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

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

LEHOTSKY KELLER COHN LLP'S REPLY IN SUPPORT OF ITS MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE AND BARNES & THORNBURG LLP
[Relates to ECF Nos. 2302, 2303, 2337, 2338]

Lehotsky Keller Cohn LLP ("***LKC***") files this reply (the "***Reply***") in support of its *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* [ECF Nos. 2302, 2303] ("***Motion***") and respectfully states as follows:

REPLY

1. The Special Committee of Rhodium Enterprises, Inc.'s Board of Directors ("***Special Committee***") and its counsel, Barnes & Thornburg LLP ("***Barnes & Thornburg***") pretend they did nothing more than file a routine objection in a "reasonable fee dispute," ECF No. 2337 at 2; ECF No. 2338 at 2. But this is pure revisionist history.

2. As the Court saw firsthand, the Special Committee and Barnes & Thornburg repeatedly and maliciously accused LKC of "professional and ethical misconduct," "acting in utter

[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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disregard to its clients'" interests, "alarming" and "improper behavior," "ignoring its ethical obligations," and acting in "bad faith." ECF No. 1530 at 2-3, 14-15; ECF No. 1614 at 1-2, 8, 13. Nowhere in their 60 pages of briefing does either the Special Committee or Barnes & Thornburg defend their defamatory litany of threats and invectives. Nor do they defend their specious sanctions motion, which they ultimately abandoned. That alone warrants sanctions.

3. But the Special Committee and Barnes & Thornburg did not stop there. When LKC refused to capitulate, the Special Committee and Barnes & Thornburg went even further, claiming LKC violated its fiduciary duties by filing a *successful* fee application instead of waiting for a purported "agreed upon" Whinstone tax allocation. ECF No. 1732 at 20-23. The tax allocation, however, was "not connected to LKC at all," as the Debtors' bankruptcy counsel told the Court, with Barnes & Thornburg's Trace Schmeltz by her side at the podium. Hearing Tr. Dec. 3, 2025 at 94:15-16. The Debtors' tax advisor, Mr. Wheeler, likewise confirmed that the tax allocation, which concerns only "tangible assets," had no effect on LKC's fee. ECF No. 2140 ¶¶ 10, 14.

4. The Special Committee and Barnes & Thornburg fail to explain how LKC could violate its fiduciary duties by filing a *successful* application instead of waiting for an *irrelevant* tax allocation. Worse, the Special Committee and Barnes & Thornburg once again ignore the fact that Whinstone had already publicly filed its allocation numbers in its Form 10-Q, and the Special Committee refused to accept them, scuttling any "agreed upon" allocation. *See* ECF No. 2151 at 7; ECF No. 2140 ¶¶ 6, 8-9. The Special Committee rejected Whinstone's numbers [redacted] *See* Motion ¶ 73.

5. Thus, there was never going to be an "agreed upon" tax allocation. And the "inconsistent" numbers that supposedly open the Debtors up "to audit risk," ECF No. 2337 at 8-9, were created by the Special Committee, not LKC. The Special Committee chose a tax allocation

that was inconsistent with Whinstone's published numbers and the ultimate allocation the Court itself determined was appropriate based on the Debtors' own board minutes and internal documents. The response briefs address none of this.

6. In addition, Barnes & Thornburg does not address, much less justify, its vexatious litigation tactics, including failing to appear for a deposition, refusing to produce documents specifically ordered by the Court, ambushing LKC with last-minute experts, and presenting an expert who did not reach his own purported opinions. These abusive tactics also warrant sanctions.

ARGUMENT

7. There is no dispute that sanctions are appropriate when "a party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" Motion ¶ 63 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991)). The only question is whether the Special Committee's and Barnes & Thornburg's baseless and frivolous attacks meet this standard.[2] As explained in the Motion, they certainly do.

