on -- I think it was on the Board call, he
19 mentioned it, that he was using it. But I don't think he
20 asked if we ever thought it was right. So I guess it comes
21 down to the word "consult."

22 Q You've got a couple of binders behind you that are our
23 binders.

24 MR. SCHMELTZ: And Your Honor, if I might
25 approach?

1 THE COURT: Yep.

2 MR. DISHER: Trace, do you have another copy of
3 your exhibits, by chance?

4 MR. SCHMELTZ: (indiscernible)

5 MR. DISHER: Oh, great.

6 MR. SCHMELTZ: I think you already have them.

7 BY MR. SCHMELTZ:

8 Q If you would, sir (indiscernible)

9 THE COURT: Do you have an extra set for my law
10 clerk, an extra set of binders?

11 BY MR. SCHMELTZ:

12 Q If you would, sir, turn to Exhibit 259, please.

13 A I'm with you.

14 Q I think you showed earlier the email at the bottom of
15 the first page here between Kevin Hays and you and others,
16 in which -- and it's the bottom of the first page and top of
17 the second page, in which he says, "I put the table in my
18 presentation. See attached." He then comments to Will, "I
19 understand you'll be available to join the Board call." Do
20 you see that?

21 A Which page are you on?

22 Q It's the top of the second page.

23 A I do see that, yes.

24 Q And then he says, "When I get to slide 3, I'll turn it
25 over to you." Right?

1 A Yes.

2 Q And I think we looked at slide 3 earlier, under your
3 Tab 14. Right?

4 A Correct.

5 Q And that's that litigation value chart, correct, that
6 we've all looked at, that has the values, and the expected
7 chance of success and all that. Right?

8 A That's right.

9 Q Then, on the first page of the email, Mr. Thompson
10 says, he asks a question, and I'll start in the fourth
11 sentence -- or pardon me, the third sentence, "If you're not
12 in the meeting," and this is on February 12th, "If you're
13 not in the meeting, it might make sense to connect briefly
14 on the low-high range you provided. I want to make sure
15 we're on the same page." He says, "Of course I don't have a
16 problem with your range. I just want to avoid stepping on
17 your toes, and confirm I understand how you calculated
18 that." Have I read that correctly, sir?

19 A Not entirely. I think you put in that instead of it,
20 but close enough.

21 Q Mr. Hays responds and says, "Will, good question. On
22 page 2, I simply took the risk value from the damages,
23 discounted a year at 25%, and roughly plus or minus \$25
24 million. I can explain that on page 2 so you don't even
25 half to mention it on slide 3." I think he might have, but

1 it says "half." Have I read that correctly?

2 A Yes, sir.

3 Q All right. And Mr. Thompson responds, "That makes
4 sense to me." Right?

5 A I see that.

6 Q And he says, "I won't plan to talk about it at all,"
7 but he goes on to say, "If I were pressed, I'd say that the
8 range of possible litigation outcomes is very wide. But I
9 can certainly understand why, from a business perspective,
10 it might make sense to look at the kind of band you're
11 using." Right?

12 A You read it correctly.

13 Q So one, it's fair to say, and maybe we're quibbling on
14 the word "consulting," but it's fair to say that your team
15 was aware of the 25% discount rate. Right?

16 A That is correct.

17 Q And was aware of the plus or minus \$25 million. Right?

18 A That is true.

19 Q And that the response was, "I can understand why, from
20 a business perspective, it might make sense to look at the
21 kind of band you're using." Right?

22 A You read the words correctly.

23 Q Certainly, using the discount rate and taking an
24 additional 25% wasn't something that your team said was
25 unacceptable at that time. Right?

1 A We did not say that.

2 Q It wasn't something that your team objected to as a

3 matter of principle. Right?

4 A I'm not sure what you mean by a matter of principle,

5 but Will is talking about it from a business perspective.

6 Q Your calculation of damages includes specifically from

7 the chart of claims the power credit claims. Right? I

8 should say the non-Uri power credit claims. Right?

9 A I prefer to say energy credits.

10 Q Is that a yes?

11 A I'm sorry, could you repeat the question?

12 Q Your chart includes the non-Uri -- pardon me, your

13 calculation includes the non-Uri energy credits specifically

14 from the chart. Correct?

15 A And by the chart, do you mean (indiscernible)

16 Q Your calculation of the success fee includes

17 specifically the non-Uri energy credit claims from the chart

18 that we looked at in Exhibit 14. Right?

19 A That is correct.

20 Q But it then makes no distinction between any other

21 category of damages, etc. It's just simple math. It's

22 subtract \$20 million from \$100 million to get the remainder.

23 Right? You're not going back through that chart and picking

24 other claims to allocate within the settlement amount.

25 Correct?

1 A I'm not sure --

2 MR. WOLFSHOHL: Vague. Objection. Vague,

3 compound. I'm not --

4 THE COURT: Rephrase the question. I think I

5 understand what he's asking.

6 BY MR. SCHMELTZ:

7 Q The \$79,040,000 that you attribute to bucket C in the

8 fee app, in your engagement letter, is not tied to any

9 specific claim on the chart in slide 3 of Exhibit 14, is it?

10 A I disagree. I can explain --

11 Q You don't make a specific allocation among the \$79

12 million to any specific claim on the chart as part of your

13 fee application, do you, sir?

14 A That is correct.

15 Q There is not anywhere I could find in your fee

16 application, in the paragraph on additional damages, where I

17 could figure out which claims are included in the \$79

18 million. Is there?

19 A I think as you've phrased it, there is. I mean, the

20 \$79.04 million comes from the claims for other damages that

21 are on this chart. If you meant specifically, like, how

22 much of the \$79 goes to one claim versus another, then I

23 agree with you.

24 Q We don't know, from your fee application, if the \$79

25 million includes attorneys' fees, bankruptcy case, do we?

1 A We do. It's all in there.

2 Q We don't know is it \$4.2, or is it a bigger number, do
3 we?

4 A It's the numbers that are on this chart. It's the
5 expected value amounts, which were then reduced by the 25%
6 discount rate, further reduced by the \$1.4 million, and then
7 reduced by \$25 million.

8 Q Can you show me on the chart in your Exhibit 14, Tab 3,
9 which litigation value claims are included in the \$79
10 million?

11 A It's all of them. We used all the claims that are on
12 this chart.

13 Q So you're seeking a success fee for the block of Temple
14 sale on which you have a base success of 5%. Right?

15 A Yeah. We used the expected value, and then the other
16 discount and deductions, correct.

17 Q And so you -- That's a claim that you told your client
18 there was a 95% chance of losing that claim, you want a
19 success fee on that claim. Right?

20 A Correct.

21 Q And then, there are bankruptcy case fees and pre-
22 bankruptcy case attorneys fees. Right?

23 A That is correct.

24 Q Turn with me, please, to Exhibit 307 in your binder.

25 A I'm with you.

1 Q You recognize this document, sir?

2 MR. WOLFSHOHL: I'm sorry, which exhibit?

3 MR. SCHMELTZ: 307.

4 MR. SCHMELTZ: Oh -- Your Honor, I want to, before
5 I get too far ahead of myself, I'd like to move the
6 admission of Exhibit 259 into evidence.

7 THE COURT: Any objection?

8 MR. DISHER: No objection.

9 THE COURT: It's admitted. It's in, Exhibit 259.

10 BY MR. SCHMELTZ:

11 Q What do you recognize this document to be, Mr. Cohn?

12 A I'm not sure I do recognize this document.

13 MR. SCHMELTZ: Your Honor, may I have a minute?

14 THE COURT: Sure.

15 MR. SCHMELTZ: Readers are leaders, Your Honor.

16 Sometimes I need someone else to read for me. My apologies.

17 BY MR. SCHMELTZ:

18 Q I represent to you, sir, that this is the compromise
19 settle and release, settlement and release agreement that
20 governs the Riot-Whinstone dispute. Have you ever seen this
21 document before?

22 A I might have. I can't recall.

23 Q Okay. You understand that your client signed a
24 settlement agreement with Riot-Whinstone. Right?

25 A I do.

1 Q And settled the disputes between and among the Rhodium
2 Debtors, and Riot and Whinstone. Right?

3 A That is correct.

4 Q I'd ask that you take a look at what is marked at the
5 bottom as Hearing Exhibit 307.011 (indiscernible) the Bates
6 range. Let me know when you get to the 011 page, please.

7 A I'm with you.

8 Q This actually provides in paragraph 25 the settlement
9 agreement, that "Except as otherwise provided in section
10 III.26, each party will pay its own attorney's fees and
11 costs." Right?

12 A I'm not sure where you're reading from. Sorry.

13 Q Paragraph 25, 25.

14 A Okay. I'm with you.

15 Q That's what it provides. Right?

16 A I'd have to hear you read it back to make sure you read
17 it correctly, but I'm reading 25 now.

18 Q And it provides that, "Except as otherwise provided in
19 section III.26, each party will pay its own attorney's fees
20 and costs." Right?

21 A That's what it says.

22 Q And Roman III.26 is a prevailing party attorney's fees
23 and costs provision. Right?

24 A It is prevailing party attorney's fees and costs.
25 Correct.

1 Q And that provision only applies to a proceeding arising
2 out of or in connection with the interpretation or
3 enforcement of the settlement agreement. Right?

4 A It says, "In the event of any dispute or legal
5 proceeding arising out of or in connection with the
6 interpretation or enforcement of this agreement, the
7 prevailing party shall be paid, and in the event of a legal
8 proceeding shall be awarded reasonable costs, expenses, and
9 attorneys fees."

10 Q And that, of course, is a situation not involving the
11 settlement of the main dispute, but of a dispute about the
12 settlement agreement. Right?

13 A I think I follow you, sure.

14 Q In other words, this agreement, the settlement
15 agreement that your client signed specifically excludes
16 recovery of attorney's fees and costs. Right?

17 THE COURT: In addition to the \$185 million? Is
18 that what you're asking?

19 MR. SCHMELTZ: Correct.

20 THE COURT: Okay.

21 BY MR. SCHMELTZ:

22 A In addition to the \$185 million, it does exclude
23 additional attorney's fees, which might or might not be
24 included in the \$185 million.

25 Q Which may or may not, and there is not any document

1 ever that you are aware of between Whinstone or Riot on the
2 one hand, and Rhodium on the other, in which Whinstone or
3 Riot expressed an intent to pay attorney's fees and costs as
4 part of the settlement. Right?

5 A To my knowledge?

6 Q To your knowledge.

7 A Yeah, I'm not aware of that document.

8 Q To be clear, on the chart that we looked at in Exhibit
9 14 at slide 3, the only claims that you have that have a
10 winning percentage other than -- Well, let's do it this way.
11 Shutdowns on that chart in Exhibit 14 has a winning
12 percentage of 80%. Right?

13 A A base success percentage, yes.

14 Q And water has a success percentage of 30%. Right?

15 A That is correct.

16 Q Meaning 70% chance you could lose. Right?

17 A That is correct.

18 Q ERCOT curtailment, no Uri, has a winning percentage of
19 70%. Right?

20 A That is right.

21 Q And ERCOT curtailment, Uri, has a winning percentage of
22 60%. Right?

23 A The base success percentage is 60%. The exemplary
24 damages success percentage is 40%.

25 Q I'm talking about just on the base claim, 60%. Right?

1 A Sure.

2 Q Now, your testimony earlier, let's pause there for a
3 second, was that you weren't ever allowed to plead and prove
4 fraud. Right?

5 A That is correct.

6 Q You filed your complaint on February 11th. Correct?

7 A That is right.

8 Q The mediation took place on February 19th. Right?

9 A The first session did.

10 Q And by April, as we've just looked at in the settlement
11 agreement at 307, by April -- pardon me, by April 28th, the
12 matter was settled entirely. Right?

13 A I don't recall the exact date, but it was some date in
14 late April.

15 Q So the fact that you weren't allowed to plead and prove
16 fraud is a timing question. It's not some grand
17 prohibition. You weren't prevented for all times from
18 pleading or proving fraud had the case gone on. Right?

19 MR. WOLFSHOHL: Objection. Vague, compound,
20 foundation.

21 THE COURT: Could you rephrase the question?

22 BY MR. SCHMELTZ:

23 Q You don't know whether you would have been allowed to
24 plead and prove fraud had the case not settled, do you, sir?

25 A Do you want me to speculate? I would speculate that I

1 was never going to be allowed to plead and prove fraud
2 because the Special Committee took the position with respect
3 to the insurance companies and the D&Os that their reliance
4 was unreasonable, unjustifiable, and that is contradictory
5 to the fraud claim we wanted to bring.

6 Q Had the case not settled, and the litigation team been
7 allowed to either plead and prove fraudulent inducement, or
8 plead and prove duress, for example, that the settlement
9 agreement was obtained under duress, those would be ways to
10 overcome the defense that Riot-Whinstone would mount to an
11 energy credit claim related to Winter Storm Uri. Right?

12 MR. DISHER: Objection. Vague, foundation.

13 THE COURT: I'm going to overrule it.

14 BY MR. SCHMELTZ:

15 A I don't understand the reference to duress, so I'll put
16 that aside. But fraud would have been a way, in our view
17 the only way to overcome the release that the executive
18 signed, waiving away the rights to the energy credits.

19 Q And stating the obvious, you don't know what would have
20 happened, because the Whinstone case settled. Right?

21 A I don't know what?

22 Q What would have happened with respect to pleading and
23 proving fraudulent inducement, because the Whinstone case
24 settled. Right?

25 A I do know that the Special Committee took a path which

1 is diametrically opposite and contradictory to pleading and
2 proving fraud. Whether they would have asked me to
3 contradict them, I can't speculate what they were going to
4 do. But it wouldn't have been a good fraud claim if they're
5 taking a contradictory position with the Ds, Os, and
6 insurance companies.

7 MR. SCHMELTZ: Your Honor, first I want to move to
8 admit Exhibit 307 into evidence. I realize I'm lagging in
9 my offering exhibits.

10 THE COURT: Any objection?

11 MR. DISHER: No objection.

12 THE COURT: Exhibit 307 is admitted.

13 BY MR. SCHMELTZ:

14 Q You also don't know what the Special Committee would
15 have done with respect to a D&O settlement had the Riot-
16 Whinstone litigation not settled, do you?

17 MR. DISHER: Objection. Calls for speculation.

18 MR. SCHMELTZ: He's been speculating right along,
19 I suppose.

20 THE COURT: Yeah, I think he's asking, you don't
21 know, and I think the answer is kind of obvious.

22 MR. DISHER: Fair enough.

23 BY MR. SCHMELTZ:

24 A I don't know.

25 THE COURT: I'm not sure it's a question, but more

1 like a statement.

2 BY MR. SCHMELTZ:

3 Q The remaining claims on this chart, putting aside
4 attorney's fees, none of them has a greater than 50% chance
5 of succeeding. Correct?

6 A You mean other than the shutdown, the ERCOT
7 curtailment, no Uri, ERCOT curtailment, Uri for base, you
8 have a couple of attorneys fees. Aside from those, yeah,
9 the numbers are below 50%.

10 Q Another reasonable way to allocate what was settled
11 would be to allocate the full base amount of winning
12 percentage claims. Right? That would be another way to
13 make an allocation. Correct?

14 MR. DISHER: Objection. Vague.

15 THE COURT: Sustained.

16 BY MR. SCHMELTZ:

17 Q Another way that one could allocate amongst the damages
18 is to simply take the base amount of winning claims and add
19 them up. Right?

20 MR. DISHER: Objection. Vague.

21 THE COURT: I'm not quite sure I understand the
22 question. Is the question that you would just take the base
23 amount of the claim without any percentage?

24 MR. SCHMELTZ: Yeah, let me do it this way.

25 BY MR. SCHMELTZ:

1 Q The base amount of shutdowns is \$8 million. Right?

2 A That is correct.

3 Q Winning claim. Right? Greater than 50% claim. Right?

4 A Is the question whether 80 is more than 50? Yes.

5 Q ERCOT curtailment, no Uri, \$36 million base amount.

6 Right?

7 A That is correct.

8 Q Seventy percent chance of success. Right?

9 A That is true.

10 Q ERCOT curtailment, Uri, \$29 million base amount.

11 Right?

12 A Yes.

13 Q Base success, 60%. Right?

14 A True.

15 Q If you took the \$29, the \$36, and the \$8, that gets you

16 \$73 million. Correct?

17 A That is correct.

18 Q And so another way to look at how you got the \$75

19 million would just be to take the base amount of those three

20 winning claims. Right?

21 A If you wanted to do something incorrectly.

22 Q Well, there's not a magic rubric for this, is there

23 now, sir?

24 A A magic rubric?

25 Q There's not any rubric.

1 A I mean, I think we do things that are reasonable, and
2 that make sense. Is that a rubric?

3 Q One of your allegations in your fee application is that
4 the Special Committee is not responsive to requests from
5 your -- you or your counsel to try to resolve your success
6 fee. Right?

7 A I don't have the application in front of me. I don't
8 think we made allegations, but if you show me the
9 application, I can take a look at the language.

10 Q Just take one example, paragraph 23. You say, "To that
11 end, shortly after entry of the LKC updated order on July
12 11th, 2025, LKC's counsel sent email correspondence to
13 Barnes & Thornburg setting forth LKC's proposed allocation
14 and contingency fee calculation, and inviting further
15 discussion. Barnes & Thornburg never responded to the July
16 11 email correspondence." Have I read that correctly?

17 A I don't know --

18 Q You don't know because you don't have it in front of
19 you. Do you recall making that allegation?

20 A No.

21 Q Okay.

22 A I don't know it's an allegation. I mean, I don't
23 recall those exact words. But if you give me a copy of the
24 fee app, I can take a look and read along with you.

25 Q In fact, do you recall -- Did I use 284?

1 MR. SCHMELTZ: Your Honor, the fee app is Exhibit
2 284. And first, I would ask that the witness turn to that,
3 and then we can move to admitted it into evident.

4 THE COURT: That's a live pleading in this case.
5 I'll just take judicial notice.

6 MR. SCHMELTZ: Thank you.

7 BY MR. SCHMELTZ:

8 Q Would you take a look at paragraph 23, please?

9 THE COURT: 284?

10 MR. SCHMELTZ: Oh, 284 is the objection on the fee
11 app.

12 THE COURT: Yeah, 284 is the objection.

13 MR. SCHMELTZ: I'll just come back to it.

14 BY MR. SCHMELTZ:

15 Q I want to talk about this concept that there were not
16 negotiations around your fee. If I might, I'd like you to
17 turn to Exhibit 201. Exhibit 201 is an email exchange
18 between me and Josh Wolfshohl. You and I went through this
19 in your deposition. You recall that. Right?

20 A Okay.

21 Q Now, I'd like you to take a look specifically at
22 201.007, and it's a May 31st exchange. I'm not offering
23 this email to suggest the value of the claim, and I'm not
24 offering it to suggest that anyone has liability. I'm
25 simply offering this to get to the bottom of the reasonable

1 action by the Special Committee to resolve this claim. And
2 I would ask that you take a look at that email, and let me
3 know if you recognize it.

4 MR. WOLFSHOHL: Your Honor (indiscernible)

5 THE COURT: Yeah.

6 MR. WOLFSHOHL: I do believe this is covered by
7 our motion in limine (indiscernible)

8 I know the Court has not taken that up now, but
9 this might be an appropriate moment to do so. And our
10 associate, Jacob Richards, is prepared to argue that if the
11 Court wants to hear argument about it right now. But I do
12 believe --

13 THE COURT: No, I mean, it clearly says that it's
14 408 discussion. So I'm not bound by -- You know, obviously
15 this is not -- I mean, just stepping back for a minute,
16 whether there were discussions or there weren't discussions,
17 that's not going to impact my ruling. I'm going to rule on
18 what the contract says and what the evidence shows about the
19 contract. So you know, I'm happy to hear this, but you
20 know, this doesn't seem to focus on the contract language
21 and the information regarding that. So I'm going to
22 overrule the objection.

23 BY MR. SCHMELTZ:

24 Q So in the middle paragraph --

25 MR. SCHMELTZ: So first I would move to admit 201

1 into evidence.

2 MR. DISHER: And just for the record, we object on
3 408 (indiscernible) grounds.

4 THE COURT: I understand. And it's going to be --
5 It's not admitted for the truth of the matter. It's
6 admitted that there was a communication regarding a proposal
7 made under 408, and you know, it's not -- the proposal
8 itself is not evidence in this case.

9 MR. DISHER: Thank you, Your Honor. Can I just
10 have a running objection (indiscernible)

11 THE COURT: You can have a running objection, yes.

12 MR. SCHMELTZ: Move to admit 201 into evidence.

13 THE COURT: Yeah, with that caveat, I'll admit
14 201, subject to the objection.

15 BY MR. SCHMELTZ:

16 Q In the third sentence, it notes, "Based on the current
17 tax plan, we see \$75 million attributed to the settlement."
18 Do you see that?

19 A I do.

20 Q In other words, you were aware as of May of 2025 that
21 the Debtor intended to allocate \$75 million to settlement.
22 Right?

23 A In this particular email, but not in other
24 correspondence.

25 Q Then it says, "It is my understanding that the \$100

1 million number came from advice given by LKC. We're not
2 likely to use that number. That is the present plan for our
3 taxes." Have I read that correctly?

4 A You read it correctly.

5 Q And then there is a paragraph in which there's a rubric
6 for potentially applying the formula in the contract, that
7 says, "We see \$50 million of that to energy credits." Have
8 I read that correctly?

9 A You did.

10 Q So baseline is \$600,000, which is that bucket A
11 Right? You'd agree with me \$600,000 is the bucket A
12 success fee. Right?

13 A Yes, sir.

14 Q And then 5% times \$5 million is another \$250,000.
15 Right?

16 A That is right.

17 Q Plus 1% of \$45 million is another \$450,000. Have I
18 read that correctly?

19 A You did.

20 Q And then, the remaining amount is \$25 million, and it
21 says, "And 10% times \$25 million is \$2.5 million." Have I
22 read that correctly?

23 A You did.

24 Q For a total of \$3.8 million. Right?

25 A You read it correctly.

1 Q That is one reasonable way to interpret the contract.

2 Isn't that right?

3 A No.

4 Q It goes on to say, "I think there's a number between
5 your \$3.8 million and your -- our \$3.8 million and your \$8.1
6 million at which we can settle." Have I read that
7 correctly?

8 A You did.

9 Q Mr. Wolfshohl responded to me on June 1st. Do you see
10 that, two pages over at LKC 4848, or Hearing Exhibit
11 201.004?

12 A I mean, there are some other emails in between, but
13 okay.

14 Q In his response at 201.005, it says, "Josh, please
15 share this analysis with Trace." And you and I talked about
16 that at your deposition, that's your analysis that you had
17 shared with me. Correct?

18 A I say it's LKC's analysis. As I think I mentioned at
19 deposition, it is likely that I would have spoken with my
20 colleagues about this. But if you want to call it my
21 analysis, that's fine.

22 Q At the next page, 201.006, there is a counter that is
23 contingent. Do you see that in that top bullet point?

24 A I see the word "counter," and I see the word
25 "contingent."

1 Q And it's contingent on the understanding, on the
2 Debtor's understanding that the brackets are \$8.1 million
3 and \$5.2 million. Correct?

4 A That is correct.

5 Q And then in the last sentence, it says, "If the Debtors
6 want the negotiations to continue, they need to make an
7 offer above \$5.2 million." Right?

8 A That is correct.

9 Q Take a look, if you would, at Exhibit 291, please.

10 A Okay.

11 Q Do you recognize this document?

12 A I think so. I believe this is the document that you
13 produced in discovery. Yeah, it does look -- it does look
14 somewhat familiar.

15 Q And this is an analysis of potential estate causes of
16 action prepared for the Special Committee of the Rhodium
17 Enterprises, Inc. Board of Directors. Right?

18 A That's what it says.

19 Q And it's dated April 2025. Right?

20 A Yes, it is.

21 MR. SCHMELTZ: Your Honor, while this witness
22 certainly isn't a foundational witness for this document,
23 it's been produced in discovery in this case, and that's
24 been produced really to all parties of record in this case
25 as the Special Committee's report. I would ask that it be

1 admitted into evidence.

2 MR. DISHER: We object on lack of foundation. We
3 also object on (indiscernible)

4 THE COURT: Well, I think when you put on Mr.
5 Eaton, he can introduce it and go through the report.

6 I sustain that objection.

7 BY MR. SCHMELTZ:

8 Q When you received the Special Committee's report in
9 Discovery, did you review it?

10 A Not the whole thing. For one thing, it is heavily
11 redacted, and pages are missing. But I did look at the
12 assertion at the end, that the company has a plausible claim
13 against Whinstone for fraudulent inducement.

14 Q Well, I was going to ask if you recalled from reviewing
15 it whether the Special Committee took a position with
16 respect to the claims of fraudulent inducement versus the
17 claim of the breach of duty of care around Winter Storm Uri.
18 Just asking if you recall.

19 A As phrased, no. But -- And I'm looking at it right now
20 on pages 83 to 85, the assertion of the company has a
21 plausible claim against Whinstone for fraudulent inducement.

22 Q From your reading of the Special Committee's report,
23 the Special Committee actually found there was a plausible
24 claim for fraudulent inducement. Is that right?

25 A Well, I wouldn't say I read it because I only looked at

1 this part of it. I don't know, because I was so confused by
2 that last paragraph before the redacted. It just seemed
3 like the Special Committee had a fundamentally mistaken view
4 of fraudulent inducement.

5 Q Do you recall from reading the report if the Special
6 Committee made a recommendation as to whether the Debtor
7 pursue a fraudulent inducement claim? Do you recall?

8 A No.

9 Q Is there anything that I might have that might refresh
10 your recollection as to whether the Debtors -- pardon me,
11 the Special Committee made a recommendation to the Debtors
12 around pursuing a fraudulent indictment claim?

13 A I mean, I'm looking now at this 83 to 85, which was
14 drawn to my attention earlier. So I looked at this before,
15 I'm looking at it now, and as I said, you know, it's hard
16 for me to get past that paragraph that begins, "Finally -- "

17 Q My question was, is there anything that might refresh
18 your recollection?

19 A I don't know.

20 Q You would look at the last sentence of the first
21 paragraph under the heading Winter Storm Uri on 291.043, and
22 let me know if that sentence refreshes your recollection
23 (indiscernible)

24 A It does not, and I'm not sure if I ever looked at this
25 page before.

1 Q Okay. I want to make sure I understand your testimony
2 correctly. The -- No, that's all right. I get it.

3 We talked earlier about the discount rate, and your
4 application of the discount rate to the power credits.
5 Right?

6 A We did. But I would call them energy credits.

7 Q The -- No, I think I've asked that.

8 MR. SCHMELTZ: Your Honor, may I just have two
9 minutes?

10 THE COURT: Sure.

11 MR. SCHMELTZ: I'll just stay on, and collect my
12 thoughts. Thank you.

13 THE COURT: Can we take a five-minute break? Does
14 that make sense, or --

15 MR. SCHMELTZ: Yeah, five minutes.

16 THE COURT: Okay. All right. We'll be in recess
17 for five minutes.

18 (Brief recess.)

19 (Back on the record.)

20 THE COURT: Okay. We're back on the record in
21 case number 24-90448.

22 BY MR. SCHMELTZ:

23 Q Turn with me, if you would, to Exhibit 13. This is
24 your Exhibit 13, Plaintiff's LKC 13. This is that February
25 18th email with the spreadsheets attached to it that you

1 went through with Mr. Disher on your direct. Do you
2 remember that?

3 A I do.

4 Q You were well aware that the Debtors were applying a
5 discount rate in their analyses of the numbers as of
6 February 18th, weren't you, sir?

7 A I was.

8 Q And in fact, you noted in this email, in the third
9 bullet point in the paragraph, "As requested," you say,
10 "That is before both pre- and post-judgment interest, likely
11 between \$5 and \$10 million, and a discount for TVM." Right?

12 A I did.

13 Q And discount for TVM is for the time value of money,
14 and that's the discount rate. Right?

15 A Colloquially speaking, yes.

16 Q You didn't say in this email that the discount rate
17 should be lower. Right?

18 A That's correct.

19 Q You do two things in this email, and you note -- and
20 then, this is that third bullet, "What would change the
21 bottom line would be rosier predictions on the big ticket
22 items, energy credits, and Building D." Have I read that
23 correctly?

24 A That is correct.

25 Q And then you say, "If we push up the odds on Uri

1 exemplaries to 60%, and the odds on Building D to 50%, which
2 I think is high for this claim, the bottom line increases to
3 \$183 million." Right?

4 A You read it correctly.

5 Q In other words, By tinkering with the percentage
6 likelihood of success, you can change the number, the bottom
7 line number for damages. Right?

8 A I'm not sure you mean by "tinkering." But yes, if you
9 change the assumptions, the bottom line changes.

10 Q And your client would be in just as good a position to
11 change those percentages, up or down, as you would. Right?

12 A No -- I'm not sure you mean by "just as good a
13 position." If you mean if they have the experience and the
14 litigation background to make the assessments of litigation
15 risk the way Stris and LKC did, then I would respectfully
16 disagree.

17 Q But they have other risks that they could weigh in
18 terms of business risks and the like, like Will Thompson
19 acknowledged. Right?

20 MR. DISHER: Objection. Foundation.

21 THE COURT: Can you rephrase the question? I'm
22 not sure exactly --

23 BY MR. SCHMELTZ:

24 Q I think your partner, Will Thompson, acknowledged that
25 there were other business risks and the like that your

1 client would also be in a good position to weigh and
2 evaluate. Right? We saw that in an earlier exhibit?

3 A My recollection of the email is not the same as yours.
4 But if you're asking me if business people should be in a
5 position to assess business risks, then I agree they should.

6 Q Okay. I want to ask specifically about this document.
7 You've said that Winter Storm Uri wasn't going to be a topic
8 in the mediation on February 19th. Did I understand your
9 testimony correctly?

10 MR. DISHER: Objection. Misstates his testimony.

11 BY MR. SCHMELTZ:

12 A I think you're phrasing (indiscernible)

13 THE COURT: Wait a second. Hold on. I'm going to
14 sustain that objection. I didn't hear him say that at all.

15 MR. SCHMELTZ: Okay.

16 MR. DISHER: Thank you, Your Honor.

17 MR. SCHMELTZ: I certainly didn't mean to
18 misstate, so I apologize.

19 BY MR. SCHMELTZ:

20 Q Let me do it this way. The complaint that was filed,
21 we looked at it in Exhibit 6, pleaded a breach of contract
22 claim for all of the energy credits, including Winter Storm
23 Uri energy credits. Right?

24 A We had a breach of contract claim, and we were seeking
25 all the energy credits, that's correct.

1 Q Including the Winter Storm Uri energy credits. Right?

2 A Sure.

3 Q And the complaint in Count 6 said that Chad Harris from
4 Whinstone lied to Rhodium. Right?

5 A I don't know about a particular account, but we,
6 somewhere in the complaint, did mention that Mr. Harris
7 lied. That's correct.

8 Q And certainly, as you're expressing here on February
9 18th, in an email in which you raised the chance of success
10 for exemplary damages related to Winter Storm Uri, that was
11 a topic that would get mediated the next day in mediation.
12 Right?

13 MR. DISHER: Objection. Vague, foundation.

14 THE COURT: Ask your question again. I'm --

15 BY MR. SCHMELTZ:

16 Q The purpose of -- Let me do it this way. You raised
17 the percentage likelihood of success for exemplary damages
18 on Winter Storm Uri the day before the mediation. Right?

19 A At the client's request, I gave rosier predictions, and
20 I obliged and I increased a couple numbers.

21 Q Certainly, if you thought that issue wouldn't be
22 pursued in mediation, or that claim couldn't be pursued,
23 that wouldn't have been one that you raised the chance of
24 success for, would it?

25 MR. DISHER: Objection. Vague.

1 THE COURT: Restate the question.

2 BY MR. SCHMELTZ:

3 Q Certainly, if you thought the Debtors weren't going to
4 be mediating a claim for energy credits related to Winter
5 Storm Uri on February 19th, the next day, you wouldn't have
6 increased the chances of success of that claim in a model
7 for your client to assess the day before mediation. Right?

8 A My adjustment had nothing to do with the timing of the
9 mediation. I made this adjustment because the client asked
10 me to make the adjustment.

11 Q The client didn't tell you which claim to adjust, did
12 it?

13 A That's correct.

14 Q You chose Uri. Right?

15 A I took the big ticket items and increased them because
16 the client wanted to see what a more optimistic spreadsheet
17 would look like.

18 Q Indicating that you intended to mediate Winter Storm
19 Uri the very next day. Right?

20 A No.

21 Q Okay. Take a look, if you would at -- I'm going to
22 have you bounce back to exhibit 307, with apologies for not
23 doing this earlier, 307 in our binder, at 307.009.

24 Are you there, sir?

25 A 307.009?

1 Q Yes, sir.

2 A Yeah, I'm with you.

3 Q This is again the settlement agreement in the Whinstone
4 matter. Right?

5 A Yes.

6 Q Paragraph 9, "Released by Debtors," you see that?

7 A I do.

8 Q That's a complete release of any and all claims.
9 Right?

10 A Give me a chance to read it. That is correct.

11 Q The Debtors are releasing Whinstone and Riot for any
12 and all claims, without any limitation. Right?

13 A It says any and all claims, and I agree I do not see
14 any limitations in this paragraph.

15 Q Certainly you would agree with me there's a difference
16 between settling a claim, and proving a claim in court.
17 Right?

18 A That is correct.

19 Q And you would agree with me that you couldn't plead and
20 prove a claim for fraudulent inducement in one court, and it
21 would probably be hard to go plead and prove a claim for
22 breach of fiduciary duty on the same claim in another court.
23 Right?

24 MR. DISHER: I'd just object to that --

25 MR. SCHMELTZ: That's fine. I'll withdraw that.

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 A I do.

2 Q The middle bullet point is Damages. You see that?

3 A I do.

4 Q "View from financing partners suggests risk to value
5 less than \$100 million." You see that?

6 A I do.

7 Q You understand that. that was a view from potential
8 exit financing partners that was expressed here in this
9 Board slide. Right?

10 A I have no idea what financing partners said what about
11 anything.

12 Q The next bullet point is, "Higher risk of exit
13 financing increased discount rate plus or minus 5% rate
14 drives plus or minus \$15 million in DCF." Do you see that?

15 A I do.

16 Q Here, the risk damages show \$50 million to \$100
17 million. Right?

18 A That is correct.

19 Q And I think you indicated that you were seeing
20 different discount rates applied at different points in
21 time. Do you have any reason to believe that an increase in
22 the discount rate at any time, here or any other time, was
23 done in bad faith?

24 A No.

25 Q Do you understand Kevin Hays prepared this analysis?

1 A That was my assumption.

2 Q And any reason to believe that Kevin Hays acted in bad
3 faith in any way, applying the discount rate that he applied
4 and reaching this conclusion?

5 A No.

6 Q At Hearing Exhibit 245.003, you see that what was
7 happening at this point in time was there was a comparison
8 of Riot's offer to the pre-mediation valuation. You see
9 that?

10 A I see the heading that says, "Comparing Riot's offer to
11 our pre-mediation valuation."

12 Q Are you aware that at this point in time, the Rhodium
13 Board was trying to analyze whether or not to settle the
14 Riot-Whinstone matter, and to determine how much value it
15 could get for doing so?

16 MR. DISHER: Objection. Compound.

17 THE COURT: Sustained.

18 BY MR. SCHMELTZ:

19 Q Do you understand that the Rhodium Board of Directors
20 was trying to settle the Riot-Whinstone litigation at this
21 time?

22 A That was my understanding. The mediation began in mid-
23 February, and the case didn't settle until April. March was
24 in between. My understanding is the Board was still seeking
25 to settle, but at the same time, I recall there were some

1 ebbs and flows, and things got cold at a certain point, so I
2 can't speak to those details.

3 Q And that's because when you went to the mediation with
4 Riot-Whinstone, you weren't really involved in the mediation
5 in a meaningful way. Right?

6 MR. SCHMELTZ: Let the record reflect the witness
7 is looking at his counsel.

8 MR. DISHER: No objection. I was considering
9 whether to object. I will not object.

10 THE COURT: Go ahead.

11 MR. COHN: I have been in trouble for cutting off
12 my counsel before, so when he stood up, I wanted to give him
13 a chance to (indiscernible)

14 MR. DISHER: Particularly me, for the record.

15 BY MR. SCHMELTZ:

16 A I'm sorry, what was the question?

17 Q That's because when you attended the Riot-Whinstone
18 mediation, you were not heavily involved, were you?

19 A "That's because -- ?" I'm not sure, what does the
20 "that" refer to?

21 Q I'm sorry, I was distracted by the tete-a-tete with
22 your Counsel. Let's go back and recollect where I am.

23 I asked if you -- You and I were talking about Exhibit
24 245. And in Exhibit 245, I was asking about what was being
25 assessed in terms of mediation and settlement, and you said,

1 I don't really know very much about that. And I said,
2 that's because you weren't meaningfully involved in the
3 mediation itself. Isn't that right?

4 MR. DISHER: I'll just object. It
5 mischaracterizes the testimony.

6 THE COURT: I don't think he's asking about the
7 testimony. I think he's just asking the question --
8 Overruled.

9 BY MR. SCHMELTZ:

10 A Meaningfully involved. So I was at the first session,
11 I was not after that. That's true. And at the first
12 session, we didn't spend much time with the mediator.

13 Q In fact, you spent about nine or ten hours in a room
14 without the mediator. Isn't that right?

15 A That sounds right. It was a long time.

16 Q You didn't have an opportunity to really present your
17 litigation case to the mediator during that mediation.
18 Right?

19 A That is true.

20 Q And at the end of the day, the SAFE AHG came out and
21 said they had a proposal, but they weren't prepared to make
22 it. Isn't that right?

23 A Well, they did make a proposal.

24 Q Did they make it that day?

25 A I believe they did.

1 Q Okay. And that proposal then was less about settling
2 the litigation, and more about the transaction. Right?

3 A I recall it was an amount for \$170-something million.
4 I thought that that was for everything, both the business
5 assets and the litigation -- Yeah, I can't remember exactly
6 what the SAFEs proposed at the end of that day, but it was a
7 lower number. I don't recall much beyond that.

8 Q You never had a conversation during the course of that
9 mediation or after about how much of that \$170-plus million
10 in consideration would go to damages or assets. Right?

11 MR. DISHER: Objection. Vague.

12 THE COURT: Yeah, why don't you ask -- Rephrase
13 the question.

14 BY MR. SCHMELTZ:

15 Q You did not -- I can ask it again, and differently.
16 You weren't involved in any conversations with Riot-
17 Whinstone about how much of that figure would be related to
18 damages versus assets, were you?

19 A That's correct.

20 Q And you haven't been involved in any of the tax
21 allocation conversations between Riot-Whinstone on the one
22 hand, and Rhodium on the other. Right?

23 A That's also correct.

24 Q You haven't been involved in any conversation with
25 Riot-Whinstone in which you learned why Riot-Whinstone paid

1 the amount of money it paid. Right?

2 A That's true.

3 Q And so fair to say your client is in a better position
4 to understand what had settled with Riot-Whinstone than you
5 are. Isn't that right?

6 MR. DISHER: Objection. Vague, foundation,
7 speculation.

8 THE COURT: Sustained.

9 MR. SCHMELTZ: I always love ending on an
10 objection that gets sustained, but I -- And they teach you
11 not to do that, but I'm going to do it.

12 Thank you, Your Honor, for your time.

13 THE COURT: Thank you.

14 MR. DISHER: Your Honor, I have a brief redirect.

15 THE COURT: Go ahead.

16 MR. DISHER: I'm going to take a second to get the
17 binders up there.

18 REDIRECT

19 BY MR. DISHER:

20 Q Okay. Mr. Cohn, let's pick up on Special Committee
21 Exhibit 245 that you've been talking about. Are you with
22 me?

23 A Yes, sir.

24 Q And you were asked about some changes, and whether you
25 thought there was any bad faith. Do you remember that?

1 A I do.

2 Q Now, the changes that were made that you walked
3 through, do you think those changes were correct?

4 A I do not think those changes were correct.

5 Q Why not?

6 A Well, the main change that we're talking about here is
7 lopping off the \$25 million from the \$100 million expected
8 collection that is on 245.008. We previously discussed that
9 I disagreed with the reduction of Building D from 40% to
10 20%, and I still disagree with that. With that 20%,
11 however, and with the 25% discount rate, we still end up
12 with an expected value, an expected collection of \$100
13 million.

14 And then, what you see here on the 245.002 is the
15 unexplained reduction by an additional \$25 million. That
16 appears to me to be baseless. I see no grounds for the
17 additional \$25 million. So I'm not saying that anyone
18 operated in bad faith, but I don't see a basis for this. It
19 strikes me as erroneous.

20 Q Let's break that down real quickly. So if we look at
21 254.008, the expected value -- or excuse me, the expected
22 collection listed here is \$100 million. Right?

23 A Yes, sir.

24 Q That's consistent -- or is that consistent with the
25 amount that LKC has used in its fee application?

1 A It's the exact amount we're using in our fee
2 application for the total litigation value.

3 Q And then if we look at the chart that was presented to
4 the Board on March 5th, what is the high-end range that the
5 Board, even after all these discounts, was given on March
6 5th?

7 A That's still \$100 million.

8 Q Is that consistent with the LKC fee application?

9 A Not only consistent, but identical.

10 Q Now, lastly, on 245, let's go real quickly back to the
11 last page, 254.008. These slides were presented to the
12 Board in March?

13 A That's my understanding.

14 Q And as of March, what is the comment next to the claim
15 for ERCOT curtailment, Uri?

16 A It's the same comment as before. This assumes we are
17 allowed to plead and prove fraud.

18 Q And you weren't, were you?

19 A We are not.

20 Q Let's go back to the beginning of your cross-
21 examination, when you were asked to do some numbers, some
22 math on the fly. Do you remember that?

23 A I do.

24 Q And you repeatedly said the premise is incorrect. Do
25 you remember that?

1 A I do.

2 Q What was incorrect about the premise from the
3 questioning from opposing Counsel?

4 A So when you reduce the litigation value by 25%, when
5 you go from \$100 million to \$75 million, you should be
6 consistent. If you're going to knock off 25% from the
7 total, you should knock off 25% from each of the two
8 constituent parts. You knock off 25% of the energy credits,
9 and you knock off 25% of the other damages. That's what you
10 should do. And what Mr. Schmeltz was doing was he was not
11 touching the energy credits. He was keeping the \$20.96
12 million. And instead, he was taking all the deduction, the
13 entire \$25 million deduction from the additional damages.

14 Q Okay. I next want to turn to Special Committee Exhibit
15 307. This is the compromise settlement and release
16 agreement.

17 A Yes.

18 Q You were asked about section III.25 on Hearing Exhibit
19 307.011. Do you remember that?

20 A Yes.

21 Q What is your understanding of the effect of Section
22 III.25 of this settlement and release agreement?

23 A What this means is, aside from the \$185 million
24 consideration, there is not going to be any other payment to
25 either side for attorneys' fees and costs.

1 Q Is that, in your opinion, the type of release of those
2 potential claims for fees and costs?

3 A It's the standard release that you're going to see in
4 agreements. It doesn't have any bearing one way or another
5 as to whether the \$185 million includes one bucket or
6 another for litigation value.

7 Q Now let's go to the prior page, 307.009. And you were
8 even asked about the section I want to talk to you about,
9 III.9. Do you see that?

10 A I do.

11 Q What, in your understanding, is the importance of that
12 provision?

13 A It's a standard release. Obviously, if you're going to
14 be paying someone \$185 million, you want a release from all
15 the claims at the end so that they can't sue you after
16 getting \$185 million, especially whereas here, the \$185
17 presumably includes a whole lot of litigation value. You
18 don't want to be sued twice.

19 Q Is there some type of relationship in your mind between
20 the release at III.9 and the release of costs and fees at
21 III.25?

22 A I just think they're both standard provisions that you
23 have in contracts. When you pay a whole lot of money, you
24 want to be clear that, number one, you're not going to be
25 sued twice, you're getting a release. And number two, you

1 can't be hit up for additional attorney's fees, especially
2 whereas here, those attorney's fees might be part of the
3 \$185 million that you paid.

4 Q And if we look at the release in III.9, the release of
5 all claims, do you understand anybody to be arguing that
6 because of that release, none of the \$185 million should be
7 attributable to damages?

8 A Yeah, I don't think this little provision here has
9 anything to do with the allocation of \$185 million for
10 damages.

11 Q Right. Now, you were also asked about the calculation
12 in one of the Special Committee's emails back to you.
13 Remember that back and forth about how to calculate? We can
14 look at it if you don't remember that.

15 A I'd rather look at the numbers, sure.

16 Q Okay. Let's go to Special Committee Exhibit 201, and
17 it's on page 201.007.

18 A Yes.

19 Q In the middle of the page, you see this formula that
20 opposing Counsel walked you through?

21 A Yeah.

22 Q Your testimony was, this is not a reasonable way to
23 interpret the contract. Do you remember that?

24 A I do.

25 Q Why is this an unreasonable way to interpret the

1 contract?

2 A Because he's allocating \$50 million to energy credits.
3 And he's also using the \$75 million. So I think both of his
4 assumptions are incorrect.

5 Q Let's look at Special Committee Exhibit 259. I just
6 want to make sure we have the timing right on this. Are you
7 there?

8 A I'm sorry, which one?

9 Q Special Committee Exhibit 259. This is the email from
10 Mr. Thompson.

11 A Yes.

12 Q What is the date of Mr. Thompson's email?

13 A It's February 12th.

14 Q Is it the same day that the Board was meeting?

15 A Same day, yes, that is correct.

16 Q Is it your understanding whether or not Mr. Thompson is
17 commenting on slides that were presented at the Board on
18 February 12th?

19 A Yeah, and actually, it looks like based upon the time
20 and the language of the email, the Board meeting might
21 already have begun.

22 Q But to answer my question, Mr. Thompson, to your
23 understanding, is he commenting about the materials that
24 were being presented to the Board on February 12th?

25 MR. SCHMELTZ: Your Honor, calls for speculation.

1 MR. DISHER: I'm just asking whether he has an
2 understanding one way or the other.

3 THE COURT: Ask him if he knows.

4 BY MR. DISHER:

5 Q Do you know one way or the other?

6 A One hundred percent sure, no. But this is on --

7 MR. SCHMELTZ: Move to strike everything after
8 "Not 100% sure." Not foundation.

9 THE COURT: Let him finish the answer, and then
10 we'll consider that.

11 MR. SCHMELTZ: Thank you.

12 BY MR. DISHER:

13 A I'll say if you look at this email chain, it is talking
14 about the damages template on February 12th, and it's
15 talking about the tables in my presentation on February
16 12th. And then, the comment is about that presentation. So
17 I can't say there's any kind of metaphysical certainty. But
18 looking at this email chain, which I was not on, it
19 certainly, it does look like they're referring to the
20 February 12th presentation.

21 Q Does this email chain refer to any other change that
22 was made to the damages chart after the February 12th
23 presentation?

24 A No.

25 Q Okay. And then finally, let's go to -- You were asked

1 about expected percentages of success on various different
2 claims. Do you remember that?

3 A Correct.

4 Q Mr. Cohn, have you repeatedly represented corporations
5 facing class action lawsuits?

6 A That is correct.

7 Q Have you seen repeatedly whether any of those class
8 action claims have a less than 50% success rate?

9 A I would say the overwhelming majority have less than a
10 50% success rate.

11 Q In those cases, have you seen corporate clients settle
12 those claims for some amount of expected damages?

13 A All the time, as they probably should. Look, if
14 there's a 40% chance of paying \$1 billion, you don't ignore
15 that risk.

16 Q If you had a 5% chance of success on a \$1 billion
17 claim, would you pursue it?

18 A Five percent chance on a \$1 billion? Yes. I mean --
19 Yes.

20 Q As your partner, I certainly hope you would.

21 MR. DISHER: I have nothing further. Pass the
22 witness.

23 THE COURT: Mr. Schmeltz?

24 RECROSS

25 BY MR. SCHMELTZ:

1 Q I think you said that the Building D movement to 20%
2 was wrong. Did I -- and I'm not putting words in your
3 mouth, but if I have it wrong, let me know.

4 MR. SCHMELTZ: I got a quizzical look for giving
5 somebody their property back, for crying out loud. Just
6 being a nice guy.

7 BY MR. SCHMELTZ:

8 Q Did I have that correct, you thought it was wrong?

9 A Reducing the odds to 20%, yes, I do.

10 MR. SCHMELTZ: Your Honor, I don't know how
11 exactly you want me to proceed. I've got -- In our exhibit
12 designations, we left open the ability to designate exhibits
13 for rebuttal purposes. And I have a rebuttal exhibit, and
14 with my apologies to everyone, I only have two copies. I
15 managed to take a photo of it with my iPad so that I can
16 read it, but I can give one to Counsel to take a look at,
17 and give one to Your Honor, and then I could take Counsel's
18 version to the witness, if that is all right.

19 THE COURT: Okay.

20 MR. SCHMELTZ: May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. SCHMELTZ: We will bring more copies.

23 MR. DISHER: Your Honor, can I have a couple
24 minutes just to read this?

25 THE COURT: Sure.

1 MR. DISHER: Okay. We've had a chance to review.

2 THE COURT: Okay. Your Honor, may I take

3 Counsel's copy to the witness?

4 THE COURT: Yeah, go ahead.

5 MR. DISHER: Can I just read off of your screen

6 (indiscernible)

7 BY MR. SCHMELTZ:

8 Q I think that you testified earlier in response to
9 questions from Mr. Disher that your recollection was that,
10 or understanding was that no one from your team was
11 consulted on the Building D change from 40% to 20% as well.
12 Did I understand your earlier testimony correctly?

13 A I think you might be paraphrasing it, and I guess
14 there's a question of the word "consulting." But if you
15 want to ask me a question, I'm happy to answer it.

16 Q Okay. These are meeting minutes of the Board of
17 Directors of Rhodium Enterprises for February 16th, 2025.
18 Do you see that?

19 A I do.

20 Q And it indicates that --

21 MR. DISHER: And Your Honor, I'll just interject
22 at this point. We object to this line of questioning. I
23 don't think he's the proper witness to authenticate this,
24 and it appears to be hearsay as well.

25 THE COURT: Yep, if you're going to -- I mean, if

1 you're going to ask him questions about it, it has to be in
2 evidence.

3 MR. DISHER: And also, I think this is an improper
4 rebuttal exhibit. I mean, Mr. Cohn made his position on
5 this line of questioning clear during his deposition. He
6 easily could have included this on the witness and exhibit
7 list.

8 MR. SCHMELTZ: So Your Honor, what I do here is
9 I'd like to make a very short proffer on this point, and
10 then we'll attempt to bring this in through another witness.

11 MR. WOLFSHOHL: But it's still not on his exhibit
12 list, Your Honor.

13 MR. DISHER: Yeah, I mean, he didn't include it on
14 his exhibit list --

15 THE COURT: Well, I mean, this is a rebuttal
16 exhibit, so I'm going to let him use a rebuttal exhibit.

17 MR. DISHER: But I mean, just so that the record
18 is clear, it's not a proper rebuttal exhibit when they knew
19 that this was our position from, you know, prior, including
20 during the deposition. They had ample time to have included
21 it on the exhibit list. I think rebuttals are meant to be
22 for when something is unforeseen, that you didn't expect,
23 testimony you didn't expect it.

24 THE COURT: Well, what are you trying to use this
25 for?

1 MR. SCHMELTZ: Well, Your Honor, it's clear from
2 the Board meeting itself, and I can have witnesses who were
3 there testify to it without the minutes, that Will Thompson
4 and John Stokes were present at the meeting, and this is
5 where --

6 I'm making a proffer, Counsel, if you'd just let
7 me.

8 -- were present at the meeting, and were
9 consulted on the change from 40% to 20%, and are recorded in
10 the minutes as agreeing, as seeing that as reasonable. So -
11 -

12 THE COURT: I mean, but -- okay. So when you get
13 this document admitted, I mean, it's --

14 MR. SCHMELTZ: Well, I'll either get it admitted,
15 or --

16 THE COURT: Have someone testify.

17 MR. SCHMELTZ: Or someone will testify. Fair
18 enough.

19 THE COURT: (indiscernible) proper --

20 MR. SCHMELTZ: (indiscernible) That's fine. I'll
21 end on yet another whimper today, but we know where we're
22 going for another day.

23 BY MR. SCHMELTZ:

24 Q All right. You -- In your engagement letter from March
25 of 2025, which was your Exhibit 2, Section D of the

1 potential success fee provides that, "The client and
2 Lehotsky Keller Cohn, LLP will determine in good faith the
3 portion of transaction value to the client allocable to the
4 energy credits and damages specified in Sections B and C."
5 Right?

6 A You read it correctly.

7 Q And it then goes on to say that if you can't do that,
8 the dispute gets resolved by the Court. Right?

9 A "That the client and Lehotsky Keller Cohn, LLP are
10 unable to reach a resolution regarding the amount of fees
11 payable under Sections B and C, including with respect to
12 the allocation of transaction value allocable to the energy
13 credits and damages, such disputes shall be resolved by the
14 Bankruptcy Court." That's --

15 Q I'm sorry, is that a yes?

16 A I'm sorry, could you repeat the question?

17 Q And then it provides that if the parties can't in good
18 faith resolve the dispute, it will be resolved by the Court.
19 Right?

20 A Yeah, that's right.

21 Q There's not anything in this agreement that sets out
22 how the parties are to go about determining how an
23 unallocated settlement should be allocated, is there?

24 MR. DISHER: Objection. Outside the scope of
25 redirect.

1 THE COURT: How is that within the --

2 MR. SCHMELTZ: I'm going to connect it in one more
3 question.

4 THE COURT: All right, I'll let -- I'll give you
5 some leeway.

6 BY MR. SCHMELTZ:

7 A Well, it does say they should determine it in good
8 faith.

9 Q And then it says if they can't, the Court would resolve
10 it. Right?

11 A That's true.

12 Q And there's not anything that points the Court to what
13 specifically it should look to, is my question.

14 A I think we read the entirety of the language.

15 Q So there's not. Right?

16 A Well, the Court has to make its own determination
17 consistent with principles and interpretations of the
18 contract law. I wouldn't ignore all that. But you're
19 asking by the words on the page, and there aren't other
20 words on the page that bear upon that determination.

21 Q And so there's nothing in this agreement that suggests
22 the Court needs to go through the settlement rubric that you
23 presented to the client with your percentages of chance of
24 likelihood of success, and your base amount of damages to
25 determine how much should be allocated to settlement, is

1 there?

2 MR. DISHER: Objection. Vague, compound.

3 THE COURT: I'm going to overrule that.

4 BY MR. SCHMELTZ:

5 A Yeah, certainly, this agreement does not specifically
6 cite any particular exhibit or spreadsheet or other
7 methodology.

8 Q Thank you.

9 MR. SCHMELTZ: I have no further questions.

10 MR. DISHER: Nothing further.

11 THE COURT: All right. Thank you, Mr. Cohn. You
12 may step down.

13 MR. COHN: Would you like me to leave the binders
14 up here?

15 THE COURT: Go ahead, just leave them there.
16 Thanks.

17 MR. DISHER: Your Honor, Lehotsky Keller Cohn
18 calls Chase Blackmon.

19 THE COURT: Okay.
20 You've got plenty of water?

21 MR. BLACKMON: Well, I'm almost out. But I'll
22 survive. Is this for me, or is this left behind?

23 THE COURT: Oh, it was a present.

24 MR. BLACKMON: Yeah. (indiscernible) bricks of
25 presents.

1 MR. SCHMELTZ: Your Honor, before we proceed with
2 the witness, I have a witness who would like to go
3 (indiscernible) it seems unlikely to me today we'll get to
4 him (indiscernible) may I excuse him?

5 THE COURT: Yeah. I mean, how long do you think
6 we're going to be --

7 MR. DISHER: Ten minutes or less.

8 MR. SCHMELTZ: I have other people I would
9 (indiscernible)

10 THE COURT: Okay, yes. Go ahead.

11 Mr. Blackmon, would you raise your right hand,
12 sir?

13 Do you solemnly wear or affirm to tell the truth,
14 the whole truth, and nothing but the truth?

15 MR. BLACKMON: Yes.

16 DIRECT EXAMINATION

17 BY MR. DISHER:

18 Q Good evening, Mr. Blackmon. How are you?

19 A I'm good. I look a little shiny this part of the day,
20 but I'm well. How are you, sir?

21 Q I'm doing well. So Mr. Blackmon, you've been either
22 the CEO or co-CEO of Rhodium for how many years?

23 A Two-and-a-half, maybe going on three at this point.

24 Q And your current title today is what?

25 A CEO and Chairman of the Board.

1 Q You've been with Rhodium since the beginning of its
2 litigation with Whinstone?

3 A Yes, sir.

4 Q That's been about two years or more?

5 A Yes.

6 Q Whinstone in that litigation was very aggressive.

7 A I believe so, yes.

8 Q They were relentless, even?

9 A Indeed.

10 Q They took every shot on goal?

11 A They did, yeah.

12 Q Rhodium hired Lehotsky Keller Cohn to join the Stris
13 litigation team. Correct?

14 A Yes, sir.

15 Q Together, Stris and LKC won everything for Rhodium?

16 A Yes.

17 Q You actually said, "I've never seen a team of winners
18 win so perfectly and with such consistency." Do you
19 remember that?

20 A I do.

21 Q Stris and LKC secured multiple emergency orders to keep
22 Rhodium alive before it filed for bankruptcy. Correct?

23 A Yes.

24 Q And you, of course, agree that LKC deserves a
25 contingency fee based on the contract that we have with

1 Rhodium?

2 A Yes.

3 Q Now, despite all that winning, before bankruptcy,
4 Rhodium was having cash flow problems?

5 A Yes.

6 Q At the time Rhodium entered bankruptcy, Rhodium was
7 running out of cash.

8 A Yes.

9 Q You know that Whinstone didn't think much of the value
10 of Rhodium during that litigation?

11 A So I heard.

12 Q And I believe the quote was that, "Whinstone would buy
13 Rhodium for \$1."

14 A That's what I heard.

15 Q And Rhodium was also unable to get alternative
16 financing before it filed for bankruptcy?

17 A Yes, sir.

18 Q After filing for Chapter 11, Rhodium got DIP financing?

19 A Yes.

20 Q That DIP financing was critical for the continuation of
21 Rhodium's business. Right?

22 A Yes.

23 Q The DIP financing represented the best and only source
24 of post-petition financing?

25 A At the time, yes.

1 Q But Rhodium, of course, was unable to get exit
2 financing.

3 A Well, yeah. I think we chose not to proceed with
4 pretty aggressive exit financing, yes.

5 Q Rhodium couldn't live with the terms of the exit
6 financing.

7 A Right.

8 Q Even though Michael Robinson and the Province team
9 tried.

10 A Oh, there was definitely a valiant effort.

11 Q But in the end, they just simply couldn't get terms
12 that would allow Rhodium to survive.

13 A Without -- I mean, taking into account the risks
14 associated with taking, you know, expensive money, we
15 decided it was best to settle with the Whinstone folks
16 instead, yeah.

17 Q But of course, you agree that at the time of the
18 settlement, Rhodium also had valuable damages claims against
19 Whinstone?

20 A (indiscernible)

21 MR. SCHMELTZ: Your Honor, I'm going to object.

22 This is leading. And I understand the oddity of that
23 objection, but this isn't necessarily an adversity scenario.

24 Mr. Blackmon is the CEO of the Debtor, and was actually
25 pursued by the Special Committee. I think Counsel needs to

1 establish some adversity between the attorney for a long-
2 time client who's called his attorney winners before we
3 (indiscernible)

4 MR. DISHER: And may I respond?

5 THE COURT: Yes.

6 MR. DISHER: Federal Rule of Evidence 611(c)(2), A
7 party can proceed through leading questioning if a party
8 calls an adverse party, or witness identified with an
9 adverse party.

10 Now, we have made --

11 MR. SCHMELTZ: (indiscernible)

12 MR. DISHER: Hold on. We've made a request for
13 fees, Rhodium has objected to that request. So this is the
14 definition of when this type of questioning should be
15 allowed.

16 MR. SCHMELTZ: Not at all. That's exactly my
17 point. He's neither an adverse party, because the adverse
18 party is the Special Committee, and he's not identified in
19 an adversary. That's why that 611 doesn't apply
20 (indiscernible)

21 THE COURT: Well, I don't know the answer to the
22 question, so I'm going to sustain it. But I'm going to let
23 you brief it, and we can come back and ask him questions
24 leading again.

25 MR. DISHER: Okay.

1 BY MR. DISHER:

2 Q While Rhodium -- Well, let me say it this way. Before
3 Rhodium entered into the settlement and release agreement
4 with Whinstone, was it your understanding one way or the
5 other whether Rhodium had valuable damages claims against
6 Whinstone?

7 A Yes, I thought the claims were valuable.

8 Q Did you review draft complaints that the Stris and LKC
9 team drafted against Whinstone?

10 A Yes.

11 Q Do you remember what you referred to that final version
12 of the complaint as?

13 A Oh, something -- masterpiece something or other.

14 Q Did Rhodium ask LKC and Stris to value the damages
15 claims?

16 A Yes, sir, on multiple occasions.

17 Q Do you have the yellow binder?

18 A Yes. It's a big boy.

19 Q If you turn to Tab 14, please, which is for the record
20 LKC Exhibit 14. You see that?

21 A Yes, sir.

22 Q Have you seen this exhibit before?

23 A I think so. This is one version of that slide deck, I
24 think. Yes.

25 Q If we go to slide 3 of Exhibit 14 --

1 A Okay. Yes, sir.

2 Q Do you understand one way or the other whether this
3 chart here reflects the Stris and LKC teams' attempt to
4 value Rhodium's damages claims against Whinstone?

5 A Yes, I believe this is the -- this chart in particular
6 on page 3 is one of the versions that you guys put together
7 for us.

8 Q Mr. Blackmon, do you have any reason to doubt that the
9 Stris firm gave its best estimates regarding the numbers
10 that went into the chart on Exhibit -- well, on page 3 of
11 Exhibit 14?

12 A Any reason to doubt that the Stris team gave its best
13 effort to come up with the numbers? Is that right? No, I
14 don't.

15 Q Likewise, do you have any reason to doubt that the LKC
16 team gave its best efforts to come up with the numbers that
17 are reflected on page 3 of Exhibit 14?

18 A No. But I think that y'all gave your best effort.

19 Q You have no reason to doubt?

20 A No reason to doubt.

21 Q Okay. Rhodium settled with Whinstone, ultimately.

22 A Yes, sir.

23 Q For how much?

24 A \$185 million.

25 Q And is it your understanding whether part of that \$185

1 million was for damage claims?

2 A I would imagine, yeah, some of it's for damages.

3 Q Right. And we know that Province failed to get exit
4 for Rhodium. Right?

5 MR. SCHMELTZ: Objection. Leading.

6 THE COURT: (indiscernible)

7 MR. DISHER: I can rephrase it.

8 THE COURT: Yeah, why don't you rephrase it?

9 BY MR. DISHER:

10 Q Do you know whether Province was successful in getting
11 exit financing for Rhodium?

12 A Not on terms that we were willing to take.

13 Q If we turn to slide 7 of Exhibit 14, you see the first
14 bullet point there? I'm just going to read it. "Energy
15 contract should be worth more to Riot than to Rhodium and
16 another buyer." Do you see that?

17 A Yes, sir.

18 Q Do you have any understanding of what that bullet was
19 trying to convey to the Board during this February 12th
20 meeting?

21 A Sure. Riot was, you know, I believe that they came out
22 and said that they were losing money on Rhodium's contract
23 to -- I think it was like \$2 million a month, something like
24 that. And so therefore, you know, they would be able to
25 reap the low energy cost that we were, you know, getting

1 less, and also take off the additional \$2 billion burden.

2 Q Now, another buyer of Rhodium wouldn't be -- Or would -
3 - Let me phrase it a different way so I don't get an
4 objection. Would another buyer of Rhodium be able to
5 experience that same benefit?

6 MR. SCHMELTZ: Your Honor, objection. Lack of
7 foundation.

8 THE COURT: I think he's trying to address the
9 "and other buyer question." So I'm going to overrule that.

10 BY MR. DISHER:

11 A Okay. No, I don't -- I don't think so.

12 Q And just explain that to the Court.

13 A Well, there's -- Riot, because they were losing \$2
14 million a month on the energy contract itself, you know,
15 whether it was Rhodium or any other buyer, they wouldn't
16 automatically be getting that additional \$2 million savings
17 like Riot would.

18 Q Right. Now if we look at the second bullet in that
19 section, do you see that, it says Rhodium? Do you see that?

20 A Yes, sir.

21 Q We can read it. "Rhodium-Whinstone contracts valuable,
22 but need to be deployed in a business with significant risk,
23 market volatility, execution, future litigation." Did I
24 read that right?

25 A Yes, sir.

1 Q Do you have any understanding what the "future
2 litigation" that's mentioned there is referring to?

3 A I mean, I think it's kind of a similar situation as
4 above. If Rhodium were to continue, you know, fighting the
5 good fight, so to speak, and try to continue deploying
6 assets, capital, resources, etc., or just OpEx into the
7 Whinstone Rockdale facility, you know, I think we said this
8 before, Whinstone had -- it seemed as though they had a
9 track record of taking every shot on a goal, I would have
10 expected them to continue being aggressive.

11 Q And so this is specifically referring to litigation
12 against Whinstone.

13 A Right.

14 Q Now, the next bullet point says, "Another buyer likely
15 has similar risks in assuming the contracts." Do you know
16 whether that phrase, "similar risks," is referring to things
17 like future litigation against Whinstone?

18 A Yes.

19 Q Explain that.

20 A I've talked with many folks who were, you know,
21 interested in a buying Rockdale site from us, but they just
22 couldn't get over the hurdle that they might have to take on
23 Riot at some point in the near future too, unfortunately, in
24 litigation and such.

25 Q You were at the February 12th Board meeting?

1 A I visit pretty much every Board meeting.

2 Q Was there an effort after the February 12th Board
3 meeting to push down the value of the damages claim?

4 A My memory's a little spotty on exactly which Board
5 meeting you're referring to.

6 Q The February 12th, the slides we were just looking at.

7 A These? Okay.

8 Q After this meeting, do you remember an effort to push
9 down the value of the damages claim?

10 A An effort to push down the value -- I know the value
11 definitely did go down for various reasons.

12 Q Do you remember testifying that Michael Robinson and
13 David Dunne were trying to push down the value of the
14 damages claim?

15 MR. SCHMELTZ: Now this is improper impeachment,
16 with (indiscernible)

17 MR. DISHER: I haven't impeached him. I'm asking
18 whether he remembers testifying to that.

19 THE COURT: Overruled.

20 BY MR. DISHER:

21 A Can you say that one more time?

22 Q Yes. Do you remember testifying during your deposition
23 that Michael Robinson and David Dunne were trying to push
24 down the value of the damages claim?

25 A If I said it like that, I'm surprised. But I think I

1 know where you're going.

2 Q I'll just ask you, after the February 12th Board
3 meeting, do you remember an effort to try to push down the
4 value of the damages claim?

5 A Okay, I would say --

6 MR. SCHMELTZ: (indiscernible)

7 MR. DISHER: He hasn't answered it yet.

8 THE COURT: Overruled.

9 BY MR. DISHER:

10 A Okay, so let me say it in a way that I would say it.
11 Okay, like, was there an effort made specifically to try to
12 drive the value down? I really wouldn't say it like that.
13 I would say that there was a new circumstance which
14 necessitated revisions of the numbers, given new
15 information.

16 Q But you never heard any lawyer tell you that the
17 damages claim should be between \$50 million and \$100
18 million, though. Right?

19 MR. SCHMELTZ: It's leading. Objection, leading.

20 THE COURT: Why don't you rephrase, sir?

21 BY MR. DISHER:

22 Q Do you ever remember any lawyer telling you that the
23 damages value, the value of the damages claim should be
24 between \$50 and \$100 million?

25 A Not that I recall.

1 Q Okay. Do you remember that, or do you remember whether
2 LKC and Stris were willing to take the damages claim on a
3 pure contingency?

4 MR. SCHMELTZ: Your Honor, objection. Relevance.

5 MR. DISHER: I'm happy to respond.

6 THE COURT: Yeah.

7 MR. DISHER: It goes to what the litigation team's
8 perspective was of the value of the damages claim, and how
9 confident we were in our ability to recover it.

10 MR. SCHMELTZ: That doesn't go to the formula in
11 the contract.

12 THE COURT: I'm sorry, what did you say?

13 MR. SCHMELTZ: That doesn't go to the formula in
14 the contract, their confidence.

15 THE COURT: Well, it goes to the quantum of
16 damages. So I'm going to overrule the objection.

17 BY MR. DISHER:

18 Q Would you like me to ask it again?

19 A If you don't mind. Thanks.

20 Q Sure. Do you remember whether LKC and Stris were
21 willing to take the damages claim on a pure contingency?

22 A Oh, yeah, I remember we had discussions about it. I
23 remember Mr. Cohn and the folks over at Stris definitely
24 entertained it. And I was very appreciative of that, by the
25 way, guys. I really do. I do not remember if it was pure

1 contingency, or if there were some other components to it.

2 But I'm pretty sure there's emails and whatnot.

3 Q Do you remember both firms enthusiastically responding
4 that, yes, we'd be willing to take it on pure contingency?

5 A I do, yes.

6 MR. DISHER: Give me one minute, please.

7 BY MR. DISHER:

8 Q Do you remember whether Whinstone ever told Rhodium
9 that -- Well, let me phrase it differently. Did Whinstone
10 ever tell you that they were paying you money because of the
11 Uri energy credits?

12 A Not that I recall.

13 Q Finally, let's look back at slide 3 of Exhibit 14. If
14 you look down in the expected value column, you see the
15 total \$158 million?

16 A Yes, sir.

17 Q And you understand that that number is the litigation
18 team's estimate of the expected value of all of Rhodium's
19 damages claims?

20 A Yes.

21 Q You lived this case.

22 A Every day.

23 Q You believed this case?

24 A Absolutely.

25 Q If you were in Las Vegas, would you take the over or

1 the under on Rhodium collecting \$158 million in damages?

2 A Instantaneously, in that moment?

3 Q Yeah.

4 A And if it's a penny short, then I lose? Sorry. Would

5 I take the over or the under? I'm not a gambling man.

6 Well, if it's a simple question, I think I would have to

7 take the under.

8 Q That's -- again, that's not what you testified to in

9 your deposition.

10 A Oh, okay.

11 Q I'm happy to show that to you, if you'd like. So let

12 me just ask you again. If you were given Vegas odds, would

13 you take the over or the under on Rhodium collecting \$158

14 million in damages?

15 MR. SCHMELTZ: (indiscernible) do not just get to

16 say (indiscernible) That's not right.

17 THE COURT: All right. Well, show him the

18 deposition, and we'll go through that.

19 MR. DISHER: Sure. Yeah. (indiscernible)

20 THE COURT: Do you want me to -- Do you still have

21 rights, or --

22 COUNSEL: No, I need them again, please.

23 (indiscernible)

24 THE COURT: (indiscernible)

25 MR. DISHER: And it's page 199 (indiscernible)

1 COUNSEL: 199?

2 MR. DISHER: Yes.

3 MR. BLACKMON: Studied those depositions a little
4 bit?

5 MR. DISHER: Say again?

6 MR. BLACKMON: Studied the depositions a little
7 bit?

8 COUNSEL: 199?

9 MR. DISHER: 199. You know what? It might be in
10 our binder.

11 THE COURT: Yeah, it's in your binder, page 199,
12 Exhibit number 26.

13 MR. DISHER: 26 -- Thank you, Your Honor.

14 BY MR. DISHER:

15 Q So Mr. Blackmon, are you with me?

16 A I'm getting there.

17 Q Okay. Tab 26, page 199.

18 A Yep

19 Q Line 16. You see that?

20 A Mm-hmm.

21 Q And you were asked, "If there were Vegas odds on this,
22 and you could take the over or the under, what would you do?

23 A. Over or under on? Q. The \$158. A. Of like, what I

24 thought we could get in a settlement? Q. No. If we

25 litigated this thing to the end, over or under, do you think

1 LKC Stris beat Whinstone again? Would you take the over or
2 the under? A. I mean, it's speculation. Right? I lived
3 it. But, I almost forgot the but, but I lived this, I
4 believed in the claims, I'd take the over."

5 That was your testimony. Right?

6 MR. SCHMELTZ: No, no, that's not a prior
7 inconsistent statement. What the witness said here today,
8 was, "I'm not sure. I'd take the under." Here he said it
9 was speculation, "I'd take the over." It's not an
10 inconsistent statement. It's not a proper (indiscernible)

11 THE COURT: Overruled.

12 BY MR. DISHER:

13 Q That's what you testified to?

14 A Yes.

15 Q That you'd take the over on the \$158?

16 A Yep.

17 MR. DISHER: Nothing further.

18 THE COURT: All right. Mr. Schmeltz?

19 MR. DISHER: Thank you, Mr. Blackmon.

20 MR. BLACKMON: Thank you, Mr. Disher.

21 CROSS-EXAMINATION

22 BY MR. SCHMELTZ:

23 Q You were just asked about the over or under on a claim.
24 What if here, in this situation, you'd agree with me that to
25 get to \$158 million was going to take a fair amount of time,

1 energy, and resources for Rhodium to continue to litigate
2 against Whinstone. Right?

3 MR. DISHER: Objection. Leading.

4 THE COURT: Sustained.

5 BY MR. SCHMELTZ:

6 Q Did you have a view one way or the other?

7 MR. DISHER: A view -- Objection. Vague.

8 THE COURT: Well, I don't think he's finished his
9 question.

10 MR. DISHER: Oh, I'm sorry. I apologize.

11 MR. SCHMELTZ: Well, I was just going to comment
12 how it's great that sauce for the goose is sauce for the
13 gander (indiscernible)

14 THE COURT: (indiscernible) I mean, I might have
15 to recall you, but he can leave. So --

16 MR. DISHER: Yeah, that's fair.

17 BY MR. SCHMELTZ:

18 Q Do you have a view one way or the other as to whether
19 it would take a significant amount of time, money, and
20 effort for Rhodium to litigate with Whinstone, and achieve
21 that kind of \$158 million value?

22 A At the time when we were having to make the decision?

23 Q Yeah.

24 A Yes, we had discussions about that.

25 Q When you're talking Vegas odds, like Vegas pays out

1 immediately. Right? That's a different question. Right?

2 A Yeah.

3 Q Did you have an understanding one way or the other as
4 to whether this litigation would pay out the same way Vegas
5 pays out?

6 A No. My understanding was it would take a, you know,
7 considerable amount of time.

8 Q And in fact, take a look at TX 212, Exhibit 212 in our
9 binder. Our binders are the white ones.

10 A Okie doke.

11 Q And this is an email exchange of 10 February 2025.
12 You're asking questions of @JonCohn and @JohnStokes. Right?

13 A Yes.

14 Q And you see where it says, "Kevin and I were reviewing
15 the exit financing term sheets we have received from Invesco
16 and Galaxy, and it appears we're going to need to have the
17 damages collected within roughly one year to be able to
18 survive these aggressive financing terms." Have I read that
19 correctly?

20 A Yes, sir.

21 Q What were your concerns, sir?

22 A Runway.

23 Q And how much would the claims have been worth to
24 Rhodium if Rhodium ran out of runway?

25 A I'm not a lawyer, but I'm going to assume a lot less,

1 if not zero.

2 Q And the question that was asked of you was, did your
3 lawyers believe in the value of these claims? Remember
4 that? Were they ebullient, did they want to take it on
5 contingency? Remember all that?

6 A Yes.

7 Q Well, did the client's view of the value of these
8 claims change over time?

9 A I would say yes on some, no on others, you know?
10 Bullish on, you know, a good chunk, and other factors
11 impacted, you know, feelings about others.

12 Q What were you bullish on?

13 A The shutdowns. I felt like that was really strong.
14 That seemed very strong. I think the energy credits seemed
15 very strong. And I think that lines up with how the
16 litigation team felt as well. Well, I could find that chart
17 to help me, but those are the two that jump out at me.

18 Q You ask a few questions here. You ask about
19 collectability, timing, and reliability. What were you
20 trying, what concerns were you trying to convey to your
21 legal team in this email?

22 A We were trying to decide between taking expensive, very
23 expensive dollars to continue fighting the good fight, so to
24 speak, right, and you know, taking it all the way with
25 Whinstone. We were trying to compare and contrast that

1 with, you know, what a settlement scenario might look like
2 if we found ourselves in one. I don't think at this time,
3 but maybe the mediation was already scheduled. I don't
4 remember. But I knew that if we took the money from, you
5 know, Galaxy or Invesco, we'd be on a clock, countdown to D-
6 Day, so to speak. And so I needed to know, you know, if we
7 win, awesome, that's great. You know, how soon can we --
8 you know, do we think we'll be able to recover those funds,
9 and how quickly would they be paid to us? And then, you
10 know, I guess the reliability of it, how do they -- how is
11 the litigation team that we can rely on the collectability
12 and timing of this to help us make decisions on where we go
13 from here?

14 Q Were you concerned one way or the other that Rhodium
15 might run out of money, or have to pay back money with funds
16 it didn't have before it could collect on this litigation?

17 A Yes. Yes.

18 Q And did that impact one way or the other your view of
19 the value of the litigation? Of the damages claims, I
20 should say?

21 A Did it impact? I mean, it certainly was a factor worth
22 considering. I think that we had already applied a discount
23 rate to the damages, which is, you know, supposed to help
24 account for some of those things, you know, time value of
25 future cash flows. But yeah.

1 Q Can you please take a look at TX 245 in your binder?

2 A Yes, sir.

3 MR. SCHMELTZ: Somebody -- Mitch, you need to
4 mute.

5 BY MR. SCHMELTZ:

6 Q Take a look with me please at 245.002. First of all,
7 do you recognize this as a presentation that was made to the
8 Rhodium Board of Directors?

9 A This looks like the presentation that was -- Yes, it
10 is.

11 Q Do you recall participating in Board meetings in which
12 this type of information was presented to the Board?

13 A Yes, sir.

14 Q Do you know what the purpose of this information was
15 for the Board?

16 A At this time, was this -- when was this? March. So
17 this is after the first mediation with Whinstone, I think.
18 Right?

19 Q The first mediation was February 19th.

20 A Yeah. And this was March. Okay, gotcha. Sorry, there
21 were a lot of these. Sorry, what was your question?

22 Q What was the purpose of this type of information in the
23 Rhodium Board meeting?

24 A To update the Board on, you know, recent developments
25 as it pertains to the Whinstone mediation. you know,

1 potential settlement, you know, discussions, you know,
2 versus, you know, going the distance on litigation.

3 Q In this slide at 245.002, do you see where it says,
4 "Risky damages," and it has a low of \$50 and a high of \$100
5 million?

6 A Yes, sir.

7 Q Do you recall there being conversation at the Board
8 meeting about the risky damages amount?

9 A Yes.

10 Q Do you recall if there were lawyers present in that
11 Board meeting?

12 A I mean, there were probably a lot of lawyers in that
13 meeting.

14 Q What types of lawyers would have attended this meeting?

15 A Ms. Tomasco usually joined, Chuck almost always joined,
16 Morgan Soule, our assistant GC always joined. Let's see --
17 Sometimes you would come. I'm not sure if you were here at
18 that point in the meetings or not. And then, of course, our
19 litigation team would sometimes join as well.

20 Q Do you recall any conversation about whether the risky
21 damages might not reflect the best thinking of all of the
22 professionals, including the outside litigators at that
23 Board meeting?

24 MR. DISHER: Objection to hearsay. Objection to
25 foundation.

1 THE COURT: Ask you a question again. Are you
2 asking whether he heard something? (indiscernible)

3 MR. SCHMELTZ: I'm asking if he recalls. And then
4 I'll find out -- lay some more foundation. So I don't think
5 we're at hearsay yet.

6 THE COURT: Okay.

7 BY MR. SCHMELTZ:

8 A What was the question again?

9 MR. DISHER: Your Honor, I guess my basis for my
10 objection is that he applied in his question a statement
11 that might have been said. So he's injecting hearsay into
12 the question, and then asking him, do you recall anybody
13 saying that?

14 THE COURT: Well -- yeah, rephrase -- rephrase the
15 question.

16 BY MR. SCHMELTZ:

17 Q Do you recall conversation around the risked damages
18 number?

19 A Yes.

20 Q What types of subjects do you remember being discussed
21 about the risked damages numbers?

22 MR. DISHER: And I will object to hearsay.

23 THE COURT: Yes, you're asking for hearsay.
24 Sustained.

25 MR. SCHMELTZ: I am asking not for the truth of

1 the matter asserted. I'm asking for what the deliberative
2 body considered, so that we have a sense of what was
3 important to the deliberative body, but not for the truth of
4 what somebody said or didn't say. It goes to effectively
5 corporate state of mind, which is the only thing
6 (indiscernible)

7 THE COURT: But if it's corporate state of mind,
8 then you're asking for the truth of the matter
9 (indiscernible)

10 MR. SCHMELTZ: (indiscernible) state of mind is
11 never -- it's a hearsay exception. Right? It's not
12 hearsay.

13 THE COURT: Well, state of mind is different than
14 asking people what they said. But re-ask your question.

15 BY MR. SCHMELTZ:

16 Q Do you recall the types of subjects that were discussed
17 around the risked damages number?

18 MR. DISHER: Objection to hearsay.

19 THE COURT: Sustained.

20 BY MR. SCHMELTZ:

21 Q In the meeting where risked damages were discussed, did
22 you personally have a concern that you weren't getting
23 advice from your outside litigators on this risked damages
24 number?

25 A Not that I recall.

1 Q As you left this -- You were the Chairman of the Board.
2 Right?

3 A Yes, sir.

4 Q As you left this meeting, did you feel like you had a
5 Board consensus on moving forward with this risked damages
6 range?

7 A Oh, man --

8 Q Let me ask it differently. Take a look at 245.003.

9 A Okay.

10 Q Same exhibit, next page.

11 A Yes.

12 Q Do you recall there being discussion comparing Riot's
13 offer to Rhodium's pre-mediation valuation?

14 A Yes. Okay, that was actually helpful.

15 Q Do you recall the purpose of this conversation?

16 A Okay. I remember where we're at now. Sorry.
17 Timelines get, you know, mixed up. There were a lot of
18 things going on.

19 THE COURT: (indiscernible) No, go ahead.

20 BY MR. SCHMELTZ:

21 A Okay. Yeah, so I believe at the previous mediation
22 that had happened in February, a number had come forth from
23 -- well, I guess it was technically the SAFE AHG, I think,
24 that sent it to us post-mediation. And that was, you know,
25 a number that Whinstone was kind of anchored towards.

1 Right? And so some of the new information that we had here
2 in this presentation was, you know, we finally get an
3 indication from the other side about where their head is at
4 value-wise. And this is the Board, you know, looking at
5 data, and trying to make sense of where they're at versus
6 where we want to be, and trying to make decisions around
7 that.

8 THE COURT: So let me just make sure I understand
9 this. So \$171 million in cash from Riot, SAFE, instead of
10 \$87, they would have agreed to \$87 minus \$12.2?

11 MR. BLACKMON: That was my understanding. Yes,
12 sir.

13 THE COURT: Okay. And then the energy deposits,
14 you would have gotten that returned, and -- You got MR.

15 BLACKMON: I believe so. Yes, sir.

16 THE COURT: Okay, and then the IP. Okay.

17 BY MR. SCHMELTZ:

18 Q And it says under \$195.3 million, "Apples to apples,
19 with authorized \$225 million pre-mediation." Do you see
20 that?

21 A Yes, sir.

22 Q So do you understand, one way or the other, whether the
23 Board was considering whether to take an offer that was on
24 its face perhaps lower than what it had wanted pre-
25 mediation?

1 A Yes.

2 Q And did the Board come to a conclusion in this Board
3 meeting, to the best of your recollection?

4 A I am confident that we came to some resolution. I
5 don't recall exactly what that number was. But it was
6 higher than the \$171.

7 Q Higher than the \$171, but it wasn't an abandoned
8 settlement process? Is that a fair understanding of where -
9 - of what you're saying?

10 A Yeah, no, finally, we were actually having settlement
11 discussions after, you know, a long time.

12 Q And so let me go back one page and ask, if you have a
13 recollection if the Board had a consensus moving forward
14 around that risked damages range that we saw at 245.002.

15 A I believe so. Right? There were external factors,
16 just new information that, you know, the Board -- was
17 presented to the Board, and the Board considered with
18 regards to, you know, lowering the risk damages number. And
19 the comment on the right-hand column, you know, kind of
20 calls it out, reduce the estimates by \$25 million.

21 Q You recall in this timeframe having a value placed on
22 the power contracts that Rhodium had with Whinstone?

23 A I remember Michael Robinson testifying that they were
24 worth roughly \$180 million, if I recall correctly.

25 Q You were asked about -- Oh, I've covered that. That's

1 good.

2 MR. SCHMELTZ: I have one topic, Your Honor, that
3 I think is in the scope of direct, but may not be, but I
4 would ask for a little leniency because we could get this
5 witness off one time for all purposes.

6 THE COURT: I'm okay with that.

7 MR. DISHER: No objection, Your Honor.

8 THE COURT: Okay, yeah. I know you'd like to be
9 here, but --

10 MR. BLACKMON: Hey, I'll hang out all day. That's
11 fine.

12 MR. SCHMELTZ: He's getting good at it, Your
13 Honor.

14 MR. BLACKMON: It's my second home.

15 BY MR. SCHMELTZ:

16 Q Do you recall a Board meeting in which it was discussed
17 whether or not a claim for fraudulent inducement related to
18 Winter Storm Uri should be pleaded in a publicly filed
19 complaint?

20 MR. DISHER: I'll object to hear a say on that
21 one.

22 THE COURT: You know, I think he only asked
23 whether he recalls a Board meeting where that was discussed.

24 Isn't that the question?

25 MR. SCHMELTZ: That is correct.

1 THE COURT: Overruled.

2 BY MR. SCHMELTZ:

3 A Yes.

4 Q Do you recall if in the course of that discussion the
5 Board formulated any particular course of action with
6 respect to that specific topic, as opposed to anything else
7 random?

8 A Sorry, I guess I just blanked. What was the topic
9 again?

10 Q Whether to plead a fraudulent inducement claim related
11 to Winter Storm Uri on a publicly filed complaint.

12 A Yes, we ultimately decided not to put the fraudulent
13 inducement claims, you know, in the pleadings for Whinstone.
14 There was a whole section that was dedicated to it that was
15 largely deleted out. And you know, I was actually a big
16 advocate for keeping that in because I believe that's, you
17 know, what happened. But for, you know, lots of reasons we
18 decided to take it out.

19 Q Do you recall what reasons the Board relied on in
20 deciding to take it out?

21 MR. DISHER: Your Honor, objection to hearsay. I
22 don't think he can answer that question without disclosing
23 what was said on that day by certain individuals.

24 THE COURT: Why don't you rephrase it, and ask him
25 what the reasons that he relied on?

1 BY MR. SCHMELTZ:

2 Q What reasons did you rely on in coming to that
3 conclusion?

4 A Well, you know, as typically happens at Board meetings,
5 there's a lot of discussion, and if I recall correctly,
6 there were kind of three sides. That's not the right way to
7 say it. Three differing opinions on the matter. Frankly, I
8 was in the camp that wanted to put the fraud claims in
9 because as a fiduciary, a bigger number is better for my
10 constituents. Right? My equity holders, shareholders,
11 Creditors, SAFEholders, etc. But then there was also logic
12 --

13 Should I not say names?

14 Q No, you can?

15 THE COURT: Yeah, you can --

16 BY MR. SCHMELTZ:

17 A Okay. If I recall correctly, I believe it was Jonas
18 who brought up a good one, and said, well, if you put fraud
19 in now, I mean, that's going to, one, inflame the other
20 side, Whinstone. And two, as a publicly traded company, if
21 we're trying to, you know, subtle with them, a component of
22 it could be stock, and that might drive their stock price
23 down and that not be particularly great for us.

24 I don't remember who said this part particularly, but
25 another school of thought was that why not, you know? Let's

1 leave the numbers the same, the same, you know, damages
2 numbers and whatnot, leave all the numbers the same, and
3 take the words "fraud" and "fraudulent inducement," and take
4 that out altogether, but still say that Chad lied, keep the
5 numbers the same, and if we need to during, you know,
6 negotiations with them, use that fraud as kind of like a,
7 you know, a big stick. Like, we will plead this if y'all
8 don't settle with us.

9 And so the Board ultimately decided to take it out,
10 take the fraud out.

11 Q And what was persuasive, particularly, to you in making
12 that decision, of the things you discussed? You discussed
13 the various logic. Was there one or more that was
14 persuasive to you?

15 A I thought, well, they were all good points. I think
16 the fact that the numbers largely stayed -- well, the
17 numbers stayed the same as far as, you know, damages and
18 whatnot. That's really how I got comfortable with it.
19 Because if the number stays the same and we just don't call
20 it fraud? You know, what do I care?

21 Q Ultimately, did you feel comfortable that Rhodium could
22 mediate all of those power credit claims in the upcoming
23 mediation?

24 A Absolutely.

25 Q Ultimately, Rhodium entered into a settlement with

1 Riot-Whinstone. Right?

2 A Yes, sir.

3 Q And are you aware, one way or the other, if that
4 settlement included a settlement and release of all claims?

5 A That was my understanding.

6 Q So did you understand that Riot-Whinstone paid
7 consideration to have all potential claims against it
8 released, for all time?

9 A Everything, for all time is my understanding, yes, sir.

10 Q Thank you.

11 MR. SCHMELTZ: I have no further questions.

12 THE COURT: (indiscernible)

13 MR. DISHER: A few follow-up, Your Honor?

14 THE COURT: Yes.

15 REDIRECT

16 BY MR. DISHER:

17 Q Mr. Blackmon, will you turn to Special Committee
18 Exhibit 236, please?

19 A I'm piling up over here.

20 Q A little bit.

21 MR. SCHMELTZ: Your Honor, I remiss would like to
22 just move the admission of 212, which I put in my apologies.
23 And my apologies, Mr. Disher, for interrupting.

24 THE COURT: Any objection?

25 MR. DISHER: I'm sorry, what number?

1 MR. SCHMELTZ: It's 212.

2 MR. BLACKMON: Oh, wait, I was wrong. You said

3 236?

4 MR. DISHER: No objection to 212.

5 BY MR. DISHER:

6 Q Yeah, it's in the big one. I'm sorry.

7 A Yes, sir.

8 Q Do you know what 212 is? I'm sorry. Do you know what

9 236 is?

10 A (indiscernible) Oh, yes. This was the mediation

11 statement on the Whinstone matter.

12 Q This is Rhodium's mediation statement that its Counsel

13 prepared?

14 A Yes.

15 Q Did you look at this before it was sent to the

16 mediator?

17 A Yes. Is there a date on this one? I don't see it.

18 Q Yeah, on page 8. February 14th, 2025.

19 A Okay, yes.

20 Q You reviewed this before it went out?

21 A Yes.

22 Q And so you can take as long as you want, but I will

23 represent to you that nowhere in this mediation is any claim

24 about fraud. Do you remember that?

25 A I do remember that.

1 Q So the complaint didn't have any mention of fraud.

2 Right?

3 A Correct.

4 Q And the mediation statement didn't have any mention of
5 fraud?

6 A Uh-huh.

7 Q Is that a yes.

8 A Yes.

9 MR. DISHER: Your Honor, I'll move for the
10 admission -- or excuse me, I will offer Exhibit 236 into
11 evidence.

12 MR. SCHMELTZ: No objection.

13 THE COURT: All right. It will be admitted.

14 BY MR. DISHER:

15 Q My last line of questioning here, I believe that you
16 said you were particularly bullish on Rhodium's potential
17 damages claims related to the shutdown?

18 A Yeah, the multiple shutdowns. Yes, sir.

19 Q Now, I know you're not a lawyer. Right?

20 A No.

21 Q Do you have any idea what would happen to those claims
22 if, during this bankruptcy, the Rhodium -- if Rhodium
23 stopped operating as a company?

24 A No.

25 Q Do you know whether those claims would just vanish?

1 A I don't know.

2 MR. SCHMELTZ: He's already answered he doesn't
3 know.

4 MR. DISHER: Nothing further, Your Honor.

5 THE COURT: Anything further, Mr. Schmeltz?

6 MR. SCHMELTZ: Yeah.

7 RECROSS

8 BY MR. SCHMELTZ:

9 Q Just -- you just had that mediation statement put in
10 front of you. I'm going to ask you to take a look at page
11 7. That's 236.008. I want you to take a look at a
12 paragraph three-quarters of the way down the page. It
13 starts with, "If Riot and Whinstone want a global resolution
14 -- " Do you see that?

15 A Yes, sir.

16 Q It says, three sentences in, it says, "Now that
17 Rhodium's contracts are secure, and it has a clear path to
18 hundreds of millions in damages against Whinstone, Rhodium
19 feels strongly that its \$453 million offer is below fair
20 value. Whinstone and Riot should be prepared to pay
21 meaningfully more than that at this stage." Have I read
22 that correctly?

23 A I think so.

24 Q Do you have a view one way or the other, if you could
25 ever get to \$453 million in damages without including the

1 Winter Storm Uri energy credit claim?

2 A Well, let me look. (indiscernible) I'm lost. Does
3 anyone know where that chart is?

4 THE COURT: 212.

5 MR. BLACKMON: 212. Thank you.

6 THE COURT: I'm sorry, 12.

7 MR. SCHMELTZ: It's at 12, and also, there's one
8 at (indiscernible) I think I put it in front of you at 245.

9 MR. BLACKMON: Hold on -- 12 is faster, I think, at this
10 point.

11 MR. SCHMELTZ: All right. Okay -- This was --
12 which version was this? \$158.

13 THE COURT: It's the original version.

14 MR. BLACKMON: Okay --

15 THE COURT: It's also at 245, if you wanted to
16 look at that fast.

17 MR. BLACKMON: Yep (indiscernible) I'm trying to
18 be thorough here.

19 THE COURT: It's the last page.

20 BY MR. SCHMELTZ:

21 A Okay. No, it does not appear that we could get to the
22 \$453 million without taking into account the Winter Storm
23 Uri credits.

24 Q One last question -- or just a -- The next page, page 8
25 says, "If the litigation goes to judgment, Rhodium fully

1 expects to collect hundreds of millions of dollars in
2 damages from Whinstone and Riot, Whinstone's puppeteer."

3 You see that? Did I read that right?

4 A Yes, sir.

5 Q Do you have an understanding, one way or the other,
6 whether Rhodium would have green-lighted its counsel to
7 amend the complaint to add a fraudulent inducement claim
8 back in if the case didn't settle?

9 A My understanding was that if we needed to, if Counsel
10 needed to, they could add it back in later.

11 Q Thank you.

12 MR. SCHMELTZ: No further questions.

13 MR. DISHER: Nothing further, Your Honor.

14 Thank you, Mr. Blackmon.

15 MR. BLACKMON: Thank you.

16 THE COURT: Thank you. You may be excused, sir.

17 MR. BLACKMON: And I'm out. Right?

18 THE COURT: Right. And don't talk to anyone
19 outside about your testimony.

20 MR. BLACKMON: Sure. Thank you. Is it okay if I
21 hang out, too?

22 THE COURT: Yep, you can hang out. You can stay
23 in.

24 MR. BLACKMON: (indiscernible)

25 THE COURT: Yeah, you're done.

1 MR. BLACKMON: Okay. I'll stay in (indiscernible)
2 These seats are more comfortable.

3 MR. THOMPSON: No further witnesses, Your Honor.
4 We rest.

5 THE COURT: Okay. All right.

6 MR. SCHMELTZ: Your Honor, we'd call Chuck Topping
7 to stand.

8 THE COURT: Okay.

9 MR. SCHMELTZ: If Your Honor is interested in
10 continuing. Thank you.

11 THE COURT: Yeah, we're going to go for a little
12 bit, but not forever.

13 Raise your right hand, sir.

14 Do you solemnly swear or affirm to tell the truth,
15 the whole truth, and nothing but the truth?

16 MR. TOPPING: I do.

17 THE COURT: Okay. Go ahead, Mr. Schmeltz.

18 DIRECT EXAMINATION

19 BY MR. SCHMELTZ:

20 Q Mr. Topping, thanks for hanging in tonight. You were
21 engaged in negotiating a fee arrangement with LKC. Is that
22 right?

23 A Yes.

24 Q Could you tell me what the components of that, the
25 success fee aspect of that arrangement were initially?

1 A The success fee had three components. The first
2 component, Part A, was based on the contracts at issue being
3 declared upheld, being upheld, our interpretation of the
4 contracts being upheld, that called for a flat fee of
5 \$600,000. The second component was energy credits. Energy
6 credits recovered came with a success fee in the amount of
7 5% of the amount recovered, up to \$5 million. Anything
8 above \$5 million came with a success fee of 1%. And then
9 there was a third component allocable to other amounts not
10 attributable to energy credits, and that came with a success
11 fee of 10% of the amount recovered.

12 Q Was it important to you to establish the caps
13 effectively in the -- that bucket B, the energy credit
14 section?

15 MR. THOMPSON: Objection. vague as to "caps."

16 THE COURT: Sustained.

17 BY MR. SCHMELTZ:

18 Q Bucket B had a 5% -- I call it a cap, and then a 1% cap
19 on success fees for energy credits. Right?

20 MR. THOMPSON: Objection. Leading.

21 MR. SCHMELTZ: It is. It's a super foundational
22 question. We'll establish the terminology so I'm not vague
23 anymore, and then we -- I promise I'll move on.

24 THE COURT: Yeah, I --

25 MR. THOMPSON: I think I misheard the question. I

1 wouldn't have objected, but it sounded not correct also. A
2 1% cap?

3 THE COURT: I think what you're trying to say is
4 that there was 5% on the first \$5 million, and then a 1% on
5 anything above that. I think that's what they're trying to
6 --

7 MR. SCHMELTZ: I'm actually trying to say
8 something different, but clearly failing.

9 THE COURT: Okay. Well, then I didn't understand
10 the question.

11 MR. SCHMELTZ: I'll get it. It's totally fair.
12 no, I'm -- Listen, that's not me being angry. That's me
13 being a little -- It's a little late in the day. I
14 apologize.

15 BY MR. SCHMELTZ:

16 Q Is there a reason that you separated energy credits out
17 into a different success fee bucket than other non-energy
18 credit claims?

19 A Yes.

20 Q What was that reason, sir?

21 Again, Your Honor, I apologize --

22 A I think that the view that we had was that energy
23 credits was by far the strongest claim. There was data that
24 demonstrated the energy sales that Whinstone had made. We
25 were able to look at that data and determine, you know, that

1 sales had taken place. So we saw this really as the low-
2 hanging fruit. And they were, in essence, claims that we
3 thought would be very, very strong. So we wanted to put the
4 financial incentive in the other bucket of claims for
5 damages, and so that came with a higher success fee
6 percentage.

7 Q We're going to talk a little bit about the claims, and
8 the nature of the claims in a minute. Can you take a look
9 at -- And it's going to be not in my white binders, but in
10 their binder, Exhibit 3, please?

11 A In the black one?

12 Q In the black binder. Thank you.

13 A Yep.

14 Q Do you recognize the document at Exhibit 3?

15 A Yes. This appears to be LKC's fee application.

16 MR. SCHMELTZ: And I think Your Honor noted you'd
17 take judicial notice that this is in the docket. Thank you.

18 BY MR. SCHMELTZ:

19 Q In the engagement letter that you negotiated, was there
20 a provision allowing LKC to recover fees and some limited
21 expenses and some limited attorney's fees?

22 A I didn't get the last part of your question. I'm
23 sorry.

24 Q Yeah, that's okay. Was there a provision allowing LKC
25 to recover expenses and limited attorney's fees in the

1 engagement letter that you negotiated?

2 A LKC had -- I think expenses and attorney's fees were a
3 component of the success fee in Part C, at the 10%.

4 THE COURT: I didn't understand that answer. I'm
5 sorry. I thought it was a different question.

6 BY MR. SCHMELTZ:

7 Q Yeah. Let me make this easier on us, Chuck, and put
8 this document in front of you. I just need the engagement
9 letter.

10 If you would take a look at Exhibit 203 in our binder?
11 I'm going to do this from the March document, but I think
12 the expense provision is the same in both the early one and
13 the (indiscernible) Whinstone matter. But take a look at
14 Exhibit 203. I think this was (indiscernible) probably
15 duplicating exhibits, because I think they've got it as
16 exhibit --

17 A I've got it.

18 Q All right. Wonderful.

19 MR. SCHMELTZ: Yeah, Your Honor, this is the same
20 as Exhibit 2. So no need for me to move to admit it again,
21 but if Your Honor is okay with me using this version?

22 THE COURT: Sure.

23 BY MR. SCHMELTZ:

24 Q Can you take a look at page 2, the paragraph that
25 starts with, "We will continue to provide -- " Do you see

1 that?

2 A Yes.

3 Q And what was your understanding of this paragraph? And
4 what was its purpose, from your perspective?

5 A This paragraph provided for graduated discounts based
6 on volume. So for the first \$250,000 of standard rates,
7 there would be a 20% discount. For the next \$250,000, there
8 would be a 25%. And then for all additional time, so in
9 other words time over \$500,000 in a given month, there would
10 be a 30% discount.

11 Q And what did you -- what, if anything, did you trade or
12 negotiate away to get those discounts? What did you give up
13 to get that?

14 A The structure, the overall structure that we came up
15 with was one that allowed for Rhodium to receive discounts
16 in exchange for a success fee. So the success fee
17 structure, the discounts helped Rhodium with much needed
18 cash flow at the time.

19 Q And about how much in discounts has LKC provided to
20 Rhodium at this point?

21 A I don't know the exact figure, but I think the ballpark
22 that I understand it to be is somewhere around the \$1
23 million ballpark in terms of aggregate to date.

24 Q The paragraph goes on to talk about bills for hourly
25 fees and reasonable expenses. Do you see that?

1 A Yes.

2 Q What do you understand that provision to mean in this
3 engagement letter?

4 A This lists a number of different categories of hourly
5 types of expenses that can be reimbursed provided that they
6 are reasonable.

7 Q And did you have occasion to review the fee application
8 that we started to look at in LKC Exhibit 3?

9 A Yeah, I have it right here.

10 Q And did you review the fees and expenses that LKC was
11 seeking in this fee application?

12 A Yes.

13 Q Did you reach a conclusion, based on what you had in
14 this application, as to whether or not the professional fees
15 and expenses sought were reimbursable under the provision we
16 just looked at in the engagement letter, which also is in
17 LKC Exhibit 2?

18 A There were amounts that were included that didn't have
19 any support. So we had never received invoices, for
20 example, for the Porter Hedges amounts, so there was no way
21 to determine if those amounts were reasonable. There were
22 certain other amounts that were difficult to determine from
23 the description, as to whether or not they were
24 reimbursable.

25 Q And do you recall asking for additional detail?

1 A I believe that request was made through Counsel.

2 Q Do you recall whether you ever got any additional
3 detail?

4 A I have not seen any additional detail.

5 Q Are you -- are you, or would you be allowed by the
6 Bankruptcy Court, etc., adverse to paying additional
7 attorney's fees and expenses if they were determined to be
8 reasonable based on additional data?

9 A Am I prepared to pay if they are determined to be
10 reasonable?

11 Q Are you adverse to it, or are you prepared to pay? Two
12 ways of saying the same thing.

13 A Yes.

14 Q Yes, you're prepared to pay?

15 A Yes.

16 Q Did there come a point in time maybe around about
17 February 2025 in which there arose a dispute about LKC's fee
18 agreement?

19 A I'm sorry, there was an issue that arose in February of
20 2025. Correct.

21 Q And I shouldn't say about its fee agreement, but maybe
22 it's right to obtain a success fee. Is that right?

23 A Yes.

24 Q What did you understand that dispute to be?

25 A To my recollection, the SAFE AHG had raised an issue

1 with whether or not LKC could receive a success fee due to
2 the nature of the original fee application, and the way in
3 which the success fee was described. There was a contention
4 made that LKC would not be able to recover a success fee
5 because of the lack of specificity in that original fee
6 application. I'm sorry, in the retention application.

7 Q What, if anything, did you do about -- Well, in an
8 effort to address that dispute?

9 A So I'm not sure if I would call it a dispute. But we
10 certainly were concerned about the issue, and so Jon Cohn,
11 Chase Blackmon, myself, the three of us explored how best to
12 remedy the situation, and respond to the Safe AHG's concern.
13 We ultimately arrived at a solution that was put before the
14 Court, and that the Court considered, and it resulted in the
15 filing of an amended retention application.

16 Q Okay. And what was the amended retention application
17 meant to address, if you recall?

18 A One thing it was meant to address was the SAFE AHG's
19 concerns about the level of specificity of the success fee,
20 and to fully disclose the components of the success fee.
21 Another purpose was to make clarifying changes, to make
22 explicit the way in which the success fee would be
23 determined in the event that you had a situation where there
24 was a transaction that resulted in a sale of Rhodium's
25 assets, and how to allocate the transaction value to the

1 different categories set forth in the engagement letter.

2 Q And that, the last thing that you've referred to in
3 front of you is Exhibit 203 in our binder, but -- or you're
4 in the black binder. Just turn to Exhibit 2, if you would,
5 which is the engagement letter as marked by LKC.

6 A I have it in front of me.

7 Q And at the bottom of page 2, there is a provision under
8 ld. Do you see that?

9 A Yes.

10 Q Was that provision added to address the issue that
11 you've just described?

12 A Yes.

13 Q And that's the provision that we've been talking about
14 today in court, that has a requirement to determining good
15 faith, the portion of transaction value allocable to energy
16 credits and damages, and then that provides for coming to
17 court if that can't be decided. Right?

18 A Yes.

19 Q Now, I've used the word "dispute," and you have been
20 very careful about it. When I say "dispute," I'm meaning
21 this dispute between the SAFE AHG and LKC. I'm not
22 referring to a dispute between LKC and Rhodium. Okay?

23 A Understood.

24 Q During this time frame, from your perspective, was
25 there a dispute between LKC and Rhodium around what the fee

1 agreement between Rhodium and LKC meant?

2 A There were negotiations that took place. We considered
3 a number of different ways to try to resolve the issue. We
4 ultimately arrived at the solution that was presented to the
5 Court.

6 Q And again, was the issue that you're describing what
7 success the LKC would get in the event there was a
8 transaction instead of simply a settlement of litigation?
9 Is that what you're referring to?

10 A Yes.

11 Q What were some of the options that you explored with
12 LKC?

13 A We explored trying to come up with a flat number, a
14 flat amount that LKC would get in the event of a
15 transaction. We also explored trying to come up with a
16 fixed percentage that LKC would receive in the event that
17 there was a transaction, in order to simplify the manner in
18 which the success fee would be calculated.

19 Q Let's hop on that question or that issue. Right?
20 You're describing a transaction that also leads to a
21 settlement of the dispute. Right?

22 A Yes.

23 Q And we'll just, maybe we use as a hypothetical the
24 transaction that actually occurred with Whinstone and Riot
25 to resolve the dispute between Rhodium and Whinstone.

1 Right? Did you have a concern that in that type of
2 transaction, it would be problematic to figure out how much
3 of the consideration was going to settlement versus going to
4 the purchase of assets?

5 A I think it would be potentially problematic. It would
6 be potentially challenging. One of the things that we
7 explored was a fixed number to avoid that. Another thing
8 that we explored was a fixed percentage, based on the total
9 transaction value.

10 Q Did you at any point reach an agreement with LKC,
11 between Rhodium and LKC, as to how, in good faith, to come
12 up with that allocation, based on a fixed percentage?

13 MR. THOMPSON: And Your Honor, I may be confused
14 about where we are. I'm not seeing the relevance about
15 negotiations around contractual terms that weren't adopted,
16 and how we apply the contractual terms that were adopted
17 (indiscernible)

18 THE COURT: Yeah. So what's the relevance?

19 MR. SCHMELTZ: So at this point in time, the
20 parties actually came up with a solution that embodies what
21 paragraph D, how it -- one way it could work in a good faith
22 basis to come up with that allocation. And so we're getting
23 into what they did to show how one could act in good faith,
24 and that they attempted to act in good faith to do that. It
25 is an example of how that provision can be carried out which

1 is, I think, what Your Honor has asked for today, tell me
2 how it's supposed to work.

3 THE COURT: I'm really not following. Sorry, but
4 --

5 MR. SCHMELTZ: So in paragraph D --

6 THE COURT: Paragraph D, it says, if you can't
7 reach agreement in B and C, and you negotiate in good faith,
8 then we'll bring it to the Court. I mean --

9 MR. SCHMELTZ: Prior to that, it says -- it says
10 in relation to the fees in A and B, in a transaction that
11 resolves or otherwise terminates the matter, the client and
12 Lehotsky Keller Cohn will determine in good faith the
13 portion of transaction value to the clients allocable to the
14 energy credits and damages is in sections B and C.

15 THE COURT: Correct.

16 MR. SCHMELTZ: And one way they could do that is
17 to come up with a flat percentage as an alternative to that,
18 or as a way to affect that.

19 THE COURT: Yeah, but that didn't happen. Right?
20 So why are we talking about it?

21 MR. SCHMELTZ: It happened. And that's what we're
22 talking about.

23 THE COURT: There was an agreed percentage?

24 MR. SCHMELTZ: There was, at a point in time, an
25 agreed percentage.

1 THE COURT: Okay. But that didn't come to pass.
2 Right?

3 MR. SCHMELTZ: It is still an example of how to do
4 that, and what that would look like.

5 THE COURT: I think that's irrelevant. Move on.

6 BY MR. SCHMELTZ:

7 Q In February of 2025, Riot-Whinstone and Rhodium were
8 preparing for a mediation. Correct?

9 A Correct.

10 Q What, if you recall, what kind of work went into
11 preparing for that mediation?

12 A There was work involved in preparing a mediation
13 statement, there was work involved in preparing a complaint
14 against Riot-Whinstone that we wanted to file before the
15 start of the mediation. There was also work involved in
16 coming up with a basis upon which the Board could set
17 parameters inferring authority on the members of the
18 management team that would be present at the mediation to
19 potentially settle the litigation.

20 Q Did your outside Counsel also prepare a complaint for
21 damages to be filed prior to this mediation?

22 A Yes.

23 Q All right. We're going to get into a couple of these
24 buckets. We're going to talk about the work done by the
25 Board (indiscernible) parameters, and we're going to talk

1 about the complaint. Let's talk about the complaint first.

2 The original complaint as drafted, did that have a claim for
3 energy credits?

4 A Yes.

5 Q Did it have a claim that included energy credits both
6 for Winter Storm Uri and non-Winter Storm Uri?

7 A Yes.

8 Q Did it have a claim for fraudulent inducement of a
9 settlement related to Winter Storm Uri included in it?

10 A Yes.

11 Q At some point in time, did there arise a conflict
12 around whether or not that complaint should in fact contain
13 a claim for fraudulent inducement?

14 A I'm not sure if I would describe it as a conflict. But
15 there was an issue that arose about whether or not to
16 include the fraudulent inducement claim in the publicly
17 filed complaint. So there was definitely a discussion and
18 some disagreement, debate around that point.

19 Q Did you have an understanding one way or the other as
20 to -- did you have a view as to whether or not a publicly
21 filed complaint should include a fraudulent inducement
22 claim.

23 A I was in favor of including fraudulent inducement as a
24 count in a publicly filed complaint.

25 Q Did ultimately a fraudulent inducement claim get filed

1 in a publicly filed complaint?

2 A No.

3 Q Do you know why?

4 A The Special Committee had requested that we refrain at
5 the time from including a fraudulent inducement count in a
6 publicly filed complaint. Did you understand one way or the
7 other if the Special Committee was prohibiting that from
8 ever happening, or was asking that it not happen at a point
9 in time?

10 A My understanding at the time that the complaint was
11 filed publicly was that the Special Committee was leaving
12 open the question of whether or not the complaint could be
13 subsequently amended to include a fraudulent inducement
14 count.

15 Q Did you ever come to learn one way or the other whether
16 the Special Committee was willing to allow a fraudulent
17 inducement claim to be filed in a publicly filed complaint?

18 A Yes.

19 Q What's that understanding?

20 A The Special Committee authorized the filing, stated
21 that it would allow the filing of a fraudulent inducement
22 count in the publicly filed complaint if the mediation
23 ultimately did not result in a settlement.

24 Q Do you have an understanding one way or the other
25 whether Rhodium was able to mediate a claim for all of its

1 power credits, energy credits, Winter Storm Uri, and non-
2 Winter Storm Uri?

3 MR. THOMPSON: Objection. Vague (indiscernible)

4 THE COURT: Restate your question?

5 BY MR. SCHMELTZ:

6 Q Did you have an understanding as to whether Rhodium was
7 able to go to mediation, and pursue all of its energy credit
8 claims, both Winter Storm Uri and non-Winter Storm Uri?