8. The Special Committee's and Barnes & Thornburg's defense is to ignore the record and recast their objection to LKC's fee application as routine. But a routine fee objector does not:

- Baselessly accuse the applicant of "violat[ing] . . . ethical and fiduciary obligations," ECF No. 1530 at 2-3, ECF No. 1614 at 1-2;
- File a specious sanctions request, ECF No. 1530 at 14-15;
- Invent a fiction about a purported "agreed upon" tax allocation later revealed to be "not connected to LKC at all," Hearing Tr. Dec. 3, 2025 at 94:15-16;
- Threaten to file a claim for breach of fiduciary duty if the applicant does not agree to delay proceedings, ECF No. 1633-3 at 6;
- File that frivolous fiduciary-duty claim and then withdraw it on the eve of trial, ECF No. 1732 at 20-23, ECF No. 1930 at 1;
- Choose to file that claim publicly for maximum damage, *see* ECF No. 2151-2;
- Fail to appear for a deposition, Motion ¶ 38;
- Fail to produce documents specifically ordered by the Court, *Id.* ¶ 40;

[2] The Special Committee's primary argument is that 28 U.S.C. § 1927 does not apply to it. LKC agrees. *See, e.g.*, Motion ¶ 63 (noting that Section 1927 applies to "an attorney"). But this is irrelevant. The Special Committee concedes this Court has inherent power to sanction it. *See* ECF No. 2338 at 11.

- Ambush the applicant with last-minute experts, ECF No. 1933 at 1-2, ECF No. 1933-2 at 11:9-17, 35:5-37:1; or
- Refuse to pay the fees awarded by the Court, forcing the applicant to file for contempt, *see* ECF No. 2268.

The Court should grant the motion.

I. The Court Should Sanction the Special Committee and Barnes & Thornburg for Their Baseless and Offensive Attacks on LKC, Including the Frivolous Fiduciary Duty Claim.

A. Baseless and offensive attacks on opposing counsel warrant sanctions.

9. "[B]aseless and offensive attacks on opposing counsel" warrant sanctions under the court's inherent authority. *Deutsch v. Henry*, 2016 WL 7165993, at *20 (W.D. Tex. Dec. 7, 2016), *aff'd*, 2017 WL 5652384 (W.D. Tex. Mar. 28, 2017), *aff'd*, 716 F. App'x 361 (5th Cir. 2018) (per curiam). Likewise, "[a]busive remarks against opposing counsel" are "offensive and damaging" to the judicial process and are sanctionable, especially when they are "absolute[ly] false[]." *Redd v. Fisher Controls*, 147 F.R.D. 128, 132-33 (W.D. Tex. 1993); *see also Chambers*, 501 U.S. at 46 (courts' "inherent power extends to a full range of litigation abuses"); *In re Carvalho*, 2019 WL 4877272, at *37 (Bankr. D.D.C. Oct. 1, 2019) (imposing sanctions on counsel under court's "inherent power" for "repeated attacks on the integrity of opposing counsel" including "unwarranted attacks . . . suggesting fraud on the part of . . . counsel"); *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1325 (11th Cir. 2002) ("Case law is replete with instances where an attorney has been sanctioned for his or her own unsubstantiated accusations and demeaning, condescending, and harassing comments directed at opposing counsel.").

10. The Special Committee and Barnes & Thornburg do not even address the litany of invectives or their specious request for sanctions against LKC. Their silence is telling. The Special Committee and Barnes & Thornburg leveled a sustained, public campaign of accusations—claiming LKC committed "violation[s] of ethical and fiduciary obligations," ECF No. 1530 at 3;

engaged in "unreasonable, unethical, . . . bad faith, and sanctionable" conduct, *id.* at 14-15; demonstrated "alarming" and "improper behavior," ECF No. 1614 at 2; "ignor[ed] its ethical obligations," *id.*; acted with "disregard for an attorney's obligation of candor to the Court," *id.* at 13; and served discovery "in bad faith," *id.* at 8. The Special Committee even sought sanctions against LKC for filing a routine status conference request. ECF No. 1530 at 14-15. Yet the Special Committee and Barnes & Thornburg do not defend a single one of these accusations in their responses to LKC's sanctions motion. That is because each of those accusations are indefensible and unsupported. The Special Committee effectively conceded as much when it withdrew "with prejudice" all "arguments and/or claims related to any breach of privilege, ethical obligations, fiduciary duty or other misconduct by Lehotsky Keller Cohn" on the eve of trial. ECF No. 1930 at 1. The Special Committee's decision to withdraw its incendiary allegations rather than defend them under oath confirms that those allegations were baseless from the start.

B. The Special Committee Filed a Frivolous Fiduciary Duty Claim.

11. Beyond baseless invectives, the Special Committee and Barnes & Thornburg asserted an affirmative claim for "breach of fiduciary duty" against LKC in their objection to LKC's fee application. ECF No. 1732 at 20-23 ¶¶ 50-59. The Special Committee publicly accused LKC of creating "a false audit trail," violating "the rules of professional conduct," and putting the Debtors "in a terrible situation"—all because LKC filed a fee application under seal instead of waiting for a fictitious "agreed upon" tax allocation between the Debtors and Whinstone. *Id.* at 4, 10, 21-22.

12. That claim was frivolous from its inception, and the Special Committee and Barnes & Thornburg knew it. The Court should sanction them for peddling a fiction that delayed proceedings, defrauded the Court, and was used to defame LKC.

13. *First*, the tax allocation was "not connected to LKC at all." Hearing Tr. Dec. 3, 2025 at 94:15-16. Those are the words of Debtors' own bankruptcy counsel, Ms. Tomasco, spoken in open court. *Id.* If the tax allocation was "not connected to LKC at all," then LKC could not possibly have breached a fiduciary duty by declining to wait for it. Yet the Special Committee falsely represented to the Court that LKC's fee application "***cannot*** be adjudicated until Debtors and Whinstone first agree on their tax allocation." ECF No. 1628 ¶ 3 (emphasis in original).

14. *Second*, the Debtors' tax advisor, Mr. Wheeler, confirmed under oath that the tax allocation concerned only "tangible assets." ECF No. 2140 ¶ 10 ("[T]he Debtors and Whinstone agreed that the only item to be reported on Form 8594, Asset Acquisition Statement Under Section 1060, was the tangible assets"); *see also id.* ¶ 14 (no allocation to litigation value). The Special Committee viewed those tangible assets as worth approximately $43.5 million; Whinstone valued them at $7.3 million. *See* ECF No. 2151 at 7. None of that implicates or restricts LKC's success fee, which was based on allocating $100 million of the $185 million settlement to litigation damages.

15. *Third*, the Debtors' General Counsel, Mr. Topping, was well aware that the Whinstone tax allocation would not dictate LKC's fee. He testified that [redacted]

16. *Fourth*, there was never going to be an "agreed upon" tax allocation, because the Special Committee rejected Whinstone's publicly stated numbers. Whinstone's parent company, Riot Platforms, Inc., filed its Form 10-Q on July 31, 2025, two weeks before the Special Committee first demanded that LKC wait for the allocation, publicly disclosing Whinstone's position: "The fair market value of the tangible assets acquired was estimated to be $7.3 million." *See* ECF No.

2151 at 7. Whinstone also ascribed zero value to intangible assets. *Id.* But the Special Committee and the Debtors insisted on entirely different numbers, valuing tangible assets at $43.5 million and intangible assets at $56.89 million. ECF No. 2140 ¶¶ 6, 8-9. Not surprisingly, Whinstone refused to agree.

17. *Fifth*, the Court itself adopted LKC's allocation—the very allocation the Special Committee said would create "audit risk" and "breach the PSA." ECF No. 1530 ¶ 3; ECF No. 1732 ¶ 55. The Special Committee cannot maintain that LKC acted in bad faith by proposing an allocation that this Court found to be correct.

18. The Special Committee and Barnes & Thornburg ignore all of this. And they do not acknowledge the internal emails revealing the reason for the Special Committee's intransigence: [redacted]

19. Instead, the Special Committee and Barnes & Thornburg regurgitate the same false allegations they previously withdrew on the eve of trial. *Compare* ECF No. 2337 at 14-15 (recounting the argument that LKC's "premature fee application could cause the Debtors 'to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder'"), *and* ECF No. 2338 at 21-22 (reasserting that the fee application was "premature" and the fiduciary duty claim was "colorable"), *with* ECF No. 1930 at 1 (withdrawing "with prejudice" all "arguments and/or claims related to any breach of privilege, ethical obligations, fiduciary duty or other misconduct by Lehotsky Keller Cohn").