9 A My understanding is that the Special Committee did not
10 prohibit Rhodium from asserting fraudulent inducement in
11 connection with the mediation.

12 Q Do you have an understanding as to whether the ultimate
13 settlement with Riot-Whinstone included a settlement of all
14 energy credit claims, including Winter Storm Uri energy
15 credit claims?

16 A It did. The release was very broad.

17 Q We talked about the work being done around settlement
18 authority. From your perspective as the general counsel of
19 Rhodium did the value that Rhodium placed on the claims it
20 was pursuing in litigation change over time in this time
21 frame?

22 A Yes.

23 Q And what is your understanding of that change, and --
24 what was your understanding of that change?

25 A My understanding is that a process began starting with

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.

1 Q And did Galaxy bring in a partner, Fortress, to help
2 think about the litigation claims?

3 A Yes.

4 Q And did you know one way or the other whether Fortress
5 was a litigation financing shop?

6 A I have limited understanding. I've never really
7 interacted with them, but my understanding at the time was
8 that, yes, Fortress was a specialist in evaluating
9 litigation claims.

10 Q And was it significant to you in the Board meeting that
11 Fortress and Galaxy had taken that view of the claims?

12 A As the general counsel of Rhodium at this time, were
13 you concerned that that risked damages range was too low?

14 A No, I don't think I had that concern.

15 Q Were you concerned that that risked damages number
16 hadn't received enough input from your professionals to be
17 reliable?

18 A That was not one of my concerns.

19 Q You mentioned the risked change to one of the claims,
20 and I think you said it was Building D. Did I hear you
21 correctly?

22 A It was indeed Building D.

23 Q Did you participate in a Board meeting in which that
24 risk adjustment change was presented to the board?

25 A I did. And what was that risk adjustment change?

1 A Can you repeat the question?

2 Q What was the change in risk -- Sorry, that's a dumb
3 question because I said "the risk adjustment change." What
4 was the change, if any, in the risk rating for that claim?

5 A It was reduced from 40% to 20%.

6 Q From your perspective as the General Counsel of
7 Rhodium, was that a well thought out decision?

8 A I believe it was.

9 Q From your perspective as the General Counsel of
10 Rhodium, was that decision made with appropriate input from
11 the corporation's professionals?

12 A Yes.

13 Q In 245.008, there is a litigation value chart, and it
14 actually shows building D at 20%. Do you see that?

15 A I do.

16 Q Did you have a view, as the General Counsel of Rhodium,
17 as to the strength of the various claims on this chart?

18 A There were several claims that I would describe as
19 winning claims. There were several claims that I would
20 describe as losing claims. I would describe a winning claim
21 as something that had a probability of success greater than
22 50%. So there were several that would fit that category,
23 and then there were several that would not.

24 Q In the engagement letter that we looked at in Exhibit
25 2, it talks about that reasonable good faith attempt to

1 allocate damages. Did you feel like it was a reasonable and
2 good faith allocation to allocate \$75 million to damages?

3 A Yes.

4 Q For purposes of that, for purposes of the LKC success
5 fee?

6 A Yes.

7 Q Do you have a feeling one way or the other as to
8 whether it would be fair and reasonable to pay a success fee
9 on winning claims?

10 A I feel it would be reasonable.

11 Q Do you have a view one way or the other as to whether
12 it would be fair and reasonable to pay a success fee on
13 losing claims?

14 A I feel --

15 MR. THOMPSON: Objection. Vague. I'm sorry, did
16 the witness already explain a losing claim, which means
17 something with a lower than 50% winning success?

18 MR. SCHMELTZ: Yes. Yes.

19 MR. THOMPSON: If that (indiscernible)

20 BY MR. SCHMELTZ:

21 A I don't feel it would be reasonable to pay a success
22 fee on a losing claim.

23 MR. SCHMELTZ: Your Honor, if I might have a
24 minute just to confer to my colleagues.

25 THE COURT: Sure.

1 BY MR. SCHMELTZ:

2 Q From the start of the preparation for mediation to
3 where we were in March, the March timeframe in this exhibit
4 we're looking at in 245, from your perspective, did the
5 process change, the settlement process or the expectations
6 change about what was happening with Rhodium vis-a-vis this
7 litigation?

8 A As we were going through the process of negotiating
9 settlement, it started to become apparent to us that it
10 would be very difficult to get exit financing on our terms.
11 At that point, the -- at that point, what we saw as the best
12 way to provide a return to our Stakeholders, provide a
13 return to our Creditors was starting to emerge as the
14 solution of an asset sale, the sale of assets to Whinstone.
15 The possibility of settling the litigation -- I'm sorry, the
16 possibility of continuing the litigation started to
17 evaporate because of the inability to obtain exit financing.
18 So the solution of an asset sale began to emerge at that
19 time as the most viable solution.

20 Q And did that play a role in in the company's view of
21 the value of the claims it was settling?

22 A It did play a role in the calculation of the discount,
23 and it did play a role in the overall assessment, yes.

24 MR. SCHMELTZ: I have no further questions. I
25 pass the witness.

1 THE COURT: All right. Mr. Thompson, how long are
2 you going to be?

3 MR. THOMPSON: Very brief. Like ten minutes.

4 THE COURT: Okay. And I think after that, then we
5 should call it a day, and then figure out when we're going
6 to come back.

7 Go ahead.

8 MR. THOMPSON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q Will Thompson, for LKC. Mr. Topping, good evening. I
12 seem to recall that you have trouble hearing in one ear?
13 Will you let me know if you can't hear me properly?

14 A That's correct. I'm deaf in my right ear. I will let
15 you know. Thank you.

16 Q And if you want to turn or anything, do whatever you
17 want to hear the question, please.

18 You were involved in hiring LKC and Stris for the
19 litigation. Is that fair?

20 A Yes.

21 Q Are you glad you hired LKC?

22 A Yes.

23 Q Are you glad you hired Stris?

24 A Yes.

25 Q Do you trust that those firms did the best they could

1 for you?

2 A Yes.

3 Q And do you trust that they gave you the best advice
4 they could?

5 A I do.

6 Q Stris and LKC, is it true that Stris and LKC obtained
7 exceptional results for Rhodium?

8 A I believe it is.

9 Q And is Rhodium committed to having -- or sorry, is
10 Rhodium committed to having LKC fully compensated for the
11 work it has done and the success fee it has earned?

12 A That has always been my position and my belief.

13 Q You told the Court that before. Right?

14 A Yes.

15 Q You testified on direct that LKC's discounted rates
16 amounted to about a million dollars over the life of the
17 matter. Do you remember that testimony?

18 A That was my rough understanding, and was kind of a
19 ballpark figure of what LKC's aggregate discounts to date
20 had been.

21 Q Right. And I think that's about right. I'm not trying
22 to quibble with you about the precise number. Do you
23 remember being asked by not an LKC lawyer, about whether a
24 success fee of eight or nine times the discount that LKC
25 provided would be fair?

1 A I do.

2 Q And your answer was it would certainly not be unfair
3 for the success fee to be eight or nine times the discount.
4 Is that fair?

5 A That was my answer, yes.

6 Q I want to touch briefly on the Porter Hedges fees.
7 We've looked at the engagement letter before. It's our
8 Exhibit 2, if you want to look at it again. But do you
9 remember the language that talks about the reasonable
10 expenses, including legal advice on retention and
11 compensation matters?

12 A I do.

13 Q Is your understanding that there would -- Sorry, was it
14 your understanding at the time that was negotiated that
15 there would be a need for LKC to obtain advice on retention
16 and compensation matters from a bankruptcy expert?

17 A Yes, and I think that's why we included that language.

18 Q Right. And that bankruptcy expert is Mr. Wolfshohl
19 from Porter Hedges here. Right?

20 A Yes.

21 Q And so you, on behalf of Rhodium, were expecting that
22 Rhodium would pay reasonable expenses for legal advice on
23 retention and compensation matters that LKC incurred by
24 hiring Mr. Wolfshohl. Correct?

25 A That was the language that we included, and that the

1 Court approved.

2 Q Even though you thought it was unlikely, you thought it
3 was a possibility that Rhodium and Whinstone, in the PSA,
4 the agreement between them, could reach one allocation, and
5 then Rhodium and LKC, pursuant to the engagement letter,
6 could reach a different allocation. Do you remember
7 testifying to that?

8 A I did acknowledge the theoretical possibility that
9 there could be two allocations. I did not want to --

10 Q Yeah. Let's talk about --

11 A I did not want -- Okay. Can I finish, or -- ?

12 Q You may finish if you want to. I think you've answered
13 the question, but I'm not trying to interrupt you.

14 A Okay. I also said it's unlikely.

15 Q Are you finished now?

16 A Yep.

17 Q Thank you, Mr. Topping. You talked a little bit about
18 fraudulent inducement, I think. You are, although a no
19 doubt talented lawyer, you're not a Texas lawyer. Fair?

20 A I am not.

21 Q When you had questions about Texas law, you tended to
22 ask Mr. Disher or myself, or someone else from Texas. Is
23 that right?

24 A That is correct.

25 Q And so if I told you that the elements of fraudulent

1 inducement in Texas require justifiable reliance by the
2 person claiming that he was fraudulently induced, would you
3 have any reason to disagree?

4 A No.

5 Q And if I told you that justifiable reliance is
6 inconsistent with not having done reasonable diligence on
7 the front end, as a matter of Texas law, would you have any
8 reason to disagree?

9 A I'm not sure if I would be willing to agree with that
10 as a categorical statement. Perhaps generally, maybe.

11 Q I just mean you wouldn't have a position one way or the
12 other because you haven't read the Texas cases about that
13 topic. Right?

14 A That is correct.

15 Q You testified a little bit on direct about the
16 mediation. You were in the mediation room. Right?

17 A I was in one of them.

18 Q That's a good point, Mr. Topping. And I don't need to
19 get into a bunch of details about this, but it's fair to say
20 in the mediation room you were in, there were also all the
21 Rhodium people. Right?

22 A That is correct.

23 Q And in that mediation room, there was no opportunity to
24 press a fraudulent inducement theory against Whinstone.

25 Fair?

1 A I'm not sure what you mean by "press." There was an
2 opportunity to meet with the mediator, and explain briefly
3 our claims, which Mr. Cohn did very eloquently, as I recall.
4 Beyond that, I would agree that for the remainder of the
5 day, there was no such opportunity.

6 Q And I'm not going to hold you to a precise number or
7 anything, but overall, about how many hours do you think we
8 were in that mediation room?

9 A It seemed like a long time. I don't know exactly how
10 many hours it was.

11 Q Maybe 11?

12 A Possibly. That sounds about right.

13 Q And out of those 11 hours, about how many minutes do
14 you think we spent talking to the mediator?

15 A Thirty or less, maybe.

16 Q Right. And when Mr. Cohn went through our claims very
17 briefly at the beginning of the day, there was no discussion
18 of fraudulent inducement. Correct?

19 A That is correct.

20 Q Because he was talking about the claims in the
21 complaint that we publicly filed. Is that fair?

22 A I don't recall. But I recall that I was happy with the
23 way that it was presented, and I don't recall specifics or
24 details.

25 Q And you recall that there was a mediation brief that

1 you reviewed?

2 A I did review it.

3 Q And you recall that it doesn't say anything about
4 fraud?

5 A It included all of the allegations. It may not have
6 included detrimental reliance or justifiable reliance. But
7 other than that, I think it did include all of the same
8 facts and allegations that were in the version of the
9 complaint, the draft complaint that did include the
10 fraudulent inducement count.

11 Q Right. It included the fact that, for example, in our
12 contention, Mr. Harris lied.

13 A Yes.

14 Q But it did not say anything about whether the founders
15 of Rhodium had justifiably relied on those
16 misrepresentations from Mr. Harris. Fair?

17 A I have no reason to disagree with that statement.

18 Q You were the 30(b)(6) witness on behalf of Rhodium
19 during a corporate representative deposition for four
20 different topics last week. Is that right?

21 A Yes.

22 Q And we don't need to get into a bunch of details about
23 it, but do you recall my asking questions about what
24 Rhodium's position was on what numbers should be plugged
25 into the different parts of the success fee formula?

1 A Yes.

2 Q And I'm not blaming you in any way, but you were not
3 able to answer those questions as a corporate
4 representative. Is that fair?

5 A I don't think that's fair. Rhodium designated a
6 different witness to answer those.

7 Q I'm sorry, I'm not talking about what happened
8 subsequent to that deposition. I just mean in the room, Mr.
9 Schmeltz said you're unable to testify on that even though
10 you were the corporate rep for topics 1 through 4. Is that
11 right?

12 A No, I don't think that's fair. I don't think that --
13 Rhodium understood that topic to encompass those questions
14 about that topic.

15 I also recall, Mr. Thompson, that Rhodium had objected,
16 and (indiscernible) that topic of being overly broad.

17 THE COURT: All right, we've only got one hour, so
18 (indiscernible)

19 MR. THOMPSON: Thank you, Your Honor.

20 BY MR. THOMPSON:

21 Q Again, I'm not trying to assign blame, or have anybody
22 work that out. The Judge will work out what the
23 consequences of anything are. All I'm saying is you were
24 explaining that Rhodium hadn't interpreted the topic to
25 cover the questions I was asking about what numbers get

1 plugged into the success fee formula.

2 A Right.

3 Q And you were giving that explanation because you
4 weren't prepped on that topic for that day. Right?

5 A It wasn't one of the topics that was encompassed by the
6 notice.

7 Q We can agree to disagree about that part. You talked a
8 little bit about what you called winning claims and losing
9 claims based on the likelihood of success on the merits. Do
10 you remember that testimony on direct?

11 A Yes.

12 Q And if I heard you correctly, you described as a losing
13 claim something that is more likely than not to lose.
14 Right?

15 A Yes.

16 Q So I understand this isn't what happened, but just
17 hypothetically speaking, if Rhodium had asserted a single
18 claim against Whinstone and had a 40% chance of winning and
19 it was worth a billion dollars, you would call that a losing
20 claim. Right?

21 A Yes.

22 Q But it would have a fair amount of settlement value.
23 Right?

24 A I'm not sure how to answer that.

25 Q Well, in your assessment as the company's general

1 counsel, do you think that a 40% likelihood of recovering \$1
2 billion means the claim has settlement value?

3 A I wouldn't know how to answer that. It's very
4 difficult to answer that in the abstract.

5 Q Okay. And if we settled that claim, 40% likelihood of
6 \$1 billion, we settled it for some amount of money, would
7 your position be, well, I have no idea where that value
8 could be allocated because it's a losing claim?

9 A I'm not really sure how to answer that either.

10 Q You testified a bit about exit financing problems
11 affecting the assessment of the damages claims on direct.
12 Do you remember that testimony?

13 A I do.

14 Q I don't know if you have an understanding of this one
15 way or the other. Do you know whether if Rhodium ceased
16 operations due to, say, a lack of exit financing and a lack
17 of settlement, whether those claims that would benefit the
18 Rhodium bankruptcy estate would disappear, or whether they
19 would continue in some way?

20 A So my general understanding is that they would not
21 necessarily disappear, but the ability to continue to
22 prosecute the claims would be impaired, because there would
23 be no ability to pay for lawyers such as yourself or LKC to
24 continue to prosecute the claims.

25 Q Have you ever heard of a litigation trust?

1 A Yes.

2 Q Okay. And do you remember -- You were in the room when
3 Mr. Blackmon testified. Right?

4 A Yes.

5 Q Do you remember Mr. Blackmon testifying about how LKC
6 and Stris were enthusiastic about the possibility of taking
7 these claims on pure contingency?

8 A Enthusiastic about, sorry, about what?

9 Q About the possibility of continuing to represent
10 Rhodium as to its affirmative claims against Whinstone on
11 pure contingency, without any hourly bills being paid.

12 A I was part of those discussions.

13 Q And so you remember them. Right?

14 A I do.

15 Q And Mr. Blackmon's testimony was accurate that both
16 firms were enthusiastic about that possibility?

17 A I was also enthusiastic about that possibility. But
18 when I talked with our professionals, it unfortunately was
19 not a huge needle mover in terms of being able to create an
20 opening for Rhodium to move forward without exit financing.

21 Q That's right. It didn't save the company enough to
22 allow the company to continue being a going concern. Right?

23 A Something like that. I mean, that's roughly, I think,
24 what my understanding was.

25 Q But of course, if the lawyers are working for free on

1 the front end, that would be enough savings for the claims
2 to continue. Right?

3 A I think theoretically, yes.

4 MR. THOMPSON: Thank you, Mr. Topping. Have a
5 good evening. I will pass the witness.

6 THE COURT: All right. Mr. Schmeltz?

7 REDIRECT

8 BY MR. SCHMELTZ:

9 Q Mr. Topping, you were asked about testimony that you
10 gave that eight or nine times the savings certainly would
11 not be unfair. Do you remember that?

12 A Yes.

13 Q Do you want to give any further gloss to that prior
14 testimony?

15 A The reason why I didn't say it would be fair --

16 MR. THOMPSON: (indiscernible) that question and
17 answer, Your Honor, instead of a narrative?

18 THE COURT: Yeah. Why don't you ask him a
19 question?

20 BY MR. SCHMELTZ:

21 Q What did you mean by that?

22 A What I meant by that was I was not prepared to rule out
23 the possibility, categorically, that solely by virtue of the
24 amount, that that level of compensation would be per se
25 unfair, inherently unfair solely because of the amount. We

1 hadn't done the analysis yet. We hadn't done the tax
2 allocation. I wasn't involved in the analysis that was
3 undertaken by Mr. Rosten, for example. I wasn't involved
4 with the ongoing discussions about the tax allocation. I
5 did not want to categorically rule out or state that a
6 certain amount was per se unfair, or per se -- yes, unfair,
7 or fair for that matter.

8 THE COURT: Wait. Hold on just a second.

9 (indiscernible) you need to dial in again, and
10 (indiscernible)

11 MR. DISHER: I'm back on now, Your Honor, if you
12 were waiting on me for something.

13 THE COURT: Okay. I was, and then Ms. Mates, too.

14 All right. Ms. Mates is on.

15 All right. Go ahead, Mr. Schmeltz. Sorry.

16 BY MR. SCHMELTZ:

17 Q Do you have a view, as you sit here today, under the
18 facts and circumstances currently, whether it would be fair
19 to pay LKC a success fee, fair and reasonable as eight or
20 nine times the savings?

21 A I believe that what is reasonable, as I sit here today,
22 based on everything that I know, based on everything I know
23 about Mr. Rosten's work, and about the tax allocation work
24 that was done, that the compensation for LKC proposed under
25 Mr. Rosten's model would be fair and reasonable. I'm not

1 sure if I could agree that something more than that would be
2 fair and reasonable.

3 Q You were asked if you could allocate value if you
4 settled a losing claim. You remember that?

5 A Yes.

6 Q Here, is there an added complexity in that you settled
7 for a number, and it's not clear whether the parties
8 settling paid more for stuff or claims? Is that an added
9 complexity?

10 A I do agree that there is added complexity in the sense
11 that we're talking about a singular settlement number, and
12 trying to come up with a mechanism for allocating different
13 claims, and coming up with the constituents that would
14 comprise that number. That is definitely a challenge.

15 Q So is it more likely than not that the settled claims,
16 the damages includes those that are greater than 50%, or
17 not?

18 A Can you repeat the question? I'm sorry.

19 Q Is it more likely than not that the settled damages
20 includes those claims that have a greater than 50% chance of
21 success?

22 MR. THOMPSON: I'm going to object as vague. I'm
23 not sure, but he might be asking about whether it's more
24 likely than not Whinstone was thinking something? Or --
25 Forgive me, I'm confused about what is more likely than not.

1 THE COURT: Can you rephrase your question?

2 BY MR. SCHMELTZ:

3 Q Yeah. If you had to make an allocation to damages,
4 would it be more fair and reasonable to fill that allocation
5 with winning claims, or with claims that were losing claims?

6 A In my opinion, it would be more fair and reasonable to
7 fill it out with claims that are winning claims.

8 MR. SCHMELTZ: Thank you. No further questions
9 for this witness.

10 MR. THOMPSON: Very briefly, Your Honor.

11 RECROSS

12 BY MR. THOMPSON:

13 Q Mr. Topping, in between your June testimony about eight
14 or nine times the discount being not unfair, and your
15 testimony today, have you spent a considerable amount of
16 time meeting with Mr. Schmeltz?

17 A Have I spent a considerable amount of time what?

18 Q Meeting with Mr. Schmeltz, the attorney from Barnes &
19 Thornburg?

20 A We did meet to prepare.

21 Q And are you asserting attorney-client privilege over
22 the content of your conversations related to this testimony?

23 A Yes.

24 MR. THOMPSON: No further questions.

25 THE COURT: Okay.

1 REDIRECT

2 BY MR. SCHMELTZ:

3 Q I'm a little concerned (indiscernible) he asked if you
4 had spent a considerable amount of time, and you said you'd
5 spent time. Well, to be clear on the record, was it a
6 considerable amount of time, or was it time?

7 A No, I wouldn't describe it as a considerable amount of
8 time.

9 Q Okay, thank you.

10 MR. SCHMELTZ: Thank you. No further questions.

11 MR. THOMPSON: Nothing further, Your Honor.

12 THE COURT: Okay. All right. Thank you, Mr.

13 Topping. You may step down.

14 MR. TOPPING: Thank you.

15 THE COURT: So it's 8:00. We're going to -- First
16 of all, I need to get a real assessment of how long you
17 think it's going to be, how long the rest of the case is
18 going to be, and then the various -- I need for you all to
19 tee up the various motions related to this, and I think
20 there's probably eight or nine. And tee them up, give me an
21 agenda, I'll go through them. To the extent I can rule on
22 them, I'll rule on them. If not, we'll do it. So once you
23 have a timeline as to how long you think it's going to take,
24 then get with Mr. Laws, and we'll get another continued date
25 for you.

1 And I don't know exactly when that's going to be.
2 We're coming up on the holidays. But in order to -- Ms.
3 Tomasco, I'm going to make the Debtor escrow the \$8.3
4 million as part of whatever it does at confirmation, so that
5 will take the time pressure off until I can rule.

6 MS. TOMASCO: I think that's perfectly fine, Your
7 Honor.

8 THE COURT: Okay. So I will enter an order for
9 you to escrow the amount, and subject to my further court
10 order.

11 MR. SCHMELTZ: We've already paid \$1.5 million of
12 that (indiscernible)

13 THE COURT: No, no, it was -- My understanding was
14 that it was the \$8.3 million. That's what the testimony
15 that you elicited today, that there was \$8.3 still owed.

16 MR. SCHMELTZ: So it's \$8.9 minus \$600 is \$8.3,
17 but then we paid \$950 on that.

18 THE COURT: Okay. Well, whatever hasn't been
19 paid, I want that escrowed in a separate account.

20 MS. TOMASCO: I'm sure Mr. Wolfshohl will provide
21 me with the number.

22 THE COURT: Okay. And then I'll enter an order to
23 that effect so that we have that money there until I can
24 rule on this. So -- all right?

25 MS. TOMASCO: Thank you.

1 THE COURT: Thank you all.

2 MR. THOMPSON: And I don't mean to suggest
3 anything by this question, but I think last week, Your Honor
4 might have suggested we'd be going tomorrow for travel
5 purposes (indiscernible)

6 THE COURT: Yeah, no, I can't go tomorrow. I said
7 we were going 'til tomorrow, but that was -- that went back
8 to my lawyer days. But -- no. But I mean, look, it
9 depends. If you need another half a day, then it's going to
10 take a while to be able to come back. And then, you know,
11 obviously, I'm going to need to rule. But I want to have
12 whatever the amount is that is owed escrowed in a separate
13 account for you all.

14 All right. We'll be in recess until tomorrow
15 morning. Thank you.

16 MR. WOLFSHOHL: Thank you, Your Honor.

17 COUNSEL: Judge Perez?

18 THE COURT: Yes?

19 COUNSEL: Would you like for us to get with Mr.
20 Laws about resetting the motion to compel that was scheduled
21 for today as well?

22 THE COURT: Oh, I totally forgot about that. Yes,
23 please do that. Yeah. (indiscernible)

24 COUNSEL: Absolutely. No problem.

25 THE COURT: You should have told me about that at

1 the beginning. I'm sorry.

2 COUNSEL: Oh, that's okay.

3 THE COURT: No (indiscernible)

4 MR. HURLEY: And Your Honor, Mitch Hurley with
5 Akin, again for the record. We also had made an emergency
6 motion for entry of a 502(d) order, which we had hoped to
7 have heard today. And if that order were entered, I think
8 it resolves at least one of the concerns that Mr. Potter had
9 raised.

10 THE COURT: Yeah -- okay. So the 502(d) order, I
11 don't think I need a hearing on that. Does anybody object
12 to that?

13 Okay, I'll enter that.

14 COUNSEL: No, we're unopposed to that.

15 THE COURT: Yeah, I'll enter that either later
16 today or first thing in the morning.

17 All right. Thank you.

18 MR. HURLEY: Thank you, Your Honor.

19 THE COURT: All right. And are you going to leave
20 the exhibits, these exhibits here?

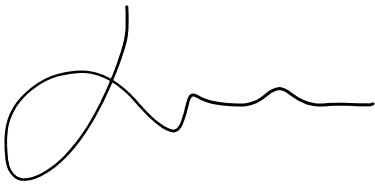
21 COUNSEL: Only if Your Honor wants us to. But I
22 think we can take them, and return with them.

23 THE COURT: Well, we can take them and return
24 them. We'll keep them.

25 (Proceedings adjourned.)

CERTIFICATION

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

A handwritten signature in black ink, appearing to read 'Lindsay Peacock'. The signature is fluid and cursive, with a large loop at the beginning and a wavy line extending to the right.

Lindsay Peacock

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

Date: November 6, 2025

EXHIBIT B

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 | Mobile: (312) 731-1980
Chicago, IL

**Barnes &
Thornburg**

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 | Mobile: (312) 731-1980
Chicago, IL

**Barnes &
Thornburg**

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

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

**Exhibit
01**

10/28/2025
Jonathan Cohn

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:14 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <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>
Sent: Monday, June 2, 2025 8:11:10 AM
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.

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
t 713.226.6695 e JWolfshohl@porterhedges.com
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From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:10 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <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>
Sent: Monday, June 2, 2025 7:57:34 AM
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'll call you then. I cell the best number?

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>
Sent: Monday, June 2, 2025 2:55 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

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

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



From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Sunday, June 1, 2025 5:23:37 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <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>
Sent: Sunday, June 1, 2025 5:10:13 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, 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> 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>
Sent: Sunday, June 1, 2025 9:02:39 AM
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 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
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From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Saturday, May 31, 2025 4:28 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <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>
Sent: Saturday, May 31, 2025 3:46:19 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, 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>
Sent: Saturday, May 31, 2025 9:51 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <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>
Sent: Thursday, May 29, 2025 4:33 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <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
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EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 24-90448
. Chapter 11
RHODIUM ENCORE LLC, et al. .
. 515 Rusk Street
. Houston, TX 77002
Debtors. .
. Wednesday, October 15, 2025
. 4:30 p.m.
.

TRANSCRIPT OF DOC# 1752 EMERGENCY MOTION CONDITIONALLY
APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B)
APPROVING THE SOLICITATION PROCEDURES AND SOLICITATION
PACKAGES, (C) SCHEDULING A COMBINED HEARING, (D) ESTABLISHING
PROCEDURES FOR OBJECTION TO THE PLAN AND FINAL APPROVAL OF THE
DISCLOSURE STATEMENT, (E) APPROVING THE FORM, MANNER, AND
SUFFICIENCY OF NOTICE OF THE COMBINED HEARING, AND (F) GRANTING
RELATED RELIEF;

DOC# 1776 EMERGENCY MOTION TO COMPEL DEPOSITIONS;
DOC# 1777 EMERGENCY MOTION TO CONTINUE HEARING ON THE SPECIAL
COMMITTEE'S OBJECTION;
DOC# 1779 EMERGENCY MOTION TO QUASH THE NOTICES OF DEPOSITION
OF PATRICIA B. TOMASCO
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Also Present:	John Cohn Will Thompson David Dunn Marcus Parrish



1 (Proceedings commence at 4:30 p.m.)

2 THE COURT: All right. Good afternoon. It is 4:30
3 on Wednesday, October 15, 2025. We're here on several matters
4 in Case Number 24-90448, Rhodium Encore. So why don't we get
5 appearances of counsel in -- first in the courtroom, and then
6 online, and then we can proceed?

7 MS. TOMASCO: Good afternoon, Your Honor. Patty
8 Tomasco, Lindsay Weber, Quinn Emanuel Urquhart & Sullivan on
9 behalf of the debtors.

10 MS. SCHULTZ: Good afternoon, Your Honor. Sarah
11 Schultz and Mitchell Hurley, Akin Gump Strauss Hauer & Feld on
12 behalf of the SAFE Ad Hoc Group, and I bet you didn't think you
13 were going to see a day with all of us sitting together over
14 there.

15 THE COURT: I still don't believe it.

16 MS. SCHMELTZ: It's not an optical illusion. Your
17 Honor, Trace Schmeltz and Ken Kansa for the Special Committee.

18 MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua
19 Wolfshohl for LKC, and I've also got Jon Cohn and Will Thompson
20 at counsel table with me as well.

21 MR. SHANNON: Good afternoon, Your Honor. RJ Shannon
22 on behalf of Nicholas Cerasuolo.

23 THE COURT: Thank you.

24 MR. PEREZ: Good afternoon, Your Honor. Alexander
25 Perez with Munsch Hardt Kopf & Harr on behalf of the Transcend



1 Group, and our co-counsel will also announce themselves.

2 THE COURT: Okay. Go ahead, Mr. Potter.

3 MR. POTTER: Yes, Your Honor. Chase Potter on behalf
4 of the Transcend Group.

5 THE COURT: Ms. Mates.

6 MS. MATES: Good afternoon, Your Honor. Rhonda Mates
7 for Imperium Investment Holdings, Chase Blackmon, Cameron
8 Blackmon, and Nathan Nichols.

9 THE COURT: All right. Mr. Allard.

10 MR. ALLARD: (Audio interference) for the Official
11 Committee of Unsecured Creditors.

12 THE COURT: Say that again. You cut out a little
13 bit.

14 MR. ALLARD: Sorry. Daniel Allard of McDermott, Will
15 & Schulte for the Official Committee of Unsecured Creditors.

16 THE COURT: All right. Thank you. All right. Does
17 anyone else wish to make an appearance?

18 All right. Go ahead, Ms. Tomasco.

19 MS. TOMASCO: I think we're going to amaze you even
20 further, Your Honor. We took to heart the Court's admonishment
21 to be transparent, and we also want to try to keep the process
22 as efficient as possible. And usually, that means I used to
23 think -- say that, you know, time is money in Chapter 11,
24 except sometimes it's not.

25 And in this case, what I think we have for the Court



1 that resolves both the motions to compel, the motions for --
2 the motions to quash, as well as the disclosure statement
3 hearing, the following proposal, and if I get it wrong, I have
4 plenty of paper graders in the courtroom that will tell me
5 where I've gotten it wrong.

6 We reached out to Mr. Laws and asked for some time on
7 the Court's docket for a two-week delay for the confirmation
8 hearing. Mr. Laws reached back out to us and gave us a time,
9 which I'm sure you're aware of, of December 3rd at 9:30.

10 What that allows us to do is, instead of Mr. Potter
11 feeling compelled to take ten depositions because he doesn't
12 know who knows what, is we're going to have a --

13 THE COURT: All right. I'm going to go ahead and
14 mute the line. So Mr. Potter and Ms. Mates, why don't you hit
15 "five star"?

16 AUTOMATED VOICE: Conference, muted.

17 THE COURT: Okay. Mr. Potter, do I have you? I know
18 I have Ms. Mates.

19 MR. POTTER: I believe so. Can you hear me?

20 THE COURT: I can hear you fine.

21 Okay. Go ahead, Ms. Tomasco.

22 MS. TOMASCO: Thank you, Your Honor. So a couple of
23 meet and confers, some really good collaborative thinking.

24 THE COURT: I was prepared to have a status
25 conference every morning at 8 so the children could get off to



1 school.

2 MS. TOMASCO: So the proposal is this: We are going
3 to circulate to Mr. Potter a redline of the revised disclosure
4 statement that addresses the information omissions that he
5 cited in his objection. We hope that that is sufficient for
6 his purposes. I will note that --

7 THE COURT: I have some comments also.

8 MS. TOMASCO: Okay. And thankfully I brought
9 Ms. Weber here who has the pen on the disclosure statement and
10 we'll be happy to take those down religiously.

11 THE COURT: These are mostly plan comments.

12 MS. TOMASCO: Okay. I understand, Your Honor. We're
13 here to help. We're here to get that done, to get everybody's
14 input. Mr. Potter is the only one that objected to the
15 disclosure statement. We're happy for him to grade what we've
16 done to address his concerns. We plan to get that redline to
17 him. And we were hoping to get a virtual-only hearing time on
18 Friday in the -- just -- you know, taking everybody's comments,
19 getting them processed.

20 THE COURT: Well, the main thing that I'm not going
21 to approve conditionally until I've had an opportunity to
22 review a fully vetted liquidation analysis. So I'm not
23 prepared to conditionally approve.

24 MS. TOMASCO: I wholeheartedly agree with Your Honor.

25 And --



1 THE COURT: I'm not going to allow it to go out on
2 the -- so you tell me when you have it and then we'll have the
3 hearing two days, you know, 48 hours after that.

4 MS. TOMASCO: I understand. So that will not allow
5 us to have, I believe, a hearing on Friday, but I will let the
6 parties opine on that. There's one circulated. It just hasn't
7 been approved by all of the planned proponents.

8 THE COURT: And there's going to be a fair amount of
9 high and low recoveries, obviously, because we still have
10 various pending items.

11 MS. TOMASCO: Correct. Correct. And I understand,
12 Your Honor. And it is my feeling as well. I've never sent out
13 a disclosure statement without a liquidation analysis. And it
14 is -- I don't know how one actually does that in a conditional
15 approval anyway.

16 THE COURT: Especially in a liquidating plan.

17 MS. TOMASCO: Correct. I understand. And so I'm 100
18 percent with the Court on that front.

19 So to sort of -- the way in which giving us more time
20 should save us money is that we've agreed with respect to the
21 depositions to do corporate representatives of the plan
22 proponents, being the debtors, the special committee, the SAFE,
23 AHG, and Imperium. If those 30(b)(6) depositions do not prove
24 fruitful enough for Mr. Potter, we would like a hearing
25 sometime after November 6th, which is the date that one of the



1 deponents would be earliest available.

2 So you see how this is all fitting together. And so
3 we would like an interim hearing on discovery sometime that
4 week of the 1st or 2nd -- sometime after the November 6th.

5 THE COURT: Got it. If you think that November 7th,
6 Mr. Potter, is, and everybody else, if you think that's
7 sufficient time, November 7th, no?

8 MR. HURLEY: I think actually, Your Honor, it
9 probably has to be a little bit after that.

10 THE COURT: Okay.

11 MR. HURLEY: Sorry, Mitch Hurley, for the record.
12 And I think that's because at least one of the 30(b)(6)
13 witnesses is not available until the following week, and we
14 want to have the conference after the 30(b)(6) witnesses are
15 finished.

16 THE COURT: Got it. Okay. So when would it be? I
17 mean --

18 MS. TOMASCO: Friday the 13th -- 14th.

19 THE COURT: Okay. We could do Friday the 14th. It
20 would be virtual.

21 MS. TOMASCO: No, virtual is also preferred for cost
22 savings, Your Honor.

23 THE COURT: Yeah. No, no. Yes.

24 MS. TOMASCO: Okay. And with those -- that basic
25 plan, we're happy to take anybody's additional comments, the



1 Court's or anybody else's, to how we can improve the disclosure
2 statement.

3 THE COURT: Okay. All right. Does anybody else wish
4 to be heard on the disclosure statement?

5 MS. TOMASCO: Oh, I'm told that we can have a hearing
6 on Monday, which, as you know, is my vacation. But if it's
7 virtual, I will have palm trees in the background.

8 THE COURT: No, no.

9 MR. ALLARD: On the disclosure statement.

10 MS. TOMASCO: On --

11 THE COURT: So when is the -- so --

12 MR. ALLARD: We're going to file the disclosure
13 statement, like, this week.

14 THE COURT: No, no. The liquidation analysis.

15 MR. ALLARD: Pardon me. The liquidation analysis
16 imminently. It -- within -- tomorrow morning, probably? Or
17 tomorrow by COB.

18 MS. TOMASCO: Tomorrow by close of business, which
19 gives us Monday for -- unfortunately. But --

20 THE COURT: Oh, I'm in the wrong day, the 20th. So
21 Monday, I have a confirmation hearing that is contested that
22 starts at 9. So we could do it at eight o'clock, or we could
23 do it at 3:30. Or 3. You could --

24 MS. TOMASCO: 3 would -- I think 3 works, Your Honor.

25 THE COURT: 3?



1 MS. TOMASCO: Yeah.

2 THE COURT: Okay. So let's do Monday at 3.

3 MS. TOMASCO: Virtual only?

4 THE COURT: As virtual only.

5 MS. TOMASCO: Thank you.

6 THE COURT: And if my confirmation hearing goes long,
7 I'll call it, and we may need to push it back a little bit.

8 MS. TOMASCO: I understand, Your Honor. Thank you.

9 MR. POTTER: Your Honor, did you say Monday, October
10 20th at 3 p.m.?

11 THE COURT: Yes, sir. At 3 p.m. Yes, sir.

12 MR. POTTER: Thank you.

13 THE COURT: All right. So just in terms of my
14 comments. So obviously, you're going to rework the schedule
15 backing back off from the new hearing date on the plan.

16 MS. TOMASCO: Correct.

17 THE COURT: All right. So my biggest concern about
18 the plan is that it kind of backdoor gives the debtor a
19 discharge with the third-party releases. So the scope of the
20 third-party release should only be the covered claims. So with
21 respect to anything that is, you know, subject to a third-party
22 release, it has to be a covered claim, which is the claims that
23 arise, you know, in connection with filing the plan, the -- and
24 anything that happened post-petition pre-effective date.

25 And with respect to everything else, you know, the



1 debtor can provide a release, or there could be, you know,
2 mutual releases exchanged where people sign. But in terms of
3 the third-party release in the plan, it's only -- I think the
4 scope has to be only the covered claims. So that's it.

5 And I like your definition of covered claims, but I
6 didn't see where it was exactly used. Because usually you
7 would see that in the excluded -- in the, I'm sorry, exculpated
8 parties, but it wasn't in the exculpated parties.

9 MS. TOMASCO: I think what you're referring to is
10 something similar that we had in the consplan?

11 THE COURT: Exactly.

12 MS. TOMASCO: Okay. I got it.

13 THE COURT: It's a liquidating plan. Yeah.

14 MS. TOMASCO: All right.

15 THE COURT: It's a liquidating plan. So it's exactly
16 the same. So as it relates to -- even if you vote to accept
17 the plan, I think you can opt out. And that's not in there
18 right now. So, you know, obviously C has to be limited to the
19 covered claims. You have to make sure that the scope of the
20 injunction is limited to the claims that are released by the
21 releasing parties. I think the scope of your injunction gives
22 you kind of a backdoor discharge. So -- and that's in a couple
23 of places, 11.1 and in the injunction.

24 Yeah, and then the exculpation talks about being
25 exculpated from preference, fraudulent conveyance, fraudulent



1 transfer claims, and all of that. I mean, that's not -- I
2 mean, the exculpation is limited to acts that happen within the
3 bankruptcy for those three parties and not for related parties.
4 You don't get -- related parties don't get exculpated. Just
5 the debtor, the Committee, its members and the two independent
6 directors. That's the only people getting exculpated.

7 MS. TOMASCO: What about counsel?

8 THE COURT: Counsel doesn't get exculpated. There's
9 a release, but there's no exculpation.

10 MS. TOMASCO: Okay.

11 THE COURT: Okay. Covered claims. All right. I
12 also had a question about employee arrangements. That's
13 more -- that's my only really disclosure issue.

14 I just, obviously that's going to have to be
15 reflected in a line item in the liquidation analysis where all
16 of these monies are coming out, you know, the substantial
17 contribution fee and all of that. I mean, all that's going to
18 have to be detailed in the liquidation analysis.

19 MS. TOMASCO: It is, Your Honor. It's been in there
20 for a long time.

21 THE COURT: Okay. All right. And let me see. Okay.
22 On the definition of released parties in 1.96, as it relates to
23 related parties, only to the extent that they would be liable
24 derivatively of the released parties. So if I'm a related
25 party that would be liable derivatively, then that would be --



1 if there's independent liability, we're not releasing that.

2 And as it relates to the releasing parties, only if the
3 releasing party would be compelled by principals of agency to
4 issue a release.

5 And then -- so here in your definition of releasing
6 parties, you have the debtors related parties, including
7 Imperium and the founders. There's a separate provision in the
8 treatment which says that they're going to opt in, that they're
9 not going to opt out. So I don't -- I'm not quite sure,
10 because you don't otherwise -- releasing parties does not
11 include related parties other than for the debtors. Was that
12 intentional? Because it's like there twice.

13 MS. TOMASCO: Like, it's probably -- I didn't -- that
14 as not -- that's not in my bailiwick because I'm --

15 THE COURT: Yeah.

16 MS. TOMASCO: -- I didn't do that part. I didn't
17 negotiate that part. But my imagination is that that was just
18 belt and suspenders duplicative.

19 THE COURT: Okay. Well, I think he -- I mean, I
20 think -- I don't think this is necessary if you already have it
21 in the plan otherwise. So take a look at that. So those are
22 my comments to the plan.

23 MS. TOMASCO: We will incorporate those changes, Your
24 Honor.

25 THE COURT: Okay. Thank you. All right. So that



1 just then leaves the setting on the -- and the discovery
2 related to the LKC fees. Is there anything else related to the
3 plan?

4 MS. TOMASCO: Nothing else related to the plan.
5 Nothing else related to the motions to compel or to quash. And
6 I'll ask Mr. Potter to confirm.

7 MR. POTTER: The one thing I would mention, Your
8 Honor, and we talked about it in our meet and confer, while we
9 agreed to begin with the 30(b)(6) depositions, I could
10 envision, and we're going to endeavor to give corporate -- you
11 know, we just made this agreement today. And so we're shifting
12 to 30(b)(6) depositions. And so we obviously need to provide
13 topics.

14 I'm endeavoring to do that by tomorrow to all the
15 entities that will be deposed. But I could see -- and I know
16 we're trying to move quickly so I could foresee some objections
17 to topics potentially. I know you wouldn't expect objections
18 or any fights in this case at all. So I'm sure it'll go
19 smoothly.

20 But in the event that that happens, I could foresee
21 needing to maybe get in front of you quickly next week. But I
22 just wanted to -- I don't know that we need necessarily a
23 setting, but I wanted to forewarn you on that.

24 THE COURT: I was prepared to have hearings every
25 morning at eight o'clock --



1 MR. POTTER: Okay.

2 THE COURT: -- to get this through, so.

3 MR. POTTER: Very good.

4 THE COURT: So don't. All right. So then --

5 MR. POTTER: But that's all for me, Your Honor.

6 THE COURT: All right. Thank you. All right. So
7 then we have the emergency motion to continue the hearing on
8 the Special Committee's objection.

9 Go ahead, Mr. Schmeltz.

10 MS. SCHMELTZ: Thank you, Your Honor. Trace Schmeltz
11 for the Special Committee. Your Honor, we took your words to
12 heart and paid. There's \$600,000 under the agreement that's
13 unequivocally due. We looked at time invoices, and we found
14 about another \$165,000 we thought unequivocally we should pay.
15 We've wired that amount. I've confirmed LKC has received that
16 wire.

17 We are very close to being able to either resolve or
18 file a motion on the Riot Whinstone allocation question. I'd
19 anticipate that Riot Whinstone allocation question motion can
20 get resolved relatively quickly. And that helps set the stage,
21 we believe, for a conversation around fees.

22 We are doing a couple of things at once. One, LKC
23 has already provided discovery to the Special Committee and
24 we've sent discovery back. So we're pursuing that litigation
25 track. Two, we're trying to resolve this issue short of



1 litigation, and we'll continue to do that.

2 We do have -- I think we will -- we would like that
3 hearing to occur later, given the confluence of plan discovery
4 and LKC discovery for our team all at once. We do have -- we
5 did receive a deposition notice for Chase Blackmon that's set
6 to occur tomorrow. I just got that notice last week. We've
7 noted that we would not have Chase Blackmon there. I think
8 LKC's view is they properly noticed that. I'll let, obviously,
9 them speak for themselves. We thought that was awfully tight,
10 and it was not sufficient notice.

11 We'd like this whole thing phased out a little bit
12 and now with the plan, you know, confirmation moved to December
13 3rd, I think we put, like, November 17 or something on our
14 request. I'd love to see that even a little later if we can.
15 But I'm mindful we have Thanksgiving and other things going on.

16 So we would be prepared to handle discovery in the
17 month of November with LKC and would like to do it that way. I
18 know they have some alternative views and I don't want to get
19 in Mr. Wolfshohl's way in that regard.

20 MR. THOMPSON: May it please the Court. Thank you,
21 Your Honor. Will Thompson from Lehotsky Keller Cohn. Good to
22 see you again.

23 Mr. Schmeltz just alluded to the possibility of a
24 deal. Deals are great if we can move toward one. In my
25 experience, deals do not happen when everyone gets endless



1 extensions and deadlines are just pushed out and we can deal
2 with other things in the meantime.

3 So I think it might help to talk a little bit about
4 the timeline here. This settlement was approved by this Court
5 back in April, more than six months ago.

6 THE COURT: I'm aware of the timeline.

7 MR. THOMPSON: Got it.

8 THE COURT: And I want to get this resolved quickly.
9 So I would -- I'm really not inclined to move the hearing. But
10 in deference to Mr. Schmeltz, I'll move it a week. But
11 otherwise, it's going to go that next week. So I will tell you
12 exactly when it's going. We're going to have -- we're going to
13 start on Tuesday, November 4th at 2 p.m.

14 MR. THOMPSON: Thank you.

15 THE COURT: And have the hearing then.

16 MR. THOMPSON: Thank you, Your Honor. Appreciate
17 that guidance.

18 THE COURT: Okay. And then to the extent that you
19 need any -- I mean, if there's continuing, and now that you
20 know -- and the hearing's not going to move, so we'll have that
21 hearing. And so to the extent that there's additional issues
22 relating to discovery that can't be resolved now that you know
23 the date, I'm happy to take that up on a further status
24 conference.

25 MS. SCHMELTZ: I will note that we're not going to



1 have Mr. Blackmon available tomorrow for a deposition. And if
2 the effort is then to impose costs on the estate, because the
3 feeling was it was properly noticed, I'd ask for relief from
4 that. -- or that -- so.

5 THE COURT: Let them file the motion first if they're
6 going to do that.

7 MS. SCHMELTZ: Fair enough. Thank you, Your Honor.

8 MR. THOMPSON: Thank you, Your Honor. Just for
9 context, you know, we have provided documents to the other
10 side. We've not received any documents in response. We've
11 tried discovery through a number of different procedures and
12 efforts here.

13 THE COURT: If they don't provide discovery, then
14 they won't be able to introduce any evidence.

15 MR. THOMPSON: And that's exactly what I'm looking
16 for, Your Honor.

17 THE COURT: All right. I mean --

18 MR. THOMPSON: I'm --

19 THE COURT: -- that's --

20 MR. THOMPSON: Yeah.

21 THE COURT: -- that's -- you know, it's got to work
22 both ways.

23 MR. THOMPSON: I'm with Your Honor 100 percent. All
24 we want to avoid is --

25 THE COURT: You know, we know the date that this is



1 moving forward. I expect all parties to provide, you know,
2 full discovery. And to the extent somebody thinks somebody's
3 being unreasonable, I'll call balls and strikes. But
4 otherwise, I believe in, you know, we're going to try it on the
5 merits. And to the extent people aren't trying it on the
6 merits, then they don't get to introduce their evidence.

7 MR. THOMPSON: I appreciate, Your Honor. I don't
8 want to take up more of your time. I do have one question
9 about this wire transfer.

10 I believe Mr. Schmeltz was correct. There was a wire
11 transfer. I saw a copy of it. I'm not a bankruptcy lawyer,
12 Your Honor knows. My understanding is there's usually a court
13 order before the money changes hands. And we're not touching
14 the money until we know what we're supposed to do on that.

15 THE COURT: So, Mr. Schmeltz, I mean, I don't know.
16 There's no court order approving the fees.

17 MR. SCHMELTZ: Your Honor, I think your comment and
18 your inclination was that there was an undisputed amount. We
19 should --

20 THE COURT: Right.

21 MR. SCHMELTZ: -- pay it, and then you would move the
22 hearing.

23 THE COURT: Right. But I actually thought the
24 undisputed amount would include part of the contingent fee, not
25 just the \$600,000. I was a little surprised that it was only



1 that amount. You know, I was -- and I'm -- you know, I was
2 actually very surprised that it only included the \$600,000 plus
3 some, you know, other small amount. So, you know, just send an
4 order approving that, and I'll enter it tomorrow. And then
5 that way, we have it covered.

6 MR. SCHMELTZ: Thank you.

7 MR. THOMPSON: Thank you, Your Honor. We appreciate
8 it.

9 MS. SCHMELTZ: I will -- well, if there's a dispute
10 about the discovery, we'll dispute that at the time. I
11 don't --

12 THE COURT: Yeah. Understand. No, no, you're --

13 MR. SCHMELTZ: -- agree necessarily with the
14 characterization.

15 THE COURT: Right. Yep.

16 MR. SCHMELTZ: I don't want you to think my silence
17 was a rollover on that.

18 THE COURT: Yep. Got it. Got it.

19 MR. SCHMELTZ: Thank you.

20 MR. THOMPSON: Thank you, Your Honor.

21 THE COURT: All right. All right. Is there anything
22 else we can do today?

23 Mr. Shannon, you've been uncharacteristically quiet.
24 What -- are you not feeling well?

25 MR. SHANNON: No, Your Honor. I'm happy that we've



1 been able to work through these things, so.

2 THE COURT: Okay. Thank you very much. All right.
3 We're in recess to my five o'clock hearing.

4 MR. WOLFSHOHL: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MS. TOMASCO: Thank you, Your Honor.

7 THE COURT: You may be excused.

8 MR. POTTER: Thank you, Judge.

9 THE COURT: Thank you.

10 (Proceedings concluded at 4:56 p.m.)

11 * * * * *

12

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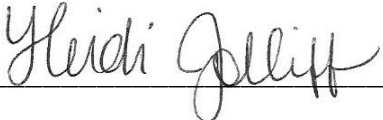
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15 C E R T I F I C A T I O N

16

17 I, Heidi Jolliff, court-approved transcriber, hereby
18 certify that the foregoing is a correct transcript from the
19 official electronic sound recording of the proceedings in the
20 above-entitled matter.

21

22 
23 _____

24 HEIDI JOLLIFF, AAERT NO. 2850 DATE: October 17, 2025

25 ACCESS TRANSCRIPTS, LLC



EXHIBIT D

From: Jon Cohn <jon@lkcfirm.com>
Sent: Wednesday, November 26, 2025 5:10:56 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Will Thompson <will@lkcfirm.com>; Hurley, Mitchell <mhurley@akingump.com>; Chase Potter <potter@imcplaw.com>
Subject: [EXTERNAL] Re: Rhodium

Caution: This email originated from outside the Firm.

Trace: Will informed me that, earlier today, the SAFE AHG and the Transcend Group directed you to terminate all settlement discussions with us because they no longer like where the negotiations are headed and they want to move backwards.

To recap the past week:

- After months of refusing to negotiate at all, the Special Committee offered \$7.1M to settle the fee dispute—far in excess of the Special Committees’ prior lowball offer of \$3.8 million. The \$7.1 million offer confirms the Special Committee’s prior bad-faith negotiating tactics, which created unnecessary litigation and depleted the estate while enriching Barnes & Thornburg.
- We countered with \$8.4 million on the success fee and made clear that the Special Committee must pay the hourly fees and expenses of LKC and Porter Hedges, none of which should ever have been in dispute.
- The Special Committee countered with \$7.4 million for the success fee and agreed to pay the hourly fees and expenses of LKC and Porter Hedges. Although the Special Committee's number was still unacceptable, we were pleased to see that the Special Committee *finally* was engaging in good-faith negotiations.
- We countered with \$8.25 million for the success fee, plus the now-undisputed hourly fees and expenses of LKC and Porter Hedges.
- But, instead of accepting our offer (which is \$650,000 less than the conservative amount in the fee application) or even providing us with a good-faith counter, you informed Will today that you will no longer negotiate—despite the contractual obligation to do so—because the SAFE AHG and the Transcend Group want to move backwards, offering a lower amount than what you offered before. You further stated that these third parties would take over negotiations (though they have been silent since then).

The implications of this are clear:

- First, trial will resume on December 3. I have cc’d the SAFE AHG and the Transcend Group to confirm that we absolutely oppose their request for a continuance.
- Second, the Special Committee has (again) breached the LKC retention agreement by refusing to negotiate in good faith. We will present this evidence to the Court, as you have already opened the door to disclosing settlement communications.
- Third, the SAFE AHG and the Transcend Group have tortiously interfered with that agreement.
- Fourth, the Debtors have violated their ongoing discovery obligations. As you may remember, LKC's discovery requests include all communications between the Debtors and third parties. Judge Perez has already ordered you to comply with that request, but you have produced nothing. Please comply immediately. The SAFE AHG should as well.

Best regards,
Jon

Cc: Mitch Hurley, Chase Potter

EXHIBIT E

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.

Trace Schmeltz | Partner

Barnes & Thornburg LLP

One North Wacker Drive Suite 4400, Chicago, IL 60606

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

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EXHIBIT F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:

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5 Houston, TX 77002
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7 For Creditor Nicholas R.J. SHANNON
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1 HOUSTON, TEXAS; WEDNESDAY, DECEMBER 3, 2025; 9:30 a.m.

2 (Call to Order)

3 THE COURT: It is Wednesday, December 3rd, 2025.

4 We are here for the 9:30 docket, Case Number 24-9044,
5 Rhodium Encore. There are various matters that are set. So
6 Ms. Tomasco, why don't you start us off. Make an appearance
7 and we'll get the appearances of counsel in the courtroom
8 and then online.

9 MS. TOMASCO: Thank you, Your Honor. Just making
10 sure the Court saw the amended agenda uploaded at Docket
11 Number 2107.

12 THE COURT: Yes. The one that -- yeah, I did.

13 MS. TOMASCO: Thank you, Your Honor. Patty
14 Tomasco. I'm here with my colleague, Razmiz Izakelian.
15 Quinn Emanuel Urquhart & Sullivan. I will let the other law
16 firms at my table make their own introductions. Thank you.

17 THE COURT: Thank you.

18 MS. TOMASCO: On behalf of the Debtors.

19 MR. SCHMELTZ: Your Honor, Vincent Schmeltz, and
20 Ken Kansa from Barnes & Thornburg on behalf of the Special
21 Committee of the Board of Rhodium.

22 THE COURT: Good morning.

23 MS. SCHULTZ: Good morning, Your Honor. Sarah
24 Schultz and Mitchell Hurley, Akin Gump, on behalf of the
25 SAFE Ad Hoc Group.

1 THE COURT: Good morning.

2 MS. FUNK: Good morning, Your Honor. Brenda Funk
3 and Chase Potter for the Transcend Group.

4 THE COURT: Good morning.

5 MR. WOLFSHOHL: Good morning, Your Honor. Joshua
6 Wolfshohl on behalf of Lehotsky Kellen Cohn.

7 THE COURT: Good morning.

8 MR. NGUYEN: Good morning, Your Honor. Ha Nguyen
9 for the U.S. Trustee.

10 MR. SHANNON: Good morning, Your Honor. R.J.
11 Shannon on behalf of Nicholas Cerasuolo.

12 THE COURT: All right. Who do we have on the
13 phone?

14 MS. CHIARELLO: Good morning, Your Honor.
15 Annemarie Chiarello of Winstead PC here on behalf of Caleb
16 VanZoeren.

17 THE COURT: Good morning.

18 MR. ALLARD: Nathaniel Allard of McDermott Will &
19 Schulte for the Official Committee of Unsecured Creditors.

20 THE COURT: Good morning.

21 MS. MATES: Rhonda Mates for Imperium Investment
22 Holdings, Chase Blackmon, Cameron Blackmon, and Nathan
23 Nichols.

24 THE COURT: Good morning. All right. All right.
25 I'm going to go ahead and mute the lines. And hit five-star

1 if you wish to speak.

2 Whoever is at the 205 area code, that's what's
3 giving us the background noise.

4 MR. CAMARA: Are you able to hear me? This is
5 Justin Camara, Your Honor, appearing pro se. I hold
6 indirect equity interest through Trine Mining, Cross the
7 River, and Elysium Mining, which old equity in Rhodium
8 Enterprises Incorporated.

9 THE COURT: Okay. I can hear. Keep your phone on
10 mute because I was getting the feedback from your line.

11 MR. CAMARA: Sorry, sir.

12 THE COURT: No problem. All right, Ms. Tomasco.

13 MS. TOMASCO: Thank you, Your Honor. the order on
14 the agenda, I hope the Court agrees with it. The parties,
15 the plan proponents agree with this order. And if I could
16 just -- because we need to address the mediation
17 confidentiality stipulation before we can proceed to the
18 case in chief on confirmation. We wanted to take that up
19 first.

20 THE COURT: Okay.

21 MS. TOMASCO: Your Honor, as you know, the agreed
22 mediation order that appears at Docket Number 966 has pretty
23 onerous confidentiality terms. Can't use anything that you
24 learned in mediation, can't use any of the events at
25 mediation. That's consistent with the Court's complex case

1 rules and the mediation procedures.

2 The parties to the mediation want to use some of
3 the things that happened at that mediation, the Whinstone
4 mediation back in February of 2025 in support of in
5 particular the contribution claim made by the SAFE Ad Hoc
6 Group. They were a participant in the mediation as were the
7 Debtors, the Unsecured Creditors' Committee and Whinstone.

8 As you'll recall, in connection with the LKC
9 matter, some mediation materials were used, notwithstanding
10 the fact that they were designated mediation privileged.
11 And so there has been some precedent already in the case for
12 using some of the information from the Whinstone mediation
13 because of the issues with allocation of the proceeds of
14 that settlement. This would just be a stipulation that
15 evidence adduced that is mediation privilege would be done
16 in a sealed manner just like all of the other sealed
17 documents that we've been dealing with in the LKC
18 litigation. We would do that here for the confirmation
19 hearing for that limited purpose.

20 It could be, Your Honor, that you say I don't need
21 to hear any of that. And that's an option. But to the
22 extent that we are going to get into mediation-privileged
23 documents, I think it's important that we follow the
24 stipulation which essentially just says it's going to be
25 submitted under seal. No one has filed an objection to this

1 stipulation. Three out of the four mediation parties are
2 before you today. And we all agree that this is evidence
3 that comes in in support of the role played by the SAFE AHG
4 in connection with the Whinstone settlement. And that's it.
5 And we --

6 THE COURT: Did you ask for Whinstone's consent?

7 MS. TOMASCO: We did not, no.

8 THE COURT: Okay.

9 MS. TOMASCO: But we had very productive
10 conversations with them, but no, we did not ask their
11 consent with respect to this.

12 THE COURT: All right. Well, I would like to hear
13 from them on that issue.

14 MS. TOMASCO: Okay. All right, Your Honor. I
15 will reach out to them and perhaps we can move forward with
16 confirmation and in the interim get some consent from them.
17 I haven't looked at --

18 THE COURT: Mr. Hurley?

19 MR. HURLEY: Could I address the Court very
20 briefly?

21 THE COURT: Go ahead.

22 MR. HURLEY: Thank you, Your Honor. For the
23 record, Mitch Hurley with Akin on behalf of the SAFE AHG.

24 Your Honor, I really don't have anything to add to
25 what Ms. Tomasco said excerpt I'd like to cite a couple of

1 cases, Your Honor, in case it's helpful.

2 THE COURT: All right.

3 MR. HURLEY: So the mediation confidentiality or
4 mediation privilege is obviously very important, but it's
5 not absolute. It's a qualified kind of privilege. This is
6 a concept that's been recognized pretty uniformly by the
7 cases. And I want to cite to two cases -- I have copies of
8 them if that would be helpful, I could hand them up -- that
9 recognize exactly that principle.

10 So the first one I'm going to cite, Your Honor, is
11 from the Northern District of Texas. It is FDIC v. White,
12 53 F.R.D. 560. And that is Northern District of Texas 1999.
13 That case is a little bit different than our facts because
14 that was a case where there was a mediation and one of the
15 mediation parties in a later proceeding wanted to argue
16 based on communications in the mediation that a settlement
17 that emerged from the mediation was produced by coercion.
18 So that's a little different than our case, but it
19 recognizes the main principle, which is that it's a
20 qualified privilege. The judge did allow that material in
21 connection with asserting the defense.

22 The other case I want to cite I think is a little
23 more apposite to our facts. It's very recent. It is 2025
24 WL 1312393. The name of the case is In re Wells Fargo. And
25 that's February 3rd, 2025. This is a case that, again,

1 recognizes the general principle that mediation privilege is
2 very important mostly to encourage candor among the
3 substantive parties to the mediation but can -- there are
4 circumstances where it's not absolute it's qualified and you
5 can use material from the mediation if the circumstances
6 warrant.

7 And the Wells Fargo case is somewhat similar to
8 what we have here in that a mediation had produced a
9 settlement of a class action. The settlement was a
10 resolution amongst the actual substantive parties to the
11 case. It actually included an agreement that 25 percent of
12 the proceeds of the award was going to be provided to the
13 Plaintiff's lawyers. It did not allocate the 25 percent
14 between plaintiff law firms.

15 The plaintiff -- one of the plaintiff law firms in
16 a subsequent fee dispute argued based on its contribution at
17 the mediation effectively that it should have a larger share
18 of the 25 percent than law firm number two believed it
19 should have.

20 Law firm number two objected, I think moved to
21 strike, and the court overruled the motion and heard the
22 evidence about what happened in the mediation in connection
23 with the fee dispute and held, you know, very specifically
24 that again the purpose of mediation confidentiality is to
25 encourage candor between the parties. And when a party

1 wants to offer that kind of information at a hearing, the
2 court engages in a balancing test where you weigh the
3 importance of the information against the harm that would be
4 caused if the information were admitted. And the court
5 noted that the evidence was directly relevant to the
6 question of who deserved what for the 25 percent of the
7 fees, so it was very important. And then evaluated what the
8 harm would be if it were allowed and observe that the actual
9 parties to the dispute had already settled. They were at
10 peace with one another. And that allowing evidence of
11 communications in the mediation that involved solely a fee
12 dispute wasn't even of enough significance to the
13 substantive parties that it could any way be viewed as
14 discouraging candor and so allowed admission of that
15 material. And we think we're in a very similar situation
16 here in terms of the importance of the information, Your
17 Honor.

18 The SAFE AHG, as you know from reading the papers,
19 and the plan proponents general submit that the SAFE AHG
20 engaged in many activities that qualify under 503(b) as
21 substantial contribution.

22 This particular aspect of it we do think is quite
23 important. It's a piece of a larger substantial
24 contribution puzzle, if you will, but we think it's an
25 important piece.

1 So in particular the Whinstone transaction is the
2 transaction that effectively enabled everything that came
3 after. It created the proceeds, the cash, that frankly
4 everyone has been fighting about since the Whinstone
5 transaction was agreed to.

6 Obviously, it's going to pay if the plan is
7 confirmed a very substantial part of the SAFE AHG, the SAFE
8 parties' claims. It's also going to make value available
9 for parties junior to the SAFE claimants. And it is what
10 has paid everybody else too, Your Honor, including the
11 claimants that were senior to the SAFE AHG. So it's a
12 really important inflection point in the case. We think
13 critically important to the success of the cases. And
14 having evidence of our involvement in helping make that
15 happen we think is again an important part of the puzzle.

16 Already on the record I think you have
17 acknowledgement that the mediation effectively produced the
18 Whinstone transaction. When Debtors announced the
19 transaction, they thanked Judge Mullin for getting us most
20 of the way there at the February 19 mediation. That was the
21 only day that we all met with the judge.

22 What's not on the record is the detail that
23 identifies what at SAFE AHG did. And that's --

24 THE COURT: Here's my only concern.

25 MR. HURLEY: Sure.

1 THE COURT: I don't think -- I'm a little
2 reluctant, especially without Whinstone's consent, to get
3 into who shot who at the mediation.

4 MR. HURLEY: Understood.

5 THE COURT: I don't -- I have not heard anyone
6 object and say that you didn't make a substantial
7 contribution. So do we have a real dispute? So that's my
8 concern.

9 MR. HURLEY: Understood. I thought it was
10 possible Your Honor might look at it that way.

11 THE COURT: Yeah.

12 MR. HURLEY: And I think I've said enough --

13 THE COURT: Because I don't view this as a fee
14 dispute. I view this, you know, more as did you meet the
15 requirements. And we're going to hear evidence on whether
16 you meet the requirements, but do I need to get into the
17 specifics of what was said and who said it and all of that?

18 MR. HURLEY: Understood. And I'll yield the
19 podium. I'll only say I guess that to the extent Your Honor
20 at any point concludes that you do need to get into that, we
21 would submit that you can. And I would note that we put the
22 stipulation on the docket some days ago. We haven't heard
23 anything from Whinstone. Maybe they're here today and maybe
24 they'll speak up. I don't know. But with that, I'll yield
25 the podium. Thank you, Your Honor.

1 THE COURT: All right.

2 MR. CAMARA: Your Honor?

3 THE COURT: Yes.

4 MR. CAMARA: Justin Camara, pro se.

5 THE COURT: Yes, sir.

6 MR. CAMARA: Permission to speak?

7 THE COURT: Yes.

8 MR. CAMARA: I'm not sure -- I need my camera
9 here. Not a hundred percent sure if this is the right time
10 to say this, but I filed a motion for late -- for leave to
11 file a late objection and I also filed an objection to
12 confirmation yesterday by FedEx with delivery to the clerk's
13 office confirmed. I do have the FedEx notification.

14 THE COURT: All right.

15 MR. CAMARA: And I can send PDFs to anybody.

16 THE COURT: Yeah, it hasn't gotten on the docket.
17 What is your objection?

18 MR. CAMARA: Focuses on two issues. First is the
19 nondisclosure of the Special Committee's pre-mediation
20 investigation and the second is the lack of proper
21 disclosure and Rule 9019 review of Transcend's settlement
22 terms.

23 THE COURT: Okay. Well, they're going to have to
24 -- you know, they're going to have to prove that up just as
25 they would have to prove everything up. So I'll look for

1 your objection if it gets filed during the course of the
2 day. But you'll have an opportunity to bring that up at the
3 appropriate time.

4 MR. CAMARA: Thank you, sir.

5 MR. HURLEY: Your Honor, just for the record, I do
6 think it hit the docket while we were sitting here. It's at
7 2108.

8 THE COURT: Okay. I'm up to 2107. So hold on.

9 For some reason I don't have it yet. Kind of
10 weird.

11 MR. TOMASCO: I can email it to Mr. Laws if you'd
12 like.

13 THE COURT: Oh, okay. Got it. It is on the
14 docket. It's just not in numerical order.

15 Okay, I've read your objection, Mr. Camara. So
16 we'll just consider it in the ordinary course during the
17 hearing. All right. Thank you, sir.

18 MR. CAMARA: Thank you, sir.

19 THE COURT: All right. Mr. Wolfshohl?

20 MR. WOLFSHOHL: Your Honor, on the stipulation
21 that we were just talking about, I think I'm equally
22 confused maybe as to the purpose of it. The concern -- I
23 have a couple of concerns.

24 One, it's being presented as being necessary to
25 elicit evidence related or supportive of the substantial

1 contribution claim and that it's going to get into things
2 that happened in mediation. My concern is we're here in a
3 confirmation hearing. I don't want anything that gets
4 presented to have any kind of impact on the pending dispute
5 that we have regarding the LKC fees. As you know, some of
6 that dispute center around what happened at mediation
7 because you're trying to do an allocation of claims. I
8 don't want some sort of back door attempt at getting
9 evidence in. I mean, frankly Your Honor is the trier of
10 fact in both cases. But I don't think there's going to be -
11 - I am not aware if there had been disclosed any evidence
12 that would relate to what happened at mediation. Mr. Hurley
13 and his client are not testifying in the fee hearing. And
14 so what I don't want is a bunch of evidence to come out
15 during this hearing that somehow taints the Court's judgment
16 of what's happening in the fee hearing.

17 And so given that we don't really have any kind of
18 visibility into what it is that they're really trying to do
19 here and I don't really understand why it's necessary,
20 that's the concern that I have. And so I just want to make
21 it very clear that we would certainly oppose any kind of
22 evidence that has any kind of impact on what's going to be -
23 - I know Your Honor started the hearing. We're going to
24 finish the hearing hopefully this afternoon. I don't think
25 it should have any impact on that. And that's the position

1 that I -- hopefully Your Honor agrees with that. And I
2 think with that we don't really have an objection to what
3 they're asking for. I just don't want it to bleed into
4 information that is relevant to the fee hearing and have any
5 kind of impact on that.

6 THE COURT: Okay. Thank you. Mr. Hurley?

7 MR. HURLEY: Thank you, Your Honor. Just to
8 clarify. We tried to clear this in the stipulation. The
9 stipulation is seeking to use the material in the
10 declaration and the other mediation material for a limited,
11 specific purpose which is in connection with confirmation
12 and substantial contribution. Thank you.

13 THE COURT: All right. Does anyone else wish to
14 be heard? All right.

15 Mr. Wolfshohl, I'm not going to rule on anything
16 before I rule on everything together. So we're going to
17 hear the various motions this morning, we're going to hear
18 the continuation of the hearing this afternoon, and then I
19 will rule subsequent on everything.

20 MR. WOLFSHOHL: Great. I appreciate that, Your
21 Honor. Thank you.

22 THE COURT: I'm not going to piecemeal it. All
23 right, Ms. Tomasco.

24 MS. TOMASCO: Your Honor, as is the custom at
25 confirmation hearings, we want to -- and not just because

1 it's custom, but it means a lot to us that the Court has
2 been here for this company and these employees and these
3 creditors and these shareholders for the last 15 months or
4 more.

5 As you'll recall, we filed in late August of 2024.
6 At that point we had been litigating with Whinstone for
7 several years at that point. The Debtors had \$2.5 million
8 in cash when we filed. And you'll recall that we were able
9 to obtain a \$30 million DIP from Galaxy. The Court
10 understood the need for an expedited resolution of our
11 issues with Whinstone and we went to trial on November 12th
12 of 2024 and we were here for about a week, sitting right
13 here. And ultimately that netted the estate \$185 million in
14 addition to the sale proceeds of other assets of the
15 Debtors. Put the Debtors in a position to pay ordinary
16 creditors in full. And then we had the task of dividing up
17 the rest with a very complicated capital structure the likes
18 of which I have never seen before exactly with these
19 documents and these interactions.

20 So I am pleased that today we're able to with the
21 help of the Court and the court staff -- Mr. Laws has been
22 very helpful in getting us before the Judge as needed. But
23 the confirmation of the plan is before you today. I'm going
24 to hand the podium over to the person who contributed most
25 at Quinn Emanuel to getting the plan ready to go, and that

1 will be Razmig Izakelian, to handle the confirmation hearing
2 itself.

3 THE COURT: Thank you.

4 MR. IZAKELIAN: Good morning, Your Honor.

5 THE COURT: Good morning, Mr. Izakelian.

6 MR. IZAKELIAN: Razmig Izakelian, Quinn Emanuel,
7 for the Debtors. So I'm going to walk through the evidence
8 and the confirmation elements, at which point I'll turn the
9 podium over to Mr. Hurley and then to Mr. Schmeltz to
10 address various issues. Specifically they will be
11 addressing substantial contribution, the releases, and the
12 LKC objection. So just going to start with some
13 housekeeping matters, which are the exhibits and the
14 testimony.

15 Starting with exhibits, we filed a joint exhibit
16 list at ECF 2077 and at 2079. And we filed some additional
17 exhibits at 2104. We'd like to move some of these into
18 evidence now, specifically Exhibits 2 --

19 THE COURT: Hold on a second.

20 MR. IZAKELIAN: Yes.

21 THE COURT: Okay, two.

22 MR. IZAKELIAN: Exhibits 2, which is the first
23 amended plan; 3, which is the disclosure statement; 4, which
24 is the liquidation analysis.

25 THE COURT: Is this the two-page liquidation

1 analysis or the fulsome liquidation analysis?

2 MR. IZAKELIAN: It's the fulsome liquidation
3 analysis.

4 THE COURT: Exhibit D?

5 MR. IZAKELIAN: Yes. It's at ECF -- it's the
6 liquidation analysis at ECF 1813. Yes, this is the one.

7 THE COURT: Okay. Because I have the other short
8 version of it.

9 MR. IZAKELIAN: Exhibit 5, which I don't know that
10 we technically need to move into evidence. But for good
11 order probably makes sense. That's the Court's --

12 THE COURT: I'll just take judicial notice of
13 that.

14 MR. IZAKELIAN: Okay. Exhibit 6, which was the
15 plan supplement. Exhibit 7, which was the second plan
16 supplement. Exhibit 8, which is the Transcend settlement
17 stipulation. Exhibit 27. That's the plan support
18 agreement. Exhibit 109, which is the D&O settlement term
19 sheet. Exhibit 110, which was the amended plan supplement
20 that kind of puts together all the plan supplements into one
21 place. And of course Exhibit 111, which is the second
22 amended plan. That's the operative plan.

23 There are additional exhibits that I believe Akin
24 and Barnes and Thornburg will move into evidence in their
25 portions.

1 So we would like to move those into evidence, Your
2 Honor.

3 THE COURT: Okay. Does anyone have any objection
4 to the admission of Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110
5 and 111? All right, hearing no objection, they will be
6 admitted.

7 (Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110 and 111
8 entered into evidence)

9 THE COURT: Mr. Izakelian, one thing I'm going to
10 ask you after the hearing, if you could in addition to
11 filing a -- file an exhibit list which lists where each of
12 the documents are on the docket by ECF number, I think that
13 will make it much easier to follow. Because you're going to
14 have to flip back and forth between them. Mr. Shannon?

15 MR. SHANNON: Your Honor, I apologize. I had the
16 one from last night so I didn't have 109.

17 Absolutely no issue with it as long as -- I
18 haven't seen some of these documents. I assume that they're
19 the right documents and they are what they say they are.
20 That's fine. But I'll just note that for the record if it
21 comes up in some alter hearing.

22 THE COURT: Ms. Schultz?

23 MS. SCHULTZ: Thank you, Your Honor. Sorry, we're
24 maybe a little left-hand-right-hand. I thought that he was
25 going to move all the exhibits in. For purposes of the

1 evidentiary record and for purposes of the record, Sarah
2 Schultz on behalf of the SAFE Ad Hoc Group. We would also
3 like to ask the Court -- and this is the reference to
4 Exhibit List 2104 -- to move in Exhibits 13 --

5 THE COURT: Hold on a second. Okay. Exhibit 13
6 is just my order. I'll just take judicial notice of that.

7 MS. SCHULTZ: Okay. Your Honor, I was going to
8 shorthand it. Because I think we're going to ask for 13 all
9 the way through -- I think it's 107.

10 THE COURT: 13 through 107?

11 MS. SCHULTZ: Yes, Your Honor. We tried to avoid
12 putting in anything that was already on the Court's docket
13 on that list.

14 THE COURT: All right. I'm going to need to --
15 I've looked at almost all the documents but I'm going to
16 need to go through them in more detail. So 13 through 107,
17 I'll get them. And some of these are mediation privileged
18 documents.

19 MS. SCHULTZ: And we marked on here, Your Honor,
20 which ones were the mediation privilege. And I omitted Mr.
21 Hurley's declaration which has the substantial portion of
22 that information. Thank you, Your Honor.

23 MR. HURLEY: Sorry, Your Honor. There are
24 substantial parts of my declaration that are related to
25 mediation, but there are a couple of paragraphs that are

1 not. And so at the appropriate time at least I want to make
2 sure at least that part will get offered into evidence.

3 Thank you.

4 THE COURT: Understood. Okay.

5 MR. IZAKELIAN: Thank you, Your Honor. Just to
6 clarify, the -- are the original exhibits, those were the
7 plan-related exhibits, not the ones we just addressed? All
8 right. Have those been admitted?

9 THE COURT: Those have been admitted.

10 MR. IZAKELIAN: Great. So we also filed several
11 declarations in support of confirmation specifically from
12 Mr. Miller, Mr. Robinson, Mr. Eaton, and Mr. Hurley. We put
13 those on the exhibit list for ease, but those are at ECF
14 2086 for Mr. Hurley.

15 THE COURT: Where are they on the exhibit list?

16 MR. IZAKELIAN: On the exhibit list they are 9...

17 THE COURT: That's Mr. Miller's ballot
18 certification.

19 MR. IZAKELIAN: Correct.

20 THE COURT: Does anyone object to Exhibit 9 found
21 at Docket 2050, the certification of Mr. Jeffrey Miller with
22 respect to the tabulation of ballots as being his direct
23 testimony subject to cross-examination? All right. I hear
24 no objection. We'll treat Exhibit 2050 as Mr. Miller's
25 direct testimony, obviously subject to cross-examination.

1 (Exhibit 9 entered into evidence)

2 MR. IZAKELIAN: Okay. And then moving on, the
3 next one is Exhibit 10 on the list. That's the declaration
4 of Michael Robinson.

5 THE COURT: Right. And that's basically the 1129
6 factors and the liquidation and the (indiscernible).

7 MR. IZAKELIAN: Mr. Robinson's declaration mostly
8 focuses on the best interest test, 1129(a)(7).

9 THE COURT: I'm sorry, liquidation
10 (indiscernible).

11 MR. IZAKELIAN: But yes, that's correct.

12 THE COURT: All right. Does anyone object to
13 admission of the declaration of Mr. Michael Robinson at
14 Exhibit 10 on ECF 2063 as his direct testimony with respect
15 to the 1129 factors subject to cross-examination? All
16 right. I will admit that.

17 (Exhibit 10 entered into evidence)

18 MR. IZAKELIAN: Next up is Exhibit 11. That's the
19 declaration of Mr. Eaton. And this goes through the
20 majority of the 1129 elements.

21 THE COURT: Right. Okay. Anyone object to the
22 declaration of Mr. David Eaton, Exhibit 11 found at Docket
23 2074 as his direct testimony in connection with the 1129
24 factors? All right. Hearing no objection, that will be
25 admitted subject to cross-examination.

1 (Exhibit 11 entered into evidence)

2 MR. IZAKELIAN: And the final one is at exhibit
3 108. That's the declaration of Mr. Hurley we just spoke
4 about. A portion of that is not mediation privileged. I
5 guess we would move to admit that portion of it as his
6 direct testimony for now and then once the mediation
7 privilege issue gets sorted out, we can move in the rest.

8 THE COURT: Okay. So --

9 MR. WOLFSHOHL: I mean, on that one we haven't
10 seen the unredacted portion. And so --

11 THE COURT: But I'm not going to admit the --

12 MS. SCHULTZ: It's on the docket.

13 MR. WOLFSHOHL: The entire thing or --

14 MS. SCHULTZ: He's only moving in the redacted
15 piece.

16 MR. WOLFSHOHL: I haven't seen what's been
17 redacted (indiscernible).

18 THE COURT: Okay. So 2086 is the redacted,
19 corrected declaration of Mr. Hurley.

20 MR. IZAKELIAN: That's correct, Your Honor. I
21 believe the only reason for the corrections were the exhibit
22 lists got moved around so some exhibit references had to
23 change.

24 And we would move the unredacted portion into
25 evidence at this time.

1 THE COURT: All right. So does anyone object to
2 the admission of Exhibit 108 as redacted and found at Docket
3 2086 as Mr. Hurley's direct testimony subject to cross-
4 examination? All right. Hearing no objection, that will be
5 admitted.

6 (Exhibit 108 entered into evidence)

7 MR. IZAKELIAN: So I think if anyone would like to
8 cross-examine the witnesses, now is probably the time.
9 Because after that I'll be walking through the 1129
10 requirements.

11 THE COURT: Well, why don't you go ahead and they
12 can put it up in their case.

13 MR. IZAKELIAN: Okay. that sounds good. So, Your
14 Honor, we've also filed the proposed confirmation order at
15 ECF 2106. This was an updated order. It reflects agreed-
16 upon language resolving Mr. VanZoeren's objection. I
17 believe we're still working through some things. But the
18 language in the order itself is agreed upon. And I've seen
19 Ms. Chiarello on the line. She can speak up if she thinks I
20 said anything incorrect.

21 THE COURT: I was looking for a redline and I
22 hadn't seen one. I don't know whether one has been filed.

23 MR. IZAKELIAN: It should have been attached to
24 that. If it was not, I apologize and we will get that
25 uploaded immediately.

1 THE COURT: Yeah, it wasn't. The difference
2 between version five and version six --

3 MR. IZAKELIAN: Okay, we will get that uploaded
4 immediately, Your Honor. The agreed-upon language is at...

5 THE COURT: What paragraph?

6 MR. IZAKELIAN: Paragraph 5. That's on Page 25.

7 THE COURT: Okay.

8 MR. IZAKELIAN: Paragraph 5(ii) also includes
9 competing versions of language that may resolve LKC's
10 objection to the plan. I will leave that for Mr. Schmeltz
11 to address.

12 THE COURT: Okay.

13 MR. IZAKELIAN: Okay. Now that our housekeeping
14 part is complete, we had filed a confirmation brief that
15 walked through all the requirements of 1129. Plan
16 proponents submit we've satisfied all the elements of
17 Section 1129. I'm happy to walk through each of them if
18 you'd like.

19 THE COURT: Yes. And Ms. Chiarello, do you want
20 to address the Court? I think I need to unmute you. Hold
21 on. Okay. I think you're unmuted now.

22 MS. CHIARELLO: Wonderful. Thank you, Your Honor.
23 Again, Annemarie Chiarello on behalf of Caleb VanZoeren.

24 Your Honor, I just wanted to confirm that that
25 language is sufficient to resolve our objection, the

1 language in Paragraph 5 that was referenced earlier. We
2 appreciate Akin and Quinn working with us on that language.
3 And while the plan supplement is a little inconsistent with
4 that language, we think that it's going to predominate. We
5 just did receive a copy of the relief that's contemplated
6 under that section and we obviously reserve all right to
7 review and comment on that. But we expect our comments to
8 be quite light. And we're comfortable that we can get there
9 on the relief. So I just wanted to make sure Your Honor was
10 aware that our objection is resolved.

11 And I'd like to -- I'm going to -- if Your Honor
12 would allow me, I'd like to be able to save my client a
13 little bit of money here. I'll be able to -- I'll be
14 monitoring, but given the size of the claim, that concludes
15 our position. And I'd like to be excused if that's
16 possible.

17 THE COURT: That's fine. Thank you for getting
18 this done. And you may be excused.

19 MS. CHIARELLO: Thank you, Your Honor.

20 MR. IZAKELIAN: So, Your Honor, I'll walk through
21 the 1129 elements now. 1129(a)(1) requires that the plan
22 comply with the applicable provisions of the Bankruptcy
23 Code. Cases have primarily construed this to mean that the
24 Debtors have complied with all provisions of the Bankruptcy
25 Code including Sections 1122 and 1123. With respect to

1 Section 1122, the Second Amended Plan places claims and
2 interests in classes if they are substantially similar to
3 the other claims in that class. With respect to 1123, the
4 plan specifies which classes are unimpaired, specifies the
5 treatment of impaired classes, provides fair and equal
6 treatment within classes except if a particular holder has
7 agreed to a different treatment. It also provides adequate
8 means for implementation and it discloses the identity of
9 the plan administrator.

10 THE COURT: The plan administrator is G...

11 MR. IZAKELIAN: GXD Labs, Your Honor.

12 THE COURT: GX -- okay.

13 MR. IZAKELIAN: Moving on to 1123(b), the plan
14 also specifies unimpaired classes. It provides for default
15 rejection of executory contracts unless they are on the list
16 of assumed contracts. It incorporates the terms of several
17 settlements including the D&O settlement and the settlement
18 with the Transcend Group. It also contains releases,
19 exculpation, and injunction provisions which Mr. Schmeltz
20 will address.

21 Moving on to 1129(a)(2), it requires that the plan
22 proponents comply with the applicable provisions of Title
23 11. We think that has been satisfied, Your Honor. The plan
24 proponents have complied with all disclosure and
25 solicitation requirements. That's set forth in the Miller

1 declaration at Paragraphs 6 to 11, which is Exhibit 0 on the
2 exhibit list.

3 Moving on to (a)(3), that requires that the plan
4 be proposed in good faith. We think the plan meets those
5 requirements. The plan as proposed maximizes the value of
6 the assets that are recoverable to creditors. The plan
7 proponents have proposed the plan honestly. It was a
8 product of long, contentious, and good-faith negotiations
9 and it has the intention of maximizing recoveries for all
10 interested parties.

11 1129(a)(4) requires that all payments made by the
12 Debtors for services and costs in connection with the case
13 have been approved are subject to approval of the Court.
14 That's what the second amended plan says. That's Sections
15 1.89 and 2.2.

16 With respect to the substantial contribution
17 claim, Mr. Hurley will be addressing that portion of it.

18 Section 1129(a)(5) requires that the Debtors
19 disclose the identity and affiliation of any entity or
20 individual proposed to serve as a director or officer.
21 Here, the winddown debtor is going to be managed by the plan
22 administrator, which is GXD Labs. That was disclosed in the
23 plan supplement that's Exhibit 6.

24 THE COURT: Who is the winddown debtor?

25 MR. IZAKELIAN: The winddown debtor, I don't know

1 if it's been fully decided yet which one of the entities
2 will be the winddown debtor.

3 THE COURT: And how are we going to know that?

4 MR. IZAKELIAN: That will be likely through
5 discussions with the plan proponents.

6 MS. SCHULTZ: It's REI.

7 THE COURT: REI.

8 MR. IZAKELIAN: So next up, 1129(a)(6) requires
9 that the Debtors comply with governmental authorities for
10 any change of its rates. We think this is inapplicable
11 because there are no government authorities setting rates
12 here.

13 1129(a)(7), that's the best interest of creditors
14 test. Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are
15 present to accept the plan. Classes 6 and 11 have voted to
16 accept the plan. And there aren't any holders in those
17 classes that voted to reject the plans, either. This only
18 leaves Classes 10 and 12. As reflected in the liquidation
19 analysis, that's Exhibit 4. And then the Robinson
20 declaration, that's Exhibit 10. The plan provides all
21 holders in classes 10 and 12 with the same or better
22 distribution than they would receive in a Chapter 7
23 liquidation.

24 Next up we have 1129(a)(8).

25 THE COURT: Let's spend a minute on that one.

1 MR. IZAKELIAN: Of course.

2 THE COURT: So his declaration -- I just want to
3 make sure I'm looking at the...

4 So it's Exhibit 10. I misheard.

5 MR. IZAKELIAN: That's correct.

6 THE COURT: Okay. So the class who voted to
7 reject is class...

8 MR. IZAKELIAN: Class 10.

9 THE COURT: Class 10. Okay. And so where in Mr.
10 Robinson's analysis does he discuss Class 10?

11 MR. IZAKELIAN: So if you look at Paragraph 19,
12 Your Honor, he refers to the liquidation analysis. And he
13 says that holders of interest in Rhodium Enterprises Inc.,
14 which is Class 10, may receive a distribution under the
15 plan. Whereas holders with claims or interests junior to
16 Class 6 are not expected to receive any Chapter 7
17 recoveries.

18 THE COURT: Okay. And then where is that in the
19 liquidation analysis?

20 MR. IZAKELIAN: So if you turn to the liquidation
21 analysis, that is on the first page, which is the
22 liquidation analysis of Rhodium Enterprises Inc. And just
23 going through that chart, if you look at the bottom, it
24 shows that in a Chapter 7 in either the high case or low
25 case, there's anticipated to be a deficit before any return

1 to equity whereas there is not anticipated to be such a
2 deficit under the plan.

3 THE COURT: Okay. The first page...

4 Where are the escrows here for the admin expenses?

5 MR. IZAKELIAN: I think those were assumed, but
6 they are not reflected on this page, Your Honor.

7 THE COURT: Okay. Is there a footnote or
8 something?

9 MR. IZAKELIAN: Oh, I see. Okay. The -- let me
10 get the page number for Your Honor.

11 THE COURT: So the one thing that I've been
12 looking for and that I haven't found is the sources and uses
13 of the cash coming in and going out. Is there such a
14 document?

15 MR. IZAKELIAN: The sources and uses? Well, we've
16 been filing the monthly operating reports, Your Honor.

17 THE COURT: I understand. But I'm talking about
18 to consummate the plan.

19 MS. TOMASCO: There is a document, Your Honor.
20 It's not in the exhibits, but the distributable cash is --
21 takes the cash that's in the Debtors right now and then
22 reduces it by anticipated expenses. And then you'll see
23 that everything flows up in the waterfall. Well, it's
24 actually a water-down.

25 THE COURT: Right.

1 MS. TOMASCO: And so we do have sources and uses
2 of cash. That's reflected in the distributable cash number.

3 THE COURT: Okay. So can that exhibit be filed?

4 MS. TOMASCO: Yes. I will get it filed.

5 THE COURT: Thank you.

6 MR. IZAKELIAN: So if you look at Page 10 -- let
7 me make sure that's right -- of the liquidation analysis,
8 Your Honor, it's the Rhodium 30MW LLC. That includes the
9 estimated administrative and priority claims.

10 THE COURT: I'm sorry. Rhodium 30MW LLC?

11 MR. IZAKELIAN: Yes. That's Page 10 of the PDF.
12 It doesn't look like --

13 THE COURT: Of course my pages don't have numbers
14 on them. They're not numbered at the bottom.

15 MR. IZAKELIAN: It's Page 6 of the analysis. So
16 it should be the sixth sheet you have there.

17 THE COURT: All right. So where are the admin
18 expenses?

19 MR. IZAKELIAN: So the admins at 30 MW are
20 accounted for under estimated administrative and priority
21 claims.

22 THE COURT: And it shows 0503(b)(9), it shows
23 administrative priority tax claim and administrative taxes.
24 It doesn't show any other admin claims.

25 MR. IZAKELIAN: Yeah. I think they are on a

1 debtor-by-debtor basis. So I can go through and pull the
2 rest.

3 So I see this is on the second page. This is the
4 Rhodium Technologies LLC analysis. If you go down toward
5 the bottom, for reserves there's an illustrative reserve for
6 the success fees.

7 THE COURT: Right.

8 MR. IZAKELIAN: So that's where that would --

9 THE COURT: Well, the plan supplement you have a
10 document that shows what amounts are going to be reserved.
11 But what I haven't found is a document that says here is the
12 cash we have on hand and here is how the waterfall is going
13 to work. That's what I've been looking for.

14 MR. IZAKELIAN: Oh, I see what you mean. So this
15 was provided on a debtor-by-debtor basis. And that's where
16 the waterfall is. We can add in more detail if you'd like,
17 Your Honor, especially --

18 THE COURT: I'm actually looking for simplifying
19 clarifications as opposed to more detail.

20 THE COURT: Okay. We can file a simplified
21 version. Our intent here was to file the liquidation
22 analysis on a debtor-by-debtor basis. Yeah.

23 THE COURT: And I think you're correct to do that.
24 Because this is not a substantively consolidated plan. But
25 I mean the statement is that in Mr. Robinson's declaration

1 is -- I mean, he makes a statement -- and I'm just saying
2 okay, fine, where can I find it. And I'm just having a hard
3 time finding it.

4 MR. IZAKELIAN: Yeah. So that statement at
5 Paragraph 19, that's reflected on the Rhodium Enterprises
6 Inc because that's where all the money flows up to. And
7 that just goes towards the bottom. Because all the
8 interests get paid out of Rhodium Enterprises because that's
9 where they land.

10 THE COURT: But the problem -- basically what it
11 says -- and I see where the \$903,000 and \$22 million come
12 from. But again, I don't know if the plan, you know, has a
13 non-positive number of a \$1,129,000, but I don't know what
14 all went into that number to get there. I don't...

15 MR. IZAKELIAN: Yeah. So at the top of that page,
16 it shows where the cash comes in from each of the other
17 debtors coming up. Yeah.

18 THE COURT: I understand. But this one didn't
19 really have any admin or any reserves or anything like that.
20 So that's why I'm a little confused.

21 MR. IZAKELIAN: I think it's because those
22 reserves and a lot of those admin fees are paid out of the
23 subsidiaries directly and then the money flows up there,
24 flows up to REI.

25 THE COURT: Yeah. And that's what I'd like to

1 see, you know, kind of a mapping if you will for that.

2 MR. IZAKELIAN: Okay. We can put together that
3 mapping for you. That will not be a problem.

4 THE COURT: Thank you.

5 MR. IZAKELIAN: Of course. So next up we have
6 1129(a)(8). This requires that each class of claims or
7 interests either accept or be unimpaired under the plan.
8 Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are presumed to
9 accept because they are unimpaired. And classes 6 and 11
10 have voted to accept the plan. This only leaves classes 10
11 and 12. And I'll address those with 1129(b) in a minute.

12 THE COURT: Okay.

13 MR. IZAKELIAN: Next we have 1129(a)(9), which
14 requires payment of administrative claims, certain priority
15 claims, and certain priority tax claims. The plan provides
16 that all administrative claims as allowed will be paid.
17 Priority claims under 507(a) will get their appropriate
18 treatment under 1129(a)(9)(B) and that priority tax claims
19 will receive cash payments to the extent allowed within five
20 years of the petition date. That's at Section 2.3 of the
21 plan.

22 THE COURT: So you're going to stretch out the tax
23 -- the tax?

24 MR. IZAKELIAN: I don't think they are going to be
25 stretched out. But if it needs to be stretched out, the

1 plan provides for that. I'm not even sure that there are
2 any that need to be paid now. So...

3 THE COURT: Okay. I don't understand that. If
4 you're going to have a plan administrator that basically has
5 a \$2 million budget to do everything, how five years would
6 work. So...

7 MR. IZAKELIAN: Well, I think the plan just gives
8 that option in case the plan administrator needs it. I
9 don't think the plan administrator is going to need that.

10 THE COURT: Okay. Well, maybe we need to address
11 that someplace.

12 MR. IZAKELIAN: Okay.

13 THE COURT: Because if you're going to stretch it
14 out five years, then I'm going to need to see evidence that
15 they're going to have the capability of paying it out over
16 five years.

17 MR. IZAKELIAN: Got it. Got it. Yes, we will
18 address that, Your Honor.

19 So just moving on, next up is 1129(a)(10). That
20 requires one impaired non-insider class of claims to accept.
21 That's Class 6 has accepted the plan.

22 Next up, 1129(a)(11) requires that the plan be
23 feasible. This is a liquidating plan and the plan specifies
24 the sources of the cash and the distributions to be made.
25 So I don't think any further liquidation is going to be

1 necessary, therefore feasible.

2 1129(a) (12) requires that all statutory fees have
3 been or will be paid. That is exactly what the plan says.
4 That's at Article 2D.

5 Next, there are a few subsections that are
6 inapplicable. That's (indiscernible) 13, retiree benefits,
7 14, the domestic support obligations. 15 only applies to
8 individual debtors. And 16 for on moneyed corporations.

9 So moving on to 1129(b) with respect to classes 10
10 and 12, those are the only classes that were impaired and
11 did not accept. So we think the plan is confirmable because
12 it does not discriminate unfairly and it's fair and
13 equitable. With respect to the fair and equitable analysis
14 under 1129(b) (2) (C) which applies to classes of interests,
15 the plan is fair and equitable. If the holder of any
16 interest junior to that class will not receive or retain
17 anything on account of that interest. This is the absolute
18 priority rule, but it's (indiscernible) interest in this
19 case. We think the plan satisfies that. It's a strict
20 waterfall.

21 We also think that the plan does not discriminate
22 unfairly. Interests are grouped together. And then Class
23 12 is the intercompany interests which of course should come
24 at the bottom.

25 THE COURT: Okay. So one question that I had is

1 in connection with Class 11, the Imperium interest, when I
2 read 5.9, it says that Technologies shall receive a hundred
3 percent of Imperium's interest in Rhodium Technologies for
4 the consideration contemplated in Section 5.9(a) of the plan
5 without the requirement to pay any cash payment or other
6 cash consideration. But I don't see in Section 5.9(a) what
7 the consideration is.

8 MR. IZAKELIAN: I'm going to get that for you,
9 Your Honor.

10 THE COURT: I read it ten times and I just don't
11 see that.

12 MS. TOMASCO: Your Honor, the redemption of the
13 Rhodium Technologies interest is an integral part of the
14 settlement and compromise between Imperium and the Debtors.
15 In other words, it allows for the interests -- Imperium's
16 interest in Technologies to be redeemed. So it's basically
17 taking Imperium's interests and not giving them anything for
18 it. So it's a net positive to the estate, but it's an
19 integral part of the settlement with Imperium. I believe
20 that if you were looking for an answer, it's going to be in
21 the mechanics of the Imperium compromise, the D&O
22 settlement.

23 THE COURT: Okay. And then whose declaration
24 would address that, Mr. Eaton's?

25 MS. TOMASCO: Mr. Eaton's.

1 THE COURT: But I mean, I understand what you just
2 said. And that's what I anticipated. But it says here for
3 the consideration contemplated by this section 5.9(a). And
4 5.9(a) doesn't contemplate any consideration.

5 MS. TOMASCO: I see. What you're saying is that
6 that particular phrase is surplusage.

7 THE COURT: I don't know whether it is or not.

8 MS. TOMASCO: I believe it is surplusage. The
9 consideration is the -- it should be for the consideration
10 contained within the plan and not necessarily that
11 paragraph.

12 THE COURT: Okay.

13 MR. IZAKELIAN: So that is it with respect to the
14 elements of confirmation, Your Honor. Unless Your Honor has
15 any questions, I will turn over the podium to Mr. Hurley now
16 to address the substantial contribution --

17 THE COURT: All right. Why don't we just do it
18 one step at a time. Does anybody wish to address the 1129
19 factors, what Mr. Izakelian had addressed?

20 All right. Go ahead, Mr. Hurley.

21 MR. HURLEY: Thank you, Your Honor. Again for the
22 record, Mitch Hurley with Akin for the SAFE AHG.

23 Just a housekeeping matter, Your Honor. I had
24 referenced some cases I had copies of before. And if I
25 could hand them up, I --

1 THE COURT: Yeah, please.

2 MR. HURLEY: Thank you.

3 THE COURT: Give it to Ms. Hernandez.

4 MR. HURLEY: I have, if I keep one for myself,
5 three copies. Three copies. And I gave copies to Mr.
6 Wolfshohl.

7 THE COURT: Okay.

8 MR. HURLEY: So, Your Honor, turning to the
9 substantial contribution claim. First of all, I'm going to
10 be very brief because our arguments are really contained in
11 the submissions that were provided to Your Honor in great
12 detail. And I know you have a lot to accomplish today, and
13 there's a lot of estate professionals here listening, so I'm
14 going to try to keep it as short as I can.

15 I think as an initial matter I just want to make
16 clear that while I am the person addressing the specific
17 aspect of the plan that goes to substantial contribution, of
18 course it's a term of the plan that's supported by all the
19 plan proponents.

20 I think it's also notable that it is supported not
21 just by the plan proponents, SAFE AHG, the Debtors, also the
22 Special Committee, also Transcend. These are really the
23 parties that were the most involved in these cases
24 throughout their course. These are parties that often
25 didn't agree on a lot and have come together on this plan.

1 And one of the important pieces of the plan is the provision
2 that provides substantial contribution to the SAFE AHG.

3 I think another important thing to keep in mind as
4 sort of a general theme is that SAFE AHG, as we said in the
5 papers, submits that all of the activities we engaged in
6 over the course of the cases we think we could support as
7 503(b) types of activities. We are not seeking payment in
8 full of all of the fees that were incurred in that regard.
9 The substantial contribution amount, as Your Honor knows, is
10 eight-and-a-half million dollars. We anticipate our actual
11 fees are going to be substantially greater than that, as
12 described in our papers.

13 And in addition, in order to try and get this
14 thing the last yard to the goal line, we agreed to settle
15 the Transcend objection in part by putting a part of that
16 eight-and-a-half million dollars into an escrow that we hope
17 we'll be able to return to the SAFE AHG. But if there is
18 insufficient proceeds from the estate other than that
19 escrow, a part of it could be released to the Trasncend
20 group to get them to a \$6.6 million recovery. That recovery
21 isn't guaranteed. But to the extent that there isn't enough
22 money to at least get them there, that would be the
23 circumstance under which the escrow would be released. If
24 the proceeds plus the escrow are in excess of 6.6, then an
25 excess would be released back to us.

1 So I'll need to pause there and make sure the
2 Court understands the mechanism of --

3 THE COURT: I understood that.

4 MR. HURLEY: Fair enough. Okay. And then I guess
5 the last kind of general observation I would make about our
6 substantial contribution claim is I think this is the kind
7 of circumstance that you see contemplated in many of the
8 cases. And we cited at least one of them in our submission.

9 So we cited the Bayou Group decision, Judge Drain
10 from the Southern district of New York, 2010 where he said
11 often substantial contribution is awarded where the creditor
12 played a leadership role that normally would be expected of
13 an estate professional. And I think that's really exactly
14 what happened here, Your Honor. And this is no knock in any
15 way, shape, or form on the UCC or what it did. But because
16 of the very unusual circumstances of this case, it made
17 sense we submit for the SAFE AHG to step in and carry out a
18 lot of the kinds of activities you would usually expect from
19 statutory committee.

20 So why is that? Well, part of it is that while
21 Your Honor's decision recognized the SAFEs as creditors,
22 contingent creditors from the beginning of the cases, SAFEs
23 were not initially scheduled as creditors by the Debtors.
24 We, as we described in our papers, tried a couple times to
25 convince the U.S. Trustee to create a committee for us or to

1 post on the Official Committee. The U.S. Trustee ultimately
2 agreed that SAFEs in fact were creditors, but it didn't
3 happen until almost the end of the case.

4 So from the UCC's perspective, its constituents
5 did not include the SAFE claimants. And so they proceeded
6 as one would expect under those circumstances, including in
7 that they weren't formed until the end of November of 2024.
8 And by the time we had the Whinstone transaction agreed to
9 in principle, which was -- let's call it late February of
10 2025, it was clear that the constituents that the UCC did
11 recognize were certain to be paid a hundred cents on the
12 dollar.

13 So we stepped in I think and undertook a lot of
14 activities that were appropriate and important in the cases.
15 Again, that you might ordinarily see a statutory committee
16 do, but didn't happen here, including for those unusual
17 circumstances I just described.

18 Very quickly, some of the key things that we did
19 throughout the course of the cases -- and this is detailed
20 again in the submissions and I would encourage Your Honor
21 to, as I know you will, read Mr. Eaton's declaration with
22 particular care. He spent a lot of time on this. We spent
23 a lot of time investigating the claims against the insiders.
24 We, like other parties in these cases, recognize that was a
25 very important aspect of the cases. Because the insiders

1 owned their interest in -- equity interest at -- sorry,
2 through Imperium, which owned its interest at RTL. REI also
3 owned an interest at RTL. Imperium's interest was in the
4 neighborhood of 60 percent of RTL.

5 So to the extent you wind up with a lot of cash
6 going to RTL, say a hundred million dollars, round numbers,
7 they would have been claiming -- they get \$60 million of it
8 and only \$40 million is left for everybody else.

9 We didn't think that would be an equitable
10 outcome. We thought there are lots of reasons why that
11 shouldn't happen. And so we were very focused on trying to
12 demonstrate the claims existed to prevent exactly that
13 outcome.

14 We coordinated with the Special Committee. As we
15 said in the papers, you know, it wasn't always harmonious.
16 Which is pretty typical I would say of bankruptcy cases
17 where there's a creditor group that is investigating
18 insiders alongside the debtors. And so we had to engage I
19 think again, as is typical in these cases, in pretty labor-
20 intensive back-and-forth to get information. I think over
21 the course of that period of time there were some points
22 that the Special Committee made to us that we ultimately
23 recognized and helped our process of going through our
24 investigation. And I'm sure we did the same for them. And
25 I think that's detailed in Mr. Eaton's declaration that in

1 fact there were aspects of their investigation that were
2 improved by our involvement and our coordination with them.

3 The Whinstone transaction we've talked about
4 already a little bit this morning. It's enormously
5 important in the cases. I'll leave for now any detail about
6 what happened in the mediation, but it was a very big part
7 of the contribution that I think we made here, is to make
8 sure that we became parties to the mediation, which we did
9 in part by negotiating an agreement with the Debtors that we
10 would defer some discovery in exchange for being an official
11 mediation party. And we were in fact made an official
12 mediation party. And obviously we know what emerged from
13 that mediation. It was very valuable.

14 Again, when you're talking about sort of measuring
15 the substantial contribution application against the value
16 that was delivered, I think there's a lot of other things
17 I'm going to talk about in a second. But one thing to keep
18 in mind is, again, as I said before, there wouldn't be
19 anyone getting a near-term payment in these cases were it
20 not for the Whinstone transaction. There would only be a
21 potential sort of speculative payment in the future, which I
22 think would be one that none of the main stakeholders in
23 these cases would have preferred. So I think that was a
24 very important part of this -- of the cases.

25 We engaged in the plan mediation in good faith as

1 did many other parties. That happened in the spring or
2 earlier this year. Outside of the mediation we also engaged
3 in settlement efforts, in particular with equity. We were
4 very near to an agreement with equity that wound up not
5 working. And equity wound up supporting the plan that was
6 filed in June, as Your Honor will of course remember. And
7 from our perspective, that meant we were going to have to
8 litigate over the status of the SAFEs.

9 Now, the SAFE status was an issue that the Debtors
10 themselves identified as a gating issue. I think they
11 argued to you, Your Honor, that we should put everything
12 else on hold and figure out what the answer to this question
13 is. Because we really can't have a confirmable plan that
14 conforms with the Bankruptcy Code until we answer the
15 question whether SAFEs are claims or interest. And I think
16 that was right.

17 But that did require a very substantial amount of
18 work around that question. Your Honor recognized it in your
19 decision that at least some of the issues (indiscernible)
20 were issues of first impression. And so there were very
21 substantial disclosures that were --

22 THE COURT: I looked for a case.

23 MR. HURLEY: I know, right. Believe me, we all
24 did. So there was an unusual amount I would say of energy
25 and effort put into answering that question.

1 And then when the decision came down at the end of
2 August of this year, Your Honor, the SAFE AHG immediately
3 sought to try to get to where we are today. I think less
4 than 24 hours after the decision came down, I emailed Mr.
5 Schmeltz and said I think we now should be able to get to a
6 deal quickly. And to his credit, he wrote back and said I
7 think you're right. Let's start working. And then we
8 worked together diligently with a whole lot of other people
9 too for the next couple of months and arrived at most of the
10 terms of the plan that are before Your Honor today.

11 Once those terms were generally agreed, then we on
12 behalf of SAFE AHG participated with the other parties that
13 are proponents of the plan in helping to review and draft
14 documents. And so that was another part of our
15 contribution.

16 And I would say again, and I referenced this
17 before, the last couple of yards to get to the finish line
18 today we're really trying to resolve the objection that
19 Equity had made and the Transcend Group in particular. The
20 SAFE AHG took the laboring oar on that. We reached out to
21 Transcend and said, hey, there's got to be a way to do this
22 that doesn't involve all the spending a fortune in the next
23 three weeks that is going to come out of everybody's
24 recoveries. And they responded in good faith. We worked
25 for a few days together and we were able to come up with an

1 agreement.

2 That agreement was that there was going to be two-
3 and-a-half million dollars paid into an escrow that was
4 going to be funded by professional fees. And when the
5 agreement was made, the contemplation originally was that it
6 would be shared among more professionals than just the SAFE
7 AHGs. I would say the contemplation that I had certainly,
8 and I think Transcend had, was that it would be shared
9 escrow. Didn't turn out that we were able to negotiate
10 that. But in order to be able to, again, get us across the
11 finish line, the SAFE AHG agreed we'll fund it all
12 ourselves, which is what we're doing.

13 By settling the Transcend claim -- and this is in
14 the declarations -- I think the estimate is at a minimum it
15 would save another 42 million in estate fees because that
16 was going to be a very hotly-contested objection.

17 So those are examples of some of the things that
18 we did. Others are detailed in our submissions. Again,
19 there's nobody who objects to the substantial contribution
20 claim, which is somewhat unusual I would say under the
21 circumstances. And we submit that the standard on a 503(b)
22 is readily met here, including when you think about things
23 like, again, the sort of amount of contribution versus the
24 amount being applied for. I already mentioned what I think
25 is a very important part of the Whinstone transaction, which

1 is very valuable for everybody. But there are a host of
2 other ways to measure the value in our view.

3 Few of the cases, they acknowledge that they are -
4 - often in these cases there are concrete kinds of
5 contributions that are really easy to put dollars and cents
6 and associated dollars and cents with. But then there are
7 often equally important kinds of contributions that it's not
8 as easy to assign a dollar and cent value to. And I think
9 we have both here.

10 One of the I think clearest sort of dollar and
11 cents items is that if you look at our plan compared to the
12 plan that was supported by others in June, we have reduced
13 the amount that is going to insider stakeholders by \$13.2
14 million. And that means that there is \$13.2 million more to
15 go to the non-insider stakeholders.

16 I think this is important to sort of pause on.
17 Because if you think about it, following Your Honor's
18 decision and the priority that we believe we had at that
19 point, if we had just accepted the deal that had been
20 negotiated back in June, the SAFE parties still would have
21 been paid. Not in full, but almost in full. A very, very
22 substantial part of the SAFE parties' claims would have been
23 paid. But there would have been no value for anybody junior
24 to the SAFE parties. And the fact that we pressed and got
25 the additional -- liberated the additional cash if you will

1 for payment to other non-insider stakeholders is the only
2 reason that there is the potential for there to be millions
3 of dollars paid to stakeholders who are junior to or
4 subordinated by agreement now to SAFE parties.

5 The insurance settlement we supported. And while
6 that had been negotiated before we got involved, I don't
7 think it was finalized until after we did. That's another
8 eight-and-a-half million dollars. You have the \$2 million
9 that we definitely saved in professional costs by stepping
10 up and settling the Transcend claim. And there is no
11 indemnification of the insiders' tax obligations in the
12 plan. There was in the other plan. That was an obligation
13 that people would assign some of the \$18 million to. So
14 another example of the kind of dollar and cents claims.

15 THE COURT: That's 5.9(e), right? Is that right,
16 5.9(e)?

17 MS. TOMASCO: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. HURLEY: Thank you. So -- and then there's
20 the other category, right? Which are the kinds of
21 contributions I think that are not quite as easy to assign
22 value to. We cited case to Your Honor that I think make
23 very clear that assisting in ensuring that a plan allocates
24 value in accordance with the Bankruptcy Code is itself the
25 kind of contribution that can be recognized and compensated

1 under 503(b). And so an example of that, we would submit
2 anyway, is the work that we did in connection with the SAFE
3 claim litigation. And Your Honor wound up reaching the
4 conclusion that you did. And a part of that was obviously
5 we were all involved in litigating that and that was part of
6 the expense that we incurred. And I think it's the kind of
7 expense that is compensable under the Code.

8 And again, I guess I would refer back a final time
9 to the mediation which resulted in I think an outcome that -
10 - resulted in a better outcome for these cases than anyone
11 before that had really hoped.

12 So, Your Honor, again, I don't want to go through
13 every word in our submissions and I'll basically leave it
14 there except I guess to ask Your Honor if there are any
15 questions that you have. I'd be happy to try and answer
16 them.

17 THE COURT: I don't think so.

18 MR. HURLEY: Okay. thank you, Your Honor.

19 THE COURT: Okay. Does anyone wish to be heard on
20 the substantial contribution claim?

21 MR. SCHMELTZ: Your Honor, I'm going to say
22 something in support of it, but it's more just I'm going to
23 talk about the D&O settlement and how that -- why that
24 supports it. So not (indiscernible).

25 THE COURT: Okay. All right. So we'll -- I think

1 Mr. Schmeltz is going to talk about the D&O settlement. Who
2 is going to talk about the Transcend settlement?

3 MR. POTTER: I plan to briefly, Your Honor.

4 THE COURT: Okay.

5 MR. POTTER: Would you like me to do so now?

6 THE COURT: Why don't we do that since we're...

7 MR. POTTER: Your Honor, Chase Potter on behalf of
8 the Transcend Group. Over the past couple of months, I
9 wouldn't have expected to be here as a plan proponent for
10 the Transcend Group. But I'm glad that --

11 THE COURT: Me neither.

12 MR. POTTER: I'm glad that we are because I do
13 think it results in, kind of dovetailing off what Mr. Hurley
14 was saying, results in a good result for the estate for many
15 reasons, all of which are in the evidence already. So I'll
16 be very brief.