20. In doing so, they double down on the very conduct that warrants sanctions. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990) ("Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay. Even if the careless litigant quickly dismisses the action, the harm . . . has already occurred" and "merits

sanctions even after a dismissal."); *see also Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 244 (5th Cir. 1998) (affirming sanctions under § 1927 where attorney "abused the judicial process to harass an apparently innocent defendant" through the "willful continuation of a suit known to be meritless, and conceded to have been abandoned").

21. The Special Committee's defenses are equally unavailing.

22. *The Whinstone PSA*. The Special Committee repeats its earlier claim that LKC's allocation "could cause the Debtors 'to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder.'" ECF No. 2337 at 14 (quoting ECF No. 1732 at 21). But Mr. Wheeler expressly testified that paying LKC's fee would *not* violate the PSA. Hearing Tr. Dec. 3, 2025 at 119:19-24 (testifying that his "personal view is it wouldn't violate the PSA" if the Debtors and Whinstone reached one allocation and the Debtors and LKC reached another). And as noted, the Form 8594 filed with the IRS addressed only "tangible assets"—which is why the tax allocation is "not connected to LKC at all." Hearing Tr. Dec. 3, 2025 at 94:15-16. The Special Committee's suggestion that there might have been a problem if the tangible assets had been valued at $100 million is a red herring. No one valued the tangible assets at $100 million. Whinstone was on record with a $7.3 million valuation. *See* ECF No. 2151 at 7.

23. *"One Set of Numbers*." The Special Committee argues "there should be one set of operative facts" because having two sets of numbers could trigger an IRS or State income tax audit. ECF No. 2337 at 9. But the Special Committee itself created the inconsistency. The Special Committee rejected Whinstone's public numbers [redacted]. The Special Committee then chose its own tax allocation—one that was inconsistent with both Whinstone's published numbers and the allocation this Court ultimately adopted. If the inconsistency was dangerous, the Special Committee endangered the

estate, not LKC. And as noted, the IRS tax allocation concerns only "tangible assets." ECF No. 2140 ¶ 10. Paying LKC its fee does not create "two sets of numbers" on that or any other issue. *See* Hearing Tr. Dec. 3, 2025 at 94:15-16, 119:19-24.

24. *Res Judicata*. The Special Committee and Barnes & Thornburg argue that they had to assert the fiduciary duty claim or risk losing it under Fifth Circuit precedent. *See* ECF No. 2337 at 14-15 (citing *In re Intelogic Trace, Inc.*, 200 F.3d 382 (5th Cir. 2000)). That is no justification for asserting a *frivolous* claim. That res judicata might later bar a meritless claim in no reason to assert it early in bad faith. The email from Debtors' bankruptcy counsel instructing the Special Committee to "bring all counterclaims to preserve them," ECF No. 2337-4 at 2, does not excuse Barnes & Thornburg from its independent obligation to refrain from asserting claims it knew to be baseless.

C. The Manner and Timing of the Fiduciary Duty Claim Confirm Its Improper Purpose.

25. The fiduciary duty claim was first raised not as a genuine assertion of legal rights, but as a *threat*—designed to coerce LKC into agreeing to an extension of time and further delay. ECF No. 1633-3 at 6 ¶ 18 ("The Special Committee believes that the Debtors could hold counterclaims against LKC . . . potentially includ[ing] claims for breach of fiduciary duty, malpractice, and fraud."). Only after LKC refused to be intimidated did the Special Committee make good on its threat and file the claim publicly. *See* ECF No. 1732.

26. The Special Committee now claims that documents should be public in bankruptcy. ECF No. 2338 at 25-26. But that is not what it said when it required LKC's fee application and all subsequent briefs to be partially sealed. The Special Committee's position is a transparent double standard: file publicly what harms LKC; seal everything else. The Special Committee cannot have it both ways.

27. Oddly, the Special Committee also argues that because LKC disclosed Barnes & Thornburg's prior inappropriate threats, the Special Committee had free license to make even worse defamatory public comments. *See* ECF No. 2338 at 25-26 (arguing the Special Committee was required to file the claim publicly under 11 U.S.C. § 107 and blaming LKC for placing materials "into the public record" first). That makes no sense. LKC's disclosure of the Special Committee's and Barnes & Thornburg's prior abuses does not justify more egregious misbehavior. Their defamation is not "a problem of [LKC's] own making." ECF No. 2337 at 20; *see also* ECF No. 2338 at 26.

D. The Special Committee's and Barnes & Thornburg's Recalcitrance Confirms the Need for Sanctions.

28. To this day, the Special Committee and Barnes & Thornburg continue to claim that they engaged in acceptable "good faith" behavior. ECF No. 2337 at 2, 14, 22-23; ECF No. 2338 at 1, 4, 11-12. They still refuse to acknowledge that the Whinstone tax allocation had nothing to do with LKC's fee. They ignore the fact that they leveled baseless accusations of professional misconduct against a small law firm that had delivered extraordinary results that helped enrich the estate. And they do not address their withdrawal of their misconduct allegations on the eve of trial rather than defending them under oath.

29. A party's refusal to acknowledge its own misconduct is relevant to the sanctions analysis. *Cf. Chambers*, 501 U.S. at 46 (finding "bad faith" conduct warrants imposition of sanctions to "mak[e] the prevailing party whole for expenses caused by his opponent's obstinacy" (citation omitted)). Here, the Special Committee and Barnes & Thornburg have not only shown no remorse—they have doubled down. That is precisely the kind of conduct that sanctions are meant to deter.

II. The Special Committee's and Barnes & Thornburg's Vexatious Litigation Tactics Independently Warrant Sanctions.

30. Even setting aside their baseless accusations and frivolous claims, the Special Committee's and Barnes & Thornburg's litigation tactics independently warrant sanctions. A party that "multiplies the proceedings in any case unreasonably and vexatiously" may be sanctioned under 28 U.S.C. § 1927. *See Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 244 (5th Cir. 1998) (affirming sanctions under § 1927 where attorney "maintain[ed] her case in federal court long after she realized it had no merit"); *Ratliff v. Stewart*, 508 F.3d 225, 234-35 (5th Cir. 2007) (recognizing that "obviously unreasonable" attorney conduct permits a court to infer improper purpose for purposes of sanctions under § 1927); *In re Carroll*, 850 F.3d 811, 816 (5th Cir. 2017) (affirming bankruptcy court's order requiring payment of attorney's fees incurred in "responding to certain instances of . . . bad faith [and] . . . vexatious conduct"). The Special Committee's and Barnes & Thornburg's conduct easily meets that standard.

A. Refusal to Appear for Deposition.

31. The Special Committee failed to produce the Debtors' CEO and Chairman, Chase Blackmon, for his properly noticed deposition. Motion ¶ 38. The Special Committee never obtained an order quashing the deposition notice or postponing the deposition. It simply did not show up. And it lacked even the courtesy of raising the issue before LKC incurred the time and expense of travel. *Id.* Courts have sanctioned parties for this kind of gamesmanship. *See, e.g.*, *In re Gleich*, 2025 WL 3633836, at *8 (B.A.P. 9th Cir. Dec. 15, 2025) ("A party's failure to appear for a deposition is sanctionable conduct."); *In re Norris*, 2012 WL 1966285, at *2 (Bankr. N.D. Ohio May 31, 2012) ("Where a party fails to appear for a deposition, courts are able to sanction the party by awarding reasonable expenses associated with the deposition to the other party, including attorney fees and costs.").