17 Given the Transcend Group settlement, we do fully
18 -- the Transcend Group does fully support the plan. On
19 behalf of the Transcend Group, we contend the evidence
20 admitted including the declarations admitted subject to
21 cross-examination establish all the factors necessary to
22 confirm all aspects of the plan including the Transcend
23 Group settlement, particularly the David Eaton declaration
24 and the uncontroverted testimony therein. Specifically,
25 Your Honor, Paragraphs 38 through 42 of such declaration

1 address and establish the factors, both 1129 and 9019, for
2 the Transcend Group settlement.

3 This settlement was certainly negotiated at arm's
4 length and resolved substantial, ongoing, and forthcoming
5 litigation, substantial both from a time and cost standpoint
6 with respect to Transcend's objections to the plan and also
7 Transcend's warrants, which have been entered into evidence,
8 Your Honor, and Transcend's proof of claims, which are all
9 on file and the Court can take judicial notice of.

10 Those proof of claims were filed against REI, RTL,
11 and Encore, which claims may have entitled Transcend to
12 recovery in advance of others, including the SAFE group, if
13 we had been successful and these ongoing litigation issues
14 were not resolved.

15 Your Honor, I do agree with Mr. Hurley that the
16 estimate of a \$2 million savings based on this resolution I
17 think is a light one, especially for this case. Very
18 conservative. Especially in light of the fact that the
19 Transcend Group had also filed an appeal of the SAFE ruling
20 which we absolutely intended to pursue along with all claim
21 objections and our proof of claims and everything else, Your
22 Honor.

23 So other than that, we believe that the evidence
24 is in the record. It's subject to any -- to cross-
25 examination, specifically Mr. Eaton and his declaration.

1 And that's all we have.

2 THE COURT: All right. Let me just ask a couple
3 of questions. So in connection -- 513 is the Transcend --
4 what's in the plan regarding the Transcend settlement. So
5 the 513(f), which is the 345 Partners v. Nathan Nichols,
6 that is going to continue.

7 MR. POTTER: Yes, Your Honor.

8 THE COURT: Okay. And I think I have a hearing on
9 that coming up.

10 MR. POTTER: I wish I knew. It's coming up soon.
11 It's a remand hearing. If it remains necessary. The Court,
12 as you may recall, was very prepared for that hearing and
13 gave us thoughts on where that might be going. So we might
14 be able to resolve that in advance. But we've been so
15 focused on plan confirmation issues, we haven't quite got
16 there yet.

17 THE COURT: And then the other thing is to the
18 extent that I confirm a plan, I may not have any
19 jurisdiction at that point.

20 MR. POTTER: Right.

21 MR. SCHMELTZ: And, Your Honor, I do want to talk
22 about -- I talked with Mr. Potter beforehand about this
23 subsection (f) of 513. Mr. Potter can confirm it now. But
24 our position is that there might be some effect to the
25 extent that the Transcend Group receives money under the

1 plan that may affect damages, things like that. Mr. Potter
2 certainly didn't agree with that. But he said that this
3 provision in 513(f) does not preclude us from making that
4 argument when the time comes.

5 MR. POTTER: Sure. I agree with that. This
6 provision does not preclude any defenses that may be argued
7 by way of asset, settlement credit, anything else that they
8 may try to argue. I do disagree with it, but that time will
9 come.

10 THE COURT: All right. So the way that I
11 understand this is that you will -- so this is kind of where
12 I really kind of need a waterfall. Because -- so your
13 claim, you have a \$10 million claim below the SAFEs, ahead
14 of equity. To the extent that there are -- the recovery is
15 \$6.6 million, they don't hit -- you don't hit the \$8.5
16 million, but you have an allowed claim up to ten. So to the
17 extent there is distributable cash above the 6.6 to the 10,
18 you would get that ahead of equity. Is that correct?

19 MR. POTTER: I believe that's correct. I won't
20 speak -- I'll let my bankruptcy partner answer that
21 question.

22 MS. FUNK: That's correct, Your Honor.

23 THE COURT: Okay. All right. And I guess this is
24 more a question for the debtor. Is there any kind of
25 waterfall that would show this?

1 MS. TOMASCO: That would show what, Your Honor?

2 THE COURT: Kind of the way that the Transcend
3 settlement would work depending on the distributable cash.

4 MS. TOMASCO: Yes. We do have a revised
5 liquidation analysis. We can probably upload it at the same
6 time that we do the sources and uses of cash exhibit that we
7 have prepared.

8 THE COURT: Okay.

9 MS. TOMASCO: We're going to upload it in moments.

10 THE COURT: All right. Thank you. All right.

11 MR. POTTER: And I would also add, Your Honor, I
12 believe if memory serves, the settlement stipulation goes
13 through some of the potentialities and examples.

14 THE COURT: It does. But I just want to make sure
15 that the plan reflects it and that I understand what I'm
16 approving.

17 MR. POTTER: Thank you, Your Honor.

18 THE COURT: Thank you. All right. Does anyone
19 else wish to be heard on these issues?

20 MR. CAMARA: Your Honor?

21 THE COURT: Yes.

22 MR. CAMARA: This is Justin Camara, pro se. I may
23 be in a situation with a little bit of background noise.
24 Full disclosure I'm actually -- but this might be the
25 appropriate time to discuss the Transcend thing or --

1 because my other objection deals with the Special Committee
2 Report or a component of it.

3 THE COURT: Well, I think the Special Committee is
4 going to go next. So why don't you wait for that. You have
5 the time. Why don't you wait for Mr. Schmeltz to go.

6 MR. CAMARA: Yes, sir. I can wait a little
7 longer. I do have like a balloon (indiscernible). But I
8 can -- I pushed it back. So I think we can do that.

9 THE COURT: Okay, all right. Well, you let me
10 know if you need to -- if you're running out of time. So
11 I'll let you go ahead. All right.

12 Mr. Schmeltz?

13 MR. SCHMELTZ: Thank you, Your Honor. It's for
14 the record Trace Schmeltz from Barnes & Thornburg on behalf
15 of the Special Committee.

16 You know, I didn't think I'd be in a position that
17 Chase Potter, Mitch Hurley, and I were all saying nice
18 things about one another, but I'll echo that I'm glad to be
19 doing that.

20 Paragraphs 33 through 37 in Mr. Eaton's
21 declaration which is found at Docket 20754 lay out the
22 benefits of the D&O settlement that the Special Committee
23 and others were able to obtain for the debtors' estates.
24 After an extensive investigation by the Special Committee,
25 the Cm concluded that there were -- an investigation, by the

1 way, into literally dozens of allegations of purported
2 wrongdoing, concluded that there were a handful of plausible
3 claims that could be pursued.

4 Of course as with any plausible claim, there were
5 defenses and weakness in those claims which the Special
6 Committee's report recognizes. And that Special Committee's
7 report, Your Honor, has been shared with all constituencies
8 and the estate. Nonetheless, the Special Committee was able
9 to obtain \$8.5 million in recovery off of \$20 million in D&O
10 policies without ever filing a complaint.

11 In addition, working with founder's counsel, the
12 Special Committee obtained a million dollars in coverage for
13 indemnifiable defense costs for the founders that would have
14 otherwise had to be borne by the estates.

15 The settlement with the founders and with Imperium
16 allowed for the flattening of Rhodium Technologies, which
17 was a partnership. That allows Rhodium Enterprises to file
18 taxes as a consolidated enterprise. And that savings is
19 somewhere between a million-and-a-half and \$2 million to the
20 estate in lowered taxes.

21 The founders had significant claims that they
22 intended to litigate for a significant amount of value from
23 the estates based on operating documents that were not
24 always translucently clear, or as Your Honor knows from the
25 litigation over the SAFE document itself, not always on

1 their face seeming to suggest what the parties believed they
2 were getting into. The savings in litigation or lack of
3 litigation from that settlement obviously was significant to
4 the estates as well.

5 The settlement with the founders and Imperium also
6 provided a gateway for the original plan and then for the
7 subsequent plan that we're here today in support of. It is
8 ultimately a resolution that is -- that brings millions of
9 dollars into the estate, has saved millions of dollars, and
10 has been a cornerstone for two plans, what we believe here a
11 very confirmable plan.

12 With that, Your Honor, I stand available to answer
13 any questions you might have. And Mr. Eaton is here should
14 there be any questions of him.

15 THE COURT: No, thank you.

16 Your Honor, I can speak in favor of it. I don't'
17 know if you want to go with Mr. Camara's...

18 THE COURT: No, I think everybody at this table
19 has spoken. Correct, Mr. Izakelian? Okay. All right.

20 MR. HURLEY:

21 MR. SHANNON: Thank you, Your Honor. Again, R.J.
22 Shannon on behalf of Nicholas Cerasuolo. He is one of these
23 founders who you've heard about. Also one of the insiders
24 that were discussed as well as part of this settlement by
25 Mr. Hurley.

1 Judge, there's a lot about the plan that I just
2 don't know about. Right? So I'm just going to stick to my
3 lane and my part of the case and support the plan that way.
4 Right? I do think this is a good plan --

5 THE COURT: That must be difficult for you to do.

6 MR. SHANNON: It is. So many things I'd love --
7 but anyway. What I can focus on is the D&O settlement and
8 why that's a good deal for the estate. And related to that,
9 why -- I do think it is part of the puzzle that Mr. Hurley
10 talked about as part of the puzzle for substantial
11 contribution.

12 You know, I'm going to tell you kind of my view of
13 these claims that I don't think anyone else here, besides I
14 guess maybe Ms. Mates online, would be able to say. I view
15 the claims against the founders are exceptionally weak. And
16 I think it's a testament to, frankly, the SAFE Ad Hoc Group
17 and the Special Committee to really get as much out of them
18 as possible.

19 The last time I talked about these claims in this
20 Court, I think I said something that I think we might be
21 getting bluffed. Right? That was my view. And again, not
22 that there's anything inappropriate with that. And there
23 are risks.

24 I don't know if the Court has ever actually heard
25 what the purported claims are. So I'd like to go over them

1 just very briefly and say why I think they're weak claims in
2 support of, again, the settlement and the plan.

3 I'll talk about the three largest. The first one
4 was a March and April 2021 private sale. Essentially the
5 allegation was that there's a potential claim against the
6 founders for a breach of the duty of loyalty by selling
7 Imperium's equity in Rhodium Enterprises LLC, now Rhodium
8 Technologies -- in the rollup they changed their name --
9 rather than seeking additional financing for Rhodium
10 projects. So that's the allegation.

11 And the problem was that there was no unified
12 Rhodium at the time, right? Rhodium operated under a
13 project finance basis. That's described in the Dunn
14 Declaration, which I noticed was not admitted at this
15 hearing, but has been admitted before. It's that first day
16 hearing.

17 And so the only equity owners on a Rhodium-wide
18 basis at the time was Imperium, which was owned solely by
19 the founders. So there was no duty of loyalty to -- this is
20 our position. And I'm sure the SAFE Ad Hoc Group and the
21 Special Committee might push back on some of this, but this
22 is our position. We think that fails as a matter of law.
23 Right? We think we would be successful.

24 I would liken it to an analogy. As you may know,
25 we brought another partner in on our firm. It would be like

1 if the original two partners when the third partner came in,
2 that we had done something before that would be a breach of
3 duty of loyalty prior to the additional partner coming in.
4 It just doesn't make sense to have a breach of the duty of
5 loyalty under those circumstances.

6 The other -- the second and I would say probably
7 the largest of the claims that were identified by the
8 Special Counsel related to the 2021 Whinstone settlement
9 between the Debtor and Whinstone regarding Winter Storm Uri.

10 Judge, you know more about that than I do. I know
11 it's something you've dealt with a lot. And the argument
12 was it was -- you know, they didn't do their diligence. It
13 was a breach of the duty of care. That was the position.

14 And there was a form 8-K that was out there from
15 Riot that the founders -- the argument is the founders
16 should have looked at and should have identified.

17 Our position is that, one, looking at an 8-K from
18 a counterparty and noticing that to see that there might
19 have been something else going on, well beyond the duty of
20 care. Right? The business judgment standard also applies
21 in that it was a resolution that we think falls in that.
22 And also, I think you're going to hear later today that the
23 Debtors want to attribute \$75 million of the ultimate
24 settlement with Whinstone to settlement of claims, right?
25 Again, our argument is we think we would win on summary

1 judgment.

2 And the last big -- the last big claim that was
3 kind of identified as a potential claim against them was
4 related to the June 2021 rollup transaction. And the part
5 identified by the Special Committee and I think also based
6 on some of the documents, the SAFE Ad Hod Group, was related
7 to the -- an extra five percent of equity that Imperium had
8 that the argument is it should not apply.

9 Essentially the argument or the position of the
10 Special Committee was that the use of the term of a control
11 premium was somehow misleading, that in these documents that
12 were presented to investors that it just wasn't clear.
13 Usually a control premium is separated amongst everyone.
14 And that's their argument, right?

15 Our position is that the rest of the document
16 explained what was meant by the term and that it was set out
17 within there. Again, something we certainly think we would
18 win at trial. Perhaps summary judgment. Probably not on a
19 motion to dismiss. But something we ultimately feel, that
20 the founders ultimately feel they would be vindicated at the
21 end of the day.

22 So the other ones aren't really any better and
23 they're smaller claims.

24 And I say all that to say it's \$8.5 million. I
25 think if -- I know sometimes at some points it might have

1 been believed that there would be more there than that. But
2 from our position, it's \$8.5 million for claims that are
3 exceptionally weak, like I said.

4 On account of those claims that again we'd knock
5 out very easily, there is \$8.5 million in cash, as you know.
6 Also the reduction in Imperium's interests in RTL, that
7 intermediate company. And not just from 60 percent to 55
8 percent. Right? All the way down to nothing.

9 There are a number of reasons for that, Your
10 Honor. But certainly a part of it is the potential for
11 litigation if we did not agree to that. There's also a
12 benefit to both the estate and the founders for the tax
13 reasons that were described. The way I calculated the
14 numbers, which is not the way that the Debtor's financial
15 advisors calculated the numbers, that even with the SAFE AD
16 Hoc Group having a claim and even with a contribution up
17 that they argued was required for that, there would still be
18 \$2 million to Imperium from RTL if that 60/40 split
19 remained. Again, that is a benefit to the estate in
20 addition to the tax. So the \$8.5 million I think is really
21 more a higher number than that. It's probably really \$12
22 million, \$12.5 million.

23 Why did we settle? Well, Judge, again, for the
24 normal reasons. Even if we were successful, there's
25 certainly a cost to it. I'm not here working for free in

1 this case where there is DO& insurance. There would be a
2 significant amount of defense costs. Also the risk is never
3 zero, right? There are a lot of good attorneys that were
4 asserting these claims were legitimate. And while I have a
5 very high opinion of myself, I get it wrong sometimes.

6 And, you know, so because of that, there was a
7 settlement, right? And I do believe that a large portion of
8 the driving force behind that was the SAFE Ad Hoc Group.
9 They really dug down. And, you know, tactically just
10 because -- maybe it was tactical, maybe it was whatever. It
11 really pushed us to really get the best deal that the
12 founders could accept, that the insurers would accept under
13 the circumstances.

14 So because of that, Judge, again -- I've been
15 speaking for the founders. I will now just say Mr.
16 Cerasuolo supports the plan for all those reasons and we
17 think it should be confirmed, Your Honor.

18 THE COURT: All right. Thank you. Ms. Mates?
19 Hit five-star one time. There you go.

20 MS. MATES: Thank you, Your Honor. I echo
21 everything Mr. Shannon said. I would like to tell the Court
22 that Imperium, Chase Blackmon, Cameron Blackmon, and Nathan
23 Nichols also support this plan. It's not -- it doesn't end
24 up the way that they had hoped that this would end up when
25 they formed the company. And they put their blood, sweat

1 and tears into it. But it is what it is. They recognize
2 the risk and recognize the parties involved and other
3 constituents and therefore have agreed to express their
4 support.

5 THE COURT: All right. Thank you.

6 MR. KANSA: Your Honor, for the record, Ken Kanza
7 of Barnes & Thornburg on behalf of the Special Committee. I
8 would just add one point in response to Dr. Camara's
9 objection which we received during this hearing that's
10 directly relevant to the Special Committee. And that
11 concerns the disclosure of the Special Committee's
12 investigation and the claims against Imperium and the
13 founders.

14 The disclosure statement at Docket Number 1832
15 does address the Special Committee's investigation and
16 recites the claims that Mr. Shannon ably summarized for the
17 Court here today. So that was disclosed to holders of
18 claims and interests who received the disclosure statement.
19 And we just wanted to make sure the Court knew that that was
20 out there. It's at Section 6(J) of the disclosure statement
21 at Page 40.

22 THE COURT: Thank you.

23 MR. KANSA: Thank you, Your Honor.

24 MR. POTTER: If I may quickly, Your Honor.

25 THE COURT: Yes.

1 MR. POTTER: Before we get to Dr. Camara's
2 objection. One point on it. Obviously, we just received it
3 this morning. And I'm looking through the objection which
4 was late-filed. It states it's filed on behalf of Justin
5 Camara appearing pro se. But at the same time in the
6 standing section it says there's standing to object based on
7 equity interests for three entities, Trine Mining, Cross the
8 River, and another one that I'm going to butcher the name
9 of. But under -- I don't believe that Mr. Camara and these
10 entities can proceed pro se. And the appropriate relief
11 would be to strike the objection because it was
12 inappropriately filed. And that's' what we would request be
13 done.

14 THE COURT: Okay. All right. Dr. Camara?

15 MR. CAMARA: Your Honor, Justin Camara appearing
16 pro se. I guess I'll just first make a comment if I could
17 about Chase Potter's comment. Generally I would hope that
18 the Court would be understanding of a pro se filer. My
19 intent was to file as a pro se. And I was just basically
20 trying to show that I owned equity ownership in the company.
21 I'm sorry if there was some kind of logistical issue there.

22 THE COURT: Well, do you own equity interest in
23 any of the debtors?

24 MR. CAMARA: Yes.

25 THE COURT: Which one?

1 MR. CAMARA: Rhodium Enterprises Incorporated.

2 THE COURT: Individually, you individually?

3 MR. CAMARA: By way of an LLC.

4 THE COURT: Okay. Well, that's his objection.

5 Normally if it's a corporate entity, even if you're the only
6 owner, that entity has to be represented by an attorney.

7 You know, you --

8 MR. CAMARA: My understanding was that -- yeah.

9 I'm sorry. I might have misunderstood.

10 THE COURT: Yes. For tax purposes it's a
11 disregarded entity. But for purposes of a plan or -- I'm
12 sorry, for purposes of the Bankruptcy Court, a pro se filer
13 can file pro se if they are asserting claims that they
14 directly own. But if you're asserting claims that are owned
15 by a corporation or a legal entity, not an individual, then
16 you can't -- generally you can't appear -- I'm going to let
17 you talk. But I am going to consider that.

18 MR. CAMARA: Yes, sir. My apologies.

19 THE COURT: Okay, there's nothing --

20 MR. CAMARA: Okay. So I'd start with -- I'd
21 mentioned that my objection focuses on two issues. It's the
22 nondisclosures related to the Special Committee
23 (indiscernible) investigation. My concern is that the
24 maximum amount of transparency for any party involved in
25 reviewing the plan should be available with that report. So

1 I understand that the issue is -- that possibly there are
2 some disclosures. I had not seen a disclosure that to me
3 gave enough information to satisfactorily allow, for
4 instance, you or anybody else to weigh the releases that are
5 being considered for Imperium. So I'll kind of go on a
6 script here and then I'll ad lib a little bit based on what
7 some of the others have said.

8 So the estate funded a month-long factual
9 investigation. There's public fee applications that show
10 that the Special Committee committed like extensive pre-
11 mediation work, forensic analyses, and creditor transaction
12 reviews, safe conversion review, tracing of transfers, legal
13 research and interviews, and repeated drafting of the
14 written Special Committee report.

15 The Special Committee report and certainly details
16 related to the signing to my knowledge do not appear in the
17 disclosure statement or the plan. You know, these are the
18 kind of factors that I would think the Court would want to
19 consider to evaluate potential insider releases, potential
20 estate claims in good faith.

21 The first time that I became aware that the
22 Committee results were going to be -- or at least details
23 related to them were going to be withheld was November 30
24 when I saw that the Special Committee was being dissolved in
25 the Second Amended Plan. So that's the portion related to

1 that.

2 I'll ad lib a little bit here. But basically the
3 estate paid \$2 million for an investigation that went into a
4 ton of detail, more than \$2 million. And we're considering
5 whether we want to allow \$1.9 million in recoveries to
6 insiders, Imperium. And I think that that really has to be
7 juxtaposed with a detailed look at the findings. I
8 understand that anyone can get up here and say
9 (indiscernible) or sandbag certain claims. But just to
10 point out a few specific things, right? It was mentioned
11 that the private sale breach of loyalty was one of the
12 claims. I would say that there's a lot of detail that is
13 extremely relevant considering whether that claim is
14 colorable, specifically that representations were made to
15 various investors related to the private sale that basically
16 the founders were pitching a SAFE agreement as a form of
17 capital raise while at the same time selling their own
18 equity. And even that private sale was not disclosed in the
19 S-1 statements that were filed for the cancelled IPO.

20 Also, we never had -- as investors we never had
21 any control over the operating agreements. And the founders
22 amended the operating agreement without proper disclosure.
23 Because my twin brother actually emailed the founders asking
24 for the operating agreement. And either Nathan Nichols or
25 Nick Cerasuolo or one of the founders refused or just

1 ignored the email for us to even get the operating
2 agreement. But they amended the operating agreement so that
3 in addition to getting the private sale money while none of
4 the investor had gotten any money, the founders indemnified
5 their own tax payments. So they basically changed the
6 operating agreement so that their company had to pay their
7 taxes at a rate for whatever the highest state corporate
8 taxes while meanwhile, I need to be honest with you, Nick
9 Cerasuolo is domiciled in Puerto Rico to avoid any taxes.
10 And I don't think that there was ever a refund for any of
11 that that came back to the company based on taxes that Nick
12 Cerasuolo may not have paid.

13 So there's tremendous more detail related to the
14 private sale. And it's very, very concerning that counsel -
15 - I mean, you would expect it, right? But would just blow
16 over that as if it was a nothingburger.

17 There is also -- I mean, it's worth noting that
18 the investment vehicle that the founders were using to raise
19 capital at the same time that they were doing a private sale
20 without disclosure is the vehicle that ultimately basically,
21 other than Transcend carving out something for themselves
22 possibly here, wiped out equity entirely. So I think that's
23 very relevant.

24 There's other issues. The Winter Storm Uri item
25 that was brought up, Nathan Nichols pitched the business to

1 investors with one of the competitive benefits of the
2 business being that Rhodium would receive energy credits if
3 the company was shut down. And the 8-K filing states that
4 Whinstone received energy credits. And then somehow
5 inexplicably Nathan Nichols signed an agreement that signed
6 away millions of dollars in energy credits in return for I
7 think a paltry like \$1 million to \$2 million. That
8 seriously harmed the company. I don't think those are
9 claims that you could just blow over in a court. It
10 certainly to me does not seem that in a derivative action or
11 an adversarial proceeding against Imperium that that would
12 just get summarily dismissed.

13 And I think the energy credits are somewhere in
14 the range of \$20 million to \$30 million, but don't quote me
15 on that. But they were substantially greater than what
16 Nathan Nichols signed them away for. There's no explanation
17 for that either, really. I mean, I guess you could pin it
18 to negligence possibly.

19 And then one other final thing is that I'm very
20 versed to speak about the control premium issue because that
21 was not even really something that was started as part of
22 the Special Committee's investigation report, although it
23 may have been covered in there. Okay?

24 The rollup transaction, Nick Cerasuolo quoted that
25 nothing would change about the pre- versus post-equity

1 interests. And then it's not five percent. That is
2 factually wrong. It's 6.5 percent that the founders skimmed
3 off of the company in the corporate reorganization. That
4 would have been worth \$195 million at the time of that
5 reorganization. It was not disclosed. You cannot find
6 anywhere in the documents where it says who gets allocated
7 the control premium. There is one appendix table in the
8 rollup that basically says here's a control premium. It
9 doesn't say where it would go at all.

10 And then well post hoc once they published the S-
11 1, you could do the math and figure out that equity holders
12 who were part of the rollup had their equity changed in a
13 way that was not how it was presented to investors. So
14 those are very colorable in my opinion.

15 The insiders try to hide behind a defense of
16 contemporaneous ownership, meaning like we changed all the
17 structure, we weren't part of the company at the time or
18 whatever. But that was contentious at the time of the
19 bankruptcy when there was a stay placed on how the Delaware
20 court was going to handle it. So those are not issues that
21 are -- just my opinion, right -- from what I can tell
22 something that can just be blown over. Certainly if you're
23 -- because what you're really trying to do, right, we're
24 trying to say is the \$8.5 million D&O settlement sufficient
25 to compensate that and do we justify insider releases.

1 So that's my point on the insiders. I just think
2 that it really deserves a fair observation so that we can
3 weigh those two things.

4 So the second point is that the -- regarding the
5 Transcend issue, I just don't have any way to really know
6 for sure if that's fair. So going back to my script.
7 Basically on November 20, one day before the objection
8 deadline, the SAFE AHG stipulated for the first time that
9 there would be a \$10 million allowed unsecured claim to
10 Transcend and a \$6.6 million guaranteed minimum recovery. I
11 would just ask that those would be reviewed possibly under
12 Rule 9019 or certainly that there would be a very thorough
13 evaluation for fairness there. Again, I'm pro se, so it's a
14 little bit -- sometimes my vocabulary might not be quite
15 right.

16 So in summary, I respectfully request that the
17 Court accept my objection as timely and the Court require
18 disclosure of the Special Committee's investigation
19 sufficient for meaningful review under Sections 1125 and
20 1129 and that the Court require appropriate disclosure or a
21 9019 review of the Transcend settlement terms.

22 THE COURT: All right. Thank you, sir. Ms.
23 Mates?

24 MS. MATES: Thank you, Your Honor. Can you hear
25 me?

1 THE COURT: Yes.

2 MS. MATES: And I didn't want to interrupt Mr.

3 Camara's allegations directly tit for tat. I know that's
4 not why we're here. I will point out that he says that the
5 claims were blown over yet started out his objection saying
6 how much money was spent by the special committee and the
7 professionals on investigating the claims. The other thing
8 I will point out is much of the information that was
9 provided by Imperium and the founders to the Special
10 Committee out of, you know, a willingness to cooperate in
11 the investigation was done in a confidential manner. And so
12 to the extent the report contains that information, we
13 object to its disclosure on a public level.

14 And my only point directly to one of Dr. Camara's
15 arguments was on the energy credits. That was part of the
16 settlement of the Whinstone Rhodium litigation. But that's
17 all I wanted to say. Thank you.

18 THE COURT: All right. Thank you. All right, Mr.
19 Hurley?

20 MR. CAMARA: Your Honor?

21 THE COURT: Hold on a second.

22 MR. CAMARA: Sorry.

23 MR. HURLEY: Your Honor, just quickly if I could
24 just clarify something for the record that Mr. Camara said.
25 There is no guaranteed \$6.6 million recovery to the

1 Transcend Group. So if there's \$2 million net at the end of
2 the day, they would be able to draw on the escrow and they
3 would get a four-and-a-half million-dollar recovery. And
4 then they wouldn't be entitled to anything else. I just
5 wanted to make that crystal clear and make sure Mr. Camara
6 understood that, too. Thank you.

7 THE COURT: All right. Mr. Potter?

8 MR. POTTER: Very briefly, Your Honor. I was just
9 going to reassert the Transcend Group's request to strike
10 the objection. Based on the argument, it appears that Dr.
11 Camara recognized he lacks standing personally as an equity
12 holder and that he also lacks the -- he lacks the ability to
13 represent the entities. Thank you.

14 MR. WOLFSHOHL: Your Honor, I'm not really sure
15 order we're going in. But we did file a limited objection.

16 THE COURT: Correct.

17 MR. WOLFSHOHL: It's a pretty narrow one. I'm
18 sure Your Honor read it.

19 THE COURT: Right. And then there's language that
20 they put in their proposed --

21 MR. WOLFSHOHL: They did. They put basically
22 where we ended up, I guess last night or late yesterday as
23 what they were proposing versus what we were proposing. I'm
24 not sure if Your Honor has had an opportunity to review
25 that.

1 THE COURT: I have reviewed the -- on Page 25 of
2 the proposed order, there are two -- there are plan
3 proponents, LKC's proposed language.

4 MS. TOMASCO: Your Honor, we uploaded a redline
5 confirmation order at Docket Number 2109.

6 MR. WOLFSHOHL: And, Your Honor, for purposes of
7 this language, I don't know that the redline is helpful
8 because this language just wasn't in there before.

9 MS. TOMASCO: If you look at ECF Page 2109-1, Page
10 26 of 46, you'll find the redline with that language in it.

11 THE COURT: I mean, I saw Page 25 of the clean. I
12 have that in front of me.

13 MS. TOMASCO: Correct.

14 THE COURT: And let me just see if there's
15 anything else. All right. Okay, go ahead.

16 MR. WOLFSHOHL: Thank you, Your Honor. Just to
17 kind of sum up what I think is really in dispute now that
18 we've kind of gone back and forth between the parties over
19 the language, first I think nobody is contesting that we're
20 not a "releasing party". And so that language is consistent
21 in both versions of the proposed language.

22 I think what it comes down to -- and I'll tell you
23 the part that -- or what we asked for, which was we wanted a
24 provision that said no claims of LKC related to the LKC
25 engagement, the LKC success fee, or the Special Committee's

1 motions, actions and claims related to LKC are released
2 under the plan or confirmation order and such claims are
3 fully preserved.

4 I think if you just kind of distill what the
5 difference is between what they are proposing versus what I
6 just read to you is that they're saying we're fine with that
7 essentially being preserved as to claims against counsel for
8 the Debtors and counsel for the Special Committee, but I
9 think they're still trying to say the Debtors and the
10 Special Committee are beneficiaries of an exculpation
11 provision that would eliminate those claims. And I think
12 we've got a pending dispute related to the LKC success fee.
13 We haven't finished evidence.

14 I think there are some -- I think stated in prior
15 pleadings that there are claims that we believe could exist
16 depending on the result of that because of some of the
17 actions taken by both of the Special Committee, maybe to
18 some extent the Debtors depending on who it is that was
19 actually doing stuff. And so I just don't think that you
20 can have a pending existing dispute like that and then have
21 some plan get confirmed that exculpates -- we are not asking
22 for an elimination of the exculpation effects as to all the
23 other things that the Special Committee or the Debtors have
24 done in this case, but I think we've got an existing dispute
25 and I don't think I should have to come in, prove up my

1 claims at a confirmation hearing to avoid the effects of an
2 exculpation provision that I think is inherently overly
3 broad and potentially impairs our rights relative to the
4 existing dispute.

5 And that's what I think this comes down to. Mr.
6 Schmaltz might say it differently. But I think what it
7 comes down to is they're saying okay, fine, well, they're
8 not really giving us much by saying Debtor's counsel and
9 Special Committee counsel, because they're not beneficiaries
10 of the exculpation provision anyway. So that's not --
11 essentially what I think their language says is -- if
12 anything it's just clarification of what the plan is already
13 doing. What we're saying is we don't want to be subject to
14 the exculpation provision that benefits the Debtors and the
15 Special Committee to the extent of claims that relate to the
16 items that I specifically identified, which again, I'm not
17 talking about D&O settlement, I'm not talking about
18 Whinstone settlement. I'm talking about things that relate
19 to LKC, its retention, its success fee and many of the
20 things that were done in connection with the LKC fee
21 application and some of the pleadings and things like that
22 that were filed.

23 So that's the thing that we're talking about.
24 Those are the things we were talking about. And I really
25 don't think that it's appropriate for an exculpation

1 provision to swoop in and eliminate those claims that exist.

2 MR. KANSA: Your Honor, Ken Kansa, Barnes &
3 Thornburg, on behalf of the Special Committee. I think Mr.
4 Wolfshohl has accurately recited the narrowing of the issues
5 between LKC and the plan proponents on this issue. We do
6 agree that they're not a releasing party, and we've put that
7 into our language. The Court has seen that. Similarly, I
8 think they had initially stated that counsel for Debtors and
9 Special Committee were indisputably getting exculpated under
10 the plan. We disagree with that. We think, candidly, Your
11 Honor, the Court would disagree with that. So we have
12 clarified that we are not getting that exculpation under the
13 plan.

14 But the real focus of our dispute is whether the
15 Debtors and the Special Committee themselves can get the
16 benefit of releases and exculpation under this plan. We
17 think they can, Your Honor. We think it's appropriate in
18 this circumstance. Certainly there are provisions in the
19 plan that would let other claims go forward if there is, for
20 example, an administrative claim that's otherwise provided
21 by the plan.

22 THE COURT: To the extent that they have a
23 defamation claim against the Special Committee, wouldn't
24 that be an administrative claim?

25 MR. KANSA: To the extent they have a defamation

1 claim against the Special Committee and they -- it's an
2 administrative claim subject to being, you know, meeting the
3 requirements of an administrative claim as opposed to having
4 a sort of free-floating carveout to assert whatever they may
5 like and not satisfy those requirements I think, Your Honor.

6 THE COURT: Right. But if it's conduct that is
7 covered from the petition date through the effective date
8 and there's a claim that arises from that, obviously subject
9 to meeting the requirements of 503, it would be an
10 administrative claim.

11 MR. KANSA: I think that's correct, Your Honor,
12 yes.

13 THE COURT: Okay. I mean, is there a circumstance
14 where the claim wouldn't fall into that?

15 MR. KANSA: None that I can think of, Your Honor.
16 But it's not my carveout to argue. So I would leave that to
17 Mr. Wolfshohl as to whether he's trying to preserve
18 something outside the administrative claims context. But we
19 certainly don't think he either can or should be able to.

20 THE COURT: I mean, to the extent that -- I mean,
21 if there was a car accident post-petition, obviously that
22 wouldn't be a benefit to the estate, but it would still be
23 an administrative claim.

24 MR. KANSA: Understood, Your Honor. Yes.

25 THE COURT: Okay. All right. Thank you.

1 MR. KANSA: Thank you, Your Honor.

2 MR. WOLFSHOHL: Your Honor, the problem I have is
3 that, you know, I don't know that we are going to be able to
4 state with certainty today that the types of -- you
5 identified a very good example, defamation. I can't --
6 unless there's going to be a stipulation that a claim like
7 that is going to flow through the estate and that there are
8 going to be adequate proceeds to satisfy that claim, I think
9 it -- I mean, I don't know the details of the Special
10 Committee's indemnification rights relative to the Debtor
11 for things that they did while -- you know, I don't even
12 know if some of the stuff that they did was acting within
13 the appropriate capacity as a special committee.

14 So I think my problem with that is only that I
15 don't know everything and I don't know -- I think you've
16 kind of hit it on the head. If I know that there's a pot of
17 money that's going to satisfy those claims, maybe I don't
18 care where it comes from. But my concern is that just
19 standing up in court and saying, yeah, we think it's
20 probably an administrative claim but not knowing with
21 certainty that it is, that's the problem I have.

22 THE COURT: Okay. Thank you. All right.
23 Anything further on confirmation?

24 MR. CAMARA: Your Honor?

25 THE COURT: Yes, sir.

1 MR. CAMARA: Justin Camara appearing
2 hypothetically pro se. I just wanted to add that I hope
3 there will be some consideration of, you know, beneficial
4 ownership if I made a mistake related to the pro se filing.
5 I just wanted to bring those issues for people to be able to
6 just be aware of.

7 And the final comment I would say before I run off
8 to surgery here is that one of the main concerns and the
9 reason that I was motivated to file the objection as we're
10 contemplating giving the insiders \$1.9 million in
11 recoveries. And whether we want to reduce the value of the
12 claims or increase the value of the claims, certainly to the
13 extent that any of those claims even marginally exceeded the
14 value of the D&O settlement, the insiders in my perspective
15 should get -- you know, that \$1.9 million is kind of absurd
16 to contemplate to give to insiders.

17 THE COURT: Okay. Thank you.

18 MR. KANSA: Your Honor, Ken Kansa for the Special
19 Committee. I just would want to clarify in response to Dr.
20 Camara's remarks, the \$1.8 million that's going to Imperium
21 and the founders under the plan is on account of notes only.
22 And that is the only consideration that is going to them
23 under the plan. It's on account of their secured notes at
24 several of the Debtors as specified in Section 6.18 of the
25 plan. So we've been very clear there that this is not a

1 free-floating claim, if you will, where a negotiated amount
2 -- it ties very specifically to certain rights that Imperium
3 and the founders have. Thank you, Your Honor.

4 THE COURT: All right. Thank you, Dr. Camara. I
5 have an independent obligation to assess the settlement and
6 the provisions of the plan. So I will take what you said
7 into account, you know, whether I recognize or not your
8 actual objection.

9 MR. CAMARA: Thank you, sir.

10 THE COURT: All right. Ms. Tomasco?

11 MS. TOMASCO: Your Honor, we have pending a notice
12 that will upload, sources and uses of cash on a consolidated
13 basis. It would be two -- I mean, it would be taciturn to
14 do it on a per-debtor basis, but it's on a consolidated
15 basis. Sources and uses of cash.

16 In addition, a slightly modified liquidation
17 analysis that shows the effects of the Transcend settlement.
18 I will tell you that the sources and uses of cash is based
19 on the old liquidation analysis. There is not a new one for
20 the amended liquidation analysis. The difference is that
21 there have been some cost savings compared to the sources
22 and uses of cash that is going to be uploaded. So it's
23 going to be slightly more beneficial than the original. But
24 we do have a new liquidation analysis to --

25 THE COURT: And how long would it take you to do

1 the sources and uses for the...

2 MS. TOMASCO: Ms. Howell is working on it right
3 now.

4 THE COURT: For the new liquidation analysis.

5 MS. TOMASCO: For the new liquidation analysis and
6 the new sources and uses. If you want a sources and uses
7 that's tied to the new cash number based on savings compared
8 to estimates, the Province team reflects that's going to
9 take about 30 minutes to have that updated sources and uses
10 of cash. So that's the difference.

11 And I can walk you through like the differences
12 between the old liquidation analysis and the new liquidation
13 analysis. Mr. Robinson can also testify. But I can tell
14 you that the differences are as you would expect. Slightly
15 less professional fee spend, that sort of thing. That's
16 what we're going to -- we would show you.

17 In addition, as I said, the updated blackline of
18 the confirmation order has been uploaded. I have been in
19 contact with Mr. Lockhart. He does not object to the use of
20 the Hurley declaration, the redacted portion, as long as
21 it's in a closed courtroom and that they can dial in and
22 listen to whatever the proceedings are that pertain to that.

23 THE COURT: Well, they're certainly welcome to
24 dial in. But I'm not -- I mean, there's really been no
25 opposition to the substantial contribution claim. I think

1 the redacted portions which don't' involve a mediation
2 privilege, I don't -- you know, I have to look at everything
3 in the context, but I don't know that it would be helpful.

4 THE COURT: I understand. And obviously you
5 prepare your exhibit list and your presentation assuming
6 that there's going to be a contest. To the extent it's not
7 contested and we don't have to go through the brain damage,
8 I can see why the court would make that decision.

9 With respect to the Transcend settlement, I just
10 wanted to mention that on Page 29 of the disclosure
11 statement that was sent to all creditors there is a detailed
12 explanation of the Transcend warrants and the effects that
13 they could have if we did not prevail on that claim
14 objection. I think that it was fully disclosed to creditors
15 what could happen. And what we are settling is that claim
16 objection in context of the plan. And I think that's
17 entirely proper, Your Honor.

18 THE COURT: All right. All right. So is there
19 anything further with respect to confirmation? All right.

20 Then the next matter is the motion to enforce.
21 And I've read Mr. Wheeler's declaration and it really didn't
22 tell me what the issues were that resulted in the need to
23 file a motion as opposed to having agreement with the
24 parties. And I know you tried to explain it to me, but I'm
25 still not really comprehending.

1 MS. TOMASCO: We were unable to reach an agreement
2 with Whinstone with respect to the allocation that the
3 Internal Revenue Code contemplates.

4 THE COURT: What was that dispute? I have no
5 evidence as to what that dispute was.

6 MS. TOMASCO: The dispute had to do -- and I will
7 tell you this one thing that may feed into this. The only
8 thing that the IRS requires that we have consistent
9 valuation of would be the physical property. That is the
10 point of the IRS forms that you should fill out when you
11 close a transaction of this type.

12 Whinstone did their own valuation, hired their tax
13 consultants, et cetera. And they valued the property
14 somewhere around \$7 million. We said that can't possibly be
15 true, because a lot of the miners that were at the Rockdale
16 location actually came from the Temple location. And I
17 don't know if you recall this, but Riot had made an offer
18 for the Temple location primarily -- it was a leased
19 location, so primarily for the miners -- upwards of \$48
20 million. And so how could that be true?

21 And they said, well, you know, we have to be able
22 to justify this to the IRS. And we said okay, we didn't
23 want to spend this money, but we'll go out and we'll do our
24 own evaluation. And we valued the property at \$48 million.
25 And that's really the dispute.

1 It also came to pass that because of the origin of
2 the parties' relationship that Whinstone had property the
3 debtor invested in creating the Rockdale Facility, invested
4 its money in exchange for these contracts, these favorable
5 power contracts which were the subject of the motion to
6 assume litigation. And property, equipment, infrastructure,
7 coolers, chillers, HVAC, all of those things the Debtor paid
8 for and had on their books. But Whinstone, for whatever
9 reason, we believe -- and in conversations it appeared that
10 they had them on their books, too. And so they were not
11 able to actually agree that they were actually ours and that
12 they had been sold to them in the PSA.

13 And so they said to resolve it, they said we can't
14 agree to something, we can't sign our name on anything. The
15 only thing that we can do is we'll honor whatever the court
16 order is. That's all we can do. We can't agree to it.

17 THE COURT: Okay. Well, what I really need is a
18 declaration from somebody with knowledge that goes through
19 what the dispute was, what happened back and forth or put a
20 witness on. Because right now I have no evidence to that
21 effect.

22 MS. TOMASCO: If you would like...

23 THE COURT: I mean, you don't have to do it right
24 now. But, I mean, that's what I thought I was going to get.
25 I thought I was going to get a full declaration as to what

1 happened, who said what, you know, and everything.

2 MS. TOMASCO: If you would like, he's in the hall.
3 Mr. Wheeler is in the hall. He is our -- he was our tax
4 consultant.

5 THE COURT: But was he involved in all of the
6 negotiations with Whinstone?

7 MS. TOMASCO: The part about the tax negotiations,
8 yes.

9 THE COURT: Yes, Mr...

10 MR. SCHMELTZ: I had one thing. Your Honor, if I
11 might, part of the complexity is -- it's my understanding
12 that Riot Whinstone has taken a public position in an SEC
13 filing with respect to the value of the hard assets. Their
14 accounting team, my understanding from our conversations, is
15 concerned about contradicting that position at this point
16 but is willing if there is a court order directing that the
17 amount of hard assets be, for example, \$45 million, \$48
18 million commensurate with the valuation we've obtained, that
19 they will live with that for purposes of the tax allocation.
20 That is a cornerstone, that piece of the hard assets is a
21 cornerstone allowing us then to allocate the rest between
22 settlement and the contract value, the contract buydown
23 value. Obviously, that's a subject of a dispute we have
24 with LKC and we'll address that this afternoon.
25 But it's my understanding that the need for a court order is

1 really one of sort of accounting cold feet to alter
2 treatment that they've taken a public stance on.

3 But again, my understanding of the reason they
4 non-opt, they didn't file an opposition to this is
5 anticipating Your Honor would issue an order saying that the
6 Debtors have obtained a proper valuation, the hard assets
7 are properly valued at \$45 million, that for tax purposes
8 that 45 -- is it 48? But in any event, that that number is
9 the proper number. And we can move on then with the rest of
10 the dispute with LKC getting to the question of whether or
11 not \$75 million is appropriate for the settlement, or \$100
12 million as they suggest, et cetera. And again, we'll put
13 evidence on of that this afternoon with Your Honor.

14 So I think that's the disconnect. That's why we
15 don't have this other witness. It would have to be probably
16 me or Patty to do exactly what I've just done.

17 THE COURT: Right now if I have to rule, I would
18 deny the motion. Because I have no evidence.

19 MS. TOMASCO: We have -- we can put Mr. Wheeler on
20 and go through --

21 THE COURT: But Mr. Wheeler is going to testify as
22 to me, right?

23 MS. TOMASCO: Correct.

24 THE COURT: And so unless he has personal
25 knowledge of the discussions with Whinstone as to why they

1 couldn't agree on that number, that doesn't help me.

2 MS. TOMASCO: Well, all of us were on the call.

3 Myself, Mr. Schmeltz, Mr. Wheeler.

4 THE COURT: Okay. If he's got personal knowledge
5 then, you know, we can -- you can do a supplemental
6 declaration, give people an opportunity to review it. But
7 this was not what I was expecting.

8 MR. SCHMELTZ: And I think there's an interim
9 conversation that both Patty and I have had separately I
10 think with Whinstone's lawyer, which is that the missing
11 piece of the puzzle where they have said to us, we can't
12 agree to your position, but we'll agree to a court order.
13 Mr. Wheeler may not have been on that particular call with
14 that missing puzzle piece. I know I'd testify to it if it's
15 appropriate.

16 MS. TOMASCO: I would testify as well. We were
17 all on the calls.

18 THE COURT: All right. then let's get a
19 declaration on.

20 MR. SCHMALTZ: All right. We can do that.

21 THE COURT: All right. Mr. Wolfshohl?

22 MR. WOLFSHOHL: I'm fine with a subsequent
23 declaration as long as we have an opportunity to review it,
24 weigh in on it. All this is very different than what's set
25 out in the motion, which I think is Your Honor's concern.

1 The other thing is I don't really understand why
2 this is being brought up today, because I did not see it on
3 Your Honor's calendar. I saw it on the agenda, but not
4 until I was preparing this morning. And so I just don't
5 know why this is being brought up today at all.

6 We did see the declaration today. I saw that it
7 was filed yesterday. There were a flurry of pleadings and
8 we were trying to get through all of them. And my reaction
9 was the same --

10 THE COURT: Yeah. No, no, I had asked -- I had
11 asked for -- when we had the hearing on this, I had asked
12 for the declaration that I would consider a connection with
13 confirmation. But I still -- the declarations really didn't
14 help me.

15 MS. TOMASCO: Just so the Court understands, this
16 is not connected to LKC at all. This has to do with taking
17 the Whinstone settlement proceeds and treating them
18 appropriately for tax purposes as they wind their way up to
19 distributions. In other words, the valuation of the
20 Debtor's assets at various subsidiaries is very important
21 because it matches up with the Debtor's books and records
22 and available tax attributes.

23 So this is not something that is being done for,
24 you know, smoke and mirrors purposes. This is very
25 important to the tax savings that the Debtors are looking to

1 accomplish.

2 THE COURT: And I don't dispute that one bit. I
3 just don't have any evidence to that effect.

4 MS. TOMASCO: Just so we're not at cross purposes,
5 Your Honor, the evidence you're looking for is...

6 THE COURT: The reason why you could not agree on
7 a valuation with Whinstone, the steps that you took to
8 address the valuation, and the dispute that I'm resolving as
9 opposed to giving an advisory opinion.

10 MS. TOMASCO: I see.

11 THE COURT: Okay. This -- Mr. Wheeler's
12 declaration basically said here's what I did. Okay, great.
13 And I don't have any question that he did what he said he
14 did. But that just doesn't resolve this dispute. I mean,
15 it doesn't address the dispute. It addresses maybe one
16 number there.

17 MS. TOMASCO: Correct. Is it -- is the Court
18 concerned with the allocation that Mr. Wheeler made? Like
19 an advisory opinion with respect to something other than the
20 property value?

21 THE COURT: Correct.

22 MS. TOMASCO: I see. Okay. I understand.

23 THE COURT: And that's one. But two, more
24 importantly is, what's the dispute that I'm really resolving
25 here, okay? Because, you know, I resolve disputes, not give

1 advisory opinions. And obviously you all have told me what
2 you think the dispute is. And, you know, and I have no
3 reason to doubt that that's not true. But I don't have any
4 evidence.

5 MS. TOMASCO: That there was a dispute.

6 THE COURT: That there was a dispute, you know,
7 who said what, why did they say it, why couldn't they do it,
8 the fact that they had an appraisal at \$7 million and you
9 disagreed with the appraisal. I mean, all of the stuff that
10 you just told me. You know, I need to look at it as
11 evidence.

12 MS. TOMASCO: And we couldn't get them to send us
13 a list of what they had appraised. And so we couldn't even
14 speak to the nature of the dispute because we had different
15 equipment lists to start with, right? So --

16 THE COURT: Well, I don't know that.

17 MS. TOMASCO: Okay. I'll prepare a declaration
18 that goes through all of those elements, Your Honor.
19 Because that's essentially what it was. We couldn't even
20 get -- agree on a list of what the equipment was that was
21 sold to them.

22 THE COURT: Understood.

23 MS. TOMASCO: Thank you.

24 THE COURT: All right. Anything further on the
25 stipulation, plan, or the motion to enforce?

1 MS. TOMASCO: I believe that with respect to the
2 stipulation, it's moot because the Court has decided that it
3 doesn't need to consider any mediation privilege documents.

4 With respect to the plan, the notice of the
5 amended liquidation analysis and the flow of funds and
6 sources and uses of cash have been uploaded. I don't have
7 the docket in front of me, but it should be the last thing
8 on the docket.

9 MR. KANSA: Your Honor, it's Docket 2110.

10 MS. TOMASCO: 2110, Your Honor. And so you'll
11 have both of those. If the Court has any questions about
12 those, Mr. Robinson can take the stand and explain anything
13 about that. To the extent that you want a sources and uses
14 of cash that ties to the amended liquidation analysis, that
15 should be available in 30 minutes or so.

16 THE COURT: So the 139 cash on hand, that includes
17 the sales proceeds from the Riot stock, correct?

18 MS. TOMASCO: Correct.

19 THE COURT: Okay, all right. So this Exhibit 1,
20 2110-1, ties to the liquidation analysis before the --

21 MS. TOMASCO: Transcend settlement.

22 THE COURT: Transcend settlement. Okay. So I
23 want to see the one with the Transcend settlement and we can
24 look at that. All right. So it's now noon. So we're
25 coming back at 1:00 for the --

1 MS. TOMASCO: LKC dispute.

2 THE COURT: All right. So we'll be in recess

3 until noon.

4 MS. TOMASCO: Until 1:00.

5 THE COURT: Until 1:00.

6 MS. TOMASCO: Thank you, Your Honor.

7 (Recess)

8 THE COURT: All right. We're back on the record

9 in Case Number 24-90448, Rhodium Encore LLC. And I'm going

10 to go ahead and activate the hand-raising feature. So to

11 the extent somebody wants to speak, please hit five-star one

12 time.

13 All right. Ms. Tomasco?

14 MS. TOMASCO: Thank you, Your Honor. I know we

15 need to take up the LKC thing, but I was wondering if we

16 could go through the additional exhibits. Because some of

17 us weren't planning to stay for the whole thing, if that's

18 okay.

19 THE COURT: Okay.

20 MS. TOMASCO: If we could do that part now and

21 then turn to that.

22 So just FYI, Your Honor, we uploaded and sent to

23 Mr. Laws Document Number 2112, which has the updated sources

24 and uses of cash.

25 THE COURT: Correct.

1 MS. TOMASCO: That is an update to the document
2 that's filed at 2110-1.

3 THE COURT: Correct.

4 MS. TOMASCO: Which is the sources and uses of
5 cash based on the original liquidation analysis.

6 THE COURT: Yeah. And so this -- the way I
7 understand this, there is no distributable cash to equity
8 based on this analysis under the plan.

9 MS. TOMASCO: That's correct. And that's a number
10 of mechanics that are different, mostly because of the
11 Transcend settlement. There have been -- as one would
12 expect, the estimates have gone up or down. And I can
13 summarize those differences for you. Or Mr. Robinson is in
14 the courtroom if --

15 THE COURT: Yeah. Why don't we get Mr. Robinson
16 on to go through it.

17 MS. TOMASCO: Thank you. Your Honor, the Debtors
18 would call Mr. Michael Robinson to the stand.

19 THE COURT: Do you solemnly swear or affirm to
20 tell the truth, the whole truth, and nothing but the truth?

21 MR. ROBINSON: I do.

22 THE COURT: Thank you. Do you have a copy of it?

23 MR. ROBINSON: I don't.

24 MS. TOMASCO: Yeah. That's what we were -- we
25 were trying to do a couple of things. What I can do is I

1 can hand up the original liquidation analysis -- I mean the
2 updated liquidation analysis to the Court. This is the
3 document that's found at 2110-2.

4 THE COURT: I've got a copy.

5 MS. TOMASCO: Okay. Then I'll just approach the
6 witness?

7 THE COURT: I have copies and --

8 MS. TOMASCO: May I approach the witness?

9 THE COURT: Yes.

10 MS. TOMASCO: All right. Your Honor, if I could
11 approach the witness one more time?

12 THE COURT: Absolutely.

13 DIRECT EXAMINATION OF MICHAEL ROBINSON

14 BY MS. TOMASCO:

15 Q Mr. Robinson, just to keep this short, we're going to
16 look at the revised liquidation analysis, which is the first
17 document I handed you, which is the same that can be found
18 at 2110-2. Do you recognize that document?

19 A I do.

20 Q And what is it?

21 A It is a liquidation analysis.

22 Q And how did it change from the liquidation analysis
23 that was filed with the disclosure statement?

24 A The core differences in this analysis were we updated
25 it for certain professional fees and other expenses that

1 were known. Ultimately that resulted in a savings of
2 several million dollars, roughly about \$3 million. It
3 additionally contemplated an increase in the winddown budget
4 shifting from \$1.15 million to \$2 million. It also
5 reflected the request to increase the reserve for the LKC
6 success fee and then it also contemplated the change in how
7 the substantial contribution would have a reserve amount of
8 two-and-a-half million dollars and also showed how that
9 would flow accordingly.

10 Q So to summarize, Mr. Robinson, how much did the
11 winddown budget increase?

12 A \$850,000.

13 Q And how much did the actual professional fees versus
14 budget decrease?

15 A I'd have to look to quickly reference that. But I
16 believe it was just over a million.

17 Q And then how much did the estimated fees to LKC and B.
18 Riley, or what we call the success fee category, increase?

19 A Yeah. So we effectively had a reserve of six-and-a-
20 quarter million dollars that ultimately would have went up
21 to \$9.9 million, but we already paid out certain amounts of
22 \$1.7 million. And in there, there's also a reserve for B.
23 Riley of \$550,000 as well as ultimately some invoice fees
24 for hourlies of roughly \$400,000 and change, give or take.

25 Q Okay. Let's look at what's been marked as -- which

1 document -- it should have at the heading ECF marker 2112.

2 Do you have that in front of you?

3 A I do.

4 Q And what is that document?

5 A This is the revision to the liquidation analysis I
6 believe containing predominantly the cash reconciliation.

7 Q Okay. Now, with respect to those five movers that
8 we've just discussed, the winddown budget going up, the
9 actual professional fees going down, the LKC reserve going
10 up, the Transcend settlement figure of \$2.5 million which
11 resulted in a net reduction of distribution of equity from
12 \$1.129 to negative \$400,000, correct?

13 A Correct.

14 Q And where is that reflected on the distributable cash
15 to equity on Docket Number 2112-1?

16 A So effectively if you look at the very bottom of what
17 is Page 2 of 2 per the top of the document, you'll see at
18 the bottom it shows distributable cash to equity as zero.
19 In fact, it's a bit negative, to your point.

20 Q It's negative \$400,000, correct?

21 A Correct.

22 Q Okay. And where is the increase in the LKC B. Riley
23 reserve reflected on Docket Number 2112-1?

24 A Yeah. So if you look a bit further up, you'll see a
25 category called reserves. And in there you'll see initially

1 late-filed claims of \$500,000. And then right below that,
2 LKC and B. Riley listed at \$8.18 million.

3 THE COURT: And B. Riley is 1.7 of that?

4 THE WITNESS: No, they are \$550,000 of that?

5 THE COURT: \$550,000, okay.

6 BY MS. TOMASCO:

7 Q Mr. Robinson, does this change materially any other
8 aspect of your declaration on file with respect to the
9 confirmation of the plan?

10 A It does not.

11 MS. TOMASCO: Any other questions, Your Honor?

12 THE COURT: Okay. So Paragraph 19 -- hold on.
13 Let me find it.

14 Ms. Tomasco, do you want to take him through
15 Paragraph 19?

16 MS. TOMASCO: Of his declaration?

17 THE COURT: Yes. And see how that compares with
18 the new -- with this new sources and uses.

19 MS. TOMASCO: Paragraph 19?

20 THE COURT: Yeah.

21 MS. TOMASCO: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MS. TOMASCO:

24 Q Mr. Robinson, do you see Paragraph 19 of your
25 declaration?

1 A I do.

2 Q Does that analysis change based on your updated
3 liquidation analysis?

4 A Give me one moment, please. The deficit amount does
5 change, but the concept does not.

6 Q And what do you mean by that?

7 A Ultimately, there is a difference in the amount of
8 recoveries that would flow through given the changes we
9 addressed.

10 THE COURT: The equity? The equity?

11 THE WITNESS: Well, ultimately the amount that
12 could potentially be available to equity. There is
13 effectively that blocking position now in the plan. Not in
14 the Chapter 7 scenario.

15 THE COURT: Okay. And you're assuming that there
16 would be an eight-and-a-half million-dollar substantial
17 contribution claim in a Chapter 7?

18 THE WITNESS: I actually assume that there may be
19 a larger substantial contribution claim in a Chapter 7. We
20 were notified by the SAFE Ad Hoc Group their intent to
21 pursue an administrative claim up to I believe it was \$12
22 million we were told. We represented a low of -- well, I
23 was talking in the high case. But in the high case
24 effectively zero and then in the low case the potential full
25 amount.

1 MS. TOMASCO: Nothing further, Your Honor.

2 THE COURT: All right. Does anyone wish to cross-
3 examine Mr. Robinson? Yes.

4 MR. POTTER: Mr. Robinson, this will be very
5 brief. May I proceed, Your Honor?

6 THE COURT: Yes.

7 CROSS-EXAMINATION OF MICHAEL ROBINSON

8 BY MR. POTTER:

9 Q Do you have in front of you Document 2112-1?

10 A I do.

11 Q Okay, great. If you go down to, I believe it's the
12 last page of that document, what's the SAFE substantial
13 contribution claim now listed at in that document, the line
14 item for that? I won't hide the ball. Do you see where it
15 says \$6 million?

16 A Yes. I see \$6 million. And then below that.

17 Q Is the Transcend reserve, correct?

18 A That's right.

19 Q So that's the eight-and-a-half million-dollar
20 substantial contribution claim that would have been paid
21 even before the Transcend settlement, correct?

22 A Correct.

23 Q And is it your understanding that the Transcend
24 settlement also resulted in a significant savings and
25 potential professional fees?

1 A Absolutely.

2 MR. POTTER: Nothing further, Your Honor.

3 THE COURT: Okay, thank you. All right. You may
4 step down.

5 MS. TOMASCO: Your Honor, before we move on to
6 LKC, is there anything else that the Court wants to hear
7 about with respect to confirmation?

8 THE COURT: No. I think that -- I mean, we still
9 have the other open issue on the stipulation -- on the
10 motion to allocate.

11 MS. TOMASCO: Beg your pardon?

12 THE COURT: On the motion regarding the allocation
13 of the purchase price.

14 MS. TOMASCO: Oh, correct. But that's not --
15 that's not tied with confirmation. That's separate.

16 THE COURT: Okay.

17 MR. POTTER: Thank you, Your Honor.

18 MS. SCHULTZ: Your Honor, for the record, Sarah
19 Schultz on behalf of the SAFE Ad Hoc Group. I just wanted
20 to modify the documents that we're asking Your Honor to
21 consider for submission as evidence given your ruling with
22 respect to the previous stipulation.

23 So, Your Honor, I'm looking at the exhibit list
24 that was filed at 2104. And, Your Honor, we would move for
25 admission of Exhibits 14 through 26.

1 THE COURT: Hold on a second. Okay, 13 I've
2 already took judicial notice of.

3 MS. SCHULTZ: Yeah.

4 THE COURT: All right. 14 through 26.

5 MS. SCHULTZ: 28 through 32 and then 35 through
6 80, 91. We would ask Your Honor to take judicial notice of
7 90.

8 THE COURT: Okay. So take judicial notice of 90.

9 MS. SCHULTZ: Yes, Your Honor. That transcript is
10 already on the docket. We would move for admission of 91,
11 93, 95 through 98 and then 100 through 107. And I believe
12 Your Honor has already admitted the portion that is
13 available to the public of Mr. Hurley's declaration, which
14 was 108.

15 THE COURT: All right. I will take judicial
16 notice of the transcript that's on file.

17 MS. SCHULTZ: Thank you.

18 THE COURT: Okay. Does anyone object to the
19 admission of Exhibits -- let me make sure I get this right.
20 14 through 26, 28 through 32, 35 through 80, 91, 93, 95
21 through 98, 100 through 107?

22 Hearing no objection, they will be admitted.

23 (Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, and
24 100-107 entered into evidence)

25 MS. TOMASCO: Thank you.

1 THE COURT: All right. Anything further on
2 confirmation?

3 MS. TOMASCO: No, Your Honor. I think you
4 understand that the plan support parties all urge the
5 confirmation of the plan, overruling the objections that we
6 haven't already resolved.

7 I know that there's a toggle issue for LKC in the
8 confirmation order which you have by virtue of the redline
9 that we've uploaded. If the Court wants additional argument
10 on any of those points, we're happy to give it.

11 THE COURT: Okay. I'm going to take the matter
12 under advisement and I will -- I'll go ahead and -- I mean,
13 I'll rule promptly, but I'm going to consider everything.

14 MS. TOMASCO: Thank you, Your Honor.

15 THE COURT: All right. Why don't we go to LKC.

16 MR. SCHMELTZ: Good afternoon, Your Honor. Trace
17 Schmeltz for the Special Committee from Barnes & Thornburg.

18 MR. WOLFSHOHL: Good afternoon, Your Honor.
19 Joshua Wolfshohl from Porter Hedges on behalf of LKC. And
20 then we've got Will Thomson, Todd Disher, John Cohn, Jacob
21 Richards.

22 MR. SCHMELTZ: Your Honor, my partner, Paige Lohse
23 is here. And my clients are here -- or my client, David
24 Eaton, is here as well. We'd like to proceed today if it
25 pleases the Court, we've submitted a declaration for Chris

1 Wheeler. We would stand on that declaration. He is here in
2 the hallway subject to cross-examination if that's what LKC
3 would like to do. We would put on Kevin Hayes, the former
4 CFO of Rhodium live today, and we would put David Eaton on
5 live as well. And then stand for argument. We've got
6 closing argument and some exciting slides to prepare -- or
7 to present. That's from our perspective all that's left to
8 be done.

9 Mr. Thompson, I assume you've got an alternate
10 plan.

11 MR. THOMPSON: Your Honor asked us to confer on
12 any pending motions that might need rulings. What I
13 understand from Mr. Schmeltz is that he's not calling Mr.
14 Rosten about whom there was a motion to strike. Assuming
15 he's not a witness, the motion to strike does not need to be
16 ruled upon.

17 As to the declaration from Mr. Wheeler, we were
18 fine with that in principle, though we have some evidentiary
19 objections to particular paragraphs just as we would if he
20 were testifying. I'm happy to make those whenever Your
21 Honor wants.

22 THE COURT: Do it now.

23 MR. THOMPSON: Does Your Honor have a copy of the
24 declaration in question? I believe it's at 1943-2. I can
25 also hand Your Honor a hard copy.

1 THE COURT: Yeah, why don't you hand me a copy. I
2 did have it in front of me.

3 MR. THOMPSON: So this is fairly similar to the
4 declaration that Your Honor saw this morning in connection
5 with the other matter. If you look at the very last
6 paragraph -- it's Page 5, Paragraph 11. It seems to offer a
7 personal belief regarding the value of the damages claims
8 based on "information I have been told or received". I have
9 a hearsay objection if he's offering an opinion based on
10 information he's been told. He's not designated as an
11 expert witness. It is not a proper lay opinion because it
12 is not rationally based on the witness's perception and it
13 is based on at best I guess specialized knowledge.

14 I guess to the extent we read the paragraph as
15 just saying this is his understanding, then I guess we can
16 solve some of those other evidentiary problems, I think it's
17 probably then irrelevant to the matter at hand. But that's
18 our issue with regard to Paragraph 11.

19 And then pretty much the same thing with regard to
20 Paragraph 9. He talks about his understanding of the power
21 contracts and how they allegedly could have been valued
22 significantly higher. Again, if it's just he's stating his
23 understanding without trying to smuggle in the basis for it,
24 I suppose that's fine. We think it's irrelevant, but Your
25 Honor can deal with that. To the extent we're kind of

1 smuggling in the basis for his understanding, we have
2 foundation and hearsay objections.

3 THE COURT: All right. Mr. Schmeltz?

4 MR. SCHMELTZ: We're at 9 and 11. Is that right?

5 THE COURT: Yes.

6 MR. SCHMELTZ: So with respect to Paragraph 9, it
7 is my understanding that the power supply agreements could
8 have been valued significantly higher than the \$60 million
9 allocated is -- sort of from a tax professional's
10 perspective I think Mr. Wheeler would tell you supportive
11 evidence in support of his understanding of how the
12 allocation would be made. I think it's evidence that he as
13 a tax professional relies on in the ordinary course and he
14 can testify about that and can provide the backup for that.

15 The Paragraph 11 information I've told or received
16 regarding the amount related to litigation and/or
17 settlement, I believe the amount allocated could have been
18 significantly lower than 75 or even zero. I'm happy to
19 strike that paragraph. Mr. Eaton, who was involved in the
20 negotiations, will testify to that.

21 THE COURT: All right. So does this then
22 contradict what you told me this morning, Ms. Tomasco, that
23 he was only offering the \$43 million? I mean, this is the
24 problem that I'm having that seems we're getting very
25 contradictory positions on this issue. And I haven't gotten

1 a real straight answer.

2 MS. TOMASCO: The valuation of the equipment?

3 THE COURT: Right.

4 MS. TOMASCO: Oh, the valuation of the equipment
5 was a valuation performed by Riveron using their valuation
6 professionals. To the extent that we need -- to the extent
7 that that would be pertaining to the tax allocation, we can
8 make a formal valuation evidence issue.

9 My understanding though is that the exercise that
10 we went through with Whinstone may reflect something that's
11 relevant to LKC. But in my view, I do not view those things
12 as related.

13 THE COURT: But the question that I have is as it
14 relates to the -- what I understood this morning was that
15 the only number in his declaration that you needed for
16 purposes of a dispute to the extent that there is one with
17 Whinstone was the \$43 million and that the other three
18 numbers were not -- that he wasn't testifying as to those.
19 That's what I understood.

20 MS. TOMASCO: It's not necessary to file the tax
21 forms. I think they're 8650 -- I don't know what the IRS
22 number is. But it's not necessary to file those tax forms.
23 The tax forms pertain only to the physical assets.

24 THE COURT: All right. Mr. Schmeltz?

25 MR. SCHMELTZ: So Mr. Wheeler, as Your Honor

1 knows, was retained under a Kovel agreement to provide
2 advice to the professionals who are advising the Debtors.
3 In that capacity, he worked on the tax allocation. He also
4 has helped to prepare analyses of the enterprise's tax
5 situation for purposes of projecting in the cash waterfall
6 what available cash would be there and what would be needed
7 for taxes. As a part of that, he helped gather information
8 related to the entirety of the \$185 million so that the
9 Debtors could make intelligent decisions about what the
10 expected taxes would be. And what he is testifying to in
11 the LKC dispute different than the tax allocation motion is
12 here are all the buckets we considered and here's how we
13 considered them for tax filing purposes.

14 The tax allocation motion is different in that we
15 need a ruling on the hard asset piece in order to resolve
16 what would be two different tax treatments between Whinstone
17 and Rhodium on that issue. So he has -- he wears two hats
18 and he certainly in this dispute is going necessarily
19 further than you need to go in the other dispute to get what
20 is needed for the tax allocation purposes, if that makes
21 sense. He is the same guy. Two hats, carrying out two
22 different mission. And we obviously need to make that more
23 clear to you in the other matter, and we will.

24 THE COURT: Well, yes. I'm really very confused
25 as to what's going on here. And, you know, Riveron

1 obviously was retained not through the Court, but they were
2 retained -- I don't know what they were doing. I don't know
3 what they were supposed to do. I haven't seen an engagement
4 letter. I haven't seen anything.

5 MR. SCHMELTZ: Understood.

6 THE COURT: And when I ask for information, I
7 haven't been provided the information.

8 MR. SCHMELTZ: Understood.

9 THE COURT: I want to see the engagement letter.
10 Let's take a break and get that to me.

11 (Recess)

12 THE COURT: All right. We're back on the record
13 in Case Number 24-90448, Rhodium Encore LLC.

14 MR. SCHMELTZ: Your Honor, I understand you had
15 questions about the engagement letter for Mr. Wheeler. I
16 want to make sure we get you whatever information you want.
17 Do you want to take that issue up now? Or how do you want
18 to proceed?

19 THE COURT: No, I mean, let's -- there was an
20 objection to Paragraph 9 and 11, you agreed to take out
21 Paragraph 11. So why don't you put him on and...

22 MR. SCHMELTZ: All right. Let's just do it.
23 We're here. (indiscernible). I just told him he could step
24 out to the bathroom because I didn't know how -- I feel like
25 my timing on that was bad. But give us half a second.

1 He'll be right back.

2 THE COURT: Why don't you come up to the witness
3 stand.

4 MR. SCHMELTZ: I want to make sure -- you guys
5 have invoked the rule. So I should have (indiscernible).
6 And then, Your Honor, we previously had -- you did some
7 magic with the recording and who could listen. And I don't
8 know if we have that same magic here.

9 THE COURT: Well, we have 40 people on the line.

10 MR. SCHMELTZ: Do we have a sense of their party
11 status from anything you can...

12 THE COURT: At the ABI project. Mr. Lockhart is
13 on. I mean, so I could go one by one and unlock the
14 conference. But is his testimony going to be...

15 MR. SCHMELTZ: I don't think his testimony will
16 cover anything privileged. So we should begin.

17 THE COURT: All right. So let's just go ahead.
18 All right. I'm going to go ahead and mute it. If anybody
19 wants to be heard, please hit five-star.

20 All right. Raise your right hand, sir. Do you
21 solemnly swear or affirm to tell the truth, the whole truth,
22 and nothing but the truth?

23 MR. WHEELER: I do.

24 THE COURT: Okay. Thank you.

25 DIRECT EXAMINATION OF CHRIS WHEELER

1 BY MR. SCHMELTZ:

2 Q Just for the record would you please introduce yourself
3 to the Court?

4 A Sure. My name is Chris Wheeler. I'm a managing
5 director at Riveron Consulting.

6 Q And, sir, what's your background?

7 A I am a certified public account and have been
8 practicing for approximately 23 years.

9 Q And you've submitted a declaration in this matter,
10 correct?

11 A I have, yes.

12 Q Did you have a chance to review that declaration before
13 it was submitted?

14 A I did.

15 Q Do you agree with its contents, sir?

16 A I do.

17 Q Do you have anything that you want to change in that
18 declaration today?

19 A No, I do not.

20 Q Your Honor, I would pass the witness.

21 MR. THOMPSON: Thank you, Your Honor. Will
22 Thompson from Lehotsky Keller Cohn.

23 CROSS-EXAMINATION OF CHRIS WHEELER

24 BY MR. THOMPSON:

25 Q Good afternoon, Mr. Wheeler.

1 A Good afternoon.

2 Q Good to see you again. You I believe have a binder in
3 front of you. I believe Your Honor also has a copy of our
4 binder. Could you take a look at Exhibit 23? It's Tab 23
5 in the yellow copy there. You should find a copy of the
6 purchase and sale agreement that you referred to in your
7 declaration. Would you let me know if you see it there?

8 A I do see it, yes.

9 Q Would you please turn to Section 2.3? It's on Page 2
10 of the internal pagination.

11 A I am there.

12 Q This is the section of the purchase and sale agreement
13 about the tax allocations that you referred to in your
14 declaration, right?

15 A Yes, that's correct.

16 Q Okay. The allocation statement required by Section 2.3
17 is prepared for tax purposes, correct?

18 A That is correct.

19 Q In fact, "For tax purposes" are the first three words
20 of Section 2.3 after the heading, right?

21 A Also correct.

22 Q If you look at the next page, you should see kind of
23 the full part of the provision, Section 2.3. Is it fair to
24 say Section 2.3 requires Rhodium and Whinstone to follow the
25 tax -- to follow the allocation statement when filing their

1 taxes?

2 A Yes.

3 Q Now let's take a look at the last sentence. I'm going
4 to read it and you'll confirm I read it correctly. "For the
5 avoidance of doubt, nothing contained herein shall be deemed
6 an allocation of asset value for purposes of distribution to
7 any seller-stakeholders." Do you see that?

8 A I do see that.

9 Q And seller in this provision refers to the Rhodium
10 entities, right?

11 A I believe it refers to the Debtors collectively, yes.

12 Q And you could view LKC as a Rhodium stakeholder,
13 correct?

14 A I don't see stakeholders defined here. It's not
15 capitalized. So I'm not sure if that was the intended
16 context as drafted.

17 Q Do you remember being asked this question in your
18 deposition?

19 A Vaguely.

20 MR. THOMPSON: Mr. Disher, could we bring up --
21 oh, I'm sorry. Your Honor, is it all right if we give Mr.
22 Disher presenting privileges to pull up the transcript?

23 Mr. Disher, I would love to look at Page 23
24 starting on Line 19.

25 BY MR. THOMPSON:

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 \$75 million, right?

2 A I do not.

3 Q You don't know how the board reacted to the \$75 million
4 number, right?

5 A Correct.

6 Q You don't know whether other values for the damages
7 case were discussed with the board, right?

8 A My understanding is that there were values that were
9 discussed that were higher than that in the past, and that
10 they had been trending downward throughout the course of the
11 dispute with Riot Whinstone.

12 Q I guess this is an understanding you gained since the
13 time of your deposition?

14 A I don't recall that you asked me that question
15 previously.

16 Q Do you remember my asking, "Do you know whether other
17 values for the damages case were discussed with the board?"

18 A I don't recall the specific question.

19 MR. THOMPSON: Mr. Disher, if we have the
20 technical problems resolved, could we go to Page 52 of Mr.
21 Wheeler's deposition transcript, Line 17?

22 MR. DISHER: Your Honor, may I have presenter --

23 THE COURT: I think you're still -- oh no. Here
24 you go.

25 MR. THOMPSON: Fifty-two, 17 to 19.

1 BY MR. THOMPSON:

2 Q All right, Mr. Wheeler, can you see the question on
3 Line 17, "Do you know whether other values for the damages
4 case were discussed with the board?"

5 A I see that, yes.

6 Q And you see your answer was, "I do not know"?

7 A I see that, yeah.

8 Q All right. Would you have wanted to know if the lead
9 litigation attorney had told the board that he thought the
10 value of the damages case was between \$100 million and \$150
11 million?

12 A I would have wanted to understand all facts relevant to
13 the basis for the payment from Riot Whinstone to the
14 company.

15 Q Is that a yes?

16 A Yes.

17 Q Now, Mr. Wheeler, could you look at Exhibit 13 in your
18 binder in front of you? You should see an email from Mr.
19 Cohn. Do you have that email in front of you?

20 A I do.

21 Q And do you see the part where he talks about trying to
22 settle the damages case from between \$100 million and \$150
23 million? It's in bold text about two-thirds of the way down
24 the page.

25 A I see that.

1 Q That's not a document you were able to consider during
2 your tax analysis, right?

3 A I have not seen this before, no.

4 Q Now, in the tax allocation discussions with Whinstone,
5 you were a part of those, right?

6 A Correct.

7 Q So you know that Whinstone wanted to allocate less
8 value to the fixed assets than Rhodium did, right?

9 A Correct.

10 Q And Whinstone wanted to allocate about \$7.2 million or
11 \$7.3 million to the fixed assets, right?

12 A Also correct.

13 Q And Rhodium's number was \$43.5 million?

14 A Yes.

15 Q That's a larger gap than you might normally see, right?

16 A I don't know about whether it's a larger gap than
17 normal, but certainly a large gap.

18 Q Do you remember saying in your deposition, "I think
19 it's a larger gap than I might normally see"?

20 A I don't recall if I said that, but...

21 MR. THOMPSON: Your Honor, if it's all right, I'm
22 going to approach the witness with the 10-Q that we heard
23 about this morning. I didn't have that printed previously.

24 BY MR. THOMPSON:

25 Q Mr. Wheeler, do you have the copy of Riot's 10-Q in

1 front of you?

2 A I do.

3 Q All right. And if you could turn to Page 9 based on
4 the internal pagination, you'll see a section entitled
5 Rhodium Settlement and Acquisition of Assets.

6 A I see that.

7 Q If you look at the second full paragraph and the third
8 line, there's a sentence that begins, "The fair value of the
9 tangible assets acquired was estimated to be \$7.3 million.
10 Do you see that?

11 A I do.

12 Q That's consistent with what Whinstone was telling you,
13 right?

14 A Yes, it's consistent with their view.

15 Q Were you in the courtroom this morning?

16 A I was not, no.

17 Q Okay. I don't want to violate the rule. You're aware
18 that Whinstone has said that it doesn't want to contradict
19 public statements it's made about the value of the fixed
20 assets, right?

21 A Yes.

22 Q Is this the public statement that Whinstone is talking
23 about when it says that?

24 A They did not tell me specifically which public
25 statements, but I can assume it could be one, yes.

1 Q Okay. And if you turn to Page 45 of this same
2 document. I'm looking at the fifth paragraph on the page.
3 It's a one-sentence paragraph. Do you see where it says,
4 "The loss on contract settlement of \$158.1 million was
5 attributable to the Rhodium settlement"?

6 A I do.

7 Q And that's not the number you used in your tax
8 allocation, is it?

9 A It is not, no.

10 Q In your view, the valuation of the power contracts is
11 somewhat subjective, right?

12 A Yes. I think there was a range of interpretations of
13 the value of any contract between different parties.

14 Q And aside from whatever it has put in its public
15 statements, Whinstone didn't convey to Rhodium as far as
16 you're aware its view of the value of those power contracts,
17 right?

18 A In any discussions of which I was part, they only
19 referenced the value of the fixed assets and the remainder
20 of the value being related to the termination of the
21 contracts. They didn't specify any further breakout than
22 that or propose any further breakout than that.

23 Q So when your declaration has a breakdown, those numbers
24 aren't based on some kind of agreement with Whinstone,
25 right?

1 A That's correct.

2 Q As part of your analysis for the tax allocation, you
3 didn't look at issues related to Rhodium seeking exit
4 financing, right?

5 A I did not as part of my analysis, no.

6 Q And if Rhodium had not struck a deal with Whinstone,
7 you don't know whether Rhodium would have been able to
8 continue operating at Rockdale and benefit from those power
9 contracts, correct?

10 A That question was not within the scope of my
11 engagement, no.

12 Q So you don't know the answer, right?

13 A I do not.

14 Q And you don't know whether Rhodium would have been able
15 to sell or transfer the power contracts to a third party,
16 right?

17 A I'm not an attorney and I'm not aware of the ability to
18 transfer those contracts or the like.

19 Q No further questions. Appreciate your time, Mr.
20 Wheeler.

21 MR. SCHMELTZ: Your Honor, may we have
22 presentation capabilities to put the deposition up on the
23 screen?

24 THE COURT: Yes. Who should I give it to?

25 MR. SCHMELTZ: Ms. Lohse. Thank you, Your Honor.

1 There it is.

2 THE COURT: I think I see her.

3 MR. SCHMELTZ: And if you could go to Page 23,
4 please.

5 REDIRECT EXAMINATION OF CHRIS WHEELER

6 BY MS. TOMASCO:

7 Q Mr. Thompson in his examination of you asked you if he
8 had asked the question LKC is a Rhodium stakeholder and gave
9 your answer that I think you could view them as that.
10 Right?

11 A Yes.

12 Q You gave a more complete answer than that at your
13 deposition, isn't that correct?

14 A I believe I did.

15 Q We're going to put that on the screen and I'm going to
16 have you read your complete answer for the record, please.
17 Why don't you start at Line 24 and read through to Page 24,
18 Line 5, please.

19 A Certainly. I'd said at the time, "I think you could
20 view them as that, although I don't know that this is how
21 that was intended. I was not a party to drafting of this
22 agreement and I can't really speak to the intent of that. I
23 could also see a reasonable view that -- and if you could
24 scroll up for me a little bit. That would simply be viewed
25 as -- that would simply be viewed as shareholders rather

1 than stakeholders, in particular as it relates to the
2 distribution, which is typically in the tax world a term we
3 use when it relates to the transfer of cash or property to a
4 shareholder of an entity.

5 Q So you were viewing the word Stakeholder in a provision
6 regarding taxes from a tax perspective in giving that
7 answer, is that right?

8 A Correct.

9 Q Let's take a look if we can at Page 52 of the
10 deposition. You were asked whether you knew if other values
11 for the damages case were discussed with the board and you
12 said, "I do not know."

13 A Correct.

14 Q In your testimony today, you said you understood that
15 number was trending down.

16 A Yes.

17 Q Can you help us understand how your answer in court was
18 consistent with your answer in the deposition?

19 A Certainly. At the time I -- at the time that we
20 discussed with the company the various damage claim amount,
21 I think I was looking at the most recent board presentation.
22 I have also learned since then that that number had been
23 revised and had considered -- had been -- you know,
24 different aspects had been looked at over time and that that
25 had kind of trended downward. But I don't for -- at the

1 time I don't think I knew for sure what specifically had
2 been discussed with the board.

3 Q And at Page 53 of your deposition, you also gave a more
4 completed answer. And if you'd read Lines 10 through 12 to
5 give a more complete view of your answer.

6 A On 53?

7 Q Yes, sir.

8 A Starting with ten?

9 Q Yes, sir.

10 A Where that says intellectually?

11 Q Start with the word "so".

12 A "So the most recent view on what the damages were
13 seemed to be the reasonable number to include in the
14 calculations."

15 Q And can you explain that please for the Court?

16 A Sure. So there are a couple of different obligations
17 that both a company and the tax preparer has when preparing
18 a tax return. A company would need to attest to essentially
19 the veracity of the information presented there. And the
20 preparer's obligation is that they are considering all the
21 facts of which they are aware.

22 And I think my comment here related to the fact that
23 being aware of the most recent, most current information
24 that the company had discussed internally related to the
25 damages and as well related to the value of the other assets

1 that were transferred or the value of the contracts that
2 were terminated was what would need to be included in
3 considering the entire purchase price allocation among those
4 different either assets transferred, contracts terminated,
5 et cetera.

6 Q Did you have evidence or information suggesting that
7 the contract piece of the assets that were sold could have
8 been valued either higher or lower than what is in your
9 allocation?

10 A I'd had discussions with the company previously and its
11 other advisors, including Mr. Robinson, related to the value
12 of those contracts and the view that those contracts were
13 valued significantly in excess of kind of the residual after
14 taking into account the fixed assets such that they could
15 have represented the entire value above the fixed asset
16 value. But we also had the information related to the view
17 on damages that was presented to the board and so needed to
18 reconcile all of the pieces together and make an attempt to
19 take all of that into account when assigning value to each
20 of the components of that Riot Whinstone contract.

21 Q You as part of your work engaged in conversations with
22 Riot Whinstone about the tax allocation. Is that right?

23 A That is, yes.

24 Q Did you have in the course of those conversations --
25 did you come to an understanding of how Riot Whinstone

1 valued what it had purchased?

2 MR. THOMPSON: Objection. If the answer is going
3 to be limited to yes or no, I guess I don't have to object.
4 But to the extent he's about to relay what prior Whinstone
5 said, I object on the grounds of hearsay.

6 THE COURT: It's a yes or no answer. Go ahead.

7 THE WITNESS: Can you ask the question again?

8 BY MR. SCHMELTZ:

9 Q Did you come to form an understanding of how Riot
10 Whinstone valued the assets it had purchased, other than the
11 hard assets, during the course of your negotiations?

12 A Yes.

13 Q And did you factor that into your tax allocation?

14 A The view that they expressed to us was that the value
15 related to the termination of the contracts. But I still
16 felt we had to consider the value of the damages over which
17 they'd been litigating. And no view was ever agreed between
18 the parties as to what the allocation was from that
19 perspective.

20 MR. THOMPSON: Object as nonresponsive and
21 hearsay.

22 THE COURT: Sustained.

23 BY MR. SCHMELTZ:

24 Q I'm going to try one more time. Did you factor in
25 their view -- did you -- did you -- let me ask it this way.

1 Did you adopt their view in your tax allocation?

2 A No.

3 Q Had you adopted their view, would you have a higher or
4 lower allocation to contracts in your tax allocation?

5 A A higher allocation of the contracts.

6 MR. SCHMELTZ: Thank you. I have no further
7 questions for this witness.

8 THE COURT: All right. Mr. Thompson, anything?

9 MR. THOMPSON: Just one last topic.

10 RECROSS EXAMINATION OF CHRIS WHEELER

11 BY MR. THOMPSON:

12 Q Mr. Wheeler, Mr. Schmeltz asked you about a reasonable
13 interpretation of Section 2.3. And I think you testified
14 that we could just read the word stakeholder to mean
15 shareholder. Did I get that right?

16 A Specifically in context that it discusses distributions
17 to stakeholders, yes.

18 Q Did you know that elsewhere in the PSA the language
19 uses the term shareholder instead of stakeholders?

20 A I don't recall that.

21 MR. THOMPSON: No further questions.

22 THE COURT: All right. Mr. Wheeler, by the time
23 that you were engaged, had the Whinstone transaction already
24 been in process?

25 THE WITNESS: The purchase and sale agreement had

1 been executed, Your Honor. I believe we were engaged toward
2 the end of April. And that transaction closed within a week
3 I think of our being engaged.

4 THE COURT: All right. And have you done any
5 other work -- you personally. I understand there's another
6 team of Riveron that's involved. Personally anything other
7 than the allocation of the Whinstone purchase price?

8 THE WITNESS: No, Your Honor.

9 THE COURT: Okay. I don't have anything. Do you
10 have any questions as a result of that?

11 MR. SCHMELTZ: You've been very patient over a
12 couple of days of this hearing, and I really appreciate your
13 time. Thank you, sir.

14 THE COURT: Thank you. You may step down.

15 THE WITNESS: Thank you, Your Honor.

16 MR. SCHMELTZ: Your Honor, I would call Kevin
17 Hayes to the stand.

18 THE COURT: All right.

19 MR. SCHMELTZ: I think I misspoke earlier in my
20 mind because of the way today was structured. We might have
21 a ruling and Mr. Hayes would still -- would not be the CFO
22 anymore of Rhodium. He is still the CFO of Rhodium. I
23 didn't mean to undersell him earlier, Your Honor. But...

24 Go ahead and take the stand, Kevin.

25 THE COURT: Raise your right hand, sir. Do you

1 solemnly swear or affirm to tell the truth, the whole truth,
2 and nothing but the truth?

3 MR. HAYES: I do.

4 THE COURT: Okay. Go ahead.

5 DIRECT EXAMINATION OF KEVIN HAYES

6 BY MR. SCHMELTZ:

7 Q Sir, would you do me a favor and introduce yourself to
8 the Court?

9 A Yes, sure. Kevin Hayes. I am the Chief Financial --
10 excuse me -- Chief Financial Officer of Rhodium Enterprises.

11 Q Could you tell us a little bit about your -- just at a
12 very high level your credentials for being a CFO, sir?

13 A Sure. I spent -- I have an MBA from Rice University
14 here in town. Spent 13 years as an investment banker, ten
15 years after that as a CFO for various private companies,
16 predominantly private equity backed companies. I also have
17 a chartered financial analyst designation as well.

18 Q Tell us a little bit about your involvement in
19 preparing and presenting claim valuations to the Rhodium
20 board of directors in February and March of 2025, please.

21 A Sure. My recollection is we were having a -- mediation
22 was set for February 19th, I believe. And in preparation
23 for that, knowing that that could lead to an offer to settle
24 the damages or an offer to perhaps purchase the entire
25 company, we prepared valuation materials that addressed both

1 in advance of that. And the first meeting we had with our
2 board was on February 12th. And I would characterize that
3 meeting as the initial discussion to kind of facilitate a
4 robust discussion on value. It was not the final board
5 meeting we had. We had a board meeting on February 16th.
6 Prior to that board meeting -- well, let me take a step
7 back. So the valuation of the company as we framed it was
8 really two principal components; the discounted cashflow of
9 the ongoing bitcoin mining business and then the discounted
10 value of the damages.

11 So when we thought about the value for the whole
12 company in the context of an offer, a potential offer from
13 Riot, we valued both of those. And I prepared -- I pulled
14 together slides for the February 12th board meeting and as
15 part of that reached out to the LKC team who provided me I
16 believe a couple hours before the board meeting an analysis
17 or a spreadsheet that listed out the components of the
18 damages. And it had categories in rows of the damages with
19 kind of a base value allocated to each. And then next to
20 each it had a success factor. And so the value for each
21 component was that base value times that success factor.

22 Q Now, on February 12th when you were working to pull
23 that information together, did you have information you had
24 already received from LKC about potential damages that you
25 were using?

1 A We had as a placeholder in that presentation an
2 analysis that was a few months old, I believe. And it --
3 yes.

4 Q Let's take a look -- you've got hopefully this in front
5 of you. We filed a declaration at Docket 1943, exhibit 2 to
6 that declaration, which is found at Pages 14 to 22 of Docket
7 1943.

8 MR. SCHMELTZ: I'm going to mark it, Your Honor,
9 as Trial Exhibit 332. It's not up there. Let's make sure
10 he gets a copy. Your Honor, may I approach the witness?

11 THE COURT: Yes, go ahead.

12 MR. SCHMELTZ: Your Honor, would you like a copy
13 as well, a hard copy?

14 THE COURT: Sure.

15 MR. SCHMELTZ: If I might approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. SCHMELTZ:

18 Q And again, Pages 14 to 22 of this document is
19 Declaration Exhibit 2, now marked as Trial Exhibit 332. Can
20 you explain to us what this email is?

21 MR. THOMPSON: Hold on, Chris. What page are you
22 on?

23 MR. SCHMELTZ: It's 14 of 1943. It's actually 15
24 is the first substantive page.

25 MR. THOMPSON: Okay, thanks.

1 THE WITNESS: Sorry, could you repeat the
2 question, Trace?

3 BY MR. SCHMELTZ:

4 Q Just tell us what we're looking at here. What is this
5 document?

6 A Okay. So starting on Page 16?

7 Q Yes, please.

8 A These are slides that were pulled together for the
9 board discussion that we had Wednesday, February 12th.

10 Q Okay. And if you would look at page 18 of the overall
11 document. It's 18 at the top-right-hand corner. And it
12 says, "Litigation value, get update from Stris LKC." Is
13 that the charge that you -- the placeholder you were
14 referring to a moment ago?

15 A This is the placeholder, yes.

16 Q And this placeholder has values for energy credits,
17 right?

18 A Correct.

19 Q Has value for Uri energy credits, right?

20 A Yes.

21 Q Has a value for a revenue loss from business shutdown,
22 right?

23 A Yes.

24 Q Has an ERCOT 4CP value, right?

25 A Yes.

1 Q It has a value for many of the things that we see on
2 your later charts. But there's one notable thing missing.

3 Do you agree with that?

4 A Yes.

5 Q What's missing, please?

6 A Building D.

7 Q And do you know why Building D wasn't on this earlier
8 analysis?

9 A I don't know specifically. But I know that it was
10 added in an analysis that was provided a couple of hours
11 before our February 12th meeting with some commentary on
12 that -- on the spreadsheet that was provided that said this
13 is a new claim, something to the effect of this is a new
14 claim, hasn't -- hasn't been discovery, we don't have all
15 the facts yet.

16 Q So fair to say Building D first showed up on a damages
17 analysis you were aware of on February 12th, 2025, is that
18 right?

19 A Yeah, that's correct.

20 MR. SCHMELTZ: I would move to admit Exhibit 332
21 into evidence, Your Honor.

22 MR. THOMPSON: Which part of this document are you
23 moving to admit?

24 MR. SCHMELTZ: Page 2.

25 THE COURT: What pages is that at the top?

1 MR. SCHMELTZ: Pages 14 through 22.

2 MR. THOMPSON: Your Honor, we do object. A couple
3 of grounds. This document was not included on their exhibit
4 list. I don't think it was properly disclosed before this
5 hearing. Also, I think this lacks foundation. I don't
6 think it's been proven up who created this, when, or for
7 what purpose. So I would object that it both is late and
8 lacks foundation.

9 MR. SCHMELTZ: Your Honor, first and foremost, it
10 was produced in discovery. It was part of the declaration
11 that we filed on November 3rd. It's been on the docket for
12 a month. Certainly full disclosure that we were going to
13 use the declaration and its constituent parts. And I think
14 the witness has just testified that he created the document,
15 and he created it for a board meeting.

16 MR. THOMPSON: I believe he testified he created
17 portions of this. But the chart that he was just asked
18 about, I don't think that he testified that he created that.
19 And I don't think he testified who did or when it was
20 created or for what purpose. And it's also hearsay.

21 THE COURT: Unless he created it.

22 MR. THOMPSON: Right.

23 THE COURT: So, Mr. Schmeltz, do you want to...

24 MR. SCHMELTZ: I can lay some more foundation.

25 THE COURT: Yeah.

1 BY MR. SCHMELTZ:

2 Q From where did you receive the chart at page 18 of
3 Exhibit 332?

4 A I don't recall from where. I mean, there were lots of
5 these valuations that had been sent around in the months
6 prior. And I just grabbed something to show everybody that
7 we need to update this.

8 Q And you in fact -- are these your notes, "Ge update
9 from Stris LKC?"

10 A Correct.

11 Q And what was your intent in including this document,
12 this page in the overall document?

13 A My intent was to -- well, for a number of reasons. I
14 wanted to have an updated valuation of the damages and I
15 wanted to alert LKC to say, hey, we're going to need to get
16 an updated version of this, LKC or Stris.

17 Q As part of your job as CFO, were you engaged in
18 advising or, pardon me, informing the board about the
19 damages and the expectations from the Whinstone litigation
20 in these board meetings?

21 A I mean, in the context of how it fit with the overall
22 valuation of the company, yes. But as to the specific
23 components of valuation, no.

24 Q So you kept -- did you keep versions of this damages
25 analysis like we see at Page 18 in the course of your job so

1 that you could provide information to the board?

2 A Did I keep these?

3 Q Did you have them in email or file or otherwise that
4 you maintained for purposes --

5 A Yeah. This is a previous version. And again, I don't
6 know where it came from. But it's a previous version that I
7 pulled really just to show that we need to update this.

8 MR. SCHMELTZ: Your Honor, the overall document is
9 a draft of a board presentation that he's pulled together as
10 part of his job to inform the board. I think it's a
11 business record and should come in.

12 MR. THOMPSON: Your Honor, I believe the
13 foundation for this specific slide still has not been laid.

14 THE COURT: I agree. I'm going to exclude this
15 slide. He doesn't know where it came from.

16 MR. SCHMELTZ: So 332 comes into evidence minutes
17 Page 18, is that right? Or 332 is excluded altogether?

18 MR. THOMPSON: Well, Your Honor, I haven't had a
19 chance to review all of this right here in part because all
20 of this was still late. The deadline to file the exhibits
21 was October 30th. This was filed on November 3rd as we just
22 heard. And so I would object to all of this coming in based
23 on the grounds that it's late.

24 THE COURT: I think the only testimony that is
25 appropriate is that he wanted people to update the slides.

1 And that will come in. But I guess the -- so which pages
2 are you offering?

3 MR. SCHMELTZ: Your Honor, I'll withdraw the
4 exhibit and move on to the next exhibit. I understand.
5 Let's take a look please at Exhibit 216, which is already in
6 evidence.

7 THE COURT: It's in the big white book.

8 MR. SCHMELTZ: It's in the big white binders.
9 Thank you, Your Honor.

10 THE COURT: The big one. No, that second one.
11 That one.

12 THE WITNESS: Okay.

13 MR. SCHMELTZ: It's Exhibit 216.

14 THE WITNESS: Okay.

15 BY MR. SCHMELTZ:

16 Q Can you take a look at this document please and let us
17 know what it is?

18 A I believe these are the materials that were discussed
19 in the February 12th board meeting.

20 Q And is this an updated version of what we just looked
21 at?

22 A It is, yes.

23 Q Let's take a look please at Document -- it has on the
24 bottom of it Hearing Exhibit 216-003, third page of the
25 document. From whom if you recall did you receive this

1 slide, the information on this slide?

2 A Yeah. I believe this was emailed to me by LKC. And
3 the only change that I made to it was to add the discount
4 rate at the bottom.

5 Q And how did you receive -- did you receive this in
6 response to a communication you made to LKC?

7 A I believe it was, yes, it was my emailed request to get
8 a revised litigation value table like this.

9 Q In your litigation -- pardon me. In your email request
10 to LKC, did you include the table that you had in your
11 possession at the time?

12 A I believe I did, just to make it easier for them to say
13 this is a previous version, give me an update, something
14 like this to include in the board -- for board discussion.

15 Q And in response to your communication with that slide,
16 did they express any surprise that you were using that
17 analysis of damages?

18 A No, they didn't. But they -- my recollection is they
19 sent me this spreadsheet at some -- you know, a couple of
20 hours before the meeting.

21 Q And this spreadsheet that we are looking at on Page 3
22 has Building D on it. Is that right?

23 A Correct.

24 Q And is that the first time you saw Building D in a
25 damages analysis?

1 A Yes, it's the first time.

2 MR. SCHMELTZ: Your Honor, I would move again for
3 the admission of 332. The slide in question is one that he
4 sent to LKC to get updated and they sent it back with an
5 update. And they didn't express surprise or chagrin or
6 anything other than that's a business record and here's an
7 update.

8 MR. THOMPSON: Your Honor, first of all, it's
9 still late. Second of all, he didn't testify that the slide
10 we were just looking at was the one that he did in fact send
11 to LKC. I imagine there's an email to that effect. That
12 would be the best evidence of that rather than some
13 undisclosed late exhibit from some other slide that who
14 knows who created. So we continue to urge our objection.

15 THE COURT: I'm going to continue to sustain the
16 objection.

17 MR. SCHMELTZ: To the extent -- and I understand --
18 -- it is because it was late, I would note, one, we were on a
19 pretty expedited clock. And two, I received their invoices,
20 the invoices that they have a burden of proof on, after the
21 deadlines for discovery. I didn't even get them in
22 discovery. So at some level -- I just note that. I
23 understand we were late and we were all moving fast and
24 there were sins on both sides.

25 THE COURT: Right.

1 MR. SCHMELTZ: I'm not questioning Your Honor's
2 ruling.

3 BY MR. SCHMELTZ:

4 Q All right. So your testimony I believe was that this
5 is the first time you had seen Building D on a damages
6 analysis.

7 A That's correct.

8 Q And can you read for the Court what it says in the
9 right-hand column under commentary next to Building D?

10 A Sure. "This is a claim that was not previously at
11 issue. We had not yet had discovery on it and do not have
12 all the facts."

13 Q You said that you've added a discount rate here on this
14 chart. What's the purpose of a discount rate, sir?

15 A The purpose of the discount rate is to bring the value
16 of cashflows that you're going to receive in the future to
17 the present to get the present value of those future
18 cashflows. So in general discount rates are akin to cost of
19 capital. And so an appropriate discount rate for a company
20 that's in Rhodium's situation, you know, in Chapter 11, a
21 volatile business, tends to be a lot higher than a company
22 that's larger, maybe public, it has better access to
23 capital.

24 Q Did you have an expectation as to how far in the future
25 you would collect damages in using this 25 percent discount

1 rate, we see at Page 3 of Exhibit 216?

2 A Yeah, I did. It was a year. And you can kind of do
3 the math here. The math is the discount rate is 26 percent.
4 What we're doing is we're taking 158, which is the value in
5 a year, dividing it by 1.25. So that's one year of
6 discounting.

7 Q And the success rate here at 40 percent for Building D,
8 did you ever have occasion to talk to anyone at LKC or
9 otherwise about that?

10 A No, not prior to the meeting. We didn't have time to
11 discuss this at all. We had to pull this together and have
12 the discussion with the board.

13 Q And here the total risk damages number is 126.4. Is
14 that correct?

15 A That is the -- yes, discounted to today, yes. That is
16 the discounted value.

17 Q And at Page 2 of this analysis, same document, you
18 actually have what I think you described earlier the ongoing
19 business value of DCF and risk damages. Is that correct?

20 A Correct.

21 Q And what was the ongoing business value as of February
22 12th?

23 A The range was essentially \$75 million to \$175 million.

24 Q And how about risked damages?

25 A \$100 million to \$150 million. And that's kind of

1 rounding that \$126.4 million and roughly adding plus or
2 minus \$25 million to it.

3 Q Do you have an understanding of what net claims means
4 on that chart, 216-002?

5 A Yeah. My recollection is that is the debt we have net
6 of cash, net of other assets we could possibly sell. It's
7 basically the debt we had less assets that we had that would
8 offset that debt.

9 Q What was your intent -- you've got net claims and then
10 you have SAFE claim, right?

11 A Mm-hmm.

12 Q What was your intent in communicating this information
13 to the board of directors of Rhodium as of February 12th?

14 A My intent was to frame the value of the company overall
15 as an asset and then taking that asset value and converting
16 that into equity value.

17 Q Did you have an understanding of whether the board was
18 trying to understand one way or the other how to add value
19 to the various constituents of the estate?

20 A I'm not sure I understand the question.

21 Q Net claims is \$51 million, right?

22 A Correct.

23 Q And the value net of claims on the low end was \$123
24 million, correct?

25 A Correct.

1 Q Was that intended to say that would be the money left
2 over after we pay our debt?

3 A Correct. Yeah. The \$51 million was our debt, which I
4 think was \$65 million less some assets that we had that we
5 would offset that. We had some cash as well. So yeah,
6 correct. Before the SAFE holders, after the debt holders,
7 that's what that value net of claims represents.

8 Q And the SAFE claim at \$87 million, that number below
9 it, at least on the low end for equity, is \$36.3 million,
10 right?

11 A Correct.

12 Q What is that intended to communicate to the board?

13 A That would be the value to -- I'll say common equity
14 net of the safe

15 Q So was the purpose of this chart to say sort of this is
16 what we need to clear in order to pay these various
17 constituents?

18 A That was one purpose. The other purpose was to show
19 what the asset value of the business was. And then yeah,
20 and then translate that into what that means for equity and
21 what that means to equity after we pay off the SAFE.

22 Q Let's take a look at Trial Exhibit 244.

23 MR. SCHMELTZ: Page 216 is already in evidence,
24 right? Oh, I need to move 216 into evidence, Your Honor.

25 THE COURT: I thought you said it was already

1 admitted.

2 MR. SCHMELTZ: I thought it had been. Paige tells
3 me it's not.

4 THE COURT: Any objection?

5 MR. THOMPSON: No objection. I'm sorry, 216,
6 right?

7 THE COURT: 216, yes.

8 MR. THOMPSON: Yes, no objection.

9 THE COURT: It's admitted.

10 (Exhibit 216 entered into evidence)

11 MR. SCHMELTZ: Let's take a look at Exhibit 244.

12 THE WITNESS: Okay.

13 BY MR. SCHMELTZ:

14 Q Tell us what this document is.

15 A I haven't read it. I'm not going to read it here.

16 I'll just -- but I'll say this is an email from John Cohn.

17 And this was prior to the mediation. And I believe this is
18 a damages spreadsheet that totals \$440 million. And it goes
19 on to say that, you know, we should aim to settle the
20 damages at \$100 million to \$150 million. I could read the
21 whole thing if you want but --

22 Q No, that's okay.

23 THE COURT: Have you seen this document before?

24 THE WITNESS: I've seen the email before, but I
25 haven't seen it in a few months.

1 BY MR. SCHMELTZ:

2 Q You're copied on it, right?

3 A Yes, I'm copied on it. I've read the email, but it's
4 been a few months since I've read it.

5 MR. SCHMELTZ: Your Honor, I would move for the
6 admission of 244 into evidence.

7 MR. THOMPSON: No objection.

8 THE COURT: Admitted.

9 (Exhibit 244 entered into evidence)

10 BY MR. SCHMELTZ:

11 Q Take a look at 244-002. We see that is a chart of
12 damages like the one we just looked at, right?

13 A It is, although the values are different. Building D
14 is \$33 million instead of \$66 million.

15 Q This is an email from John Cohn at LKC, right?

16 A The previous pages was, yes.

17 Q And this is an attachment to this email. Do you
18 understand that?

19 A I believe so, yes. I think he -- this was probably
20 something that was sent back to him and he sent back 003.

21 Q Okay. So on February 18, 2025, Mr. Cohn had an
22 analysis that showed Building D at 20 percent. Is that
23 right?

24 MR. THOMPSON: I'm sorry, could you repeat that
25 question?

1 BY MR. SCHMELTZ:

2 Q As of February 18, 2025 Mr. Cohn had an analysis that
3 showed Building D success rate at 20 percent, right?

4 MR. THOMPSON: I will object to that question.
5 Misleading, lacks foundation, misstates the document, and
6 misstates his testimony.

7 THE COURT: Why don't you try and lay a
8 foundation.

9 BY MR. SCHMELTZ:

10 Q So this was an email you received from John Cohn,
11 right?

12 A Correct.

13 Q It had two attachments to it, correct?

14 A Yeah. It may have had two attachments or it may have
15 had one tab that was my spreadsheet and he added another
16 tab. I don't remember this being two separate spreadsheets.

17 Q In other words, both documents here were sent to you by
18 John Cohn, right?

19 MR. THOMPSON: I will object that that misstates
20 the testimony and lacks foundation.

21 THE COURT: It's leading. So why don't you try to
22 lay a foundation.

23 BY MR. SCHMELTZ:

24 Q This document, whether it was a single spreadsheet or
25 two separate attachments, did it have an attachment of some

1 kind with the information we see at 002 and 003?

2 A Yes.

3 Q And that information was in the email that you received
4 from Mr. Cohn, is that right?

5 A Yes.

6 Q So the information that was attached to the email you
7 received from Mr. Cohn --

8 MR. THOMPSON: Objection, leading and misstates
9 his testimony.

10 MR. SCHMELTZ: I have half a question.

11 MR. THOMPSON: I'm sorry. I thought you'd
12 finished. Go ahead.

13 THE COURT: Finish your question.

14 BY MR. SCHMELTZ:

15 Q So the information in the email that you received from
16 John Cohn, did it show a success rate for Building D at 20
17 percent?

18 MR. THOMPSON: Objection, vague.

19 THE COURT: Well, I think he's asking him is the
20 number in the base success percentage for Building D in this
21 document 20 percent. I think that's what you're asking.

22 MR. THOMPSON: And the basis for my vagueness
23 objection is I don't know if he's referring to -- I don't
24 know if he's referring to information that Mr. Cohn sent to
25 Mr. Hayes or that Mr. Hayes first sent to Mr. Cohn and then

1 it was just reattached when Mr. Cohn sent the email
2 responding to Mr. Hayes' email.

3 THE COURT: So the problem that I'm having with
4 this document is, first of all, it's not a complete
5 document. It cuts off in the first page. Second, in one
6 chart it has a 20 percent success rate. And in the other
7 chart it has a 50 percent success rate. So I don't know
8 that we know from this gentleman what was said or what
9 wasn't said.

10 MR. SCHMELTZ: Right.

11 BY MR. SCHMELTZ:

12 Q At dot 002, that reflects your analysis from a chart
13 you had prepared with a 20 percent success rate of Building
14 D. Is that right?

15 A That's correct. And it was also discussed -- this
16 chart was discussed on the board call on February 16th.

17 Q And we'll get to that February 16 board call in a
18 minute. It shows a discount rate of 25 percent, right?

19 A Correct.

20 Q And that's all in information that was in an email you
21 received from John Cohn, correct?

22 A Correct.

23 Q Let's talk about the February 16 board meeting, please.

24 A Okay.

25 MR. SCHMELTZ: And 244 is in evidence now. Is

1 that correct, Your Honor?

2 THE COURT: It is in evidence.

3 MR. THOMPSON: That's fine.

4 MR. SCHMELTZ: Let's take a look at -- Paige, may
5 I have Exhibit 245, please?

6 BY MR. SCHMELTZ:

7 Q Let's take a look Exhibit 245.

8 A Okay.

9 Q And can you tell -- this is in evidence, and I -- I'd
10 ask you to identify what this is for the Court.

11 A These are slides that were used that were discussed
12 with the board on March 5th, 2025.

13 Q Okay. And in this March 5th document, let's take a
14 look at 245.008, the last page. Is this the same chart that
15 we just looked at in Exhibit 244?

16 A Yes, it is.

17 MR. THOMPSON: Hold on. 244?

18 THE COURT: This is 245.

19 MR. THOMPSON: The question was is it the same
20 chart as 244?

21 MR. SCHMELTZ: Yeah.

22 MR. THOMPSON: Okay.

23 THE WITNESS: Yeah, it is.

24 MR. SCHMELTZ: Thank you.

25 BY MR. SCHMELTZ:

1 Q And this says litigation value, 2/16/25. Do you see
2 that?

3 A Right. This is --

4 Q Why does it say that?

5 A It says that -- we're -- the -- if you look at the
6 first slide of this presentation, it talks about what's
7 changed since the last board discussion, which was on
8 February 16th. And so we talk about a few things that
9 changed and the impact that has. And then this is just last
10 slide, kind of an appendix slide that just reminds everybody
11 this is where we were on 2/16 for the damages.

12 Q Okay. So we've discussed a board meeting on 2/12. And
13 that's the board meeting where you first saw Building D,
14 right?

15 A Correct.

16 Q And that Building D -- I'm just recapping quickly --
17 had a 40 percent success rate. Is that right?

18 A Correct.

19 Q We saw Exhibit 244, Mr. Cohn's email of February 18,
20 right?

21 A Correct.

22 Q And it had this same chart that we're looking at
23 245.008 in it, right?

24 A Correct.

25 MR. THOMPSON: Objection, vague. Which chart is

1 he referring to in 244?

2 THE COURT: Yeah. Why don't we be specific as to
3 the number.

4 BY MR. SCHMELTZ:

5 Q We looked at the same chart at 244.002 that we're
6 looking at in 245.008, right?

7 A Correct.

8 Q And if I understand what you've testified to just now
9 correctly, 245.008 was presented to the board in a
10 subsequent meeting on February 16th. Is that right?

11 A Correct.

12 Q Do you recall if there was conversation on February 16
13 about Building D and about a change in the success
14 percentage from 40 percent to 20 percent? Do you recall?

15 A Yes.

16 Q Do you recall if there were lawyers from LKC and Stris
17 present in that board meeting on February 16th?

18 A Yes, there were. And you could look in the board
19 minutes. I presented the valuation and I said the only
20 change we've made to the damages is to adjust the success
21 factor for Building D from 40 percent to 20 percent which
22 reduces the expected value or the risked value from \$66
23 million to \$33 million.

24 This was a call on a Sunday. LKC was on the call,
25 Stris was on the call. And if you look in the minutes --

1 MR. THOMPSON: that's where I'll object as
2 hearsay.

3 MR. SCHMELTZ: It's a statement of a party
4 opponent. We're talking about what LKC said in the meeting
5 to him.

6 THE COURT: The minutes reflect what LKC said? I
7 haven't seen the minutes.

8 MR. SCHMELTZ: Very good. Let's do that. Let's
9 take a look at Exhibit 334, which are the minutes from the
10 February 16, 2025 board meeting. Your Honor may recall I
11 tried to introduce these in our hearing on November 3rd and
12 I think Your Honor correctly pointed out I didn't have a
13 foundational witness who could explain what these were. I
14 have that now.

15 THE WITNESS: Which is this? 334?

16 MR. SCHMELTZ: Hold on.

17 THE COURT: It's not in the document. It's not in
18 the book.

19 THE WITNESS: Thank you. Appreciate that.

20 MR. SCHMELTZ: May I approach?

21 THE COURT: Yes.

22 MR. SCHMELTZ: This was previously marked as 334
23 but not entered into evidence.

24 BY MR. SCHMELTZ:

25 Q Could you identify this for the record, sir? Just

1 identify what this is for the record.

2 A This looks like a -- these are the board -- starting on
3 page 1 I see the board minutes from the board meeting on
4 February 16th. The third page I should say.

5 Q You've seen board minutes like this before in your
6 capacity as a CFO, is that right?

7 A Yes.

8 Q Are these the standard form of board minutes for
9 Rhodium Enterprises Inc?

10 A Yes.

11 Q And do you have an understanding as to who typically
12 kept the minutes for these meetings?

13 A Yeah.

14 Q Who was that?

15 A My entire time at Rhodium it was Becky Rice, a
16 paralegal.

17 Q And were the minutes signed by the general counsel and
18 corporate secretary as well?

19 A It looks like they are on Page 2 here, yes.

20 Q And do the minutes have attached to them a board
21 presentation?

22 A They do.

23 Q And is that the board presentation -- are you familiar
24 with this board presentation?

25 A Yes, I am.

1 Q How are you familiar with this board presentation?

2 A This was the board presentation that we gave on the
3 16th. And this was -- this was the one where -- this was
4 the version where we adjusted the value for Building D.
5 That was the change that we made to damages.

6 Q And is that shown at -- I have a page number 866943.6
7 in the bottom right-hand corner of my document. I don't
8 know how yours are paginated.

9 A Yes.

10 Q Do you see that?

11 A Yeah, that's the page.

12 Q And that chart at .6 in Exhibit 334, is that the same
13 as 245.008 that we looked at?

14 A Yes, it is.

15 Q And is that the same as 244.002 that we looked at?

16 A Yes, it is.

17 MR. SCHMELTZ: I would move the admission of the
18 board minutes of Rhodium for February 16th into evidence.

19 MR. THOMPSON: We object. It's not on their
20 exhibit list that was filed before the deadline to file and
21 serve exhibits for this hearing. So that's one independent
22 ground, that it's late. The second independent ground, this
23 is hearsay. It is double hearsay in fact. It reflects --
24 not only are the minutes an out-of-court statement, but they
25 also reflect statements that were made out of court. So

1 there's actually two levels of hearsay in here. And I don't
2 believe this witness is in the proper position to
3 authenticate this document. So three objections.

4 MR. SCHMELTZ: First of all, Your Honor, it's a
5 corporate record. He is the CFO of the corporation. Second
6 of all, he participates regularly his testimony in these
7 board minutes. The minutes were kept by the same human.
8 He's familiar with the form. He is certainly in a position
9 to authenticate this as a corporate record as the corporate
10 CFO. So that takes care at least of one layer of hearsay.

11 Within the minutes and what I want to focus on is
12 the conversation that involves Mr. Hayes on the one hand and
13 Mr. Thompson of LKC on the other hand. That would be the
14 statement of a party opponents and that should come into
15 evidence as well.

16 Finally, Your Honor, John Cohn testified in his
17 direct examination that he had not talked to anybody about a
18 change in success percentage from 40 to 20 percent. He
19 wasn't aware of anyone at LKC who had talked to Mr. Hayes or
20 anyone at Rhodium in changing the percentage success from 40
21 percent to 20 percent. So this is also proper impeachment
22 in that regard.

23 MR. THOMPSON: He referenced a paralegal who is
24 nowhere on here as the one who kept these minutes. We don't
25 have any way to know if that's accurate. I don't think he's

1 laid the foundation that these were made in the ordinary
2 course, kept in the ordinary course. I don't think he's
3 even a proper custodian of the records for Rhodium. I don't
4 think any of that necessary foundation has been paid. So
5 these still are hearsay just on its face. And then of
6 course there's the double hearsay which we can also address.
7 But there's certainly hearsay, not authenticated, and
8 they're still late. They weren't on either their exhibit
9 list filed before the deadline, and then they filed a
10 supplemental exhibit list after the deadline but still not
11 on the supplemental exhibit list. So this is -- our third
12 and final objection is this is late.

13 And of course at this time LKC and Mr. Thompson in
14 particular were not party opponents to Rhodium because we
15 were representing them and they were still seeking our legal
16 advice.

17 THE COURT: So why weren't these put on the
18 witness and exhibit list?

19 MR. SCHMELTZ: We had -- I can't even remember --
20 something like 500 documents originally on the witness and
21 exhibit list. Prior to trial we tried to make some hard
22 cuts of things that we thought in large chunks we could
23 eliminate as testimony could come in otherwise. We quickly
24 identified in the hearing in November that this particular
25 set of minutes needed to come in. That's why I brought them

1 immediately to the Court on November 3rd. It was an
2 oversight on my part trying to get a chunk of documents out
3 so we didn't have five million exhibits. And this was one
4 that as soon as it came -- it was produced in discovery,
5 right? Unlike the invoices that we received as an exhibit
6 but never received in discovery in this case and never had a
7 chance to analyze and never had a summary of. We produced
8 this in discovery. I just missed it. And I brought it to
9 the Court's attention as soon -- in the last hearing as soon
10 as I saw it. That's why we brought it up in the last
11 hearing.

12 THE COURT: So why can't you prove this up as a
13 business record? Are you saying that he is the custodian
14 with knowledge to prove this up as a business record?

15 MR. SCHMELTZ: I could bring Mr. Topping back on
16 the stand if that's your preference to do that. I believe
17 the CFO of the company who regularly participates in the
18 board meetings and is in every board meeting where these are
19 approved is appropriate to relay that foundation. And if
20 you'd like, Your Honor, I can ask a few more questions and
21 do that now.

22 THE COURT: Yeah. I mean, I think people know how
23 to get in exhibits as business records, and we can do that.

24 MR. SCHMELTZ: Understood. Happy to do that.

25 THE COURT: But -- you know, and then there's

1 additional comments. But why don't you go ahead and try to
2 do that.

3 BY MR. SCHMELTZ:

4 Q In your capacity as a CFO do you regularly participate
5 in board meetings at Rhodium?

6 A Yes.

7 Q And in your capacity as the CFO, do you regularly
8 review minutes from prior meetings for their approval?

9 A I don't regularly do that, but I've done it, yes.

10 Q And on how many occasions have you done that?

11 A Five or six times.

12 Q Five or six total times?

13 A Yeah.

14 Q And is this set of minutes consistent with the minutes
15 that you've seen approved in other meetings?

16 A Yes.

17 Q And have you -- do you understand whether the minutes
18 of Rhodium Enterprises Inc are kept in the ordinary course
19 of business to document what happens at board meetings?

20 A Yes.

21 Q And I think you testified about a paralegal who
22 regularly kept those minutes.

23 A Yes.

24 Q And did you have occasion to review the accuracy of her
25 work and her minutes over time?

1 A Yes, on occasion I did, yes.

2 Q And how did you find the accuracy?

3 A Accurate. Very accurate.

4 Q In the course of your participation in board meetings,
5 did you ever hear anybody have a meaningful disagreement
6 with what was recorded in terms of its accuracy in board
7 minutes for Rhodium?

8 A No.

9 Q In the course of your time at Rhodium Enterprises did
10 you have occasion to see board members rely on the board
11 minutes for purposes of conducting business or talking about
12 issues within board meetings?

13 A I didn't hear that they relied on them, no.

14 MR. SCHMELTZ: Your Honor, I think with limited
15 exception I've laid a sufficient foundation under these
16 circumstances for the admission of this document as a
17 business record.

18 MR. THOMPSON: Just one other point, Your Honor,
19 is these purport to be the minutes from the February 16th,
20 2025 board meeting. But I don't see anything subsequent
21 from the board approving these as the official minutes from
22 the February 16th, 2025 meeting. So we don't know if this
23 is in fact the final version that was approved by the board
24 or if this was simply a draft or what this was.

25 And again, I don't think that Mr. Hayes, given his

1 limited exposure to the minutes and the process that Rhodium
2 went through to create and store the minutes is in a
3 position to authenticate them as business records even if
4 they are, which we're not sure they are, because we still
5 don't know if these are the final minutes that were approved
6 by the Rhodium board subsequent to the February 16th
7 meeting.

8 MR. SCHMELTZ: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 MR. SCHMELTZ: (indiscernible).

12 THE COURT: So there's Exhibit B and there's the
13 part one. And that's the only one that's signed. And then
14 there's Exhibit A presumably. I don't know to what. And
15 then there's part two that, again, is not signed.

16 MR. THOMPSON: And finally, Your Honor, again, not
17 only are they late, if Mr. Schmeltz is saying they were
18 produced, I have no reason to doubt that. I will just note
19 that the Bates label is different than all of the other
20 productions from the Special Committee. And I'm only saying
21 that because I don't know when they were produced or why the
22 Bates number is different. Again, I don't doubt that they
23 were, but they certainly weren't on the exhibit list that
24 was filed before the deadline.

25 BY MR. SCHMELTZ:

1 Q Have you had occasion to review the minutes in front of
2 you?

3 A Yes, I have.

4 Q Does the information in the minutes in front of you
5 comport with your recollection of what occurred in the
6 February 16, 2025 board meeting?

7 A Yes, it does.

8 Q And does the presentation that's attached comport with
9 your recollection of the presentation that you prepared and
10 presented in that board meeting?

11 A Yes, it does.

12 MR. SCHMELTZ: Your Honor, I think that I have
13 established all appropriate indicia of reliability of this
14 document as at a minimum a reliable recording of the events
15 in the board meeting, and I move its admission.

16 MR. THOMPSON: Same objections. And as a -- just
17 to clarify, the slides that Mr. Hayes prepared purportedly
18 attached to these minutes, we have no objection with those
19 slides coming in. It's just the minutes themselves.
20 Because I don't think that they've laid the foundation.
21 They're late, they're hearsay. For all the reasons we've
22 explained. They don't show that these are the final minutes
23 that were adopted by the board at a subsequent meeting.

24 I believe Mr. Hayes can authenticate the slides
25 because he testified that he created those. So we have no

1 problem with those coming into evidence. But the minutes
2 themselves, I don't think that they meet the criteria for
3 admissibility.

4 THE COURT: My problem is that I don't really
5 understand what these documents are. So the first one is
6 Exhibit B. Is that what's being approved in part one that
7 is signed? Did somebody testify as to that?

8 MR. SCHMELTZ: I'll put Mr. Eaton on the stand
9 next and we can go through that with Your Honor. I can ask
10 some --

11 THE COURT: Maybe this is 11 and 12 and they
12 should be at the end of the document.

13 MR. SCHMELTZ: It is. In my version, it's
14 established. For whatever reason part one starts with that
15 board meeting, the meeting minutes, and you don't have that
16 vestigial document up front on the version I have, which is
17 866943.1 through 943.10.

18 THE COURT: Okay. So it should be 866943.1
19 through 866943.12.

20 MR. SCHMELTZ: Correct, Your Honor.

21 MR. THOMPSON: And again, on just that Bates
22 number point by itself, I will note that all of the other
23 production from the Special Committee -- Special Committee,
24 underscore, LKC, underscore, and then the Bates number.
25 This is obviously a totally different format. I don't know

1 what production this was a part of, if that Bates number
2 even relates to a production that's occurred in this
3 proceeding. That could be some sort of internal tracking
4 number.

5 MR. SCHMELTZ: So, Your Honor, this -- there was a
6 production, the production version of this document --
7 because this is -- I mean, they have this document. Special
8 Committee LKC 4657 is the start of this document. And it
9 runs through -- let me scroll through real quick. It runs
10 through 4668, Special Committee LKC 4668. There's a
11 production version. They have it in their production. It's
12 not an issue.

13 MR. THOMPSON: That's not this version, right?
14 That could be a different document. How am I supposed to
15 know that?

16 MR. SCHMELTZ: Yeah. So the native version of
17 this exact same document has 866943.1. This is -- what
18 happened is someone in pulling this, when I asked for it
19 pulled in the last hearing, pulled it as the native version.
20 The number, 866943, is from the native. The Bates is the
21 exact same document, just produced with the Bates on it.
22 It's the same document, Your Honor. It was a mistake in how
23 we pulled it and printed it. but it's the exact same
24 document. I'd represent that to the Court. And I could
25 hand Counsel (indiscernible). And that's the original

1 number. (indiscernible).

2 MR. THOMPSON: But is the Bates version included
3 in the exhibit list?

4 MR. SCHMELTZ: (indiscernible). Is it the same
5 document, it's the same document.

6 MR. THOMPSON: But Your Honor, this is why we have
7 a deadline for exhibits, right? And so we don't have this
8 in live court with a witness on the stand. And I'm sorry,
9 I'm at a loss to know, as Your Honor, what is this document,
10 why does it have a different Bates number, what is the Bates
11 number document, is that different. When was this produced,
12 was it the final version that was approved by the board, et
13 cetera. So we have to stand on our objection.

14 THE COURT: I'm going to consider whether to admit
15 this document or not.

16 MR. SCHMELTZ: Thank you, Your Honor. During the
17 --

18 THE COURT: You can continue asking him questions
19 and I'll determine later.

20 MR. SCHMELTZ: Thank you.

21 BY MR. SCHMELTZ:

22 Q In the section called Mediation Strategies Discussion,
23 do you see that?

24 A Yeah.

25 Q It notes, "To begin the meeting, Kevin Hayes shared

1 with the board the attached presentation, Exhibit A." Do
2 you see that?

3 A Yes.

4 Q Did you in fact share the presentation that is Exhibit
5 A that we've talked about?

6 A I did.

7 Q And you gave the board some information about the
8 presentation, correct?

9 A Yes.

10 Q And what did you inform the board about your
11 presentation?

12 A I said that it was the same as what we went through on
13 Wednesday with one change. And that change was to change
14 the Building D success factor from 40 percent to 20 percent
15 or, you know, in absolute dollar terms from \$66 million to
16 \$33 million undiscounted.

17 Q Did anyone in the course of the board meeting speak up
18 and comment on your -- in response to your presentation and
19 your changes?

20 MR. THOMPSON: Objection, hearsay.

21 THE WITNESS: I asked did anyone speak up in
22 response to your statements about the changes in the
23 presentation. I didn't ask -- I didn't ask what they said,
24 I didn't ask who said anything. I asked did anyone stand up
25 in response.

1 THE WITNESS: No.

2 BY MR. SCHMELTZ:

3 Q Were the lawyers from LKC present in the meeting?

4 A Yes.

5 Q This particular document notes Mr. Thomson then joined
6 the --

7 MR. THOMPSON: Your Honor, he is now reading from
8 a document that has not been admitted into evidence. That
9 is not a proper line of questioning.

10 THE COURT: You can ask him what Mr. Thompson said
11 if anything, but not from the document.

12 BY MR. SCHMELTZ:

13 Q Do you recall Mr. Thompson saying anything about the
14 change in success percentage to the Building D claim?

15 A I don't recall him objecting to it. He says here that
16 he --

17 THE COURT: No, no, just from what your
18 recollection.

19 THE WITNESS: I don't recall him objecting to it.

20 BY MR. SCHMELTZ:

21 Q Do you recall him approving or disapproving one way or
22 the other of the change?

23 A I don't. I don't recall him objecting. I don't
24 remember. I mean -- yeah.

25 Q And the change is to the slide that we've looked at in

1 245.008. That's the same slide, right?

2 A Right.

3 MR. SCHMELTZ: And if I haven't admitted 245 into
4 evidence, I'd like to do that, Your Honor.

5 THE COURT: Any objection?

6 MR. SCHMELTZ: It was previously admitted Paige
7 tells me. I apologize. I thought I had a list somewhere of
8 my admits, and I misplaced it. 245 is in evidence.

9 BY MR. SCHMELTZ:

10 Q So in other words, 245.008 is the same information
11 presented in this presentation that we see attached to 334,
12 right?

13 A It matches 8669436, right. Yeah.

14 Q Thank you. And it also I think we've established
15 matches 244.002, right?

16 A Yes.

17 Q A document that was attached to an email from John
18 Cohn, right?

19 A Correct.

20 Q Do you have -- did you interact with LKC in the course
21 of your experience as a CFO and on these claims, these Riot
22 Whinstone claims?

23 A A little bit. I mean, not extensively. I mean, we
24 probably interacted during this period fairly frequently.
25 But other than that, you know, prior to that I didn't

1 interact with them very much.

2 Q In your experience if they disagreed with something you
3 said or did, would they speak up and let you know it?

4 A We didn't have disagreements very often, but yeah, I've
5 seen them voice their opinion pretty strongly on a lot of
6 board discussions.

7 Q In the course of your compilation of damages analyses,
8 did you -- I think we have established that you saw Building
9 D come in for the first time in February '25, right?

10 A Right.

11 Q Did you ever see energy claims related to Winter Storm
12 Uri excluded from a damages analysis?

13 A No, I never did.

14 Q Did you have an understanding one way or the other as
15 to whether the energy claims were considered to be strong
16 claims?

17 A My understanding was they were all strong claims. And
18 I think, you know, we talked about them my entire time at
19 Rhodium as really what we could hang our hat on. And if you
20 look at the spreadsheet that was provided, the one that was
21 provided from John, you see base amount in one column and
22 you see base success factor. And all those energy claims,
23 70 percent, 60 percent. You know, 4CP, that's different.
24 That's small. But those were the bigger, stronger claims.

25 Q Do you have a sense as to how much a change in Building

1 D as a \$66 million claim versus it as a \$33 million claim
2 impacts the potential success fee for LKC in this case?

3 A I do.

4 Q What do you understand that --

5 A Well, Building D is in the bucket of non-energy credit
6 claims which get ten percent. LKC's success fee gets ten
7 percent of those claims. So if you reduce it by 30 -- let's
8 just say you reduce -- by round numbers we reduce that by
9 \$33 million, that has a \$3.3 million impact on their fee.
10 That was -- I had no idea of that at the time we were doing
11 all this. I was worried about the company and the company's
12 viability.

13 Q At the time you prepared these claim charts, were they
14 meant to have any bearing on the success fee for LKC?

15 A No. It was meant to give the board a realistic view of
16 the value so they could make a very important decision, you
17 know, as they considered an offer from Riot today versus
18 future cashflows from bitcoin mining and potential damages.

19 Q Did you work with Chris Wheeler on his tax allocation?

20 A I did.

21 Q Were you involved in determining how much to allocate
22 to settlement versus the purchase of assets as part of that
23 process?

24 A We used the \$75 million for settlement. So that \$75
25 million had my input and the board's input. So I would say

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 in
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 riskd
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 Q If we look at the bottom of the first page, you see it
2 says one of two in the bottom-right corner?

3 A Yes.

4 Q And if we flip the page, it doesn't say two of two,
5 correct?

6 A Correct.

7 Q And if we look here, there's only two charts attached
8 to the email at Special Committee 244, right?

9 A There's only two charts. You mean 244.002 and 244.003?

10 A Yes, sir.

11 Q Right. Now what I want you to do is switch binders.
12 Go to the black binder, please. Go to Tab 13 if you will.

13 Okay, are you with me?

14 A Sure.

15 Q If we look at Tab 13 which is LKC Exhibit 13, this is
16 the same first page email that's reflected in Special
17 Committee 244? Oh, I'm sorry, I should have had you leave
18 that open.

19 A Let me just check the time. Yes.

20 Q If we look at LKC Exhibit 13, we see there are two
21 pages of email texts, right?

22 A Right, yes.

23 Q If we turn the page through the rest of the exhibit, we
24 see that there are actually three charts attached to Mr.
25 Cohn's email in LKC Exhibit 13?

1 A Yes.

2 Q So is it your recollection that LKC Exhibit 13 is the
3 complete version of Mr. Cohn's email with the three charts
4 as opposed to Special Committee 244?

5 A Give me a second here. Well, it has more attachments.
6 I don't recall if this is absolutely complete or not, but I
7 have no reason to believe it's not.

8 Q Now, I just again wanted to clarify one thing in LKC
9 Exhibit --

10 MR. THOMPSON: And I'm sorry, Your Honor, I
11 believe we've offered this into evidence. But in case I
12 haven't, I would offer it.

13 THE COURT: Any objection?

14 MR. SCHMELTZ: No objection. I believe it's in
15 evidence.

16 BY MR. DISHER:

17 Q Okay. So LKC Exhibit 13. There was some back and
18 forth about precisely what information Mr. Cohn provided to
19 you and what information you provided to Mr. Cohn, correct?
20 Do you remember that on your direct examination?

21 A Yes. I think we passed the spreadsheet back a little
22 bit. He had versions, I had versions. I think that's
23 right.

24 Q Great. And I just want to be clear about one thing.
25 The chart that is on page 5 of 6 of exhibit 13 that shows

1 the Building D percentage at 20 percent, do you see that?

2 A Correct.

3 Q Your testimony was that you sent that chart to Mr.
4 Cohn, right?

5 A Yes, that's my recollection. That's what was in the
6 board presentation from the 16th.

7 Q Right. Mr. Cohn did not create this chart with the
8 Building D percentage at 20 percent and then send it to you,
9 correct?

10 A Yeah, I believe that's correct.

11 Q What Mr. Cohn did send you is the chart on Page 6 of 6
12 of LKC Exhibit 13?

13 A Okay.

14 Q Is that right?

15 MR. SCHMELTZ: Calls for speculation.

16 THE COURT: Just ask him if he knows.

17 THE WITNESS: I mean, I don't remember if this was
18 in the attachment or not. But it's in the email. It's in
19 this exhibit. But --

20 BY MR. DISHER:

21 Q Do you remember whether these are the rosier
22 predictions that Mr. Cohn provided in advance of mediation?

23 A Yeah. I would have to read the email to get -- to
24 comment on the context. But I recall that there was --
25 there was a case that we see on four of six that was -- you

1 know, everything un-risked. And I don't know if that went
2 into the complaint or not, if that exact number went into
3 the complaint or not. And then I think if you read the
4 email, it appears that John talks about six of six in his
5 email.

6 Q Right. And one other thing John -- excuse me, Mr. Cohn
7 mentions in his email if we look at Page 1 of 2, do you see
8 that? Will you go to Page 1 of 2, please?

9 A Sure.

10 Q The third paragraph down, second sentence, "I remain of
11 the view that we should aim to settle damages in the \$100
12 million to \$150 million ballpark. Did I read that right?

13 A Yeah, that's what it says.

14 Q Now, I want to take a step back. I want to go to the
15 February 12th slides. I'm going to use the version in the
16 black binder. So that would be LKC Exhibit 14.

17 A Okay.

18 Q Will you turn to Page 3, Slide 3, please, the
19 litigation value chart? Are you with me?

20 A I am with you, yes.

21 Q I want to spend some time on this. I'm going to give
22 myself some more room here. So this was a slide that you
23 put into the materials that would have been presented to the
24 board on February 12th, correct?

25 A Yes. The spreadsheet was provided to me. And what I

1 did was I added that discount rate and then kind of the
2 discounted today value at the bottom, yes.

3 Q Great. And we'll talk about the discount rate in a
4 minute. But before we talk about the discount rate, I want
5 to talk about everything above the discount rate leading to
6 the expected value of \$158 million. Do you see that?

7 A Yes.

8 Q These are numbers that were provided to you, right?

9 A Yes.

10 Q And I believe you testified Mr. Cohn provided you those
11 numbers?

12 A Yes.

13 Q You are aware of course that LKC wasn't the only firm
14 that worked on these numbers?

15 A I'm honestly not aware of that. I mean, they may have
16 had -- I never received any sort of analysis like this from
17 Stris. Whether they had input on it, I don't know. But...

18 Q Great. So you don't know one way or the other whether
19 Stris did in fact play a role in creating the numbers
20 reflected in the chart on Slide 3?

21 A I don't. I mean, I know that they were on calls where
22 we discussed this, but I don't know that they -- no, I
23 don't.

24 Q Do you know whether the hired retained litigation
25 consultants were -- provided input to these numbers that are

1 reflected on Exhibit 3?

2 A The hired litigation consultants? I'm sorry.

3 MR. SCHMELTZ: Lack of foundation, Your Honor.

4 MR. THOMPSON: Asking whether he knows.

5 THE COURT: Yeah, overruled.

6 THE WITNESS: Who the hired litigation -- you mean
7 the attorneys or --

8 BY MR. DISHER:

9 Q No, the expert witnesses that the attorneys hired in
10 the litigation, do you know whether they were consulted in
11 creating the numbers reflected in Slide 3.

12 A The expert witnesses.

13 Q Correct.

14 A I don't know who you're talking about.

15 Q Dr. Miljkovic, for example. Do you know whether he was
16 consulted in coming up with these numbers?

17 A I don't know if -- that name doesn't ring a bell to me.
18 So no, I don't know if he was consulted.

19 Q Okay. What about a consultant related to the energy
20 creditors, do you know whether that consultant provided any
21 input to the numbers reflected in Exhibit 3?

22 A I don't know who these consultants are. So...

23 Q So no.

24 A Yeah.

25 Q Great. What about the Province team? Do you know

1 whether the Province team provided any input into the
2 numbers that are reflected in Slide 3?

3 A Not in this slide, other than their input on the
4 discount rate.

5 Q So when you say not on the slide, do you mean they
6 didn't provide or you don't know whether they provided?

7 A They didn't provide anything above the one -- the row
8 that sums up to 158.

9 Q Okay. And ultimately the numbers that you got from Mr.
10 Cohn, you put those into this chart that was then presented
11 to the board?

12 A Correct.

13 Q And of course you want information presented to the
14 board to be reliable and accurate and trustworthy?

15 A Well, yeah, I do. But I also want to have it in there
16 so we could have the discussion. And I got this about an
17 hour before the meeting. So I didn't have a whole lot of
18 time to go vet it with a wide group of people. We had to
19 put it in there. And I think it's important to have that
20 discussion when you can and not wait for people to, you
21 know, boil water, and get it to you.

22 Q And we'll talk about further discussions, trust me.
23 Now I want to turn to the 25 percent discount rate, okay?

24 A Correct.

25 Q To the numbers that were provide to you by Mr. Cohn,

1 you then applied a 25 percent discount rate, correct?

2 A I -- well, I would put it this way. The way that these
3 were presented, the assumption I made was that we would --
4 we would win or, you know, receive these damages in a year.

5 Q And Mr. Hayes, I promise we'll talk about what went
6 into the 25 percent discount rate. My question is much
7 simpler than that. My question is simply were you the one
8 who put the 25 percent discount rate on the chart that's
9 reflected in Slide 3?

10 A Yes.

11 Q Great. Now, your goal with that discount rate was to
12 attempt to account for more than just the time value of
13 money, right?

14 A No, it was the time value of money.

15 Q Did you not also have the intent of accounting for the
16 risk that Rhodium would somehow become insolvent before it
17 could collect the damages?

18 A Well, that goes into the discount rate, right? That's
19 what discounting is.

20 Q That's exactly my question. So the 25 percent discount
21 rate that you applied takes into account the risk that
22 Rhodium might become insolvent before it could collect on
23 those damages.

24 A I would frame it differently. I would also say that I
25 could look back to a data point from a few months ago when

1 we had our DIP financing. And if you calculate the fees and
2 the interest rate there, that's 25 percent right there. So
3 I felt very justified in that 25 percent based on that DIP
4 financing.

5 Q Okay. And again, that's not precisely my question. My
6 question is this. Does the discounted rate here, the 25
7 percent that you put into this chart, does that account for
8 both the time value of money as well as the risk that
9 Rhodium would somehow become insolvent in that year?

10 A It accounts for the risk -- it's an appropriate
11 discount rate for Rhodium. So that includes a lot of risks,
12 variability in its business, and I suppose, you know,
13 insolvency is one of those as well?

14 Q Thank you. That 25 percent discount rate is in fact
15 the same discount rate that you applied to the discounted
16 cashflow analysis in the material presented to the board on
17 February 12th, right?

18 A Correct.

19 Q LKC did not tell you to apply that same 25 percent
20 discount to the expected value of the damages reflected in
21 Exhibit 3, right?

22 A They did not.

23 Q Stris did not tell you to apply that same 25 percent
24 discount rate, correct?

25 A Well, let me add something to your first question

1 though.

2 Q It was a yes or no question.

3 A I sent an email to Will and said -- I put the slide in.
4 He noted, I see that you put a 25 percent discount rate.
5 I'm not -- I don't have a big problem with that, but I'm
6 going to let you carry the water in the board meeting on
7 that.

8 Q Did you consult with anybody from the LKC or Stris team
9 before you applied the same discount rate that you used for
10 your discounted cashflow analysis?

11 A I sent the email to Will and ran it by him. And he
12 made the comment that I just told you.

13 Q But he didn't say yes, that sounds good to us?

14 A He said basically I don't have a problem with it.

15 Q Okay.

16 A Splitting hairs.

17 Q Now, when we look at the chart on Slide 3, you did not
18 add in any accounting for pre-judgment interest, right?

19 A I did not.

20 Q Once you added your 25 percent discount rate, the EOY
21 2025 expected collection is \$126.4 million, correct?

22 A Yeah. That's probably a typo. That should have read
23 that -- not EOY 2025, it should have been discounted back to
24 today.

25 Q Sure.

1 A Right.

2 Q But the ultimate number that you calculated on Slide 3
3 is \$126.4 million?

4 A Correct.

5 Q Okay. Now you carried that number back into the chart
6 that is on the proceeding slide, Slide 2, right?

7 A Correct.

8 Q And that 126.4 is the basis for the low/high range of
9 risk damages?

10 A Yes.

11 Q But before you did the range, you of course subtracted
12 \$1.4 million from the 126.4, right?

13 A Well, I rounded it, yes. So the midpoint in the
14 analysis is 126.4. For the sake of the presentation I made
15 \$126.4 a 125 and added plus or minus 25 million, correct.

16 Q But just to be clear, nobody from the Stris team told
17 you to subtract out \$1.4 million?

18 A No, they didn't.

19 Q Nobody from the LKC team told you to subtract out \$1.4
20 million?

21 A No.

22 Q Okay. Now, once you subtract the \$1.4 million, you get
23 to \$125 million, right?

24 A Correct.

25 Q That's the midpoint, right?

1 A Correct.

2 Q And from that \$125 million, you then did a plus or
3 minus of \$25 million to get to that range of \$100 million to
4 \$150 million?

5 A Correct.

6 Q Part of the variability that you're trying to capture
7 with the plus or minus \$25 million is the fact that if you
8 went through this entire litigation, there is a chance that
9 Rhodium would not have collected some of the numbers
10 included on the damage chart in Slide 3.

11 A I think that's just a range that -- I mean, I think to
12 say that the number was exactly \$125 million or \$126.4
13 million, to me it was a false level of precision. I just
14 simply added plus or minus \$25 million to reflect the
15 variability in what we could -- what those claims were going
16 to be. So I don't --

17 Q I just want to be clear, part of the variability that
18 you're trying to capture with that plus or minus \$25 million
19 is the fact that if Rhodium went through with this entire
20 litigation, there's a chance that Rhodium would not have
21 collected some of the numbers included in the damage chart
22 on Slide 3, right?

23 A Yeah. It reflected the variability in the merits of
24 these respective buckets of claims.

25 Q So the answer to my question is yes?

1 A I think your question was did it reflect like that we
2 would be distressed. And the answer to that is no. That's
3 what I thought I heard.

4 Q No, I think the -- my question about the distress was
5 about the discounted rate. Now I'm talking about the
6 plus/minus \$25 million --

7 A Yes.

8 Q -- that you applied on the chart on Slide 2.

9 A Yeah.

10 Q That \$25 million, part of it was to account for the
11 variability of not collecting some of the damages listed in
12 the chart on Slide 3.

13 A To account for the variability in the success in the
14 claims, correct.

15 Q Okay. Nobody from the Stris team told you to do a
16 plus/minus \$25 million range?

17 A No.

18 Q Nobody from the LKC team told you to do a plus or minus
19 \$25 million range?

20 A No.

21 Q Now, if we look at the chart on Slide 2, Risked
22 Damages, that you presented to the board on February 12th,
23 the low end of that range is \$100 million, right?

24 A Correct.

25 Q And you understand of course that that is the \$100

1 million that LKC uses in its fee application that is
2 currently pending in front of this Court?

3 A I guess I understand. I mean, I don't know that I
4 totally -- like that's -- I haven't reviewed it in detail.
5 But if you say that's the basis, then that's fine.

6 Q Okay, great. All right. Now I want to switch to the
7 February 16th slides.

8 A Okay.

9 Q If you go to Tab 245 in the white binder, please. 245.

10 A Okay.

11 Q Are you with me?

12 A Yes.

13 Q If you turn to the last page, which is 245.008, please.

14 A Okay.

15 Q This chart is the chart that was presented to the board
16 on February 16th?

17 A Correct. This is in the March 5th board presentation.
18 The last slide in that presentation, just for reference.

19 Q Right. But just to be clear, this is in fact what was
20 presented to the board on February 16th?

21 A Correct.

22 Q So from the February 12th board slide showing the
23 damages -- and we can flip back to it if we need to --
24 there's only one change in the numbers, right?

25 A Correct.

1 Q And that change is to the base success rate for
2 Building D?

3 A Correct.

4 Q So the damage numbers presented to the board on
5 February 16th were identical to those presented to the board
6 on February 12th but for the one change to the Building D
7 success rate?

8 A Correct.

9 Q And that was -- obviously February 16th is four days
10 after the February 12th board meeting, right?

11 A Right.

12 Q Now, the change from -- well, let me back up. In the
13 February 12th slide, the building D base success rate was 40
14 percent?

15 A Correct.

16 Q And now it's 20 percent on February 16th?

17 A Correct.

18 Q The change in Building D success rate from 40 percent
19 to 20 percent, that was a collective decision between you
20 and the Province team?

21 A Yes. I don't remember if we discussed this with Chase
22 and others before the board meeting, but we discussed it ad
23 nauseum on the board meeting on February 16th.

24 Q But prior to the board meeting, the decision to change
25 the base success rate from 40 percent to 20 percent, that

1 was a collective decision between yourself and the Province
2 team, right?

3 A Correct.

4 Q And specifically Mr. Robinson on the Province team?

5 A Correct.

6 Q Prior to the February 16th board meeting, you, Mr.
7 Hayes, you never personally talked to any of the potential
8 exit financiers related to the slide that's reflected on Page
9 8 of Exhibit 245?

10 A During what time period?

11 Q Prior to the February 16th board meeting.

12 A I did, actually. I was on calls with one of the --
13 diligence calls with one of the groups.

14 Q Okay. My question is simply did you yourself have any
15 discussions with the exit financiers prior to the February
16 16th board meeting related to the information that went into
17 the presentation provided to the board on February 16th?

18 A No.

19 Q You don't remember talking to anybody from the Stris
20 team about that change in Building D success rate prior to
21 the February 16th board meeting.

22 A No.

23 Q You don't remember talking to anybody from the LKC team
24 about that change prior to the February 16th board meeting.

25 A No.

1 Q Now, if we look back at the slide, we see the same
2 discount rate of 25 percent, right?

3 A Correct.

4 Q Likewise, we also see that you did not add back in any
5 accounting for pre-judgment interest, right?

6 A Right. I mean...

7 Q Now, if we flip back to slide -- one page to 245.007,
8 do you see that? Are you there?

9 A I'm there.

10 Q Okay, great. So this slide was also presented to the
11 board on February 16th, 2025?

12 A Yes.

13 Q Okay. And we see risk damages, and we see the
14 commentary there, risk estimates from LCK -- typo -- /Stris
15 plus/minus \$25 million?

16 A Correct.

17 Q So, to the number that you calculated prior to the
18 February 16th board meeting, you did that same plus/minus
19 \$25 million?

20 A Correct.

21 Q Of course, \$100 million is right in the middle of that
22 range?

23 A Correct.

24 Q And that, of course, is the number that LKC is using in
25 its fee application that's pending in front of the Court?

1 A Correct. And I want to point out this is as of
2 February 16th.

3 Q Right. Now, let's also talk about what happened during
4 the February 16th board meeting. Do you remember that Mr.
5 Chase Blackmon made a motion to set the litigation
6 settlement minimum at \$100 million?

7 A I do. I think it's important to note that the language
8 there was a \$100 million minimum, and if it's less than
9 that, bring it back to the board for negotiation.

10 Q That's exactly right. Any amount below that would have
11 to then be presented to the board?

12 A That doesn't mean that we'll take --

13 Q That's just a yes or no.

14 A Doesn't mean we'll take less than \$100 million.

15 Q Just a yes --

16 A So I think your -- I don't --

17 Q It's a yes or no question. That was your understanding
18 after the February --

19 A I think it's important to say it was \$100 million, and
20 if it's less than that, bring it to the board for
21 discussion. That was a really important part of that.

22 MR. DISHER: Your Honor, it's a yes or no
23 question. Objection, non-responsive.

24 THE COURT: Sustained. Why don't you just ask his
25 question. Your counsel can clean that up.

1 BY MR. DISHER:

2 Q That resolution to set the litigation minimum at \$100
3 million, that was passed by the board at that February 16th
4 meeting?

5 A Correct.

6 Q Okay. Next meeting, March 5th, same exhibit. If we go
7 to Slide Number 2 --

8 A Correct, yep.

9 Q -- we see the updated chart that was presented to the
10 board on March 5th?

11 A Yes.

12 Q And it has the risk damages range?

13 A Yes.

14 Q Now, that risk damages range, that's still based on the
15 numbers in the chart that was presented to the board on
16 February 16th?

17 A Look, I'll explain the differences. It's based on \$125
18 million that --

19 Q Let me pause you right there. That's the \$125 million
20 that was presented to the board on February 16th?

21 A Right.

22 Q Right. Okay. Keep going.

23 A So, that \$125 million is the risk expected value, but
24 it's not discounted. So we had some feedback. We learned
25 some things between February 16th and March 5th. We had a

1 mediation. We got feedback from the exit financing process
2 that the lender that we had high hopes for that was -- you
3 know, that provided our DIP financing was not going to get
4 there. And the only term sheet we had had a cost of capital
5 that was in excess of 30 percent.

6 Q Okay.

7 A So that was one thing we learned. The other thing that
8 I learned and others on the valuation, you know, side of
9 things learned was the litigators and others sort of said to
10 us, you're not going to collect this in a year. You're
11 going to collect this in a couple of years.

12 So, you know, with that information, we did two things.
13 We took that \$125 million. We slightly adjusted the
14 discount rate from 25 to 30 percent to tie to the term
15 sheet, the one term sheet that we had. And then we also
16 discounted it by two years instead of one year.

17 Q Right.

18 A So, if you take that \$125 million, divide it by 1.3 to
19 the second power, that's \$74 million, so roughly \$75
20 million.

21 Q And that is what is reflected in the commentary on
22 Slide Number 2 in the material that was presented to the
23 board. It says reduced estimates by \$25 million. Do you
24 see that?

25 A Correct.

1 Q So that reduction of the estimates by \$25 million,
2 that's the result of the process you just described of
3 increasing the discount rate --

4 A Right.

5 Q -- from 20 percent -- excuse me -- from 25 percent to
6 30 percent --

7 A Yes.

8 Q -- and then adding another year of that discount rate?

9 A Right.

10 Q And just to be clear, that 30 percent, you then also
11 use that same 30 percent discount rate for the discounted
12 cash flow analysis that you presented to the board on March
13 5th, right?

14 A You mean for the ongoing business?

15 Q Correct.

16 A Correct.

17 Q Okay. The decision to, "reduce estimates by \$25
18 million", you and Michael Robinson, again, were the ones who
19 made that decision prior to the March 5th board meeting?

20 A I would say yes. And I don't recall if we socialized
21 that before the board meeting, but we did, and we explained
22 it at the board meeting --

23 Q Right.

24 A -- and had a robust discussion about it.

25 Q And even once you and Michael Robinson decide to reduce

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

1 back, and we don't think the document is privileged at all.

2 I would be happy to provide the Court a copy of it, should
3 the Court want to review it.

4 THE COURT: Let me hear from Mr. Schmeltz.

5 MR. DISHER: And just -- it's this document.

6 MR. SCHMELTZ: So, first of all, Your Honor, I
7 want to address the delay in claw back. It's a little bit
8 of a right-hand, left-hand. I had a misunderstanding with
9 Quinn as to the scope of what aspects of the privilege we
10 would be waiving. And Ms. Tomasco brought to my attention
11 that I misunderstood a conversation she and I had about how
12 that was to work, and I immediately said about clawing it
13 back.

14 It was not her intent for me to produce this
15 document, ever, and we shouldn't have produced it. So it
16 was an error on my part, and it was a misunderstanding on my
17 part. So we addressed it as quickly as I could, given the
18 circumstances.

19 The document itself is, you know, 100 percent the
20 provision of legal advice in a dispute, and it's why you
21 hire an accountant on a Kovel agreement, because you've got
22 to know how the accountant approaches it so that you can
23 give appropriate legal advice. And Ms. Tomasco is literally
24 referring to going to talk to the accountant to get some
25 information so that she can give that legal advice. I

1 think, again, that's exactly why you hire that consultant,
2 and it is the provision of legal advice. I know Ms. Tomasco
3 has risen to address it as well. I want to (indiscernible)
4 have an opportunity, if Your Honor will allow her to address
5 it as well.

6 THE COURT: Yes.

7 MS. TOMASCO: I didn't know this was going to come
8 up today, but I will tell you what the mistake was. It was
9 not a misunderstanding. The at-issue waiver of the
10 privilege applies to anything that was happening between LKC
11 and the Debtor prior to the dispute arising between the
12 parties.

13 Once the dispute arise, the at-issue waiver no
14 longer applies to communications. The review team viewed it
15 as a temporal matter that there was no distinction. But
16 this email -- and to be honest, it's quite innocuous, and
17 this is more a matter of I never waived the privilege.

18 I never agreed to have this communication, which
19 we had carefully engaged Riveron under a Kovel agreement so
20 that our Quinn Emanuel tax legal team could give advice to
21 Rhodium with respect to tax issues that were going to arise
22 from the allocation. All right?

23 In that context, a dispute arose previously with
24 respect to LKC. So the -- I can brief this for Your Honor,
25 but the at-issue privilege waiver, as you know, pertains to

1 the conversations that we've been going through where LKC is
2 on and the Rhodium board is on, and that at-issue waiver is
3 because there is a dispute between the law firm and the
4 client. That doesn't apply after the dispute has arisen,
5 and I'm giving advice about a completely different thing.
6 Right?

7 So, there is a temporal nature to the at-issue,
8 once the dispute arises. If I wanted to go to Rhodium, to
9 Chuck Topping, and say, you know, I think LKC is wrong on
10 this point, obviously the at-issue waiver does not apply to
11 that communication because now there is a dispute between
12 Rhodium and LKC.

13 This email, to the extent it even applies to the
14 LKC dispute -- and I don't think it does -- it's privileged
15 as between myself and Rhodium. And the fact that this was
16 inadvertently produced because of a misunderstanding of the
17 scope of the at-issue waiver between LKC and Rhodium should
18 have nothing to do with the veracity of the claw back. And
19 if you read the parties' 502 agreement, it says that any of
20 this is not a waiver. You can't waive it once you have a
21 502 agreement, and they do.

22 So this is one of the things that has raised my
23 hackles up to here because, number one, I didn't know this
24 email was produced. Number two, the at-issue waiver that
25 has been the prevalent issue between these parties, the

1 Special Committee and LKC, it only applies to communications
2 between LKC and Rhodium before the dispute arose.

3 After the dispute arose, Rhodium is entitled to my
4 counsel, his counsel, counsel of their choosing. The
5 attorney-client privilege, after the dispute arises, cannot
6 be breached. And that's what this is. This is a July 15th.
7 And as you know, we had a whole bunch of adversity with LKC
8 well before then. And so this privilege cannot be waived.

9 THE COURT: When do you -- what date do you
10 determine there was adversity with LKC?

11 MS. TOMASCO: I believe when they would have --
12 well, they've made a lot of threats -- but I believe when --
13 after we filed the amended application to retain them with
14 more detail about the contingency fee. But certainly by
15 this point, we understood, and we were not sharing with them
16 as counsel anything to do with valuation, because we
17 understood it was going to be an issue with how do you
18 determine what their fee is.

19 MR. SCHMELTZ: And by this time, Your Honor, I had
20 made a settlement -- this is -- I made that settlement offer
21 in May, at or about the date that we -- let me just grab the
22 first exhibit. Hang on. June 27th. "Please find
23 attached."

24 So by June, right after we made the tax allocation
25 proposal to Riot Whinstone, I made a settlement offer to

1 Lehotsky Keller and Cohn, through Josh Wolfshohl, which was
2 met with a great deal of antagonism. So you're right in --
3 I mean, we're right on the cusp of it.

4 But again, Your Honor, this is why we negotiated a
5 502(d) agreement. We knew we were moving awful fast. We
6 took Your Honor's, you know, be transparent and get it done
7 very seriously, and our team put the jets on to do that.
8 And this was a mistake on our part. I own it. And that's
9 why we had a 502(d) in place. And I pointed it out to them
10 as soon as I realized where this fell on the wrong side of
11 the (indiscernible).

12 MR. DISHER: A couple of responses, Your Honor.
13 First of all, I think that from the substance of this email
14 on its face, it's clear that this is not the provision of
15 legal advice. This is business advice. So I don't think
16 this is covered by privilege at all, whether it's within the
17 scope of the limited waiver or not. This is just not
18 privileged because it's not the provision of legal advice.

19 Second, the claw back was way late. If they
20 really thought this was a privileged document, you act on
21 that immediately. You can't wait four days after it's used
22 for the second time in a second deposition and then
23 belatedly try to claw this back, just because they don't
24 like the answers that this witness gave about this document.
25 That's not the proper use of a claw back.

1 And then third, they're saying that -- somehow,
2 they're saying that... Well, I'll leave it at that. I'll
3 leave it at those two points.

4 MR. SCHMELTZ: I do want to note a hyper-contempt
5 with the answers (indiscernible) with the scale of the
6 documents has nothing to do with that. I mean, this is an
7 absolute provision of legal advice at the time --

8 THE COURT: Let me look at it. Ms. Tomasco, what
9 is it that is here providing legal advice?

10 MS. TOMASCO: Can I see it again? I mean, I feel
11 like this is a trap, Your Honor. If I explained to you how
12 this relates to other legal advice I'm giving the client
13 with respect to its tax matters, I would be waiving the
14 privilege because --

15 THE COURT: I don't see anything in there about --
16 in your email about tax. So, maybe we just need to brief
17 this.

18 MS. TOMASCO: I'm happy to brief it, Your Honor.
19 I feel quite strongly about this, because the only reason
20 why, at this point, Chris Wheeler was involved was under a
21 Kovel agreement with Quinn Emanuel to provide privileged tax
22 advice in running through the various --

23 THE COURT: Let me -- I must have missed the tax
24 advice part of it in what you're saying in that email. Let
25 me see that again? I mean, the attachment is Mr. Lockhart's

1 email, which is already in evidence. So we're only looking
2 at the first email. Is that correct?

3 MR. DISHER: Mr. Lockhart's email will be in
4 evidence, once I offer it. I haven't --

5 THE COURT: Okay.

6 MR. DISHER: So, Exhibit 17 is the one we already
7 looked at. I'm going to offer that into evidence.
8 This is Exhibit 18, which we included the redacted version.
9 If Your Honor rules that the claw back was improper, we
10 obviously will offer the unredacted version of 18 into
11 evidence.

12 THE COURT: I'm going to let you make a record,
13 and then I'll decide after we get the briefing.

14 MR. DISHER: Thank you, Your Honor. At this point
15 we offer LKC Exhibit 17, which is not the subject of the
16 claw back. That's the prior one we were talking about a
17 minute ago. We offer that into evidence.

18 THE COURT: Any objection?

19 MR. SCHMELTZ: None, Your Honor.

20 MR. DISHER: Your Honor, we offer Exhibit 18. We
21 have included a version of that on the exhibits that we
22 filed with the Court in which the claw back portion was
23 redacted. We also would offer to the Court the unredacted
24 version of Exhibit 18, and with the argument that this is
25 not privileged, it's business advice, it's not the provision

1 of legal advice, and any privilege that might have been
2 associated with this was waived because they didn't act
3 expeditiously in order to claw this back.

4 THE COURT: All right.

5 MR. DISHER: Would you like me to leave this
6 with...?

7 THE COURT: No, you can keep it.

8 MR. DISHER: Okay.

9 THE COURT: And I'll just wait for the briefing.

10 MR. SCHMELTZ: Your Honor, with respect to the
11 redacted version of 18, no objection. Obviously, with
12 respect to the unredacted version, we're going to brief it.

13 BY MR. DISHER:

14 Q Okay, Mr. Hayes, just a few final questions here. I
15 want to stay on line with the tax allocation, just to close
16 the loop on this. Will you turn to Tab 23 in the black
17 binder, please?

18 A Sure. Yes, I'm here.

19 Q If you go to -- it's this -- it's Page Number 2. It's
20 probably about four or five pages in, Article 2, Section
21 2.3?

22 A Yep.

23 Q There's a provision about purchase price allocation?

24 A Mm hmm.

25 Q The first three words of that provision say "for tax

1 purposes", right?

2 A Correct.

3 Q So this purchase price allocation is done for tax
4 purposes, correct?

5 A Correct.

6 Q Okay. Now, if we look at the very last sentence of
7 Section 2.3, I'm just going to read it. "For the avoidance
8 of doubt, nothing contained herein shall be deemed an
9 allocation of asset value for purposes of distribution to
10 any seller's stakeholders." Did I read that right?

11 A You read it right.

12 Q Great. Now, finally, let's go back to Exhibit 14,
13 please.

14 A Okay.

15 Q There's been some discussion about the energy
16 contracts.

17 A Yes, 14, right?

18 Q Yes. If you go to Slide 7, which is the last slide in
19 the presentation of the board --

20 A Sure.

21 Q -- you see the first bullet point that says, "Energy
22 contracts should be worth more to Riot than to Rhodium (and
23 any other buyer)."?

24 A Yes, I see that.

25 Q You wrote that sentence?

1 A Yeah.

2 Q Yeah.

3 A I believe I did.

4 Q Now, the first bullet point is talking about Riot. The
5 second bullet point is talking about Rhodium. Do you see
6 that?

7 A Correct.

8 Q And it says, "Whinstone contracts valuable, but need to
9 be deployed in a business with significant risk, market
10 volatility, execution, future litigation." Right?

11 A Correct.

12 Q And you wrote that sentence?

13 A I believe so, yes.

14 Q And then, finally, you conclude it with a sentence in
15 red that says, "Another buyer likely has similar risks in
16 assuming the contracts." Right?

17 A Yeah. Notice it's in brackets. But, yes, I did put
18 that in there.

19 Q One of the risks that another buyer would likely have
20 is future litigation risk, correct?

21 A Yes.

22 Q And that's the future litigation with Whinstone,
23 correct?

24 A Correct.

25 Q And you, of course, don't dispute that the litigation

1 against Whinstone is adversely affecting Rhodium's ability
2 to raise money, right?

3 A Yes.

4 Q Do you have any reason to dispute that when Rhodium
5 filed for Chapter 11 bankruptcy, it had just \$2.5 million
6 cash on hand?

7 A I don't have any reason to dispute that.

8 Q If Rhodium had not been able to get DIP financing,
9 Rhodium could not have made payroll, right?

10 A I mean, it would have made payroll for presumably a few
11 periods, but, yeah, we would have run out of money.

12 Q From May 2024 through Rhodium's initial Chapter 11
13 filing, Rhodium did not have a month that it was cash flow
14 positive?

15 A That sounds right. I don't know that for a fact, but
16 that sounds about right.

17 Q Thank you, Mr. Hayes.

18 A Due in large part to a lot of litigation expense.

19 Q Thank you, Mr. Hayes. Nothing further.

20 THE COURT: I think he's going to re-cross you.

21 THE WITNESS: Oh. I'm sorry.

22 MR. SCHMELTZ: We'll see how far I can go. I know
23 you need to get out of here.

24 REDIRECT EXAMINATION OF KEVIN HAYES

25 BY MR. SCHMELTZ:

1 Q You have significant experience in your career making
2 projections, right?

3 A I do.

4 Q Are the tools that you used in these financial
5 projections tools, like, plus or minus \$25 million in
6 discount rate, standard tools for projecting how something
7 economic might come out?

8 A Yes.

9 Q They certainly were tools that you applied from your
10 experience, and I doubt to kind of cook the books here.

11 MR. DISHER: Objection, Your Honor. Leading.

12 THE COURT: Sustained.

13 BY MR. SCHMELTZ:

14 Q Did you use these tools to try to cook the books?

15 A No. No. My -- I was worried about presenting a fair
16 valuation, a fair view of the valuation to the board to give
17 them the best data to make a good decision. And where I
18 used plus or minus \$25 million, I think it reflected the --
19 I think it was -- it would be intellectually dishonest to
20 say that the right number is, you know, \$100.2 million.
21 That's way too much specificity for what the damages were.
22 And so I merely rounded it and added plus or minus \$25
23 million to translate something and kind of make it easy to
24 follow and realistic for the board.

25 Q You mentioned that Will Thompson and you had had an

1 exchange about prejudgment interest, right?

2 MR. DISHER: Objection. Misstates the testimony.

3 THE COURT: I don't remember that.

4 MR. SCHMELTZ: Pardon me?

5 THE COURT: I don't remember that testimony.

6 THE WITNESS: No, I didn't -- I didn't mention
7 that. I don't remember mentioning that.

8 THE COURT: I don't think he mentioned it.

9 MR. SCHMELTZ: My apologies.

10 BY MR. SCHMELTZ:

11 Q You mentioned that you and Will Thompson had a back and
12 forth about discounts, present value and risking the
13 damages, right?

14 A Yeah, it was a brief email exchange before the February
15 12th board meeting.

16 Q Let's take a look at Exhibit 259, please, which is in
17 the white binders?

18 A Okay.

19 Q Let's take a look at -- do you recognize this document?

20 A I do.

21 Q 259?

22 A Yes, I do.

23 Q Is this the email exchange you were describing?

24 A Yes, it is.

25 Q And it's an email exchange, at least for the first

1 several emails, that is between you and Will Thompson,
2 correct?

3 A Correct.

4 MR. SCHMELTZ: Move admission of 259 into
5 evidence.

6 THE COURT: Any objection?

7 MR. DISHER: No objection, Your Honor.

8 THE COURT: Admitted.

9 (Exhibit 259 entered into evidence)

10 BY MR. SCHMELTZ:

11 Q Let's start with at the top of 259.002, email where you
12 respond to John Cohn and Will Thompson. Do you see that?

13 A Yes, I do.

14 THE COURT: Wait, I'm sorry. What page are you
15 on?

16 MR. SCHMELTZ: 002.

17 BY MR. SCHMELTZ:

18 Q It says, "Will, I understand you'll be available to
19 join the board call. When we get to that Slide Number 3, I
20 will turn it over to you." Did I read that correctly?

21 A Yes, you did.

22 THE COURT: I'm sorry, Mr. Schmeltz. I don't know

23 --

24 MR. SCHMELTZ: 002.

25 THE COURT: (indiscernible) 259?

1 MR. SCHMELTZ: 002.

2 THE WITNESS: 259.

3 BY MR. SCHMELTZ:

4 Q And Slide 3 that you're describing is the damages --
5 risk-based damages calculation we've been talking about,
6 right?

7 A Yes.

8 Q And that's the risk-based damages calculation that had
9 a discount rate, right?

10 A Of 25 -- yes.

11 Q And plus or minus \$25 million?

12 A Correct.

13 Q And Mr. Thompson says to you, "Thanks for sharing
14 these. This is on 001. If you're already in the board
15 meeting, I don't mean to interrupt you. If you're not in
16 that meeting, it might make sense to connect briefly on the
17 low-high range you provided. I want to make sure we're on
18 the same page. Of course, I don't have a problem with your
19 range. I just want to avoid stepping on your toes and
20 confirm I understand how you calculated it." Have I read
21 that correctly?

22 A You have.

23 Q Explain your response to him to the Court, please?

24 A Well, I can read it. "Good question. I simply took
25 the risk value, discounted at a year at 25 percent, and

1 roughly added and subtracted \$25 million."

2 Q He responds, "That makes sense to me. I won't plan to
3 talk about it at all. If I were pressed, I'd say that the
4 range of possible litigation outcomes is very wide, but I
5 can certainly understand why, from a business perspective,
6 it might make sense to look at the kind of band you're
7 using." Have I read that correctly?

8 A Correct.

9 Q He didn't suggest to you that you should add pre-
10 judgment interest, right?

11 MR. DISHER: Objection, leading, Your Honor.

12 THE COURT: Sustained.

13 BY MR. SCHMELTZ:

14 Q Did he make any suggestion about how you should tweak
15 your risk adjustment?

16 A No.

17 Q Did he ever make any suggestion about how you should
18 tweak your risk adjustment?

19 A No.

20 Q You were asked about -- prior to the board meeting on
21 February 16th, whether you had consulted with Stris or LKC
22 about your adjustment to Building D. Do you remember that?

23 A Yes.

24 Q I think when I asked you if you remembered about what
25 happened in your conversation at the board about that, you

1 did not recall, right? When we were...

2 A Right. No objections on the board call.

3 Q Is it possible that if I showed you a copy of the
4 minutes from that meeting, it might refresh your
5 recollection about the back and forth you might have had
6 with Stris LKC at that board meeting?

7 A Yes.

8 MR. SCHMELTZ: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 MR. SCHMELTZ: Oh, I'm sorry.

12 THE COURT: I'm sorry. I said yes.

13 BY MR. SCHMELTZ:

14 Q Could you take a look at the Mediation Strategies
15 section? Take a look at it.

16 A Mm hmm.

17 Q Let me know if it refreshes your recollection. And if
18 it does, I'm going to have you hand me that document back,
19 and we'll hear what you think. Okay?

20 A Yep. It does.

21 Q And what is your refreshed recollection about what
22 occurred at the board meeting in conversation about Building
23 D?

24 A I think I began the discussion of the valuation to
25 point out -- to make it crystal clear to everybody, that the

1 only thing we changed from four days ago was Building D.
2 And we changed it from \$66 million to \$33 million, or, you
3 know, from a 40 percent success factor to a 20 percent
4 success factor. I didn't hear anybody push back on that.
5 And, in fact, there were comments from Will and John Stokes
6 that said --

7 MR. DISHER: (indiscernible) object, Your Honor.

8 BY MR. SCHMELTZ:

9 A -- that makes sense, and they agree with that.

10 MR. DISHER: Hearsay.

11 THE COURT: Sustained.

12 BY MR. SCHMELTZ:

13 A We decided that because LKC wasn't a party opponent
14 then, but they are now, their statements about what they
15 believed about Building D then aren't -- or don't fall under
16 that exception, because I think --

17 MR. DISHER: (indiscernible)

18 THE COURT: I'm sorry. I think he's -- do you
19 recall what Mr. Thompson said specifically?

20 THE WITNESS: He said he didn't have a problem
21 with it, and John Stokes said he agreed.

22 MR. DISHER: (indiscernible) I will object to
23 that, as hearsay.

24 MR. SCHMELTZ: Okay. I think Mr. Thompson's views
25 about Building D and the success rate --

1 THE COURT: Well, they weren't a party opponent at
2 this time, right?

3 MR. SCHMELTZ: But they surely are now. The idea
4 of a statement of a party opponent does not require you to
5 have been an opponent at the time. It is about what you say
6 is reliable for the truth of the matter asserted, because
7 you are presently a party opponent. Certainly the
8 reliability of what LKC was saying about Building D at the
9 time is reliable, which is why it comes in as non-hearsay,
10 now that they are in a statement of -- that they are an
11 opponent. Right? So what you say is reliable.

12 MR. DISHER: I think the reliability is contingent
13 on the adversity. Right? There's no reason to lend
14 additional credibility to what your own lawyer says at the
15 time that there was no adversity. The reason something
16 becomes more reliable is because there is adversity at the
17 time that it was said.

18 MR. SCHMELTZ: No, what makes it reliable is that
19 you are adverse to the current situation. And so, what you
20 said then we take as reliably true because now you are
21 adverse to the situation. So light was red, light was
22 green. Whatever you said then, you're adverse to the
23 situation now. We take as true reliably what you said then.
24 That's the way that works.

25 THE COURT: All right. I'm going to let it in for

1 now, but I'll -- you know, I'll make a final decision.

2 MR. SCHMELTZ: Thank you. I also think it's a
3 present-tense impression, non-hearsay, as well as Ms. Lohse
4 reminds me, this is his immediate reaction upon hearing it.
5 Present-tense impression would suggest that that is non-
6 hearsay --

7 THE COURT: If you literally read this, one could
8 say that he joined the meeting after this was said. Okay?
9 So it's not clear to me from these minutes what, in fact,
10 was being said. So we'll leave it at that.

11 MR. SCHMELTZ: Well, I think it's joined the
12 conversation as opposed to the meeting, but I take your
13 point, Your Honor.

14 THE COURT: Yeah, you know, and --

15 MR. SCHMELTZ: And the witness's recollection is
16 refreshed, and that's what we're bringing in to evidence at
17 this point.

18 BY MR. SCHMELTZ:

19 Q Exhibit 6 in the black binder, the question was about
20 zero value to intangible assets. Do you remember that?

21 A Yes.

22 Q What, in fact -- you mentioned that you thought the
23 attorney from Foley was confused. Why don't you explain
24 your answer?

25 A Yeah, I think their email was confused. We had

1 subsequent discussions with them to clarify. But their
2 statement -- and this is my impression, and, you know,
3 others could perhaps recall their -- they could share as
4 well. But that \$73 million, that did not apply to the
5 energy contracts. That applied to intangibles, and I think
6 he was confused. And if, you know, intangibles, in fact,
7 meant the energy contracts, that was not his intent.

8 And I think in subsequent calls, we quickly clarified
9 that. Riot certainly was buying us for the energy
10 contracts. That's why they were buying us. Nobody
11 questions that.

12 MR. SCHMELTZ: I have no further questions of this
13 witness. Thank you.

14 MR. DISHER: Just briefly, Your Honor.

15 THE COURT: Sure.

16 RECROSS EXAMINATION OF KEVIN HAYES

17 BY MR. DISHER:

18 Q You looked at Exhibit 259 on redirect in the white
19 binder?

20 A Okay.

21 Q This is the back and forth between you and Mr. Thompson
22 prior to the February 12th board meeting?

23 A Correct.

24 Q Do you know what experience Mr. Thompson has, if any,
25 with discount rates at this point?

1 A I don't. Although that he said that makes sense to me.

2 Q Now, after you applied the 25 percent discount, and
3 after you applied your range of plus or minus \$25 million,
4 the low end of that range that was presented to the board on
5 February 12th was \$100 million, right?

6 A Yes, with a \$66 million value for Building D, but yes.

7 Q And that is the \$100 million, the low-end estimate
8 presented to the board on February 12th, that we use in our
9 fee application pending in front of the Judge. Correct?

10 A Correct.

11 MR. DISHER: Nothing further.

12 THE COURT: Anything further?

13 MR. SCHMELTZ: Nothing further for this witness.

14 I'd like to call Mr. Eaton to the stand.

15 THE COURT: All right. We've got to stop at 6:00,
16 so are we going to get done with him by 6:00?

17 MR. SCHMELTZ: Yes.

18 THE COURT: All right. I'm going to stop at 6:00,
19 and if we're in the middle of a cross, we'll just have to
20 come back.

21 MR. SCHMELTZ: It's not optimal, but I want to be
22 efficient.

23 THE COURT: Okay.

24 MR. SCHMELTZ: And ideally, I wouldn't put my
25 witness on for a half hour, and if we're crossing, to give

1 them another week to figure out more cross. But I want to
2 be --

3 MS. TOMASCO: Right.

4 MR. SCHMELTZ: I'll take your preference, but I'd
5 like to --

6 THE COURT: No, no, no. I'm --

7 MS. TOMASCO: My new friend Sarah Schultz is
8 concerned about catching a plane, so we're wondering, are we
9 coming back tomorrow or sometime when the Court has another
10 availability?

11 THE COURT: No, sometime when the Court has
12 another availability. I'm pretty much booked up through --
13 I have a four-day trial next week.

14 MS. TOMASCO: I'm aware.

15 MR. SCHMELTZ: So, if I might, then, I'd like to
16 not call Mr. Eaton tonight --

17 THE COURT: Okay.

18 MR. SCHMELTZ: -- and we'll bring him -- we'll do
19 it all at once. He's my last witness, and then we'd have
20 argument.

21 MR. DISHER: I'd love to just finish tonight. I
22 mean, he can take 20 minutes, I can take 10 minutes, and
23 we'd be done.

24 MR. SCHMELTZ: I don't think I can take 20. I
25 mean, I think I'm closer to half hour, 40 minutes. I'm

1 pushing it at 30, so...

2 THE COURT: Okay. Well, we will then come back.

3 MR. SCHMELTZ: Thank you.

4 THE COURT: All right, we'll be in recess.

5 (Proceedings adjourned at 5:31 p.m.)

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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.

A handwritten signature in black ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

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

Date: December 10, 2025

EXHIBIT G

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

3 RHODIUM ENCORE LLC and) CASE NO: 24-90448
4 AIR HPC LLC,)
5 Debtor.) Houston, Texas
6) Thursday, December 11, 2025
7) 1:00 to 1:54 p.m.
8 -----)

8 HEARING

9 BEFORE THE HONORABLE ALFREDO R. PEREZ
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

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1 HOUSTON, TEXAS; THURSDAY, DECEMBER 11, 2025; 1:00 PM

1 the Special Committee would like to call David Eaton to the
2 stand, Your Honor.

3 THE COURT: All right. Mr. Eaton, can you hear
4 me?

5 MR. EATON: I can hear you. Can you hear me?

6 THE COURT: Yes, I can. Okay, would you raise
7 your right hand, sir?

8 Do you swear or affirm to tell the truth, the
9 whole truth, and nothing but the truth?

10 THE WITNESS: I do.

11 THE COURT: All right, thank you. Go ahead, Mr.
12 Schmeltz.

13 DIRECT EXAMINATION OF DAVID EATON

14 BY MR. SCHMELTZ:

15 Q Mr. Eaton, would you please state your full name and
16 introduce yourself to the court?

17 A Thank you, Your Honor. I'm David Eaton, and for over
18 47 years, I've been involved in business (indiscernible).
19 I've been involved in business and sponsoring matters.

20 THE WITNESS: Can you still hear me, Your Honor?
21 I'm sorry. I've got a lot of feedback.

22 THE COURT: I'll tell you what. Let me activate
23 the hand-raising feature, so hit five-star one time.

24 AUTOMATED VOICE: Conference muted.

25 THE WITNESS: Good not.

1 THE COURT: All right, I can hear you. Go ahead,
2 sir.

3 THE WITNESS: Okay, thanks, Your Honor. Your
4 Honor, for over 47 years, I've been involved in business
5 restructuring matters. That includes decades, decades as a
6 restructuring partner at Kirkland & Ellis. As an investment
7 banker, I also managed PricewaterhouseCoopers Special
8 Situations Investment Banking Group.

9 In the course of my career, I also co-founded a
10 financial advisory firm and have experience acting as a
11 financial advisor and chief restructuring officer. I also
12 taught international bankruptcy law as an adjunct professor
13 for years at University of Illinois College of Law, and I've
14 regularly acted as an independent director in restructuring
15 situations.

16 BY MR. SCHMELTZ:

17 Q Sir, would you mind explaining what position you hold
18 with Rhodium?

19 A I am one of two independent directors, and I'm a member
20 of the Special Committee that deals with -- a committee of
21 two -- that deals with potential conflict matters.

22 Q In your role as a member of the Special Committee, did
23 you and the committee become involved in a question of the
24 LKC success fee?

25 A We did, because we have no stake in the outcome, and it

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 no uncertain terms, they did not want to discuss them, and
2 we'd heard that before when months earlier in a different
3 context, we tried to settle with them. So that's the first
4 reason. We were -- is that the settlement discussions were
5 solely centered around the value of the business.

6 But the second point that was a real game-changer was
7 that --

8 MR. THOMPSON: Your Honor -- I'm sorry, Your
9 Honor, I think I was muted. I'm sorry to interrupt, Mr.
10 Eaton. I was trying to object, and I think I was objecting
11 into a mute button.

12 I'm objecting to the discussion of things that
13 Whinstone allegedly said when no one has called anyone from
14 Whinstone to the stand, so it's a hearsay objection, Your
15 Honor.

16 THE COURT: Sustained.

17 BY MR. SCHMELTZ:

18 Q Okay.

19 A All right. And the second point -- nonetheless --

20 Q You can continue with your answer.

21 A Okay. I will tell you -- I will just tell you that we
22 -- that I only discussed the enterprise value and trying to
23 get the highest settlement. And the second point that was a
24 real game-changer is that within days after the mediation,
25 but before our final deal discussions with Riot, it became

1 apparent that we'd been unable to obtain exit financing to
2 pursue a reorganization plan built around it.

3 Q I appreciate the two points, and I want to go back.
4 Were you personally involved in negotiations with Riot-
5 Whinstone?

6 A Yes, I was.

7 Q And were you involved in the negotiations after the
8 mediation and up until the time there was a finished deal
9 with Riot-Whinstone?

10 A That's exactly right.

11 Q And during that time, did you ever discuss one way or
12 the other the claims or the value of the claims?

13 A Not with Riot.

14 Q Was there ever an opportunity in your discussions with
15 Riot to discuss the value of the claims?

16 A I suppose we could have mentioned it, but there were
17 reasons that we didn't.

18 Q And from your perspective, why did you not mention it?

19 A Well, there's a couple. I have to say, I had -- we'd
20 been admonished that it was of no value to engage in that
21 discussion, but more importantly --

22 MR. THOMPSON: Objection, Your Honor.

23 THE WITNESS: -- is that -- but you know, when I
24 talked -- the other reason really relates to what I
25 mentioned as the second what I call game-changing factor.

1 And so maybe I can -- maybe I'll explain what that is.

2 BY MR. SCHMELTZ:

3 Q Why don't you do that?

4 A Okay. The only committed financing that we had, which
5 came out with finality like day -- after the mediation, but
6 a couple of days before we met to see if we could negotiate
7 a final deal, was a \$75 million face amount, which would
8 have enabled us to pay general unsecureds and secured
9 creditors and provide some working capital, but it was so
10 exorbitantly priced that if we took two years to pay it,
11 which was the expected timeframe to get -- to obtain and
12 collect, if possible, a judgment, the SAFEs and the equity
13 holders would have been behind two times below, or about
14 \$150 million in new senior debt before they could recover a
15 penny.

16 Q And how did that -- let me ask you a question. So you
17 had this expensive exit financing that required you to pay
18 two times the loan amount; how did that compare to other
19 alternatives Rhodium had at that point in time?

20 A Okay. So the alternative that was in front of us was
21 that the SAFEs had reached a very high floor in their
22 negotiation with Riot at the mediation and had presented a
23 settlement totaling \$177 million to the estate that would
24 have paid all creditors I discussed, and in addition, have
25 \$90 plus million to distribute immediately to the SAFEs and

1 equity holders.

2 Q And so did you -- as a fiduciary, how did you weigh
3 those two alternatives?

4 A Well, at that point, coming fresh off the unacceptable
5 and untenable exit financing, I thought it would have been
6 irresponsible to roll the dice by saddling the company with
7 this super expensive new debt to fight litigation for a
8 couple of years, where our business would be -- end up
9 highly leveraged, greater risk, and far less valuable than
10 it would be through an immediate sale.

11 And so from a fiduciary point of view -- so to me,
12 since the only way you could achieve any value at all for
13 the claims was to operate the business and fund it for a
14 couple of years to get to that end point, to me, the value
15 of the claims was effectively going to zero because we
16 couldn't responsibly afford that alternative.

17 So at best, the claims became the tail on the dog. And
18 so by comparison, we already had in the hand a \$90-plus
19 million, even after creditors were paid, a proposal that we
20 could -- we thought we could and did approve in our final
21 discussion, our final settlement with Riot.

22 So that comes back to explaining why essentially the
23 value of the claims were diminishing and to me could have
24 gone to zero because we weren't -- that was not going to
25 lead us anywhere. We could never -- we couldn't get the

1 verdict in a fiduciarily responsible way. So that's why we
2 focused on the sale and the enterprise value of the business
3 to Riot.

4 Q You've mentioned the enterprise value of the business
5 to Riot. How, if at all, does the enterprise value of the
6 business to Riot differ from a discounted cash flow analysis
7 of the business in the hands of Rhodium?

8 A Well, the value to Riot, even though the value to us
9 was what we looked at as declining because of the additional
10 risk that we'd be putting on or if we ever even -- with that
11 exit financing, or -- and we're a private company facing
12 financing with a huge coupon on it. On the other hand, Riot
13 was a well-capitalized public company with a much lower,
14 significantly lower cost of capital.

15 And the value to them wasn't changing. The value for
16 them to gain control of these assets was much higher than it
17 is for a smaller private riskier company on a discounted
18 cash flow basis than it was to Riot, as I mentioned, a well-
19 capitalized public company, you know, with a much smaller
20 discount rate, so --

21 Q Can you quantify -- can you quantify that value?

22 A I can't quantify it. We -- yes. We had presentations
23 from management before the mediation that in the hands of
24 Riot, the business value alone, the DCF alone was upwards --
25 was nearly \$500 million. So multiples of what we were

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

1 on how much money ought to be allocated to the energy
2 credit. He explained on the record that he wasn't prepared
3 to address that. Mr. Schmeltz confirmed it. I can pull up
4 the transcript if we need to, but I think it's undisputed.

5 We have disagreements about whether that should
6 preclude them from putting on a witness on this topic at
7 all. The debtors then decided that they would try a
8 different witness, and I think Your Honor said if they can
9 produce them for a deposition, that would be all right.
10 They used an expert named Mr. Reston from PDO. In the face
11 of our motion to strike that witness, they have withdrawn
12 that witness.

13 So we've gone through two witnesses who should
14 have been able to give us discovery on what Rhodium's
15 position was with regard to the energy credit allocation.
16 Neither one of them has done it, and so I think it's
17 inappropriate for Rhodium having told us during a 30(b)(6)
18 depo they haven't -- they⁷ can't tell us any position on
19 that matter, and now try to elicit such a position through
20 Mr. Eaton.

21 THE COURT: Mr. Schmeltz?

22 MR. SCHMELTZ: Two responses. First of all, Mr.
23 Eaton was presented as a witness to talk about the D&O
24 settlement. The D&O settlement relates to Winter Storm Uri.
25 Mr. Eaton has already testified on Winter Storm Uri and on

1 that energy credit. We also have testimony on Building D,
2 which Mr. Eaton will speak to briefly.

3 I direct Your Honor's attention to Johnson v. Big
4 Lots Stores, Inc., 2008 WL 6928161 at 5. It is an Eastern
5 District, Louisiana court. I understand it's not binding on
6 this Court, but it provides specifically that a party at
7 trial may use the testimony of a witness who is not its
8 corporate representative during a prior 30(b)(6) witness
9 deposition.

10 It goes on to note that "30(b)(6) does not require
11 a corporate party to exclusively call its designees at
12 trial, nor does it prohibit calling other employees as
13 witnesses. The new witness may testify," that court says,
14 "about the same subject matter so long as the testimony is
15 based on personal knowledge." That case cites Union Pump
16 Company v. Centrifugal Tech, Inc., 404 F. App'x 899, 907-908
17 (5th Cir. 2010).

18 At trial, Johnson goes on to say, "A party is not
19 foreclosed from introducing testimony by a new witness, even
20 if it may differ from or explain statements made by its Rule
21 30(b)(6) designee. Testimony by the new witness may even
22 contradict the 30(b)(6) representative," and the proper
23 course of action is for counsel, as Mr. Thompson has
24 suggested, to impeach with the prior testimony. That's from
25 Crompton Greaves, Ltd. v. Shipper's Stevedoring Company, 776

1 F.Supp.2d 375 (S.D. Tex. 2011).

2 Ultimately, 30(b)(6) testimony is not binding
3 judicial admission if it's evidence subject to
4 contradiction, explanation, or impeachment by other
5 testimony, and it's for the trier of fact to decide its
6 weight.

7 Mr. Eaton will tell you that he has personal
8 knowledge of the Winter Storm Uri claim and why it was
9 appropriately mediated. He will also tell you that he has
10 personal knowledge as a board member of the Building D claim
11 and how it was presented.

12 Both of those things will be the subject of his
13 testimony. He is not going to be calculating the success
14 fee, which is the issue Mr. Thompson has raised and the
15 issue for which we had Mr. Reston originally to come in to
16 calculate. I'm going to do that because it's simple math in
17 my closing, Your Honor. We don't need a witness. I can do
18 that for you, and I will do it at closing.

19 Mr. Eaton is instead testifying as to components
20 of the claim and damages, and I want to be clear on that.
21 He will not be calculating a fee for you, which again would
22 have been what Mr. Thompson asked Mr. Topping, who was not
23 prepared to answer that, and what Mr. Thompson asked Mr.
24 Reston about as well.

25 THE COURT: All right, I'm going to sustain the
SPECIALCOMMITTEE_00497

1 objection. I'm not going to let him testify about Winter
2 Storm Uri. I don't think when one party asked for
3 information regarding that and the person isn't able to
4 testify, I'm not going to let them bring that at trial. So
5 why don't you move on?

6 MR. SCHMELTZ: I want to be clear. Mr. Eaton was
7 our designee to talk about Winter Storm Uri. He -- what
8 he's not -- what Mr. Thompson is saying is they had a
9 witness to do the calculation. Mr. Eaton is not doing the
10 calculation. He was the designee for Winter Storm Uri. He
11 --

12 MR. THOMPSON: Maybe it'd help if I just read the
13 question that led to the problem at the deposition, Your
14 Honor. The question was, "Does Rhodium have a position on
15 what portion of the \$75 million it mentioned is allocable to
16 energy credits?"

17 As I understand it from Mr. Schmeltz's
18 introduction to his line of questioning, that's the purpose
19 of this line of questioning. He wants to establish what
20 portion of the 75 Mr. Eaton was just talking about should go
21 to energy credits and what portion should go to other stuff.

22 They couldn't tell us that during the 30(b)(6)
23 deposition, and I don't think there's any other reason to
24 have Mr. Eaton testify on the other topics that Mr. Schmeltz
25 is talking about.

1 MR. SCHMELTZ: Mr. Eaton was the designee to talk
2 about why Winter Storm Uri was included in the Whinstone
3 mediation, Your Honor. That's what he testified.

4 THE COURT: All right. I've made my ruling. Move
5 on.

6 MR. SCHMELTZ: Your Honor, may I have five
7 minutes?

8 THE COURT: Excuse me?

9 MR. SCHMELTZ: May I have a five-minute recess,
10 Your Honor?

11 THE COURT: Sure.

12 (Recess)

13 MR. SCHMELTZ: Your Honor, when you're ready.

14 THE COURT: I'm ready. Go ahead.

15 MR. SCHMELTZ: Two things. First of all, Mr.
16 Topping was the witness that Mr. Thompson was just referring
17 to in Pages 53 to 58 of Mr. Topping's deposition as a
18 30(b)(6). He testified to Winter Storm Uri and its
19 inclusion in the mediation and how it's appropriate to
20 include it in a damages calculation. I would offer that,
21 first of all, Your Honor, for a reason to allow me to go
22 forward.

23 If Your Honor prefers to stick with your ruling,
24 which I respect, I'd ask to make an offer of proof such that
25 I can preserve the issue for appeal. The pages are of the

1 deposition.

2 MS. LOHSE: No, that's the November 3rd hearing.

3 MR. SCHMELTZ: Oh, also at the November 3rd
4 hearing, Mr. Topping was permitted to testify Pages 199 to
5 200 to this topic, which is all I'm asking for an
6 opportunity to bring this through this witness quickly to
7 bring the issue to a close.

8 MS. LOHSE: And 198 to 200.

9 MR. SCHMELTZ: Thank you, 198 to 200 of the
10 November 3rd transcript.

11 THE COURT: All right. After the close of the
12 hearing, you can make your proffer. All right, let's
13 continue on.

14 MR. SCHMELTZ: Thank you, Your Honor. Thank you.

15 BY MR. SCHMELTZ:

16 Q Sir, were you -- you sat on -- regularly on the Board
17 of Directors in your capacity as a Special Committee member;
18 is that correct?

19 A Yes.

20 Q Were you in February 16, 2025 board meeting where
21 various claims were discussed?

22 A Yes, I was.

23 Q Were the claims that were discussed in that board
24 meeting claims that were expected to be mediated in the
25 upcoming mediation with Riot-Whinstone?

1 A Yes.

2 Q Did those claims include the claim for Winter Storm Uri
3 and Building D?

4 A Yes, both of those.

5 Q Were you involved in a conversation about the chance of
6 success for Building D as a claim?

7 MR. THOMPSON: Objection. We're getting into a
8 fair number of leading questions now.

9 MR. SCHMELTZ: I asked, were you involved in a
10 conversation about the chance of success for Building D?

11 THE COURT: Yeah, overruled. Go ahead and answer
12 that.

13 THE WITNESS: Yes, I was present for and heard
14 that. I don't recall piping in on it, but I was there for
15 the conversation.

16 BY MR. SCHMELTZ:

17 Q Was the conversation around the chance of success for
18 that claim, if you recall?

19 A Yes, it was.

20 Q Do you recall what the conclusion in that meeting was
21 in terms of the chance of success for Building D?

22 A Yes, that the risk-adjusted probability of recovering
23 at Building D was reduced from 40 percent to 20 percent.

24 Q Were litigation attorneys from LKC and Stritz & Mayer
25 present in that conversation?

1 A Yes, they both were.

2 Q Do you recall whether either lawyer from LKC or Stritz
3 agreed or disagreed with that conclusion?

4 A No one disagreed, and I do remember that in fact they
5 concurred with that decision.

6 MR. SCHMELTZ: Your Honor, may I please have
7 screen share capability?

8 THE COURT: You have that?

9 MR. SCHMELTZ: Thank you, Your Honor. Now I have
10 to figure out if I'm competent enough to use it.

11 CLERK: If you want to click the PDF,
12 (indiscernible) declaration form.

13 MR. SCHMELTZ: Why is that the thing -- no, it's
14 not what I want.

15 CLERK: Then you might need to go back to the
16 GoTo. There you go.

17 MR. SCHMELTZ: There we go.

18 CLERK: Sorry about that.

19 MR. SCHMELTZ: No worries.

20 Your Honor, I'm putting on the screen Exhibit 334,
21 which has been provisionally or taken under advisement by
22 the Court.

23 BY MR. SCHMELTZ:

24 Q Mr. Eaton, do you recognize this document?

25 A Yes, I do recognize the document.

1 Q And what do you recognize the document to be?

2 A To be minutes of the Board of Directors meeting on --
3 we had two that day, but this was the first one, February
4 16, 2025.

5 Q Have you reviewed these minutes?

6 A I have.

7 Q Do they reflect fairly and accurately the meeting from
8 your perspective?

9 A Yes, they do.

10 Q Were they taken by someone at the meeting in real time?

11 A Yes.

12 Q Who was that?

13 A That was Becky Rice.

14 Q Was that ordinary for Rhodium to do that that way?

15 A Yes, that was how it was done.

16 Q And are these minutes kept in the ordinary course of
17 Rhodium's business for its business purposes?

18 A Yes, they are.

19 MR. SCHMELTZ: Your Honor, I would move again for
20 the admission of Exhibit 334 into evidence.

21 MR. THOMPSON: We stand on the same objections as
22 last time, Your Honor. This is, I believe, (indiscernible)
23 untimely exhibit and it was -- Mr. Eaton did not testify
24 that he wrote any of these. If he wants to testify about
25 his recollection from the meeting, that seems like a more

1 sensible way to proceed.

2 MR. SCHMELTZ: Your Honor, if I might direct your
3 attention to U.S. Commodity Futures Trading Commission v.
4 DeZona, Fifth Circuit case, 594 F.3d 408, 415. "There's no
5 requirement that the offering witness be able to testify to
6 the record's accuracy. A qualified offering witness simply
7 must explain the recordkeeping system of the organization
8 and vouch that the requirements of 803.6 were met."

9 Mr. Eaton has met all three, all of the
10 requirements of 803.6, that the record was made at or at
11 time by or from information transmitted by someone with
12 knowledge; that the record was kept in the ordinary course
13 of a business activity; that it was part of the regular
14 practice of that activity.

15 Those, under 803.6(e), that does not need to be
16 done by a custodian. It simply needs to be done by a
17 qualified witness. And under the case of Morris v. B.C.
18 Olympiakos, 721 F.2d 546 at 551 (S.D. Tex. 2010), the court
19 made it clear that the -- it is not essential that the
20 offering witness be the person who actually recorded the
21 events.

22 THE COURT: Okay, so --

23 MR. SCHMELTZ: For that, I think we've laid a
24 proper foundation, Your Honor.

25 THE COURT: Okay, so what exhibit is it again?

1 It's not Exhibit 334.

2 MR. SCHMELTZ: It's what I show as 334 in my
3 exhibit list, Your Honor.

4 THE COURT: It says 334 down here, but do you know
5 where it is in the record? Because my Exhibit 334 is a
6 confidential placement memorandum.

7 MR. SCHMELTZ: Paige, can you see in the
8 transcript what we called it last time, please?

9 THE COURT: Let me see, there's another Exhibit
10 334.

11 MR. SCHMELTZ: Understood, Your Honor.

12 MS. LOHSE: 334 --

13 MR. SCHMELTZ: Say again?

14 MS. LOHSE: Page 157 of the transcript shows it's
15 Exhibit 334.]

16 MR. SCHMELTZ: Page 157 of the last day's trial
17 transcript shows it as 334 as well, Your Honor. I don't
18 know if I double-labeled. I don't have anything else. I
19 mean, our last exhibit was 331, and then this was, as you
20 know, offered late, as we've explained, and we've explained
21 why.

22 THE COURT: Okay. Do you -- but do you know where
23 it is on the docket, filed on the docket?

24 MS. LOHSE: It has not been filed.

25 MR. SCHMELTZ: I don't think it's been filed on

1 the docket, because we presented it to Your Honor, and you
2 took it under advisement when we were there last. I can
3 email it to Mr. Laws right now.

4 THE COURT: No, that's okay. All right.

5 MR. SCHMELTZ: And I can page through it here on
6 the screen as well.

7 THE COURT: No, no, I remember the document. I
8 just wanted to look at it. Yeah, I'm going to have to look
9 -- I'm going to have to find the document to look at it
10 again.

11 MR. SCHMELTZ: Your Honor, may I ask questions
12 from it directly, or do you want me to have the witness give
13 his best recollection, or how do you want me to do that?

14 THE COURT: No, why don't you go ahead and ask him
15 the questions, and then when I look at it, I'll make a
16 decision as to whether to admit it.

17 And by the way, we basically have 15 more minutes,
18 so if we can't finish, then we're going to need to go to the
19 17th.

20 MR. SCHMELTZ: I just have two questions for him.

21 THE COURT: Okay, go ahead.

22 BY MR. SCHMELTZ:

23 Q I have on the screen the mediation strategies
24 discussion. Do you see that, Mr. Eaton?

25 A Yes, I do.

1 Q It notes, "Mr. Hayes informed the board this
2 presentation was the same as presented to the board at
3 Wednesday's board meeting with one small revision. The base
4 success percentage for the Building D litigation has been
5 downgraded from 40 percent to 20 percent." Do you see that?

6 A Yes, I do.

7 Q That comport with your recollection of what Mr. Hayes
8 reported at the meeting?

9 A Definitely.

10 Q It then notes, "Mr. Thompson then joined the
11 conversation by stating he had gone through the litigation
12 buckets at Wednesday's meeting and appreciated why the
13 Building D bucket had been revised and did not have any
14 material concerns about this revision, and Mr. Stokes
15 concurred." Does that comport with your recollection of
16 what happened at the meeting?

17 A It does. I didn't know that it was Mr. Thompson. I
18 knew that there was an LKC attorney and Mr. Stokes were on,
19 and I knew that -- and so this definitely comports with my
20 recollection of what happened at the meeting.

21 Q And I guess my final question. Mr. Thompson -- did Mr.
22 Thompson join the meeting at that moment, or was he already
23 present to the best of your recollection?

24 A I believe he was already present when we started the
25 meeting.

1 MR. SCHMELTZ: Thank you. I have no further
2 questions for this witness, Your Honor.

3 THE COURT: All right. Mr. Thompson?

4 MR. THOMPSON: Thank you, Your Honor. Will
5 Thompson from LKC. I also don't have an electronic copy, I
6 think, of those minutes, but if I need to figure it out, I
7 guess I will.

8 CROSS-EXAMINATION OF DAVID EATON

9 BY MR. THOMPSON:

10 Q Mr. Eaton, you were just talking about February 15th
11 board meeting. Do you remember that board meeting?

12 A February 16th.

13 Q February 16th.

14 A Yes.

15 Q Do you remember setting a minimum value for the
16 litigation claims to be used in mediation at that board
17 meeting?

18 A I remember that the board discussed the minimum -- the
19 amounts that they wanted to go into the mediation
20 requesting.

21 Q Let me ask you using the right words here, Mr. Eaton.
22 Did the board establish a minimum mediation litigation
23 settlement amount of \$100 million?

24 A I believe -- well, oh --

25 Q Just answer the question, sir.

1 MR. SCHMELTZ: I think he's trying to answer it.

2 THE WITNESS: I'm going to answer it. I believe
3 that was -- my recollection is that that was authorized,
4 that number was authorized to accept, and if it was lower
5 that people were instructed to come back to the board.

6 BY MR. THOMPSON:

7 Q So it's correct that the board establishes a minimum
8 mediation litigation settlement amount of \$100 million on
9 February 16th, correct?

10 A That was the target, and yes, on February 16th, that
11 occurred.

12 Q Now, Mr. Eaton, you got into this a little bit in your
13 direct. Mister -- you've heard Mr. Schmeltz in these
14 proceedings because you've been the representative for the
15 Special Committee in the courtroom, right?

16 A Yes.

17 Q Because you weren't excluded under the rule. You were
18 in the courtroom for many of the days that we've been here
19 for this matter, right?

20 A Yes.

21 Q So you've heard Mr. Schmeltz make a lot of claims about
22 what I said during the February 16th board meeting, right?

23 A I've heard Mr. Schmeltz talk about that, yes.

24 Q Are you aware that the Special Committee didn't seek my
25 deposition in this matter?

1 A I wasn't aware one way or another about that.

2 Q Were you aware the Special Committee didn't put me on a
3 witness list?

4 A I was not aware one way or the other about that.

5 Q And before you heard Mr. Schmeltz's questions during
6 this proceeding, during your deposition, you didn't remember
7 ever talking to me before, right?

8 A That's not correct. I remembered not speaking with you
9 to my knowledge, but that we may have been on some calls
10 together and I just wasn't aware that the particular person
11 speaking was you.

12 Q During your deposition, do you remember testifying,
13 we've never spoken before? Remember saying that?

14 A Yes, that was my recollection that we had never
15 directly spoken before.

16 Q Okay. On direct, Mr. Eaton, you also testified about
17 exit financing. Do you remember talking about that?

18 A Yes.

19 Q Now, it became apparent around the time of the
20 mediation that Rhodium's ability to get exit financing was
21 evaporating, right?

22 A Yes, I agree with that.

23 Q It also was apparent that because of the market in
24 general, but in particular, Whinstone's actions and the fact
25 that Whinstone owned the property and the fact that there

1 was a limited energy contract that was favorable to produce
2 the positive cash flow, that there was only one buyer, and
3 that was Whinstone, right?

4 A I think that's -- I happen to agree with that.
5 Whinstone was the one we had to sell the assets to as a
6 practical matter.

7 Q So Rhodium wasn't going to be able to continue and it
8 wasn't going to be able to sell to a third party, and so it
9 found a way out by selling its assets and selling its claims
10 with Whinstone, right?

11 A Well, we sold the assets, and to me, the claims were
12 along for the ride.

13 Q That's not the wording you used during your deposition,
14 is it?

15 A I don't remember exactly the words I used.

16 Q When I asked, so Rhodium wasn't going to be able to
17 continue and it wasn't going to be able to sell to a third
18 party, and so it found a way out by selling its assets and
19 settling its claims with Whinstone, right, you answered yes.
20 Do you remember that?

21 A Okay, yeah. I confirm that.

22 Q All right. On direct, you talked about having to
23 operate the business to fund the claims against Whinstone.
24 Do you remember that testimony?

25 A Yes.

1 Q Did you hear Chase Blackmon's testimony in Houston
2 about LKC and Stritz enthusiastically offering to take the
3 claims against Whinstone on a pure contingency basis?

4 A I don't recall that testimony.

5 Q Do you maybe recall Chuck Topping's testimony
6 confirming Mr. Blackmon's testimony?

7 A I have a vague recollection that it was discussed.

8 MR. THOMPSON: No further questions, Your Honor.

9 Thank you.

10 THE COURT: All right, Mr. Schmeltz?

11 REDIRECT EXAMINATION OF DAVID EATON

12 BY MR. SCHMELTZ:

13 Q Had LKC taken on the claims on a pure contingency
14 basis, would that have been sufficient to bring the same
15 value to creditors through the reorganization process that
16 the sale to Riot-Whinstone achieved?

17 A No, there's no way that could have occurred. Because
18 to take the claims on a contingent basis, we could not have
19 sold -- I do agree, we could not have sold the assets to
20 Riot without, as I said, the tail on the dog, settling the
21 claims along with it. And if there's nobody else to sell it
22 to, that means we got to operate the business under -- to
23 enable the continuation of the litigation or wind down and
24 liquidate the business without having almost \$200 million of
25 value in front of us.

1 Q So in your 47 years of experience --

2 A -- it's not possible to separate -- I'm sorry. You
3 can't just say someone would have done on a contingency
4 without considering what alternatives and what the
5 consequences would be for selling the business.

6 Q In your 47 years of experience in bankruptcy, is a
7 straight liquidation of assets likely to bring more value or
8 less value than a sale of the business?

9 A Far less value than selling the business intact.

10 MR. SCHMELTZ: Thank you. I have no further
11 questions, Your Honor. I would like to make my proffer when
12 it's appropriate.

13 THE COURT: Mr. Thompson?

14 MR. THOMPSON: Other than -- nothing further, Your
15 Honor. Thank you.

16 THE COURT: All right. So, Mr. Smeltz, why don't
17 you just file your proffer and we'll just include that in
18 the record?

19 MR. SCHMELTZ: I will. Thank you, Your Honor.

20 THE COURT: All right. And so we'll be in recess
21 till the 17th, correct?

22 MR. SCHMELTZ: Yes, Your Honor.

23 THE COURT: Yeah, one o'clock on the 17th. All
24 right, thank you.

25 MR. SCHMELTZ: Thank you, Your Honor.

1 MR. THOMPSON: Thank you.

2 (Proceedings adjourned at 1:54 p.m.)

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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.

A handwritten signature in black ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions
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Date: December 15, 2025

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Rhodium Encore LLC) CASE NO: 24-90448
and Air HPC LLC) Houston, Texas
Debtor.)
) Thursday,
) October 30, 2025
-----)

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

APPEARANCES:

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1 HOUSTON, TEXAS; THURSDAY, OCTOBER 31, 2025

2 (Call to Order)

3 THE COURT: Case number 24-90448, Rhodium
4 Enterprises, Rhodium Encore.

5 Why don't we get appearances of Counsel? I think
6 Mr. Wolfshohl is here in the courtroom, but --

7 MR. WOLFSHOHL: Good afternoon, Your Honor.
8 Joshua Wolfshohl, on behalf of Lehotsky Keller Cohn. And
9 Bill Thompson is on the line as well. He can introduce
10 himself.

11 THE COURT: All right. All right. Thank you.
12 All right. Let's go -- Go ahead. Why don't we
13 get appearances of Counsel on the line.

14 MS. LOHSE: Your Honor, this is Paige Lohse, on --

15 MR. THOMPSON: Your Honor, this is Will Thomson --

16 THE COURT: Go ahead.

17 MR. THOMPSON: Sorry, Your Honor. This is --

18 MS. LOHSE: Your Honor, this is Paige Lohse, on
19 behalf of the Special Committee.

20 THE COURT: All right. Thank you, Ms. Lohse.

21 Mr. Thompson?

22 MR. THOMPSON: Apologies, Your Honor. Will
23 Thompson, on behalf of LKC.

24 THE COURT: All right. Ms. Schultz?

25 MS. SCHULTZ: Good afternoon, Your Honor. Sarah

1 Schultz, on behalf of the SAFE AHG.

2 THE COURT: All right. Mr. Allard?

3 MR. ALLARD: Thank you, Your Honor. Nathaniel
4 Allard of McDermott Will & Schulte, for the Official
5 Committee of Unsecured Creditors.

6 THE COURT: All right. So we have a couple of
7 motions that are sent for this afternoon. Where are the
8 parties with respect to them?

9 MS. LOHSE: Your Honor, this is Paige Lohse
10 speaking.

11 It's my understanding that LKC does not oppose the
12 Special Committee's motion for sealing the courtroom, but we
13 will still need to discuss logistics for that.

14 THE COURT: Yes

15 MS. LOHSE: My understanding is the Special
16 Committee's second motion is opposed, however/

17 THE COURT: Okay.

18 MS. LOHSE: Their motion for the protective order.

19 THE COURT: Ah. I actually have a problem with
20 sealing the courtroom. I think that we're going to need to
21 kind of figure out what parts of the testimony are going to
22 be -- that have to be under seal. But I'm not going to seal
23 the entire, you know, the entire hearing without -- I'm
24 going to only seal those portions of the hearing that need
25 to be sealed. And I don't know how you all are intending to

1 work through it, but what I need to do is --

2 I'm going to -- Somebody's typing furiously.

3 But anyway, so I fully understand and respect the
4 need to maintain the confidentiality of a lot of these
5 documents and a lot of the testimony, but I don't -- I just
6 don't want to blanket do it. So if you -- if you all can
7 agree on, you know, what documents, what -- you know, what
8 testimony regarding the documents is -- needs to be sealed,
9 we'll go ahead and do that, and then we'll just try to have,
10 you know, the sealed part of the hearing at one time, and
11 then everything else together. But I don't think, you know,
12 that opening statements or anything like that should be
13 sealed. I think we can do it in a way that that doesn't do
14 it.

15 But again, I'm reluctant to enter the order, but
16 I'm happy to grant the relief with respect to specific items
17 and specific testimony.

18 MS. SCHULTZ: Your Honor --

19 MS. LOHSE: Thank you, Your Honor.

20 THE COURT: Yes, Ms. Schultz.

21 MS. SCHULTZ: Your Honor, thank you. For the
22 record, Sarah Schultz, on behalf of the SAFE AHG.

23 If I could just ask a clarifying question? We're
24 trying to be conservative with our fees, but would like to
25 request that parties keep us in the loop with respect to

1 what they intend to try to seal and not seal. We, for
2 example, have requested from Mr. Wolfshohl a copy of the
3 sealed exhibits that he put on the docket today, and have
4 not yet received that, although we have executed the
5 protective order. So we just want to make sure we have
6 everything in hand. If not, I suspect we, and although I
7 don't want to speak on behalf of the Official Committee, I
8 assume they're in a similar position, and we'd need to be
9 there live on Monday, as opposed to considering
10 participating virtually.

11 THE COURT: Okay. All right, yeah, you can speak
12 to -- yeah, Mr. Maxwell about that. I mean, obviously, go
13 ahead and do that.

14 All right. So then, I think we have the motion
15 for a protective order. So go ahead, Ms. Lohse. It's your
16 motion.

17 MS. LOHSE: Your Honor, we've moved for a
18 protective order to prevent LKC from forcing us to produce
19 witnesses on topics designated as number 8 and 9 in their
20 notice of Rule 30(b)(6) deposition. Topic 8 focuses on a
21 common interest privilege between SAFE and the Debtors and
22 the Special Committee, which we view as irrelevant, and
23 certainly unduly burdensome under the timeframe of discovery
24 for this hearing. It's unlikely to have any probative
25 effect on the ruling on this issue.

1 THE COURT: Okay. So my understanding in reading
2 topic number 8 is they just want whether there is any
3 agreements. Right?

4 MS. LOHSE: We read it as broader, Your Honor.

5 THE COURT: All right. Mr. Thompson, are you
6 going to be arguing this? I thought this was just, do they
7 exist, and who knows about them, and what's the scope?
8 That's what I -- that's the way I read this.

9 MR. THOMPSON: That is what we were looking for,
10 Your Honor. But I think I can short circuit some of this,
11 if that would be helpful.

12 So just by way of background, we served these
13 topics on the 18th. On the 28th, at 10 p.m., they served
14 their objections, which was less than 12 hours before the
15 deposition started. They did not produce witnesses to
16 address topics 8 or 9. At this point, I'm really not
17 looking to multiply the depositions, and go back and make
18 them answer a bunch of these questions. What we were really
19 just (indiscernible) the fact that they didn't produce a
20 witness on this topic, they won't introduce evidence about
21 these topics at the hearing.

22 And so what I'm assuming we can do is, given that
23 they wouldn't tell us about any common interest agreements
24 with the SAFE, they won't be asserting a common interest
25 privilege against our objections at the hearing.

1 Similar story for topic 9. Topic 9 has to do with
2 their communications with third parties related to our fees.
3 And if we're, you know, we're not able to question anyone
4 from the Debtors about that, I hope that we won't be hearing
5 from third parties about our fees, who received information
6 from the Debtors, or are working on behalf of the Debtors
7 and that kind of thing at the hearing. Unfortunately, it
8 appears, based on the witness list filed slightly after noon
9 today, that they do intend to call third parties, such as a
10 witness, purported both fact and expert witness, from BDO.
11 And then, they also want to include a purported fact and
12 expert witness from what I understand to be an investment
13 bank called B. Riley.

14 So our view of this is that if they're not willing
15 to produce witnesses at the corporate representative level
16 to discuss these topics, they should be precluded from
17 introducing evidence about these topics at the hearing, and
18 hopefully that can avoid the need for increased legal spend
19 on things like doing 30(b)(6) depositions.

20 MS. LOHSE: Your Honor, if I may respond to that?

21 The Special Committee Counsel has been conferring
22 with LKC for over a week now, or at least a week, on what
23 witnesses we intend to call at the hearing on Monday, and so
24 LKC has been informed for a while now about the Special
25 Committees' intent. We've also been conferring on 30(b)(6)

1 representatives that we are willing to produce, and on what
2 topics. And so LKC has been informed orally through the
3 course of these conferrals on the Special Committees' intent
4 with witnesses, so LKC was not surprised by the timing of
5 those designations. It was simply a formality to ensure it
6 was in writing, where we corresponded and discussed this
7 previously.

8 Additionally, the rule -- the topic 9 that they've
9 identified in their designation is essentially the same as
10 their topic 1, but it's seeking to obtain information about
11 communications with any third party at all. We have
12 identified corporate representatives who are third parties
13 to speak to topic 1 and topic 2. And so we're agreeing to
14 it in a limited scope, and we believe that topic 9 is an
15 unduly broad expansion of those initial two topics. So we
16 only seek to obtain a protective order on topic 9, to the
17 extent it goes further than what topics 1 and 2 cover. And
18 4.

19 THE COURT: Mr. Thompson?

20 MR. THOMPSON: Thank you, Your Honor. I
21 apologize, I'm trying not to interrupt. I'm not very good
22 at the virtual appearance.

23 With respect to my friend on the other side, I
24 don't think that's fully accurate. I learned about this
25 potential BDO witness yesterday, in person, during the

1 30(b)(6) deposition, when the witness designated to talk on
2 topics 1 and 2, which are about our engagement letters and
3 our success fee, was unable to answer questions about
4 Rhodium's position on what numbers should be fed into the
5 success fee formula. I think my question was something
6 like, what is Rhodium's position on how much money should be
7 allocated to energy credits for the 1% part of the success
8 fee formula? And the answer turned out to be that the
9 corporate representative on topics 1 and 2 was unable to
10 answer, and that they did not have anyone to testify about
11 that. There was no one designated to explain Rhodium's
12 position on the success fees.

13 That's when my friend on the other side told me
14 that they had been considering, and would now find someone
15 from BDO to testify about that. So I don't think yesterday
16 afternoon was the appropriate time for that.

17 THE COURT: Well, to the extent that they had --

18 MS. LOHSE: Your Honor, if I may?

19 THE COURT: Yeah, go ahead.

20 MS. LOHSE: Conferrals on Rule 30(b)(6)s are
21 intended to be iterative and cooperative. And for instance,
22 topic 2 seeks communication, discussions, negotiations, and
23 analyses concerning the LKC success fee. One could
24 interpret that as negotiations around the success fee, and
25 one could also interpret that as evaluation and mathematical

1 formula around the success fee.

2 And so through the course of events in this very
3 short, less than two-week timeframe in which we've been
4 engaging in these 30(b)(6)s, we found that LKC wanted to
5 cover a topic that was broader than we anticipated based on
6 conferrals to date. It had been unclear before. And so now
7 that the clarity has arisen, we're responding to that in
8 turn to ensure that they get the discovery they need on the
9 topic, and we're offering up a witness, and we're willing to
10 provide it. This is part of the iterative process, and it's
11 just a little bit faster under the timeframe.

12 THE COURT: Well, I will tell you that if your
13 30(b)(6) witness was unable to testify on that topic, I
14 don't know how you're going to defend their, you know, their
15 witness on that topic. And to the extent that now you're
16 designating -- Are you designating one of these individuals
17 now as a 30(b)(6)?

18 MS. LOHSE: Yes, Your Honor. We sent a letter to
19 LKC about this prior to this hearing. We had five, four or
20 five individuals represent -- designated for various topics,
21 because these are broad and varying topics on their 30(b)(6)
22 designations. And so now that we know a specific part of
23 one topic they want to cover, we plan to provide a witness
24 to speak to that. It's simply a damage and calculation,
25 while they were questioning a witness who was prepared to

1 speak more from the perspective of contract negotiation.

2 THE COURT: All right. Well, to the extent that
3 that person is not the --

4 Go ahead, Mr. Thompson.

5 MR. THOMPSON: I don't mean to nitpick, Your
6 Honor. But the purported new designations we got on the
7 30(b)(6), if I'm looking at the right email, are from 3:15
8 p.m. today, less than an hour before this hearing was
9 supposed to start, and well after the witness and exhibit
10 deadline.

11 MS. LOHSE: Your Honor, it was something that was
12 discussed yesterday. Mr. Thompson did know it was going to
13 be a BDO representative who we designated, added to this
14 designation. And under the timeframe of discovery in this
15 matter, it seems that allowing time for the merits, rather
16 than strict enforcement of procedure, is probably allowing
17 for further discovery when we're offering it. Telling LKC
18 we can have a witness prepared on this topic promptly seems
19 like thee -- seems like a reasonable route to take here.

20 THE COURT: All right. Well, I'm not -- So if you
21 can present them for deposition before the start of the
22 hearing on Tuesday, and giving, you know, LKC sufficient
23 time to take the deposition, I'll let that happen. And then
24 we'll go forward, and then at the hearing we'll determine
25 whether that person can testify or not. But I'm going to go

1 ahead and allow you to take the deposition of that person.

2 And I guess he's going to produce an expert report that --
3 that, and you provide all of the information regarding the
4 expert report, what he was given, etc.

5 So let's go -- Going back to the motion for
6 protection --

7 MS. LOHSE: Your Honor, back to the motion for
8 protection. On topic 9, we are willing to produce
9 witnesses, and have, on the topics to the extent they
10 pertain to communications between Debtors and LKC. But any
11 third party is incredibly broad and unnecessary. And so to
12 the extent third parties are relevant, they fall within the
13 scope of what we have already provided. This is simply
14 preventing overreach.

15 THE COURT: Well -- well, any other third party
16 may be too broad, but I'm going to -- I'm going to not grant
17 it with respect to -- I think topic 8 is not an issue at
18 this point. It doesn't add up here that there is any
19 witness from the SAFE AG that's going to be testifying at
20 the hearing. Is that correct?

21 MS. LOHSE: Correct, Your Honor.

22 THE COURT: Okay. So I think topic 8 is not an
23 issue. With respect to topic 9, any party is too broad.
24 But I am going to -- I am going to make you produce it with
25 respect to the parties, you know, the parties who have been

1 active in the case, the SAFE AG, the other objectors, the
2 Committee, those parties, yes. But not any other party, but
3 parties who have been active in the case.

4 And I think that's probably, Mr. Thompson, what
5 you really meant here, not anybody off the street.

6 MR. THOMPSON: Right. We don't anticipate that
7 they've been speaking to random people off the street.

8 THE COURT: Right.

9 MR. THOMPSON: Really, we're just trying to get at
10 whoever you've been talking to about our success fee,
11 whoever's helping you calculate it, or anything like that.
12 That's what we want to know.

13 THE COURT: Right. Yeah. And obviously, to the
14 extent that, you know, you talk to other people about the
15 success fee in a material fashion, then I think those would
16 need to be produced. And then, you can have them do that.

17 MS. LOHSE: Understood.

18 THE COURT: All right. Any other issues?

19 MS. LOHSE: Your Honor, we did want to make an
20 oral request today for a witness to appear remotely to
21 testify. Our witness from B. Riley will only have limited
22 testimony, and he lives in Virginia. And so we would like
23 to request the ability for him to testify remotely, rather
24 than fly in in person.

25 THE COURT: All right. What is he testifying on?

1 MS. LOHSE: A valuation of the company as it
2 pertains to the success fee.

3 MR. THOMPSON: Your Honor, they have not provided
4 an expert report in connection with this. They didn't
5 identify him as an expert, they did put expert next to his
6 name on the witness and exhibit list, which they filed a
7 little bit after the deadline today. They've offered him up
8 for a one-hour remote deposition on Sunday. We're preparing
9 for a hearing on Monday. This is too little, too late.

10 THE COURT: Yep.

11 MR. THOMPSON: And the idea that he would get up
12 and testify on valuation when it is a fundamental issue that
13 they should have brought up during the period that we were
14 taking discovery -- We've taken, like, four, or -- I think,
15 four different depositions. I mean, this is something that
16 they are springing -- They are attempting to do trial by
17 ambush, and I don't think that that should be permitted,
18 Your Honor.

19 THE COURT: Yeah, unless you can produce his
20 report, and make him available for deposition tomorrow, I
21 think this is a situation where it's too late, you know? So
22 if you can produce his report and make him available for
23 deposition tomorrow afternoon, so that they have an
24 opportunity to study and maybe get their own person to look
25 at it -- You know, this is not intended to be a trial by

1 ambush.

2 MS. LOHSE: Your Honor, we did produce his report
3 as part of our exhibit. It's listed in our exhibit list,
4 and we did supplement our documents earlier today with that
5 report.

6 MR. THOMPSON: After the deadline. It doesn't
7 meet the requirements of Rule 26. I don't think that
8 they've met the requirements, Your Honor. And frankly, it
9 was never -- Nobody ever said ahead of today's deadline that
10 B. Riley was going to be an expert, testifying in an expert
11 capacity. They are the hired investment banker. They
12 mentioned the possibility of B. Riley testifying, that, you
13 know, they might be a fact witness about something. But
14 telling us that they can testify for one hour remotely on
15 Sunday before a hearing that's on Monday, that's just --

16 THE COURT: Yeah, that's not acceptable. So make
17 him available for a deposition tomorrow, if that's the case.
18 And if the expert report is there already, then it's there.
19 So make him available for a deposition tomorrow, if you want
20 to.

21 MS. LOHSE: Okay. Thank you, Your Honor.

22 THE COURT: All right. Anything further?

23 All right. Okay. So we'll be in recess until
24 tomorrow morning.

25 MR. THOMPSON: Thank you, Your Honor.

1 MS. LOHSE: Oh, Your Honor -- I'm sorry, just one
2 more thing.

3 THE COURT: Yes. Yes.

4 MS. LOHSE: We believe that the testimony for this
5 hearing is likely to last of full day, and right now, the
6 hearing is set to begin on Monday, at 2 p.m. And so for
7 scheduling purposes, we wanted to raise this issue with you
8 in advance, so we could schedule accordingly.

9 THE COURT: Well, my other hearing doesn't start
10 until 9:00 the next morning, so we can go as late as you
11 want.

12 MS. LOHSE: Okay.

13 MR. THOMPSON: Your Honor, I think our case in
14 chief is going to be an hour. We're going to focus on
15 what's relevant. I'm not sure what they're planning on
16 doing on Monday, but I think we're probably going to be an
17 hour.

18 THE COURT: Yeah, no, so just -- I mean, I was
19 intending on going as late as need be.

20 MS. LOHSE: Understood. Thank you.

21 THE COURT: And you know, I would have some time
22 the next day. I would have to squeeze it in, but I would
23 probably have a couple of hours the next day.

24 And you know, I'm really focused on, you know,
25 what does the contract say, and evidence regarding that.

1 All right. Okay. So we'll be in recess until
2 tomorrow morning. Thank you.

3 MR. THOMPSON: Thank you, Your Honor.

4 MS. LOHSE: Thank you, Your Honor.

5 MR. WOLFSHOHL: Thank you, Your Honor.

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7 (Proceedings adjourned.)

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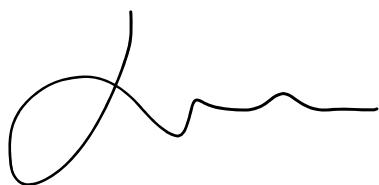
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CERTIFICATION

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

A handwritten signature in black ink, appearing to read 'Lindsay Peacock'. The signature is fluid and cursive, with a large loop at the beginning and a wavy line extending to the right.

Lindsay Peacock

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Date: October 31, 2025