B. Failure to Produce Court-Ordered Documents.

32. The Special Committee also failed to produce documents specifically ordered by this Court. Motion ¶ 40. The Court decided "to make [the Special Committee] produce [documents] with respect to the . . . parties who have been active in the case, the SAFE A[H]G, the other objectors, the Committee." ECF No. 1919, Hearing Tr. Oct. 13, 2025 at 13:24-14:2. The Court explained that to the extent the Special Committee "talk[ed] to other people about the success fee in a material fashion, then . . . those would need to be produced." *Id.* at 14:13-16.

33. The Special Committee and Barnes & Thornburg do not even address this failure. Yet, remarkably, the Special Committee attached to its opposition one of the very documents it should have produced—an email from Debtors' bankruptcy counsel, Ms. Tomasco, encouraging the Special Committee to file the fiduciary duty claim against LKC. ECF No. 2337-4.

34. This document does not help the Special Committee. The Special Committee cannot blame Ms. Tomasco for its own decision to file a frivolous claim. And the Special Committee's belated disclosure of this document only underscores and confirms its prior failure to comply with the Court's discovery orders.

35. What else is the Special Committee hiding? LKC specifically asked for communications between the Special Committee and the SAFE AHG or its attorneys, but the Special Committee produced nothing. Presumably these documents could help elucidate the scope of the "master"-servant relationship (which the Special Committee now seems to dispute) and shed light on the reasons for the Special Committee's baseless tactics. Regardless, parties are not free to disregard Court orders, no matter how embarrassing the documents may be.

36. To enforce its prior order and inform its assessment of the sanctions motion, the Court should require the Special Committee to finally fully disclose its communications with "the parties who have been active in the case" related to LKC's fee. ECF No. 1919, Hearing Tr. Oct.

13, 2025 at 13:24-14:1. This makes particular sense because Special Committee has argued that this sanctions proceeding, not the Adversary Complaint raising state-law claims, is the proper forum for addressing the conduct at issue. ECF No. 19 at 23.

37. At the very least, the Court can draw an adverse inference based on the Special Committee's failure to produce these documents in its possession. *See In re High Standard Mfg. Co., Inc.*, 2016 WL 5947244, at *5 (Bankr. S.D. Tex. Oct. 13, 2016) ("[A] party's unexplained failure or refusal to produce evidence that would tend to throw light on issues authorizes [an] inference that such evidence would be unfavorable to that party.").

38. An inference is especially sound in light of the curious appearance of the Special Committee and Barnes & Thornburg in the fee dispute in the first place. The Special Committee contends that it got involved "solely due to a perceived conflict of Debtors' counsel." ECF No. 2338 at 8. But that is unpersuasive. Whereas Debtors' *bankruptcy* counsel, Ms. Tomasco, may have had some conflicts (including, apparently, because her firm represents the lead member of the SAFE AHG),[3] "Debtors' counsel" on LKC fee issues was originally Stris & Maher LLP, which defended Debtors' application for an updated retention of LKC in this Court. *See* ECF No. 1111. Stris & Maher had no conflict.

39. But the SAFE AHG and Akin objected to Stris & Maher's involvement and wanted Barnes & Thornburg to be involved instead. ECF No. 1065. The Court rejected the SAFE AHG's motion to disqualify Stris & Maher. ECF No. 1106. But ultimately the SAFE AHG got its wish.

40. The only conflict was that there was no conflict. As Mr. Trace Schmeltz explained at trial, the Debtors were not adverse to LKC. Motion ¶ 86; *see* also Hearing Tr. Nov. 3, 2025 at

[3] *See Law Disrupted: The Client's Perspective on Litigating High Stakes Cases*, Quinn Emanuel Urquhart & Sullivan LLP (Dec. 12, 2025), https://perma.cc/UX85-L8DN (interview with David Proman regarding Quinn Emanuel's representation of the Blockchain Recovery Investment Consortium, which Proman co-founded); *see also* ECF No. 1346 at 6 (identifying Blockchain Recovery Investment Consortium, LLC as lead member of the SAFE AHG).

149:24-150:19. And Stris & Maher dutifully represented the Debtors, both at the retention hearing and previously at the Whinstone hearing. But the SAFE AHG (or at least one member of it) did not want to pay LKC's fees, and as a result, LKC is still defending its fees almost a year later. *See The Special Comm. of the Bd. of Dirs. of Debtor Rhodium Enters., Inc. v. Lehotsky Keller Cohn LLP*, No. 4:26-cv-00233 (S.D. Tex.); *The Ad Hoc Grp. of SAFE Parties v. Lehotsky Keller Cohn LLP*, No. 4:26-cv-00235 (S.D. Tex.).

41. Even the Special Committee recognizes the need for sanctions when there are "maneuvers or schemes which would have the effect of undermining the integrity of the bankruptcy system." ECF No. 2338 at 12. That is precisely the case here—especially because the fee dispute was not the first time the Special Committee did the bidding of the SAFE AHG and Akin. Indeed, it was Akin that directed the Special Committee to remove the fraud claim from the Debtors' complaint against Whinstone. *See* Hearing Tr. Nov. 3, 2025 at 65:6-16 (testimony of J. Cohn) (explaining that the Special Committee directed LKC not to plead fraud because "Akin, Mitch Hurley had sent a letter to the Special Committee contending that the executives had acted unreasonably"); *see also* [redacted] (Instead of the fraud claim, which Barnes & Thornburg later admitted was strong, [redacted] the Special Committee asserted D&O claims, recovered $8.5 million from insurers, and gave all the money to the SAFE AHG as a "special contribution," ECF No. 2062 at 25.) In the view of Debtors' General Counsel, [redacted]

[redacted]

C. Ambush with Last-Minute Experts.

42. The Special Committee's conduct relating to its expert witnesses was equally vexatious. First, the Special Committee attempted to ambush LKC by offering its B. Riley expert witness for deposition less than 24 hours before trial—offering only a one-hour remote deposition on Sunday, November 2, the day before the hearing commenced. ECF No. 2302 ¶ 42. The Court made clear it would not tolerate this "trial by ambush." Hearing Tr. Oct. 30, 2025 at 15:24-16:1. The Special Committee withdrew the B. Riley expert entirely, and eventually clawed back the expert report, demanding LKC "cease any review, dissemination, or use of these materials." ECF No. 1933-3 at 4. The Special Committee then pivoted to a different expert, Mike Rosten from BDO, providing his belated expert report at midnight Central Time—just 14 hours before his deposition. ECF No. 1933-7. Mr. Rosten's deposition revealed that he had been retained only two days earlier and did not author the report bearing his signature. ECF No. 1933-2 at 11:9-17; 35:5-37:1; 132:12-16. The Special Committee ultimately elected not to call Mr. Rosten as a witness at trial, rendering the entire costly exercise a waste of estate resources and LKC's time. ECF No. 2302 ¶ 47. The Special Committee and Barnes & Thornburg do not even attempt to defend these tactics.

D. Refusal to Pay Fees Awarded by the Court.

43. After this Court awarded LKC its fees, the Special Committee and Barnes & Thornburg refused to pay the amounts ordered. LKC was forced to file a motion for contempt to compel payment. *See* ECF No. 2268 (noting receipt of payment and withdrawal of motion for order directing payment). The Special Committee's refusal to comply with an order of this Court was yet another vexatious tactic designed to impose additional costs and delay on LKC.

E. Refusal to Negotiate in Good Faith.

44. The Special Committee and Barnes & Thornburg claim that they previously negotiated in good faith. Even if that were true, prior negotiations would not justify subsequent vexatious litigation tactics. But it is false in any event.

45. The Special Committee's initial offer of $3.8 million was a lowball figure that fell well below its own flawed calculations. ECF No. 2337-3 at 7. Even lower were the "uncontested" amounts the Special Committee was willing to pay in the interim. Motion ¶ 84. And while Barnes & Thornburg claims that "LKC would not entertain the settlement offers presented by B&T," ECF No. 2337 at 9, the record tells a different story. After the hearing began, the Special Committee offered LKC $7.4 million. ECF No. 2338-4. But it was not LKC that walked away from the table. To the contrary, the SAFE AHG and the Transcend Group instructed Barnes & Thornburg to stop negotiating. *Id.* Barnes & Thornburg obeyed its "new master." Motion ¶ 26.[4] The Special Committee and Barnes & Thornburg cannot blame LKC for the Special Committee's own counsel pulling the plug on settlement talks.

III. The Special Committee's Arguments Regarding Section 328 are Meritless.

46. Barnes & Thornburg contends that Section 328(a) "does not even apply in this setting" because it authorizes fees only for services performed for a committee or trustee and not for a professional's own defense. ECF No. 2337 at 25-26. The Special Committee similarly argues that "LKC seeks compensation for services performed for itself, not for the Debtors." ECF No. 2338 at 30. But LKC does not seek fees under Section 328(a) for services performed for itself. Rather, LKC seeks an upward adjustment of the terms of its own engagement *with the Debtors*

[4] Barnes & Thornburg puts words in Mr. Schmeltz's mouth and tries to justify his description of the Ad Hoc Group of SAFE Parties as his "new master." None of that is relevant to the pending sanctions motion but will be fully addressed in discovery in LKC's pending adversary proceeding, No. 26-03051. *See* ECF No. 2305. *See also supra* ¶¶ 35–37.

because the Special Committee's bad-faith interference rendered those terms "improvident in light of developments not capable of being anticipated at the time of fixing such terms and conditions." 11 U.S.C. § 328(a). The Special Committee's campaign to tarnish LKC's reputation and deprive it of earned fees through frivolous and sanctionable misconduct allegations is not a "compensation matter" that the parties anticipated when they negotiated those terms. No one expected the Special Committee to jump in, claim a conflict, and peddle a fraud.

47. Nothing in *ASARCO* bars the relief LKC seeks. In that case, the Supreme Court addressed only whether Section 330(a)(1) authorizes compensation for time spent defending a fee application and held that it does not. *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 134-35 (2015). The Court did not address Section 328. And, although the Fifth Circuit has recognized that Section 328(a) "creates a 'high hurdle,'" it is certainly not a bar. *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012). The Special Committee's reliance on *In re Boomerang Tube, Inc.*, 548 B.R. 69 (Bankr. D. Del. 2016), is misplaced. ECF No. 2338 at 30-31. *Boomerang Tube* addressed whether a *pre-approved fee-defense provision* in a retention application could be authorized under Section 328—not whether a court may exercise its discretion to adjust compensation under Section 328(a) after the fact based on unforeseeable developments. LKC is not seeking pre-approval of a fee-defense arrangement; it is asking this Court to exercise its statutory authority to adjust LKC's compensation based on unforeseeable developments that rendered the original terms improvident.

48. The Special Committee argues that a fee dispute was foreseeable because LKC's engagement letter contemplated that such dispute shall be resolved by the Bankruptcy Court. ECF No. 2337 at 26; ECF No. 2338 at 31 (same). But what transpired here was no garden-variety fee dispute. Instead, the Special Committee embarked on a months-long campaign of baseless accusations of professional and ethical misconduct, asserted a frivolous claim for breach of

fiduciary duty, refused to negotiate in good faith, ambushed LKC with eleventh-hour experts, and resisted payment even after the Court entered a final order. The engagement letter anticipated a disagreement over numbers—not bad-faith scorched-earth litigation intended to bully LKC into capitulation. No party could have foreseen the Special Committee would abandon its duties to the estate and the Court and instead wage a sanctionable public campaign to damage the reputation of the estate's own successful litigation counsel, at the estate's expense.

49. Only a cynic would contend that sanctionable behavior was a foreseeable "routine aspect of bankruptcy practice," ECF No. 2338 at 27.

CONCLUSION

For the foregoing reasons, LKC respectfully requests that this Court grant the Motion for Sanctions, award LKC its reasonable attorneys' fees, costs, and expenses incurred as a result of the Special Committee's and Barnes & Thornburg's sanctionable conduct, and grant such other and further relief as the Court deems just and proper. The Court should also require the Special Committee to produce the discovery that the Special Committee failed to produce despite this Court's explicit order.

Dated: April 28, 2026
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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CERTIFICATE OF SERVICE

I hereby certify that, on April 28, 2026, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl