Docket #2393 Date Filed: 06/02/2026

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)
	§	

BARNES & THORNBURG LLP'S WITNESS AND EXHIBIT LIST
FOR THE JUNE 4, 2026 HEARING

Barnes & Thornburg LLP ("B&T"), in its capacity as former counsel of the Special Committee of the Board of Directors of Rhodium Enterprises, Inc., one of the debtors in the above-captioned chapter 11 cases, by and through its undersigned counsel, submits the following list of witnesses and exhibits for the hearing scheduled for Thursday, June 4, 2026, at 11:00 a.m. (CDT) before the Honorable Judge Alfredo R. Perez, at the United States Bankruptcy Court for the Southern District of Texas, in Courtroom 400, 515 Rusk Street, Houston, Texas 77002. B&T understands that the June 4, 2026 hearing is non-evidentiary, but it includes the witnesses and exhibits below to the extent they are relevant to any threshold legal question the Court considers.

A. WITNESSES

1. Charles Topping, by deposition (June 2, 2025 and Oct. 29, 2025 transcripts);

2. Kevin Hays, by hearing testimony (Dec. 3, 2025 hearing transcript);

[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.

24904482606020000000000003

3. David Eaton, by hearing testimony (Dec. 11, 2025 hearing transcript);

4. Mark "Christopher" Wheeler, by hearing testimony (Dec. 3, 2025 hearing transcript);

5. Jonathan Cohn, by deposition (Oct. 28, 2025 transcript);

6. Any witness called or designated by any other party;

7. All persons listed on the witness list of any other party; and

8. Any rebuttal and/or impeachment witnesses.[2]

B. EXHIBITS[3]

1. Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (ECF No. 835, as granted by ECF No. 1418);

2. 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 (ECF No. 2303);

3. Barnes & Thornburg LLP's Response to Lehotsky Keller Cohn LLP's Motion for Sanctions (ECF No. 2337);

4. 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 (ECF No. 2338);

5. Lehotsky Keller Cohn LLP's Reply in Support of its Motion for Sanctions Against the Special Committee and Barnes & Thornburg LLP (ECF No. 2374);

6. Lehotsky Keller Cohn LLP's Supplemental Brief in Support of its Motion for Sanctions Against the Special Committee and Barnes & Thornburg LLP (ECF No. 2389);

[2] B&T reserves the right to cross-examine any witness called by any other party. Nothing herein constitutes a waiver of B&T's rights, remedies, claims or objections, all of which are reserved.
[3] The exhibits in this list include without limitation each exhibit and schedule attached thereto.

7. David Eaton and Spencer Wells's Response to Lehotsky Keller Cohn LLP's Supplemental Brief in Support of its Motion for Sanctions Against the Special Committee and Barnes & Thornburg LLP (ECF No. 2391);

8. June 2, 2025 Deposition Transcript of Charles Topping;

9. October 29, 2025 Deposition Transcript of Charles Topping;

10. October 28, 2025 Deposition Transcript of Jonathan Cohn;

11. Any exhibit identified or admitted by any other party;

12. Any rebuttal or impeachment exhibits; and

13. Any document or pleading filed in the above-captioned main cases.

B&T reserves its rights to amend and/or supplement this Witness and Exhibit List at any time prior to the hearing and to use additional exhibits for purposes of rebuttal or impeachment and to further supplement the foregoing lists of witnesses and exhibits as appropriate. B&T also reserves its rights to rely upon and use as evidence (i) exhibits included on the exhibit lists of any other parties in interest, and (ii) any pleading, hearing transcript, or other document filed with the Court in the above-captioned matter.

BECK REDDEN LLP

By: */s/ David J. Beck*
David J. Beck
State Bar No. 00000070
dbeck@beckredden.com
David T. Judd
State Bar No. 24149115
djudd@beckredden.com
1221 McKinney St., Suite 4500
Houston, Texas 77010-2010
(713) 951–3700
(713) 951–3720 – Fax

ATTORNEYS FOR BARNES & THORNBURG LLP

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system on June 2, 2026.

/s/ David J. Beck
David J. Beck

Exhibit 1
to B&T's Witness and Exhibit List for 6/4/26 Hearing

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)
	§	

APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE UNITED STATES BAKRUPTCY JUDGE:

Rhodium Encore LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, "Debtors" or "Rhodium") respectfully submit this

[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.

Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation counsel (the "Application") pursuant to sections 327(e), 328(a), 330, and 1107 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and paragraph 47 of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "Complex Case Procedures"). In support of this Application, Debtors submit the Amended Declaration of Jonathan F. Cohn ("Amended Declaration").

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of Debtors' chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Application is sought pursuant to 11 U.S.C. §§ 105, 327(e), 328(a), 330, 503, 507, and 1107(a).

BACKGROUND

3. On August 24, 2024, Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The factual background regarding Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of Debtors' chapter 11 cases, is set forth in the Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (ECF No. 35).

4. On August 24, 2024, the Court entered an order jointly administering the bankruptcy cases under case number 24-90448 (ARP). *See* Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief (ECF No. 8).

5. On August 24, 2024, Debtors filed a Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7). On August 29, 2024, Debtors filed a Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32).

6. On September 22, 2024, Debtors filed an Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Initial Application") (ECF No. 173).

7. Debtors hereby incorporate by reference Paragraphs 6 through 48 of their Initial Application, ECF No. 173.

8. No parties objected to the Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP (ECF No. 263).

9. As set forth in the Amended Declaration, Debtors' Initial Application disclosed that Debtors' agreement with Lehotsky Keller Cohn LLP included discounted hourly rates in exchange for a partial contingency fee based upon the outcome of the litigation. The details of this arrangement are specified in Debtors' Engagement Letter with Lehotsky Keller Cohn LLP, dated May 16, 2023, attached to the Amended Declaration as Exhibit A.

10. No parties objected to the Debtor's Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

11. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

12. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, attached to the Amended Declaration as Exhibit B.

13. Debtors have requested that the Court enter the attached Proposed Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel, under the terms of the updated Engagement Letter attached to the Amended Declaration as Exhibit B.

RELIEF REQUESTED

Debtors respectfully request that this Court enter an updated order allowing the retention and employment of Lehotsky Keller Cohn LLP as special litigation as upon the terms described in this Application and in the accompanying Exhibit B and for such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 6th day of March, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Patricia B. Tomasco
Patricia B. Tomasco (SBN 01797600)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice)*
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
cameronkelly@quinnemanuel.com
alainjaquet@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*) Razmig Izakelian (*pro hac vice)* 865 S. Figueroa Street, 10th Floor Los Angeles, California 90017 Telephone: 213-443-3000
Facsimile: 213-443-3100
Email:
ericwinston@quinnemanuel.com
razmigizakelian@quinnemanuel.com

Counsel to the Debtors and Debtors-In-Possession

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Application was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

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)
	§	

AMENDED DECLARATION OF JONATHAN F. COHN IN SUPPORT OF THE APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

Pursuant to 28 U.S.C. § 1746, I, Jonathan F. Cohn, hereby declare as follows:

1. My name is Jonathan F. Cohn. I am over the age of 18 years. I am competent to make this amended declaration and I have personal knowledge of the facts stated herein. Each and every statement contained herein is true and correct.

2. I am a partner in the law firm of Lehotsky Keller Cohn LLP (the "LKC"). LKC maintains its primary office at 408 W. 11th Street, 5th Floor, Austin, Texas 78701. LKC's main telephone number is (512) 693-8350, and its main facsimile number is (512) 693-4755. I submit this declaration (the "Second Amended Declaration") as an amendment to my declaration dated September 22, 2024 (the "Declaration") (ECF No. 173) that was filed in support of the Application

[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.

for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (ECF No. 173).

3. On September 22, 2024, Debtors filed their Application for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Application") (ECF No. 173). That Application disclosed that LKC was providing discounted rates and would receive a potential contingency payment. *See id.* ¶ 26 ("There is also a contingent fee depending on the outcome of the litigation that has not changed."); *id.* ¶ 40 ("Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on the above-described matter based on a combination of hourly billing and a contingent fee."); *id.* ¶ 41 ("Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of the litigation."); *id.* ("Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee."); *see also id.* ¶ 44; ECF 173, Cohn Decl. ¶ 6; *id.* ¶ 25; ECF 173, Topping Decl. ¶ 9; *id.* ¶ 10.

4. No parties objected to the Application,.

5. On October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

6. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

7. In an abundance of caution, and to avoid any confusion, LKC attaches its engagement letter with Debtors, dated May 16, 2023, providing the details of the discounts and contingency arrangement (Exhibit A).

8. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, a copy of which is attached (Exhibit B).

9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 6, 2025

/s/ Jonathan F. Cohn
Jonathan F. Cohn
Partner, Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Amended Declaration was served via the Clerk of the Court through the ECF filing system to the parties registered to receive notice through ECF.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

May 16, 2023

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX 76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC* ("this Matter").

Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.

Fees: The fee for this Matter will be comprised of: (1) a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for all other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: $1,300
- Other partners, including Will Thompson: $1,200
- Counsels: $900
- Associates: $750

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all

EXHIBIT
A
exhibitsticker.com

additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

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

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay monthly invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky

Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

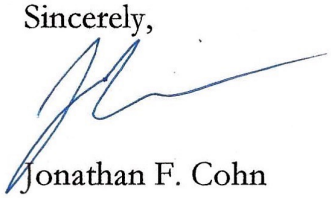
Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,



Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

By: 
Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

EXHIBIT
B
exhibitsticker.com

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

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

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

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

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

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)
	§	

ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to ECF No. _____)

This matter comes before the Court upon the application, dated __ (the "Application"),[2] of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, "Debtors"), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in connection with two separate matters.

The Court has considered the Application and the Cohn Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which Lehotsky Keller Cohn LLP is to be employed," as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors' reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to modify the retention of Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, pursuant to the engagement letter attached as **Exhibit A**.

2. Lehotsky Keller Cohn LLP shall be compensated in accordance with **Exhibit A**, and will file interim and final fee applications for allowance of its compensation and expenses, and any hourly fees and expenses shall be subject to sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. With respect to its hourly fees, for

billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

3. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

4. With respect to non-hourly fee compensation set forth in **Exhibit A**, such compensation is hereby approved, provided that the amount of such compensation shall be subject to Bankruptcy Court approval as set forth in **Exhibit A**.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

8. Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

9. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2025

_____
ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.



- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

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

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

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

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

Exhibit 2
to B&T's Witness and Exhibit List for 6/4/26 Hearing

ECF No. 2303 - Filed Under Seal

Exhibit 3
to B&T's Witness and Exhibit List for 6/4/26 Hearing

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)
	§	

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

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

INTRODUCTION

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

[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.

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

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

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

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

BACKGROUND

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

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

A. The Debtors Retain LKC

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

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

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

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

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

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

10. Accordingly, in March 2025, Debtors and LKC signed a revised engagement letter ("Revised Engagement Letter") that superseded the one from May 2023. ECF No. 835 at 13–16. The Revised Engagement Letter outlined the terms of the success fee as follows:

> The potential success fee is calculated as follows:
>
> (a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;
>
> (b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and
>
> (c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;
>
> (d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

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

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

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

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

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

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

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

C. The Settlement

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

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

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

[3] Form 8594, Form 8594 (Rev. November 2021).

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

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

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

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

[4] Additionally, the Settlement clarified that its provisions encompassed "the documents required by the PSA," including the Allocation Statement. ECF No. 1530-2 at 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. Mr. Wheeler stated that the PSA between Debtors and Whinstone "requires attribution of revenue to each [Rhodium] entity based on (i) the specific assets sold by each entity, (ii) the specific Hosting Agreements held by each entity, providing for each entity to receive quantities of electricity from Whinstone at a fixed price of at least ten years, and (iii) the settlement of certain claims as asserted by each entity in the Debtors litigation with Whinstone." *Id.* at ¶ 7. Mr. Wheeler then analyzed the Allocation Statement provision of the PSA and its consequences for the Debtors and Whinstone. *See id.* at ¶¶ 8–19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

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

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

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

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

ARGUMENT

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

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

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

against LKC based on its fee application. Even the declaration from LKC's counsel bears this out: "During several previous meet-and-confer phone calls and correspondence, the Special Committee's counsel has not articulated any claim the Debtors may have against LKC **but indicated that the potential claims have to do with the filing of LKC's** *Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024 through June 30, 2025* (ECF No. 1560)." ECF No. 1633-1 at 4, ¶ 8 (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The Court Should Not Award LKC Attorneys' Fees

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

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

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

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

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

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

CONCLUSION

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

BECK REDDEN LLP

By: */s/ David J. Beck*
David J. Beck
State Bar No. 00000070
dbeck@beckredden.com
David T. Judd
State Bar No. 24149115
djudd@beckredden.com
1221 McKinney St., Suite 4500
Houston, Texas 77010-2010
(713) 951–3700
(713) 951–3720 – Fax

ATTORNEYS FOR BARNES &
THORNBURG LLP

CERTIFICATE OF SERVICE

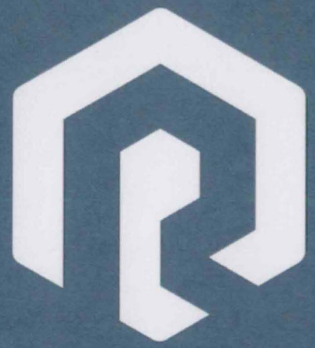
I certify that a true and correct copy of the foregoing instrument was served upon counsel of record on March 6, 2026, in accordance with the Federal Rules of Civil Procedure.

/s/ David J. Beck

Exhibit

1

Internal Distribution Only



RHODIUM

March 2025 -

PROPRIETARY & CONFIDENTIAL



HEARING EX 245.001

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

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

Key recent developments:

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

Impact on Valuation:

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

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

3/5/2025

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

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Comparing Riot's Offer to our pre-Mediation Valuation

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

Value Drivers:

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

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Impact on Equity Value

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

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Impact on Equity Value

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

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Appendix

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Value Considerations – 2/16/25

Valuation considerations ahead of next week's mediation:

- Rhodium's standalone valuation = Discounted Cash flow of business + Risked Damages
- Additional upside Riot derives from a settlement:
  - Value of contracts – removal of these contracts creates value to Riot at a lower discount rate (no execution risk)
  - Optics – Riot's public trading metrics allow enable it to pay more for Rhodium, accretive acquisition vs continuing a costly distraction

- Implications for Rhodium Equity holders in a Settlement offer
  - Equity Value comes after Secured & Unsecured Debt, General Unsecured Claims, and Accrued Expenses (collectively, net of cash, "Net Claims" in table below), and the SAFE (generally $87 million in most scenarios)
  - ~$140 million of Settlement Value until equity gets paid (net of SAFE)

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

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL

Litigation Value – 2/16/25

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

Exhibit

2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:	CAMERON KELLY PATRICIA B. TOMASCO Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
For Special Committee:	TRACE SCHMELTZ CATHERINE PAIGE LOHSE Barnes & Thornburg LLP One N. Wacker Drive, Suite 4400 Chicago, IL 60606
For Lehotsky Keller Cohn:	WILLIAM THOMAS THOMPSON Lehotsky Keller Cohn 7500 Rialto Boulevard, Suite 1-250 Austin, TX 78735
For Official Committee:	NATHANIEL ALLARD McDermott Will & Schulte One Vanderbilt Avenue New York, NY 10017
Court Reporter:	AKEITA HOUSE
Courtroom Deputy:	AKEITA HOUSE

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

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

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

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

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

A Yes, I'm aware of that.

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

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

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

A I did.

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

A I would give that a qualified yes.

Q Would you explain your qualification, sir?

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

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

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

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

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

looking at with our risk factors and discount.

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

Q In a context in which --

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

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

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

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

done, but it creates a windfall for LKC. That is my view.
Q But you're not walking away from that number, right?
A No, no.
Q Let's shift gears a little bit and talk a little bit about the calculation of the success fee. I want to start by talking about the LKC success fee for energy credits. Do you understand how the energy credits work under the March -- sorry. Do you understand how success fee for energy credit claims works under the March 2025 engagement letter?
A Yes. The success fee for energy credit claims is 5 percent on the first $5 million and 1 percent for everything after $5 million.
Q How would that compare to the success fee for non-energy credit claims?
A For non-energy credit claims, the success fee is 10 percent of those claims.
Q From your perspective, is it appropriate for LKC to eliminate the energy credit claim related to Winter Storm Uri from the calculation of the success fee?
MR. THOMPSON: Objection, Your Honor. I have to object to asking this witness about what percentage of total damages ought to be allocated to energy credit. The debtors put up a 30(b)(6) witness on the topic of the LKC success fee. As Your Honor may recall from a hearing in October, that witness was unable to share any position of the debtors

CERTIFICATION

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



Sonya Ledanski Hyde

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

Date: December 15, 2025

Exhibit

3

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

[redacted]

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 | Mobile: (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
Bio • **Web** • **V-Card**

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • Web • V-Card

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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 | Mobile: (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
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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 | Mobile: (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

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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 | Mobile: (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
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • Web • V-Card

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

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have

received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

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

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

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

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

Exhibit

4

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

Will do.

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



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



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

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

Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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

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

> On Aug 22, 2025, at 6:19 PM, Patty Tomasco <pattytomasco@quinnemanuel.com> wrote:
>
> Osherow v Ernst & Young. We have to bring all counterclaims to preserve them.

Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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

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

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

[EXTERNAL EMAIL from tschmeltz@btlaw.com]

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

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

From: Cisco Unity Connection Messaging System <unityconnection@cucn1.btlaw.com>
Sent: Friday, August 22, 2025 3:21:16 PM
To: Vincent Schmeltz <vschmeltz@cucn1.btlaw.com>
Subject: Message from WOLFSHOHL,JOSHU (8329695660)

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

CONFIDENTIALITY NOTICE: This email and any attachments are for the

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

<VoiceMessage.wav>

<Image.png>

Exhibit

5

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

Caution: This email originated from outside the Firm.

Trace, are you available to discuss in the morning?
Joshua W. Wolfshohl
Porter Hedges LLP
1000 Main St., 36th Floor
Houston, Texas 77002

> On Sep 30, 2025, at 2:00 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:
>
> Tomorrow, we will be filing our objection to your client's application and our affirmative claim for breach of fiduciary duty. We do not intend to file this document under seal. We are asking to strike paragraphs 29 through 32 of your fee application, as well, as filing under seal does not protect the privilege.
>
> **Trace Schmeltz**
> Partner
> Direct: (312) 214-4830 | Mobile: (312) 731-1980
> Chicago, IL
>
> ---
>
> **From:** Schmeltz, Trace
> **Sent:** Tuesday, September 9, 2025 4:20:55 PM
> **To:** Wolfshohl, Joshua W. <jwolfshohl@porterhedges.com>
> **Subject:** 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx
>
> **Trace Schmeltz**
> Partner
> Direct: (312) 214-4830 | Mobile: (312) 731-1980
> TSchmeltz@btlaw.com
> Bio LinkedIn vCard
>
> <image001.png>
>
> **Barnes & Thornburg LLP | 20+ Offices Nationwide | 800+ Lawyers**

One North Wacker Drive Suite 4400, Chicago, IL 60606

Atlanta | Boston | Chicago | Dallas | Delaware | Florida | Indiana | Los Angeles | Michigan
Minneapolis | Nashville | New Jersey | New York | North Carolina | Ohio | Philadelphia
Salt Lake City | San Diego | Washington, D.C.

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

Exhibit

6

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

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

****

ORAL AND VIDEOTAPED DEPOSITION OF

CHARLES TOPPING

OCTOBER 29, 2025

****

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

CHARLES TOPPING - October 29, 2025

APPEARANCES

FOR LEHOTSKY KELLER COHN, LLP:
MR. WILL THOMPSON
LEHOTSKY KELLER COHN LLP
7500 Rialto Boulevard
Building 1, Suite 250
Austin, Texas 78735
210-286-0806
will@lkcfirm.com

FOR THE SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS OF RHODIUM ENTERPRISES, INC.:
MR. VINCENT P. (TRACE) SCHMELTZ III
MS. HALEY CASPER (VIA ZOOM)
BARNES & THORNBURG LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
312-357-1313
tschmeltz@btlaw.com
haley.casper@btlaw.com

FOR IMPERIUM INVESTMENT HOLDINGS, LLC, AND CHASE BLACKMON, CAMERON BLACKMON, AND NATHAN NICHOLS:
MS. RHONDA MATES
STREUSAND LANDON OZBURN LEMMON
1801 South Mopac Expressway
Suite 320
Austin, Texas 78746
512-220-2689
mates@slollp.com
(Not Present)

APPEARANCES (Continued)

FOR THE AD HOC GROUP OF SAFE PARTIES:
MS. ELIZABETH D. SCOTT (VIA ZOOM)
MS. SARAH LINK SCHULTZ (VIA ZOOM)
MS. SAMANTHA BAHAM (VIA ZOOM)
AKIN GUMP STRAUSS HAUER & FELD, LLP
2300 North Field Street
Suite 1800
Dallas, Texas 75201-2481
214-969-2800
edscott@akingump.com
sschultz@akingump.com
sbaham@akingump.com

FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS:
MR. NATHANIEL ALLARD (VIA ZOOM)
MR. DANIEL H. KALTMAN (VIA ZOOM)
MCDERMOTT WILL & SCHULTE
One Vanderbilt Avenue
New York, New York 10017-3852
212-547-5366
nallard@mwe.com
dkaltman@mwe.com

FOR THE TRANSCEND GROUP, TRANSCEND PARTNERS LEGEND FUND LLC, VALLEY HIGH LP, GR FAIRBAIRN FAMILY TRUST, GRANT FAIRBAIRN REVOCABLE TRUST, NINA CLAIRE FAIRBAIRN REVOCABLE TRUST, NCF EAGLE TRUST, GRF TIGER TRUST, AND NC FAIRBAIRN FAMILY TRUST:

MS. ANNA OLIN RICHARDSON (VIA ZOOM)
IACUONE MCALLISTER POTTER PLLC
4925 Greenville Avenue
Suite 1112
Dallas, Texas 75206
214-432-1536
anna@imcplaw.com

APPEARANCES (Continued)

FOR THE DEBTORS:
MR. ALAIN JAQUET (VIA ZOOM)
MS. LINDSAY WEBER (VIA ZOOM)
1300 I Street NW
Suite 900
Washington, D.C. 20005
202-538-8000
alainjaquet@quinnemanuel.com
lindsayweber@quinnemanuel.com

ALSO PRESENT:
Morgan Soule (Via Zoom)
Scott Kintz (Via Zoom)
Nina Fairbairn (Via Zoom)
Tim Bishop, Videographer

INDEX

	PAGE
Appearances	2
Examination by Mr. Thompson 3:20 p.m. - 4:42 p.m. 5:11 p.m. - 5:21 p.m.	6
Changes and Corrections	62
Signature	63
Reporter's Certification	64

EXHIBIT INDEX

NO.	DESCRIPTION	PAGE
10	Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	9
11	Emergency Motion for Authority to Pay Fees to Lehotsky Keller & Cohn LLP	11
12	Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	15
13	Email Dated February 11, 2025	53

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

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

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

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

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

A. I don't.

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

A. That would be great.

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

VIDEOGRAPHER: 4:41, off.

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

VIDEOGRAPHER: Okay. The time is 5:10. On the record.

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

Mr. Schmeltz and I have just conferred off

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

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

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

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

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

MR. SCHMELTZ: All right. All right.

MR. THOMPSON: Okay. That resolves that.

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

(Exhibit No. 13 marked)

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

A. I do.

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

A. Yes.

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

CHARLES TOPPING - October 29, 2025

CHANGES AND CORRECTIONS

WITNESS NAME: CHARLES TOPPING

DATE OF DEPOSITION: OCTOBER 29, 2025

PAGE	LINE	CHANGE	REASON

I, CHARLES TOPPING, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
CHARLES TOPPING

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared CHARLES TOPPING, known to me (or proved to me under oath or through _____) (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF_____
COMMISSION EXPIRES:_____

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

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

****

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING
OCTOBER 29, 2025

****

I, SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CHARLES TOPPING, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

__x__ was requested by the deponent or a party before the completion of the deposition and returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

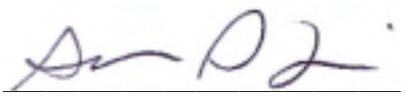
_____ was not requested by the deponent or a party before the completion of the deposition.

That the amount of time used by each party at the deposition is as follows:

MR. WILL THOMPSON.... 1 Hour, 32 Minutes
MR. VINCENT P. TRACE SCHMELTZ III.... 0 Hours, 0 Minutes
MS. ELIZABETH D. SCOTT.... 0 Hours, 0 Minutes
MR. NATHANIEL ALLARD.... 0 Hours, 0 Minutes
MS. ANNA OLIN RICHARDSON.... 0 Hours, 0 Minutes
MR. ALAIN JAQUET.... 0 Hours, 0 Minutes

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

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



SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 5/31/26
COURT REPORTERS CLEARINGHOUSE
Firm Registration No. 556
13809 Research Boulevard, Suite 500
Austin, Texas 78750
(512) 732-1805

Exhibit

7

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

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

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



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

Caution: This email originated from outside the Firm.



Trace,

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

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

Thanks,
Will

Will Thompson | Lehotsky Keller Cohn | 210.286.0806

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

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

Trace Schmeltz | Partner
Barnes & Thornburg LLP
One North Wacker Drive Suite 4400, Chicago, IL 60606
Direct: (312) 214-4830 | Mobile: (312) 731-1980

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

Exhibit

8

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

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

APPEARANCES:

For Lehotsky Keller Cohn LLP:
JOSHUA W. WOLFSHOHL
WILLIAM THOMPSON
Porter Hedges LLP
1000 Main, 36th Floor
Houston, TX 77002

JON COHN
WILL THOMPSON
TODD DISHER
JACOB RICHARDS
Lehotsky Keller Cohn
333 Clay Street, Suite 1950
Houston, TX 77002

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

CHARLES TOPPING
CHASE BLACKMON
KEVIN HAYS
Rhodium Encore, LLC
2617 Bissonnet St, Ste 234
Houston, TX 77005

PATRICIA B. TOMASCO
Quinn Emanuel Urquhart & Sullivan
700 Louisiana St., Suite 3900
Houston, TX 77002

For Ad Hoc Group of SAFE Parties:
SARAH A SCHULTZ
MITCHELL HURLEY
Akin Gump Strauss Hauer & Feld LLP
2300 N. Field St., Suite 1800
Dallas, TX 75201

For the Transcend Group:
CHASE JORDAN POTTER
ANNA RICHARDSON
Iacuone McAllister Potter PLLC
4925 Greenville Ave., Suite 1112
Dallas, TX 75206

NINA FAIRBAIRN
Transcend Partners
10 Orinda View Road
Orinda, CA 94563

For The Official Committee of Unsecured Creditors:
NATHANIEL ALLARD
McDermott Will & Schulte LLP
2801 N. Harwood St., Suite 2600
Dallas, TX 75201

For Imperium, the Blackmons, and Nathan Nichols:
RHONDA BEAR MATES
Streusand Landon Ozburn Lemmon LLP
1801 S. Mopac Expressway, Suite 320
Austin, TX 78746

For Liquid Mining Funds I, II, and III:
MATTHEW I. ROCHMAN
Lessne Hoffman PLLC
100 SE 3rd Ave., 10th Floor
Fort Lauderdale, FL 33065

Court Reporter:

Courtroom Deputy:

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

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

We can argue it later.
BY MR. SCHMELTZ:
Q Would you take a look for me please at Exhibit 245? Exhibit 245 is a March PowerPoint. I think you first used this in Mr. Blackmon's deposition. Do you recognize this document, sir?
A I do.
Q And if you take a look at Hearing Exhibit 245.007, there are value considerations there. Right?
A I'm with you.
Q And it indicates additional upside Riot derives from a settlement. Do you see that?
A I see that line.
Q "Value of contracts, removal of these contracts creates value to Riot at a lower discount rate, no execution risk." Do you see that?
A I do.
Q And you understood that one of the things that was at issue between Rhodium on the one hand, and Riot-Whinstone on the other hand were these low-cost power contracts. Right?
A Initially in the litigation?
Q Yes.
A Yeah, yeah, those contracts were at issue in the litigation.
Q And you would understand from this type of statement

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

A Yeah.

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

A I do.

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

A For risk damages? Yeah.

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

A Yes.

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

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

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

A Yes, sir.

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

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

March.

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

A Correct.

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

A Bad faith? No.

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

A I don't think it was bad faith.

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

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

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

A I'm not sure I follow that.

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

MR. DISHER: No objection.

THE COURT: 245 is admitted.

BY MR. SCHMELTZ:

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

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

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

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

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

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

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

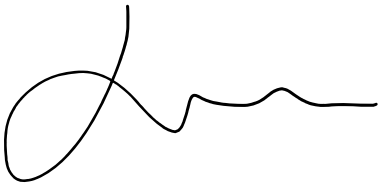
A Okay.

Q Do you recognize this document, sir?

A Yes. This appears to be a Board -- a presentation that was given to the Board in March, I believe.
Q And on the first page, 245.002, does that reflect the evolution of the risked damages that you've described?
A It does reflect some of the thinking, I think, at the time. I'm looking at 245.002.
Q And you see risked damages, with a low range of $50 million and a high range of $100 million. You see that?
A Yes.
Q Do you have an understanding as to whether that is reflective of how the company valued its litigation claims at that time?
A That is reflective of how the company valued damages at that time, it does say reduced estimates by $25 million.
THE COURT: Let me ask you a question. Where it says exit financing less certain due to -- and it goes on and says, "Galaxy less robust view on damage potential, longer timeline to recover from partner Fortress." Was that Galaxy's view? Is that what this is saying?
MR. TOPPING: Yes. Correct.
THE COURT: Okay.
BY MR. SCHMELTZ:
Q And Galaxy, was Galaxy brought in to potentially provide exit financing?
A Yes.

CERTIFICATION

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



Lindsay Peacock

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

Date: November 6, 2025

Exhibit

9

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:	PATRICIA B. TOMASCO RAZMIG IZAKELIAN Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
	VINCENT PAUL SCHMELTZ, III KENNETH KANSA Barnes Thornburg, LLP One North Wacker Drive, Suite 4400 Chicago, IL 60606
For Ad Hoc Group of SAFE Parties:	SARAH A. SCHULTZ Akin Gump Strauss Hauer & Feld LLP 2300 North Field Street, Suite 1800 Dallas, TX 75201
For Creditor:	BRENDA LYNN FUNK Munsch Hardt Kopf & Harr, P.C. 700 Milam Street, Suite 800 Houston, TX 77002
	CHASE JORDAN POTTER Iacuone McAllister Potter PLLC 4925 Greenville Avenue, Suite 1112 Dallas, TX 75206

For Lehotsky Keller Cohn LLP:	JOSHUA W. WOLFSHOHL Porter Hedges LLP 1000 Main, 36th Floor Houston, TX 77002
For United States Trustee:	HA MINH NGUYEN Office of the U.S. Trustee 515 Rusk Street, Suite 3516 Houston, TX 77002
For Creditor Nicholas Cerasuolo:	R.J. SHANNON Shannon Lee Beatty LLP 2100 Travis Street, Suite 1525 Houston, TX 77002
For Caleb VanZoeren:	ANNMARIE ANTONINETTE CHIARELLO Winstead PC 500 Winstead Building 2728 North Harwood Street Dallas, TX 75201
For Imperium Investment Holdings, LLC:	RHONDA BEAR MATES Streusand Landon Ozburn Lemmon LLP 1801 South Mopac Expressway Suite 320 Austin, TX 78746
Court Reporter:	AKEITA HOUSE
Case Manager:	
Transcribed by:	Veritext Legal Solutions 330 Old Country Road, Suite 300 Mineola, NY 11501 Tel: 800-727-6396

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

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL ROBINSON	100	105		
CHRIS WHEELER	115	116	127	132
KEVIN HAYES	134	180	217	227

EXHIBITS	RECEIVED
Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110, 111	21
Exhibit 9	24
Exhibit 10	24
Exhibit 11	25
Exhibit 108	26
Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, 100-107	107
Exhibit 216	149
Exhibit 244	150
Exhibit 259	220

Q We'll try it this way while we see if we can figure out the technical issues, Mr. Wheeler. Do you remember my asking you, "LKC is a Rhodium stakeholder, correct?"
A I remember you asking the question.
Q And do you remember that your answer began, "I think that you could view them as that, although I don't know that this is how that was intended"?
A It sounds consistent with what I said.
Q All right.
MR. SCHMELTZ: I would just note, Your Honor, my objection that it's improper impeachment. It's (indiscernible).
MR. THOMPSON: I'll get to it.
BY MR. THOMPSON:
Q And as Rhodium's corporate representative, you could not testify about the intent behind that last sentence in Section 2.3, right?
A That's correct.
Q But based on the language in the document, if Rhodium and Whinstone reach one allocation for the purposes of the PSA and then Rhodium and LKC reach a different allocation for purposes of the fee dispute, that wouldn't violate the PSA in Rhodium's understanding, correct?
A My personal view is it wouldn't violate the PSA, but I've also been advising on matters related to the tax

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

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

THE COURT: Okay.

BY MR. THOMPSON:

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

A Correct.

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

A I did not.

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

A That's correct.

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

A Yes.

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

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

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

A I do not.

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

yes.
Q Let's take a look at Exhibit 245 again. And 245.002 shows an ongoing business valuation and risked damages at the bottom of the page. Do you see that?
A Hang on a second. Okay. We're on...
Q 245.002, bottom of the page where it says 3/5/2025. Do you see that?
A Sure, yeah.
Q And this is after the mediation that took place, Riot Whinstone on February 19th, correct?
A Correct. It's a few weeks after that. So this is on March 5th. So it's a few weeks after that mediation.
Q And at this point in time you note on 245.002 some exit financing less certain -- due to certain things. Do you see that?
A Yes.
Q How did that impact if at all your views of damages?
A Yeah. So between February 16th and February -- and March 5th, we -- it became clear to us that a few of the financing -- potential financing partners that we were hoping that would be able to provide exit financing, one of which we had a lot of comfort with, they were not going to get there. They -- much to all of our efforts, and that would include LKC and Stris as well, trying to get them comfortable within the value of the litigation in addition

to the business. They couldn't get there.

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

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

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

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

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

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

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

THE COURT: Go ahead, you can answer.

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

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

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

THE WITNESS: Yes, they did.

BY MR. SCHMELTZ:

Q And did you report that information to the board?

A Yes.
Q And did you take that information into account in risking the damages in this presentation to the board?
A I used that to increase the discount rate, but I did not change the $125 million.
Q Do you see where it says impact on valuation on 245.002?
A Correct, yes.
Q Do you see the second bullet?
A Yes.
Q Can you please read that to the Court?
A "Damages. View from financing partners suggests risked value less than $100 million."
Q And the next bullet?
A "Higher risk of exit financing, increased discount rate." And then is say -- and this has to do with the ongoing business. If you toggle the interest rate -- the discount rate five percent, that has a $15 million impact on discounted cashflow. That applies to the business, not the damages.
Q And at the time you prepared this presentation and presented it to the board, did you have any idea that it might come up in a later conversation around the success fee with LKC?
A No.

Q And is that risked damages number of $75 million what you discussed with Chris Wheeler?
A Yes.
Q And was that based on this presentation to the board?
A Yeah, that was based on this presentation.
Q Did anyone at the board object to or oppose the idea of valuing damages at $75 million at or about this time?
A My recollection, you know, the board always has healthy opinions on the value of the business. And I think at this point we were -- the board was -- and the management team were agreeing on these ranges. You know, we had a lot of robust discussions on the 12th and the 16th.
Q The total asset value, business plus risk damages, has a low of $108 million, right?
A Mm-hmm.
Q And a high of just about $249 million, correct?
A Correct.
Q Just as a math guy, can you give me a midpoint on that?
A About $180 million. Yeah. 180, $185 million, something like that.
Q About where you came out in the transaction?
A Correct. We of course didn't negotiate that transaction until I think the end of March.
Q So that $75 million is the midpoint of risked damages, right?

A Correct.
Q And 180, 185 is the midpoint of the total asset value, right?
A Correct.
MR. SCHMELTZ: I don't have any further questions for this witness. Thank you, Your Honor.
THE COURT: Thank you. So it's 4:00. Why don't we take a ten-minute break. It's 4:08. Why don't we come back at 4:20. And then I'll talk to my staff to see how late they can stay tonight.
MR. THOMPSON: Thank you.
(Recess)
THE COURT: All right. We're back -- okay, we're back on the record in Case Number 24-90448. And you are still under oath. Go ahead.
MR. DISHER: May I proceed, Your Honor?

CROSS-EXAMINATION OF KEVIN HAYES

BY MR. DISHER:
Q Good afternoon, Mr. Hayes. How are you?
A Good to see you again.
Q You too. So I want to start just by clearing up one thing. You were asked questions about Special Committee Exhibit 244. If you could go ahead and turn to that in your white binder, please.
A Yes.

estimates by another $25 million, the high range of your risk damages estimate is still $100 million?
A Correct.
Q And that, of course, is the amount that we are using in our fee application pending in front of the Court, correct?
A Correct.
Q Okay. Just to be clear about one last thing in the March meeting, on Slide 2 there's the third bullet that says, "exit financing less certain due to" -- do you see that?
A Yes.
Q Galaxy ultimately refused to provide exit financing? Is that right?
A Yeah. I don't know if we can share the name here, but yes.
Q Okay. And Invesco here, it says cost prohibitive?
A Correct.
Q Okay. Now, I want to shift gears slightly to the tax allocation. You've been involved in discussions with Whinstone related to the allocation of taxes for -- excuse me -- the allocation of the sales price for tax purposes, right?
A I've been involved with Whinstone. I would characterize that as the purchase price allocation, yes. Those -- I've been involved in those discussions

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

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

A Correct.

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

A Correct.

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

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

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

A Right.

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

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

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

with me?
A Yeah, I'm with you.
Q Okay. So the first email in LKC Exhibit 17 is an email from you to Mr. Topping and some other folks at Rhodium?
A Yes.
Q And if we skip down to the next email, it looks like you were forwarded an email from Mr. Topping, right?
A Yes.
Q Mr. Topping was forwarding you an email from Mr. Lockhart?
A Yes.
Q Mr. Lockhart, of course, is one of the lawyers for Whinstone?
A Yes.
Q And here he says, "Patty: Below, please find Whinstone's objections to Rhodium's purchase price allocation." And there's a bullet. That's $33.42 million in tangible assets, right?
A Mm hmm.
Q So that was Rhodium's initial proposed allocation to tangible assets was $33.42 million?
A Yes.
Q And if we look at the next page, there's a sub-bullet that says, "Based on our third-party valuation, the amount is approximately $7.2 million." That's Whinstone's

objection to the $33.42 million in tangible assets, right?
A Correct.
Q So Whinstone is saying, we think the tangible assets should only be allocated $7.2 million, right?
A For the fixed assets, correct.
Q Then, if we look at the next bullet point, $70.46 million in intangible assets. Do you see that?
A I do.
Q Whinstone, in responding to that proposed allocation, says it assigns zero value to any tangible asset, right?
A Yeah. I mean, we talked about this email at the deposition. I think this email was -- I think he was confused.
Q But my question was simply yes or no. The lawyer for Whinstone is saying, in response to Rhodium's initial allocation, that Whinstone assigns zero value to any intangible asset, right?
A Yeah, but that doesn't mean he doesn't put value on the energy contracts.
Q What he's saying here is zero value to any intangible assets. That's all he's saying. I'm just -- it's a yes or no question.
A That's what he's saying, but --
Q Right.
A -- this is a confusing email.

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

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

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

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

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

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

CERTIFICATION

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



Sonya Ledanski Hyde

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

Date: December 10, 2025

Exhibit

10

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

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

VIDEO-RECORDED DEPOSITION OF JONATHAN COHN

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

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

APPEARANCES

On behalf of Special Committee of the Board of Directors of Rhodium Enterprises:

VINCENT P. (TRACE) SCHMELTZ III, ESQUIRE
KEVIN D. WARREN, ESQUIRE
HALEY HINTON CASPER, ESQUIRE (Via Zoom)
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
tschmeltz@btlaw.com
kevin.warren@btlaw.com
haley.hinton@btlaw.com

On behalf of the Witness:

TODD DISHER, ESQUIRE
WILL THOMPSON, ESQUIRE (Via Zoom)
Lehotsky Keller Cohn LLP
919 Congress Avenue
Suite 1100
Austin, Texas 78701
todd@lkcfirm.com
will@lkcfirm.com

On behalf of Lehotsky Keller Cohn LLP:

JOSHUA WOLFSHOHL, ESQUIRE (Via Zoom)
Porter Hedges LLP
1000 Main Street
36th Floor
Houston, Texas 77002
jwolfshohl@porterhedges.com

APPEARANCES

On behalf of the Ad Hoc Group of SAFE Parties:

ELIZABETH SCOTT, ESQUIRE (Via Zoom)
SARAH LINK SCHULTZ, ESQUIRE (Via Zoom)
KAILA ZAHARIS, ESQUIRE (Via Zoom)
Akin Gump Strauss Hauer & Feld LLP
2300 North Field Street
Suite 1800
Dallas, Texas 75201
edscott@akingump.com
sschultz@akingump.com
kzaharis@akingump.com

On behalf of the Rhodium Debtors:

LINDSAY M. WEBER, ESQUIRE (Via Zoom)
Quinn Emanuel Urquhart & Sullivan LLP
295 5th Avenue
Ninth Floor
New York, New York 10016
lindsayweber@quinnemanuel.com
- and -
ALAIN JAQUET, ESQUIRE (Via Zoom)
Quinn Emanuel Urquhart & Sullivan LLP
1300 I Street, Northwest
Suite 900
Washington, D.C. 20005
alainjaquet@quinnemanuel.com

ALSO PRESENT:

Orson Braithwaite, Video Technician
Andy Bos, Concierge Tech (Via Zoom)
Morgan Soule (Via Zoom)
Scott Kintz (Via Zoom)
Charles Topping (Via Zoom)

CONTENTS

EXAMINATION BY: PAGE
Mr. Schmeltz 7
Mr. Disher 410
Ms. Weber 413

EXHIBITS

NUMBER DESCRIPTION PAGE
Cohn Exhibit 1 E-mail correspondence 14
SpecialCommittee_LKC_00004845 - 853
Cohn Exhibit 2 Letter dated 5/16/2023 from Jonathan Cohn to Cameron Blackmon 75
Cohn Exhibit 3 Letter dated 3/4/2025 from Jonathan Cohn to Cameron Blackmon 82
Cohn Exhibit 4 E-mail correspondence 99
SpecialCommittee_LKC_00004813 - 816
Cohn Exhibit 5 E-mail correspondence 103
SpecialCommittee_LKC_00004838 - 844
Cohn Exhibit 6 E-mail correspondence 130
SpecialCommittee_LKC_00004819 - 821
Cohn Exhibit 7 Complaint 137
Cohn Exhibit 8 E-mail correspondence 149
SpecialCommittee_LKC_00000037 - 038
Cohn Exhibit 9 Redlined Complaint 146
Cohn Exhibit 10 E-mail correspondence 191
SpecialCommittee_LKC_00003477 - 505
Cohn Exhibit 11 E-mail correspondence dated 2/11/2025 from Will Thompson to Charles Topping 211

CONTENTS (Continued)

EXHIBITS

NUMBER DESCRIPTION PAGE
Cohn Exhibit 12 E-mail correspondence 241
SpecialCommittee_LKC_00003534 - 535
Cohn Exhibit 13 E-mail correspondence 277
SpecialCommittee_LKC_00003460 - 462
Cohn Exhibit 14 E-mail correspondence dated 11/20/2024 290
Cohn Exhibit 15 E-mail correspondence 292
SpecialCommittee_LKC_00002426 - 427
Cohn Exhibit 16 PowerPoint Presentation 303
SpecialCommittee_LKC_00002428 - 434
Cohn Exhibit 17 E-mail correspondence 344
SpecialCommittee_LKC_00000073 - 074
Cohn Exhibit 18 E-mail correspondence 361
SpecialCommittee_LKC_00001445 - 451
Cohn Exhibit 19 E-mail correspondence 375
SpecialCommittee_LKC_00000923 - 926
Cohn Exhibit 20 E-mail correspondence 382
SpecialCommittee_LKC_00002143
Cohn Exhibit 21 E-mail correspondence 387
SpecialCommittee_LKC_00002150 - 154
Cohn Exhibit 22 E-mail correspondence 394
SpecialCommittee_LKC_00000759 - 761
Cohn Exhibit 23 E-mail correspondence 398
SpecialCommittee_LKC_00001272 - 274

(*Exhibits attached to transcript.)

Page 406

BY MR. SCHMELTZ
Q It's fair to say that at every step along the way, when given a choice between fighting or being collaborative, you've chose fighting; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes the record. Mischaracterizes prior testimony.
THE WITNESS: And also really incorrect. So, no, it's not correct. That would not be fair to say.
BY MR. SCHMELTZ
Q In point of fact, you've picked a fight with everyone who's disagreed with you; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes.
THE WITNESS: Yeah, definitely not. I would say that pretty much everyone I've dealt with in this case has complained to me about your behavior, including people who are on this call, people who are not on this call, and you've

Page 407

treated many people very poorly.
But the answer to your question is no. I think what you're saying is incorrect. And this is probably just another attempt by you to try to get people aggravated at you, and I don't know why you roll that way, Trace. I really wish you didn't. I know you've had a tough year, but that's no reason to be the way you are to other people who are trying their best to be professional.
BY MR. SCHMELTZ
Q You don't consider telling someone that they're re-creating history picking a fight with them; is that correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't. I do think that you have tried very hard to pick fights, both during this deposition and on very -- many other phone calls. I disagree. We all disagree with the tactics you've taken. And this is, of course, not the first case in which you have

Page 408

skirted the lines on appropriate behavior. I think everyone knows how you were held in contempt of court before, and I don't know if you're trying to do it again, but I do disagree with your statement.
I think what your statement is, it's unfair, it's unprofessional, and I would just politely suggest that whatever is going on in your life, you leave it aside when it comes to a deposition.
BY MR. SCHMELTZ
Q I think that sort of characterizes exactly the way your behavior has been this entire case. When confronted with disagreement, you go on an ad hominem attack; isn't that right, sir, as you just have now?
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q That's your -- that's your MO, isn't it, sir?
MR. DISHER: Objection. Argumentative. Misstates testimony.

Page 409

THE WITNESS: Yeah.
MR. DISHER: Foundation.
BY MR. SCHMELTZ
Q You wouldn't describe what you just did as an ad hominem attack; is that --
A No, not at all.
MR. SCHMELTZ: Okay.
THE WITNESS: I would say --
MR. SCHMELTZ: I have no further --
THE WITNESS: -- Trace --
MR. SCHMELTZ: -- questions.
THE WITNESS: I'm not done answering.
MR. SCHMELTZ: You are.
THE WITNESS: No, I'm not.
MR. SCHMELTZ: I have no further questions.
THE WITNESS: No, so I --
MR. SCHMELTZ: I said, would you describe it as an ad hominem attack, and you said no. We're done.
THE WITNESS: So let me explain.
MR. SCHMELTZ: No, no need to explain.

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

October 31, 2025
To: Todd Disher
Case Name: In Re Rhodium Encore LLC, Et. Al., v.
Veritext Reference Number: 7680676
Witness: Jonathan Cohn Deposition Date: 10/28/2025
Dear Sir/Madam:
Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Jonathan Cohn
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Jonathan Cohn

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 7680676

PAGE/LINE(S) / CHANGE /REASON

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Date Jonathan Cohn
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20_____ .

_____
Notary Public

_____
Commission Expiration Date

Exhibit

11

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

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

****

CONFIDENTIAL

ORAL AND ZOOM DEPOSITION OF

CHARLES TOPPING

JUNE 2, 2025

****

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

---oOo---

APPEARANCES ALL REMOTELY VIA ZOOM
For the AD HOC GROUP of SAFE PARTIES:
KATHERINE PORTER
KAREN YANG
MITCHELL HURLEY
SARAH SCHULTZ
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
(212) 872-7467
Kporter@akingump.com
SSchultz@AkinGump.com
For Debtors:
ELIZABETH BRANNEN
JOHN STOKES
BRIDGET ASAY
Stris & Maher LLP
17785 Center Court Drive N., Suite 600
Cerritos, CA 90703
(213) 995-6809
Ebrannen@stris.com

For Lehotsky Keller Cohn:

JOSHUA WOLFSHOHL
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, TX 77002
(713) 226-6695
Jwolfshohl@porterhedges.com
For the Special Committee:
PAIGE LOHSE
Barnes & Thornburg LLP
1 N Wacker Drive
Chicago, IL 60606-2833
(312) 214-8301
Paige.Lohse@btlaw.com

For Imperium:
RHONDA MATES
Streusand Landon Ozburn Lemmon LLP
1801 S Mopac Expressway, Suite 320
Austin, TX 78746
(512) 220-2689
For DLT Data Center 1 LLC:
MICHAEL FOX
THOMAS FLEMING
Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
(212) 451-2277
Mfox@olshanlaw.com
Also present:
Molly Novin
Mitch Hurley

INDEX

PAGE

Appearances.....2

WITNESS:

CHARLES TOPPING

Examination by MS. PORTER.....6

Reporter's Certificate.....109

E X H I B I T S

PAGE

SAFE AD HOC GROUP'S
Exhibit 1 Declaration of Mr. Topping dated.....13
May 14, 2025

Exhibit 2 Transcript excerpt of March 19, 2025.....39
hearing
Exhibit 3 Redline of Letters - SAFE AHG Exhibit....61
Exhibit 4 August 2024 engagement letter.....65
Exhibit 5 September 2024 engagement letter.....65
Exhibit 6 July invoice.....65
Exhibit 7 LKC's reply brief.....89

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

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

A. I think there might be overlap.

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

MS. BRANNEN: Objection to form.

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

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

MS. BRANNEN: Objection to form.

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

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

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

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a part before the completion of the deposition and that the signature is to be before any notary public and returned within 30 days from the date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefore:

__X__ was not requested by the deponent or a part before the completion of the deposition.

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

Certified to by me this 3rd day of June, 2025.

_____

Nicole A. Hatler, Texas CSR 11275
Expiration Date: 11/30/22
NHatler@Ymail.com

Exhibit 4
to B&T's Witness and Exhibit List for 6/4/26 Hearing

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.

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 4

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. 4

B. The Debtors entered into a settlement agreement with Whinstone that included a sale and purchase of assets. 5

C. The Debtors attempted to negotiate in good faith the amount of LKC's success fee. 6

D. LKC filed its Fee Application. 7

E. The Special Committee, on the Debtors' behalf, raised reasonable objections to LKC's Fee Application. 8

F. After certain payments to LKC, additional settlement negotiations, and a hearing, the Court approved LKC's Fee Application. 9

G. LKC moved for sanctions and filed claims against the Special Committee. 10

III. ARGUMENT 10

A. The Court cannot sanction the Special Committee under 28 U.S.C. § 1927 because the Special Committee is a represented party. 10

B. LKC cannot meet the high bar for inherent-authority sanctions in the face of the Special Committee's good-faith conduct. 11

i. The Court exercises its inherent power to sanction litigants with restraint and discretion. 12

ii. The Special Committee's objections to LKC's Fee Application were reasonable and made pursuant to the Debtors' statutory and contractual rights. 14

a. Objections to final fee applications are authorized under 11 U.S.C. § 330(a)(2) and routine. 15

b. LKC's revised engagement letter expressly contemplated judicial resolution of the amount of LKC's success fee. 16

c. The Special Committee reasonably argued that LKC's success fee calculation was overstated because the Whinstone settlement was primarily an asset sale. 17

d. The Special Committee reasonably argued that LKC's Fee Application included unrecoverable fees for work performed by Porter Hedges. 20

e. The Special Committee reasonably argued that LKC's Fee Application was premature. 21

iii. The Special Committee asserted a breach of fiduciary duty claim against LKC on the Debtors' behalf in good faith. 22

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. 22

b. The breach of fiduciary duty claim was colorable. 23

c. Federal and bankruptcy laws required the Special Committee to file the breach of fiduciary claim publicly. 25

iv. The Special Committee's litigation conduct was routine and reasonable. 26

C. *ASARCO* bars LKC's attempt to collect attorneys' fees and expenses for defending its Fee Application under 11 U.S.C. § 328. 29

IV. CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

CASES

Anglo-Dutch Petroleum Int'l, Inc. v. Greenberg Peden, P.C.,
352 S.W.3d 445 (Tex. 2011).....15

Baker Botts L.L.P. v. ASARCO LLC,
576 U.S. 121 (2015).....14, 28, 29, 30, 31

Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner),
783 F.3d 266 (5th Cir. 2015).....14

Chambers v. NASCO, Inc.,
501 U.S. 32 (1991).....11, 12, 28

Day v. Amoco Chemicals Corp.,
595 F. Supp. 1120 (S.D. Tex. 1984).....28

Dean v. Riser,
240 F.3d 505 (5th Cir. 2001).....23

Elliott v. Tilton,
64 F.3d 213 (5th Cir. 1995).....12

First United Pentecostal Church of Beaumont v. Parker,
514 S.W.3d 214 (Tex. 2017).....3, 22, 26

Goodyear Tire & Rubber Co. v. Haeger,
581 U.S. 101 (2017).....10

Hardt v. Reliance Std. Life Ins. Co.,
560 U.S. 242 (2010).....29

In re ASARCO, L.L.C.,
702 F.3d 250 (5th Cir. 2012).....16, 30

In re Boomerang Tube, Inc.,
548 B.R. 69 (Bankr. D. Del. 2016).....29, 30

In re Cano,
410 B.R. 506 (Bankr. S.D. Tex. 2009).....28

In re Cleveland Imaging & Surgical Hosp.,
L.L.C., 26 F.4th 285 (5th Cir. 2022).....13

In re Danner,
2012 WL 3205242 (B.A.P. 9th Cir. July 31, 2012) 29

In re Digerati Technologies, Inc.,
537 B.R. 317 (Bankr. S.D. Tex. 2015) 14

In re Feldman,
597 B.R. 448 (Bankr. E.D.N.Y. 2019) 10

In re Gen. Homes Corp.,
181 B.R. 898 (Bankr. S.D. Tex. 1995) 24

In re Haney,
2022 WL 412809 (Bankr. N.D. Ala. Feb. 10, 2022) 13

In re High Sulfur Content Gasoline Prods. Liab. Litig.,
517 F.3d 220 (5th Cir. 2008) 15

In re Huepenbecker,
546 B.R. 381 (Bankr. W.D. Mich. 2015) 28

In re Intelogic Trace, Inc.,
200 F.3d 382 (5th Cir. 2000) 22

In re King,
546 B.R. 682 (Bankr. S.D. Tex. 2016) 26

In re Moore,
739 F.3d 724 (5th Cir. 2014) 11, 12

In re N. Bay Gen. Hosp., Inc.,
404 B.R. 429 (Bankr. S.D. Tex. 2009) 25

In re Parsley,
384 B.R. 138 (Bankr. S.D. Tex. 2008) 12, 24

In re Prof'l Fee Matters Concerning Jackson Walker Law Firm,
663 B.R. 335 (Bankr. S.D. Tex. 2024) 11

In re Raocore Tech., LLC,
2025 WL 828880 (Bankr. D.D.C. Feb. 20, 2025) 29

In re Rodriguez,
652 B.R. 750 (Bankr. S.D. Tex. 2023) 12, 14, 24

In re Ruth,
473 B.R. 152 (Bankr. S.D. Tex. 2012) 26

In re SkyPort Global Commc'ns, Inc.,
528 B.R. 297 (S.D. Tex. 2015) 11

In re Vaughn,
660 B.R. 827 (Bankr. S.D. Ohio 2024).....28

In re Yorkshire, LLC,
540 F.3d 328 (5th Cir. 2008) 13

Matta v. May,
118 F.3d 410 (5th Cir. 1997) 10

McCollum v. Jacobs Eng'g Grp., Inc.,
992 F. Supp. 2d 680 (S.D. Miss. 2014).....23

Michael v. Boutwell,
138 F. Supp. 3d 761 (N.D. Miss. 2015).....12

Miller v. Dunn,
774 F. Supp. 3d 806 (N.D. Tex. 2024), *aff'd sub nom.*, 2025 WL 3231718 (5th Cir. Nov. 19, 2025) 11, 12, 14, 21

Pressey v. Patterson,
898 F.2d 1018 (5th Cir. 1990) 12

Smith Int'l, Inc. v. Tex. Commerce Bank,
844 F.2d 1193 (5th Cir. 1988) 10

United States v. Sutton,
786 F.2d 1305 (5th Cir. 1986) 12

Walters v. Tenant Background Search,
849 F. App'x 476 (5th Cir. Mar. 12, 2021).....26

STATUTES

11 U.S.C. § 328(a) 30

11 U.S.C. § 107(a) 24

11 U.S.C. § 327(a) 14

11 U.S.C. § 330(a)(1)(B) 20

11 U.S.C. § 330(a)(2).....13, 14, 15

28 U.S.C. § 1927.....10

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 Intelogic 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.

/s/ Travis A. McRoberts

Thomas E. O'Brien (TX 24046543)
Travis A. McRoberts (TX 24088040)
Kevin Chiu (TX 24019723)
2001 Ross Avenue, Suite 900
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
Email: tom.obrien@bakerbotts.com
travis.mcroberts@bakerbotts.com
kevin.chiu@bakerbotts.com

-and-

Matthew G. Sheridan (TX 24088404)
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: (713) 229-1568
Email: matthew.sheridan@bakerbotts.com

Counsel for David L. Eaton and Spencer Wells

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

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

APPEARANCES:

For Lehotsky Keller Cohn LLP:
JOSHUA W. WOLFSHOHL
WILLIAM THOMPSON
Porter Hedges LLP
1000 Main, 36th Floor
Houston, TX 77002

JON COHN
WILL THOMPSON
TODD DISHER
JACOB RICHARDS
Lehotsky Keller Cohn
333 Clay Street, Suite 1950
Houston, TX 77002

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

CHARLES TOPPING
CHASE BLACKMON
KEVIN HAYS
Rhodium Encore, LLC
2617 Bissonnet St, Ste 234
Houston, TX 77005

PATRICIA B. TOMASCO
Quinn Emanuel Urquhart & Sullivan
700 Louisiana St., Suite 3900
Houston, TX 77002

For Ad Hoc Group of SAFE Parties:
SARAH A SCHULTZ
MITCHELL HURLEY
Akin Gump Strauss Hauer & Feld LLP
2300 N. Field St., Suite 1800
Dallas, TX 75201

For the Transcend Group:
CHASE JORDAN POTTER
ANNA RICHARDSON
Iacuone McAllister Potter PLLC
4925 Greenville Ave., Suite 1112
Dallas, TX 75206

NINA FAIRBAIRN
Transcend Partners
10 Orinda View Road
Orinda, CA 94563

For The Official Committee of Unsecured Creditors:
NATHANIEL ALLARD
McDermott Will & Schulte LLP
2801 N. Harwood St., Suite 2600
Dallas, TX 75201

For Imperium, the Blackmons, and Nathan Nichols:
RHONDA BEAR MATES
Streusand Landon Ozburn Lemmon LLP
1801 S. Mopac Expressway, Suite 320
Austin, TX 78746

For Liquid Mining Funds I, II, and III:
MATTHEW I. ROCHMAN
Lessne Hoffman PLLC
100 SE 3rd Ave., 10th Floor
Fort Lauderdale, FL 33065

Court Reporter:

Courtroom Deputy:

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

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

HOUSTON, TEXAS; MONDAY, NOVEMBER 3, 2025

(Call to Order)

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

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

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

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

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

the phone.

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

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

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

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

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

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

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

THE COURT: Except for the ABI Project.

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

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

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

MR. SCHMELTZ: Okay.

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

THE COURT: Okay. Is that fair?

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

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

MR. THOMPSON: I believe that's correct.

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

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

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

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

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

MS. MATES: Your Honor --

THE COURT: Yes?

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

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

Okay. How about 925?

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

THE COURT: And 954?

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

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

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

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

All right. Mr. Wolfshohl?

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

THE COURT: Right.

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

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

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

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

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

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

THE COURT: Do you want to (indiscernible)

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

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

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

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

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

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

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

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

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

THE COURT: I only have two eyes.

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

THE COURT: Mr. Lockhart is listening.

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

contrary to maybe some people's expectations.

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

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

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

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

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

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

Okay. Go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right. I just -- yeah.

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

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

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

THE COURT: Right.

MR. THOMPSON: But that is my understanding, that

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

THE COURT: Right, right.

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

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

(indiscernible)

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

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

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

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

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

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

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

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

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

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

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

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

You'll hear from Chris Wheeler on sort of another

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

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

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

THE COURT: And what contracts are you talking about?

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

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

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

Appreciate your time, Your Honor.

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

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

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

or from Rhodium who are going to be testifying.

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

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

UNIDENTIFIED SPEAKER: No, that's okay.

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

THE COURT: Any objection to having two client reps?

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

THE COURT: Okay.

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

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

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

THE COURT: Okay. So --

MR. SCHMELTZ: They probably should go as well.

THE COURT: Yeah.

MR. SCHMELTZ: I'm sorry. I'm a little (indiscernible) Sorry, guys.

Oh, yeah, Michael Rosten and Chris Wheeler are both --

THE COURT: They just left.

MR. SCHMELTZ: Yes.

THE COURT: Okay.

All right. Come up, Mr. Cohn.

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

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

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

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

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

MR. DISHER: Have you been sworn in?

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

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

MR. COHN: I do, Your Honor.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. DISHER:

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

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

Q Mr. Cohn, what is your current profession?

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

Q How long have you been a lawyer?

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

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

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

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

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

Q Why did you join LKC?

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

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

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

A That would have been May of 2023.

Q Who made the introduction?

A Peter Stris, of Stris & Maher.

Q How do you know, or how did you know Peter Stris before that point?
A Through college. He and I both did college debate.
Q When Mr. Stris approached you, what was the status of the relationship between Whinstone and Rhodium?
A At that point, there was not yet litigation. It seemed like things were getting heated. If I recall, there was an exchange of letters between Peter Stris and Foley, Rob Slovak, but there wasn't yet litigation.
Q Okay. Why did Mr. Stris contact you in particular?
A In addition to the fact that we had been friends and he had followed my career, he mentioned two things. One, there was an interest in the client to bolster the litigation team going up against a large litigation powerhouse at Foley. Also, the client wanted to have a Texas presence, and one of our main offices is in Austin, not far from the Rockdale facility.
Q Once Mr. Stris introduced you to Rhodium, what happened next?
A I was introduced to Mr. Topping and Mr. Chase Blackmon.
Q Did you discuss terms of a potential engagement?
A We did.
Q What did your original engagement letter say about the fees that would be paid to LKC for its work in this matter?
A Very similar to the current engagement letter, with, as

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

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

A Yes. That's my understanding.

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

A I'm with you.

Q What is this document?

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

THE COURT: Do you have a binder?

MR. DISHER: May I approach?

THE COURT: Yes.

MR. DISHER: Would you like a copy, too (indiscernible)

THE COURT: (indiscernible)

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

LKC Exhibit 2 into evidence.

THE COURT: Any objection?

MR. SCHMELTZ: None, Your Honor.

THE COURT: Okay. Exhibit 2 is admitted.

BY MR. DISHER:

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

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

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

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

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

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

point. It was profitable to do so in certain circumstances. Above a certain threshold, Whinstone was obligated to give those credits, the profits of those sales, back to Rhodium.

Q Did Whinstone do that?

A They did not.

Q Right. And now lastly, on Exhibit 2, I want to talk about the reasonable expenses for various professionals. I'll direct your attention to the first full paragraph on page 2. Do you have an understanding about why this provision is included in exhibit number two?

A So in particular, the provision about the legal expenses and legal advice retention, that language?

Q Yes.

A That actually is one of the changes, compared to the earlier versions of the engagement letter. We negotiated that with Debtors, and that related to the fact that we had to retain Porter Hedges to help us with legal advice matters. As the Court is aware, there were some issues with our prior engagement letter. We retained Porter Hedges to help us through that process.

Q Okay, great. Thank you. We can leave Exhibit 2 for now. I want to talk a bit more broadly about LKC's work for Rhodium. We can be brief, but I just want to kind of hit the high points. Let's start before the bankruptcy filing. What sort of litigation did LKC do for Rhodium before the

bankruptcy began?

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

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

A It would have died.

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

A They did.

Q And what caused that to happen?

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

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

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

Q Did Stris and LKC have to get emergency relief against

Whinstone on behalf of Rhodium yet again?
A We did. The injunction we got from the emergency arbitrator had some temporal limit, so we had to go to the -- I'll call it a permanent arbitrator to get relief one more time.
Q All right. Then bankruptcy occurs, and I'm sure the Judge is familiar with this, it, but just brief overview of what work LKC has done on behalf of Rhodium in this bankruptcy proceeding.
A We prepared for, and then conducted, along with Stris & Maher, the trial on the motion to assume.
Q Great. And we prevailed on that motion?
A We did.
Q So we've talked about defensive measures. What about offensive measures? Has LKC -- or had LKC taken steps to go on offense for Rhodium?
A We did, almost from the beginning. As soon as Whinstone started shutting down our power, we began thinking about potential affirmative claims.
Q Great. Let's talk about those claims. If we go to Exhibit 12 in your binder, are you familiar with the chart that's contained in Exhibit 12?
A I am.
Q What is it?
A This is a chart that the entire litigation team

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

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

THE COURT: Any objection?

MR. SCHMELTZ: None.

THE COURT: It's admitted.

BY MR. DISHER:

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

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

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

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

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

A Yes, sir.

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

So under the column of issue, do you see that?
A Yes.
Q There's various different entries. Are these the different claims that Rhodium was considering pursuing against Whinstone?
A Yes.
Q Okay. Let's look at the first one, shutdowns. What is that?
A That relates to the two aforementioned shutdowns. When Whinstone shut down our power, we were unable to mine Bitcoin. As a result, we had damages. And we used Dr. Milkovich, the expert that we had used in the motion to assume trial, to work with us in trying to calculate how much Bitcoin we lost because of the shutdowns. That added up to $8 million, roughly.
Q Great. So just to be clear, the base amount here is the total number of damages as projected by Stris, LKC, and Dr. Milkovich?
A That's correct.
Q All right. Let's look at the next entry, water. What is that entry for?
A We had a water agreement with Whinstone in which they're supposed to provide us with water, which you needed to cool the facilities to more efficiently mine Bitcoin. The water we got was filthy. At one point, a dead fish

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

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

A That is correct.

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

A I do.

Q What are those entries?

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

Rhodium as well. That's the 4CP.

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

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

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

A They did.

Q How so?

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

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

A That is correct.

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

damages?

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

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

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

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

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

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

A I do.

Q What was that potential claim?
A In addition to the Rockdale facility, Debtors operated a facility in Temple. They wanted to sell it. They were close to a deal, as I understand it. There was a tentative deal to sell it for over $100 million. That deal fell apart when Whinstone filed a fraud claim against, among other entities, Rhodium Renewables, which owned and ran the Temple facilities.

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

Q And if we look at the base success fee for the block of Temple sale, we see 5%. Is that right?
A Yes.
Q Did the Stris and LKC teams jointly collaborate to come up with these base success figures?
A They did. We did.
Q Okay. So this 5% given to the block of Temple sale, does that mean that the block of Temple sale was somehow

like a frivolous claim?

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

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

A I do.

Q What are those three issues about?

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

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

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

Q Great.

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

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

A Yes.

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

A Yes.

Q Who is Andrew?

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

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

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

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

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

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

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

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

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

claim against Riot.
Q Why is it listed as $0 there?
A Because in our view, it probably wouldn't increase the overall damages we recovered. It would just give us an additional road to recover, to collect those damages.
Q All right. Great. Thank you. Thank you for walking through that. I failed to ask you one question about the energy curtailments. Where did you get the base amounts that went into those damage estimations?
A That was provided to us by our ERCOT expert, Mr. Charles Griffey, who was working with Liz Brannen from Stris & Maher.
Q Okay. So I just want to sum up who provided input to this chart at Exhibit 12? I heard the Stris litigation team. Correct?
A Yes, sir.
Q And certainly the LKC litigation team.
A Yes.
Q The folks from Province.
A Yes.
Q And the -- oh, and two retained experts, right, Mr. Griffey and Dr. Milkovich?
A That is correct.
Q Okay. Now under the expected value column, we see a total of $158 million.

A Yes, I see that.
Q To get to that, the team who created this chart first had to assign base success percentages. Do you see that?
A I do.
Q Okay. So how does the base amount relate to the base success percentage? And what are you trying to calculate by combining those?
A So the base amount is the amount that we expected to get if we won. The base success percentage was our collective best judgment on the odds of winning each of those claims.
Q Who calculated the base success percentages that we see on Exhibit 12?
A No one person. It was a series of conversations that the Stris & Maher LKC joint litigation team had. We just tried to do our best to give our collective judgment as to what the odds are.
Q Do you think that the base success percentages listed here are conservative estimates?
A I do. I do. Look, I mean, if you asked me to take the over or under, I would probably take the over. But I'm not going to deviate. I think that these are collectively our best judgment, though probably a little conservative.
Q Okay. All right. Finally, the expected value, $158 million. So just to be clear, what does that $158 million

figure represent?
A That represents the amount that the litigation team collectively thought we would get if we litigated these claims. If we litigated and we had a judgment, our expected value of that was $158 million.
Q Okay, great. Let's turn to Exhibit 8 briefly. So just to -- and maybe you answered this already, but why did the Stris and LKC litigation team create the chart at Exhibit 12?
A We did that because the Debtors asked us to do so.
Q Okay. And if we look at Exhibit 8, you've seen this email before?
A I have.
Q What does this email -- or what is this e-mail?
A It's a whole e-mail chain which I guess covers -- well, the first email is November 20th. But in essence, this is the email chain which, among other things, asks us to put together our chart, the one we put together.
Q So this is the email that asks the litigation team to create the chart that we looked at in Exhibit 12?
A That is correct.
Q All right.
A And this would be on the page 1 of 3 (indiscernible)
MR. DISHER: All right. Your Honor, I offer Exhibit 12.

THE COURT: Any objection?

MR. SCHMELTZ: No objection, Your Honor.

THE COURT: All right. Exhibit 12 is admitted.

BY MR. DISHER:

Q Okay. So --

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

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

Any objection to Exhibit number 8?

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

THE COURT: Yeah.

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 8 is admitted.

BY MR. DISHER:

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

A That is correct.

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

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

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

A I got it.
Q Are you familiar with what Exhibit 14 is?
A I am.
Q What is it?
A This is the PowerPoint presentation I mentioned.
Q So this is the PowerPoint presentation material created for the Board meeting on February 12th, 2025?
A Correct.
MR. DISHER: Your Honor, I would offer Exhibit 14.
THE COURT: Any objection to Exhibit 14?
MR. SCHMELTZ: None. Thank you, Your Honor.
THE COURT: All right. Exhibit 14 will be admitted.
BY MR. DISHER:
Q So Mr. Cohn, I want to start with slide number 3. The title is Litigation Value.
A Yes.
Q What is this chart?
A Most of this chart is the same thing as the chart we had just looked at, in which we give our expected value of $158 million. The only differences are the last two lines, the discount rate line and the EOI 2025 expected collection line.
Q And if we look at the expected value before we go to the discount rate, that's $158 million. Right?

A Yes.
Q And that's the same $158 million that the litigation team came up with in its work in Exhibit 12?
MR. SCHMELTZ: Objection. Leading.
THE COURT: Why don't you ask your question again?
MR. DISHER: Sure.
BY MR. DISHER:
Q How does the $158 million figure on slide 3 relate to the work that the litigation team did reflected in Slide 12?
A It's the same number. The chart is the same, except for those last two lines.
Q Let's talk about the last two lines. Did you insert those last two lines?
A No, I did not.
Q Did somebody from Stris insert those last two lines?
A No.
Q Did somebody from LKC insert those last two lines?
A No.
Q Okay. Who inserted them?
A Probably Kevin Hays, the CFO.
Q The first one says, "Discount rate, 25%." What do you -- What is your understanding of what that means?
A I'm not entirely sure. He wanted to apply a discount rate to take into account some risks, like the time value of money and other stuff. I didn't fully understand it, one,

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

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

A I'm with you.

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

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

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

A 25%.

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

A Correct, yep.

Q (indiscernible) that you did?

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

Q Okay. Did Mr. Hays include prejudgment interest?
A No, he did not.
Q Did you object at the time to the 25% discount rate that Mr. Hays used here?
A No.
Q Why not?
A It didn't really matter too much for me. I mean, I figured he had his business reasons, he wanted to be cautious. I was not going to argue with him over it. And frankly, at the time, I didn't think that this PowerPoint presentation would be relevant for things like the LKC success fee, so it just wasn't top of mind.
Q Once Mr. Hays applies the 25% discount rate, what is the resulting number?
A $126.4 million.
Q And what is your understanding of what that number represents?
A That is the expected value of the litigation claims reduced by his discount rate.
Q Did Mr. Hays make any other changes to the expected value rate in the Board material presented on February 12th?
A Not to the expected value, but he did have a chart on the previous page.
Q Okay. So if we go back to slide 2, what are your understandings about what other changes Mr. Hays made to the

damages calculations?

A So his expected value post-discount was $126.4 million. He then made two additional changes. One is he reduced $126.4 million to $125 million. And the second thing is he built a range of plus or minus $25 million, and that's reflected in his commentary.

Q Okay, so let's break that down. $126.4 on slide 3. You said the first change was what?

A He reduced the $126.4 to $125.

Q Why?

A I don't know. Maybe he might have wanted a round number. But Mr. Hays can speak about Mr. Hays' thoughts.

Q Fair enough. And then, the second change that Mr. Hays made was what?

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

Q Is that range reflected on slide 2?

A It is. So on slide 2, there's that chart which shows risk damages, which means the same thing, I think, as litigation value. Under commentary, he states risked estimates from LCK, that means LKC/Stris plus or minus $25 million.

Q Do you know why he did that?

A I think he wanted to -- Again, Mr. Hays can speak to Mr. Hays. But I think he wanted to give the business a range, because it's unpredictable.

Q What damage number does LKC use in its fee application that's currently pending in front of the Court?
A We used the low end of that range, the $100 million.
Q And we'll talk about that briefly. After the February 12th Board meeting, have you seen -- Well, let me actually ask one question. Is it your understanding that this material was in fact presented to the Rhodium Board of Directors on February 12th?
A Correct.
Q Have you seen any other attempts to try to calculate the litigation value created subsequent to the February 12th board meeting?
A I have.
Q What subsequent attempts have you seen?
A I've seen a few sets of different numbers. So one was a few days later. I think it was either at or right after the February 16th Board meeting, Kevin sent me a spreadsheet which was identical to the spreadsheet on page three, except he reduced the odds of Building D from 40% to 20%.
Q Did Mr. Hays say why he did that?
A I think he said he wanted something that was more pessimistic, more cautious, something along those lines.
Q Do you --
MR. SCHMELTZ: I'd move to strike as non-responsive. He asked what Mr. Hays said, and the witness

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

THE COURT: Overruled.

BY MR. DISHER:

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

A No, he did not.

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

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

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

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

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

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

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

A $100 million.

Q Have you seen any other charts that have attempted to

calculate the litigation value that Rhodium had against Whinstone?

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

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

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

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

A Yes, sir.

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

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

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

A We do. Yes, we do.

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

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

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

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

Q What was the thinking behind including that comment there?

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

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

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

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

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

Q And again, why did you create this chart?

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

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

THE COURT: Any objection?

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 13 is admitted.

BY MR. DISHER:

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

A Yeah.

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

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

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

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

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

additional attempts to try to value the damages claims?
A Yes. Only in discovery, we learned that in March, the Board had another meeting with another PowerPoint, and we got that in discovery.
Q How did the numbers in that March PowerPoint relate to the numbers that y'all came up with on February 12th?
A They were lower. So those numbers, it used Kevin's more pessimistic numbers, which resulted in an expected value of $100 million. And the chart is the same, it shows $100 million. But then in calculating the range, Kevin reduces the $100 million to $75 million.
Q Why did he do that?
A Don't know.
Q Did he consult with you before doing that?
A No.
Q To the best of your knowledge, did he consult with anybody at LKC before doing that?
A No.
Q What about the Stris team?
A He did not.
Q Okay. Let's move to the actual calculation in our fee application. Okay?
A Okay.
THE COURT: Before we do that, we've been going for about an hour-and-a-half, why don't we take a five-

minute break?

MR. DISHER: Okay.

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

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

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

(Brief recess.)

(Back on the record.)

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

Go ahead, Mr. Cohn.

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

MR. COHN: Yes, sir.

MR. DISHER: Okay, thanks.

BY MR. DISHER:

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

A I'm with you.

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

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

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

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

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

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

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

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

A Okay. I'm with you.

Q And again, sorry to interrupt --

A No worries.

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

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

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

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

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

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

A Okay.

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

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

numbers. One is -- And do we have the chart in front of us? It might be easier if I --

Q It should be slide 3 of Exhibit 14.

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

Q We'll talk about that in a minute.

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

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

A I do.

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

A $20.96 million.

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

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

Q Thank you. Okay. Let's talk about the Uri credits. Why did LKC -- why did LKC not add the value of the Uri credits to its calculation?

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

Q Why not?

A The Special Committee directed us not to do so.

Q Do you have any understanding about why they told you not to pursue a fraud claim?

A I did. I do.

Q And what is that understanding?

A So it began with they wanted to conclude an investigation into whether or not Rhodium's executives had acted reasonably or unreasonably in relying upon Mr. Harris's misrepresentations. Akin, Mitch Hurley had sent a letter to the Special Committee contending that the executives had acted unreasonably, had breached the business judgment rule and their fiduciary duties by signing that release. In his view, it was unreasonable to sign that release.

Q Did LKC and Stris prepare a version of the complaint that included the fraud claims?

A We did.

Q If we turn to Exhibit number 6?

A I got it.

Q Do you know what Exhibit number 6 is?

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

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

MR. SCHMELTZ: No objection.

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

BY MR. DISHER:

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

A By the Special Committee.

Q If you turn to Exhibit number 5 --

A I'm with you.

Q What is Exhibit number 5?

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

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

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

Q In your mind, is there a distinction between seeking

damages and recovering damages?
A Absolutely. I mean, Plaintiffs can and do seek a whole lot of things. It's one thing to seek money. It's quite another to actually recover it in litigation.
Q How does the fact that the complaint no longer asserts a count of fraud affect, in your opinion, the ability to recover damages for those Uri energy credits?
A As I told the Special Committee, and anyone else on phone calls, emails, the odds of recovering the energy credits likely go to zero. We needed to overcome the settlement agreement, the release, and the only way we could think of to overcome it was with the fraud claim.
Q Your email goes on, the next sentence says, "We just don't call it fraud." What did you mean by that sentence?
A What I mean is we took out the fraud claim, and the allegations that underlie the fraud claim, including that there was reliance.
Q The next sentence says, "We can amend at a later date if we want to add back the fraud claim." Did I read that right?
A You did.
Q What do you mean by that?
A Well, we were hoping that we would eventually have the ability to add back the fraud claim. So we had it in there. We had that sentence in there.

Q Did you ever amend the complaint to add back the fraud claim?
A We did not.
Q Did you ever get authorization to amend the complaint to add back the fraud claim?
A We did not.
Q Did you want to amend the complaint to add back the fraud claim?
A Very much so.
Q Why?
A For three reasons, and this is all documented and memorialized. But number one, we thought it was a good claim. We thought we would collect the compensatory damages. I think we had the odds handicapped at around 60% of recovering those credits, and we wanted to do that. That was the first reason, to get that money back. The second reason was we thought we had a pretty good argument about exemplary damages as well, and with fraud, we could get exemplary damages. That chart conservatively ballparks the exemplaries at one-to-one. We thought we could at least get one-to-one, maybe more.

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

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

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

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

A I do.

Q What happened?

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

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

A I'm with you.

Q Is this the letter that you were referring to?

A Yes, it is.

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

A Yes, it is.

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

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 19 is admitted.

BY MR. DISHER:

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

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

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

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

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

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

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

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

BY MR. DISHER:

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

A They did not.

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

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

BY MR. DISHER:

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

A They did.

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

A That is correct.

Q What are those hourly fees and expenses for?

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

Q What else?

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

Q If you turn to Exhibit 21, please?

A I'm with you.

Q Do you know what Exhibit 21 contains?

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

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

THE COURT: Any objection?

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

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

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

MR. SCHMELTZ: (indiscernible) they produced in

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

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

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

BY MR. DISHER:

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

A Yes.

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

A Yes, indeed.

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

A That is correct.

Q Okay.

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

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

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

THE COURT: All right.

MR. SCHMELTZ: This is one of those --

THE COURT: I'll consider it.

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

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

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

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

BY MR. DISHER:

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

A It did.

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

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

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

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

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

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

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

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

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

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

A Plus another $31 million.

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

A A lot more, yes.

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

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

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

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

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

A I did.

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

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

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

Q Did you run the numbers making any different assumptions?

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

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

A I did.

Q What was that amount?

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

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

A Not even close.

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

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

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

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

A It's $8.9 million.

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

A I did.

Q Can you tell Judge Perez about that?

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

Q So using the numbers that the Special Committee's

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

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

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

A That is correct. We stand by our numbers.

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

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. SCHMELTZ:

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

A That's correct.

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

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

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

A With a gap, yeah, sure. Yes.

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

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

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

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

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

A That's correct.

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

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

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

A I think you meant to say Building D.

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

A That's one issue, yes.

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

MR. DISHER: Objection. Foundation.

BY MR. SCHMELTZ:

A I'm aware that's not correct.

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

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

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

A That's incorrect.

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

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

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

A That's fair.

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

and for how much it thinks it's settling for. Right?
A Has a right to analyze what it's settling? I'm not sure I fully understand the question.
Q Your client was assessing the potential for settling with Riot-Whinstone at the time of that March presentation. Right?
A That's right. And you would agree with me your client has a right to lean into its professionals in any way it sees fit to assess that settlement. Right?
A I'm not sure I'm getting what lean is. But if you're asking if they have the right to talk to their professionals, certainly.
Q And your client isn't obligated to give you a call, to ask if you think the number that it's settling for includes $50, $75, or $100 million in damages, are they?
A That's correct.
Q And your client was also represented by Chuck Topping, General Counsel, at the time of that presentation. Right?
A That's fair.
Q And your client was represented by Quinn Emanuel at the time of that presentation. Right?
A Yes.
Q So if your client's March 2025 assessment of the damages, and what its damages were worth didn't include LKC or Stris, that's not problematic by itself, is it?

A I would say it's problematic.
Q Now, your methodology took $100 million, and subtracted $20,960,000 from that to get an amount to which you apply the 10% rate for that bucket C success fee. Right?
A I wouldn't phrase it quite that way, but I think we're on the same page. If you want me to say it differently, I can.
Q I don't want you to say it differently. Your number for power credits was $20,960,000. Right?
A For energy credits?
Q For energy credits.
A Yeah, $20.96 million. That's correct. And your number for the non-energy credits, to which you applied the 10% rate, was $79,400,000. Right?
A No, sir. Your math is --
Q $79,004,000. Right?
A No, no. $40,000.
Q You're right. You're right. I'm stumbling over a number there. But $79 million and change. Right?
A We can go with that one.
Q And you get that $79 million and change by subtracting $20,960,000 from $100 million. Right?
A That's right.
Q Okay. Let's use your number, $20,960,000 for energy credits. Okay? Let's use that number. If you subtract

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

A Okay.

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

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

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

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

Q $5.4.

A That would be a $3.5 million difference.

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

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

Q But you would agree with the numbers. Right?

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

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

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

credits --

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

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

THE COURT: Okay. All right.

MR. WOLFSHOHL: Object. Vague, foundation.

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

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

MR. SCHMELTZ: That's fine.

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

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

BY MR. SCHMELTZ:

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

A Yes, that's right.

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

A That's still the answer, yes.
Q And your model applies 10% to that number. Right?
A That's correct.
Q To get $7,904,000 in bucket C success fees. Right?
A I think there might have been a zero missing in there, but we could say roughly $7.9 million.
Q $7,904,000.
A Yeah, that's right.
Q No zeros missing. And to Your Honor's point, under a $75 million number, that bucket C would be $5,404,000. Right?
A No. Not if you were doing it accurately.
Q $75 million minus $20,960,000 is $54,040,000. Right?
A The math is right, but the methodology is incorrect.
Q In your fee application, you say in paragraph 36, you have a paragraph about additional damages, and you say those additional damages are $79.04 million, the difference between $100 million and $20.96 million. Right?
A Yes.
Q And so similarly, if you used a $75 million base, the difference for the additional damages, you would take the difference between $75 million and $20.96 million. Right?
A Like I said, your math is right, but your methodology is incorrect.
Q I'm just using your methodology. Right?

A No, you're not.
Q Let's take a look. You have a -- You I think said to Mr. Disher that the number, if you used $75 million and you included the power credits, that would be about a $6-plus million success fee. Did I understand that correctly?
A Not entirely. So if you were to assume that the proper number is $75 million, and you were to assume the Uri energy credits, and you did the math and methodology correctly, you would end up with over $6.4 million. And when you say the math and methodology correctly, you have applied a 25% discount rate -- pardon me, to the energy credits. Correct?
A That's part of it. We use the same 25% discount rate that Kevin used to compare apples to apples.
Q You don't use a 25% discount rate, though, to the $79,040,000 that makes up the basis for a discount. damages, do you?
A No, we did. Because we used his number, the $100 million, and you get to the $100 million only by using his 25% discount rate.
Q I see. So you, for energy credits, you double count -- You take 25% once to get to the $100 million, and then you take 25% again and add it to the energy credits. Right?
A No. That's not right. It's not double counting.
Q You do apply a 25% discount to the energy credits as well, don't you?

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

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

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

Q If you take the same --

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

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

A Okay, sure.

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

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

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

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

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

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

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

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

THE COURT: I'm going to overrule that objection. You can answer the question.

BY MR. SCHMELTZ:

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

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

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

THE COURT: Yep.

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

MR. SCHMELTZ: (indiscernible)

MR. DISHER: Oh, great.

MR. SCHMELTZ: I think you already have them.

BY MR. SCHMELTZ:

Q If you would, sir (indiscernible)

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

BY MR. SCHMELTZ:

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

A I'm with you.

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

A Which page are you on?

Q It's the top of the second page.

A I do see that, yes.

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

A Yes.
Q And I think we looked at slide 3 earlier, under your Tab 14. Right?
A Correct.
Q And that's that litigation value chart, correct, that we've all looked at, that has the values, and the expected chance of success and all that. Right?
A That's right.
Q Then, on the first page of the email, Mr. Thompson says, he asks a question, and I'll start in the fourth sentence -- or pardon me, the third sentence, "If you're not in the meeting," and this is on February 12th, "If you're not in the meeting, it might make sense to connect briefly on the low-high range you provided. I want to make sure we're on the same page." He says, "Of course I don't have a problem with your range. I just want to avoid stepping on your toes, and confirm I understand how you calculated that." Have I read that correctly, sir?
A Not entirely. I think you put in that instead of it, but close enough.
Q Mr. Hays responds and says, "Will, good question. On page 2, I simply took the risk value from the damages, discounted a year at 25%, and roughly plus or minus $25 million. I can explain that on page 2 so you don't even half to mention it on slide 3." I think he might have, but

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

A Yes, sir.

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

A I see that.

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

A You read it correctly.

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

A That is correct.

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

A That is true.

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

A You read the words correctly.

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

A We did not say that.
Q It wasn't something that your team objected to as a matter of principle. Right?
A I'm not sure what you mean by a matter of principle, but Will is talking about it from a business perspective.
Q Your calculation of damages includes specifically from the chart of claims the power credit claims. Right? I should say the non-Uri power credit claims. Right?
A I prefer to say energy credits.
Q Is that a yes?
A I'm sorry, could you repeat the question?
Q Your chart includes the non-Uri -- pardon me, your calculation includes the non-Uri energy credits specifically from the chart. Correct?
A And by the chart, do you mean (indiscernible)
Q Your calculation of the success fee includes specifically the non-Uri energy credit claims from the chart that we looked at in Exhibit 14. Right?
A That is correct.
Q But it then makes no distinction between any other category of damages, etc. It's just simple math. It's subtract $20 million from $100 million to get the remainder. Right? You're not going back through that chart and picking other claims to allocate within the settlement amount. Correct?

A I'm not sure --

MR. WOLFSHOHL: Vague. Objection. Vague, compound. I'm not --

THE COURT: Rephrase the question. I think I understand what he's asking.

BY MR. SCHMELTZ:

Q The $79,040,000 that you attribute to bucket C in the fee app, in your engagement letter, is not tied to any specific claim on the chart in slide 3 of Exhibit 14, is it?

A I disagree. I can explain --

Q You don't make a specific allocation among the $79 million to any specific claim on the chart as part of your fee application, do you, sir?

A That is correct.

Q There is not anywhere I could find in your fee application, in the paragraph on additional damages, where I could figure out which claims are included in the $79 million. Is there?

A I think as you've phrased it, there is. I mean, the $79.04 million comes from the claims for other damages that are on this chart. If you meant specifically, like, how much of the $79 goes to one claim versus another, then I agree with you.

Q We don't know, from your fee application, if the $79 million includes attorneys' fees, bankruptcy case, do we?

A We do. It's all in there.
Q We don't know is it $4.2, or is it a bigger number, do we?
A It's the numbers that are on this chart. It's the expected value amounts, which were then reduced by the 25% discount rate, further reduced by the $1.4 million, and then reduced by $25 million.
Q Can you show me on the chart in your Exhibit 14, Tab 3, which litigation value claims are included in the $79 million?
A It's all of them. We used all the claims that are on this chart.
Q So you're seeking a success fee for the block of Temple sale on which you have a base success of 5%. Right?
A Yeah. We used the expected value, and then the other discount and deductions, correct.
Q And so you -- That's a claim that you told your client there was a 95% chance of losing that claim, you want a success fee on that claim. Right?
A Correct.
Q And then, there are bankruptcy case fees and pre-bankruptcy case attorneys fees. Right?
A That is correct.
Q Turn with me, please, to Exhibit 307 in your binder.
A I'm with you.

Q You recognize this document, sir?

MR. WOLFSHOHL: I'm sorry, which exhibit?

MR. SCHMELTZ: 307.

MR. SCHMELTZ: Oh -- Your Honor, I want to, before I get too far ahead of myself, I'd like to move the admission of Exhibit 259 into evidence.

THE COURT: Any objection?

MR. DISHER: No objection.

THE COURT: It's admitted. It's in, Exhibit 259.

BY MR. SCHMELTZ:

Q What do you recognize this document to be, Mr. Cohn?

A I'm not sure I do recognize this document.

MR. SCHMELTZ: Your Honor, may I have a minute?

THE COURT: Sure.

MR. SCHMELTZ: Readers are leaders, Your Honor. Sometimes I need someone else to read for me. My apologies.

BY MR. SCHMELTZ:

Q I represent to you, sir, that this is the compromise settle and release, settlement and release agreement that governs the Riot-Whinstone dispute. Have you ever seen this document before?

A I might have. I can't recall.

Q Okay. You understand that your client signed a settlement agreement with Riot-Whinstone. Right?

A I do.

Q And settled the disputes between and among the Rhodium Debtors, and Riot and Whinstone. Right?

A That is correct.

Q I'd ask that you take a look at what is marked at the bottom as Hearing Exhibit 307.011 (indiscernible) the Bates range. Let me know when you get to the 011 page, please.

A I'm with you.

Q This actually provides in paragraph 25 the settlement agreement, that "Except as otherwise provided in section III.26, each party will pay its own attorney's fees and costs." Right?

A I'm not sure where you're reading from. Sorry.

Q Paragraph 25, 25.

A Okay. I'm with you.

Q That's what it provides. Right?

A I'd have to hear you read it back to make sure you read it correctly, but I'm reading 25 now.

Q And it provides that, "Except as otherwise provided in section III.26, each party will pay its own attorney's fees and costs." Right?

A That's what it says.

Q And Roman III.26 is a prevailing party attorney's fees and costs provision. Right?

A It is prevailing party attorney's fees and costs. Correct.

Q And that provision only applies to a proceeding arising out of or in connection with the interpretation or enforcement of the settlement agreement. Right?

A It says, "In the event of any dispute or legal proceeding arising out of or in connection with the interpretation or enforcement of this agreement, the prevailing party shall be paid, and in the event of a legal proceeding shall be awarded reasonable costs, expenses, and attorneys fees."

Q And that, of course, is a situation not involving the settlement of the main dispute, but of a dispute about the settlement agreement. Right?

A I think I follow you, sure.

Q In other words, this agreement, the settlement agreement that your client signed specifically excludes recovery of attorney's fees and costs. Right?

THE COURT: In addition to the $185 million? Is that what you're asking?

MR. SCHMELTZ: Correct.

THE COURT: Okay.

BY MR. SCHMELTZ:

A In addition to the $185 million, it does exclude additional attorney's fees, which might or might not be included in the $185 million.

Q Which may or may not, and there is not any document

ever that you are aware of between Whinstone or Riot on the one hand, and Rhodium on the other, in which Whinstone or Riot expressed an intent to pay attorney's fees and costs as part of the settlement. Right?

A To my knowledge?

Q To your knowledge.

A Yeah, I'm not aware of that document.

Q To be clear, on the chart that we looked at in Exhibit 14 at slide 3, the only claims that you have that have a winning percentage other than -- Well, let's do it this way. Shutdowns on that chart in Exhibit 14 has a winning percentage of 80%. Right?

A A base success percentage, yes.

Q And water has a success percentage of 30%. Right?

A That is correct.

Q Meaning 70% chance you could lose. Right?

A That is correct.

Q ERCOT curtailment, no Uri, has a winning percentage of 70%. Right?

A That is right.

Q And ERCOT curtailment, Uri, has a winning percentage of 60%. Right?

A The base success percentage is 60%. The exemplary damages success percentage is 40%.

Q I'm talking about just on the base claim, 60%. Right?

A Sure.
Q Now, your testimony earlier, let's pause there for a second, was that you weren't ever allowed to plead and prove fraud. Right?
A That is correct.
Q You filed your complaint on February 11th. Correct?
A That is right.
Q The mediation took place on February 19th. Right?
A The first session did.
Q And by April, as we've just looked at in the settlement agreement at 307, by April -- pardon me, by April 28th, the matter was settled entirely. Right?
A I don't recall the exact date, but it was some date in late April.
Q So the fact that you weren't allowed to plead and prove fraud is a timing question. It's not some grand prohibition. You weren't prevented for all times from pleading or proving fraud had the case gone on. Right?
MR. WOLFSHOHL: Objection. Vague, compound, foundation.
THE COURT: Could you rephrase the question?
BY MR. SCHMELTZ:
Q You don't know whether you would have been allowed to plead and prove fraud had the case not settled, do you, sir?
A Do you want me to speculate? I would speculate that I

was never going to be allowed to plead and prove fraud because the Special Committee took the position with respect to the insurance companies and the D&Os that their reliance was unreasonable, unjustifiable, and that is contradictory to the fraud claim we wanted to bring.

Q Had the case not settled, and the litigation team been allowed to either plead and prove fraudulent inducement, or plead and prove duress, for example, that the settlement agreement was obtained under duress, those would be ways to overcome the defense that Riot-Whinstone would mount to an energy credit claim related to Winter Storm Uri. Right?

MR. DISHER: Objection. Vague, foundation.

THE COURT: I'm going to overrule it.

BY MR. SCHMELTZ:

A I don't understand the reference to duress, so I'll put that aside. But fraud would have been a way, in our view the only way to overcome the release that the executive signed, waiving away the rights to the energy credits.

Q And stating the obvious, you don't know what would have happened, because the Whinstone case settled. Right?

A I don't know what?

Q What would have happened with respect to pleading and proving fraudulent inducement, because the Whinstone case settled. Right?

A I do know that the Special Committee took a path which

is diametrically opposite and contradictory to pleading and proving fraud. Whether they would have asked me to contradict them, I can't speculate what they were going to do. But it wouldn't have been a good fraud claim if they're taking a contradictory position with the Ds, Os, and insurance companies.

MR. SCHMELTZ: Your Honor, first I want to move to admit Exhibit 307 into evidence. I realize I'm lagging in my offering exhibits.

THE COURT: Any objection?

MR. DISHER: No objection.

THE COURT: Exhibit 307 is admitted.

BY MR. SCHMELTZ:

Q You also don't know what the Special Committee would have done with respect to a D&O settlement had the Riot-Whinstone litigation not settled, do you?

MR. DISHER: Objection. Calls for speculation.

MR. SCHMELTZ: He's been speculating right along, I suppose.

THE COURT: Yeah, I think he's asking, you don't know, and I think the answer is kind of obvious.

MR. DISHER: Fair enough.

BY MR. SCHMELTZ:

A I don't know.

THE COURT: I'm not sure it's a question, but more

like a statement.
BY MR. SCHMELTZ:
Q The remaining claims on this chart, putting aside attorney's fees, none of them has a greater than 50% chance of succeeding. Correct?
A You mean other than the shutdown, the ERCOT curtailment, no Uri, ERCOT curtailment, Uri for base, you have a couple of attorneys fees. Aside from those, yeah, the numbers are below 50%.
Q Another reasonable way to allocate what was settled would be to allocate the full base amount of winning percentage claims. Right? That would be another way to make an allocation. Correct?
MR. DISHER: Objection. Vague.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Another way that one could allocate amongst the damages is to simply take the base amount of winning claims and add them up. Right?
MR. DISHER: Objection. Vague.
THE COURT: I'm not quite sure I understand the question. Is the question that you would just take the base amount of the claim without any percentage?
MR. SCHMELTZ: Yeah, let me do it this way.
BY MR. SCHMELTZ:

Q The base amount of shutdowns is $8 million. Right?
A That is correct.
Q Winning claim. Right? Greater than 50% claim. Right?
A Is the question whether 80 is more than 50? Yes.
Q ERCOT curtailment, no Uri, $36 million base amount. Right?
A That is correct.
Q Seventy percent chance of success. Right?
A That is true.
Q ERCOT curtailment, Uri, $29 million base amount. Right?
A Yes.
Q Base success, 60%. Right?
A True.
Q If you took the $29, the $36, and the $8, that gets you $73 million. Correct?
A That is correct.
Q And so another way to look at how you got the $75 million would just be to take the base amount of those three winning claims. Right?
A If you wanted to do something incorrectly.
Q Well, there's not a magic rubric for this, is there now, sir?
A A magic rubric?
Q There's not any rubric.

A I mean, I think we do things that are reasonable, and that make sense. Is that a rubric?
Q One of your allegations in your fee application is that the Special Committee is not responsive to requests from your -- you or your counsel to try to resolve your success fee. Right?
A I don't have the application in front of me. I don't think we made allegations, but if you show me the application, I can take a look at the language.
Q Just take one example, paragraph 23. You say, "To that end, shortly after entry of the LKC updated order on July 11th, 2025, LKC's counsel sent email correspondence to Barnes & Thornburg setting forth LKC's proposed allocation and contingency fee calculation, and inviting further discussion. Barnes & Thornburg never responded to the July 11 email correspondence." Have I read that correctly?
A I don't know --
Q You don't know because you don't have it in front of you. Do you recall making that allegation?
A No.
Q Okay.
A I don't know it's an allegation. I mean, I don't recall those exact words. But if you give me a copy of the fee app, I can take a look and read along with you.
Q In fact, do you recall -- Did I use 284?

MR. SCHMELTZ: Your Honor, the fee app is Exhibit 284. And first, I would ask that the witness turn to that, and then we can move to admitted it into evident.

THE COURT: That's a live pleading in this case. I'll just take judicial notice.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q Would you take a look at paragraph 23, please?

THE COURT: 284?

MR. SCHMELTZ: Oh, 284 is the objection on the fee app.

THE COURT: Yeah, 284 is the objection.

MR. SCHMELTZ: I'll just come back to it.

BY MR. SCHMELTZ:

Q I want to talk about this concept that there were not negotiations around your fee. If I might, I'd like you to turn to Exhibit 201. Exhibit 201 is an email exchange between me and Josh Wolfshohl. You and I went through this in your deposition. You recall that. Right?

A Okay.

Q Now, I'd like you to take a look specifically at 201.007, and it's a May 31st exchange. I'm not offering this email to suggest the value of the claim, and I'm not offering it to suggest that anyone has liability. I'm simply offering this to get to the bottom of the reasonable

action by the Special Committee to resolve this claim. And I would ask that you take a look at that email, and let me know if you recognize it.

MR. WOLFSHOHL: Your Honor (indiscernible)

THE COURT: Yeah.

MR. WOLFSHOHL: I do believe this is covered by our motion in limine (indiscernible)

I know the Court has not taken that up now, but this might be an appropriate moment to do so. And our associate, Jacob Richards, is prepared to argue that if the Court wants to hear argument about it right now. But I do believe --

THE COURT: No, I mean, it clearly says that it's 408 discussion. So I'm not bound by -- You know, obviously this is not -- I mean, just stepping back for a minute, whether there were discussions or there weren't discussions, that's not going to impact my ruling. I'm going to rule on what the contract says and what the evidence shows about the contract. So you know, I'm happy to hear this, but you know, this doesn't seem to focus on the contract language and the information regarding that. So I'm going to overrule the objection.

BY MR. SCHMELTZ:

Q So in the middle paragraph --

MR. SCHMELTZ: So first I would move to admit 201

into evidence.

MR. DISHER: And just for the record, we object on 408 (indiscernible) grounds.

THE COURT: I understand. And it's going to be -- It's not admitted for the truth of the matter. It's admitted that there was a communication regarding a proposal made under 408, and you know, it's not -- the proposal itself is not evidence in this case.

MR. DISHER: Thank you, Your Honor. Can I just have a running objection (indiscernible)

THE COURT: You can have a running objection, yes.

MR. SCHMELTZ: Move to admit 201 into evidence.

THE COURT: Yeah, with that caveat, I'll admit 201, subject to the objection.

BY MR. SCHMELTZ:

Q In the third sentence, it notes, "Based on the current tax plan, we see $75 million attributed to the settlement." Do you see that?

A I do.

Q In other words, you were aware as of May of 2025 that the Debtor intended to allocate $75 million to settlement. Right?

A In this particular email, but not in other correspondence.

Q Then it says, "It is my understanding that the $100

million number came from advice given by LKC. We're not likely to use that number. That is the present plan for our taxes." Have I read that correctly?

A You read it correctly.

Q And then there is a paragraph in which there's a rubric for potentially applying the formula in the contract, that says, "We see $50 million of that to energy credits." Have I read that correctly?

A You did.

Q So baseline is $600,000, which is that bucket A

Right? You'd agree with me $600,000 is the bucket A success fee. Right?

A Yes, sir.

Q And then 5% times $5 million is another $250,000. Right?

A That is right.

Q Plus 1% of $45 million is another $450,000. Have I read that correctly?

A You did.

Q And then, the remaining amount is $25 million, and it says, "And 10% times $25 million is $2.5 million." Have I read that correctly?

A You did.

Q For a total of $3.8 million. Right?

A You read it correctly.

Q That is one reasonable way to interpret the contract. Isn't that right?
A No.
Q It goes on to say, "I think there's a number between your $3.8 million and your -- our $3.8 million and your $8.1 million at which we can settle." Have I read that correctly?
A You did.
Q Mr. Wolfshohl responded to me on June 1st. Do you see that, two pages over at LKC 4848, or Hearing Exhibit 201.004?
A I mean, there are some other emails in between, but okay.
Q In his response at 201.005, it says, "Josh, please share this analysis with Trace." And you and I talked about that at your deposition, that's your analysis that you had shared with me. Correct?
A I say it's LKC's analysis. As I think I mentioned at deposition, it is likely that I would have spoken with my colleagues about this. But if you want to call it my analysis, that's fine.
Q At the next page, 201.006, there is a counter that is contingent. Do you see that in that top bullet point?
A I see the word "counter," and I see the word "contingent."

Q And it's contingent on the understanding, on the Debtor's understanding that the brackets are $8.1 million and $5.2 million. Correct?

A That is correct.

Q And then in the last sentence, it says, "If the Debtors want the negotiations to continue, they need to make an offer above $5.2 million." Right?

A That is correct.

Q Take a look, if you would, at Exhibit 291, please.

A Okay.

Q Do you recognize this document?

A I think so. I believe this is the document that you produced in discovery. Yeah, it does look -- it does look somewhat familiar.

Q And this is an analysis of potential estate causes of action prepared for the Special Committee of the Rhodium Enterprises, Inc. Board of Directors. Right?

A That's what it says.

Q And it's dated April 2025. Right?

A Yes, it is.

MR. SCHMELTZ: Your Honor, while this witness certainly isn't a foundational witness for this document, it's been produced in discovery in this case, and that's been produced really to all parties of record in this case as the Special Committee's report. I would ask that it be

admitted into evidence.

MR. DISHER: We object on lack of foundation. We also object on (indiscernible)

THE COURT: Well, I think when you put on Mr. Eaton, he can introduce it and go through the report.

I sustain that objection.

BY MR. SCHMELTZ:

Q When you received the Special Committee's report in Discovery, did you review it?

A Not the whole thing. For one thing, it is heavily redacted, and pages are missing. But I did look at the assertion at the end, that the company has a plausible claim against Whinstone for fraudulent inducement.

Q Well, I was going to ask if you recalled from reviewing it whether the Special Committee took a position with respect to the claims of fraudulent inducement versus the claim of the breach of duty of care around Winter Storm Uri. Just asking if you recall.

A As phrased, no. But -- And I'm looking at it right now on pages 83 to 85, the assertion of the company has a plausible claim against Whinstone for fraudulent inducement.

Q From your reading of the Special Committee's report, the Special Committee actually found there was a plausible claim for fraudulent inducement. Is that right?

A Well, I wouldn't say I read it because I only looked at

this part of it. I don't know, because I was so confused by that last paragraph before the redacted. It just seemed like the Special Committee had a fundamentally mistaken view of fraudulent inducement.

Q Do you recall from reading the report if the Special Committee made a recommendation as to whether the Debtor pursue a fraudulent inducement claim? Do you recall?

A No.

Q Is there anything that I might have that might refresh your recollection as to whether the Debtors -- pardon me, the Special Committee made a recommendation to the Debtors around pursuing a fraudulent indictment claim?

A I mean, I'm looking now at this 83 to 85, which was drawn to my attention earlier. So I looked at this before, I'm looking at it now, and as I said, you know, it's hard for me to get past that paragraph that begins, "Finally -- "

Q My question was, is there anything that might refresh your recollection?

A I don't know.

Q You would look at the last sentence of the first paragraph under the heading Winter Storm Uri on 291.043, and let me know if that sentence refreshes your recollection (indiscernible)

A It does not, and I'm not sure if I ever looked at this page before.

Q Okay. I want to make sure I understand your testimony correctly. The -- No, that's all right. I get it.

We talked earlier about the discount rate, and your application of the discount rate to the power credits. Right?

A We did. But I would call them energy credits.

Q The -- No, I think I've asked that.

MR. SCHMELTZ: Your Honor, may I just have two minutes?

THE COURT: Sure.

MR. SCHMELTZ: I'll just stay on, and collect my thoughts. Thank you.

THE COURT: Can we take a five-minute break? Does that make sense, or --

MR. SCHMELTZ: Yeah, five minutes.

THE COURT: Okay. All right. We'll be in recess for five minutes.

(Brief recess.)

(Back on the record.)

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

BY MR. SCHMELTZ:

Q Turn with me, if you would, to Exhibit 13. This is your Exhibit 13, Plaintiff's LKC 13. This is that February 18th email with the spreadsheets attached to it that you

went through with Mr. Disher on your direct. Do you remember that?

A I do.

Q You were well aware that the Debtors were applying a discount rate in their analyses of the numbers as of February 18th, weren't you, sir?

A I was.

Q And in fact, you noted in this email, in the third bullet point in the paragraph, "As requested," you say, "That is before both pre- and post-judgment interest, likely between $5 and $10 million, and a discount for TVM." Right?

A I did.

Q And discount for TVM is for the time value of money, and that's the discount rate. Right?

A Colloquially speaking, yes.

Q You didn't say in this email that the discount rate should be lower. Right?

A That's correct.

Q You do two things in this email, and you note -- and then, this is that third bullet, "What would change the bottom line would be rosier predictions on the big ticket items, energy credits, and Building D." Have I read that correctly?

A That is correct.

Q And then you say, "If we push up the odds on Uri

exemplaries to 60%, and the odds on Building D to 50%, which I think is high for this claim, the bottom line increases to $183 million." Right?

A You read it correctly.

Q In other words, By tinkering with the percentage likelihood of success, you can change the number, the bottom line number for damages. Right?

A I'm not sure you mean by "tinkering." But yes, if you change the assumptions, the bottom line changes.

Q And your client would be in just as good a position to change those percentages, up or down, as you would. Right?

A No -- I'm not sure you mean by "just as good a position." If you mean if they have the experience and the litigation background to make the assessments of litigation risk the way Stris and LKC did, then I would respectfully disagree.

Q But they have other risks that they could weigh in terms of business risks and the like, like Will Thompson acknowledged. Right?

MR. DISHER: Objection. Foundation.

THE COURT: Can you rephrase the question? I'm not sure exactly --

BY MR. SCHMELTZ:

Q I think your partner, Will Thompson, acknowledged that there were other business risks and the like that your

client would also be in a good position to weigh and evaluate. Right? We saw that in an earlier exhibit?

A My recollection of the email is not the same as yours. But if you're asking me if business people should be in a position to assess business risks, then I agree they should.

Q Okay. I want to ask specifically about this document. You've said that Winter Storm Uri wasn't going to be a topic in the mediation on February 19th. Did I understand your testimony correctly?

MR. DISHER: Objection. Misstates his testimony.

BY MR. SCHMELTZ:

A I think you're phrasing (indiscernible)

THE COURT: Wait a second. Hold on. I'm going to sustain that objection. I didn't hear him say that at all.

MR. SCHMELTZ: Okay.

MR. DISHER: Thank you, Your Honor.

MR. SCHMELTZ: I certainly didn't mean to misstate, so I apologize.

BY MR. SCHMELTZ:

Q Let me do it this way. The complaint that was filed, we looked at it in Exhibit 6, pleaded a breach of contract claim for all of the energy credits, including Winter Storm Uri energy credits. Right?

A We had a breach of contract claim, and we were seeking all the energy credits, that's correct.

Q Including the Winter Storm Uri energy credits. Right?
A Sure.
Q And the complaint in Count 6 said that Chad Harris from Whinstone lied to Rhodium. Right?
A I don't know about a particular account, but we, somewhere in the complaint, did mention that Mr. Harris lied. That's correct.
Q And certainly, as you're expressing here on February 18th, in an email in which you raised the chance of success for exemplary damages related to Winter Storm Uri, that was a topic that would get mediated the next day in mediation. Right?
MR. DISHER: Objection. Vague, foundation.
THE COURT: Ask your question again. I'm --
BY MR. SCHMELTZ:
Q The purpose of -- Let me do it this way. You raised the percentage likelihood of success for exemplary damages on Winter Storm Uri the day before the mediation. Right?
A At the client's request, I gave rosier predictions, and I obliged and I increased a couple numbers.
Q Certainly, if you thought that issue wouldn't be pursued in mediation, or that claim couldn't be pursued, that wouldn't have been one that you raised the chance of success for, would it?
MR. DISHER: Objection. Vague.

THE COURT: Restate the question.

BY MR. SCHMELTZ:

Q Certainly, if you thought the Debtors weren't going to be mediating a claim for energy credits related to Winter Storm Uri on February 19th, the next day, you wouldn't have increased the chances of success of that claim in a model for your client to assess the day before mediation. Right?

A My adjustment had nothing to do with the timing of the mediation. I made this adjustment because the client asked me to make the adjustment.

Q The client didn't tell you which claim to adjust, did it?

A That's correct.

Q You chose Uri. Right?

A I took the big ticket items and increased them because the client wanted to see what a more optimistic spreadsheet would look like.

Q Indicating that you intended to mediate Winter Storm Uri the very next day. Right?

A No.

Q Okay. Take a look, if you would at -- I'm going to have you bounce back to exhibit 307, with apologies for not doing this earlier, 307 in our binder, at 307.009.

Are you there, sir?

A 307.009?

Q Yes, sir.
A Yeah, I'm with you.
Q This is again the settlement agreement in the Whinstone matter. Right?
A Yes.
Q Paragraph 9, "Released by Debtors," you see that?
A I do.
Q That's a complete release of any and all claims. Right?
A Give me a chance to read it. That is correct.
Q The Debtors are releasing Whinstone and Riot for any and all claims, without any limitation. Right?
A It says any and all claims, and I agree I do not see any limitations in this paragraph.
Q Certainly you would agree with me there's a difference between settling a claim, and proving a claim in court. Right?
A That is correct.
Q And you would agree with me that you couldn't plead and prove a claim for fraudulent inducement in one court, and it would probably be hard to go plead and prove a claim for breach of fiduciary duty on the same claim in another court. Right?
MR. DISHER: I'd just object to that --
MR. SCHMELTZ: That's fine. I'll withdraw that.

We can argue it later.

BY MR. SCHMELTZ:

Q Would you take a look for me please at Exhibit 245? Exhibit 245 is a March PowerPoint. I think you first used this in Mr. Blackmon's deposition. Do you recognize this document, sir?

A I do.

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

A I'm with you.

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

A I see that line.

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

A I do.

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

A Initially in the litigation?

Q Yes.

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

Q And you would understand from this type of statement

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

A Yeah.

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

A I do.

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

A For risk damages? Yeah.

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

A Yes.

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

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

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

A Yes, sir.

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

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

March.

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

A Correct.

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

A Bad faith? No.

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

A I don't think it was bad faith.

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

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

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

A I'm not sure I follow that.

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

MR. DISHER: No objection.

THE COURT: 245 is admitted.

BY MR. SCHMELTZ:

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

A I do.
Q The middle bullet point is Damages. You see that?
A I do.
Q "View from financing partners suggests risk to value less than $100 million." You see that?
A I do.
Q You understand that. that was a view from potential exit financing partners that was expressed here in this Board slide. Right?
A I have no idea what financing partners said what about anything.
Q The next bullet point is, "Higher risk of exit financing increased discount rate plus or minus 5% rate drives plus or minus $15 million in DCF." Do you see that?
A I do.
Q Here, the risk damages show $50 million to $100 million. Right?
A That is correct.
Q And I think you indicated that you were seeing different discount rates applied at different points in time. Do you have any reason to believe that an increase in the discount rate at any time, here or any other time, was done in bad faith?
A No.
Q Do you understand Kevin Hays prepared this analysis?

A That was my assumption.
Q And any reason to believe that Kevin Hays acted in bad faith in any way, applying the discount rate that he applied and reaching this conclusion?
A No.
Q At Hearing Exhibit 245.003, you see that what was happening at this point in time was there was a comparison of Riot's offer to the pre-mediation valuation. You see that?
A I see the heading that says, "Comparing Riot's offer to our pre-mediation valuation."
Q Are you aware that at this point in time, the Rhodium Board was trying to analyze whether or not to settle the Riot-Whinstone matter, and to determine how much value it could get for doing so?
MR. DISHER: Objection. Compound.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Do you understand that the Rhodium Board of Directors was trying to settle the Riot-Whinstone litigation at this time?
A That was my understanding. The mediation began in mid-February, and the case didn't settle until April. March was in between. My understanding is the Board was still seeking to settle, but at the same time, I recall there were some

ebbs and flows, and things got cold at a certain point, so I can't speak to those details.

Q And that's because when you went to the mediation with Riot-Whinstone, you weren't really involved in the mediation in a meaningful way. Right?

MR. SCHMELTZ: Let the record reflect the witness is looking at his counsel.

MR. DISHER: No objection. I was considering whether to object. I will not object.

THE COURT: Go ahead.

MR. COHN: I have been in trouble for cutting off my counsel before, so when he stood up, I wanted to give him a chance to (indiscernible)

MR. DISHER: Particularly me, for the record.

BY MR. SCHMELTZ:

A I'm sorry, what was the question?

Q That's because when you attended the Riot-Whinstone mediation, you were not heavily involved, were you?

A "That's because -- ?" I'm not sure, what does the "that" refer to?

Q I'm sorry, I was distracted by the tete-a-tete with your Counsel. Let's go back and recollect where I am.

I asked if you -- You and I were talking about Exhibit 245. And in Exhibit 245, I was asking about what was being assessed in terms of mediation and settlement, and you said,

I don't really know very much about that. And I said, that's because you weren't meaningfully involved in the mediation itself. Isn't that right?

MR. DISHER: I'll just object. It mischaracterizes the testimony.

THE COURT: I don't think he's asking about the testimony. I think he's just asking the question -- Overruled.

BY MR. SCHMELTZ:

A Meaningfully involved. So I was at the first session, I was not after that. That's true. And at the first session, we didn't spend much time with the mediator.

Q In fact, you spent about nine or ten hours in a room without the mediator. Isn't that right?

A That sounds right. It was a long time.

Q You didn't have an opportunity to really present your litigation case to the mediator during that mediation. Right?

A That is true.

Q And at the end of the day, the SAFE AHG came out and said they had a proposal, but they weren't prepared to make it. Isn't that right?

A Well, they did make a proposal.

Q Did they make it that day?

A I believe they did.

Q Okay. And that proposal then was less about settling the litigation, and more about the transaction. Right?
A I recall it was an amount for $170-something million. I thought that that was for everything, both the business assets and the litigation -- Yeah, I can't remember exactly what the SAFEs proposed at the end of that day, but it was a lower number. I don't recall much beyond that.
Q You never had a conversation during the course of that mediation or after about how much of that $170-plus million in consideration would go to damages or assets. Right?
MR. DISHER: Objection. Vague.
THE COURT: Yeah, why don't you ask -- Rephrase the question.
BY MR. SCHMELTZ:
Q You did not -- I can ask it again, and differently. You weren't involved in any conversations with Riot-Whinstone about how much of that figure would be related to damages versus assets, were you?
A That's correct.
Q And you haven't been involved in any of the tax allocation conversations between Riot-Whinstone on the one hand, and Rhodium on the other. Right?
A That's also correct.
Q You haven't been involved in any conversation with Riot-Whinstone in which you learned why Riot-Whinstone paid

the amount of money it paid. Right?

A That's true.

Q And so fair to say your client is in a better position to understand what had settled with Riot-Whinstone than you are. Isn't that right?

MR. DISHER: Objection. Vague, foundation, speculation.

THE COURT: Sustained.

MR. SCHMELTZ: I always love ending on an objection that gets sustained, but I -- And they teach you not to do that, but I'm going to do it.

Thank you, Your Honor, for your time.

THE COURT: Thank you.

MR. DISHER: Your Honor, I have a brief redirect.

THE COURT: Go ahead.

MR. DISHER: I'm going to take a second to get the binders up there.

REDIRECT

BY MR. DISHER:

Q Okay. Mr. Cohn, let's pick up on Special Committee Exhibit 245 that you've been talking about. Are you with me?

A Yes, sir.

Q And you were asked about some changes, and whether you thought there was any bad faith. Do you remember that?

A I do.
Q Now, the changes that were made that you walked through, do you think those changes were correct?
A I do not think those changes were correct.
Q Why not?
A Well, the main change that we're talking about here is lopping off the $25 million from the $100 million expected collection that is on 245.008. We previously discussed that I disagreed with the reduction of Building D from 40% to 20%, and I still disagree with that. With that 20%, however, and with the 25% discount rate, we still end up with an expected value, an expected collection of $100 million.

And then, what you see here on the 245.002 is the unexplained reduction by an additional $25 million. That appears to me to be baseless. I see no grounds for the additional $25 million. So I'm not saying that anyone operated in bad faith, but I don't see a basis for this. It strikes me as erroneous.

Q Let's break that down real quickly. So if we look at 254.008, the expected value -- or excuse me, the expected collection listed here is $100 million. Right?
A Yes, sir.
Q That's consistent -- or is that consistent with the amount that LKC has used in its fee application?

A It's the exact amount we're using in our fee application for the total litigation value.
Q And then if we look at the chart that was presented to the Board on March 5th, what is the high-end range that the Board, even after all these discounts, was given on March 5th?
A That's still $100 million.
Q Is that consistent with the LKC fee application?
A Not only consistent, but identical.
Q Now, lastly, on 245, let's go real quickly back to the last page, 254.008. These slides were presented to the Board in March?
A That's my understanding.
Q And as of March, what is the comment next to the claim for ERCOT curtailment, Uri?
A It's the same comment as before. This assumes we are allowed to plead and prove fraud.
Q And you weren't, were you?
A We are not.
Q Let's go back to the beginning of your cross-examination, when you were asked to do some numbers, some math on the fly. Do you remember that?
A I do.
Q And you repeatedly said the premise is incorrect. Do you remember that?

A I do.
Q What was incorrect about the premise from the questioning from opposing Counsel?
A So when you reduce the litigation value by 25%, when you go from $100 million to $75 million, you should be consistent. If you're going to knock off 25% from the total, you should knock off 25% from each of the two constituent parts. You knock off 25% of the energy credits, and you knock off 25% of the other damages. That's what you should do. And what Mr. Schmeltz was doing was he was not touching the energy credits. He was keeping the $20.96 million. And instead, he was taking all the deduction, the entire $25 million deduction from the additional damages.
Q Okay. I next want to turn to Special Committee Exhibit 307. This is the compromise settlement and release agreement.
A Yes.
Q You were asked about section III.25 on Hearing Exhibit 307.011. Do you remember that?
A Yes.
Q What is your understanding of the effect of Section III.25 of this settlement and release agreement?
A What this means is, aside from the $185 million consideration, there is not going to be any other payment to either side for attorneys' fees and costs.

Q Is that, in your opinion, the type of release of those potential claims for fees and costs?
A It's the standard release that you're going to see in agreements. It doesn't have any bearing one way or another as to whether the $185 million includes one bucket or another for litigation value.
Q Now let's go to the prior page, 307.009. And you were even asked about the section I want to talk to you about, III.9. Do you see that?
A I do.
Q What, in your understanding, is the importance of that provision?
A It's a standard release. Obviously, if you're going to be paying someone $185 million, you want a release from all the claims at the end so that they can't sue you after getting $185 million, especially whereas here, the $185 presumably includes a whole lot of litigation value. You don't want to be sued twice.
Q Is there some type of relationship in your mind between the release at III.9 and the release of costs and fees at III.25?
A I just think they're both standard provisions that you have in contracts. When you pay a whole lot of money, you want to be clear that, number one, you're not going to be sued twice, you're getting a release. And number two, you

can't be hit up for additional attorney's fees, especially whereas here, those attorney's fees might be part of the $185 million that you paid.

Q And if we look at the release in III.9, the release of all claims, do you understand anybody to be arguing that because of that release, none of the $185 million should be attributable to damages?

A Yeah, I don't think this little provision here has anything to do with the allocation of $185 million for damages.

Q Right. Now, you were also asked about the calculation in one of the Special Committee's emails back to you. Remember that back and forth about how to calculate? We can look at it if you don't remember that.

A I'd rather look at the numbers, sure.

Q Okay. Let's go to Special Committee Exhibit 201, and it's on page 201.007.

A Yes.

Q In the middle of the page, you see this formula that opposing Counsel walked you through?

A Yeah.

Q Your testimony was, this is not a reasonable way to interpret the contract. Do you remember that?

A I do.

Q Why is this an unreasonable way to interpret the

contract?
A Because he's allocating $50 million to energy credits. And he's also using the $75 million. So I think both of his assumptions are incorrect.
Q Let's look at Special Committee Exhibit 259. I just want to make sure we have the timing right on this. Are you there?
A I'm sorry, which one?
Q Special Committee Exhibit 259. This is the email from Mr. Thompson.
A Yes.
Q What is the date of Mr. Thompson's email?
A It's February 12th.
Q Is it the same day that the Board was meeting?
A Same day, yes, that is correct.
Q Is it your understanding whether or not Mr. Thompson is commenting on slides that were presented at the Board on February 12th?
A Yeah, and actually, it looks like based upon the time and the language of the email, the Board meeting might already have begun.
Q But to answer my question, Mr. Thompson, to your understanding, is he commenting about the materials that were being presented to the Board on February 12th?
MR. SCHMELTZ: Your Honor, calls for speculation.

MR. DISHER: I'm just asking whether he has an understanding one way or the other.

THE COURT: Ask him if he knows.

BY MR. DISHER:

Q Do you know one way or the other?

A One hundred percent sure, no. But this is on --

MR. SCHMELTZ: Move to strike everything after "Not 100% sure." Not foundation.

THE COURT: Let him finish the answer, and then we'll consider that.

MR. SCHMELTZ: Thank you.

BY MR. DISHER:

A I'll say if you look at this email chain, it is talking about the damages template on February 12th, and it's talking about the tables in my presentation on February 12th. And then, the comment is about that presentation. So I can't say there's any kind of metaphysical certainty. But looking at this email chain, which I was not on, it certainly, it does look like they're referring to the February 12th presentation.

Q Does this email chain refer to any other change that was made to the damages chart after the February 12th presentation?

A No.

Q Okay. And then finally, let's go to -- You were asked

about expected percentages of success on various different claims. Do you remember that?

A Correct.

Q Mr. Cohn, have you repeatedly represented corporations facing class action lawsuits?

A That is correct.

Q Have you seen repeatedly whether any of those class action claims have a less than 50% success rate?

A I would say the overwhelming majority have less than a 50% success rate.

Q In those cases, have you seen corporate clients settle those claims for some amount of expected damages?

A All the time, as they probably should. Look, if there's a 40% chance of paying $1 billion, you don't ignore that risk.

Q If you had a 5% chance of success on a $1 billion claim, would you pursue it?

A Five percent chance on a $1 billion? Yes. I mean -- Yes.

Q As your partner, I certainly hope you would.

MR. DISHER: I have nothing further. Pass the witness.

THE COURT: Mr. Schmeltz?

RECROSS

BY MR. SCHMELTZ:

Q I think you said that the Building D movement to 20% was wrong. Did I -- and I'm not putting words in your mouth, but if I have it wrong, let me know.

MR. SCHMELTZ: I got a quizzical look for giving somebody their property back, for crying out loud. Just being a nice guy.

BY MR. SCHMELTZ:

Q Did I have that correct, you thought it was wrong?

A Reducing the odds to 20%, yes, I do.

MR. SCHMELTZ: Your Honor, I don't know how exactly you want me to proceed. I've got -- In our exhibit designations, we left open the ability to designate exhibits for rebuttal purposes. And I have a rebuttal exhibit, and with my apologies to everyone, I only have two copies. I managed to take a photo of it with my iPad so that I can read it, but I can give one to Counsel to take a look at, and give one to Your Honor, and then I could take Counsel's version to the witness, if that is all right.

THE COURT: Okay.

MR. SCHMELTZ: May I approach, Your Honor?

THE COURT: Yes.

MR. SCHMELTZ: We will bring more copies.

MR. DISHER: Your Honor, can I have a couple minutes just to read this?

THE COURT: Sure.

MR. DISHER: Okay. We've had a chance to review.

THE COURT: Okay. Your Honor, may I take Counsel's copy to the witness?

THE COURT: Yeah, go ahead.

MR. DISHER: Can I just read off of your screen (indiscernible)

BY MR. SCHMELTZ:

Q I think that you testified earlier in response to questions from Mr. Disher that your recollection was that, or understanding was that no one from your team was consulted on the Building D change from 40% to 20% as well. Did I understand your earlier testimony correctly?

A I think you might be paraphrasing it, and I guess there's a question of the word "consulting." But if you want to ask me a question, I'm happy to answer it.

Q Okay. These are meeting minutes of the Board of Directors of Rhodium Enterprises for February 16th, 2025. Do you see that?

A I do.

Q And it indicates that --

MR. DISHER: And Your Honor, I'll just interject at this point. We object to this line of questioning. I don't think he's the proper witness to authenticate this, and it appears to be hearsay as well.

THE COURT: Yep, if you're going to -- I mean, if

you're going to ask him questions about it, it has to be in evidence.

MR. DISHER: And also, I think this is an improper rebuttal exhibit. I mean, Mr. Cohn made his position on this line of questioning clear during his deposition. He easily could have included this on the witness and exhibit list.

MR. SCHMELTZ: So Your Honor, what I do here is I'd like to make a very short proffer on this point, and then we'll attempt to bring this in through another witness.

MR. WOLFSHOHL: But it's still not on his exhibit list, Your Honor.

MR. DISHER: Yeah, I mean, he didn't include it on his exhibit list --

THE COURT: Well, I mean, this is a rebuttal exhibit, so I'm going to let him use a rebuttal exhibit.

MR. DISHER: But I mean, just so that the record is clear, it's not a proper rebuttal exhibit when they knew that this was our position from, you know, prior, including during the deposition. They had ample time to have included it on the exhibit list. I think rebuttals are meant to be for when something is unforeseen, that you didn't expect, testimony you didn't expect it.

THE COURT: Well, what are you trying to use this for?

MR. SCHMELTZ: Well, Your Honor, it's clear from the Board meeting itself, and I can have witnesses who were there testify to it without the minutes, that Will Thompson and John Stokes were present at the meeting, and this is where --

I'm making a proffer, Counsel, if you'd just let me.

-- were present at the meeting, and were consulted on the change from 40% to 20%, and are recorded in the minutes as agreeing, as seeing that as reasonable. So --

THE COURT: I mean, but -- okay. So when you get this document admitted, I mean, it's --

MR. SCHMELTZ: Well, I'll either get it admitted, or --

THE COURT: Have someone testify.

MR. SCHMELTZ: Or someone will testify. Fair enough.

THE COURT: (indiscernible) proper --

MR. SCHMELTZ: (indiscernible) That's fine. I'll end on yet another whimper today, but we know where we're going for another day.

BY MR. SCHMELTZ:

Q All right. You -- In your engagement letter from March of 2025, which was your Exhibit 2, Section D of the

potential success fee provides that, "The client and Lehotsky Keller Cohn, LLP will determine in good faith the portion of transaction value to the client allocable to the energy credits and damages specified in Sections B and C." Right?

A You read it correctly.

Q And it then goes on to say that if you can't do that, the dispute gets resolved by the Court. Right?

A "That 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 disputes shall be resolved by the Bankruptcy Court." That's --

Q I'm sorry, is that a yes?

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

Q And then it provides that if the parties can't in good faith resolve the dispute, it will be resolved by the Court. Right?

A Yeah, that's right.

Q There's not anything in this agreement that sets out how the parties are to go about determining how an unallocated settlement should be allocated, is there?

MR. DISHER: Objection. Outside the scope of redirect.

THE COURT: How is that within the --

MR. SCHMELTZ: I'm going to connect it in one more question.

THE COURT: All right, I'll let -- I'll give you some leeway.

BY MR. SCHMELTZ:

A Well, it does say they should determine it in good faith.

Q And then it says if they can't, the Court would resolve it. Right?

A That's true.

Q And there's not anything that points the Court to what specifically it should look to, is my question.

A I think we read the entirety of the language.

Q So there's not. Right?

A Well, the Court has to make its own determination consistent with principles and interpretations of the contract law. I wouldn't ignore all that. But you're asking by the words on the page, and there aren't other words on the page that bear upon that determination.

Q And so there's nothing in this agreement that suggests the Court needs to go through the settlement rubric that you presented to the client with your percentages of chance of likelihood of success, and your base amount of damages to determine how much should be allocated to settlement, is

there?

MR. DISHER: Objection. Vague, compound.

THE COURT: I'm going to overrule that.

BY MR. SCHMELTZ:

A Yeah, certainly, this agreement does not specifically cite any particular exhibit or spreadsheet or other methodology.

Q Thank you.

MR. SCHMELTZ: I have no further questions.

MR. DISHER: Nothing further.

THE COURT: All right. Thank you, Mr. Cohn. You may step down.

MR. COHN: Would you like me to leave the binders up here?

THE COURT: Go ahead, just leave them there. Thanks.

MR. DISHER: Your Honor, Lehotsky Keller Cohn calls Chase Blackmon.

THE COURT: Okay.

You've got plenty of water?

MR. BLACKMON: Well, I'm almost out. But I'll survive. Is this for me, or is this left behind?

THE COURT: Oh, it was a present.

MR. BLACKMON: Yeah. (indiscernible) bricks of presents.

MR. SCHMELTZ: Your Honor, before we proceed with the witness, I have a witness who would like to go (indiscernible) it seems unlikely to me today we'll get to him (indiscernible) may I excuse him?

THE COURT: Yeah. I mean, how long do you think we're going to be --

MR. DISHER: Ten minutes or less.

MR. SCHMELTZ: I have other people I would (indiscernible)

THE COURT: Okay, yes. Go ahead.

Mr. Blackmon, would you raise your right hand, sir?

Do you solemnly wear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. BLACKMON: Yes.

DIRECT EXAMINATION

BY MR. DISHER:

Q Good evening, Mr. Blackmon. How are you?

A I'm good. I look a little shiny this part of the day, but I'm well. How are you, sir?

Q I'm doing well. So Mr. Blackmon, you've been either the CEO or co-CEO of Rhodium for how many years?

A Two-and-a-half, maybe going on three at this point.

Q And your current title today is what?

A CEO and Chairman of the Board.

Q You've been with Rhodium since the beginning of its litigation with Whinstone?
A Yes, sir.
Q That's been about two years or more?
A Yes.
Q Whinstone in that litigation was very aggressive.
A I believe so, yes.
Q They were relentless, even?
A Indeed.
Q They took every shot on goal?
A They did, yeah.
Q Rhodium hired Lehotsky Keller Cohn to join the Stris litigation team. Correct?
A Yes, sir.
Q Together, Stris and LKC won everything for Rhodium?
A Yes.
Q You actually said, "I've never seen a team of winners win so perfectly and with such consistency." Do you remember that?
A I do.
Q Stris and LKC secured multiple emergency orders to keep Rhodium alive before it filed for bankruptcy. Correct?
A Yes.
Q And you, of course, agree that LKC deserves a contingency fee based on the contract that we have with

Rhodium?
A Yes.
Q Now, despite all that winning, before bankruptcy, Rhodium was having cash flow problems?
A Yes.
Q At the time Rhodium entered bankruptcy, Rhodium was running out of cash.
A Yes.
Q You know that Whinstone didn't think much of the value of Rhodium during that litigation?
A So I heard.
Q And I believe the quote was that, "Whinstone would buy Rhodium for $1."
A That's what I heard.
Q And Rhodium was also unable to get alternative financing before it filed for bankruptcy?
A Yes, sir.
Q After filing for Chapter 11, Rhodium got DIP financing?
A Yes.
Q That DIP financing was critical for the continuation of Rhodium's business. Right?
A Yes.
Q The DIP financing represented the best and only source of post-petition financing?
A At the time, yes.

Q But Rhodium, of course, was unable to get exit financing.
A Well, yeah. I think we chose not to proceed with pretty aggressive exit financing, yes.
Q Rhodium couldn't live with the terms of the exit financing.
A Right.
Q Even though Michael Robinson and the Province team tried.
A Oh, there was definitely a valiant effort.
Q But in the end, they just simply couldn't get terms that would allow Rhodium to survive.
A Without -- I mean, taking into account the risks associated with taking, you know, expensive money, we decided it was best to settle with the Whinstone folks instead, yeah.
Q But of course, you agree that at the time of the settlement, Rhodium also had valuable damages claims against Whinstone?
A (indiscernible)
MR. SCHMELTZ: Your Honor, I'm going to object. This is leading. And I understand the oddity of that objection, but this isn't necessarily an adversity scenario. Mr. Blackmon is the CEO of the Debtor, and was actually pursued by the Special Committee. I think Counsel needs to

establish some adversity between the attorney for a long-time client who's called his attorney winners before we (indiscernible)

MR. DISHER: And may I respond?

THE COURT: Yes.

MR. DISHER: Federal Rule of Evidence 611(c)(2), A party can proceed through leading questioning if a party calls an adverse party, or witness identified with an adverse party.

Now, we have made --

MR. SCHMELTZ: (indiscernible)

MR. DISHER: Hold on. We've made a request for fees, Rhodium has objected to that request. So this is the definition of when this type of questioning should be allowed.

MR. SCHMELTZ: Not at all. That's exactly my point. He's neither an adverse party, because the adverse party is the Special Committee, and he's not identified in an adversary. That's why that 611 doesn't apply (indiscernible)

THE COURT: Well, I don't know the answer to the question, so I'm going to sustain it. But I'm going to let you brief it, and we can come back and ask him questions leading again.

MR. DISHER: Okay.

BY MR. DISHER:

Q While Rhodium -- Well, let me say it this way. Before Rhodium entered into the settlement and release agreement with Whinstone, was it your understanding one way or the other whether Rhodium had valuable damages claims against Whinstone?

A Yes, I thought the claims were valuable.

Q Did you review draft complaints that the Stris and LKC team drafted against Whinstone?

A Yes.

Q Do you remember what you referred to that final version of the complaint as?

A Oh, something -- masterpiece something or other.

Q Did Rhodium ask LKC and Stris to value the damages claims?

A Yes, sir, on multiple occasions.

Q Do you have the yellow binder?

A Yes. It's a big boy.

Q If you turn to Tab 14, please, which is for the record LKC Exhibit 14. You see that?

A Yes, sir.

Q Have you seen this exhibit before?

A I think so. This is one version of that slide deck, I think. Yes.

Q If we go to slide 3 of Exhibit 14 --

A Okay. Yes, sir.
Q Do you understand one way or the other whether this chart here reflects the Stris and LKC teams' attempt to value Rhodium's damages claims against Whinstone?
A Yes, I believe this is the -- this chart in particular on page 3 is one of the versions that you guys put together for us.
Q Mr. Blackmon, do you have any reason to doubt that the Stris firm gave its best estimates regarding the numbers that went into the chart on Exhibit -- well, on page 3 of Exhibit 14?
A Any reason to doubt that the Stris team gave its best effort to come up with the numbers? Is that right? No, I don't.
Q Likewise, do you have any reason to doubt that the LKC team gave its best efforts to come up with the numbers that are reflected on page 3 of Exhibit 14?
A No. But I think that y'all gave your best effort.
Q You have no reason to doubt?
A No reason to doubt.
Q Okay. Rhodium settled with Whinstone, ultimately.
A Yes, sir.
Q For how much?
A $185 million.
Q And is it your understanding whether part of that $185

million was for damage claims?
A I would imagine, yeah, some of it's for damages.
Q Right. And we know that Province failed to get exit for Rhodium. Right?
MR. SCHMELTZ: Objection. Leading.
THE COURT: (indiscernible)
MR. DISHER: I can rephrase it.
THE COURT: Yeah, why don't you rephrase it?
BY MR. DISHER:
Q Do you know whether Province was successful in getting exit financing for Rhodium?
A Not on terms that we were willing to take.
Q If we turn to slide 7 of Exhibit 14, you see the first bullet point there? I'm just going to read it. "Energy contract should be worth more to Riot than to Rhodium and another buyer." Do you see that?
A Yes, sir.
Q Do you have any understanding of what that bullet was trying to convey to the Board during this February 12th meeting?
A Sure. Riot was, you know, I believe that they came out and said that they were losing money on Rhodium's contract to -- I think it was like $2 million a month, something like that. And so therefore, you know, they would be able to reap the low energy cost that we were, you know, getting

less, and also take off the additional $2 billion burden.
Q Now, another buyer of Rhodium wouldn't be -- Or would -- Let me phrase it a different way so I don't get an objection. Would another buyer of Rhodium be able to experience that same benefit?
MR. SCHMELTZ: Your Honor, objection. Lack of foundation.
THE COURT: I think he's trying to address the "and other buyer question." So I'm going to overrule that.
BY MR. DISHER:
A Okay. No, I don't -- I don't think so.
Q And just explain that to the Court.
A Well, there's -- Riot, because they were losing $2 million a month on the energy contract itself, you know, whether it was Rhodium or any other buyer, they wouldn't automatically be getting that additional $2 million savings like Riot would.
Q Right. Now if we look at the second bullet in that section, do you see that, it says Rhodium? Do you see that?
A Yes, sir.
Q We can read it. "Rhodium-Whinstone contracts valuable, but need to be deployed in a business with significant risk, market volatility, execution, future litigation." Did I read that right?
A Yes, sir.

Q Do you have any understanding what the "future litigation" that's mentioned there is referring to?
A I mean, I think it's kind of a similar situation as above. If Rhodium were to continue, you know, fighting the good fight, so to speak, and try to continue deploying assets, capital, resources, etc., or just OpEx into the Whinstone Rockdale facility, you know, I think we said this before, Whinstone had -- it seemed as though they had a track record of taking every shot on a goal, I would have expected them to continue being aggressive.
Q And so this is specifically referring to litigation against Whinstone.
A Right.
Q Now, the next bullet point says, "Another buyer likely has similar risks in assuming the contracts." Do you know whether that phrase, "similar risks," is referring to things like future litigation against Whinstone?
A Yes.
Q Explain that.
A I've talked with many folks who were, you know, interested in a buying Rockdale site from us, but they just couldn't get over the hurdle that they might have to take on Riot at some point in the near future too, unfortunately, in litigation and such.
Q You were at the February 12th Board meeting?

A I visit pretty much every Board meeting.
Q Was there an effort after the February 12th Board meeting to push down the value of the damages claim?
A My memory's a little spotty on exactly which Board meeting you're referring to.
Q The February 12th, the slides we were just looking at.
A These? Okay.
Q After this meeting, do you remember an effort to push down the value of the damages claim?
A An effort to push down the value -- I know the value definitely did go down for various reasons.
Q Do you remember testifying that Michael Robinson and David Dunne were trying to push down the value of the damages claim?
MR. SCHMELTZ: Now this is improper impeachment, with (indiscernible)
MR. DISHER: I haven't impeached him. I'm asking whether he remembers testifying to that.
THE COURT: Overruled.
BY MR. DISHER:
A Can you say that one more time?
Q Yes. Do you remember testifying during your deposition that Michael Robinson and David Dunne were trying to push down the value of the damages claim?
A If I said it like that, I'm surprised. But I think I

know where you're going.
Q I'll just ask you, after the February 12th Board meeting, do you remember an effort to try to push down the value of the damages claim?
A Okay, I would say --
MR. SCHMELTZ: (indiscernible)
MR. DISHER: He hasn't answered it yet.
THE COURT: Overruled.
BY MR. DISHER:
A Okay, so let me say it in a way that I would say it. Okay, like, was there an effort made specifically to try to drive the value down? I really wouldn't say it like that. I would say that there was a new circumstance which necessitated revisions of the numbers, given new information.
Q But you never heard any lawyer tell you that the damages claim should be between $50 million and $100 million, though. Right?
MR. SCHMELTZ: It's leading. Objection, leading.
THE COURT: Why don't you rephrase, sir?
BY MR. DISHER:
Q Do you ever remember any lawyer telling you that the damages value, the value of the damages claim should be between $50 and $100 million?
A Not that I recall.

Q Okay. Do you remember that, or do you remember whether LKC and Stris were willing to take the damages claim on a pure contingency?

MR. SCHMELTZ: Your Honor, objection. Relevance.

MR. DISHER: I'm happy to respond.

THE COURT: Yeah.

MR. DISHER: It goes to what the litigation team's perspective was of the value of the damages claim, and how confident we were in our ability to recover it.

MR. SCHMELTZ: That doesn't go to the formula in the contract.

THE COURT: I'm sorry, what did you say?

MR. SCHMELTZ: That doesn't go to the formula in the contract, their confidence.

THE COURT: Well, it goes to the quantum of damages. So I'm going to overrule the objection.

BY MR. DISHER:

Q Would you like me to ask it again?

A If you don't mind. Thanks.

Q Sure. Do you remember whether LKC and Stris were willing to take the damages claim on a pure contingency?

A Oh, yeah, I remember we had discussions about it. I remember Mr. Cohn and the folks over at Stris definitely entertained it. And I was very appreciative of that, by the way, guys. I really do. I do not remember if it was pure

contingency, or if there were some other components to it. But I'm pretty sure there's emails and whatnot.

Q Do you remember both firms enthusiastically responding that, yes, we'd be willing to take it on pure contingency?

A I do, yes.

MR. DISHER: Give me one minute, please.

BY MR. DISHER:

Q Do you remember whether Whinstone ever told Rhodium that -- Well, let me phrase it differently. Did Whinstone ever tell you that they were paying you money because of the Uri energy credits?

A Not that I recall.

Q Finally, let's look back at slide 3 of Exhibit 14. If you look down in the expected value column, you see the total $158 million?

A Yes, sir.

Q And you understand that that number is the litigation team's estimate of the expected value of all of Rhodium's damages claims?

A Yes.

Q You lived this case.

A Every day.

Q You believed this case?

A Absolutely.

Q If you were in Las Vegas, would you take the over or

the under on Rhodium collecting $158 million in damages?
A Instantaneously, in that moment?
Q Yeah.
A And if it's a penny short, then I lose? Sorry. Would I take the over or the under? I'm not a gambling man. Well, if it's a simple question, I think I would have to take the under.
Q That's -- again, that's not what you testified to in your deposition.
A Oh, okay.
Q I'm happy to show that to you, if you'd like. So let me just ask you again. If you were given Vegas odds, would you take the over or the under on Rhodium collecting $158 million in damages?
MR. SCHMELTZ: (indiscernible) do not just get to say (indiscernible) That's not right.
THE COURT: All right. Well, show him the deposition, and we'll go through that.
MR. DISHER: Sure. Yeah. (indiscernible)
THE COURT: Do you want me to -- Do you still have rights, or --
COUNSEL: No, I need them again, please. (indiscernible)
THE COURT: (indiscernible)
MR. DISHER: And it's page 199 (indiscernible)

COUNSEL: 199?

MR. DISHER: Yes.

MR. BLACKMON: Studied those depositions a little bit?

MR. DISHER: Say again?

MR. BLACKMON: Studied the depositions a little bit?

COUNSEL: 199?

MR. DISHER: 199. You know what? It might be in our binder.

THE COURT: Yeah, it's in your binder, page 199, Exhibit number 26.

MR. DISHER: 26 -- Thank you, Your Honor.

BY MR. DISHER:

Q So Mr. Blackmon, are you with me?

A I'm getting there.

Q Okay. Tab 26, page 199.

A Yep

Q Line 16. You see that?

A Mm-hmm.

Q And you were asked, "If there were Vegas odds on this, and you could take the over or the under, what would you do? A. Over or under on? Q. The $158. A. Of like, what I thought we could get in a settlement? Q. No. If we litigated this thing to the end, over or under, do you think

LKC Stris beat Whinstone again? Would you take the over or the under? A. I mean, it's speculation. Right? I lived it. But, I almost forgot the but, but I lived this, I believed in the claims, I'd take the over."

That was your testimony. Right?

MR. SCHMELTZ: No, no, that's not a prior inconsistent statement. What the witness said here today, was, "I'm not sure. I'd take the under." Here he said it was speculation, "I'd take the over." It's not an inconsistent statement. It's not a proper (indiscernible)

THE COURT: Overruled.

BY MR. DISHER:

Q That's what you testified to?

A Yes.

Q That you'd take the over on the $158?

A Yep.

MR. DISHER: Nothing further.

THE COURT: All right. Mr. Schmeltz?

MR. DISHER: Thank you, Mr. Blackmon.

MR. BLACKMON: Thank you, Mr. Disher.

CROSS-EXAMINATION

BY MR. SCHMELTZ:

Q You were just asked about the over or under on a claim. What if here, in this situation, you'd agree with me that to get to $158 million was going to take a fair amount of time,

energy, and resources for Rhodium to continue to litigate against Whinstone. Right?

MR. DISHER: Objection. Leading.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Did you have a view one way or the other?

MR. DISHER: A view -- Objection. Vague.

THE COURT: Well, I don't think he's finished his question.

MR. DISHER: Oh, I'm sorry. I apologize.

MR. SCHMELTZ: Well, I was just going to comment how it's great that sauce for the goose is sauce for the gander (indiscernible)

THE COURT: (indiscernible) I mean, I might have to recall you, but he can leave. So --

MR. DISHER: Yeah, that's fair.

BY MR. SCHMELTZ:

Q Do you have a view one way or the other as to whether it would take a significant amount of time, money, and effort for Rhodium to litigate with Whinstone, and achieve that kind of $158 million value?

A At the time when we were having to make the decision?

Q Yeah.

A Yes, we had discussions about that.

Q When you're talking Vegas odds, like Vegas pays out

immediately. Right? That's a different question. Right?
A Yeah.
Q Did you have an understanding one way or the other as to whether this litigation would pay out the same way Vegas pays out?
A No. My understanding was it would take a, you know, considerable amount of time.
Q And in fact, take a look at TX 212, Exhibit 212 in our binder. Our binders are the white ones.
A Okie doke.
Q And this is an email exchange of 10 February 2025. You're asking questions of @JonCohn and @JohnStokes. Right?
A Yes.
Q And you see where it says, "Kevin and I were reviewing the exit financing term sheets we have received from Invesco and Galaxy, and it appears we're going to need to have the damages collected within roughly one year to be able to survive these aggressive financing terms." Have I read that correctly?
A Yes, sir.
Q What were your concerns, sir?
A Runway.
Q And how much would the claims have been worth to Rhodium if Rhodium ran out of runway?
A I'm not a lawyer, but I'm going to assume a lot less,

if not zero.
Q And the question that was asked of you was, did your lawyers believe in the value of these claims? Remember that? Were they ebullient, did they want to take it on contingency? Remember all that?
A Yes.
Q Well, did the client's view of the value of these claims change over time?
A I would say yes on some, no on others, you know? Bullish on, you know, a good chunk, and other factors impacted, you know, feelings about others.
Q What were you bullish on?
A The shutdowns. I felt like that was really strong. That seemed very strong. I think the energy credits seemed very strong. And I think that lines up with how the litigation team felt as well. Well, I could find that chart to help me, but those are the two that jump out at me.
Q You ask a few questions here. You ask about collectability, timing, and reliability. What were you trying, what concerns were you trying to convey to your legal team in this email?
A We were trying to decide between taking expensive, very expensive dollars to continue fighting the good fight, so to speak, right, and you know, taking it all the way with Whinstone. We were trying to compare and contrast that

with, you know, what a settlement scenario might look like if we found ourselves in one. I don't think at this time, but maybe the mediation was already scheduled. I don't remember. But I knew that if we took the money from, you know, Galaxy or Invesco, we'd be on a clock, countdown to D-Day, so to speak. And so I needed to know, you know, if we win, awesome, that's great. You know, how soon can we -- you know, do we think we'll be able to recover those funds, and how quickly would they be paid to us? And then, you know, I guess the reliability of it, how do they -- how is the litigation team that we can rely on the collectability and timing of this to help us make decisions on where we go from here?

Q Were you concerned one way or the other that Rhodium might run out of money, or have to pay back money with funds it didn't have before it could collect on this litigation?

A Yes. Yes.

Q And did that impact one way or the other your view of the value of the litigation? Of the damages claims, I should say?

A Did it impact? I mean, it certainly was a factor worth considering. I think that we had already applied a discount rate to the damages, which is, you know, supposed to help account for some of those things, you know, time value of future cash flows. But yeah.

Q Can you please take a look at TX 245 in your binder?
A Yes, sir.
MR. SCHMELTZ: Somebody -- Mitch, you need to mute.
BY MR. SCHMELTZ:
Q Take a look with me please at 245.002. First of all, do you recognize this as a presentation that was made to the Rhodium Board of Directors?
A This looks like the presentation that was -- Yes, it is.
Q Do you recall participating in Board meetings in which this type of information was presented to the Board?
A Yes, sir.
Q Do you know what the purpose of this information was for the Board?
A At this time, was this -- when was this? March. So this is after the first mediation with Whinstone, I think. Right?
Q The first mediation was February 19th.
A Yeah. And this was March. Okay, gotcha. Sorry, there were a lot of these. Sorry, what was your question?
Q What was the purpose of this type of information in the Rhodium Board meeting?
A To update the Board on, you know, recent developments as it pertains to the Whinstone mediation. you know,

potential settlement, you know, discussions, you know, versus, you know, going the distance on litigation.

Q In this slide at 245.002, do you see where it says, "Risked damages," and it has a low of $50 and a high of $100 million?

A Yes, sir.

Q Do you recall there being conversation at the Board meeting about the risked damages amount?

A Yes.

Q Do you recall if there were lawyers present in that Board meeting?

A I mean, there were probably a lot of lawyers in that meeting.

Q What types of lawyers would have attended this meeting?

A Ms. Tomasco usually joined, Chuck almost always joined, Morgan Soule, our assistant GC always joined. Let's see -- Sometimes you would come. I'm not sure if you were here at that point in the meetings or not. And then, of course, our litigation team would sometimes join as well.

Q Do you recall any conversation about whether the risked damages might not reflect the best thinking of all of the professionals, including the outside litigators at that Board meeting?

MR. DISHER: Objection to hearsay. Objection to foundation.

THE COURT: Ask you a question again. Are you asking whether he heard something? (indiscernible)

MR. SCHMELTZ: I'm asking if he recalls. And then I'll find out -- lay some more foundation. So I don't think we're at hearsay yet.

THE COURT: Okay.

BY MR. SCHMELTZ:

A What was the question again?

MR. DISHER: Your Honor, I guess my basis for my objection is that he applied in his question a statement that might have been said. So he's injecting hearsay into the question, and then asking him, do you recall anybody saying that?

THE COURT: Well -- yeah, rephrase -- rephrase the question.

BY MR. SCHMELTZ:

Q Do you recall conversation around the risked damages number?

A Yes.

Q What types of subjects do you remember being discussed about the risked damages numbers?

MR. DISHER: And I will object to hearsay.

THE COURT: Yes, you're asking for hearsay. Sustained.

MR. SCHMELTZ: I am asking not for the truth of

the matter asserted. I'm asking for what the deliberative body considered, so that we have a sense of what was important to the deliberative body, but not for the truth of what somebody said or didn't say. It goes to effectively corporate state of mind, which is the only thing (indiscernible)

THE COURT: But if it's corporate state of mind, then you're asking for the truth of the matter (indiscernible)

MR. SCHMELTZ: (indiscernible) state of mind is never -- it's a hearsay exception. Right? It's not hearsay.

THE COURT: Well, state of mind is different than asking people what they said. But re-ask your question.

BY MR. SCHMELTZ:

Q Do you recall the types of subjects that were discussed around the risked damages number?

MR. DISHER: Objection to hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q In the meeting where risked damages were discussed, did you personally have a concern that you weren't getting advice from your outside litigators on this risked damages number?

A Not that I recall.

Q As you left this -- You were the Chairman of the Board. Right?

A Yes, sir.

Q As you left this meeting, did you feel like you had a Board consensus on moving forward with this risked damages range?

A Oh, man --

Q Let me ask it differently. Take a look at 245.003.

A Okay.

Q Same exhibit, next page.

A Yes.

Q Do you recall there being discussion comparing Riot's offer to Rhodium's pre-mediation valuation?

A Yes. Okay, that was actually helpful.

Q Do you recall the purpose of this conversation?

A Okay. I remember where we're at now. Sorry. Timelines get, you know, mixed up. There were a lot of things going on.

THE COURT: (indiscernible) No, go ahead.

BY MR. SCHMELTZ:

A Okay. Yeah, so I believe at the previous mediation that had happened in February, a number had come forth from -- well, I guess it was technically the SAFE AHG, I think, that sent it to us post-mediation. And that was, you know, a number that Whinstone was kind of anchored towards.

Right? And so some of the new information that we had here in this presentation was, you know, we finally get an indication from the other side about where their head is at value-wise. And this is the Board, you know, looking at data, and trying to make sense of where they're at versus where we want to be, and trying to make decisions around that.

THE COURT: So let me just make sure I understand this. So $171 million in cash from Riot, SAFE, instead of $87, they would have agreed to $87 minus $12.2?

MR. BLACKMON: That was my understanding. Yes, sir.

THE COURT: Okay. And then the energy deposits, you would have gotten that returned, and -- You got MR. BLACKMON: I believe so. Yes, sir.

THE COURT: Okay, and then the IP. Okay.

BY MR. SCHMELTZ:

Q And it says under $195.3 million, "Apples to apples, with authorized $225 million pre-mediation." Do you see that?

A Yes, sir.

Q So do you understand, one way or the other, whether the Board was considering whether to take an offer that was on its face perhaps lower than what it had wanted pre-mediation?

A Yes.
Q And did the Board come to a conclusion in this Board meeting, to the best of your recollection?
A I am confident that we came to some resolution. I don't recall exactly what that number was. But it was higher than the $171.
Q Higher than the $171, but it wasn't an abandoned settlement process? Is that a fair understanding of where -- of what you're saying?
A Yeah, no, finally, we were actually having settlement discussions after, you know, a long time.
Q And so let me go back one page and ask, if you have a recollection if the Board had a consensus moving forward around that risked damages range that we saw at 245.002.
A I believe so. Right? There were external factors, just new information that, you know, the Board -- was presented to the Board, and the Board considered with regards to, you know, lowering the risk damages number. And the comment on the right-hand column, you know, kind of calls it out, reduce the estimates by $25 million.
Q You recall in this timeframe having a value placed on the power contracts that Rhodium had with Whinstone?
A I remember Michael Robinson testifying that they were worth roughly $180 million, if I recall correctly.
Q You were asked about -- Oh, I've covered that. That's

good.

MR. SCHMELTZ: I have one topic, Your Honor, that I think is in the scope of direct, but may not be, but I would ask for a little leniency because we could get this witness off one time for all purposes.

THE COURT: I'm okay with that.

MR. DISHER: No objection, Your Honor.

THE COURT: Okay, yeah. I know you'd like to be here, but --

MR. BLACKMON: Hey, I'll hang out all day. That's fine.

MR. SCHMELTZ: He's getting good at it, Your Honor.

MR. BLACKMON: It's my second home.

BY MR. SCHMELTZ:

Q Do you recall a Board meeting in which it was discussed whether or not a claim for fraudulent inducement related to Winter Storm Uri should be pleaded in a publicly filed complaint?

MR. DISHER: I'll object to hear a say on that one.

THE COURT: You know, I think he only asked whether he recalls a Board meeting where that was discussed.

Isn't that the question?

MR. SCHMELTZ: That is correct.

THE COURT: Overruled.

BY MR. SCHMELTZ:

A Yes.

Q Do you recall if in the course of that discussion the Board formulated any particular course of action with respect to that specific topic, as opposed to anything else random?

A Sorry, I guess I just blanked. What was the topic again?

Q Whether to plead a fraudulent inducement claim related to Winter Storm Uri on a publicly filed complaint.

A Yes, we ultimately decided not to put the fraudulent inducement claims, you know, in the pleadings for Whinstone. There was a whole section that was dedicated to it that was largely deleted out. And you know, I was actually a big advocate for keeping that in because I believe that's, you know, what happened. But for, you know, lots of reasons we decided to take it out.

Q Do you recall what reasons the Board relied on in deciding to take it out?

MR. DISHER: Your Honor, objection to hearsay. I don't think he can answer that question without disclosing what was said on that day by certain individuals.

THE COURT: Why don't you rephrase it, and ask him what the reasons that he relied on?

BY MR. SCHMELTZ:

Q What reasons did you rely on in coming to that conclusion?

A Well, you know, as typically happens at Board meetings, there's a lot of discussion, and if I recall correctly, there were kind of three sides. That's not the right way to say it. Three differing opinions on the matter. Frankly, I was in the camp that wanted to put the fraud claims in because as a fiduciary, a bigger number is better for my constituents. Right? My equity holders, shareholders, Creditors, SAFEholders, etc. But then there was also logic --

Should I not say names?

Q No, you can?

THE COURT: Yeah, you can --

BY MR. SCHMELTZ:

A Okay. If I recall correctly, I believe it was Jonas who brought up a good one, and said, well, if you put fraud in now, I mean, that's going to, one, inflame the other side, Whinstone. And two, as a publicly traded company, if we're trying to, you know, subtle with them, a component of it could be stock, and that might drive their stock price down and that not be particularly great for us.

I don't remember who said this part particularly, but another school of thought was that why not, you know? Let's

leave the numbers the same, the same, you know, damages numbers and whatnot, leave all the numbers the same, and take the words "fraud" and "fraudulent inducement," and take that out altogether, but still say that Chad lied, keep the numbers the same, and if we need to during, you know, negotiations with them, use that fraud as kind of like a, you know, a big stick. Like, we will plead this if y'all don't settle with us.

And so the Board ultimately decided to take it out, take the fraud out.

Q And what was persuasive, particularly, to you in making that decision, of the things you discussed? You discussed the various logic. Was there one or more that was persuasive to you?

A I thought, well, they were all good points. I think the fact that the numbers largely stayed -- well, the numbers stayed the same as far as, you know, damages and whatnot. That's really how I got comfortable with it. Because if the number stays the same and we just don't call it fraud? You know, what do I care?

Q Ultimately, did you feel comfortable that Rhodium could mediate all of those power credit claims in the upcoming mediation?

A Absolutely.

Q Ultimately, Rhodium entered into a settlement with

Riot-Whinstone. Right?

A Yes, sir.

Q And are you aware, one way or the other, if that settlement included a settlement and release of all claims?

A That was my understanding.

Q So did you understand that Riot-Whinstone paid consideration to have all potential claims against it released, for all time?

A Everything, for all time is my understanding, yes, sir.

Q Thank you.

MR. SCHMELTZ: I have no further questions.

THE COURT: (indiscernible)

MR. DISHER: A few follow-up, Your Honor?

THE COURT: Yes.

REDIRECT

BY MR. DISHER:

Q Mr. Blackmon, will you turn to Special Committee Exhibit 236, please?

A I'm piling up over here.

Q A little bit.

MR. SCHMELTZ: Your Honor, I remiss would like to just move the admission of 212, which I put in my apologies. And my apologies, Mr. Disher, for interrupting.

THE COURT: Any objection?

MR. DISHER: I'm sorry, what number?

MR. SCHMELTZ: It's 212.

MR. BLACKMON: Oh, wait, I was wrong. You said 236?

MR. DISHER: No objection to 212.

BY MR. DISHER:

Q Yeah, it's in the big one. I'm sorry.

A Yes, sir.

Q Do you know what 212 is? I'm sorry. Do you know what 236 is?

A (indiscernible) Oh, yes. This was the mediation statement on the Whinstone matter.

Q This is Rhodium's mediation statement that its Counsel prepared?

A Yes.

Q Did you look at this before it was sent to the mediator?

A Yes. Is there a date on this one? I don't see it.

Q Yeah, on page 8. February 14th, 2025.

A Okay, yes.

Q You reviewed this before it went out?

A Yes.

Q And so you can take as long as you want, but I will represent to you that nowhere in this mediation is any claim about fraud. Do you remember that?

A I do remember that.

Q So the complaint didn't have any mention of fraud. Right?
A Correct.
Q And the mediation statement didn't have any mention of fraud?
A Uh-huh.
Q Is that a yes.
A Yes.
MR. DISHER: Your Honor, I'll move for the admission -- or excuse me, I will offer Exhibit 236 into evidence.
MR. SCHMELTZ: No objection.
THE COURT: All right. It will be admitted.
BY MR. DISHER:
Q My last line of questioning here, I believe that you said you were particularly bullish on Rhodium's potential damages claims related to the shutdown?
A Yeah, the multiple shutdowns. Yes, sir.
Q Now, I know you're not a lawyer. Right?
A No.
Q Do you have any idea what would happen to those claims if, during this bankruptcy, the Rhodium -- if Rhodium stopped operating as a company?
A No.
Q Do you know whether those claims would just vanish?

A I don't know.

MR. SCHMELTZ: He's already answered he doesn't know.

MR. DISHER: Nothing further, Your Honor.

THE COURT: Anything further, Mr. Schmeltz?

MR. SCHMELTZ: Yeah.

RECROSS

BY MR. SCHMELTZ:

Q Just -- you just had that mediation statement put in front of you. I'm going to ask you to take a look at page 7. That's 236.008. I want you to take a look at a paragraph three-quarters of the way down the page. It starts with, "If Riot and Whinstone want a global resolution -- " Do you see that?

A Yes, sir.

Q It says, three sentences in, it says, "Now that Rhodium's contracts are secure, and it has a clear path to hundreds of millions in damages against Whinstone, Rhodium feels strongly that its $453 million offer is below fair value. Whinstone and Riot should be prepared to pay meaningfully more than that at this stage." Have I read that correctly?

A I think so.

Q Do you have a view one way or the other, if you could ever get to $453 million in damages without including the

Winter Storm Uri energy credit claim?

A Well, let me look. (indiscernible) I'm lost. Does anyone know where that chart is?

THE COURT: 212.

MR. BLACKMON: 212. Thank you.

THE COURT: I'm sorry, 12.

MR. SCHMELTZ: It's at 12, and also, there's one at (indiscernible) I think I put it in front of you at 245.

MR. BLACKMON: Hold on -- 12 is faster, I think, at this point.

MR. SCHMELTZ: All right. Okay -- This was -- which version was this? $158.

THE COURT: It's the original version.

MR. BLACKMON: Okay --

THE COURT: It's also at 245, if you wanted to look at that fast.

MR. BLACKMON: Yep (indiscernible) I'm trying to be thorough here.

THE COURT: It's the last page.

BY MR. SCHMELTZ:

A Okay. No, it does not appear that we could get to the $453 million without taking into account the Winter Storm Uri credits.

Q One last question -- or just a -- The next page, page 8 says, "If the litigation goes to judgment, Rhodium fully

expects to collect hundreds of millions of dollars in damages from Whinstone and Riot, Whinstone's puppeteer." You see that? Did I read that right?

A Yes, sir.

Q Do you have an understanding, one way or the other, whether Rhodium would have green-lighted its counsel to amend the complaint to add a fraudulent inducement claim back in if the case didn't settle?

A My understanding was that if we needed to, if Counsel needed to, they could add it back in later.

Q Thank you.

MR. SCHMELTZ: No further questions.

MR. DISHER: Nothing further, Your Honor.

Thank you, Mr. Blackmon.

MR. BLACKMON: Thank you.

THE COURT: Thank you. You may be excused, sir.

MR. BLACKMON: And I'm out. Right?

THE COURT: Right. And don't talk to anyone outside about your testimony.

MR. BLACKMON: Sure. Thank you. Is it okay if I hang out, too?

THE COURT: Yep, you can hang out. You can stay in.

MR. BLACKMON: (indiscernible)

THE COURT: Yeah, you're done.

MR. BLACKMON: Okay. I'll stay in (indiscernible) These seats are more comfortable.

MR. THOMPSON: No further witnesses, Your Honor. We rest.

THE COURT: Okay. All right.

MR. SCHMELTZ: Your Honor, we'd call Chuck Topping to stand.

THE COURT: Okay.

MR. SCHMELTZ: If Your Honor is interested in continuing. Thank you.

THE COURT: Yeah, we're going to go for a little bit, but not forever.

Raise your right hand, sir.

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

MR. TOPPING: I do.

THE COURT: Okay. Go ahead, Mr. Schmeltz.

DIRECT EXAMINATION

BY MR. SCHMELTZ:

Q Mr. Topping, thanks for hanging in tonight. You were engaged in negotiating a fee arrangement with LKC. Is that right?

A Yes.

Q Could you tell me what the components of that, the success fee aspect of that arrangement were initially?

A The success fee had three components. The first component, Part A, was based on the contracts at issue being declared upheld, being upheld, our interpretation of the contracts being upheld, that called for a flat fee of $600,000. The second component was energy credits. Energy credits recovered came with a success fee in the amount of 5% of the amount recovered, up to $5 million. Anything above $5 million came with a success fee of 1%. And then there was a third component allocable to other amounts not attributable to energy credits, and that came with a success fee of 10% of the amount recovered.

Q Was it important to you to establish the caps effectively in the -- that bucket B, the energy credit section?

MR. THOMPSON: Objection. vague as to "caps."

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Bucket B had a 5% -- I call it a cap, and then a 1% cap on success fees for energy credits. Right?

MR. THOMPSON: Objection. Leading.

MR. SCHMELTZ: It is. It's a super foundational question. We'll establish the terminology so I'm not vague anymore, and then we -- I promise I'll move on.

THE COURT: Yeah, I --

MR. THOMPSON: I think I misheard the question. I

wouldn't have objected, but it sounded not correct also. A 1% cap?

THE COURT: I think what you're trying to say is that there was 5% on the first $5 million, and then a 1% on anything above that. I think that's what they're trying to --

MR. SCHMELTZ: I'm actually trying to say something different, but clearly failing.

THE COURT: Okay. Well, then I didn't understand the question.

MR. SCHMELTZ: I'll get it. It's totally fair. no, I'm -- Listen, that's not me being angry. That's me being a little -- It's a little late in the day. I apologize.

BY MR. SCHMELTZ:

Q Is there a reason that you separated energy credits out into a different success fee bucket than other non-energy credit claims?

A Yes.

Q What was that reason, sir?

Again, Your Honor, I apologize --

A I think that the view that we had was that energy credits was by far the strongest claim. There was data that demonstrated the energy sales that Whinstone had made. We were able to look at that data and determine, you know, that

sales had taken place. So we saw this really as the low-hanging fruit. And they were, in essence, claims that we thought would be very, very strong. So we wanted to put the financial incentive in the other bucket of claims for damages, and so that came with a higher success fee percentage.

Q We're going to talk a little bit about the claims, and the nature of the claims in a minute. Can you take a look at -- And it's going to be not in my white binders, but in their binder, Exhibit 3, please?

A In the black one?

Q In the black binder. Thank you.

A Yep.

Q Do you recognize the document at Exhibit 3?

A Yes. This appears to be LKC's fee application.

MR. SCHMELTZ: And I think Your Honor noted you'd take judicial notice that this is in the docket. Thank you.

BY MR. SCHMELTZ:

Q In the engagement letter that you negotiated, was there a provision allowing LKC to recover fees and some limited expenses and some limited attorney's fees?

A I didn't get the last part of your question. I'm sorry.

Q Yeah, that's okay. Was there a provision allowing LKC to recover expenses and limited attorney's fees in the

engagement letter that you negotiated?

A LKC had -- I think expenses and attorney's fees were a component of the success fee in Part C, at the 10%.

THE COURT: I didn't understand that answer. I'm sorry. I thought it was a different question.

BY MR. SCHMELTZ:

Q Yeah. Let me make this easier on us, Chuck, and put this document in front of you. I just need the engagement letter.

If you would take a look at Exhibit 203 in our binder? I'm going to do this from the March document, but I think the expense provision is the same in both the early one and the (indiscernible) Whinstone matter. But take a look at Exhibit 203. I think this was (indiscernible) probably duplicating exhibits, because I think they've got it as exhibit --

A I've got it.

Q All right. Wonderful.

MR. SCHMELTZ: Yeah, Your Honor, this is the same as Exhibit 2. So no need for me to move to admit it again, but if Your Honor is okay with me using this version?

THE COURT: Sure.

BY MR. SCHMELTZ:

Q Can you take a look at page 2, the paragraph that starts with, "We will continue to provide -- " Do you see

that?
A Yes.
Q And what was your understanding of this paragraph? And what was its purpose, from your perspective?
A This paragraph provided for graduated discounts based on volume. So for the first $250,000 of standard rates, there would be a 20% discount. For the next $250,000, there would be a 25%. And then for all additional time, so in other words time over $500,000 in a given month, there would be a 30% discount.
Q And what did you -- what, if anything, did you trade or negotiate away to get those discounts? What did you give up to get that?
A The structure, the overall structure that we came up with was one that allowed for Rhodium to receive discounts in exchange for a success fee. So the success fee structure, the discounts helped Rhodium with much needed cash flow at the time.
Q And about how much in discounts has LKC provided to Rhodium at this point?
A I don't know the exact figure, but I think the ballpark that I understand it to be is somewhere around the $1 million ballpark in terms of aggregate to date.
Q The paragraph goes on to talk about bills for hourly fees and reasonable expenses. Do you see that?

A Yes.
Q What do you understand that provision to mean in this engagement letter?
A This lists a number of different categories of hourly types of expenses that can be reimbursed provided that they are reasonable.
Q And did you have occasion to review the fee application that we started to look at in LKC Exhibit 3?
A Yeah, I have it right here.
Q And did you review the fees and expenses that LKC was seeking in this fee application?
A Yes.
Q Did you reach a conclusion, based on what you had in this application, as to whether or not the professional fees and expenses sought were reimbursable under the provision we just looked at in the engagement letter, which also is in LKC Exhibit 2?
A There were amounts that were included that didn't have any support. So we had never received invoices, for example, for the Porter Hedges amounts, so there was no way to determine if those amounts were reasonable. There were certain other amounts that were difficult to determine from the description, as to whether or not they were reimbursable.
Q And do you recall asking for additional detail?

A I believe that request was made through Counsel.
Q Do you recall whether you ever got any additional detail?
A I have not seen any additional detail.
Q Are you -- are you, or would you be allowed by the Bankruptcy Court, etc., adverse to paying additional attorney's fees and expenses if they were determined to be reasonable based on additional data?
A Am I prepared to pay if they are determined to be reasonable?
Q Are you adverse to it, or are you prepared to pay? Two ways of saying the same thing.
A Yes.
Q Yes, you're prepared to pay?
A Yes.
Q Did there come a point in time maybe around about February 2025 in which there arose a dispute about LKC's fee agreement?
A I'm sorry, there was an issue that arose in February of 2025. Correct.
Q And I shouldn't say about its fee agreement, but maybe it's right to obtain a success fee. Is that right?
A Yes.
Q What did you understand that dispute to be?
A To my recollection, the SAFE AHG had raised an issue

with whether or not LKC could receive a success fee due to the nature of the original fee application, and the way in which the success fee was described. There was a contention made that LKC would not be able to recover a success fee because of the lack of specificity in that original fee application. I'm sorry, in the retention application.

Q What, if anything, did you do about -- Well, in an effort to address that dispute?

A So I'm not sure if I would call it a dispute. But we certainly were concerned about the issue, and so Jon Cohn, Chase Blackmon, myself, the three of us explored how best to remedy the situation, and respond to the Safe AHG's concern. We ultimately arrived at a solution that was put before the Court, and that the Court considered, and it resulted in the filing of an amended retention application.

Q Okay. And what was the amended retention application meant to address, if you recall?

A One thing it was meant to address was the SAFE AHG's concerns about the level of specificity of the success fee, and to fully disclose the components of the success fee. Another purpose was to make clarifying changes, to make explicit the way in which the success fee would be determined in the event that you had a situation where there was a transaction that resulted in a sale of Rhodium's assets, and how to allocate the transaction value to the

different categories set forth in the engagement letter.
Q And that, the last thing that you've referred to in front of you is Exhibit 203 in our binder, but -- or you're in the black binder. Just turn to Exhibit 2, if you would, which is the engagement letter as marked by LKC.
A I have it in front of me.
Q And at the bottom of page 2, there is a provision under ld. Do you see that?
A Yes.
Q Was that provision added to address the issue that you've just described?
A Yes.
Q And that's the provision that we've been talking about today in court, that has a requirement to determining good faith, the portion of transaction value allocable to energy credits and damages, and then that provides for coming to court if that can't be decided. Right?
A Yes.
Q Now, I've used the word "dispute," and you have been very careful about it. When I say "dispute," I'm meaning this dispute between the SAFE AHG and LKC. I'm not referring to a dispute between LKC and Rhodium. Okay?
A Understood.
Q During this time frame, from your perspective, was there a dispute between LKC and Rhodium around what the fee

agreement between Rhodium and LKC meant?
A There were negotiations that took place. We considered a number of different ways to try to resolve the issue. We ultimately arrived at the solution that was presented to the Court.
Q And again, was the issue that you're describing what success the LKC would get in the event there was a transaction instead of simply a settlement of litigation? Is that what you're referring to?
A Yes.
Q What were some of the options that you explored with LKC?
A We explored trying to come up with a flat number, a flat amount that LKC would get in the event of a transaction. We also explored trying to come up with a fixed percentage that LKC would receive in the event that there was a transaction, in order to simplify the manner in which the success fee would be calculated.
Q Let's hop on that question or that issue. Right? You're describing a transaction that also leads to a settlement of the dispute. Right?
A Yes.
Q And we'll just, maybe we use as a hypothetical the transaction that actually occurred with Whinstone and Riot to resolve the dispute between Rhodium and Whinstone.

Right? Did you have a concern that in that type of transaction, it would be problematic to figure out how much of the consideration was going to settlement versus going to the purchase of assets?

A I think it would be potentially problematic. It would be potentially challenging. One of the things that we explored was a fixed number to avoid that. Another thing that we explored was a fixed percentage, based on the total transaction value.

Q Did you at any point reach an agreement with LKC, between Rhodium and LKC, as to how, in good faith, to come up with that allocation, based on a fixed percentage?

MR. THOMPSON: And Your Honor, I may be confused about where we are. I'm not seeing the relevance about negotiations around contractual terms that weren't adopted, and how we apply the contractual terms that were adopted (indiscernible)

THE COURT: Yeah. So what's the relevance?

MR. SCHMELTZ: So at this point in time, the parties actually came up with a solution that embodies what paragraph D, how it -- one way it could work in a good faith basis to come up with that allocation. And so we're getting into what they did to show how one could act in good faith, and that they attempted to act in good faith to do that. It is an example of how that provision can be carried out which

is, I think, what Your Honor has asked for today, tell me how it's supposed to work.

THE COURT: I'm really not following. Sorry, but --

MR. SCHMELTZ: So in paragraph D --

THE COURT: Paragraph D, it says, if you can't reach agreement in B and C, and you negotiate in good faith, then we'll bring it to the Court. I mean --

MR. SCHMELTZ: Prior to that, it says -- it says in relation to the fees in A and B, in a transaction that resolves or otherwise terminates the matter, the client and Lehotsky Keller Cohn will determine in good faith the portion of transaction value to the clients allocable to the energy credits and damages is in sections B and C.

THE COURT: Correct.

MR. SCHMELTZ: And one way they could do that is to come up with a flat percentage as an alternative to that, or as a way to affect that.

THE COURT: Yeah, but that didn't happen. Right? So why are we talking about it?

MR. SCHMELTZ: It happened. And that's what we're talking about.

THE COURT: There was an agreed percentage?

MR. SCHMELTZ: There was, at a point in time, an agreed percentage.

THE COURT: Okay. But that didn't come to pass. Right?

MR. SCHMELTZ: It is still an example of how to do that, and what that would look like.

THE COURT: I think that's irrelevant. Move on.

BY MR. SCHMELTZ:

Q In February of 2025, Riot-Whinstone and Rhodium were preparing for a mediation. Correct?

A Correct.

Q What, if you recall, what kind of work went into preparing for that mediation?

A There was work involved in preparing a mediation statement, there was work involved in preparing a complaint against Riot-Whinstone that we wanted to file before the start of the mediation. There was also work involved in coming up with a basis upon which the Board could set parameters inferring authority on the members of the management team that would be present at the mediation to potentially settle the litigation.

Q Did your outside Counsel also prepare a complaint for damages to be filed prior to this mediation?

A Yes.

Q All right. We're going to get into a couple of these buckets. We're going to talk about the work done by the Board (indiscernible) parameters, and we're going to talk

about the complaint. Let's talk about the complaint first. The original complaint as drafted, did that have a claim for energy credits?

A Yes.

Q Did it have a claim that included energy credits both for Winter Storm Uri and non-Winter Storm Uri?

A Yes.

Q Did it have a claim for fraudulent inducement of a settlement related to Winter Storm Uri included in it?

A Yes.

Q At some point in time, did there arise a conflict around whether or not that complaint should in fact contain a claim for fraudulent inducement?

A I'm not sure if I would describe it as a conflict. But there was an issue that arose about whether or not to include the fraudulent inducement claim in the publicly filed complaint. So there was definitely a discussion and some disagreement, debate around that point.

Q Did you have an understanding one way or the other as to -- did you have a view as to whether or not a publicly filed complaint should include a fraudulent inducement claim.

A I was in favor of including fraudulent inducement as a count in a publicly filed complaint.

Q Did ultimately a fraudulent inducement claim get filed

in a publicly filed complaint?
A No.
Q Do you know why?
A The Special Committee had requested that we refrain at the time from including a fraudulent inducement count in a publicly filed complaint. Did you understand one way or the other if the Special Committee was prohibiting that from ever happening, or was asking that it not happen at a point in time?
A My understanding at the time that the complaint was filed publicly was that the Special Committee was leaving open the question of whether or not the complaint could be subsequently amended to include a fraudulent inducement count.
Q Did you ever come to learn one way or the other whether the Special Committee was willing to allow a fraudulent inducement claim to be filed in a publicly filed complaint?
A Yes.
Q What's that understanding?
A The Special Committee authorized the filing, stated that it would allow the filing of a fraudulent inducement count in the publicly filed complaint if the mediation ultimately did not result in a settlement.
Q Do you have an understanding one way or the other whether Rhodium was able to mediate a claim for all of its

power credits, energy credits, Winter Storm Uri, and non-Winter Storm Uri?

MR. THOMPSON: Objection. Vague (indiscernible)

THE COURT: Restate your question?

BY MR. SCHMELTZ:

Q Did you have an understanding as to whether Rhodium was able to go to mediation, and pursue all of its energy credit claims, both Winter Storm Uri and non-Winter Storm Uri?

A My understanding is that the Special Committee did not prohibit Rhodium from asserting fraudulent inducement in connection with the mediation.

Q Do you have an understanding as to whether the ultimate settlement with Riot-Whinstone included a settlement of all energy credit claims, including Winter Storm Uri energy credit claims?

A It did. The release was very broad.

Q We talked about the work being done around settlement authority. From your perspective as the general counsel of Rhodium did the value that Rhodium placed on the claims it was pursuing in litigation change over time in this time frame?

A Yes.

Q And what is your understanding of that change, and -- what was your understanding of that change?

A My understanding is that a process began starting with

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

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

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

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

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

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

A Okay.

Q Do you recognize this document, sir?

A Yes. This appears to be a Board -- a presentation that was given to the Board in March, I believe.
Q And on the first page, 245.002, does that reflect the evolution of the risked damages that you've described?
A It does reflect some of the thinking, I think, at the time. I'm looking at 245.002.
Q And you see risked damages, with a low range of $50 million and a high range of $100 million. You see that?
A Yes.
Q Do you have an understanding as to whether that is reflective of how the company valued its litigation claims at that time?
A That is reflective of how the company valued damages at that time, it does say reduced estimates by $25 million.
THE COURT: Let me ask you a question. Where it says exit financing less certain due to -- and it goes on and says, "Galaxy less robust view on damage potential, longer timeline to recover from partner Fortress." Was that Galaxy's view? Is that what this is saying?
MR. TOPPING: Yes. Correct.
THE COURT: Okay.
BY MR. SCHMELTZ:
Q And Galaxy, was Galaxy brought in to potentially provide exit financing?
A Yes.

Q And did Galaxy bring in a partner, Fortress, to help think about the litigation claims?
A Yes.
Q And did you know one way or the other whether Fortress was a litigation financing shop?
A I have limited understanding. I've never really interacted with them, but my understanding at the time was that, yes, Fortress was a specialist in evaluating litigation claims.
Q And was it significant to you in the Board meeting that Fortress and Galaxy had taken that view of the claims?
A As the general counsel of Rhodium at this time, were you concerned that that risked damages range was too low?
A No, I don't think I had that concern.
Q Were you concerned that that risked damages number hadn't received enough input from your professionals to be reliable?
A That was not one of my concerns.
Q You mentioned the risked change to one of the claims, and I think you said it was Building D. Did I hear you correctly?
A It was indeed Building D.
Q Did you participate in a Board meeting in which that risk adjustment change was presented to the board?
A I did. And what was that risk adjustment change?

A Can you repeat the question?
Q What was the change in risk -- Sorry, that's a dumb question because I said "the risk adjustment change." What was the change, if any, in the risk rating for that claim?
A It was reduced from 40% to 20%.
Q From your perspective as the General Counsel of Rhodium, was that a well thought out decision?
A I believe it was.
Q From your perspective as the General Counsel of Rhodium, was that decision made with appropriate input from the corporation's professionals?
A Yes.
Q In 245.008, there is a litigation value chart, and it actually shows building D at 20%. Do you see that?
A I do.
Q Did you have a view, as the General Counsel of Rhodium, as to the strength of the various claims on this chart?
A There were several claims that I would describe as winning claims. There were several claims that I would describe as losing claims. I would describe a winning claim as something that had a probability of success greater than 50%. So there were several that would fit that category, and then there were several that would not.
Q In the engagement letter that we looked at in Exhibit 2, it talks about that reasonable good faith attempt to

allocate damages. Did you feel like it was a reasonable and good faith allocation to allocate $75 million to damages?

A Yes.

Q For purposes of that, for purposes of the LKC success fee?

A Yes.

Q Do you have a feeling one way or the other as to whether it would be fair and reasonable to pay a success fee on winning claims?

A I feel it would be reasonable.

Q Do you have a view one way or the other as to whether it would be fair and reasonable to pay a success fee on losing claims?

A I feel --

MR. THOMPSON: Objection. Vague. I'm sorry, did the witness already explain a losing claim, which means something with a lower than 50% winning success?

MR. SCHMELTZ: Yes. Yes.

MR. THOMPSON: If that (indiscernible)

BY MR. SCHMELTZ:

A I don't feel it would be reasonable to pay a success fee on a losing claim.

MR. SCHMELTZ: Your Honor, if I might have a minute just to confer to my colleagues.

THE COURT: Sure.

BY MR. SCHMELTZ:

Q From the start of the preparation for mediation to where we were in March, the March timeframe in this exhibit we're looking at in 245, from your perspective, did the process change, the settlement process or the expectations change about what was happening with Rhodium vis-a-vis this litigation?

A As we were going through the process of negotiating settlement, it started to become apparent to us that it would be very difficult to get exit financing on our terms. At that point, the -- 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, the sale of assets to Whinstone. The possibility of settling the litigation -- I'm sorry, the possibility of continuing the litigation started to evaporate because of the inability to obtain exit financing. So the solution of an asset sale began to emerge at that time as the most viable solution.

Q And did that play a role in in the company's view of the value of the claims it was settling?

A It did play a role in the calculation of the discount, and it did play a role in the overall assessment, yes.

MR. SCHMELTZ: I have no further questions. I pass the witness.

THE COURT: All right. Mr. Thompson, how long are you going to be?

MR. THOMPSON: Very brief. Like ten minutes.

THE COURT: Okay. And I think after that, then we should call it a day, and then figure out when we're going to come back.

Go ahead.

MR. THOMPSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q Will Thompson, for LKC. Mr. Topping, good evening. I seem to recall that you have trouble hearing in one ear? Will you let me know if you can't hear me properly?

A That's correct. I'm deaf in my right ear. I will let you know. Thank you.

Q And if you want to turn or anything, do whatever you want to hear the question, please.

You were involved in hiring LKC and Stris for the litigation. Is that fair?

A Yes.

Q Are you glad you hired LKC?

A Yes.

Q Are you glad you hired Stris?

A Yes.

Q Do you trust that those firms did the best they could

for you?
A Yes.
Q And do you trust that they gave you the best advice they could?
A I do.
Q Stris and LKC, is it true that Stris and LKC obtained exceptional results for Rhodium?
A I believe it is.
Q And is Rhodium committed to having -- or sorry, is Rhodium committed to having LKC fully compensated for the work it has done and the success fee it has earned?
A That has always been my position and my belief.
Q You told the Court that before. Right?
A Yes.
Q You testified on direct that LKC's discounted rates amounted to about a million dollars over the life of the matter. Do you remember that testimony?
A That was my rough understanding, and was kind of a ballpark figure of what LKC's aggregate discounts to date had been.
Q Right. And I think that's about right. I'm not trying to quibble with you about the precise number. Do you remember being asked by not an LKC lawyer, about whether a success fee of eight or nine times the discount that LKC provided would be fair?

A I do.
Q And your answer was it would certainly not be unfair for the success fee to be eight or nine times the discount. Is that fair?
A That was my answer, yes.
Q I want to touch briefly on the Porter Hedges fees. We've looked at the engagement letter before. It's our Exhibit 2, if you want to look at it again. But do you remember the language that talks about the reasonable expenses, including legal advice on retention and compensation matters?
A I do.
Q Is your understanding that there would -- Sorry, was it your understanding at the time that was negotiated that there would be a need for LKC to obtain advice on retention and compensation matters from a bankruptcy expert?
A Yes, and I think that's why we included that language.
Q Right. And that bankruptcy expert is Mr. Wolfshohl from Porter Hedges here. Right?
A Yes.
Q And so you, on behalf of Rhodium, were expecting that Rhodium would pay reasonable expenses for legal advice on retention and compensation matters that LKC incurred by hiring Mr. Wolfshohl. Correct?
A That was the language that we included, and that the

Court approved.
Q Even though you thought it was unlikely, you thought it was a possibility that Rhodium and Whinstone, in the PSA, the agreement between them, could reach one allocation, and then Rhodium and LKC, pursuant to the engagement letter, could reach a different allocation. Do you remember testifying to that?
A I did acknowledge the theoretical possibility that there could be two allocations. I did not want to --
Q Yeah. Let's talk about --
A I did not want -- Okay. Can I finish, or -- ?
Q You may finish if you want to. I think you've answered the question, but I'm not trying to interrupt you.
A Okay. I also said it's unlikely.
Q Are you finished now?
A Yep.
Q Thank you, Mr. Topping. You talked a little bit about fraudulent inducement, I think. You are, although a no doubt talented lawyer, you're not a Texas lawyer. Fair?
A I am not.
Q When you had questions about Texas law, you tended to ask Mr. Disher or myself, or someone else from Texas. Is that right?
A That is correct.
Q And so if I told you that the elements of fraudulent

inducement in Texas require justifiable reliance by the person claiming that he was fraudulently induced, would you have any reason to disagree?

A No.

Q And if I told you that justifiable reliance is inconsistent with not having done reasonable diligence on the front end, as a matter of Texas law, would you have any reason to disagree?

A I'm not sure if I would be willing to agree with that as a categorical statement. Perhaps generally, maybe.

Q I just mean you wouldn't have a position one way or the other because you haven't read the Texas cases about that topic. Right?

A That is correct.

Q You testified a little bit on direct about the mediation. You were in the mediation room. Right?

A I was in one of them.

Q That's a good point, Mr. Topping. And I don't need to get into a bunch of details about this, but it's fair to say in the mediation room you were in, there were also all the Rhodium people. Right?

A That is correct.

Q And in that mediation room, there was no opportunity to press a fraudulent inducement theory against Whinstone. Fair?

A I'm not sure what you mean by "press." There was an opportunity to meet with the mediator, and explain briefly our claims, which Mr. Cohn did very eloquently, as I recall. Beyond that, I would agree that for the remainder of the day, there was no such opportunity.

Q And I'm not going to hold you to a precise number or anything, but overall, about how many hours do you think we were in that mediation room?

A It seemed like a long time. I don't know exactly how many hours it was.

Q Maybe 11?

A Possibly. That sounds about right.

Q And out of those 11 hours, about how many minutes do you think we spent talking to the mediator?

A Thirty or less, maybe.

Q Right. And when Mr. Cohn went through our claims very briefly at the beginning of the day, there was no discussion of fraudulent inducement. Correct?

A That is correct.

Q Because he was talking about the claims in the complaint that we publicly filed. Is that fair?

A I don't recall. But I recall that I was happy with the way that it was presented, and I don't recall specifics or details.

Q And you recall that there was a mediation brief that

you reviewed?
A I did review it.
Q And you recall that it doesn't say anything about fraud?
A It included all of the allegations. It may not have included detrimental reliance or justifiable reliance. But other than that, I think it did include all of the same facts and allegations that were in the version of the complaint, the draft complaint that did include the fraudulent inducement count.
Q Right. It included the fact that, for example, in our contention, Mr. Harris lied.
A Yes.
Q But it did not say anything about whether the founders of Rhodium had justifiably relied on those misrepresentations from Mr. Harris. Fair?
A I have no reason to disagree with that statement.
Q You were the 30(b)(6) witness on behalf of Rhodium during a corporate representative deposition for four different topics last week. Is that right?
A Yes.
Q And we don't need to get into a bunch of details about it, but do you recall my asking questions about what Rhodium's position was on what numbers should be plugged into the different parts of the success fee formula?

A Yes.
Q And I'm not blaming you in any way, but you were not able to answer those questions as a corporate representative. Is that fair?
A I don't think that's fair. Rhodium designated a different witness to answer those.
Q I'm sorry, I'm not talking about what happened subsequent to that deposition. I just mean in the room, Mr. Schmeltz said you're unable to testify on that even though you were the corporate rep for topics 1 through 4. Is that right?
A No, I don't think that's fair. I don't think that -- Rhodium understood that topic to encompass those questions about that topic.
I also recall, Mr. Thompson, that Rhodium had objected, and (indiscernible) that topic of being overly broad.
THE COURT: All right, we've only got one hour, so (indiscernible)
MR. THOMPSON: Thank you, Your Honor.
BY MR. THOMPSON:
Q Again, I'm not trying to assign blame, or have anybody work that out. The Judge will work out what the consequences of anything are. All I'm saying is you were explaining that Rhodium hadn't interpreted the topic to cover the questions I was asking about what numbers get

plugged into the success fee formula.
A Right.
Q And you were giving that explanation because you weren't prepped on that topic for that day. Right?
A It wasn't one of the topics that was encompassed by the notice.
Q We can agree to disagree about that part. You talked a little bit about what you called winning claims and losing claims based on the likelihood of success on the merits. Do you remember that testimony on direct?
A Yes.
Q And if I heard you correctly, you described as a losing claim something that is more likely than not to lose. Right?
A Yes.
Q So I understand this isn't what happened, but just hypothetically speaking, if Rhodium had asserted a single claim against Whinstone and had a 40% chance of winning and it was worth a billion dollars, you would call that a losing claim. Right?
A Yes.
Q But it would have a fair amount of settlement value. Right?
A I'm not sure how to answer that.
Q Well, in your assessment as the company's general

counsel, do you think that a 40% likelihood of recovering $1 billion means the claim has settlement value?

A I wouldn't know how to answer that. It's very difficult to answer that in the abstract.

Q Okay. And if we settled that claim, 40% likelihood of $1 billion, we settled it for some amount of money, would your position be, well, I have no idea where that value could be allocated because it's a losing claim?

A I'm not really sure how to answer that either.

Q You testified a bit about exit financing problems affecting the assessment of the damages claims on direct. Do you remember that testimony?

A I do.

Q I don't know if you have an understanding of this one way or the other. Do you know whether if Rhodium ceased operations due to, say, a lack of exit financing and a lack of settlement, whether those claims that would benefit the Rhodium bankruptcy estate would disappear, or whether they would continue in some way?

A So my general understanding is that they would not necessarily disappear, but the ability to continue to prosecute the claims would be impaired, because there would be no ability to pay for lawyers such as yourself or LKC to continue to prosecute the claims.

Q Have you ever heard of a litigation trust?

A Yes.
Q Okay. And do you remember -- You were in the room when Mr. Blackmon testified. Right?
A Yes.
Q Do you remember Mr. Blackmon testifying about how LKC and Stris were enthusiastic about the possibility of taking these claims on pure contingency?
A Enthusiastic about, sorry, about what?
Q About the possibility of continuing to represent Rhodium as to its affirmative claims against Whinstone on pure contingency, without any hourly bills being paid.
A I was part of those discussions.
Q And so you remember them. Right?
A I do.
Q And Mr. Blackmon's testimony was accurate that both firms were enthusiastic about that possibility?
A I was also enthusiastic about that possibility. But when I talked with our professionals, it unfortunately was not a huge needle mover in terms of being able to create an opening for Rhodium to move forward without exit financing.
Q That's right. It didn't save the company enough to allow the company to continue being a going concern. Right?
A Something like that. I mean, that's roughly, I think, what my understanding was.
Q But of course, if the lawyers are working for free on

the front end, that would be enough savings for the claims to continue. Right?

A I think theoretically, yes.

MR. THOMPSON: Thank you, Mr. Topping. Have a good evening. I will pass the witness.

THE COURT: All right. Mr. Schmeltz?

REDIRECT

BY MR. SCHMELTZ:

Q Mr. Topping, you were asked about testimony that you gave that eight or nine times the savings certainly would not be unfair. Do you remember that?

A Yes.

Q Do you want to give any further gloss to that prior testimony?

A The reason why I didn't say it would be fair --

MR. THOMPSON: (indiscernible) that question and answer, Your Honor, instead of a narrative?

THE COURT: Yeah. Why don't you ask him a question?

BY MR. SCHMELTZ:

Q What did you mean by that?

A What I meant by that was I was not prepared to rule out the possibility, categorically, that solely by virtue of the amount, that that level of compensation would be per se unfair, inherently unfair solely because of the amount. We

hadn't done the analysis yet. We hadn't done the tax allocation. I wasn't involved in the analysis that was undertaken by Mr. Rosten, for example. I wasn't involved with the ongoing discussions about the tax allocation. I did not want to categorically rule out or state that a certain amount was per se unfair, or per se -- yes, unfair, or fair for that matter.

THE COURT: Wait. Hold on just a second.

(indiscernible) you need to dial in again, and (indiscernible)

MR. DISHER: I'm back on now, Your Honor, if you were waiting on me for something.

THE COURT: Okay. I was, and then Ms. Mates, too.

All right. Ms. Mates is on.

All right. Go ahead, Mr. Schmeltz. Sorry.

BY MR. SCHMELTZ:

Q Do you have a view, as you sit here today, under the facts and circumstances currently, whether it would be fair to pay LKC a success fee, fair and reasonable as eight or nine times the savings?

A I believe that what is reasonable, as I sit here today, based on everything that I know, based on everything I know about Mr. Rosten's work, and about the tax allocation work that was done, that the compensation for LKC proposed under Mr. Rosten's model would be fair and reasonable. I'm not

sure if I could agree that something more than that would be fair and reasonable.

Q You were asked if you could allocate value if you settled a losing claim. You remember that?

A Yes.

Q Here, is there an added complexity in that you settled for a number, and it's not clear whether the parties settling paid more for stuff or claims? Is that an added complexity?

A I do agree that there is added complexity in the sense that we're talking about a singular settlement number, and trying to come up with a mechanism for allocating different claims, and coming up with the constituents that would comprise that number. That is definitely a challenge.

Q So is it more likely than not that the settled claims, the damages includes those that are greater than 50%, or not?

A Can you repeat the question? I'm sorry.

Q Is it more likely than not that the settled damages includes those claims that have a greater than 50% chance of success?

MR. THOMPSON: I'm going to object as vague. I'm not sure, but he might be asking about whether it's more likely than not Whinstone was thinking something? Or -- Forgive me, I'm confused about what is more likely than not.

THE COURT: Can you rephrase your question?

BY MR. SCHMELTZ:

Q Yeah. If you had to make an allocation to damages, would it be more fair and reasonable to fill that allocation with winning claims, or with claims that were losing claims?

A In my opinion, it would be more fair and reasonable to fill it out with claims that are winning claims.

MR. SCHMELTZ: Thank you. No further questions for this witness.

MR. THOMPSON: Very briefly, Your Honor.

RECROSS

BY MR. THOMPSON:

Q Mr. Topping, in between your June testimony about eight or nine times the discount being not unfair, and your testimony today, have you spent a considerable amount of time meeting with Mr. Schmeltz?

A Have I spent a considerable amount of time what?

Q Meeting with Mr. Schmeltz, the attorney from Barnes & Thornburg?

A We did meet to prepare.

Q And are you asserting attorney-client privilege over the content of your conversations related to this testimony?

A Yes.

MR. THOMPSON: No further questions.

THE COURT: Okay.

REDIRECT

BY MR. SCHMELTZ:

Q I'm a little concerned (indiscernible) he asked if you had spent a considerable amount of time, and you said you'd spent time. Well, to be clear on the record, was it a considerable amount of time, or was it time?

A No, I wouldn't describe it as a considerable amount of time.

Q Okay, thank you.

MR. SCHMELTZ: Thank you. No further questions.

MR. THOMPSON: Nothing further, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Topping. You may step down.

MR. TOPPING: Thank you.

THE COURT: So it's 8:00. We're going to -- First of all, I need to get a real assessment of how long you think it's going to be, how long the rest of the case is going to be, and then the various -- I need for you all to tee up the various motions related to this, and I think there's probably eight or nine. And tee them up, give me an agenda, I'll go through them. To the extent I can rule on them, I'll rule on them. If not, we'll do it. So once you have a timeline as to how long you think it's going to take, then get with Mr. Laws, and we'll get another continued date for you.

And I don't know exactly when that's going to be. We're coming up on the holidays. But in order to -- Ms. Tomasco, I'm going to make the Debtor escrow the $8.3 million as part of whatever it does at confirmation, so that will take the time pressure off until I can rule.

MS. TOMASCO: I think that's perfectly fine, Your Honor.

THE COURT: Okay. So I will enter an order for you to escrow the amount, and subject to my further court order.

MR. SCHMELTZ: We've already paid $1.5 million of that (indiscernible)

THE COURT: No, no, it was -- My understanding was that it was the $8.3 million. That's what the testimony that you elicited today, that there was $8.3 still owed.

MR. SCHMELTZ: So it's $8.9 minus $600 is $8.3, but then we paid $950 on that.

THE COURT: Okay. Well, whatever hasn't been paid, I want that escrowed in a separate account.

MS. TOMASCO: I'm sure Mr. Wolfshohl will provide me with the number.

THE COURT: Okay. And then I'll enter an order to that effect so that we have that money there until I can rule on this. So -- all right?

MS. TOMASCO: Thank you.

THE COURT: Thank you all.

MR. THOMPSON: And I don't mean to suggest anything by this question, but I think last week, Your Honor might have suggested we'd be going tomorrow for travel purposes (indiscernible)

THE COURT: Yeah, no, I can't go tomorrow. I said we were going 'til tomorrow, but that was -- that went back to my lawyer days. But -- no. But I mean, look, it depends. If you need another half a day, then it's going to take a while to be able to come back. And then, you know, obviously, I'm going to need to rule. But I want to have whatever the amount is that is owed escrowed in a separate account for you all.

All right. We'll be in recess until tomorrow morning. Thank you.

MR. WOLFSHOHL: Thank you, Your Honor.

COUNSEL: Judge Perez?

THE COURT: Yes?

COUNSEL: Would you like for us to get with Mr. Laws about resetting the motion to compel that was scheduled for today as well?

THE COURT: Oh, I totally forgot about that. Yes, please do that. Yeah. (indiscernible)

COUNSEL: Absolutely. No problem.

THE COURT: You should have told me about that at

the beginning. I'm sorry.

COUNSEL: Oh, that's okay.

THE COURT: No (indiscernible)

MR. HURLEY: And Your Honor, Mitch Hurley with Akin, again for the record. We also had made an emergency motion for entry of a 502(d) order, which we had hoped to have heard today. And if that order were entered, I think it resolves at least one of the concerns that Mr. Potter had raised.

THE COURT: Yeah -- okay. So the 502(d) order, I don't think I need a hearing on that. Does anybody object to that?

Okay, I'll enter that.

COUNSEL: No, we're unopposed to that.

THE COURT: Yeah, I'll enter that either later today or first thing in the morning.

All right. Thank you.

MR. HURLEY: Thank you, Your Honor.

THE COURT: All right. And are you going to leave the exhibits, these exhibits here?

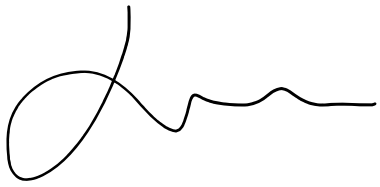
COUNSEL: Only if Your Honor wants us to. But I think we can take them, and return with them.

THE COURT: Well, we can take them and return them. We'll keep them.

(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.



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

[redacted]

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 | Mobile: (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
Bio • **Web** • **V-Card**

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

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 | Mobile: (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
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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 | Mobile: (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

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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 | Mobile: (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
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

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

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have

received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

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

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

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

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

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:

For the Debtors:	Quinn Emanuel Urquhart & Sullivan By: PATRICIA B. TOMASCO, ESQ. 700 Louisiana St., Suite 3900 Houston, TX 77002 (713) 221-7227
APPEARANCES CONTINUED.	
Audio Operator:	Akeita House, ERO
Transcription Company:	Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46048 (855) 873-2223 www.accesstranscripts.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Continued):

For the Debtors:	Quinn Emanuel Urquhart & Sullivan By: LINDSAY M. WEBER, ESQ. 295 5th Ave. New York, NY 10016 (212) 849-7000
For the Ad Hoc Group of SAFE Parties:	Akin Gump Strauss Hauer & Feld LLP By: SARAH A. SCHULTZ, ESQ. 2300 N. Field St., Suite 1800 Dallas, TX 75201 (214) 969-4367
	Akin Gump Strauss Hauer & Feld LLP By: MITCHELL P. HURLEY, ESQ. Bank of America Tower 1 Bryant Park New York, NY 10036 (212) 872-1011
For the Special Committee:	Barnes & Thornburg LLP By: TRACE SCHMELTZ, ESQ. KENNETH KANSA, ESQ. One North Wacker Drive Suite 4400 Chicago, IL 60606 (312) 214-4830
For Lehotsky Keller Cohn LLP:	Porter Hedges LLP By: JOSHUA WOLFSHOHL, ESQ. 1000 Main, 36th Floor Houston, TX 77002 713-226-6000
For Nicholas Cerasuolo:	Shannon Lee Beatty LLP By: RJ SHANNON, ESQ. 2100 Travis Street, Suite 1525 Houston, TX 77002 (713) 714-5770
For Transcend Partners Legend Fund LLC:	Munsch Hardt Kopf & Harr, P.C. By: ALEXANDER R. PEREZ, ESQ. 700 Milam Street, Suite 800 Houston, TX 77002 (713) 222-1489

TELEPHONIC APPEARANCES:

For Transcend Partners Legend Fund LLC:	Iacuone McAllister Potter PLLC By: CHASE JORDAN POTTER, ESQ. JOSHUA LEE SHEPHERD, ESQ. 4925 Greenville Ave. Suite 1112 Dallas, TX 75206 (214) 432-1548
For Imperium Investments Holdings, LLC, Cameron Blackmon, Chase Blackmon, and Nathan Nichols:	Streusand Landon Ozburn Lemmon LLP By: RHONDA BEAR MATES, ESQ. 1801 S. Mopac Expressway, Suite 320 Austin, TX 78746 (512) 220-2689
For the Official Committee of Unsecured Creditors of Rhodium Encore LLC, et al.:	McDermott Will & Schulte LLP By: DANIEL ALLARD, ESQ. 1 Vanderbilt Ave New York, NY 10017 (212) 547-5400
For Temple Green Data, LLC:	Jackson Walker LLP By: VICTORIA ARGEROPLOS, ESQ. 1401 McKinney Street Suite 1900 Houston, TX 77010 (713) 752-4334
For Proof Capital Parties:	Morris James LLP By: CARL N. KUNZ, III, ESQ. 3205 Avenue North Blvd., Suite 100 Wilmington, DE 19803 (302) 888-6800
For Liquid Mining Fund I, LLC, Liquid Mining Fund II, LLC, and Liquid Mining Fund III, LLC:	Lessne Hoffman PLLC By: MATTHEW I. ROCHMAN, ESQ. 100 SE 3rd Ave. 10th Floor Fort Lauderdale, FL 33065 (954) 372-5759
Also Present:	John Cohn Will Thompson David Dunn Marcus Parrish

(Proceedings commence at 4:30 p.m.)

THE COURT: All right. Good afternoon. It is 4:30 on Wednesday, October 15, 2025. We're here on several matters in Case Number 24-90448, Rhodium Encore. So why don't we get appearances of counsel in -- first in the courtroom, and then online, and then we can proceed?

MS. TOMASCO: Good afternoon, Your Honor. Patty Tomasco, Lindsay Weber, Quinn Emanuel Urquhart & Sullivan on behalf of the debtors.

MS. SCHULTZ: Good afternoon, Your Honor. Sarah Schultz and Mitchell Hurley, Akin Gump Strauss Hauer& Feld on behalf of the SAFE Ad Hoc Group, and I bet you didn't think you were going to see a day with all of us sitting together over there.

THE COURT: I still don't believe it.

MS. SCHMELTZ: It's not an optical illusion. Your Honor, Trace Schmeltz and Ken Kansa for the Special Committee.

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl for LKC, and I've also got Jon Cohn and Will Thompson at counsel table with me as well.

MR. SHANNON: Good afternoon, Your Honor. RJ Shannon on behalf of Nicholas Cerasuolo.

THE COURT: Thank you.

MR. PEREZ: Good afternoon, Your Honor. Alexander Perez with Munsch Hardt Kopf & Harr on behalf of the Transcend

Group, and our co-counsel will also announce themselves.

THE COURT: Okay. Go ahead, Mr. Potter.

MR. POTTER: Yes, Your Honor. Chase Potter on behalf of the Transcend Group.

THE COURT: Ms. Mates.

MS. MATES: Good afternoon, Your Honor. Rhonda Mates for Imperium Investment Holdings, Chase Blackmon, Cameron Blackmon, and Nathan Nichols.

THE COURT: All right. Mr. Allard.

MR. ALLARD: (Audio interference) for the Official Committee of Unsecured Creditors.

THE COURT: Say that again. You cut out a little bit.

MR. ALLARD: Sorry. Daniel Allard of McDermott, Will & Schulte for the Official Committee of Unsecured Creditors.

THE COURT: All right. Thank you. All right. Does anyone else wish to make an appearance?

All right. Go ahead, Ms. Tomasco.

MS. TOMASCO: I think we're going to amaze you even further, Your Honor. We took to heart the Court's admonishment to be transparent, and we also want to try to keep the process as efficient as possible. And usually, that means I used to think -- say that, you know, time is money in Chapter 11, except sometimes it's not.

And in this case, what I think we have for the Court

that resolves both the motions to compel, the motions for -- the motions to quash, as well as the disclosure statement hearing, the following proposal, and if I get it wrong, I have plenty of paper graders in the courtroom that will tell me where I've gotten it wrong.

We reached out to Mr. Laws and asked for some time on the Court's docket for a two-week delay for the confirmation hearing. Mr. Laws reached back out to us and gave us a time, which I'm sure you're aware of, of December 3rd at 9:30.

What that allows us to do is, instead of Mr. Potter feeling compelled to take ten depositions because he doesn't know who knows what, is we're going to have a --

THE COURT: All right. I'm going to go ahead and mute the line. So Mr. Potter and Ms. Mates, why don't you hit "five star"?

AUTOMATED VOICE: Conference, muted.

THE COURT: Okay. Mr. Potter, do I have you? I know I have Ms. Mates.

MR. POTTER: I believe so. Can you hear me?

THE COURT: I can hear you fine.

Okay. Go ahead, Ms. Tomasco.

MS. TOMASCO: Thank you, Your Honor. So a couple of meet and confers, some really good collaborative thinking.

THE COURT: I was prepared to have a status conference every morning at 8 so the children could get off to

school.

MS. TOMASCO: So the proposal is this: We are going to circulate to Mr. Potter a redline of the revised disclosure statement that addresses the information omissions that he cited in his objection. We hope that that is sufficient for his purposes. I will note that --

THE COURT: I have some comments also.

MS. TOMASCO: Okay. And thankfully I brought Ms. Weber here who has the pen on the disclosure statement and we'll be happy to take those down religiously.

THE COURT: These are mostly plan comments.

MS. TOMASCO: Okay. I understand, Your Honor. We're here to help. We're here to get that done, to get everybody's input. Mr. Potter is the only one that objected to the disclosure statement. We're happy for him to grade what we've done to address his concerns. We plan to get that redline to him. And we were hoping to get a virtual-only hearing time on Friday in the -- just -- you know, taking everybody's comments, getting them processed.

THE COURT: Well, the main thing that I'm not going to approve conditionally until I've had an opportunity to review a fully vetted liquidation analysis. So I'm not prepared to conditionally approve.

MS. TOMASCO: I wholeheartedly agree with Your Honor. And --

THE COURT: I'm not going to allow it to go out on the -- so you tell me when you have it and then we'll have the hearing two days, you know, 48 hours after that.

MS. TOMASCO: I understand. So that will not allow us to have, I believe, a hearing on Friday, but I will let the parties opine on that. There's one circulated. It just hasn't been approved by all of the planned proponents.

THE COURT: And there's going to be a fair amount of high and low recoveries, obviously, because we still have various pending items.

MS. TOMASCO: Correct. Correct. And I understand, Your Honor. And it is my feeling as well. I've never sent out a disclosure statement without a liquidation analysis. And it is -- I don't know how one actually does that in a conditional approval anyway.

THE COURT: Especially in a liquidating plan.

MS. TOMASCO: Correct. I understand. And so I'm 100 percent with the Court on that front.

So to sort of -- the way in which giving us more time should save us money is that we've agreed with respect to the depositions to do corporate representatives of the plan proponents, being the debtors, the special committee, the SAFE, AHG, and Imperium. If those 30(b)(6) depositions do not prove fruitful enough for Mr. Potter, we would like a hearing sometime after November 6th, which is the date that one of the

deponents would be earliest available.

So you see how this is all fitting together. And so we would like an interim hearing on discovery sometime that week of the 1st or 2nd -- sometime after the November 6th.

THE COURT: Got it. If you think that November 7th, Mr. Potter, is, and everybody else, if you think that's sufficient time, November 7th, no?

MR. HURLEY: I think actually, Your Honor, it probably has to be a little bit after that.

THE COURT: Okay.

MR. HURLEY: Sorry, Mitch Hurley, for the record. And I think that's because at least one of the 30(b)(6) witnesses is not available until the following week, and we want to have the conference after the 30(b)(6) witnesses are finished.

THE COURT: Got it. Okay. So when would it be? I mean --

MS. TOMASCO: Friday the 13th -- 14th.

THE COURT: Okay. We could do Friday the 14th. It would be virtual.

MS. TOMASCO: No, virtual is also preferred for cost savings, Your Honor.

THE COURT: Yeah. No, no. Yes.

MS. TOMASCO: Okay. And with those -- that basic plan, we're happy to take anybody's additional comments, the

Court's or anybody else's, to how we can improve the disclosure statement.

THE COURT: Okay. All right. Does anybody else wish to be heard on the disclosure statement?

MS. TOMASCO: Oh, I'm told that we can have a hearing on Monday, which, as you know, is my vacation. But if it's virtual, I will have palm trees in the background.

THE COURT: No, no.

MR. ALLARD: On the disclosure statement.

MS. TOMASCO: On --

THE COURT: So when is the -- so --

MR. ALLARD: We're going to file the disclosure statement, like, this week.

THE COURT: No, no. The liquidation analysis.

MR. ALLARD: Pardon me. The liquidation analysis imminently. It -- within -- tomorrow morning, probably? Or tomorrow by COB.

MS. TOMASCO: Tomorrow by close of business, which gives us Monday for -- unfortunately. But --

THE COURT: Oh, I'm in the wrong day, the 20th. So Monday, I have a confirmation hearing that is contested that starts at 9. So we could do it at eight o'clock, or we could do it at 3:30. Or 3. You could --

MS. TOMASCO: 3 would -- I think 3 works, Your Honor.

THE COURT: 3?

MS. TOMASCO: Yeah.

THE COURT: Okay. So let's do Monday at 3.

MS. TOMASCO: Virtual only?

THE COURT: As virtual only.

MS. TOMASCO: Thank you.

THE COURT: And if my confirmation hearing goes long, I'll call it, and we may need to push it back a little bit.

MS. TOMASCO: I understand, Your Honor. Thank you.

MR. POTTER: Your Honor, did you say Monday, October 20th at 3 p.m.?

THE COURT: Yes, sir. At 3 p.m. Yes, sir.

MR. POTTER: Thank you.

THE COURT: All right. So just in terms of my comments. So obviously, you're going to rework the schedule backing back off from the new hearing date on the plan.

MS. TOMASCO: Correct.

THE COURT: All right. So my biggest concern about the plan is that it kind of backdoor gives the debtor a discharge with the third-party releases. So the scope of the third-party release should only be the covered claims. So with respect to anything that is, you know, subject to a third-party release, it has to be a covered claim, which is the claims that arise, you know, in connection with filing the plan, the -- and anything that happened post-petition pre-effective date.

And with respect to everything else, you know, the

debtor can provide a release, or there could be, you know, mutual releases exchanged where people sign. But in terms of the third-party release in the plan, it's only -- I think the scope has to be only the covered claims. So that's it.

And I like your definition of covered claims, but I didn't see where it was exactly used. Because usually you would see that in the excluded -- in the, I'm sorry, exculpated parties, but it wasn't in the exculpated parties.

MS. TOMASCO: I think what you're referring to is something similar that we had in the cons plan?

THE COURT: Exactly.

MS. TOMASCO: Okay. I got it.

THE COURT: It's a liquidating plan. Yeah.

MS. TOMASCO: All right.

THE COURT: It's a liquidating plan. So it's exactly the same. So as it relates to -- even if you vote to accept the plan, I think you can opt out. And that's not in there right now. So, you know, obviously C has to be limited to the covered claims. You have to make sure that the scope of the injunction is limited to the claims that are released by the releasing parties. I think the scope of your injunction gives you kind of a backdoor discharge. So -- and that's in a couple of places, 11.1 and in the injunction.

Yeah, and then the exculpation talks about being exculpated from preference, fraudulent conveyance, fraudulent

transfer claims, and all of that. I mean, that's not -- I mean, the exculpation is limited to acts that happen within the bankruptcy for those three parties and not for related parties. You don't get -- related parties don't get exculpated. Just the debtor, the Committee, its members and the two independent directors. That's the only people getting exculpated.

MS. TOMASCO: What about counsel?

THE COURT: Counsel doesn't get exculpated. There's a release, but there's no exculpation.

MS. TOMASCO: Okay.

THE COURT: Okay. Covered claims. All right. I also had a question about employee arrangements. That's more -- that's my only really disclosure issue.

I just, obviously that's going to have to be reflected in a line item in the liquidation analysis where all of these monies are coming out, you know, the substantial contribution fee and all of that. I mean, all that's going to have to be detailed in the liquidation analysis.

MS. TOMASCO: It is, Your Honor. It's been in there for a long time.

THE COURT: Okay. All right. And let me see. Okay. On the definition of released parties in 1.96, as it relates to related parties, only to the extent that they would be liable derivatively of the released parties. So if I'm a related party that would be liable derivatively, then that would be --

if there's independent liability, we're not releasing that. And as it relates to the releasing parties, only if the releasing party would be compelled by principals of agency to issue a release.

And then -- so here in your definition of releasing parties, you have the debtors related parties, including Imperium and the founders. There's a separate provision in the treatment which says that they're going to opt in, that they're not going to opt out. So I don't -- I'm not quite sure, because you don't otherwise -- releasing parties does not include related parties other than for the debtors. Was that intentional? Because it's like there twice.

MS. TOMASCO: Like, it's probably -- I didn't -- that as not -- that's not in my bailiwick because I'm --

THE COURT: Yeah.

MS. TOMASCO: -- I didn't do that part. I didn't negotiate that part. But my imagination is that that was just belt and suspenders duplicative.

THE COURT: Okay. Well, I think he -- I mean, I think -- I don't think this is necessary if you already have it in the plan otherwise. So take a look at that. So those are my comments to the plan.

MS. TOMASCO: We will incorporate those changes, Your Honor.

THE COURT: Okay. Thank you. All right. So that

just then leaves the setting on the -- and the discovery related to the LKC fees. Is there anything else related to the plan?

MS. TOMASCO: Nothing else related to the plan. Nothing else related to the motions to compel or to quash. And I'll ask Mr. Potter to confirm.

MR. POTTER: The one thing I would mention, Your Honor, and we talked about it in our meet and confer, while we agreed to begin with the 30(b)(6) depositions, I could envision, and we're going to endeavor to give corporate -- you know, we just made this agreement today. And so we're shifting to 30(b)(6) depositions. And so we obviously need to provide topics.

I'm endeavoring to do that by tomorrow to all the entities that will be deposed. But I could see -- and I know we're trying to move quickly so I could foresee some objections to topics potentially. I know you wouldn't expect objections or any fights in this case at all. So I'm sure it'll go smoothly.

But in the event that that happens, I could foresee needing to maybe get in front of you quickly next week. But I just wanted to -- I don't know that we need necessarily a setting, but I wanted to forewarn you on that.

THE COURT: I was prepared to have hearings every morning at eight o'clock --

MR. POTTER: Okay.

THE COURT: -- to get this through, so.

MR. POTTER: Very good.

THE COURT: So don't. All right. So then --

MR. POTTER: But that's all for me, Your Honor.

THE COURT: All right. Thank you. All right. So then we have the emergency motion to continue the hearing on the Special Committee's objection.

Go ahead, Mr. Schmeltz.

MS. SCHMELTZ: Thank you, Your Honor. Trace Schmeltz for the Special Committee. Your Honor, we took your words to heart and paid. There's $600,000 under the agreement that's unequivocally due. We looked at time invoices, and we found about another $165,000 we thought unequivocally we should pay. We've wired that amount. I've confirmed LKC has received that wire.

We are very close to being able to either resolve or file a motion on the Riot Whinstone allocation question. I'd anticipate that Riot Whinstone allocation question motion can get resolved relatively quickly. And that helps set the stage, we believe, for a conversation around fees.

We are doing a couple of things at once. One, LKC has already provided discovery to the Special Committee and we've sent discovery back. So we're pursuing that litigation track. Two, we're trying to resolve this issue short of

litigation, and we'll continue to do that.

We do have -- I think we will -- we would like that hearing to occur later, given the confluence of plan discovery and LKC discovery for our team all at once. We do have -- we did receive a deposition notice for Chase Blackmon that's set to occur tomorrow. I just got that notice last week. We've noted that we would not have Chase Blackmon there. I think LKC's view is they properly noticed that. I'll let, obviously, them speak for themselves. We thought that was awfully tight, and it was not sufficient notice.

We'd like this whole thing phased out a little bit and now with the plan, you know, confirmation moved to December 3rd, I think we put, like, November 17 or something on our request. I'd love to see that even a little later if we can. But I'm mindful we have Thanksgiving and other things going on.

So we would be prepared to handle discovery in the month of November with LKC and would like to do it that way. I know they have some alternative views and I don't want to get in Mr. Wolfshohl's way in that regard.

MR. THOMPSON: May it please the Court. Thank you, Your Honor. Will Thompson from Lehotsky Keller Cohn. Good to see you again.

Mr. Schmeltz just alluded to the possibility of a deal. Deals are great if we can move toward one. In my experience, deals do not happen when everyone gets endless

extensions and deadlines are just pushed out and we can deal with other things in the meantime.

So I think it might help to talk a little bit about the timeline here. This settlement was approved by this Court back in April, more than six months ago.

THE COURT: I'm aware of the timeline.

MR. THOMPSON: Got it.

THE COURT: And I want to get this resolved quickly. So I would -- I'm really not inclined to move the hearing. But in deference to Mr. Schmeltz, I'll move it a week. But otherwise, it's going to go that next week. So I will tell you exactly when it's going. We're going to have -- we're going to start on Tuesday, November 4th at 2 p.m.

MR. THOMPSON: Thank you.

THE COURT: And have the hearing then.

MR. THOMPSON: Thank you, Your Honor. Appreciate that guidance.

THE COURT: Okay. And then to the extent that you need any -- I mean, if there's continuing, and now that you know -- and the hearing's not going to move, so we'll have that hearing. And so to the extent that there's additional issues relating to discovery that can't be resolved now that you know the date, I'm happy to take that up on a further status conference.

MS. SCHMELTZ: I will note that we're not going to

have Mr. Blackmon available tomorrow for a deposition. And if the effort is then to impose costs on the estate, because the feeling was it was properly noticed, I'd ask for relief from that. -- or that -- so.

THE COURT: Let them file the motion first if they're going to do that.

MS. SCHMELTZ: Fair enough. Thank you, Your Honor.

MR. THOMPSON: Thank you, Your Honor. Just for context, you know, we have provided documents to the other side. We've not received any documents in response. We've tried discovery through a number of different procedures and efforts here.

THE COURT: If they don't provide discovery, then they won't be able to introduce any evidence.

MR. THOMPSON: And that's exactly what I'm looking for, Your Honor.

THE COURT: All right. I mean --

MR. THOMPSON: I'm --

THE COURT: -- that's --

MR. THOMPSON: Yeah.

THE COURT: -- that's -- you know, it's got to work both ways.

MR. THOMPSON: I'm with Your Honor 100 percent. All we want to avoid is --

THE COURT: You know, we know the date that this is

moving forward. I expect all parties to provide, you know, full discovery. And to the extent somebody thinks somebody's being unreasonable, I'll call balls and strikes. But otherwise, I believe in, you know, we're going to try it on the merits. And to the extent people aren't trying it on the merits, then they don't get to introduce their evidence.

MR. THOMPSON: I appreciate, Your Honor. I don't want to take up more of your time. I do have one question about this wire transfer.

I believe Mr. Schmeltz was correct. There was a wire transfer. I saw a copy of it. I'm not a bankruptcy lawyer, Your Honor knows. My understanding is there's usually a court order before the money changes hands. And we're not touching the money until we know what we're supposed to do on that.

THE COURT: So, Mr. Schmeltz, I mean, I don't know. There's no court order approving the fees.

MR. SCHMELTZ: Your Honor, I think your comment and your inclination was that there was an undisputed amount. We should --

THE COURT: Right.

MR. SCHMELTZ: -- pay it, and then you would move the hearing.

THE COURT: Right. But I actually thought the undisputed amount would include part of the contingent fee, not just the $600,000. I was a little surprised that it was only

that amount. You know, I was -- and I'm -- you know, I was actually very surprised that it only included the $600,000 plus some, you know, other small amount. So, you know, just send an order approving that, and I'll enter it tomorrow. And then that way, we have it covered.

MR. SCHMELTZ: Thank you.

MR. THOMPSON: Thank you, Your Honor. We appreciate it.

MS. SCHMELTZ: I will -- well, if there's a dispute about the discovery, we'll dispute that at the time. I don't --

THE COURT: Yeah. Understand. No, no, you're --

MR. SCHMELTZ: -- agree necessarily with the characterization.

THE COURT: Right. Yep.

MR. SCHMELTZ: I don't want you to think my silence was a rollover on that.

THE COURT: Yep. Got it. Got it.

MR. SCHMELTZ: Thank you.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: All right. All right. Is there anything else we can do today?

Mr. Shannon, you've been uncharacteristically quiet. What -- are you not feeling well?

MR. SHANNON: No, Your Honor. I'm happy that we've

been able to work through these things, so.

THE COURT: Okay. Thank you very much. All right. We're in recess to my five o'clock hearing.

MR. WOLFSHOHL: Thank you, Your Honor.

THE COURT: Thank you.

MS. TOMASCO: Thank you, Your Honor.

THE COURT: You may be excused.

MR. POTTER: Thank you, Judge.

THE COURT: Thank you.

(Proceedings concluded at 4:56 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Heidi Jolliff, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Heidi Jolliff

HEIDI JOLLIFF, AAERT NO. 2850 DATE: October 17, 2025

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 that 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 he SAFE AHG and the Transcend Group want to move backwards, offering a lower amount that 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

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

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:	PATRICIA B. TOMASCO RAZMIG IZAKELIAN Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
	VINCENT PAUL SCHMELTZ, III KENNETH KANSA Barnes Thornburg, LLP One North Wacker Drive, Suite 4400 Chicago, IL 60606
For Ad Hoc Group of SAFE Parties:	SARAH A. SCHULTZ Akin Gump Strauss Hauer & Feld LLP 2300 North Field Street, Suite 1800 Dallas, TX 75201
For Creditor:	BRENDA LYNN FUNK Munsch Hardt Kopf & Harr, P.C. 700 Milam Street, Suite 800 Houston, TX 77002
	CHASE JORDAN POTTER Iacuone McAllister Potter PLLC 4925 Greenville Avenue, Suite 1112 Dallas, TX 75206

For Lehotsky Keller Cohn LLP:	JOSHUA W. WOLFSHOHL Porter Hedges LLP 1000 Main, 36th Floor Houston, TX 77002
For United States Trustee:	HA MINH NGUYEN Office of the U.S. Trustee 515 Rusk Street, Suite 3516 Houston, TX 77002
For Creditor Nicholas Cerasuolo:	R.J. SHANNON Shannon Lee Beatty LLP 2100 Travis Street, Suite 1525 Houston, TX 77002
For Caleb VanZoeren:	ANNMARIE ANTONINETTE CHIARELLO Winstead PC 500 Winstead Building 2728 North Harwood Street Dallas, TX 75201
For Imperium Investment Holdings, LLC:	RHONDA BEAR MATES Streusand Landon Ozburn Lemmon LLP 1801 South Mopac Expressway Suite 320 Austin, TX 78746
Court Reporter:	AKEITA HOUSE
Case Manager:	
Transcribed by:	Veritext Legal Solutions 330 Old Country Road, Suite 300 Mineola, NY 11501 Tel: 800-727-6396

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

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL ROBINSON	100	105		
CHRIS WHEELER	115	116	127	132
KEVIN HAYES	134	180	217	227

EXHIBITS	RECEIVED
Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110, 111	21
Exhibit 9	24
Exhibit 10	24
Exhibit 11	25
Exhibit 108	26
Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, 100-107	107
Exhibit 216	149
Exhibit 244	150
Exhibit 259	220

HOUSTON, TEXAS; WEDNESDAY, DECEMBER 3, 2025; 9:30 a.m.

(Call to Order)

THE COURT: It is Wednesday, December 3rd, 2025. We are here for the 9:30 docket, Case Number 24-9044, Rhodium Encore. There are various matters that are set. So Ms. Tomasco, why don't you start us off. Make an appearance and we'll get the appearances of counsel in the courtroom and then online.

MS. TOMASCO: Thank you, Your Honor. Just making sure the Court saw the amended agenda uploaded at Docket Number 2107.

THE COURT: Yes. The one that -- yeah, I did.

MS. TOMASCO: Thank you, Your Honor. Patty Tomasco. I'm here with my colleague, Razmiz Izakelian. Quinn Emanuel Urquhart & Sullivan. I will let the other law firms at my table make their own introductions. Thank you.

THE COURT: Thank you.

MS. TOMASCO: On behalf of the Debtors.

MR. SCHMELTZ: Your Honor, Vincent Schmeltz, and Ken Kansa from Barnes & Thornburg on behalf of the Special Committee of the Board of Rhodium.

THE COURT: Good morning.

MS. SCHULTZ: Good morning, Your Honor. Sarah Schultz and Mitchell Hurley, Akin Gump, on behalf of the SAFE Ad Hoc Group.

THE COURT: Good morning.

MS. FUNK: Good morning, Your Honor. Brenda Funk and Chase Potter for the Transcend Group.

THE COURT: Good morning.

MR. WOLFSHOHL: Good morning, Your Honor. Joshua Wolfshohl on behalf of Lehotsky Kellen Cohn.

THE COURT: Good morning.

MR. NGUYEN: Good morning, Your Honor. Ha Nguyen for the U.S. Trustee.

MR. SHANNON: Good morning, Your Honor. R.J. Shannon on behalf of Nicholas Cerasuolo.

THE COURT: All right. Who do we have on the phone?

MS. CHIARELLO: Good morning, Your Honor. Annemarie Chiarello of Winstead PC here on behalf of Caleb VanZoeren.

THE COURT: Good morning.

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

THE COURT: Good morning.

MS. MATES: Rhonda Mates for Imperium Investment Holdings, Chase Blackmon, Cameron Blackmon, and Nathan Nichols.

THE COURT: Good morning. All right. All right. I'm going to go ahead and mute the lines. And hit five-star

if you wish to speak.

Whoever is at the 205 area code, that's what's giving us the background noise.

MR. CAMARA: Are you able to hear me? This is Justin Camara, Your Honor, appearing pro se. I hold indirect equity interest through Trine Mining, Cross the River, and Elysium Mining, which old equity in Rhodium Enterprises Incorporated.

THE COURT: Okay. I can hear. Keep your phone on mute because I was getting the feedback from your line.

MR. CAMARA: Sorry, sir.

THE COURT: No problem. All right, Ms. Tomasco.

MS. TOMASCO: Thank you, Your Honor. the order on the agenda, I hope the Court agrees with it. The parties, the plan proponents agree with this order. And if I could just -- because we need to address the mediation confidentiality stipulation before we can proceed to the case in chief on confirmation. We wanted to take that up first.

THE COURT: Okay.

MS. TOMASCO: Your Honor, as you know, the agreed mediation order that appears at Docket Number 966 has pretty onerous confidentiality terms. Can't use anything that you learned in mediation, can't use any of the events at mediation. That's consistent with the Court's complex case

rules and the mediation procedures.

The parties to the mediation want to use some of the things that happened at that mediation, the Whinstone mediation back in February of 2025 in support of in particular the contribution claim made by the SAFE Ad Hoc Group. They were a participant in the mediation as were the Debtors, the Unsecured Creditors' Committee and Whinstone.

As you'll recall, in connection with the LKC matter, some mediation materials were used, notwithstanding the fact that they were designated mediation privileged. And so there has been some precedent already in the case for using some of the information from the Whinstone mediation because of the issues with allocation of the proceeds of that settlement. This would just be a stipulation that evidence adduced that is mediation privilege would be done in a sealed manner just like all of the other sealed documents that we've been dealing with in the LKC litigation. We would do that here for the confirmation hearing for that limited purpose.

It could be, Your Honor, that you say I don't need to hear any of that. And that's an option. But to the extent that we are going to get into mediation-privileged documents, I think it's important that we follow the stipulation which essentially just says it's going to be submitted under seal. No one has filed an objection to this

stipulation. Three out of the four mediation parties are before you today. And we all agree that this is evidence that comes in in support of the role played by the SAFE AHG in connection with the Whinstone settlement. And that's it. And we --

THE COURT: Did you ask for Whinstone's consent?

MS. TOMASCO: We did not, no.

THE COURT: Okay.

MS. TOMASCO: But we had very productive conversations with them, but no, we did not ask their consent with respect to this.

THE COURT: All right. Well, I would like to hear from them on that issue.

MS. TOMASCO: Okay. All right, Your Honor. I will reach out to them and perhaps we can move forward with confirmation and in the interim get some consent from them. I haven't looked at --

THE COURT: Mr. Hurley?

MR. HURLEY: Could I address the Court very briefly?

THE COURT: Go ahead.

MR. HURLEY: Thank you, Your Honor. For the record, Mitch Hurley with Akin on behalf of the SAFE AHG.

Your Honor, I really don't have anything to add to what Ms. Tomasco said excerpt I'd like to cite a couple of

cases, Your Honor, in case it's helpful.

THE COURT: All right.

MR. HURLEY: So the mediation confidentiality or mediation privilege is obviously very important, but it's not absolute. It's a qualified kind of privilege. This is a concept that's been recognized pretty uniformly by the cases. And I want to cite to two cases -- I have copies of them if that would be helpful, I could hand them up -- that recognize exactly that principle.

So the first one I'm going to cite, Your Honor, is from the Northern District of Texas. It is FDIC v. White, 53 F.R.D. 560. And that is Northern District of Texas 1999. That case is a little bit different than our facts because that was a case where there was a mediation and one of the mediation parties in a later proceeding wanted to argue based on communications in the mediation that a settlement that emerged from the mediation was produced by coercion. So that's a little different than our case, but it recognizes the main principle, which is that it's a qualified privilege. The judge did allow that material in connection with asserting the defense.

The other case I want to cite I think is a little more apposite to our facts. It's very recent. It is 2025 WL 1312393. The name of the case is In re Wells Fargo. And that's February 3rd, 2025. This is a case that, again,

recognizes the general principle that mediation privilege is very important mostly to encourage candor among the substantive parties to the mediation but can -- there are circumstances where it's not absolute it's qualified and you can use material from the mediation if the circumstances warrant.

And the Wells Fargo case is somewhat similar to what we have here in that a mediation had produced a settlement of a class action. The settlement was a resolution amongst the actual substantive parties to the case. It actually included an agreement that 25 percent of the proceeds of the award was going to be provided to the Plaintiff's lawyers. It did not allocate the 25 percent between plaintiff law firms.

The plaintiff -- one of the plaintiff law firms in a subsequent fee dispute argued based on its contribution at the mediation effectively that it should have a larger share of the 25 percent than law firm number two believed it should have.

Law firm number two objected, I think moved to strike, and the court overruled the motion and heard the evidence about what happened in the mediation in connection with the fee dispute and held, you know, very specifically that again the purpose of mediation confidentiality is to encourage candor between the parties. And when a party

wants to offer that kind of information at a hearing, the court engages in a balancing test where you weigh the importance of the information against the harm that would be caused if the information were admitted. And the court noted that the evidence was directly relevant to the question of who deserved what for the 25 percent of the fees, so it was very important. And then evaluated what the harm would be if it were allowed and observe that the actual parties to the dispute had already settled. They were at peace with one another. And that allowing evidence of communications in the mediation that involved solely a fee dispute wasn't even of enough significance to the substantive parties that it could any way be viewed as discouraging candor and so allowed admission of that material. And we think we're in a very similar situation here in terms of the importance of the information, Your Honor.

The SAFE AHG, as you know from reading the papers, and the plan proponents general submit that the SAFE AHG engaged in many activities that qualify under 503(b) as substantial contribution.

This particular aspect of it we do think is quite important. It's a piece of a larger substantial contribution puzzle, if you will, but we think it's an important piece.

So in particular the Whinstone transaction is the transaction that effectively enabled everything that came after. It created the proceeds, the cash, that frankly everyone has been fighting about since the Whinstone transaction was agreed to.

Obviously, it's going to pay if the plan is confirmed a very substantial part of the SAFE AHG, the SAFE parties' claims. It's also going to make value available for parties junior to the SAFE claimants. And it is what has paid everybody else too, Your Honor, including the claimants that were senior to the SAFE AHG. So it's a really important inflection point in the case. We think critically important to the success of the cases. And having evidence of our involvement in helping make that happen we think is again an important part of the puzzle.

Already on the record I think you have acknowledgement that the mediation effectively produced the Whinstone transaction. When Debtors announced the transaction, they thanked Judge Mullin for getting us most of the way there at the February 19 mediation. That was the only day that we all met with the judge.

What's not on the record is the detail that identifies what at SAFE AHG did. And that's --

THE COURT: Here's my only concern.

MR. HURLEY: Sure.

THE COURT: I don't think -- I'm a little reluctant, especially without Whinstone's consent, to get into who shot who at the mediation.

MR. HURLEY: Understood.

THE COURT: I don't -- I have not heard anyone object and say that you didn't make a substantial contribution. So do we have a real dispute? So that's my concern.

MR. HURLEY: Understood. I thought it was possible Your Honor might look at it that way.

THE COURT: Yeah.

MR. HURLEY: And I think I've said enough --

THE COURT: Because I don't view this as a fee dispute. I view this, you know, more as did you meet the requirements. And we're going to hear evidence on whether you meet the requirements, but do I need to get into the specifics of what was said and who said it and all of that?

MR. HURLEY: Understood. And I'll yield the podium. I'll only say I guess that to the extent Your Honor at any point concludes that you do need to get into that, we would submit that you can. And I would note that we put the stipulation on the docket some days ago. We haven't heard anything from Whinstone. Maybe they're here today and maybe they'll speak up. I don't know. But with that, I'll yield the podium. Thank you, Your Honor.

THE COURT: All right.

MR. CAMARA: Your Honor?

THE COURT: Yes.

MR. CAMARA: Justin Camara, pro se.

THE COURT: Yes, sir.

MR. CAMARA: Permission to speak?

THE COURT: Yes.

MR. CAMARA: I'm not sure -- I need my camera here. Not a hundred percent sure if this is the right time to say this, but I filed a motion for late -- for leave to file a late objection and I also filed an objection to confirmation yesterday by FedEx with delivery to the clerk's office confirmed. I do have the FedEx notification.

THE COURT: All right.

MR. CAMARA: And I can send PDFs to anybody.

THE COURT: Yeah, it hasn't gotten on the docket. What is your objection?

MR. CAMARA: Focuses on two issues. First is the nondisclosure of the Special Committee's pre-mediation investigation and the second is the lack of proper disclosure and Rule 9019 review of Transcend's settlement terms.

THE COURT: Okay. Well, they're going to have to -- you know, they're going to have to prove that up just as they would have to prove everything up. So I'll look for

your objection if it gets filed during the course of the day. But you'll have an opportunity to bring that up at the appropriate time.

MR. CAMARA: Thank you, sir.

MR. HURLEY: Your Honor, just for the record, I do think it hit the docket while we were sitting here. It's at 2108.

THE COURT: Okay. I'm up to 2107. So hold on.

For some reason I don't have it yet. Kind of weird.

MR. TOMASCO: I can email it to Mr. Laws if you'd like.

THE COURT: Oh, okay. Got it. It is on the docket. It's just not in numerical order.

Okay, I've read your objection, Mr. Camara. So we'll just consider it in the ordinary course during the hearing. All right. Thank you, sir.

MR. CAMARA: Thank you, sir.

THE COURT: All right. Mr. Wolfshohl?

MR. WOLFSHOHL: Your Honor, on the stipulation that we were just talking about, I think I'm equally confused maybe as to the purpose of it. The concern -- I have a couple of concerns.

One, it's being presented as being necessary to elicit evidence related or supportive of the substantial

contribution claim and that it's going to get into things that happened in mediation. My concern is we're here in a confirmation hearing. I don't want anything that gets presented to have any kind of impact on the pending dispute that we have regarding the LKC fees. As you know, some of that dispute center around what happened at mediation because you're trying to do an allocation of claims. I don't want some sort of back door attempt at getting evidence in. I mean, frankly Your Honor is the trier of fact in both cases. But I don't think there's going to be -- I am not aware if there had been disclosed any evidence that would relate to what happened at mediation. Mr. Hurley and his client are not testifying in the fee hearing. And so what I don't want is a bunch of evidence to come out during this hearing that somehow taints the Court's judgment of what's happening in the fee hearing.

And so given that we don't really have any kind of visibility into what it is that they're really trying to do here and I don't really understand why it's necessary, that's the concern that I have. And so I just want to make it very clear that we would certainly oppose any kind of evidence that has any kind of impact on what's going to be -- I know Your Honor started the hearing. We're going to finish the hearing hopefully this afternoon. I don't think it should have any impact on that. And that's the position

that I -- hopefully Your Honor agrees with that. And I think with that we don't really have an objection to what they're asking for. I just don't want it to bleed into information that is relevant to the fee hearing and have any kind of impact on that.

THE COURT: Okay. Thank you. Mr. Hurley?

MR. HURLEY: Thank you, Your Honor. Just to clarify. We tried to clear this in the stipulation. The stipulation is seeking to use the material in the declaration and the other mediation material for a limited, specific purpose which is in connection with confirmation and substantial contribution. Thank you.

THE COURT: All right. Does anyone else wish to be heard? All right.

Mr. Wolfshohl, I'm not going to rule on anything before I rule on everything together. So we're going to hear the various motions this morning, we're going to hear the continuation of the hearing this afternoon, and then I will rule subsequent on everything.

MR. WOLFSHOHL: Great. I appreciate that, Your Honor. Thank you.

THE COURT: I'm not going to piecemeal it. All right, Ms. Tomasco.

MS. TOMASCO: Your Honor, as is the custom at confirmation hearings, we want to -- and not just because

it's custom, but it means a lot to us that the Court has been here for this company and these employees and these creditors and these shareholders for the last 15 months or more.

As you'll recall, we filed in late August of 2024. At that point we had been litigating with Whinstone for several years at that point. The Debtors had $2.5 million in cash when we filed. And you'll recall that we were able to obtain a $30 million DIP from Galaxy. The Court understood the need for an expedited resolution of our issues with Whinstone and we went to trial on November 12th of 2024 and we were here for about a week, sitting right here. And ultimately that netted the estate $185 million in addition to the sale proceeds of other assets of the Debtors. Put the Debtors in a position to pay ordinary creditors in full. And then we had the task of dividing up the rest with a very complicated capital structure the likes of which I have never seen before exactly with these documents and these interactions.

So I am pleased that today we're able to with the help of the Court and the court staff -- Mr. Laws has been very helpful in getting us before the Judge as needed. But the confirmation of the plan is before you today. I'm going to hand the podium over to the person who contributed most at Quinn Emanuel to getting the plan ready to go, and that

will be Razmig Izakelian, to handle the confirmation hearing itself.

THE COURT: Thank you.

MR. IZAKELIAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Izakelian.

MR. IZAKELIAN: Razmig Izakelian, Quinn Emanuel, for the Debtors. So I'm going to walk through the evidence and the confirmation elements, at which point I'll turn the podium over to Mr. Hurley and then to Mr. Schmeltz to address various issues. Specifically they will be addressing substantial contribution, the releases, and the LKC objection. So just going to start with some housekeeping matters, which are the exhibits and the testimony.

Starting with exhibits, we filed a joint exhibit list at ECF 2077 and at 2079. And we filed some additional exhibits at 2104. We'd like to move some of these into evidence now, specifically Exhibits 2 --

THE COURT: Hold on a second.

MR. IZAKELIAN: Yes.

THE COURT: Okay, two.

MR. IZAKELIAN: Exhibits 2, which is the first amended plan; 3, which is the disclosure statement; 4, which is the liquidation analysis.

THE COURT: Is this the two-page liquidation

analysis or the fulsome liquidation analysis?

MR. IZAKELIAN: It's the fulsome liquidation analysis.

THE COURT: Exhibit D?

MR. IZAKELIAN: Yes. It's at ECF -- it's the liquidation analysis at ECF 1813. Yes, this is the one.

THE COURT: Okay. Because I have the other short version of it.

MR. IZAKELIAN: Exhibit 5, which I don't know that we technically need to move into evidence. But for good order probably makes sense. That's the Court's --

THE COURT: I'll just take judicial notice of that.

MR. IZAKELIAN: Okay. Exhibit 6, which was the plan supplement. Exhibit 7, which was the second plan supplement. Exhibit 8, which is the Transcend settlement stipulation. Exhibit 27. That's the plan support agreement. Exhibit 109, which is the D&O settlement term sheet. Exhibit 110, which was the amended plan supplement that kind of puts together all the plan supplements into one place. And of course Exhibit 111, which is the second amended plan. That's the operative plan.

There are additional exhibits that I believe Akin and Barnes and Thornburg will move into evidence in their portions.

So we would like to move those into evidence, Your Honor.

THE COURT: Okay. Does anyone have any objection to the admission of Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110 and 111? All right, hearing no objection, they will be admitted.

(Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110 and 111 entered into evidence)

THE COURT: Mr. Izakelian, one thing I'm going to ask you after the hearing, if you could in addition to filing a -- file an exhibit list which lists where each of the documents are on the docket by ECF number, I think that will make it much easier to follow. Because you're going to have to flip back and forth between them. Mr. Shannon?

MR. SHANNON: Your Honor, I apologize. I had the one from last night so I didn't have 109.

Absolutely no issue with it as long as -- I haven't seen some of these documents. I assume that they're the right documents and they are what they say they are. That's fine. But I'll just note that for the record if it comes up in some alter hearing.

THE COURT: Ms. Schultz?

MS. SCHULTZ: Thank you, Your Honor. Sorry, we're maybe a little left-hand-right-hand. I thought that he was going to move all the exhibits in. For purposes of the

evidentiary record and for purposes of the record, Sarah Schultz on behalf of the SAFE Ad Hoc Group. We would also like to ask the Court -- and this is the reference to Exhibit List 2104 -- to move in Exhibits 13 --

THE COURT: Hold on a second. Okay. Exhibit 13 is just my order. I'll just take judicial notice of that.

MS. SCHULTZ: Okay. Your Honor, I was going to shorthand it. Because I think we're going to ask for 13 all the way through -- I think it's 107.

THE COURT: 13 through 107?

MS. SCHULTZ: Yes, Your Honor. We tried to avoid putting in anything that was already on the Court's docket on that list.

THE COURT: All right. I'm going to need to -- I've looked at almost all the documents but I'm going to need to go through them in more detail. So 13 through 107, I'll get them. And some of these are mediation privileged documents.

MS. SCHULTZ: And we marked on here, Your Honor, which ones were the mediation privilege. And I omitted Mr. Hurley's declaration which has the substantial portion of that information. Thank you, Your Honor.

MR. HURLEY: Sorry, Your Honor. There are substantial parts of my declaration that are related to mediation, but there are a couple of paragraphs that are

not. And so at the appropriate time at least I want to make sure at least that part will get offered into evidence. Thank you.

THE COURT: Understood. Okay.

MR. IZAKELIAN: Thank you, Your Honor. Just to clarify, the -- are the original exhibits, those were the plan-related exhibits, not the ones we just addressed? All right. Have those been admitted?

THE COURT: Those have been admitted.

MR. IZAKELIAN: Great. So we also filed several declarations in support of confirmation specifically from Mr. Miller, Mr. Robinson, Mr. Eaton, and Mr. Hurley. We put those on the exhibit list for ease, but those are at ECF 2086 for Mr. Hurley.

THE COURT: Where are they on the exhibit list?

MR. IZAKELIAN: On the exhibit list they are 9...

THE COURT: That's Mr. Miller's ballot certification.

MR. IZAKELIAN: Correct.

THE COURT: Does anyone object to Exhibit 9 found at Docket 2050, the certification of Mr. Jeffrey Miller with respect to the tabulation of ballots as being his direct testimony subject to cross-examination? All right. I hear no objection. We'll treat Exhibit 2050 as Mr. Miller's direct testimony, obviously subject to cross-examination.

(Exhibit 9 entered into evidence)

MR. IZAKELIAN: Okay. And then moving on, the next one is Exhibit 10 on the list. That's the declaration of Michael Robinson.

THE COURT: Right. And that's basically the 1129 factors and the liquidation and the (indiscernible).

MR. IZAKELIAN: Mr. Robinson's declaration mostly focuses on the best interest test, 1129(a)(7).

THE COURT: I'm sorry, liquidation (indiscernible).

MR. IZAKELIAN: But yes, that's correct.

THE COURT: All right. Does anyone object to admission of the declaration of Mr. Michael Robinson at Exhibit 10 on ECF 2063 as his direct testimony with respect to the 1129 factors subject to cross-examination? All right. I will admit that.

(Exhibit 10 entered into evidence)

MR. IZAKELIAN: Next up is Exhibit 11. That's the declaration of Mr. Eaton. And this goes through the majority of the 1129 elements.

THE COURT: Right. Okay. Anyone object to the declaration of Mr. David Eaton, Exhibit 11 found at Docket 2074 as his direct testimony in connection with the 1129 factors? All right. Hearing no objection, that will be admitted subject to cross-examination.

(Exhibit 11 entered into evidence)

MR. IZAKELIAN: And the final one is at exhibit 108. That's the declaration of Mr. Hurley we just spoke about. A portion of that is not mediation privileged. I guess we would move to admit that portion of it as his direct testimony for now and then once the mediation privilege issue gest sorted out, we can move in the rest.

THE COURT: Okay. So --

MR. WOLFSHOHL: I mean, on that one we haven't seen the unredacted portion. And so --

THE COURT: But I'm not going to admit the --

MS. SCHULTZ: It's on the docket.

MR. WOLFSHOHL: The entire thing or --

MS. SCHULTZ: He's only moving in the redacted piece.

MR. WOLFSHOHL: I haven't seen what's been redacted (indiscernible).

THE COURT: Okay. So 2086 is the redacted, corrected declaration of Mr. Hurley.

MR. IZAKELIAN: That's correct, Your Honor. I believe the only reason for the corrections were the exhibit lists got moved around so some exhibit references had to change.

And we would move the unredacted portion into evidence at this time.

THE COURT: All right. So does anyone object to the admission of Exhibit 108 as redacted and found at Docket 2086 as Mr. Hurley's direct testimony subject to cross-examination? All right. Hearing no objection, that will be admitted.

(Exhibit 108 entered into evidence)

MR. IZAKELIAN: So I think if anyone would like to cross-examine the witnesses, now is probably the time. Because after that I'll be walking through the 1129 requirements.

THE COURT: Well, why don't you go ahead and they can put it up in their case.

MR. IZAKELIAN: Okay. that sounds good. So, Your Honor, we've also filed the proposed confirmation order at ECF 2106. This was an updated order. It reflects agreed-upon language resolving Mr. VanZoeren's objection. I believe we're still working through some things. But the language in the order itself is agreed upon. And I've seen Ms. Chiarello on the line. She can speak up if she thinks I said anything incorrect.

THE COURT: I was looking for a redline and I hadn't seen one. I don't know whether one has been filed.

MR. IZAKELIAN: It should have been attached to that. If it was not, I apologize and we will get that uploaded immediately.

THE COURT: Yeah, it wasn't. The difference between version five and version six --

MR. IZAKELIAN: Okay, we will get that uploaded immediately, Your Honor. The agreed-upon language is at...

THE COURT: What paragraph?

MR. IZAKELIAN: Paragraph 5. That's on Page 25.

THE COURT: Okay.

MR. IZAKELIAN: Paragraph 5(ii) also includes competing versions of language that may resolve LKC's objection to the plan. I will leave that for Mr. Schmeltz to address.

THE COURT: Okay.

MR. IZAKELIAN: Okay. Now that our housekeeping part is complete, we had filed a confirmation brief that walked through all the requirements of 1129. Plan proponents submit we've satisfied all the elements of Section 1129. I'm happy to walk through each of them if you'd like.

THE COURT: Yes. And Ms. Chiarello, do you want to address the Court? I think I need to unmute you. Hold on. Okay. I think you're unmuted now.

MS. CHIARELLO: Wonderful. Thank you, Your Honor. Again, Annemarie Chiarello on behalf of Caleb VanZoeren.

Your Honor, I just wanted to confirm that that language is sufficient to resolve our objection, the

language in Paragraph 5 that was referenced earlier. We appreciate Akin and Quinn working with us on that language. And while the plan supplement is a little inconsistent with that language, we think that it's going to predominate. We just did receive a copy of the relief that's contemplated under that section and we obviously reserve all right to review and comment on that. But we expect our comments to be quite light. And we're comfortable that we can get there on the relief. So I just wanted to make sure Your Honor was aware that our objection is resolved.

And I'd like to -- I'm going to -- if Your Honor would allow me, I'd like to be able to save my client a little bit of money here. I'll be able to -- I'll be monitoring, but given the size of the claim, that concludes our position. And I'd like to be excused if that's possible.

THE COURT: That's fine. Thank you for getting this done. And you may be excused.

MS. CHIARELLO: Thank you, Your Honor.

MR. IZAKELIAN: So, Your Honor, I'll walk through the 1129 elements now. 1129(a)(1) requires that the plan comply with the applicable provisions of the Bankruptcy Code. Cases have primarily construed this to mean that the Debtors have complied with all provisions of the Bankruptcy Code including Sections 1122 and 1123. With respect to

Section 1122, the Second Amended Plan places claims and interests in classes if they are substantially similar to the other claims in that class. With respect to 1123, the plan specifies which classes are unimpaired, specifies the treatment of impaired classes, provides fair and equal treatment within classes except if a particular holder has agreed to a different treatment. It also provides adequate means for implementation and it discloses the identity of the plan administrator.

THE COURT: The plan administrator is G...

MR. IZAKELIAN: GXD Labs, Your Honor.

THE COURT: GX -- okay.

MR. IZAKELIAN: Moving on to 1123(b), the plan also specifies unimpaired classes. It provides for default rejection of executory contracts unless they are on the list of assumed contracts. It incorporates the terms of several settlements including the D&O settlement and the settlement with the Transcend Group. It also contains releases, exculpation, and injunction provisions which Mr. Schmeltz will address.

Moving on to 1129(a)(2), it requires that the plan proponents comply with the applicable provisions of Title 11. We think that has been satisfied, Your Honor. The plan proponents have complied with all disclosure and solicitation requirements. That's set forth in the Miller

declaration at Paragraphs 6 to 11, which is Exhibit 0 on the exhibit list.

Moving on to (a)(3), that requires that the plan be proposed in good faith. We think the plan meets those requirements. The plan as proposed maximizes the value of the assets that are recoverable to creditors. The plan proponents have proposed the plan honestly. It was a product of long, contentious, and good-faith negotiations and it has the intention of maximizing recoveries for all interested parties.

1129(a)(4) requires that all payments made by the Debtors for services and costs in connection with the case have been approved are subject to approval of the Court. That's what the second amended plan says. That's Sections 1.89 and 2.2.

With respect to the substantial contribution claim, Mr. Hurley will be addressing that portion of it.

Section 1129(a)(5) requires that the Debtors disclose the identity and affiliation of any entity or individual proposed to serve as a director or officer. Here, the winddown debtor is going to be managed by the plan administrator, which is GXD Labs. That was disclosed int eh plan supplement that's Exhibit 6.

THE COURT: Who is the winddown debtor?

MR. IZAKELIAN: The winddown debtor, I don't know

if it's been fully decided yet which one of the entities will be the winddown debtor.

THE COURT: And how are we going to know that?

MR. IZAKELIAN: That will be likely through discussions with the plan proponents.

MS. SCHULTZ: It's REI.

THE COURT: REI.

MR. IZAKELIAN: So next up, 1129(a)(6) requires that the Debtors comply with governmental authorities for any change of its rates. We think this is inapplicable because there are no government authorities setting rates here.

1129(a)(7), that's the best interest of creditors test. Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are present to accept the plan. Classes 6 and 11 have voted to accept the plan. And there aren't any holders in those classes that voted to reject the plans, either. This only leaves Classes 10 and 12. As reflected in the liquidation analysis, that's Exhibit 4. And then the Robinson declaration, that's Exhibit 10. The plan provides all holders in classes 10 and 12 with the same or better distribution than they would receive in a Chapter 7 liquidation.

Next up we have 1129(a)(8).

THE COURT: Let's spend a minute on that one.

MR. IZAKELIAN: Of course.

THE COURT: So his declaration -- I just want to make sure I'm looking at the...

So it's Exhibit 10. I misheard.

MR. IZAKELIAN: That's correct.

THE COURT: Okay. So the class who voted to reject is class...

MR. IZAKELIAN: Class 10.

THE COURT: Class 10. Okay. And so where in Mr. Robinson's analysis does he discuss Class 10?

MR. IZAKELIAN: So if you look at Paragraph 19, Your Honor, he refers to the liquidation analysis. And he says that holders of interest in Rhodium Enterprises Inc., which is Class 10, may receive a distribution under the plan. Whereas holders with claims or interests junior to Class 6 are not expected to receive any Chapter 7 recoveries.

THE COURT: Okay. And then where is that in the liquidation analysis?

MR. IZAKELIAN: So if you turn to the liquidation analysis, that is on the first page, which is the liquidation analysis of Rhodium Enterprises Inc. And just going through that chart, if you look at the bottom, it shows that in a Chapter 7 in either the high case or low case, there's anticipated to be a deficit before any return

to equity whereas there is not anticipated to be such a deficit under the plan.

THE COURT: Okay. The first page...

Where are the escrows here for the admin expenses?

MR. IZAKELIAN: I think those were assumed, but they are not reflected on this page, Your Honor.

THE COURT: Okay. Is there a footnote or something?

MR. IZAKELIAN: Oh, I see. Okay. The -- let me get the page number for Your Honor.

THE COURT: So the one thing that I've been looking for and that I haven't found is the sources and uses of the cash coming in and going out. Is there such a document?

MR. IZAKELIAN: The sources and uses? Well, we've been filing the monthly operating reports, Your Honor.

THE COURT: I understand. But I'm talking about to consummate the plan.

MS. TOMASCO: There is a document, Your Honor. It's not in the exhibits, but the distributable cash is -- takes the cash that's in the Debtors right now and then reduces it by anticipated expenses. And then you'll see that everything flows up in the waterfall. Well, it's actually a water-down.

THE COURT: Right.

MS. TOMASCO: And so we do have sources and uses of cash. That's reflected in the distributable cash number.

THE COURT: Okay. So can that exhibit be filed?

MS. TOMASCO: Yes. I will get it filed.

THE COURT: Thank you.

MR. IZAKELIAN: So if you look at Page 10 -- let me make sure that's right -- of the liquidation analysis, Your Honor, it's the Rhodium 30MW LLC. That includes the estimated administrative and priority claims.

THE COURT: I'm sorry. Rhodium 30MW LLC?

MR. IZAKELIAN: Yes. That's Page 10 of the PDF. It doesn't look like --

THE COURT: Of course my pages don't have numbers on them. They're not numbered at the bottom.

MR. IZAKELIAN: It's Page 6 of the analysis. So it should be the sixth sheet you have there.

THE COURT: All right. So where are the admin expenses?

MR. IZAKELIAN: So the admins at 30 MW are accounted for under estimated administrative and priority claims.

THE COURT: And it shows 0503(b)(9), it shows administrative priority tax claim and administrative taxes. It doesn't show any other admin claims.

MR. IZAKELIAN: Yeah. I think they are on a

debtor-by-debtor basis. So I can go through and pull the rest.

So I see this is on the second page. This is the Rhodium Technologies LLC analysis. If you go down toward the bottom, for reserves there's an illustrative reserve for the success fees.

THE COURT: Right.

MR. IZAKELIAN: So that's where that would --

THE COURT: Well, the plan supplement you have a document that shows what amounts are going to be reserved. But what I haven't found is a document that says here is the cash we have on hand and here is how the waterfall is going to work. That's what I've been looking for.

MR. IZAKELIAN: Oh, I see what you mean. So this was provided on a debtor-by-debtor basis. And that's where the waterfall is. We can add in more detail if you'd like, Your Honor, especially --

THE COURT: I'm actually looking for simplifying clarifications as opposed to more detail.

THE COURT: Okay. We can file a simplified version. Our intent here was to file the liquidation analysis on a debtor-by-debtor basis. Yeah.

THE COURT: And I think you're correct to do that. Because this is not a substantively consolidated plan. But I mean the statement is that in Mr. Robinson's declaration

is -- I mean, he makes a statement -- and I'm just saying okay, fine, where can I find it. And I'm just having a hard time finding it.

MR. IZAKELIAN: Yeah. So that statement at Paragraph 19, that's reflected on the Rhodium Enterprises Inc because that's where all the money flows up to. And that just goes towards the bottom. Because all the interests get paid out of Rhodium Enterprises because that's where they land.

THE COURT: But the problem -- basically what it says -- and I see where the $903,000 and $22 million come from. But again, I don't know if the plan, you know, has a non-positive number of a $1,129,000, but I don't know what all went into that number to get there. I don't...

MR. IZAKELIAN: Yeah. So at the top of that page, it shows where the cash comes in from each of the other debtors coming up. Yeah.

THE COURT: I understand. But this one didn't really have any admin or any reserves or anything like that. So that's why I'm a little confused.

MR. IZAKELIAN: I think it's because those reserves and a lot of those admin fees are paid out of the subsidiaries directly and then the money flows up there, flows up to REI.

THE COURT: Yeah. And that's what I'd like to

see, you know, kind of a mapping if you will for that.

MR. IZAKELIAN: Okay. We can put together that mapping for you. That will not be a problem.

THE COURT: Thank you.

MR. IZAKELIAN: Of course. So next up we have 1129(a)(8). This requires that each class of claims or interests either accept or be unimpaired under the plan. Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are presumed to accept because they are unimpaired. And classes 6 and 11 have voted to accept the plan. This only leaves classes 10 and 12. And I'll address those with 1129(b) in a minute.

THE COURT: Okay.

MR. IZAKELIAN: Next we have 1129(a)(9), which requires payment of administrative claims, certain priority claims, and certain priority tax claims. The plan provides that all administrative claims as allowed will be paid. Priority claims under 507(a) will get their appropriate treatment under 1129(a)(9)(B) and that priority tax claims will receive cash payments to the extent allowed within five years of the petition date. That's at Section 2.3 of the plan.

THE COURT: So you're going to stretch out the tax -- the tax?

MR. IZAKELIAN: I don't think they are going to be stretched out. But if it needs to be stretched out, the

plan provides for that. I'm not even sure that there are any that need to be paid now. So...

THE COURT: Okay. I don't understand that. If you're going to have a plan administrator that basically has a $2 million budget to do everything, how five years would work. So...

MR. IZAKELIAN: Well, I think the plan just gives that option in case the plan administrator needs it. I don't think the plan administrator is going to need that.

THE COURT: Okay. Well, maybe we need to address that someplace.

MR. IZAKELIAN: Okay.

THE COURT: Because if you're going to stretch it out five years, then I'm going to need to see evidence that they're going to have the capability of paying it out over five years.

MR. IZAKELIAN: Got it. Got it. Yes, we will address that, Your Honor.

So just moving on, next up is 1129(a)(10). That requires one impaired non-insider class of claims to accept. That's Class 6 has accepted the plan.

Next up, 1129(a)(11) requires that the plan be feasible. This is a liquidating plan and the plan specifies the sources of the cash and the distributions to be made. So I don't think any further liquidation is going to be

necessary, therefore feasible.

1129(a)(12) requires that all statutory fees have been or will be paid. That is exactly what the plan says. That's at Article 2D.

Next, there are a few subsections that are inapplicable. That's (indiscernible) 13, retiree benefits, 14, the domestic support obligations. 15 only applies to individual debtors. And 16 for on moneyed corporations.

So moving on to 1129(b) with respect to classes 10 and 12, those are the only classes that were impaired and did not accept. So we think the plan is confirmable because it does not discriminate unfairly and it's fair and equitable. With respect to the fair and equitable analysis under 1129(b)(2)(C) which applies to classes of interests, the plan is fair and equitable. If the holder of any interest junior to that class will not receive or retain anything on account of that interest. This is the absolute priority rule, but it's (indiscernible) interest in this case. We think the plan satisfies that. It's a strict waterfall.

We also think that the plan does not discriminate unfairly. Interests are grouped together. And then Class 12 is the intercompany interests which of course should come at the bottom.

THE COURT: Okay. So one question that I had is

in connection with Class 11, the Imperium interest, when I read 5.9, it says that Technologies shall receive a hundred percent of Imperium's interest in Rhodium Technologies for the consideration contemplated in Section 5.9(a) of the plan without the requirement to pay any cash payment or other cash consideration. But I don't see in Section 5.9(a) what the consideration is.

MR. IZAKELIAN: I'm going to get that for you, Your Honor.

THE COURT: I read it ten times and I just don't see that.

MS. TOMASCO: Your Honor, the redemption of the Rhodium Technologies interest is an integral part of the settlement and compromise between Imperium and the Debtors. In other words, it allows for the interests -- Imperium's interest in Technologies to be redeemed. So it's basically taking Imperium's interests and not giving them anything for it. So it's a net positive to the estate, but it's an integral part of the settlement with Imperium. I believe that if you were looking for an answer, it's going to be in the mechanics of the Imperium compromise, the D&O settlement.

THE COURT: Okay. And then whose declaration would address that, Mr. Eaton's?

MS. TOMASCO: Mr. Eaton's.

THE COURT: But I mean, I understand what you just said. And that's what I anticipated. But it says here for the consideration contemplated by this section 5.9(a). And 5.9(a) doesn't contemplate any consideration.

MS. TOMASCO: I see. What you're saying is that that particular phrase is surplusage.

THE COURT: I don't know whether it is or not.

MS. TOMASCO: I believe it is surplusage. The consideration is the -- it should be for the consideration contained within the plan and not necessarily that paragraph.

THE COURT: Okay.

MR. IZAKELIAN: So that is it with respect to the elements of confirmation, Your Honor. Unless Your Honor has any questions, I will turn over the podium to Mr. Hurley now to address the substantial contribution --

THE COURT: All right. Why don't we just do it one step at a time. Does anybody wish to address the 1129 factors, what Mr. Izakelian had addressed?

All right. Go ahead, Mr. Hurley.

MR. HURLEY: Thank you, Your Honor. Again for the record, Mitch Hurley with Akin for the SAFE AHG.

Just a housekeeping matter, Your Honor. I had referenced some cases I had copies of before. And if I could hand them up, I --

THE COURT: Yeah, please.

MR. HURLEY: Thank you.

THE COURT: Give it to Ms. Hernandez.

MR. HURLEY: I have, if I keep one for myself, three copies. Three copies. And I gave copies to Mr. Wolfshohl.

THE COURT: Okay.

MR. HURLEY: So, Your Honor, turning to the substantial contribution claim. First of all, I'm going to be very brief because our arguments are really contained int eh submissions that were provided to Your Honor in great detail. And I know you have a lot to accomplish today, and there's a lot of estate professionals here listening, so I'm going to try to keep it as short as I can.

I think as an initial matter I just want to make clear that while I am the person addressing the specific aspect of the plan that goes to substantial contribution, of course it's a term of the plan that's supported by all the plan proponents.

I think it's also notable that it is supported not just by the plan proponents, SAFE AHG, the Debtors, also the Special Committee, also Transcend. These are really the parties that were the most involved in these cases throughout their course. These are parties that often didn't agree on a lot and have come together on this plan.

And one of the important pieces of the plan is the provision that provides substantial contribution to the SAFE AHG.

I think another important thing to keep in mind as sort of a general theme is that SAFE AHG, as we said in the papers, submits that all of the activities we engaged in over the course of the cases we think we could support as 503(b) types of activities. We are not seeking payment in full of all of the fees that were incurred in that regard. The substantial contribution amount, as Your Honor knows, is eight-and-a-half million dollars. We anticipate our actual fees are going to be substantially greater than that, as described in our papers.

And in addition, in order to try and get this thing the last yard to the goal line, we agreed to settle the Transcend objection in part by putting a part of that eight-and-a-half million dollars into an escrow that we hope we'll be able to return to the SAFE AHG. But if there is insufficient proceeds from the estate other than that escrow, a part of it could be released to the Trasncend group to get them to a $6.6 million recovery. That recovery isn't guaranteed. But to the extent that there isn't enough money to at least get them there, that would be the circumstance under which the escrow would be released. If the proceeds plus the escrow are in excess of 6.6, then an excess would be released back to us.

So I'll need to pause there and make sure the Court understands the mechanism of --

THE COURT: I understood that.

MR. HURLEY: Fair enough. Okay. And then I guess the last kind of general observation I would make about our substantial contribution claim is I think this is the kind of circumstance that you see contemplated in many of the cases. And we cited at least one of them in our submission.

So we cited the Bayou Group decision, Judge Drain from the Southern district of New York, 2010 where he said often substantial contribution is awarded where the creditor played a leadership role that normally would be expected of an estate professional. And I think that's really exactly what happened here, Your Honor. And this is no knock in any way, shape, or form on the UCC or what it did. But because of the very unusual circumstances of this case, it made sense we submit for the SAFE AHG to step in and carry out a lot of the kinds of activities you would usually expect from statutory committee.

So why is that? Well, part of it is that while Your Honor's decision recognized the SAFEs as creditors, contingent creditors from the beginning of the cases, SAFEs were not initially scheduled as creditors by the Debtors. We, as we described in our papers, tried a couple times to convince the U.S. Trustee to create a committee for us or to

post on the Official Committee. The U.S. Trustee ultimately agreed that SAFEs in fact were creditors, but it didn't happen until almost the end of the case.

So from the UCC's perspective, its constituents did not include the SAFE claimants. And so they proceeded as one would expect under those circumstances, including in that they weren't formed until the end of November of 2024. And by the time we had the Whinstone transaction agreed to in principle, which was -- let's call it late February of 2025, it was clear that the constituents that the UCC did recognize were certain to be paid a hundred cents on the dollar.

So we stepped in I think and undertook a lot of activities that were appropriate and important in the cases. Again, that you might ordinarily see a statutory committee do, but didn't happen here, including for those unusual circumstances I just described.

Very quickly, some of the key things that we did throughout the course of the cases -- and this is detailed again in the submissions and I would encourage Your Honor to, as I know you will, read Mr. Eaton's declaration with particular care. He spent a lot of time on this. We spent a lot of time investigating the claims against the insiders. We, like other parties in these cases, recognize that was a very important aspect of the cases. Because the insiders

owned their interest in -- equity interest at -- sorry, through Imperium, which owned its interest at RTL. REI also owned an interest at RTL. Imperium's interest was in the neighborhood of 60 percent of RTL.

So to the extent you wind up with a lot of cash going to RTL, say a hundred million dollars, round numbers, they would have been claiming -- they get $60 million of it and only $40 million is left for everybody else.

We didn't think that would be an equitable outcome. We thought there are lots of reasons why that shouldn't happen. And so we were very focused on trying to demonstrate the claims existed to prevent exactly that outcome.

We coordinated with the Special Committee. As we said in the papers, you know, it wasn't always harmonious. Which is pretty typical I would say of bankruptcy cases where there's a creditor group that is investigating insiders alongside the debtors. And so we had to engage I think again, as is typical in these cases, in pretty labor-intensive back-and-forth to get information. I think over the course of that period of time there were some points that the Special Committee made to us that we ultimately recognized and helped our process of going through our investigation. And I'm sure we did the same for them. And I think that's detailed in Mr. Eaton's declaration that in

fact there were aspects of their investigation that were improved by our involvement and our coordination with them.

The Whinstone transaction we've talked about already a little bit this morning. It's enormously important in the cases. I'll leave for now any detail about what happened in the mediation, but it was a very big part of the contribution that I think we made here, is to make sure that we became parties to the mediation, which we did in part by negotiating an agreement with the Debtors that we would defer some discovery in exchange for being an official mediation party. And we were in fact made an official mediation party. And obviously we know what emerged from that mediation. It was very valuable.

Again, when you're talking about sort of measuring the substantial contribution application against the value that was delivered, I think there's a lot of other things I'm going to talk about in a second. But one thing to keep in mind is, again, as I said before, there wouldn't be anyone getting a near-term payment in these cases were it not for the Whinstone transaction. There would only be a potential sort of speculative payment in the future, which I think would be one that none of the main stakeholders in these cases would have preferred. So I think that was a very important part of this -- of the cases.

We engaged in the plan mediation in good faith as

did many other parties. That happened in the spring or earlier this year. Outside of the mediation we also engaged in settlement efforts, in particular with equity. We were very near to an agreement with equity that wound up not working. And equity wound up supporting the plan that was filed in June, as Your Honor will of course remember. And from our perspective, that meant we were going to have to litigate over the status of the SAFEs.

Now, the SAFE status was an issue that the Debtors themselves identified as a gating issue. I think they argued to you, Your Honor, that we should put everything else on hold and figure out what the answer to this question is. Because we really can't have a confirmable plan that conforms with the Bankruptcy Code until we answer the question whether SAFEs are claims or interest. And I think that was right.

But that did require a very substantial amount of work around that question. Your Honor recognized it in your decision that at least some of the issues (indiscernible) were issues of first impression. And so there were very substantial disclosures that were --

THE COURT: I looked for a case.

MR. HURLEY: I know, right. Believe me, we all did. So there was an unusual amount I would say of energy and effort put into answering that question.

And then when the decision came down at the end of August of this year, Your Honor, the SAFE AHG immediately sought to try to get to where we are today. I think less than 24 hours after the decision came down, I emailed Mr. Schmeltz and said I think we now should be able to get to a deal quickly. And to his credit, he wrote back and said I think you're right. Let's start working. And then we worked together diligently with a whole lot of other people too for the next couple of months and arrived at most of the terms of the plan that are before Your Honor today.

Once those terms were generally agreed, then we on behalf of SAFE AHG participated with the other parties that are proponents of the plan in helping to review and draft documents. And so that was another part of our contribution.

And I would say again, and I referenced this before, the last couple of yards to get to the finish line today we're really trying to resolve the objection that Equity had made and the Transcend Group in particular. The SAFE AHG took the laboring oar on that. We reached out to Transcend and said, hey, there's got to be a way to do this that doesn't involve all the spending a fortune in the next three weeks that is going to come out of everybody's recoveries. And they responded in good faith. We worked for a few days together and we were able to come up with an

agreement.

That agreement was that there was going to be two-and-a-half million dollars paid into an escrow that was going to be funded by professional fees. And when the agreement was made, the contemplation originally was that it would be shared among more professionals than just the SAFE AHGs. I would say the contemplation that I had certainly, and I think Transcend had, was that it would be shared escrow. Didn't turn out that we were able to negotiate that. But in order to be able to, again, get us across the finish line, the SAFE AHG agreed we'll fund it all ourselves, which is what we're doing.

By settling the Transcend claim -- and this is in the declarations -- I think the estimate is at a minimum it would save another 42 million in estate fees because that was going to be a very hotly-contested objection.

So those are examples of some of the things that we did. Others are detailed in our submissions. Again, there's nobody who objects to the substantial contribution claim, which is somewhat unusual I would say under the circumstances. And we submit that the standard on a 503(b) is readily met here, including when you think about things like, again, the sort of amount of contribution versus the amount being applied for. I already mentioned what I think is a very important part of the Whinstone transaction, which

is very valuable for everybody. But there are a host of other ways to measure the value in our view.

Few of the cases, they acknowledge that they are -- often in these cases there are concrete kinds of contributions that are really easy to put dollars and cents and associated dollars and cents with. But then there are often equally important kinds of contributions that it's not as easy to assign a dollar and cent value to. And I think we have both here.

One of the I think clearest sort of dollar and cents items is that if you look at our plan compared to the plan that was supported by others in June, we have reduced the amount that is going to insider stakeholders by $13.2 million. And that means that there is $13.2 million more to go to the non-insider stakeholders.

I think this is important to sort of pause on. Because if you think about it, following Your Honor's decision and the priority that we believe we had at that point, if we had just accepted the deal that had been negotiated back in June, the SAFE parties still would have been paid. Not in full, but almost in full. A very, very substantial part of the SAFE parties' claims would have been paid. But there would have been no value for anybody junior to the SAFE parties. And the fact that we pressed and got the additional -- liberated the additional cash if you will

for payment to other non-insider stakeholders is the only reason that there is the potential for there to be millions of dollars paid to stakeholders who are junior to or subordinated by agreement now to SAFE parties.

The insurance settlement we supported. And while that had been negotiated before we got involved, I don't think it was finalized until after we did. That's another eight-and-a-half million dollars. You have the $2 million that we definitely saved in professional costs by stepping up and settling the Transcend claim. And there is no indemnification of the insiders' tax obligations in the plan. There was in the other plan. That was an obligation that people would assign some of the $18 million to. So another example of the kind of dollar and cents claims.

THE COURT: That's 5.9(e), right? Is that right, 5.9(e)?

MS. TOMASCO: Yes, Your Honor.

THE COURT: Okay.

MR. HURLEY: Thank you. So -- and then there's the other category, right? Which are the kinds of contributions I think that are not quite as easy to assign value to. We cited case to Your Honor that I think make very clear that assisting in ensuring that a plan allocates value in accordance with the Bankruptcy Code is itself the kind of contribution that can be recognized and compensated

under 503(b). And so an example of that, we would submit anyway, is the work that we did in connection with the SAFE claim litigation. And Your Honor wound up reaching the conclusion that you did. And a part of that was obviously we were all involved in litigating that and that was part of the expense that we incurred. And I think it's the kind of expense that is compensable under the Code.

And again, I guess I would refer back a final time to the mediation which resulted in I think an outcome that -- resulted in a better outcome for these cases than anyone before that had really hoped.

So, Your Honor, again, I don't want to go through every word in our submissions and I'll basically leave it there except I guess to ask Your Honor if there are any questions that you have. I'd be happy to try and answer them.

THE COURT: I don't think so.

MR. HURLEY: Okay. thank you, Your Honor.

THE COURT: Okay. Does anyone wish to be heard on the substantial contribution claim?

MR. SCHMELTZ: Your Honor, I'm going to say something in support of it, but it's more just I'm going to talk about the D&O settlement and how that -- why that supports it. So not (indiscernible).

THE COURT: Okay. All right. So we'll -- I think

Mr. Schmeltz is going to talk about the D&O settlement. Who is going to talk about the Transcend settlement?

MR. POTTER: I plan to briefly, Your Honor.

THE COURT: Okay.

MR. POTTER: Would you like me to do so now?

THE COURT: Why don't we do that since we're...

MR. POTTER: Your Honor, Chase Potter on behalf of the Transcend Group. Over the past couple of months, I wouldn't have expected to be here as a plan proponent for the Transcend Group. But I'm glad that --

THE COURT: Me neither.

MR. POTTER: I'm glad that we are because I do think it results in, kind of dovetailing off what Mr. Hurley was saying, results in a good result for the estate for many reasons, all of which are in the evidence already. So I'll be very brief.

Given the Transcend Group settlement, we do fully -- the Transcend Group does fully support the plan. On behalf of the Transcend Group, we contend the evidence admitted including the declarations admitted subject to cross-examination establish all the factors necessary to confirm all aspects of the plan including the Transcend Group settlement, particularly the David Eaton declaration and the uncontroverted testimony therein. Specifically, Your Honor, Paragraphs 38 through 42 of such declaration

address and establish the factors, both 1129 and 9019, for the Transcend Group settlement.

This settlement was certainly negotiated at arm's length and resolved substantial, ongoing, and forthcoming litigation, substantial both from a time and cost standpoint with respect to Transcend's objections to the plan and also Transcend's warrants, which have been entered into evidence, Your Honor, and Transcend's proof of claims, which are all on file and the Court can take judicial notice of.

Those proof of claims were filed against REI, RTL, and Encore, which claims may have entitled Transcend to recovery in advance of others, including the SAFE group, if we had been successful and these ongoing litigation issues were not resolved.

Your Honor, I do agree with Mr. Hurley that the estimate of a $2 million savings based on this resolution I think is a light one, especially for this case. Very conservative. Especially in light of the fact that the Transcend Group had also filed an appeal of the SAFE ruling which we absolutely intended to pursue along with all claim objections and our proof of claims and everything else, Your Honor.

So other than that, we believe that the evidence is in the record. It's subject to any -- to cross-examination, specifically Mr. Eaton and his declaration.

And that's all we have.

THE COURT: All right. Let me just ask a couple of questions. So in connection -- 513 is the Transcend -- what's in the plan regarding the Transcend settlement. So the 513(f), which is the 345 Partners v. Nathan Nichols, that is going to continue.

MR. POTTER: Yes, Your Honor.

THE COURT: Okay. And I think I have a hearing on that coming up.

MR. POTTER: I wish I knew. It's coming up soon. It's a remand hearing. If it remains necessary. The Court, as you may recall, was very prepared for that hearing and gave us thoughts on where that might be going. So we might be able to resolve that in advance. But we've been so focused on plan confirmation issues, we haven't quite got there yet.

THE COURT: And then the other thing is to the extent that I confirm a plan, I may not have any jurisdiction at that point.

MR. POTTER: Right.

MR. SCHMELTZ: And, Your Honor, I do want to talk about -- I talked with Mr. Potter beforehand about this subsection (f) of 513. Mr. Potter can confirm it now. But our position is that there might be some effect to the extent that the Transcend Group receives money under the

plan that may affect damages, things like that. Mr. Potter certainly didn't agree with that. But he said that this provision in 513(f) does not preclude us from making that argument when the time comes.

MR. POTTER: Sure. I agree with that. This provision does not preclude any defenses that may be argued by way of asset, settlement credit, anything else that they may try to argue. I do disagree with it, but that time will come.

THE COURT: All right. So the way that I understand this is that you will -- so this is kind of where I really kind of need a waterfall. Because -- so your claim, you have a $10 million claim below the SAFEs, ahead of equity. To the extent that there are -- the recovery is $6.6 million, they don't hit -- you don't hit the $8.5 million, but you have an allowed claim up to ten. So to the extent there is distributable cash above the 6.6 to the 10, you would get that ahead of equity. Is that correct?

MR. POTTER: I believe that's correct. I won't speak -- I'll let my bankruptcy partner answer that question.

MS. FUNK: That's correct, Your Honor.

THE COURT: Okay. All right. And I guess this is more a question for the debtor. Is there any kind of waterfall that would show this?

MS. TOMASCO: That would show what, Your Honor?

THE COURT: Kind of the way that the Transcend settlement would work depending on the distributable cash.

MS. TOMASCO: Yes. We do have a revised liquidation analysis. We can probably upload it at the same time that we do the sources and uses of cash exhibit that we have prepared.

THE COURT: Okay.

MS. TOMASCO: We're going to upload it in moments.

THE COURT: All right. Thank you. All right.

MR. POTTER: And I would also add, Your Honor, I believe if memory serves, the settlement stipulation goes through some of the potentialities and examples.

THE COURT: It does. But I just want to make sure that the plan reflects it and that I understand what I'm approving.

MR. POTTER: Thank you, Your Honor.

THE COURT: Thank you. All right. Does anyone else wish to be heard on these issues?

MR. CAMARA: Your Honor?

THE COURT: Yes.

MR. CAMARA: This is Justin Camara, pro se. I may be in a situation with a little bit of background noise. Full disclosure I'm actually -- but this might be the appropriate time to discuss the Transcend thing or --

because my other objection deals with the Special Committee Report or a component of it.

THE COURT: Well, I think the Special Committee is going to go next. So why don't you wait for that. You have the time. Why don't you wait for Mr. Schmeltz to go.

MR. CAMARA: Yes, sir. I can wait a little longer. I do have like a balloon (indiscernible). But I can -- I pushed it back. So I think we can do that.

THE COURT: Okay, all right. Well, you let me know if you need to -- if you're running out of time. So I'll let you go ahead. All right.

Mr. Schmeltz?

MR. SCHMELTZ: Thank you, Your Honor. It's for the record Trace Schmeltz from Barnes & Thornburg on behalf of the Special Committee.

You know, I didn't think I'd be in a position that Chase Potter, Mitch Hurley, and I were all saying nice things about one another, but I'll echo that I'm glad to be doing that.

Paragraphs 33 through 37 in Mr. Eaton's declaration which is found at Docket 20754 lay out the benefits of the D&O settlement that the Special Committee and others were able to obtain for the debtors' estates. After an extensive investigation by the Special Committee, the Cm concluded that there were -- an investigation, by the

way, into literally dozens of allegations of purported wrongdoing, concluded that there were a handful of plausible claims that could be pursued.

Of course as with any plausible claim, there were defenses and weakness in those claims which the Special Committee's report recognizes. And that Special Committee's report, Your Honor, has been shared with all constituencies and the estate. Nonetheless, the Special Committee was able to obtain $8.5 million in recovery off of $20 million in D&O policies without ever filing a complaint.

In addition, working with founder's counsel, the Special Committee obtained a million dollars in coverage for indemnifiable defense costs for the founders that would have otherwise had to be borne by the estates.

The settlement with the founders and with Imperium allowed for the flattening of Rhodium Technologies, which was a partnership. That allows Rhodium Enterprises to file taxes as a consolidated enterprise. And that savings is somewhere between a million-and-a-half and $2 million to the estate in lowered taxes.

The founders had significant claims that they intended to litigate for a significant amount of value from the estates based on operating documents that were not always translucently clear, or as Your Honor knows from the litigation over the SAFE document itself, not always on

their face seeming to suggest what the parties believed they were getting into. The savings in litigation or lack of litigation from that settlement obviously was significant to the estates as well.

The settlement with the founders and Imperium also provided a gateway for the original plan and then for the subsequent plan that we're here today in support of. It is ultimately a resolution that is -- that brings millions of dollars into the estate, has saved millions of dollars, and has been a cornerstone for two plans, what we believe here a very confirmable plan.

With that, Your Honor, I stand available to answer any questions you might have. And Mr. Eaton is here should there be any questions of him.

THE COURT: No, thank you.

Your Honor, I can speak in favor of it. I don't' know if you want to go with Mr. Camara's...

THE COURT: No, I think everybody at this table has spoken. Correct, Mr. Izakelian? Okay. All right.

MR. HURLEY:

MR. SHANNON: Thank you, Your Honor. Again, R.J. Shannon on behalf of Nicholas Cerasuolo. He is one of these founders who you've heard about. Also one of the insiders that were discussed as well as part of this settlement by Mr. Hurley.

Judge, there's a lot about the plan that I just don't know about. Right? So I'm just going to stick to my lane and my part of the case and support the plan that way. Right? I do think this is a good plan --

THE COURT: That must be difficult for you to do.

MR. SHANNON: It is. So many things I'd love -- but anyway. What I can focus on is the D&O settlement and why that's a good deal for the estate. And related to that, why -- I do think it is part of the puzzle that Mr. Hurley talked about as part of the puzzle for substantial contribution.

You know, I'm going to tell you kind of my view of these claims that I don't think anyone else here, besides I guess maybe Ms. Mates online, would be able to say. I view the claims against the founders are exceptionally weak. And I think it's a testament to, frankly, the SAFE Ad Hoc Group and the Special Committee to really get as much out of them as possible.

The last time I talked about these claims in this Court, I think I said something that I think we might be getting bluffed. Right? That was my view. And again, not that there's anything inappropriate with that. And there are risks.

I don't know if the Court has ever actually heard what the purported claims are. So I'd like to go over them

just very briefly and say why I think they're weak claims in support of, again, the settlement and the plan.

I'll talk about the three largest. The first one was a March and April 2021 private sale. Essentially the allegation was that there's a potential claim against the founders for a breach of the duty of loyalty by selling Imperium's equity in Rhodium Enterprises LLC, now Rhodium Technologies -- in the rollup they changed their name -- rather than seeking additional financing for Rhodium projects. So that's the allegation.

And the problem was that there was no unified Rhodium at the time, right? Rhodium operated under a project finance basis. That's described in the Dunn Declaration, which I noticed was not admitted at this hearing, but has been admitted before. It's that first day hearing.

And so the only equity owners on a Rhodium-wide basis at the time was Imperium, which was owned solely by the founders. So there was no duty of loyalty to -- this is our position. And I'm sure the SAFE Ad Hoc Group and the Special Committee might push back on some of this, but this is our position. We think that fails as a matter of law. Right? We think we would be successful.

I would liken it to an analogy. As you may know, we brought another partner in on our firm. It would be like

if the original two partners when the third partner came in, that we had done something before that would be a breach of duty of loyalty prior to the additional partner coming in. It just doesn't make sense to have a breach of the duty of loyalty under those circumstances.

The other -- the second and I would say probably the largest of the claims that were identified by the Special Counsel related to the 2021 Whinstone settlement between the Debtor and Whinstone regarding Winter Storm Uri.

Judge, you know more about that than I do. I know it's something you've dealt with a lot. And the argument was it was -- you know, they didn't do their diligence. It was a breach of the duty of care. That was the position.

And there was a form 8-K that was out there from Riot that the founders -- the argument is the founders should have looked at and should have identified.

Our position is that, one, looking at an 8-K from a counterparty and noticing that to see that there might have been something else going on, well beyond the duty of care. Right? The business judgment standard also applies in that it was a resolution that we think falls in that. And also, I think you're going to hear later today that the Debtors want to attribute $75 million of the ultimate settlement with Whinstone to settlement of claims, right? Again, our argument is we think we would win on summary

judgment.

And the last big -- the last big claim that was kind of identified as a potential claim against them was related to the June 2021 rollup transaction. And the part identified by the Special Committee and I think also based on some of the documents, the SAFE Ad Hod Group, was related to the -- an extra five percent of equity that Imperium had that the argument is it should not apply.

Essentially the argument or the position of the Special Committee was that the use of the term of a control premium was somehow misleading, that in these documents that were presented to investors that it just wasn't clear. Usually a control premium is separated amongst everyone. And that's their argument, right?

Our position is that the rest of the document explained what was meant by the term and that it was set out within there. Again, something we certainly think we would win at trial. Perhaps summary judgment. Probably not on a motion to dismiss. But something we ultimately feel, that the founders ultimately feel they would be vindicated at the end of the day.

So the other ones aren't really any better and they're smaller claims.

And I say all that to say it's $8.5 million. I think if -- I know sometimes at some points it might have

been believed that there would be more there than that. But from our position, it's $8.5 million for claims that are exceptionally weak, like I said.

On account of those claims that again we'd knock out very easily, there is $8.5 million in cash, as you know. Also the reduction in Imperium's interests in RTL, that intermediate company. And not just from 60 percent to 55 percent. Right? All the way down to nothing.

There are a number of reasons for that, Your Honor. But certainly a part of it is the potential for litigation if we did not agree to that. There's also a benefit to both the estate and the founders for the tax reasons that were described. The way I calculated the numbers, which is not the way that the Debtor's financial advisors calculated the numbers, that even with the SAFE AD Hoc Group having a claim and even with a contribution up that they argued was required for that, there would still be $2 million to Imperium from RTL if that 60/40 split remained. Again, that is a benefit to the estate in addition to the tax. So the $8.5 million I think is really more a higher number than that. It's probably really $12 million, $12.5 million.

Why did we settle? Well, Judge, again, for the normal reasons. Even if we were successful, there's certainly a cost to it. I'm not here working for free in

this case where there is DO& insurance. There would be a significant amount of defense costs. Also the risk is never zero, right? There are a lot of good attorneys that were asserting these claims were legitimate. And while I have a very high opinion of myself, I get it wrong sometimes.

And, you know, so because of that, there was a settlement, right? And I do believe that a large portion of the driving force behind that was the SAFE Ad Hoc Group. They really dug down. And, you know, tactically just because -- maybe it was tactical, maybe it was whatever. It really pushed us to really get the best deal that the founders could accept, that the insurers would accept under the circumstances.

So because of that, Judge, again -- I've been speaking for the founders. I will now just say Mr. Cerasuolo supports the plan for all those reasons and we think it should be confirmed, Your Honor.

THE COURT: All right. Thank you. Ms. Mates? Hit five-star one time. There you go.

MS. MATES: Thank you, Your Honor. I echo everything Mr. Shannon said. I would like to tell the Court that Imperium, Chase Blackmon, Cameron Blackmon, and Nathan Nichols also support this plan. It's not -- it doesn't end up the way that they had hoped that this would end up when they formed the company. And they put their blood, sweat

and tears into it. But it is what it is. They recognize the risk and recognize the parties involved and other constituents and therefore have agreed to express their support.

THE COURT: All right. Thank you.

MR. KANSA: Your Honor, for the record, Ken Kanza of Barnes & Thornburg on behalf of the Special Committee. I would just add one point in response to Dr. Camara's objection which we received during this hearing that's directly relevant to the Special Committee. And that concerns the disclosure of the Special Committee's investigation and the claims against Imperium and the founders.

The disclosure statement at Docket Number 1832 does address the Special Committee's investigation and recites the claims that Mr. Shannon ably summarized for the Court here today. So that was disclosed to holders of claims and interests who received the disclosure statement. And we just wanted to make sure the Court knew that that was out there. It's at Section 6(J) of the disclosure statement at Page 40.

THE COURT: Thank you.

MR. KANSA: Thank you, Your Honor.

MR. POTTER: If I may quickly, Your Honor.

THE COURT: Yes.

MR. POTTER: Before we get to Dr. Camara's objection. One point on it. Obviously, we just received it this morning. And I'm looking through the objection which was late-filed. It states it's filed on behalf of Justin Camara appearing pro se. But at the same time in the standing section it says there's standing to object based on equity interests for three entities, Trine Mining, Cross the River, and another one that I'm going to butcher the name of. But under -- I don't believe that Mr. Camara and these entities can proceed pro se. And the appropriate relief would be to strike the objection because it was inappropriately filed. And that's' what we would request be done.

THE COURT: Okay. All right. Dr. Camara?

MR. CAMARA: Your Honor, Justin Camara appearing pro se. I guess I'll just first make a comment if I could about Chase Potter's comment. Generally I would hope that the Court would be understanding of a pro se filer. My intent was to file as a pro se. And I was just basically trying to show that I owned equity ownership in the company. I'm sorry if there was some kind of logistical issue there.

THE COURT: Well, do you own equity interest in any of the debtors?

MR. CAMARA: Yes.

THE COURT: Which one?

MR. CAMARA: Rhodium Enterprises Incorporated.

THE COURT: Individually, you individually?

MR. CAMARA: By way of an LLC.

THE COURT: Okay. Well, that's his objection. Normally if it's a corporate entity, even if you're the only owner, that entity has to be represented by an attorney. You know, you --

MR. CAMARA: My understanding was that -- yeah. I'm sorry. I might have misunderstood.

THE COURT: Yes. For tax purposes it's a disregarded entity. But for purposes of a plan or -- I'm sorry, for purposes of the Bankruptcy Court, a pro se filer can file pro se if they are asserting claims that they directly own. But if you're asserting claims that are owned by a corporation or a legal entity, not an individual, then you can't -- generally you can't appear -- I'm going to let you talk. But I am going to consider that.

MR. CAMARA: Yes, sir. My apologies.

THE COURT: Okay, there's nothing --

MR. CAMARA: Okay. So I'd start with -- I'd mentioned that my objection focuses on two issues. It's the nondisclosures related to the Special Committee (indiscernible) investigation. My concern is that the maximum amount of transparency for any party involved in reviewing the plan should be available with that report. So

I understand that the issue is -- that possibly there are some disclosures. I had not seen a disclosure that to me gave enough information to satisfactorily allow, for instance, you or anybody else to weigh the releases that are being considered for Imperium. So I'll kind of go on a script here and then I'll ad lib a little bit based on what some of the others have said.

So the estate funded a month-long factual investigation. There's public fee applications that show that the Special Committee committed like extensive pre-mediation work, forensic analyses, and creditor transaction reviews, safe conversion review, tracing of transfers, legal research and interviews, and repeated drafting of the written Special Committee report.

The Special Committee report and certainly details related to the signing to my knowledge do not appear in the disclosure statement or the plan. You know, these are the kind of factors that I would think the Court would want to consider to evaluate potential insider releases, potential estate claims in good faith.

The first time that I became aware that the Committee results were going to be -- or at least details related to them were going to be withheld was November 30 when I saw that the Special Committee was being dissolved in the Second Amended Plan. So that's the portion related to

that.

I'll ad lib a little bit here. But basically the estate paid $2 million for an investigation that went into a ton of detail, more than $2 million. And we're considering whether we want to allow $1.9 million in recoveries to insiders, Imperium. And I think that that really has to be juxtaposed with a detailed look at the findings. I understand that anyone can get up here and say (indiscernible) or sandbag certain claims. But just to point out a few specific things, right? It was mentioned that the private sale breach of loyalty was one of the claims. I would say that there's a lot of detail that is extremely relevant considering whether that claim is colorable, specifically that representations were made to various investors related to the private sale that basically the founders were pitching a SAFE agreement as a form of capital raise while at the same time selling their own equity. And even that private sale was not disclosed in the S-1 statements that were filed for the cancelled IPO.

Also, we never had -- as investors we never had any control over the operating agreements. And the founders amended the operating agreement without proper disclosure. Because my twin brother actually emailed the founders asking for the operating agreement. And either Nathan Nichols or Nick Cerasuolo or one of the founders refused or just

ignored the email for us to even get the operating agreement. But they amended the operating agreement so that in addition to getting the private sale money while none of the investor had gotten any money, the founders indemnified their own tax payments. So they basically changed the operating agreement so that their company had to pay their taxes at a rate for whatever the highest state corporate taxes while meanwhile, I need to be honest with you, Nick Cerasuolo is domiciled in Puerto Rico to avoid any taxes. And I don't think that there was ever a refund for any of that that came back to the company based on taxes that Nick Cerasuolo may not have paid.

So there's tremendous more detail related to the private sale. And it's very, very concerning that counsel -- I mean, you would expect it, right? But would just blow over that as if it was a nothingburger.

There is also -- I mean, it's worth noting that the investment vehicle that the founders were using to raise capital at the same time that they were doing a private sale without disclosure is the vehicle that ultimately basically, other than Transcend carving out something for themselves possibly here, wiped out equity entirely. So I think that's very relevant.

There's other issues. The Winter Storm Uri item that was brought up, Nathan Nichols pitched the business to

investors with one of the competitive benefits of the business being that Rhodium would receive energy credits if the company was shut down. And the 8-K filing states that Whinstone received energy credits. And then somehow inexplicably Nathan Nichols signed an agreement that signed away millions of dollars in energy credits in return for I think a paltry like $1 million to $2 million. That seriously harmed the company. I don't think those are claims that you could just blow over in a court. It certainly to me does not seem that in a derivative action or an adversarial proceeding against Imperium that that would just get summarily dismissed.

And I think the energy credits are somewhere in the range of $20 million to $30 million, but don't quote me on that. But they were substantially greater than what Nathan Nichols signed them away for. There's no explanation for that either, really. I mean, I guess you could pin it to negligence possibly.

And then one other final thing is that I'm very versed to speak about the control premium issue because that was not even really something that was started as part of the Special Committee's investigation report, although it may have been covered in there. Okay?

The rollup transaction, Nick Cerasuolo quoted that nothing would change about the pre- versus post-equity

interests. And then it's not five percent. That is factually wrong. It's 6.5 percent that the founders skimmed off of the company in the corporate reorganization. That would have been worth $195 million at the time of that reorganization. It was not disclosed. You cannot find anywhere in the documents where it says who gets allocated the control premium. There is one appendix table in the rollup that basically says here's a control premium. It doesn't say where it would go at all.

And then well post hoc once they published the S-1, you could do the math and figure out that equity holders who were part of the rollup had their equity changed in a way that was not how it was presented to investors. So those are very colorable in my opinion.

The insiders try to hide behind a defense of contemporaneous ownership, meaning like we changed all the structure, we weren't part of the company at the time or whatever. But that was contentious at the time of the bankruptcy when there was a stay placed on how the Delaware court was going to handle it. So those are not issues that are -- just my opinion, right -- from what I can tell something that can just be blown over. Certainly if you're -- because what you're really trying to do, right, we're trying to say is the $8.5 million D&O settlement sufficient to compensate that and do we justify insider releases.

So that's my point on the insiders. I just think that it really deserves a fair observation so that we can weigh those two things.

So the second point is that the -- regarding the Transcend issue, I just don't have any way to really know for sure if that's fair. So going back to my script. Basically on November 20, one day before the objection deadline, the SAFE AHG stipulated for the first time that there would be a $10 million allowed unsecured claim to Transcend and a $6.6 million guaranteed minimum recovery. I would just ask that those would be reviewed possibly under Rule 9019 or certainly that there would be a very thorough evaluation for fairness there. Again, I'm pro se, so it's a little bit -- sometimes my vocabulary might not be quite right.

So in summary, I respectfully request that the Court accept my objection as timely and the Court require disclosure of the Special Committee's investigation sufficient for meaningful review under Sections 1125 and 1129 and that the Court require appropriate disclosure or a 9019 review of the Transcend settlement terms.

THE COURT: All right. Thank you, sir. Ms. Mates?

MS. MATES: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MS. MATES: And I didn't want to interrupt Mr. Camara's allegations directly tit for tat. I know that's not why we're here. I will point out that he says that the claims were blown over yet started out his objection saying how much money was spent by the special committee and the professionals on investigating the claims. The other thing I will point out is much of the information that was provided by Imperium and the founders to the Special Committee out of, you know, a willingness to cooperate in the investigation was done in a confidential manner. And so to the extent the report contains that information, we object to its disclosure on a public level.

And my only point directly to one of Dr. Camara's arguments was on the energy credits. That was part of the settlement of the Whinstone Rhodium litigation. But that's all I wanted to say. Thank you.

THE COURT: All right. Thank you. All right, Mr. Hurley?

MR. CAMARA: Your Honor?

THE COURT: Hold on a second.

MR. CAMARA: Sorry.

MR. HURLEY: Your Honor, just quickly if I could just clarify something for the record that Mr. Camara said. There is no guaranteed $6.6 million recovery to the

Transcend Group. So if there's $2 million net at the end of the day, they would be able to draw on the escrow and they would get a four-and-a-half million-dollar recovery. And then they wouldn't be entitled to anything else. I just wanted to make that crystal clear and make sure Mr. Camara understood that, too. Thank you.

THE COURT: All right. Mr. Potter?

MR. POTTER: Very briefly, Your Honor. I was just going to reassert the Transcend Group's request to strike the objection. Based on the argument, it appears that Dr. Camara recognized he lacks standing personally as an equity holder and that he also lacks the -- he lacks the ability to represent the entities. Thank you.

MR. WOLFSHOHL: Your Honor, I'm not really sure order we're going in. But we did file a limited objection.

THE COURT: Correct.

MR. WOLFSHOHL: It's a pretty narrow one. I'm sure Your Honor read it.

THE COURT: Right. And then there's language that they put in their proposed --

MR. WOLFSHOHL: They did. They put basically where we ended up, I guess last night or late yesterday as what they were proposing versus what we were proposing. I'm not sure if Your Honor has had an opportunity to review that.

THE COURT: I have reviewed the -- on Page 25 of the proposed order, there are two -- there are plan proponents, LKC's proposed language.

MS. TOMASCO: Your Honor, we uploaded a redline confirmation order at Docket Number 2109.

MR. WOLFSHOHL: And, Your Honor, for purposes of this language, I don't know that the redline is helpful because this language just wasn't in there before.

MS. TOMASCO: If you look at ECF Page 2109-1, Page 26 of 46, you'll find the redline with that language in it.

THE COURT: I mean, I saw Page 25 of the clean. I have that in front of me.

MS. TOMASCO: Correct.

THE COURT: And let me just see if there's anything else. All right. Okay, go ahead.

MR. WOLFSHOHL: Thank you, Your Honor. Just to kind of sum up what I think is really in dispute now that we've kind of gone back and forth between the parties over the language, first I think nobody is contesting that we're not a "releasing party". And so that language is consistent in both versions of the proposed language.

I think what it comes down to -- and I'll tell you the part that -- or what we asked for, which was we wanted a provision that said no claims of LKC related to the LKC engagement, the LKC success fee, or the Special Committee's

motions, actions and claims related to LKC are released under the plan or confirmation order and such claims are fully preserved.

I think if you just kind of distill what the difference is between what they are proposing versus what I just read to you is that they're saying we're fine with that essentially being preserved as to claims against counsel for the Debtors and counsel for the Special Committee, but I think they're still trying to say the Debtors and the Special Committee are beneficiaries of an exculpation provision that would eliminate those claims. And I think we've got a pending dispute related to the LKC success fee. We haven't finished evidence.

I think there are some -- I think stated in prior pleadings that there are claims that we believe could exist depending on the result of that because of some of the actions taken by both of the Special Committee, maybe to some extent the Debtors depending on who it is that was actually doing stuff. And so I just don't think that you can have a pending existing dispute like that and then have some plan get confirmed that exculpates -- we are not asking for an elimination of the exculpation effects as to all the other things that the Special Committee or the Debtors have done in this case, but I think we've got an existing dispute and I don't think I should have to come in, prove up my

claims at a confirmation hearing to avoid the effects of an exculpation provision that I think is inherently overly broad and potentially impairs our rights relative to the existing dispute.

And that's what I think this comes down to. Mr. Schmaltz might say it differently. But I think what it comes down to is they're saying okay, fine, well, they're not really giving us much by saying Debtor's counsel and Special Committee counsel, because they're not beneficiaries of the exculpation provision anyway. So that's not -- essentially what I think their language says is -- if anything it's just clarification of what the plan is already doing. What we're saying is we don't want to be subject to the exculpation provision that benefits the Debtors and the Special Committee to the extent of claims that relate to the items that I specifically identified, which again, I'm not talking about D&O settlement, I'm not talking about Whinstone settlement. I'm talking about things that relate to LKC, its retention, its success fee and many of the things that were done in connection with the LKC fee application and some of the pleadings and things like that that were filed.

So that's the thing that we're talking about. Those are the things we were talking about. And I really don't think that it's appropriate for an exculpation

provision to swoop in and eliminate those claims that exist.

MR. KANSA: Your Honor, Ken Kansa, Barnes & Thornburg, on behalf of the Special Committee. I think Mr. Wolfshohl has accurately recited the narrowing of the issues between LKC and the plan proponents on this issue. We do agree that they're not a releasing party, and we've put that into our language. The Court has seen that. Similarly, I think they had initially stated that counsel for Debtors and Special Committee were indisputably getting exculpated under the plan. We disagree with that. We think, candidly, Your Honor, the Court would disagree with that. So we have clarified that we are not getting that exculpation under the plan.

But the real focus of our dispute is whether the Debtors and the Special Committee themselves can get the benefit of releases and exculpation under this plan. We think they can, Your Honor. We think it's appropriate in this circumstance. Certainly there are provisions in the plan that would let other claims go forward if there is, for example, an administrative claim that's otherwise provided by the plan.

THE COURT: To the extent that they have a defamation claim against the Special Committee, wouldn't that be an administrative claim?

MR. KANSA: To the extent they have a defamation

claim against the Special Committee and they -- it's an administrative claim subject to being, you know, meeting the requirements of an administrative claim as opposed to having a sort of free-floating carveout to assert whatever they may like and not satisfy those requirements I think, Your Honor.

THE COURT: Right. But if it's conduct that is covered from the petition date through the effective date and there's a claim that arises from that, obviously subject to meeting the requirements of 503, it would be an administrative claim.

MR. KANSA: I think that's correct, Your Honor, yes.

THE COURT: Okay. I mean, is there a circumstance where the claim wouldn't fall into that?

MR. KANSA: None that I can think of, Your Honor. But it's not my carveout to argue. So I would leave that to Mr. Wolfshohl as to whether he's trying to preserve something outside the administrative claims context. But we certainly don't think he either can or should be able to.

THE COURT: I mean, to the extent that -- I mean, if there was a car accident post-petition, obviously that wouldn't be a benefit to the estate, but it would still be an administrative claim.

MR. KANSA: Understood, Your Honor. Yes.

THE COURT: Okay. All right. Thank you.

MR. KANSA: Thank you, Your Honor.

MR. WOLFSHOHL: Your Honor, the problem I have is that, you know, I don't know that we are going to be able to state with certainty today that the types of -- you identified a very good example, defamation. I can't -- unless there's going to be a stipulation that a claim like that is going to flow through the estate and that there are going to be adequate proceeds to satisfy that claim, I think it -- I mean, I don't know the details of the Special Committee's indemnification rights relative to the Debtor for things that they did while -- you know, I don't even know if some of the stuff that they did was acting within the appropriate capacity as a special committee.

So I think my problem with that is only that I don't know everything and I don't know -- I think you've kind of hit it on the head. If I know that there's a pot of money that's going to satisfy those claims, maybe I don't care where it comes from. But my concern is that just standing up in court and saying, yeah, we think it's probably an administrative claim but not knowing with certainty that it is, that's the problem I have.

THE COURT: Okay. Thank you. All right. Anything further on confirmation?

MR. CAMARA: Your Honor?

THE COURT: Yes, sir.

MR. CAMARA: Justin Camara appearing hypothetically pro se. I just wanted to add that I hope there will be some consideration of, you know, beneficial ownership if I made a mistake related to the pro se filing. I just wanted to bring those issues for people to be able to just be aware of.

And the final comment I would say before I run off to surgery here is that one of the main concerns and the reason that I was motivated to file the objection as we're contemplating giving the insiders $1.9 million in recoveries. And whether we want to reduce the value of the claims or increase the value of the claims, certainly to the extent that any of those claims even marginally exceeded the value of the D&O settlement, the insiders in my perspective should get -- you know, that $1.9 million is kind of absurd to contemplate to give to insiders.

THE COURT: Okay. Thank you.

MR. KANSA: Your Honor, Ken Kansa for the Special Committee. I just would want to clarify in response to Dr. Camara's remarks, the $1.8 million that's going to Imperium and the founders under the plan is on account of notes only. And that is the only consideration that is going to them under the plan. It's on account of their secured notes at several of the Debtors as specified in Section 6.18 of the plan. So we've been very clear there that this is not a

free-floating claim, if you will, where a negotiated amount -- it ties very specifically to certain rights that Imperium and the founders have. Thank you, Your Honor.

THE COURT: All right. Thank you, Dr. Camara. I have an independent obligation to assess the settlement and the provisions of the plan. So I will take what you said into account, you know, whether I recognize or not your actual objection.

MR. CAMARA: Thank you, sir.

THE COURT: All right. Ms. Tomasco?

MS. TOMASCO: Your Honor, we have pending a notice that will upload, sources and uses of cash on a consolidated basis. It would be two -- I mean, it would be taciturn to do it on a per-debtor basis, but it's on a consolidated basis. Sources and uses of cash.

In addition, a slightly modified liquidation analysis that shows the effects of the Transcend settlement. I will tell you that the sources and uses of cash is based on the old liquidation analysis. There is not a new one for the amended liquidation analysis. The difference is that there have been some cost savings compared to the sources and uses of cash that is going to be uploaded. So it's going to be slightly more beneficial than the original. But we do have a new liquidation analysis to --

THE COURT: And how long would it take you to do

the sources and uses for the...

MS. TOMASCO: Ms. Howell is working on it right now.

THE COURT: For the new liquidation analysis.

MS. TOMASCO: For the new liquidation analysis and the new sources and uses. If you want a sources and uses that's tied to the new cash number based on savings compared to estimates, the Province team reflects that's going to take about 30 minutes to have that updated sources and uses of cash. So that's the difference.

And I can walk you through like the differences between the old liquidation analysis and the new liquidation analysis. Mr. Robinson can also testify. But I can tell you that the differences are as you would expect. Slightly less professional fee spend, that sort of thing. That's what we're going to -- we would show you.

In addition, as I said, the updated blackline of the confirmation order has been uploaded. I have been in contact with Mr. Lockhart. He does not object to the use of the Hurley declaration, the redacted portion, as long as it's in a closed courtroom and that they can dial in and listen to whatever the proceedings are that pertain to that.

THE COURT: Well, they're certainly welcome to dial in. But I'm not -- I mean, there's really been no opposition to the substantial contribution claim. I think

the redacted portions which don't' involve a mediation privilege, I don't -- you know, I have to look at everything in the context, but I don't know that it would be helpful.

THE COURT: I understand. And obviously you prepare your exhibit list and your presentation assuming that there's going to be a contest. To the extent it's not contested and we don't have to go through the brain damage, I can see why the court would make that decision.

With respect to the Transcend settlement, I just wanted to mention that on Page 29 of the disclosure statement that was sent to all creditors there is a detailed explanation of the Transcend warrants and the effects that they could have if we did not prevail on that claim objection. I think that it was fully disclosed to creditors what could happen. And what we are settling is that claim objection in context of the plan. And I think that's entirely proper, Your Honor.

THE COURT: All right. All right. So is there anything further with respect to confirmation? All right.

Then the next matter is the motion to enforce. And I've read Mr. Wheeler's declaration and it really didn't tell me what the issues were that resulted in the need to file a motion as opposed to having agreement with the parties. And I know you tried to explain it to me, but I'm still not really comprehending.

MS. TOMASCO: We were unable to reach an agreement with Whinstone with respect to the allocation that the Internal Revenue Code contemplates.

THE COURT: What was that dispute? I have no evidence as to what that dispute was.

MS. TOMASCO: The dispute had to do -- and I will tell you this one thing that may feed into this. The only thing that the IRS requires that we have consistent valuation of would be the physical property. That is the point of the IRS forms that you should fill out when you close a transaction of this type.

Whinstone did their own valuation, hired their tax consultants, et cetera. And they valued the property somewhere around $7 million. We said that can't possibly be true, because a lot of the miners that were at the Rockdale location actually came from the Temple location. And I don't know if you recall this, but Riot had made an offer for the Temple location primarily -- it was a leased location, so primarily for the miners -- upwards of $48 million. And so how could that be true?

And they said, well, you know, we have to be able to justify this to the IRS. And we said okay, we didn't want to spend this money, but we'll go out and we'll do our own evaluation. And we valued the property at $48 million. And that's really the dispute.

It also came to pass that because of the origin of the parties' relationship that Whinstone had property the debtor invested in creating the Rockdale Facility, invested its money in exchange for these contracts, these favorable power contracts which were the subject of the motion to assume litigation. And property, equipment, infrastructure, coolers, chillers, HVAC, all of those things the Debtor paid for and had on their books. But Whinstone, for whatever reason, we believe -- and in conversations it appeared that they had them on their books, too. And so they were not able to actually agree that they were actually ours and that they had been sold to them in the PSA.

And so they said to resolve it, they said we can't agree to something, we can't sign our name on anything. The only thing that we can do is we'll honor whatever the court order is. That's all we can do. We can't agree to it.

THE COURT: Okay. Well, what I really need is a declaration from somebody with knowledge that goes through what the dispute was, what happened back and forth or put a witness on. Because right now I have no evidence to that effect.

MS. TOMASCO: If you would like...

THE COURT: I mean, you don't have to do it right now. But, I mean, that's what I thought I was going to get. I thought I was going to get a full declaration as to what

happened, who said what, you know, and everything.

MS. TOMASCO: If you would like, he's in the hall. Mr. Wheeler is in the hall. He is our -- he was our tax consultant.

THE COURT: But was he involved in all of the negotiations with Whinstone?

MS. TOMASCO: The part about the tax negotiations, yes.

THE COURT: Yes, Mr...

MR. SCHMELTZ: I had one thing. Your Honor, if I might, part of the complexity is -- it's my understanding that Riot Whinstone has taken a public position in an SEC filing with respect to the value of the hard assets. Their accounting team, my understanding from our conversations, is concerned about contradicting that position at this point but is willing if there is a court order directing that the amount of hard assets be, for example, $45 million, $48 million commensurate with the valuation we've obtained, that they will live with that for purposes of the tax allocation. That is a cornerstone, that piece of the hard assets is a cornerstone allowing us then to allocate the rest between settlement and the contract value, the contract buydown value. Obviously, that's a subject of a dispute we have with LKC and we'll address that this afternoon. But it's my understanding that the need for a court order is

really one of sort of accounting cold feet to alter treatment that they've taken a public stance on.

But again, my understanding of the reason they non-opt, they didn't file an opposition to this is anticipating Your Honor would issue an order saying that the Debtors have obtained a proper valuation, the hard assets are properly valued at $45 million, that for tax purposes that 45 -- is it 48? But in any event, that that number is the proper number. And we can move on then with the rest of the dispute with LKC getting to the question of whether or not $75 million is appropriate for the settlement, or $100 million as they suggest, et cetera. And again, we'll put evidence on of that this afternoon with Your Honor.

So I think that's the disconnect. That's why we don't have this other witness. It would have to be probably me or Patty to do exactly what I've just done.

THE COURT: Right now if I have to rule, I would deny the motion. Because I have no evidence.

MS. TOMASCO: We have -- we can put Mr. Wheeler on and go through --

THE COURT: But Mr. Wheeler is going to testify as to me, right?

MS. TOMASCO: Correct.

THE COURT: And so unless he has personal knowledge of the discussions with Whinstone as to why they

couldn't agree on that number, that doesn't help me.

MS. TOMASCO: Well, all of us were on the call. Myself, Mr. Schmeltz, Mr. Wheeler.

THE COURT: Okay. If he's got personal knowledge then, you know, we can -- you can do a supplemental declaration, give people an opportunity to review it. But this was not what I was expecting.

MR. SCHMELTZ: And I think there's an interim conversation that both Patty and I have had separately I think with Whinstone's lawyer, which is that the missing piece of the puzzle where they have said to us, we can't agree to your position, but we'll agree to a court order. Mr. Wheeler may not have been on that particular call with that missing puzzle piece. I know I'd testify to it if it's appropriate.

MS. TOMASCO: I would testify as well. We were all on the calls.

THE COURT: All right. then let's get a declaration on.

MR. SCHMALTZ: All right. We can do that.

THE COURT: All right. Mr. Wolfshohl?

MR. WOLFSHOHL: I'm fine with a subsequent declaration as long as we have an opportunity to review it, weigh in on it. All this is very different than what's set out in the motion, which I think is Your Honor's concern.

The other thing is I don't really understand why this is being brought up today, because I did not see it on Your Honor's calendar. I saw it on the agenda, but not until I was preparing this morning. And so I just don't know why this is being brought up today at all.

We did see the declaration today. I saw that it was filed yesterday. There were a flurry of pleadings and we were trying to get through all of them. And my reaction was the same --

THE COURT: Yeah. No, no, I had asked -- I had asked for -- when we had the hearing on this, I had asked for the declaration that I would consider a connection with confirmation. But I still -- the declarations really didn't help me.

MS. TOMASCO: Just so the Court understands, this is not connected to LKC at all. This has to do with taking the Whinstone settlement proceeds and treating them appropriately for tax purposes as they wind their way up to distributions. In other words, the valuation of the Debtor's assets at various subsidiaries is very important because it matches up with the Debtor's books and records and available tax attributes.

So this is not something that is being done for, you know, smoke and mirrors purposes. This is very important to the tax savings that the Debtors are looking to

accomplish.

THE COURT: And I don't dispute that one bit. I just don't have any evidence to that effect.

MS. TOMASCO: Just so we're not at cross purposes, Your Honor, the evidence you're looking for is...

THE COURT: The reason why you could not agree on a valuation with Whinstone, the steps that you took to address the valuation, and the dispute that I'm resolving as opposed to giving an advisory opinion.

MS. TOMASCO: I see.

THE COURT: Okay. This -- Mr. Wheeler's declaration basically said here's what I did. Okay, great. And I don't have any question that he did what he said he did. But that just doesn't resolve this dispute. I mean, it doesn't address the dispute. It addresses maybe one number there.

MS. TOMASCO: Correct. Is it -- is the Court concerned with the allocation that Mr. Wheeler made? Like an advisory opinion with respect to something other than the property value?

THE COURT: Correct.

MS. TOMASCO: I see. Okay. I understand.

THE COURT: And that's one. But two, more importantly is, what's the dispute that I'm really resolving here, okay? Because, you know, I resolve disputes, not give

advisory opinions. And obviously you all have told me what you think the dispute is. And, you know, and I have no reason to doubt that that's not true. But I don't have any evidence.

MS. TOMASCO: That there was a dispute.

THE COURT: That there was a dispute, you know, who said what, why did they say it, why couldn't they do it, the fact that they had an appraisal at $7 million and you disagreed with the appraisal. I mean, all of the stuff that you just told me. You know, I need to look at it as evidence.

MS. TOMASCO: And we couldn't get them to send us a list of what they had appraised. And so we couldn't even speak to the nature of the dispute because we had different equipment lists to start with, right? So --

THE COURT: Well, I don't know that.

MS. TOMASCO: Okay. I'll prepare a declaration that goes through all of those elements, Your Honor. Because that's essentially what it was. We couldn't even get -- agree on a list of what the equipment was that was sold to them.

THE COURT: Understood.

MS. TOMASCO: Thank you.

THE COURT: All right. Anything further on the stipulation, plan, or the motion to enforce?

MS. TOMASCO: I believe that with respect to the stipulation, it's moot because the Court has decided that it doesn't need to consider any mediation privilege documents.

With respect to the plan, the notice of the amended liquidation analysis and the flow of funds and sources and uses of cash have been uploaded. I don't have the docket in front of me, but it should be the last thing on the docket.

MR. KANSA: Your Honor, it's Docket 2110.

MS. TOMASCO: 2110, Your Honor. And so you'll have both of those. If the Court has any questions about those, Mr. Robinson can take the stand and explain anything about that. To the extent that you want a sources and uses of cash that ties to the amended liquidation analysis, that should be available in 30 minutes or so.

THE COURT: So the 139 cash on hand, that includes the sales proceeds from the Riot stock, correct?

MS. TOMASCO: Correct.

THE COURT: Okay, all right. So this Exhibit 1, 2110-1, ties to the liquidation analysis before the --

MS. TOMASCO: Transcend settlement.

THE COURT: Transcend settlement. Okay. So I want to see the one with the Transcend settlement and we can look at that. All right. So it's now noon. So we're coming back at 1:00 for the --

MS. TOMASCO: LKC dispute.

THE COURT: All right. So we'll be in recess until noon.

MS. TOMASCO: Until 1:00.

THE COURT: Until 1:00.

MS. TOMASCO: Thank you, Your Honor.

(Recess)

THE COURT: All right. We're back on the record in Case Number 24-90448, Rhodium Encore LLC. And I'm going to go ahead and activate the hand-raising feature. So to the extent somebody wants to speak, please hit five-star one time.

All right. Ms. Tomasco?

MS. TOMASCO: Thank you, Your Honor. I know we need to take up the LKC thing, but I was wondering if we could go through the additional exhibits. Because some of us weren't planning to stay for the whole thing, if that's okay.

THE COURT: Okay.

MS. TOMASCO: If we could do that part now and then turn to that.

So just FYI, Your Honor, we uploaded and sent to Mr. Laws Document Number 2112, which has the updated sources and uses of cash.

THE COURT: Correct.

MS. TOMASCO: That is an update to the document that's filed at 2110-1.

THE COURT: Correct.

MS. TOMASCO: Which is the sources and uses of cash based on the original liquidation analysis.

THE COURT: Yeah. And so this -- the way I understand this, there is no distributable cash to equity based on this analysis under the plan.

MS. TOMASCO: That's correct. And that's a number of mechanics that are different, mostly because of the Transcend settlement. There have been -- as one would expect, the estimates have gone up or down. And I can summarize those differences for you. Or Mr. Robinson is in the courtroom if --

THE COURT: Yeah. Why don't we get Mr. Robinson on to go through it.

MS. TOMASCO: Thank you. Your Honor, the Debtors would call Mr. Michael Robinson to the stand.

THE COURT: Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. ROBINSON: I do.

THE COURT: Thank you. Do you have a copy of it?

MR. ROBINSON: I don't.

MS. TOMASCO: Yeah. That's what we were -- we were trying to do a couple of things. What I can do is I

can hand up the original liquidation analysis -- I mean the updated liquidation analysis to the Court. This is the document that's found at 2110-2.

THE COURT: I've got a copy.

MS. TOMASCO: Okay. Then I'll just approach the witness?

THE COURT: I have copies and --

MS. TOMASCO: May I approach the witness?

THE COURT: Yes.

MS. TOMASCO: All right. Your Honor, if I could approach the witness one more time?

THE COURT: Absolutely.

DIRECT EXAMINATION OF MICHAEL ROBINSON

BY MS. TOMASCO:

Q Mr. Robinson, just to keep this short, we're going to look at the revised liquidation analysis, which is the first document I handed you, which is the same that can be found at 2110-2. Do you recognize that document?

A I do.

Q And what is it?

A It is a liquidation analysis.

Q And how did it change from the liquidation analysis that was filed with the disclosure statement?

A The core differences in this analysis were we updated it for certain professional fees and other expenses that

were known. Ultimately that resulted in a savings of several million dollars, roughly about $3 million. It additionally contemplated an increase in the winddown budget shifting from $1.15 million to $2 million. It also reflected the request to increase the reserve for the LKC success fee and then it also contemplated the change in how the substantial contribution would have a reserve amount of two-and-a-half million dollars and also showed how that would flow accordingly.

Q So to summarize, Mr. Robinson, how much did the winddown budget increase?

A $850,000.

Q And how much did the actual professional fees versus budget decrease?

A I'd have to look to quickly reference that. But I believe it was just over a million.

Q And then how much did the estimated fees to LKC and B. Riley, or what we call the success fee category, increase?

A Yeah. So we effectively had a reserve of six-and-a-quarter million dollars that ultimately would have went up to $9.9 million, but we already paid out certain amounts of $1.7 million. And in there, there's also a reserve for B. Riley of $550,000 as well as ultimately some invoice fees for hourlies of roughly $400,000 and change, give or take.

Q Okay. Let's look at what's been marked as -- which

document -- it should have at the heading ECF marker 2112. Do you have that in front of you?

A I do.

Q And what is that document?

A This is the revision to the liquidation analysis I believe containing predominantly the cash reconciliation.

Q Okay. Now, with respect to those five movers that we've just discussed, the winddown budget going up, the actual professional fees going down, the LKC reserve going up, the Transcend settlement figure of $2.5 million which resulted in a net reduction of distribution of equity from $1.129 to negative $400,000, correct?

A Correct.

Q And where is that reflected on the distributable cash to equity on Docket Number 2112-1?

A So effectively if you look at the very bottom of what is Page 2 of 2 per the top of the document, you'll see at the bottom it shows distributable cash to equity as zero. In fact, it's a bit negative, to your point.

Q It's negative $400,000, correct?

A Correct.

Q Okay. And where is the increase in the LKC B. Riley reserve reflected on Docket Number 2112-1?

A Yeah. So if you look a bit further up, you'll see a category called reserves. And in there you'll see initially

late-filed claims of $500,000. And then right below that, LKC and B. Riley listed at $8.18 million.

THE COURT: And B. Riley is 1.7 of that?

THE WITNESS: No, they are $550,000 of that?

THE COURT: $550,000, okay.

BY MS. TOMASCO:

Q Mr. Robinson, does this change materially any other aspect of your declaration on file with respect to the confirmation of the plan?

A It does not.

MS. TOMASCO: Any other questions, Your Honor?

THE COURT: Okay. So Paragraph 19 -- hold on. Let me find it.

Ms. Tomasco, do you want to take him through Paragraph 19?

MS. TOMASCO: Of his declaration?

THE COURT: Yes. And see how that compares with the new -- with this new sources and uses.

MS. TOMASCO: Paragraph 19?

THE COURT: Yeah.

MS. TOMASCO: May I approach, Your Honor?

THE COURT: Yes.

BY MS. TOMASCO:

Q Mr. Robinson, do you see Paragraph 19 of your declaration?

A I do.
Q Does that analysis change based on your updated liquidation analysis?
A Give me one moment, please. The deficit amount does change, but the concept does not.
Q And what do you mean by that?
A Ultimately, there is a difference in the amount of recoveries that would flow through given the changes we addressed.

THE COURT: The equity? The equity?

THE WITNESS: Well, ultimately the amount that could potentially be available to equity. There is effectively that blocking position now in the plan. Not in the Chapter 7 scenario.

THE COURT: Okay. And you're assuming that there would be an eight-and-a-half million-dollar substantial contribution claim in a Chapter 7?

THE WITNESS: I actually assume that there may be a larger substantial contribution claim in a Chapter 7. We were notified by the SAFE Ad Hoc Group their intent to pursue an administrative claim up to I believe it was $12 million we were told. We represented a low of -- well, I was talking in the high case. But in the high case effectively zero and then in the low case the potential full amount.

MS. TOMASCO: Nothing further, Your Honor.

THE COURT: All right. Does anyone wish to cross-examine Mr. Robinson? Yes.

MR. POTTER: Mr. Robinson, this will be very brief. May I proceed, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION OF MICHAEL ROBINSON

BY MR. POTTER:

Q Do you have in front of you Document 2112-1?

A I do.

Q Okay, great. If you go down to, I believe it's the last page of that document, what's the SAFE substantial contribution claim now listed at in that document, the line item for that? I won't hide the ball. Do you see where it says $6 million?

A Yes. I see $6 million. And then below that.

Q Is the Transcend reserve, correct?

A That's right.

Q So that's the eight-and-a-half million-dollar substantial contribution claim that would have been paid even before the Transcend settlement, correct?

A Correct.

Q And is it your understanding that the Transcend settlement also resulted in a significant savings and potential professional fees?

A Absolutely.

MR. POTTER: Nothing further, Your Honor.

THE COURT: Okay, thank you. All right. You may step down.

MS. TOMASCO: Your Honor, before we move on to LKC, is there anything else that the Court wants to hear about with respect to confirmation?

THE COURT: No. I think that -- I mean, we still have the other open issue on the stipulation -- on the motion to allocate.

MS. TOMASCO: Beg your pardon?

THE COURT: On the motion regarding the allocation of the purchase price.

MS. TOMASCO: Oh, correct. But that's not -- that's not tied with confirmation. That's separate.

THE COURT: Okay.

MR. POTTER: Thank you, Your Honor.

MS. SCHULTZ: Your Honor, for the record, Sarah Schultz on behalf of the SAFE Ad Hoc Group. I just wanted to modify the documents that we're asking Your Honor to consider for submission as evidence given your ruling with respect to the previous stipulation.

So, Your Honor, I'm looking at the exhibit list that was filed at 2104. And, Your Honor, we would move for admission of Exhibits 14 through 26.

THE COURT: Hold on a second. Okay, 13 I've already took judicial notice of.

MS. SCHULTZ: Yeah.

THE COURT: All right. 14 through 26.

MS. SCHULTZ: 28 through 32 and then 35 through 80, 91. We would ask Your Honor to take judicial notice of 90.

THE COURT: Okay. So take judicial notice of 90.

MS. SCHULTZ: Yes, Your Honor. That transcript is already on the docket. We would move for admission of 91, 93, 95 through 98 and then 100 through 107. And I believe Your Honor has already admitted the portion that is available to the public of Mr. Hurley's declaration, which was 108.

THE COURT: All right. I will take judicial notice of the transcript that's on file.

MS. SCHULTZ: Thank you.

THE COURT: Okay. Does anyone object to the admission of Exhibits -- let me make sure I get this right. 14 through 26, 28 through 32, 35 through 80, 91, 93, 95 through 98, 100 through 107?

Hearing no objection, they will be admitted.

(Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, and 100-107 entered into evidence)

MS. TOMASCO: Thank you.

THE COURT: All right. Anything further on confirmation?

MS. TOMASCO: No, Your Honor. I think you understand that the plan support parties all urge the confirmation of the plan, overruling the objections that we haven't already resolved.

I know that there's a toggle issue for LKC in the confirmation order which you have by virtue of the redline that we've uploaded. If the Court wants additional argument on any of those points, we're happy to give it.

THE COURT: Okay. I'm going to take the matter under advisement and I will -- I'll go ahead and -- I mean, I'll rule promptly, but I'm going to consider everything.

MS. TOMASCO: Thank you, Your Honor.

THE COURT: All right. Why don't we go to LKC.

MR. SCHMELTZ: Good afternoon, Your Honor. Trace Schmeltz for the Special Committee from Barnes & Thornburg.

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl from Porter Hedges on behalf of LKC. And then we've got Will Thomson, Todd Disher, John Cohn, Jacob Richards.

MR. SCHMELTZ: Your Honor, my partner, Paige Lohse is here. And my clients are here -- or my client, David Eaton, is here as well. We'd like to proceed today if it pleases the Court, we've submitted a declaration for Chris

Wheeler. We would stand on that declaration. He is here in the hallway subject to cross-examination if that's what LKC would like to do. We would put on Kevin Hayes, the former CFO of Rhodium live today, and we would put David Eaton on live as well. And then stand for argument. We've got closing argument and some exciting slides to prepare -- or to present. That's from our perspective all that's left to be done.

Mr. Thompson, I assume you've got an alternate plan.

MR. THOMPSON: Your Honor asked us to confer on any pending motions that might need rulings. What I understand from Mr. Schmeltz is that he's not calling Mr. Rosten about whom there was a motion to strike. Assuming he's not a witness, the motion to strike does not need to be ruled upon.

As to the declaration from Mr. Wheeler, we were fine with that in principle, though we have some evidentiary objections to particular paragraphs just as we would if he were testifying. I'm happy to make those whenever Your Honor wants.

THE COURT: Do it now.

MR. THOMPSON: Does Your Honor have a copy of the declaration in question? I believe it's at 1943-2. I can also hand Your Honor a hard copy.

THE COURT: Yeah, why don't you hand me a copy. I did have it in front of me.

MR. THOMPSON: So this is fairly similar to the declaration that Your Honor saw this morning in connection with the other matter. If you look at the very last paragraph -- it's Page 5, Paragraph 11. It seems to offer a personal belief regarding the value of the damages claims based on "information I have been told or received". I have a hearsay objection if he's offering an opinion based on information he's been told. He's not designated as an expert witness. It is not a proper lay opinion because it is not rationally based on the witness's perception and it is based on at best I guess specialized knowledge.

I guess to the extent we read the paragraph as just saying this is his understanding, then I guess we can solve some of those other evidentiary problems, I think it's probably then irrelevant to the matter at hand. But that's our issue with regard to Paragraph 11.

And then pretty much the same thing with regard to Paragraph 9. He talks about his understanding of the power contracts and how they allegedly could have been valued significantly higher. Again, if it's just he's stating his understanding without trying to smuggle in the basis for it, I suppose that's fine. We think it's irrelevant, but Your Honor can deal with that. To the extent we're kind of

smuggling in the basis for his understanding, we have foundation and hearsay objections.

THE COURT: All right. Mr. Schmeltz?

MR. SCHMELTZ: We're at 9 and 11. Is that right?

THE COURT: Yes.

MR. SCHMELTZ: So with respect to Paragraph 9, it is my understanding that the power supply agreements could have been valued significantly higher than the $60 million allocated is -- sort of from a tax professional's perspective I think Mr. Wheeler would tell you supportive evidence in support of his understanding of how the allocation would be made. I think it's evidence that he as a tax professional relies on in the ordinary course and he can testify about that and can provide the backup for that.

The Paragraph 11 information I've told or received regarding the amount related to litigation and/or settlement, I believe the amount allocated could have been significantly lower than 75 or even zero. I'm happy to strike that paragraph. Mr. Eaton, who was involved in the negotiations, will testify to that.

THE COURT: All right. So does this then contradict what you told me this morning, Ms. Tomasco, that he was only offering the $43 million? I mean, this is the problem that I'm having that seems we're getting very contradictory positions on this issue. And I haven't gotten

a real straight answer.

MS. TOMASCO: The valuation of the equipment?

THE COURT: Right.

MS. TOMASCO: Oh, the valuation of the equipment was a valuation performed by Riveron using their valuation professionals. To the extent that we need -- to the extent that that would be pertaining to the tax allocation, we can make a formal valuation evidence issue.

My understanding though is that the exercise that we went through with Whinstone may reflect something that's relevant to LKC. But in my view, I do not view those things as related.

THE COURT: But the question that I have is as it relates to the -- what I understood this morning was that the only number in his declaration that you needed for purposes of a dispute to the extent that there is one with Whinstone was the $43 million and that the other three numbers were not -- that he wasn't testifying as to those. That's what I understood.

MS. TOMASCO: It's not necessary to file the tax forms. I think they're 8650 -- I don't know what the IRS number is. But it's not necessary to file those tax forms. The tax forms pertain only to the physical assets.

THE COURT: All right. Mr. Schmeltz?

MR. SCHMELTZ: So Mr. Wheeler, as Your Honor

knows, was retained under a Kovel agreement to provide advice to the professionals who are advising the Debtors. In that capacity, he worked on the tax allocation. He also has helped to prepare analyses of the enterprise's tax situation for purposes of projecting in the cash waterfall what available cash would be there and what would be needed for taxes. As a part of that, he helped gather information related to the entirety of the $185 million so that the Debtors could make intelligent decisions about what the expected taxes would be. And what he is testifying to in the LKC dispute different than the tax allocation motion is here are all the buckets we considered and here's how we considered them for tax filing purposes.

The tax allocation motion is different in that we need a ruling on the hard asset piece in order to resolve what would be two different tax treatments between Whinstone and Rhodium on that issue. So he has -- he wears two hats and he certainly in this dispute is going necessarily further than you need to go in the other dispute to get what is needed for the tax allocation purposes, if that makes sense. He is the same guy. Two hats, carrying out two different mission. And we obviously need to make that more clear to you in the other matter, and we will.

THE COURT: Well, yes. I'm really very confused as to what's going on here. And, you know, Riveron

obviously was retained not through the Court, but they were retained -- I don't know what they were doing. I don't know what they were supposed to do. I haven't seen an engagement letter. I haven't seen anything.

MR. SCHMELTZ: Understood.

THE COURT: And when I ask for information, I haven't been provided the information.

MR. SCHMELTZ: Understood.

THE COURT: I want to see the engagement letter. Let's take a break and get that to me.

(Recess)

THE COURT: All right. We're back on the record in Case Number 24-90448, Rhodium Encore LLC.

MR. SCHMELTZ: Your Honor, I understand you had questions about the engagement letter for Mr. Wheeler. I want to make sure we get you whatever information you want. Do you want to take that issue up now? Or how do you want to proceed?

THE COURT: No, I mean, let's -- there was an objection to Paragraph 9 and 11, you agreed to take out Paragraph 11. So why don't you put him on and...

MR. SCHMELTZ: All right. Let's just do it. We're here. (indiscernible). I just told him he could step out to the bathroom because I didn't know how -- I feel like my timing on that was bad. But give us half a second.

He'll be right back.

THE COURT: Why don't you come up to the witness stand.

MR. SCHMELTZ: I want to make sure -- you guys have invoked the rule. So I should have (indiscernible). And then, Your Honor, we previously had -- you did some magic with the recording and who could listen. And I don't know if we have that same magic here.

THE COURT: Well, we have 40 people on the line.

MR. SCHMELTZ: Do we have a sense of their party status from anything you can...

THE COURT: At the ABI project. Mr. Lockhart is on. I mean, so I could go one by one and unlock the conference. But is his testimony going to be...

MR. SCHMELTZ: I don't think his testimony will cover anything privileged. So we should begin.

THE COURT: All right. So let's just go ahead. All right. I'm going to go ahead and mute it. If anybody wants to be heard, please hit five-star.

All right. Raise your right hand, sir. Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. WHEELER: I do.

THE COURT: Okay. Thank you.

DIRECT EXAMINATION OF CHRIS WHEELER

BY MR. SCHMELTZ:

Q Just for the record would you please introduce yourself to the Court?

A Sure. My name is Chris Wheeler. I'm a managing director at Riveron Consulting.

Q And, sir, what's your background?

A I am a certified public account and have been practicing for approximately 23 years.

Q And you've submitted a declaration in this matter, correct?

A I have, yes.

Q Did you have a chance to review that declaration before it was submitted?

A I did.

Q Do you agree with its contents, sir?

A I do.

Q Do you have anything that you want to change in that declaration today?

A No, I do not.

Q Your Honor, I would pass the witness.

MR. THOMPSON: Thank you, Your Honor. Will Thompson from Lehotsky Keller Cohn.

CROSS-EXAMINATION OF CHRIS WHEELER

BY MR. THOMPSON:

Q Good afternoon, Mr. Wheeler.

A Good afternoon.
Q Good to see you again. You I believe have a binder in front of you. I believe Your Honor also has a copy of our binder. Could you take a look at Exhibit 23? It's Tab 23 in the yellow copy there. You should find a copy of the purchase and sale agreement that you referred to in your declaration. Would you let me know if you see it there?
A I do see it, yes.
Q Would you please turn to Section 2.3? It's on Page 2 of the internal pagination.
A I am there.
Q This is the section of the purchase and sale agreement about the tax allocations that you referred to in your declaration, right?
A Yes, that's correct.
Q Okay. The allocation statement required by Section 2.3 is prepared for tax purposes, correct?
A That is correct.
Q In fact, "For tax purposes" are the first three words of Section 2.3 after the heading, right?
A Also correct.
Q If you look at the next page, you should see kind of the full part of the provision, Section 2.3. Is it fair to say Section 2.3 requires Rhodium and Whinstone to follow the tax -- to follow the allocation statement when filing their

taxes?
A Yes.
Q Now let's take a look at the last sentence. I'm going to read it and you'll confirm I read it correctly. "For the avoidance of doubt, nothing contained herein shall be deemed an allocation of asset value for purposes of distribution to any seller-stakeholders." Do you see that?
A I do see that.
Q And seller in this provision refers to the Rhodium entities, right?
A I believe it refers to the Debtors collectively, yes.
Q And you could view LKC as a Rhodium stakeholder, correct?
A I don't see stakeholders defined here. It's not capitalized. So I'm not sure if that was the intended context as drafted.
Q Do you remember being asked this question in your deposition?
A Vaguely.
MR. THOMPSON: Mr. Disher, could we bring up -- oh, I'm sorry. Your Honor, is it all right if we give Mr. Disher presenting privileges to pull up the transcript?
Mr. Disher, I would love to look at Page 23 starting on Line 19.
BY MR. THOMPSON:

Q We'll try it this way while we see if we can figure out the technical issues, Mr. Wheeler. Do you remember my asking you, "LKC is a Rhodium stakeholder, correct?"
A I remember you asking the question.
Q And do you remember that your answer began, "I think that you could view them as that, although I don't know that this is how that was intended"?
A It sounds consistent with what I said.
Q All right.
MR. SCHMELTZ: I would just note, Your Honor, my objection that it's improper impeachment. It's (indiscernible).
MR. THOMPSON: I'll get to it.
BY MR. THOMPSON:
Q And as Rhodium's corporate representative, you could not testify about the intent behind that last sentence in Section 2.3, right?
A That's correct.
Q But based on the language in the document, if Rhodium and Whinstone reach one allocation for the purposes of the PSA and then Rhodium and LKC reach a different allocation for purposes of the fee dispute, that wouldn't violate the PSA in Rhodium's understanding, correct?
A My personal view is it wouldn't violate the PSA, but I've also been advising on matters related to the tax

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

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

THE COURT: Okay.

BY MR. THOMPSON:

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

A Correct.

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

A I did not.

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

A That's correct.

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

A Yes.

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

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

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

A I do not.

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

$75 million, right?
A I do not.
Q You don't know how the board reacted to the $75 million number, right?
A Correct.
Q You don't know whether other values for the damages case were discussed with the board, right?
A My understanding is that there were values that were discussed that were higher than that in the past, and that they had been trending downward throughout the course of the dispute with Riot Whinstone.
Q I guess this is an understanding you gained since the time of your deposition?
A I don't recall that you asked me that question previously.
Q Do you remember my asking, "Do you know whether other values for the damages case were discussed with the board?"
A I don't recall the specific question.
MR. THOMPSON: Mr. Disher, if we have the technical problems resolved, could we go to Page 52 of Mr. Wheeler's deposition transcript, Line 17?
MR. DISHER: Your Honor, may I have presenter --
THE COURT: I think you're still -- oh no. Here you go.
MR. THOMPSON: Fifty-two, 17 to 19.

BY MR. THOMPSON:

Q All right, Mr. Wheeler, can you see the question on Line 17, "Do you know whether other values for the damages case were discussed with the board?"

A I see that, yes.

Q And you see your answer was, "I do not know"?

A I see that, yeah.

Q All right. Would you have wanted to know if the lead litigation attorney had told the board that he thought the value of the damages case was between $100 million and $150 million?

A I would have wanted to understand all facts relevant to the basis for the payment from Riot Whinstone to the company.

Q Is that a yes?

A Yes.

Q Now, Mr. Wheeler, could you look at Exhibit 13 in your binder in front of you? You should see an email from Mr. Cohn. Do you have that email in front of you?

A I do.

Q And do you see the part where he talks about trying to settle the damages case from between $100 million and $150 million? It's in bold text about two-thirds of the way down the page.

A I see that.

Q That's not a document you were able to consider during your tax analysis, right?
A I have not seen this before, no.
Q Now, in the tax allocation discussions with Whinstone, you were a part of those, right?
A Correct.
Q So you know that Whinstone wanted to allocate less value to the fixed assets than Rhodium did, right?
A Correct.
Q And Whinstone wanted to allocate about $7.2 million or $7.3 million to the fixed assets, right?
A Also correct.
Q And Rhodium's number was $43.5 million?
A Yes.
Q That's a larger gap than you might normally see, right?
A I don't know about whether it's a larger gap than normal, but certainly a large gap.
Q Do you remember saying in your deposition, "I think it's a larger gap than I might normally see"?
A I don't recall if I said that, but...
MR. THOMPSON: Your Honor, if it's all right, I'm going to approach the witness with the 10-Q that we heard about this morning. I didn't have that printed previously.
BY MR. THOMPSON:
Q Mr. Wheeler, do you have the copy of Riot's 10-Q in

front of you?
A I do.
Q All right. And if you could turn to Page 9 based on the internal pagination, you'll see a section entitled Rhodium Settlement and Acquisition of Assets.
A I see that.
Q If you look at the second full paragraph and the third line, there's a sentence that begins, "The fair value of the tangible assets acquired was estimated to be $7.3 million. Do you see that?
A I do.
Q That's consistent with what Whinstone was telling you, right?
A Yes, it's consistent with their view.
Q Were you in the courtroom this morning?
A I was not, no.
Q Okay. I don't want to violate the rule. You're aware that Whinstone has said that it doesn't want to contradict public statements it's made about the value of the fixed assets, right?
A Yes.
Q Is this the public statement that Whinstone is talking about when it says that?
A They did not tell me specifically which public statements, but I can assume it could be one, yes.

Q Okay. And if you turn to Page 45 of this same document. I'm looking at the fifth paragraph on the page. It's a one-sentence paragraph. Do you see where it says, "The loss on contract settlement of $158.1 million was attributable to the Rhodium settlement"?
A I do.
Q And that's not the number you used in your tax allocation, is it?
A It is not, no.
Q In your view, the valuation of the power contracts is somewhat subjective, right?
A Yes. I think there was a range of interpretations of the value of any contract between different parties.
Q And aside from whatever it has put in its public statements, Whinstone didn't convey to Rhodium as far as you're aware its view of the value of those power contracts, right?
A In any discussions of which I was part, they only referenced the value of the fixed assets and the remainder of the value being related to the termination of the contracts. They didn't specify any further breakout than that or propose any further breakout than that.
Q So when your declaration has a breakdown, those numbers aren't based on some kind of agreement with Whinstone, right?

A That's correct.
Q As part of your analysis for the tax allocation, you didn't look at issues related to Rhodium seeking exit financing, right?
A I did not as part of my analysis, no.
Q And if Rhodium had not struck a deal with Whinstone, you don't know whether Rhodium would have been able to continue operating at Rockdale and benefit from those power contracts, correct?
A That question was not within the scope of my engagement, no.
Q So you don't know the answer, right?
A I do not.
Q And you don't know whether Rhodium would have been able to sell or transfer the power contracts to a third party, right?
A I'm not an attorney and I'm not aware of the ability to transfer those contracts or the like.
Q No further questions. Appreciate your time, Mr. Wheeler.
MR. SCHMELTZ: Your Honor, may we have presentation capabilities to put the deposition up on the screen?
THE COURT: Yes. Who should I give it to?
MR. SCHMELTZ: Ms. Lohse. Thank you, Your Honor.

There it is.

THE COURT: I think I see her.

MR. SCHMELTZ: And if you could go to Page 23, please.

REDIRECT EXAMINATION OF CHRIS WHEELER

BY MS. TOMASCO:

Q Mr. Thompson in his examination of you asked you if he had asked the question LKC is a Rhodium stakeholder and gave your answer that I think you could view them as that. Right?

A Yes.

Q You gave a more complete answer than that at your deposition, isn't that correct?

A I believe I did.

Q We're going to put that on the screen and I'm going to have you read your complete answer for the record, please. Why don't you start at Line 24 and read through to Page 24, Line 5, please.

A Certainly. I'd said at the time, "I think you could view them as that, although I don't know that this is how that was intended. I was not a party to drafting of this agreement and I can't really speak to the intent of that. I could also see a reasonable view that -- and if you could scroll up for me a little bit. That would simply be viewed as -- that would simply be viewed as shareholders rather

than stakeholders, in particular as it relates to the distribution, which is typically in the tax world a term we use when it relates to the transfer of cash or property to a shareholder of an entity.

Q So you were viewing the word Stakeholder in a provision regarding taxes from a tax perspective in giving that answer, is that right?

A Correct.

Q Let's take a look if we can at Page 52 of the deposition. You were asked whether you knew if other values for the damages case were discussed with the board and you said, "I do not know."

A Correct.

Q In your testimony today, you said you understood that number was trending down.

A Yes.

Q Can you help us understand how your answer in court was consistent with your answer in the deposition?

A Certainly. At the time I -- at the time that we discussed with the company the various damage claim amount, I think I was looking at the most recent board presentation. I have also learned since then that that number had been revised and had considered -- had been -- you know, different aspects had been looked at over time and that that had kind of trended downward. But I don't for -- at the

time I don't think I knew for sure what specifically had been discussed with the board.

Q And at Page 53 of your deposition, you also gave a more completed answer. And if you'd read Lines 10 through 12 to give a more complete view of your answer.

A On 53?

Q Yes, sir.

A Starting with ten?

Q Yes, sir.

A Where that says intellectually?

Q Start with the word "so".

A "So the most recent view on what the damages were seemed to be the reasonable number to include in the calculations."

Q And can you explain that please for the Court?

A Sure. So there are a couple of different obligations that both a company and the tax preparer has when preparing a tax return. A company would need to attest to essentially the veracity of the information presented there. And the preparer's obligation is that they are considering all the facts of which they are aware.

And I think my comment here related to the fact that being aware of the most recent, most current information that the company had discussed internally related to the damages and as well related to the value of the other assets

that were transferred or the value of the contracts that were terminated was what would need to be included in considering the entire purchase price allocation among those different either assets transferred, contracts terminated, et cetera.

Q Did you have evidence or information suggesting that the contract piece of the assets that were sold could have been valued either higher or lower than what is in your allocation?

A I'd had discussions with the company previously and its other advisors, including Mr. Robinson, related to the value of those contracts and the view that those contracts were valued significantly in excess of kind of the residual after taking into account the fixed assets such that they could have represented the entire value above the fixed asset value. But we also had the information related to the view on damages that was presented to the board and so needed to reconcile all of the pieces together and make an attempt to take all of that into account when assigning value to each of the components of that Riot Whinstone contract.

Q You as part of your work engaged in conversations with Riot Whinstone about the tax allocation. Is that right?

A That is, yes.

Q Did you have in the course of those conversations -- did you come to an understanding of how Riot Whinstone

valued what it had purchased?

MR. THOMPSON: Objection. If the answer is going to be limited to yes or no, I guess I don't have to object. But to the extent he's about to relay what prior Whinstone said, I object on the grounds of hearsay.

THE COURT: It's a yes or no answer. Go ahead.

THE WITNESS: Can you ask the question again?

BY MR. SCHMELTZ:

Q Did you come to form an understanding of how Riot Whinstone valued the assets it had purchased, other than the hard assets, during the course of your negotiations?

A Yes.

Q And did you factor that into your tax allocation?

A The view that they expressed to us was that the value related to the termination of the contracts. But I still felt we had to consider the value of the damages over which they'd been litigating. And no view was ever agreed between the parties as to what the allocation was from that perspective.

MR. THOMPSON: Object as nonresponsive and hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q I'm going to try one more time. Did you factor in their view -- did you -- did you -- let me ask it this way.

Did you adopt their view in your tax allocation?
A No.
Q Had you adopted their view, would you have a higher or lower allocation to contracts in your tax allocation?
A A higher allocation of the contracts.
MR. SCHMELTZ: Thank you. I have no further questions for this witness.
THE COURT: All right. Mr. Thompson, anything?
MR. THOMPSON: Just one last topic.

RECROSS EXAMINATION OF CHRIS WHEELER

BY MR. THOMPSON:
Q Mr. Wheeler, Mr. Schmeltz asked you about a reasonable interpretation of Section 2.3. And I think you testified that we could just read the word stakeholder to mean shareholder. Did I get that right?
A Specifically in context that it discusses distributions to stakeholders, yes.
Q Did you know that elsewhere in the PSA the language uses the term shareholder instead of stakeholders?
A I don't recall that.
MR. THOMPSON: No further questions.
THE COURT: All right. Mr. Wheeler, by the time that you were engaged, had the Whinstone transaction already been in process?
THE WITNESS: The purchase and sale agreement had

been executed, Your Honor. I believe we were engaged toward the end of April. And that transaction closed within a week I think of our being engaged.

THE COURT: All right. And have you done any other work -- you personally. I understand there's another team of Riveron that's involved. Personally anything other than the allocation of the Whinstone purchase price?

THE WITNESS: No, Your Honor.

THE COURT: Okay. I don't have anything. Do you have any questions as a result of that?

MR. SCHMELTZ: You've been very patient over a couple of days of this hearing, and I really appreciate your time. Thank you, sir.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, Your Honor.

MR. SCHMELTZ: Your Honor, I would call Kevin Hayes to the stand.

THE COURT: All right.

MR. SCHMELTZ: I think I misspoke earlier in my mind because of the way today was structured. We might have a ruling and Mr. Hayes would still -- would not be the CFO anymore of Rhodium. He is still the CFO of Rhodium. I didn't mean to undersell him earlier, Your Honor. But...

Go ahead and take the stand, Kevin.

THE COURT: Raise your right hand, sir. Do you

solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. HAYES: I do.

THE COURT: Okay. Go ahead.

DIRECT EXAMINATION OF KEVIN HAYES

BY MR. SCHMELTZ:

Q Sir, would you do me a favor and introduce yourself to the Court?

A Yes, sure. Kevin Hayes. I am the Chief Financial -- excuse me -- Chief Financial Officer of Rhodium Enterprises.

Q Could you tell us a little bit about your -- just at a very high level your credentials for being a CFO, sir?

A Sure. I spent -- I have an MBA from Rice University here in town. Spent 13 years as an investment banker, ten years after that as a CFO for various private companies, predominantly private equity backed companies. I also have a chartered financial analyst designation as well.

Q Tell us a little bit about your involvement in preparing and presenting claim valuations to the Rhodium board of directors in February and March of 2025, please.

A Sure. My recollection is we were having a -- mediation was set for February 19th, I believe. And in preparation for that, knowing that that could lead to an offer to settle the damages or an offer to perhaps purchase the entire company, we prepared valuation materials that addressed both

in advance of that. And the first meeting we had with our board was on February 12th. And I would characterize that meeting as the initial discussion to kind of facilitate a robust discussion on value. It was not the final board meeting we had. We had a board meeting on February 16th. Prior to that board meeting -- well, let me take a step back. So the valuation of the company as we framed it was really two principal components; the discounted cashflow of the ongoing bitcoin mining business and then the discounted value of the damages.

So when we thought about the value for the whole company in the context of an offer, a potential offer from Riot, we valued both of those. And I prepared -- I pulled together slides for the February 12th board meeting and as part of that reached out to the LKC team who provided me I believe a couple hours before the board meeting an analysis or a spreadsheet that listed out the components of the damages. And it had categories in rows of the damages with kind of a base value allocated to each. And then next to each it had a success factor. And so the value for each component was that base value times that success factor.

Q Now, on February 12th when you were working to pull that information together, did you have information you had already received from LKC about potential damages that you were using?

A We had as a placeholder in that presentation an analysis that was a few months old, I believe. And it -- yes.

Q Let's take a look -- you've got hopefully this in front of you. We filed a declaration at Docket 1943, exhibit 2 to that declaration, which is found at Pages 14 to 22 of Docket 1943.

MR. SCHMELTZ: I'm going to mark it, Your Honor, as Trial Exhibit 332. It's not up there. Let's make sure he gets a copy. Your Honor, may I approach the witness?

THE COURT: Yes, go ahead.

MR. SCHMELTZ: Your Honor, would you like a copy as well, a hard copy?

THE COURT: Sure.

MR. SCHMELTZ: If I might approach, Your Honor?

THE COURT: Yes.

BY MR. SCHMELTZ:

Q And again, Pages 14 to 22 of this document is Declaration Exhibit 2, now marked as Trial Exhibit 332. Can you explain to us what this email is?

MR. THOMPSON: Hold on, Chris. What page are you on?

MR. SCHMELTZ: It's 14 of 1943. It's actually 15 is the first substantive page.

MR. THOMPSON: Okay, thanks.

THE WITNESS: Sorry, could you repeat the question, Trace?

BY MR. SCHMELTZ:

Q Just tell us what we're looking at here. What is this document?

A Okay. So starting on Page 16?

Q Yes, please.

A These are slides that were pulled together for the board discussion that we had Wednesday, February 12th.

Q Okay. And if you would look at page 18 of the overall document. It's 18 at the top-right-hand corner. And it says, "Litigation value, get update from Stris LKC." Is that the charge that you -- the placeholder you were referring to a moment ago?

A This is the placeholder, yes.

Q And this placeholder has values for energy credits, right?

A Correct.

Q Has value for Uri energy credits, right?

A Yes.

Q Has a value for a revenue loss from business shutdown, right?

A Yes.

Q Has an ERCOT 4CP value, right?

A Yes.

Q It has a value for many of the things that we see on your later charts. But there's one notable thing missing. Do you agree with that?
A Yes.
Q What's missing, please?
A Building D.
Q And do you know why Building D wasn't on this earlier analysis?
A I don't know specifically. But I know that it was added in an analysis that was provided a couple of hours before our February 12th meeting with some commentary on that -- on the spreadsheet that was provided that said this is a new claim, something to the effect of this is a new claim, hasn't -- hasn't been discovery, we don't have all the facts yet.
Q So fair to say Building D first showed up on a damages analysis you were aware of on February 12th, 2025, is that right?
A Yeah, that's correct.
MR. SCHMELTZ: I would move to admit Exhibit 332 into evidence, Your Honor.
MR. THOMPSON: Which part of this document are you moving to admit?
MR. SCHMELTZ: Page 2.
THE COURT: What pages is that at the top?

MR. SCHMELTZ: Pages 14 through 22.

MR. THOMPSON: Your Honor, we do object. A couple of grounds. This document was not included on their exhibit list. I don't think it was properly disclosed before this hearing. Also, I think this lacks foundation. I don't think it's bene proven up who created this, when, or for what purpose. So I would object that it both is late and lacks foundation.

MR. SCHMELTZ: Your Honor, first and foremost, it was produced in discovery. It was part of the declaration that we filed on November 3rd. It's been on the docket for a month. Certainly full disclosure that we were going to use the declaration and its constituent parts. And I think the witness has just testified that he created the document, and he created it for a board meeting.

MR. THOMPSON: I believe he testified he created portions of this. But the chart that he was just asked about, I don't think that he testified that he created that. And I don't think he testified who did or when it was created or for what purpose. And it's also hearsay.

THE COURT: Unless he created it.

MR. THOMPSON: Right.

THE COURT: So, Mr. Schmeltz, do you want to...

MR. SCHMELTZ: I can lay some more foundation.

THE COURT: Yeah.

BY MR. SCHMELTZ:

Q From where did you receive the chart at page 18 of Exhibit 332?

A I don't recall from where. I mean, there were lots of these valuations that had been sent around in the months prior. And I just grabbed something to show everybody that we need to update this.

Q And you in fact -- are these your notes, "Ge update from Stris LKC?"

A Correct.

Q And what was your intent in including this document, this page in the overall document?

A My intent was to -- well, for a number of reasons. I wanted to have an updated valuation of the damages and I wanted to alert LKC to say, hey, we're going to need to get an updated version of this, LKC or Stris.

Q As part of your job as CFO, were you engaged in advising or, pardon me, informing the board about the damages and the expectations from the Whinstone litigation in these board meetings?

A I mean, in the context of how it fit with the overall valuation of the company, yes. But as to the specific components of valuation, no.

Q So you kept -- did you keep versions of this damages analysis like we see at Page 18 in the course of your job so

that you could provide information to the board?
A Did I keep these?
Q Did you have them in email or file or otherwise that you maintained for purposes --
A Yeah. This is a previous version. And again, I don't know where it came from. But it's a previous version that I pulled really just to show that we need to update this.
MR. SCHMELTZ: Your Honor, the overall document is a draft of a board presentation that he's pulled together as part of his job to inform the board. I think it's a business record and should come in.
MR. THOMPSON: Your Honor, I believe the foundation for this specific slide still has not been laid.
THE COURT: I agree. I'm going to exclude this slide. He doesn't know where it came from.
MR. SCHMELTZ: So 332 comes into evidence minutes Page 18, is that right? Or 332 is excluded altogether?
MR. THOMPSON: Well, Your Honor, I haven't had a chance to review all of this right here in part because all of this was still late. The deadline to file the exhibits was October 30th. This was filed on November 3rd as we just heard. And so I would object to all of this coming in based on the grounds that it's late.
THE COURT: I think the only testimony that is appropriate is that he wanted people to update the slides.

And that will come in. But I guess the -- so which pages are you offering?

MR. SCHMELTZ: Your Honor, I'll withdraw the exhibit and move on to the next exhibit. I understand. Let's take a look please at Exhibit 216, which is already in evidence.

THE COURT: It's in the big white book.

MR. SCHMELTZ: It's in the big white binders. Thank you, Your Honor.

THE COURT: The big one. No, that second one. That one.

THE WITNESS: Okay.

MR. SCHMELTZ: It's Exhibit 216.

THE WITNESS: Okay.

BY MR. SCHMELTZ:

Q Can you take a look at this document please and let us know what it is?

A I believe these are the materials that were discussed in the February 12th board meeting.

Q And is this an updated version of what we just looked at?

A It is, yes.

Q Let's take a look please at Document -- it has on the bottom of it Hearing Exhibit 216-003, third page of the document. From whom if you recall did you receive this

slide, the information on this slide?
A Yeah. I believe this was emailed to me by LKC. And the only change that I made to it was to add the discount rate at the bottom.
Q And how did you receive -- did you receive this in response to a communication you made to LKC?
A I believe it was, yes, it was my emailed request to get a revised litigation value table like this.
Q In your litigation -- pardon me. In your email request to LKC, did you include the table that you had in your possession at the time?
A I believe I did, just to make it easier for them to say this is a previous version, give me an update, something like this to include in the board -- for board discussion.
Q And in response to your communication with that slide, did they express any surprise that you were using that analysis of damages?
A No, they didn't. But they -- my recollection is they sent me this spreadsheet at some -- you know, a couple of hours before the meeting.
Q And this spreadsheet that we are looking at on Page 3 has Building D on it. Is that right?
A Correct.
Q And is that the first time you saw Building D in a damages analysis?

A Yes, it's the first time.

MR. SCHMELTZ: Your Honor, I would move again for the admission of 332. The slide in question is one that he sent to LKC to get updated and they sent it back with an update. And they didn't express surprise or chagrin or anything other than that's a business record and here's an update.

MR. THOMPSON: Your Honor, first of all, it's still late. Second of all, he didn't testify that the slide we were just looking at was the one that he did in fact send to LKC. I imagine there's an email to that effect. That would be the best evidence of that rather than some undisclosed late exhibit from some other slide that who knows who created. So we continue to urge our objection.

THE COURT: I'm going to continue to sustain the objection.

MR. SCHMELTZ: To the extent -- and I understand -- it is because it was late, I would note, one, we were on a pretty expedited clock. And two, I received their invoices, the invoices that they have a burden of proof on, after the deadlines for discovery. I didn't even get them in discovery. So at some level -- I just note that. I understand we were late and we were all moving fast and there were sins on both sides.

THE COURT: Right.

MR. SCHMELTZ: I'm not questioning Your Honor's ruling.

BY MR. SCHMELTZ:

Q All right. So your testimony I believe was that this is the first time you had seen Building D on a damages analysis.

A That's correct.

Q And can you read for the Court what it says in the right-hand column under commentary next to Building D?

A Sure. "This is a claim that was not previously at issue. We had not yet had discovery on it and do not have all the facts."

Q You said that you've added a discount rate here on this chart. What's the purpose of a discount rate, sir?

A The purpose of the discount rate is to bring the value of cashflows that you're going to receive in the future to the present to get the present value of those future cashflows. So in general discount rates are akin to cost of capital. And so an appropriate discount rate for a company that's in Rhodium's situation, you know, in Chapter 11, a volatile business, tends to be a lot higher than a company that's larger, maybe public, it has better access to capital.

Q Did you have an expectation as to how far in the future you would collect damages in using this 25 percent discount

rate, we see at Page 3 of Exhibit 216?
A Yeah, I did. It was a year. And you can kind of do the math here. The math is the discount rate is 26 percent. What we're doing is we're taking 158, which is the value in a year, dividing it by 1.25. So that's one year of discounting.
Q And the success rate here at 40 percent for Building D, did you ever have occasion to talk to anyone at LKC or otherwise about that?
A No, not prior to the meeting. We didn't have time to discuss this at all. We had to pull this together and have the discussion with the board.
Q And here the total risk damages number is 126.4. Is that correct?
A That is the -- yes, discounted to today, yes. That is the discounted value.
Q And at Page 2 of this analysis, same document, you actually have what I think you described earlier the ongoing business value of DCF and risk damages. Is that correct?
A Correct.
Q And what was the ongoing business value as of February 12th?
A The range was essentially $75 million to $175 million.
Q And how about risked damages?
A $100 million to $150 million. And that's kind of

rounding that $126.4 million and roughly adding plus or minus $25 million to it.

Q Do you have an understanding of what net claims means on that chart, 216-002?

A Yeah. My recollection is that is the debt we have net of cash, net of other assets we could possibly sell. It's basically the debt we had less assets that we had that would offset that debt.

Q What was your intent -- you've got net claims and then you have SAFE claim, right?

A Mm-hmm.

Q What was your intent in communicating this information to the board of directors of Rhodium as of February 12th?

A My intent was to frame the value of the company overall as an asset and then taking that asset value and converting that into equity value.

Q Did you have an understanding of whether the board was trying to understand one way or the other how to add value to the various constituents of the estate?

A I'm not sure I understand the question.

Q Net claims is $51 million, right?

A Correct.

Q And the value net of claims on the low end was $123 million, correct?

A Correct.

Q Was that intended to say that would be the money left over after we pay our debt?
A Correct. Yeah. The $51 million was our debt, which I think was $65 million less some assets that we had that we would offset that. We had some cash as well. So yeah, correct. Before the SAFE holders, after the debt holders, that's what that value net of claims represents.
Q And the SAFE claim at $87 million, that number below it, at least on the low end for equity, is $36.3 million, right?
A Correct.
Q What is that intended to communicate to the board?
A That would be the value to -- I'll say common equity net of the safe
Q So was the purpose of this chart to say sort of this is what we need to clear in order to pay these various constituents?
A That was one purpose. The other purpose was to show what the asset value of the business was. And then yeah, and then translate that into what that means for equity and what that means to equity after we pay off the SAFE.
Q Let's take a look at Trial Exhibit 244.
MR. SCHMELTZ: Page 216 is already in evidence, right? Oh, I need to move 216 into evidence, Your Honor.
THE COURT: I thought you said it was already

admitted.

MR. SCHMELTZ: I thought it had been. Paige tells me it's not.

THE COURT: Any objection?

MR. THOMPSON: No objection. I'm sorry, 216, right?

THE COURT: 216, yes.

MR. THOMPSON: Yes, no objection.

THE COURT: It's admitted.

(Exhibit 216 entered into evidence)

MR. SCHMELTZ: Let's take a look at Exhibit 244.

THE WITNESS: Okay.

BY MR. SCHMELTZ:

Q Tell us what this document is.

A I haven't read it. I'm not going to read it here. I'll just -- but I'll say this is an email from John Cohn. And this was prior to the mediation. And I believe this is a damages spreadsheet that totals $440 million. And it goes on to say that, you know, we should aim to settle the damages at $100 million to $150 million. I could read the whole thing if you want but --

Q No, that's okay.

THE COURT: Have you seen this document before?

THE WITNESS: I've seen the email before, but I haven't seen it in a few months.

BY MR. SCHMELTZ:
Q You're copied on it, right?
A Yes, I'm copied on it. I've read the email, but it's been a few months since I've read it.
MR. SCHMELTZ: Your Honor, I would move for the admission of 244 into evidence.
MR. THOMPSON: No objection.
THE COURT: Admitted.
(Exhibit 244 entered into evidence)
BY MR. SCHMELTZ:
Q Take a look at 244-002. We see that is a chart of damages like the one we just looked at, right?
A It is, although the values are different. Building D is $33 million instead of $66 million.
Q This is an email from John Cohn at LKC, right?
A The previous pages was, yes.
Q And this is an attachment to this email. Do you understand that?
A I believe so, yes. I think he -- this was probably something that was sent back to him and he sent back 003.
Q Okay. So on February 18, 2025, Mr. Cohn had an analysis that showed Building D at 20 percent. Is that right?
MR. THOMPSON: I'm sorry, could you repeat that question?

BY MR. SCHMELTZ:

Q As of February 18, 2025 Mr. Cohn had an analysis that showed Building D success rate at 20 percent, right?

MR. THOMPSON: I will object to that question. Misleading, lacks foundation, misstates the document, and misstates his testimony.

THE COURT: Why don't you try and lay a foundation.

BY MR. SCHMELTZ:

Q So this was an email you received from John Cohn, right?

A Correct.

Q It had two attachments to it, correct?

A Yeah. It may have had two attachments or it may have had one tab that was my spreadsheet and he added another tab. I don't remember this being two separate spreadsheets.

Q In other words, both documents here were sent to you by John Cohn, right?

MR. THOMPSON: I will object that that misstates the testimony and lacks foundation.

THE COURT: It's leading. So why don't you try to lay a foundation.

BY MR. SCHMELTZ:

Q This document, whether it was a single spreadsheet or two separate attachments, did it have an attachment of some

kind with the information we see at 002 and 003?
A Yes.
Q And that information was in the email that you received from Mr. Cohn, is that right?
A Yes.
Q So the information that was attached to the email you received from Mr. Cohn --
MR. THOMPSON: Objection, leading and misstates his testimony.
MR. SCHMELTZ: I have half a question.
MR. THOMPSON: I'm sorry. I thought you'd finished. Go ahead.
THE COURT: Finish your question.
BY MR. SCHMELTZ:
Q So the information in the email that you received from John Cohn, did it show a success rate for Building D at 20 percent?
MR. THOMPSON: Objection, vague.
THE COURT: Well, I think he's asking him is the number in the base success percentage for Building D in this document 20 percent. I think that's what you're asking.
MR. THOMPSON: And the basis for my vagueness objection is I don't know if he's referring to -- I don't know if he's referring to information that Mr. Cohn sent to Mr. Hayes or that Mr. Hayes first sent to Mr. Cohn and then

it was just reattached when Mr. Cohn sent the email responding to Mr. Hayes' email.

THE COURT: So the problem that I'm having with this document is, first of all, it's not a complete document. It cuts off in the first page. Second, in one chart it has a 20 percent success rate. And in the other chart it has a 50 percent success rate. So I don't know that we know from this gentleman what was said or what wasn't said.

MR. SCHMELTZ: Right.

BY MR. SCHMELTZ:

Q At dot 002, that reflects your analysis from a chart you had prepared with a 20 percent success rate of Building D. Is that right?

A That's correct. And it was also discussed -- this chart was discussed on the board call on February 16th.

Q And we'll get to that February 16 board call in a minute. It shows a discount rate of 25 percent, right?

A Correct.

Q And that's all in information that was in an email you received from John Cohn, correct?

A Correct.

Q Let's talk about the February 16 board meeting, please.

A Okay.

MR. SCHMELTZ: And 244 is in evidence now. Is

that correct, Your Honor?

THE COURT: It is in evidence.

MR. THOMPSON: That's fine.

MR. SCHMELTZ: Let's take a look at -- Paige, may I have Exhibit 245, please?

BY MR. SCHMELTZ:

Q Let's take a look Exhibit 245.

A Okay.

Q And can you tell -- this is in evidence, and I -- I'd ask you to identify what this is for the Court.

A These are slides that were used that were discussed with the board on March 5th, 2025.

Q Okay. And in this March 5th document, let's take a look at 245.008, the last page. Is this the same chart that we just looked at in Exhibit 244?

A Yes, it is.

MR. THOMPSON: Hold on. 244?

THE COURT: This is 245.

MR. THOMPSON: The question was is it the same chart as 244?

MR. SCHMELTZ: Yeah.

MR. THOMPSON: Okay.

THE WITNESS: Yeah, it is.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q And this says litigation value, 2/16/25. Do you see that?
A Right. This is --
Q Why does it say that?
A It says that -- we're -- the -- if you look at the first slide of this presentation, it talks about what's changed since the last board discussion, which was on February 16th. And so we talk about a few things that changed and the impact that has. And then this is just last slide, kind of an appendix slide that just reminds everybody this is where we were on 2/16 for the damages.
Q Okay. So we've discussed a board meeting on 2/12. And that's the board meeting where you first saw Building D, right?
A Correct.
Q And that Building D -- I'm just recapping quickly -- had a 40 percent success rate. Is that right?
A Correct.
Q We saw Exhibit 244, Mr. Cohn's email of February 18, right?
A Correct.
Q And it had this same chart that we're looking at 245.008 in it, right?
A Correct.
MR. THOMPSON: Objection, vague. Which chart is

he referring to in 244?

THE COURT: Yeah. Why don't we be specific as to the number.

BY MR. SCHMELTZ:

Q We looked at the same chart at 244.002 that we're looking at in 245.008, right?

A Correct.

Q And if I understand what you've testified to just now correctly, 245.008 was presented to the board in a subsequent meeting on February 16th. Is that right?

A Correct.

Q Do you recall if there was conversation on February 16 about Building D and about a change in the success percentage from 40 percent to 20 percent? Do you recall?

A Yes.

Q Do you recall if there were lawyers from LKC and Stris present in that board meeting on February 16th?

A Yes, there were. And you could look in the board minutes. I presented the valuation and I said the only change we've made to the damages is to adjust the success factor for Building D from 40 percent to 20 percent which reduces the expected value or the risked value from $66 million to $33 million.

This was a call on a Sunday. LKC was on the call, Stris was on the call. And if you look in the minutes --

MR. THOMPSON: that's where I'll object as hearsay.

MR. SCHMELTZ: It's a statement of a party opponent. We're talking about what LKC said in the meeting to him.

THE COURT: The minutes reflect what LKC said? I haven't seen the minutes.

MR. SCHMELTZ: Very good. Let's do that. Let's take a look at Exhibit 334, which are the minutes from the February 16, 2025 board meeting. Your Honor may recall I tried to introduce these in our hearing on November 3rd and I think Your Honor correctly pointed out I didn't have a foundational witness who could explain what these were. I have that now.

THE WITNESS: Which is this? 334?

MR. SCHMELTZ: Hold on.

THE COURT: It's not in the document. It's not in the book.

THE WITNESS: Thank you. Appreciate that.

MR. SCHMELTZ: May I approach?

THE COURT: Yes.

MR. SCHMELTZ: This was previously marked as 334 but not entered into evidence.

BY MR. SCHMELTZ:

Q Could you identify this for the record, sir? Just

identify what this is for the record.
A This looks like a -- these are the board -- starting on page 1 I see the board minutes from the board meeting on February 16th. The third page I should say.
Q You've seen board minutes like this before in your capacity as a CFO, is that right?
A Yes.
Q Are these the standard form of board minutes for Rhodium Enterprises Inc?
A Yes.
Q And do you have an understanding as to who typically kept the minutes for these meetings?
A Yeah.
Q Who was that?
A My entire time at Rhodium it was Becky Rice, a paralegal.
Q And were the minutes signed by the general counsel and corporate secretary as well?
A It looks like they are on Page 2 here, yes.
Q And do the minutes have attached to them a board presentation?
A They do.
Q And is that the board presentation -- are you familiar with this board presentation?
A Yes, I am.

Q How are you familiar with this board presentation?
A This was the board presentation that we gave on the 16th. And this was -- this was the one where -- this was the version where we adjusted the value for Building D. That was the change that we made to damages.
Q And is that shown at -- I have a page number 866943.6 in the bottom right-hand corner of my document. I don't know how yours are paginated.
A Yes.
Q Do you see that?
A Yeah, that's the page.
Q And that chart at .6 in Exhibit 334, is that the same as 245.008 that we looked at?
A Yes, it is.
Q And is that the same as 244.002 that we looked at?
A Yes, it is.

MR. SCHMELTZ: I would move the admission of the board minutes of Rhodium for February 16th into evidence.

MR. THOMPSON: We object. It's not on their exhibit list that was filed before the deadline to file and serve exhibits for this hearing. So that's one independent ground, that it's late. The second independent ground, this is hearsay. It is double hearsay in fact. It reflects -- not only are the minutes an out-of-court statement, but they also reflect statements that were made out of court. So

there's actually two levels of hearsay in here. And I don't believe this witness is in the proper position to authenticate this document. So three objections.

MR. SCHMELTZ: First of all, Your Honor, it's a corporate record. He is the CFO of the corporation. Second of all, he participates regularly his testimony in these board minutes. The minutes were kept by the same human. He's familiar with the form. He is certainly in a position to authenticate this as a corporate record as the corporate CFO. So that takes care at least of one layer of hearsay.

Within the minutes and what I want to focus on is the conversation that involves Mr. Hayes on the one hand and Mr. Thompson of LKC on the other hand. That would be the statement of a party opponents and that should come into evidence as well.

Finally, Your Honor, John Cohn testified in his direct examination that he had not talked to anybody about a change in success percentage from 40 to 20 percent. He wasn't aware of anyone at LKC who had talked to Mr. Hayes or anyone at Rhodium in changing the percentage success from 40 percent to 20 percent. So this is also proper impeachment in that regard.

MR. THOMPSON: He referenced a paralegal who is nowhere on here as the one who kept these minutes. We don't have any way to know if that's accurate. I don't think he's

laid the foundation that these were made in the ordinary course, kept in the ordinary course. I don't think he's even a proper custodian of the records for Rhodium. I don't think any of that necessary foundation has been paid. So these still are hearsay just on its face. And then of course there's the double hearsay which we can also address. But there's certainly hearsay, not authenticated, and they're still late. They weren't on either their exhibit list filed before the deadline, and then they filed a supplemental exhibit list after the deadline but still not on the supplemental exhibit list. So this is -- our third and final objection is this is late.

And of course at this time LKC and Mr. Thompson in particular were not party opponents to Rhodium because we were representing them and they were still seeking our legal advice.

THE COURT: So why weren't these put on the witness and exhibit list?

MR. SCHMELTZ: We had -- I can't even remember -- something like 500 documents originally on the witness and exhibit list. Prior to trial we tried to make some hard cuts of things that we thought in large chunks we could eliminate as testimony could come in otherwise. We quickly identified in the hearing in November that this particular set of minutes needed to come in. That's why I brought them

immediately to the Court on November 3rd. It was an oversight on my part trying to get a chunk of documents out so we didn't have five million exhibits. And this was one that as soon as it came -- it was produced in discovery, right? Unlike the invoices that we received as an exhibit but never received in discovery in this case and never had a chance to analyze and never had a summary of. We produced this in discovery. I just missed it. And I brought it to the Court's attention as soon -- in the last hearing as soon as I saw it. That's why we brought it up in the last hearing.

THE COURT: So why can't you prove this up as a business record? Are you saying that he is the custodian with knowledge to prove this up as a business record?

MR. SCHMELTZ: I could bring Mr. Topping back on the stand if that's your preference to do that. I believe the CFO of the company who regularly participates in the board meetings and is in every board meeting where these are approved is appropriate to relay that foundation. And if you'd like, Your Honor, I can ask a few more questions and do that now.

THE COURT: Yeah. I mean, I think people know how to get in exhibits as business records, and we can do that.

MR. SCHMELTZ: Understood. Happy to do that.

THE COURT: But -- you know, and then there's

additional comments. But why don't you go ahead and try to do that.

BY MR. SCHMELTZ:

Q In your capacity as a CFO do you regularly participate in board meetings at Rhodium?

A Yes.

Q And in your capacity as the CFO, do you regularly review minutes from prior meetings for their approval?

A I don't regularly do that, but I've done it, yes.

Q And on how many occasions have you done that?

A Five or six times.

Q Five or six total times?

A Yeah.

Q And is this set of minutes consistent with the minutes that you've seen approved in other meetings?

A Yes.

Q And have you -- do you understand whether the minutes of Rhodium Enterprises Inc are kept in the ordinary course of business to document what happens at board meetings?

A Yes.

Q And I think you testified about a paralegal who regularly kept those minutes.

A Yes.

Q And did you have occasion to review the accuracy of her work and her minutes over time?

A Yes, on occasion I did, yes.
Q And how did you find the accuracy?
A Accurate. Very accurate.
Q In the course of your participation in board meetings, did you ever hear anybody have a meaningful disagreement with what was recorded in terms of its accuracy in board minutes for Rhodium?
A No.
Q In the course of your time at Rhodium Enterprises did you have occasion to see board members rely on the board minutes for purposes of conducting business or talking about issues within board meetings?
A I didn't hear that they relied on them, no.

MR. SCHMELTZ: Your Honor, I think with limited exception I've laid a sufficient foundation under these circumstances for the admission of this document as a business record.

MR. THOMPSON: Just one other point, Your Honor, is these purport to be the minutes from the February 16th, 2025 board meeting. But I don't see anything subsequent from the board approving these as the official minutes from the February 16th, 2025 meeting. So we don't know if this is in fact the final version that was approved by the board or if this was simply a draft or what this was.

And again, I don't think that Mr. Hayes, given his

limited exposure to the minutes and the process that Rhodium went through to create and store the minutes is in a position to authenticate them as business records even if they are, which we're not sure they are, because we still don't know if these are the final minutes that were approved by the Rhodium board subsequent to the February 16th meeting.

MR. SCHMELTZ: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. SCHMELTZ: (indiscernible).

THE COURT: So there's Exhibit B and there's the part one. And that's the only one that's signed. And then there's Exhibit A presumably. I don't know to what. And then there's part two that, again, is not signed.

MR. THOMPSON: And finally, Your Honor, again, not only are they late, if Mr. Schmeltz is saying they were produced, I have no reason to doubt that. I will just note that the Bates label is different than all of the other productions from the Special Committee. And I'm only saying that because I don't know when they were produced or why the Bates number is different. Again, I don't doubt that they were, but they certainly weren't on the exhibit list that was filed before the deadline.

BY MR. SCHMELTZ:

Q Have you had occasion to review the minutes in front of you?
A Yes, I have.
Q Does the information in the minutes in front of you comport with your recollection of what occurred in the February 16, 2025 board meeting?
A Yes, it does.
Q And does the presentation that's attached comport with your recollection of the presentation that you prepared and presented in that board meeting?
A Yes, it does.

MR. SCHMELTZ: Your Honor, I think that I have established all appropriate indicia of reliability of this document as at a minimum a reliable recording of the events in the board meeting, and I move its admission.

MR. THOMPSON: Same objections. And as a -- just to clarify, the slides that Mr. Hayes prepared purportedly attached to these minutes, we have no objection with those slides coming in. It's just the minutes themselves. Because I don't think that they've laid the foundation. They're late, they're hearsay. For all the reasons we've explained. They don't show that these are the final minutes that were adopted by the board at a subsequent meeting.

I believe Mr. Hayes can authenticate the slides because he testified that he created those. So we have no

problem with those coming into evidence. But the minutes themselves, I don't think that they meet the criteria for admissibility.

THE COURT: My problem is that I don't really understand what these documents are. So the first one is Exhibit B. Is that what's being approved in part one that is signed? Did somebody testify as to that?

MR. SCHMELTZ: I'll put Mr. Eaton on the stand next and we can go through that with Your Honor. I can ask some --

THE COURT: Maybe this is 11 and 12 and they should be at the end of the document.

MR. SCHMELTZ: It is. In my version, it's established. For whatever reason part one starts with that board meeting, the meeting minutes, and you don't have that vestigial document up front on the version I have, which is 866943.1 through 943.10.

THE COURT: Okay. So it should be 866943.1 through 866943.12.

MR. SCHMELTZ: Correct, Your Honor.

MR. THOMPSON: And again, on just that Bates number point by itself, I will note that all of the other production from the Special Committee -- Special Committee, underscore, LKC, underscore, and then the Bates number. This is obviously a totally different format. I don't know

what production this was a part of, if that Bates number even relates to a production that's occurred in this proceeding. That could be some sort of internal tracking number.

MR. SCHMELTZ: So, Your Honor, this -- there was a production, the production version of this document -- because this is -- I mean, they have this document. Special Committee LKC 4657 is the start of this document. And it runs through -- let me scroll through real quick. It runs through 4668, Special Committee LKC 4668. There's a production version. They have it in their production. It's not an issue.

MR. THOMPSON: That's not this version, right? That could be a different document. How am I supposed to know that?

MR. SCHMELTZ: Yeah. So the native version of this exact same document has 866943.1. This is -- what happened is someone in pulling this, when I asked for it pulled in the last hearing, pulled it as the native version. The number, 866943, is from the native. The Bates is the exact same document, just produced with the Bates on it. It's the same document, Your Honor. It was a mistake in how we pulled it and printed it. but it's the exact same document. I'd represent that to the Court. And I could hand Counsel (indiscernible). And that's the original

number. (indiscernible).

MR. THOMPSON: But is the Bates version included in the exhibit list?

MR. SCHMELTZ: (indiscernible). Is it the same document, it's the same document.

MR. THOMPSON: But Your Honor, this is why we have a deadline for exhibits, right? And so we don't have this in live court with a witness on the stand. And I'm sorry, I'm at a loss to know, as Your Honor, what is this document, why does it have a different Bates number, what is the Bates number document, is that different. When was this produced, was it the final version that was approved by the board, et cetera. So we have to stand on our objection.

THE COURT: I'm going to consider whether to admit this document or not.

MR. SCHMELTZ: Thank you, Your Honor. During the --

THE COURT: You can continue asking him questions and I'll determine later.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q In the section called Mediation Strategies Discussion, do you see that?

A Yeah.

Q It notes, "To begin the meeting, Kevin Hayes shared

with the board the attached presentation, Exhibit A." Do you see that?

A Yes.

Q Did you in fact share the presentation that is Exhibit A that we've talked about?

A I did.

Q And you gave the board some information about the presentation, correct?

A Yes.

Q And what did you inform the board about your presentation?

A I said that it was the same as what we went through on Wednesday with one change. And that change was to change the Building D success factor from 40 percent to 20 percent or, you know, in absolute dollar terms from $66 million to $33 million undiscounted.

Q Did anyone in the course of the board meeting speak up and comment on your -- in response to your presentation and your changes?

MR. THOMPSON: Objection, hearsay.

THE WITNESS: I asked did anyone speak up in response to your statements about the changes in the presentation. I didn't ask -- I didn't ask what they said, I didn't ask who said anything. I asked did anyone stand up in response.

THE WITNESS: No.
BY MR. SCHMELTZ:
Q Were the lawyers from LKC present in the meeting?
A Yes.
Q This particular document notes Mr. Thomson then joined the --
MR. THOMPSON: Your Honor, he is now reading from a document that has not been admitted into evidence. That is not a proper line of questioning.
THE COURT: You can ask him what Mr. Thompson said if anything, but not from the document.
BY MR. SCHMELTZ:
Q Do you recall Mr. Thompson saying anything about the change in success percentage to the Building D claim?
A I don't recall him objecting to it. He says here that he --
THE COURT: No, no, just from what your recollection.
THE WITNESS: I don't recall him objecting to it.
BY MR. SCHMELTZ:
Q Do you recall him approving or disapproving one way or the other of the change?
A I don't. I don't recall him objecting. I don't remember. I mean -- yeah.
Q And the change is to the slide that we've looked at in

245.008. That's the same slide, right?
A Right.
MR. SCHMELTZ: And if I haven't admitted 245 into evidence, I'd like to do that, Your Honor.
THE COURT: Any objection?
MR. SCHMELTZ: It was previously admitted Paige tells me. I apologize. I thought I had a list somewhere of my admits, and I misplaced it. 245 is in evidence.
BY MR. SCHMELTZ:
Q So in other words, 245.008 is the same information presented in this presentation that we see attached to 334, right?
A It matches 8669436, right. Yeah.
Q Thank you. And it also I think we've established matches 244.002, right?
A Yes.
Q A document that was attached to an email from John Cohn, right?
A Correct.
Q Do you have -- did you interact with LKC in the course of your experience as a CFO and on these claims, these Riot Whinstone claims?
A A little bit. I mean, not extensively. I mean, we probably interacted during this period fairly frequently. But other than that, you know, prior to that I didn't

interact with them very much.
Q In your experience if they disagreed with something you said or did, would they speak up and let you know it?
A We didn't have disagreements very often, but yeah, I've seen them voice their opinion pretty strongly on a lot of board discussions.
Q In the course of your compilation of damages analyses, did you -- I think we have established that you saw Building D come in for the first time in February '25, right?
A Right.
Q Did you ever see energy claims related to Winter Storm Uri excluded from a damages analysis?
A No, I never did.
Q Did you have an understanding one way or the other as to whether the energy claims were considered to be strong claims?
A My understanding was they were all strong claims. And I think, you know, we talked about them my entire time at Rhodium as really what we could hang our hat on. And if you look at the spreadsheet that was provided, the one that was provided from John, you see base amount in one column and you see base success factor. And all those energy claims, 70 percent, 60 percent. You know, 4CP, that's different. That's small. But those were the bigger, stronger claims.
Q Do you have a sense as to how much a change in Building

D as a $66 million claim versus it as a $33 million claim impacts the potential success fee for LKC in this case?

A I do.

Q What do you understand that --

A Well, Building D is int eh bucket of non-energy credit claims which get ten percent. LKC's success fee gets ten percent of those claims. So if you reduce it by 30 -- let's just say you reduce -- by round numbers we reduce that by $33 million, that has a $3.3 million impact on their fee. That was -- I had no idea of that at the time we were doing all this. I was worried about the company and the company's viability.

Q At the time you prepared these claim charts, were they meant to have any bearing on the success fee for LKC?

A No. It was meant to give the board a realistic view of the value so they could make a very important decision, you know, as they considered an offer from Riot today versus future cashflows from bitcoin mining and potential damages.

Q Did you work with Chris Wheeler on his tax allocation?

A I did.

Q Were you involved in determining how much to allocate to settlement versus the purchase of assets as part of that process?

A We used the $75 million for settlement. So that $75 million had my input and the board's input. So I would say

yes.
Q Let's take a look at Exhibit 245 again. And 245.002 shows an ongoing business valuation and risked damages at the bottom of the page. Do you see that?
A Hang on a second. Okay. We're on...
Q 245.002, bottom of the page where it says 3/5/2025. Do you see that?
A Sure, yeah.
Q And this is after the mediation that took place, Riot Whinstone on February 19th, correct?
A Correct. It's a few weeks after that. So this is on March 5th. So it's a few weeks after that mediation.
Q And at this point in time you note on 245.002 some exit financing less certain -- due to certain things. Do you see that?
A Yes.
Q How did that impact if at all your views of damages?
A Yeah. So between February 16th and February -- and March 5th, we -- it became clear to us that a few of the financing -- potential financing partners that we were hoping that would be able to provide exit financing, one of which we had a lot of comfort with, they were not going to get there. They -- much to all of our efforts, and that would include LKC and Stris as well, trying to get them comfortable within the value of the litigation in addition

to the business. They couldn't get there.

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

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

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

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

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

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

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

THE COURT: Go ahead, you can answer.

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

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

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

THE WITNESS: Yes, they did.

BY MR. SCHMELTZ:

Q And did you report that information to the board?

A Yes.
Q And did you take that information into account in risking the damages in this presentation to the board?
A I used that to increase the discount rate, but I did not change the $125 million.
Q Do you see where it says impact on valuation on 245.002?
A Correct, yes.
Q Do you see the second bullet?
A Yes.
Q Can you please read that to the Court?
A "Damages. View from financing partners suggests risked value less than $100 million."
Q And the next bullet?
A "Higher risk of exit financing, increased discount rate." And then is say -- and this has to do with the ongoing business. If you toggle the interest rate -- the discount rate five percent, that has a $15 million impact on discounted cashflow. That applies to the business, not the damages.
Q And at the time you prepared this presentation and presented it to the board, did you have any idea that it might come up in a later conversation around the success fee with LKC?
A No.

Q And is that risked damages number of $75 million what you discussed with Chris Wheeler?
A Yes.
Q And was that based on this presentation to the board?
A Yeah, that was based on this presentation.
Q Did anyone at the board object to or oppose the idea of valuing damages at $75 million at or about this time?
A My recollection, you know, the board always has healthy opinions on the value of the business. And I think at this point we were -- the board was -- and the management team were agreeing on these ranges. You know, we had a lot of robust discussions on the 12th and the 16th.
Q The total asset value, business plus risk damages, has a low of $108 million, right?
A Mm-hmm.
Q And a high of just about $249 million, correct?
A Correct.
Q Just as a math guy, can you give me a midpoint on that?
A About $180 million. Yeah. 180, $185 million, something like that.
Q About where you came out in the transaction?
A Correct. We of course didn't negotiate that transaction until I think the end of March.
Q So that $75 million is the midpoint of risked damages, right?

A Correct.
Q And 180, 185 is the midpoint of the total asset value, right?
A Correct.
MR. SCHMELTZ: I don't have any further questions for this witness. Thank you, Your Honor.
THE COURT: Thank you. So it's 4:00. Why don't we take a ten-minute break. It's 4:08. Why don't we come back at 4:20. And then I'll talk to my staff to see how late they can stay tonight.
MR. THOMPSON: Thank you.
(Recess)
THE COURT: All right. We're back -- okay, we're back on the record in Case Number 24-90448. And you are still under oath. Go ahead.
MR. DISHER: May I proceed, Your Honor?

CROSS-EXAMINATION OF KEVIN HAYES

BY MR. DISHER:
Q Good afternoon, Mr. Hayes. How are you?
A Good to see you again.
Q You too. So I want to start just by clearing up one thing. You were asked questions about Special Committee Exhibit 244. If you could go ahead and turn to that in your white binder, please.
A Yes.

Q If we look at the bottom of the first page, you see it says one of two in the bottom-right corner?
A Yes.
Q And if we flip the page, it doesn't say two of two, correct?
A Correct.
Q And if we look here, there's only two charts attached to the email at Special Committee 244, right?
A There's only two charts. You mean 244.002 and 244.003?
A Yes, sir.
Q Right. Now what I want you to do is switch binders. Go to the black binder, please. Go to Tab 13 if you will.
Okay, are you with me?
A Sure.
Q If we look at Tab 13 which is LKC Exhibit 13, this is the same first page email that's reflected in Special Committee 244? Oh, I'm sorry, I should have had you leave that open.
A Let me just check the time. Yes.
Q If we look at LKC Exhibit 13, we see there are two pages of email texts, right?
A Right, yes.
Q If we turn the page through the rest of the exhibit, we see that there are actually three charts attached to Mr. Cohn's email in LKC Exhibit 13?

A Yes.
Q So is it your recollection that LKC Exhibit 13 is the complete version of Mr. Cohn's email with the three charts as opposed to Special Committee 244?
A Give me a second here. Well, it has more attachments. I don't recall if this is absolutely complete or not, but I have no reason to believe it's not.
Q Now, I just again wanted to clarify one thing in LKC Exhibit --
MR. THOMPSON: And I'm sorry, Your Honor, I believe we've offered this into evidence. But in case I haven't, I would offer it.
THE COURT: Any objection?
MR. SCHMELTZ: No objection. I believe it's in evidence.
BY MR. DISHER:
Q Okay. So LKC Exhibit 13. There was some back and forth about precisely what information Mr. Cohn provided to you and what information you provided to Mr. Cohn, correct? Do you remember that on your direct examination?
A Yes. I think we passed the spreadsheet back a little bit. He had versions, I had versions. I think that's right.
Q Great. And I just want to be clear about one thing. The chart that is on page 5 of 6 of exhibit 13 that shows

the Building D percentage at 20 percent, do you see that?
A Correct.
Q Your testimony was that you sent that chart to Mr. Cohn, right?
A Yes, that's my recollection. That's what was in the board presentation from the 16th.
Q Right. Mr. Cohn did not create this chart with the Building D percentage at 20 percent and then send it to you, correct?
A Yeah, I believe that's correct.
Q What Mr. Cohn did send you is the chart on Page 6 of 6 of LKC Exhibit 13?
A Okay.
Q Is that right?
MR. SCHMELTZ: Calls for speculation.
THE COURT: Just ask him if he knows.
THE WITNESS: I mean, I don't remember if this was in the attachment or not. But it's in the email. It's in this exhibit. But --
BY MR. DISHER:
Q Do you remember whether these are the rosier predictions that Mr. Cohn provided in advance of mediation?
A Yeah. I would have to read the email to get -- to comment on the context. But I recall that there was -- there was a case that we see on four of six that was -- you

know, everything un-risked. And I don't know if that went into the complaint or not, if that exact number went into the complaint or not. And then I think if you read the email, it appears that John talks about six of six in his email.

Q Right. And one other thing John -- excuse me, Mr. Cohn mentions in his email if we look at Page 1 of 2, do you see that? Will you go to Page 1 of 2, please?

A Sure.

Q The third paragraph down, second sentence, "I remain of the view that we should aim to settle damages in the $100 million to $150 million ballpark. Did I read that right?

A Yeah, that's what it says.

Q Now, I want to take a step back. I want to go to the February 12th slides. I'm going to use the version in the black binder. So that would be LKC Exhibit 14.

A Okay.

Q Will you turn to Page 3, Slide 3, please, the litigation value chart? Are you with me?

A I am with you, yes.

Q I want to spend some time on this. I'm going to give myself some more room here. So this was a slide that you put into the materials that would have been presented to the board on February 12th, correct?

A Yes. The spreadsheet was provided to me. And what I

did was I added that discount rate and then kind of the discounted today value at the bottom, yes.

Q Great. And we'll talk about the discount rate in a minute. But before we talk about the discount rate, I want to talk about everything above the discount rate leading to the expected value of $158 million. Do you see that?

A Yes.

Q These are numbers that were provided to you, right?

A Yes.

Q And I believe you testified Mr. Cohn provided you those numbers?

A Yes.

Q You are aware of course that LKC wasn't the only firm that worked on these numbers?

A I'm honestly not aware of that. I mean, they may have had -- I never received any sort of analysis like this from Stris. Whether they had input on it, I don't know. But...

Q Great. So you don't know one way or the other whether Stris did in fact play a role in creating the numbers reflected in the chart on Slide 3?

A I don't. I mean, I know that they were on calls where we discussed this, but I don't know that they -- no, I don't.

Q Do you know whether the hired retained litigation consultants were -- provided input to these numbers that are

reflected on Exhibit 3?
A The hired litigation consultants? I'm sorry.
MR. SCHMELTZ: Lack of foundation, Your Honor.
MR. THOMPSON: Asking whether he knows.
THE COURT: Yeah, overruled.
THE WITNESS: Who the hired litigation -- you mean the attorneys or --
BY MR. DISHER:
Q No, the expert witnesses that the attorneys hired in the litigation, do you know whether they were consulted in creating the numbers reflected in Slide 3.
A The expert witnesses.
Q Correct.
A I don't know who you're talking about.
Q Dr. Miljkovic, for example. Do you know whether he was consulted in coming up with these numbers?
A I don't know if -- that name doesn't ring a bell to me. So no, I don't know if he was consulted.
Q Okay. What about a consultant related to the energy creditors, do you know whether that consultant provided any input to the numbers reflected in Exhibit 3?
A I don't know who these consultants are. So...
Q So no.
A Yeah.
Q Great. What about the Province team? Do you know

whether the Province team provided any input into the numbers that are reflected in Slide 3?

A Not in this slide, other than their input on the discount rate.

Q So when you say not on the slide, do you mean they didn't provide or you don't know whether they provided?

A They didn't provide anything above the one -- the row that sums up to 158.

Q Okay. And ultimately the numbers that you got from Mr. Cohn, you put those into this chart that was then presented to the board?

A Correct.

Q And of course you want information presented to the board to be reliable and accurate and trustworthy?

A Well, yeah, I do. But I also want to have it in there so we could have the discussion. And I got this about an hour before the meeting. So I didn't have a whole lot of time to go vet it with a wide group of people. We had to put it in there. And I think it's important to have that discussion when you can and not wait for people to, you know, boil water, and get it to you.

Q And we'll talk about further discussions, trust me. Now I want to turn to the 25 percent discount rate, okay?

A Correct.

Q To the numbers that were provide to you by Mr. Cohn,

you then applied a 25 percent discount rate, correct?
A I -- well, I would put it this way. The way that these were presented, the assumption I made was that we would -- we would win or, you know, receive these damages in a year.
Q And Mr. Hayes, I promise we'll talk about what went into the 25 percent discount rate. My question is much simpler than that. My question is simply were you the one who put the 25 percent discount rate on the chart that's reflected in Slide 3?
A Yes.
Q Great. Now, your goal with that discount rate was to attempt to account for more than just the time value of money, right?
A No, it was the time value of money.
Q Did you not also have the intent of accounting for the risk that Rhodium would somehow become insolvent before it could collect the damages?
A Well, that goes into the discount rate, right? That's what discounting is.
Q That's exactly my question. So the 25 percent discount rate that you applied takes into account the risk that Rhodium might become insolvent before it could collect on those damages.
A I would frame it differently. I would also say that I could look back to a data point from a few months ago when

we had our DIP financing. And if you calculate the fees and the interest rate there, that's 25 percent right there. So I felt very justified in that 25 percent based on that DIP financing.

Q Okay. And again, that's not precisely my question. My question is this. Does the discounted rate here, the 25 percent that you put into this chart, does that account for both the time value of money as well as the risk that Rhodium would somehow become insolvent in that year?

A It accounts for the risk -- it's an appropriate discount rate for Rhodium. So that includes a lot of risks, variability in its business, and I suppose, you know, insolvency is one of those as well?

Q Thank you. That 25 percent discount rate is in fact the same discount rate that you applied to the discounted cashflow analysis in the material presented to the board on February 12th, right?

A Correct.

Q LKC did not tell you to apply that same 25 percent discount to the expected value of the damages reflected in Exhibit 3, right?

A They did not.

Q Stris did not tell you to apply that same 25 percent discount rate, correct?

A Well, let me add something to your first question

though.
Q It was a yes or no question.
A I sent an email to Will and said -- I put the slide in. He noted, I see that you put a 25 percent discount rate. I'm not -- I don't have a big problem with that, but I'm going to let you carry the water in the board meeting on that.
Q Did you consult with anybody from the LKC or Stris team before you applied the same discount rate that you used for your discounted cashflow analysis?
A I sent the email to Will and ran it by him. And he made the comment that I just told you.
Q But he didn't say yes, that sounds good to us?
A He said basically I don't have a problem with it.
Q Okay.
A Splitting hairs.
Q Now, when we look at the chart on Slide 3, you did not add in any accounting for pre-judgment interest, right?
A I did not.
Q Once you added your 25 percent discount rate, the EOY 2025 expected collection is $126.4 million, correct?
A Yeah. That's probably a typo. That should have read that -- not EOY 2025, it should have been discounted back to today.
Q Sure.

A Right.
Q But the ultimate number that you calculated on Slide 3 is $126.4 million?
A Correct.
Q Okay. Now you carried that number back into the chart that is on the proceeding slide, Slide 2, right?
A Correct.
Q And that 126.4 is the basis for the low/high range of risk damages?
A Yes.
Q But before you did the range, you of course subtracted $1.4 million from the 126.4, right?
A Well, I rounded it, yes. So the midpoint in the analysis is 126.4. For the sake of the presentation I made $126.4 a 125 and added plus or minus 25 million, correct.
Q But just to be clear, nobody from the Stris team told you to subtract out $1.4 million?
A No, they didn't.
Q Nobody from the LKC team told you to subtract out $1.4 million?
A No.
Q Okay. Now, once you subtract the $1.4 million, you get to $125 million, right?
A Correct.
Q That's the midpoint, right?

A Correct.
Q And from that $125 million, you then did a plus or minus of $25 million to get to that range of $100 million to $150 million?
A Correct.
Q Part of the variability that you're trying to capture with the plus or minus $25 million is the fact that if you went through this entire litigation, there is a chance that Rhodium would not have collected some of the numbers included on the damage chart in Slide 3.
A I think that's just a range that -- I mean, I think to say that the number was exactly $125 million or $126.4 million, to me it was a false level of precision. I just simply added plus or minus $25 million to reflect the variability in what we could -- what those claims were going to be. So I don't --
Q I just want to be clear, part of the variability that you're trying to capture with that plus or minus $25 million is the fact that if Rhodium went through with this entire litigation, there's a chance that Rhodium would not have collected some of the numbers included in the damage chart on Slide 3, right?
A Yeah. It reflected the variability in the merits of these respective buckets of claims.
Q So the answer to my question is yes?

A I think your question was did it reflect like that we would be distressed. And the answer to that is no. That's what I thought I heard.
Q No, I think the -- my question about the distress was about the discounted rate. Now I'm talking about the plus/minus $25 million --
A Yes.
Q -- that you applied on the chart on Slide 2.
A Yeah.
Q That $25 million, part of it was to account for the variability of not collecting some of the damages listed in the chart on Slide 3.
A To account for the variability in the success in the claims, correct.
Q Okay. Nobody from the Stris team told you to do a plus/minus $25 million range?
A No.
Q Nobody from the LKC team told you to do a plus or minus $25 million range?
A No.
Q Now, if we look at the chart on Slide 2, Risked Damages, that you presented to the board on February 12th, the low end of that range is $100 million, right?
A Correct.
Q And you understand of course that that is the $100

million that LKC uses in its fee application that is currently pending in front of this Court?

A I guess I understand. I mean, I don't know that I totally -- like that's -- I haven't reviewed it in detail. But if you say that's the basis, then that's fine.

Q Okay, great. All right. Now I want to switch to the February 16th slides.

A Okay.

Q If you go to Tab 245 in the white binder, please. 245.

A Okay.

Q Are you with me?

A Yes.

Q If you turn to the last page, which is 245.008, please.

A Okay.

Q This chart is the chart that was presented to the board on February 16th?

A Correct. This is in the March 5th board presentation. The last slide in that presentation, just for reference.

Q Right. But just to be clear, this is in fact what was presented to the board on February 16th?

A Correct.

Q So from the February 12th board slide showing the damages -- and we can flip back to it if we need to -- there's only one change in the numbers, right?

A Correct.

Q And that change is to the base success rate for Building D?
A Correct.
Q So the damage numbers presented to the board on February 16th were identical to those presented to the board on February 12th but for the one change to the Building D success rate?
A Correct.
Q And that was -- obviously February 16th is four days after the February 12th board meeting, right?
A Right.
Q Now, the change from -- well, let me back up. In the February 12th slide, the building D base success rate was 40 percent?
A Correct.
Q And now it's 20 percent on February 16th?
A Correct.
Q The change in Building D success rate from 40 percent to 20 percent, that was a collective decision between you and the Province team?
A Yes. I don't remember if we discussed this with Chase and others before the board meeting, but we discussed it ad nauseum on the board meeting on February 16th.
Q But prior to the board meeting, the decision to change the base success rate from 40 percent to 20 percent, that

was a collective decision between yourself and the Province team, right?
A Correct.
Q And specifically Mr. Robinson on the Province team?
A Correct.
Q Prior to the February 16th board meeting, you, Mr. Hayes, you never personally talked to any of the potential exit financers related to the slide that's reflected on Page 8 of Exhibit 245?
A During what time period?
Q Prior to the February 16th board meeting.
A I did, actually. I was on calls with one of the -- diligence calls with one of the groups.
Q Okay. My question is simply did you yourself have any discussions with the exit financers prior to the February 16th board meeting related to the information that went into the presentation provided to the board on February 16th?
A No.
Q You don't remember talking to anybody from the Stris team about that change in Building D success rate prior to the February 16th board meeting.
A No.
Q You don't remember talking to anybody from the LKC team about that change prior to the February 16th board meeting.
A No.

Q Now, if we look back at the slide, we see the same discount rate of 25 percent, right?
A Correct.
Q Likewise, we also see that you did not add back in any accounting for pre-judgment interest, right?
A Right. I mean...
Q Now, if we flip back to slide -- one page to 245.007, do you see that? Are you there?
A I'm there.
Q Okay, great. So this slide was also presented to the board on February 16th, 2025?
A Yes.
Q Okay. And we see risk damages, and we see the commentary there, risk estimates from LCK -- typo -- /Stris plus/minus $25 million?
A Correct.
Q So, to the number that you calculated prior to the February 16th board meeting, you did that same plus/minus $25 million?
A Correct.
Q Of course, $100 million is right in the middle of that range?
A Correct.
Q And that, of course, is the number that LKC is using in its fee application that's pending in front of the Court?

A Correct. And I want to point out this is as of February 16th.

Q Right. Now, let's also talk about what happened during the February 16th board meeting. Do you remember that Mr. Chase Blackmon made a motion to set the litigation settlement minimum at $100 million?

A I do. I think it's important to note that the language there was a $100 million minimum, and if it's less than that, bring it back to the board for negotiation.

Q That's exactly right. Any amount below that would have to then be presented to the board?

A That doesn't mean that we'll take --

Q That's just a yes or no.

A Doesn't mean we'll take less than $100 million.

Q Just a yes --

A So I think your -- I don't --

Q It's a yes or no question. That was your understanding after the February --

A I think it's important to say it was $100 million, and if it's less than that, bring it to the board for discussion. That was a really important part of that.

MR. DISHER: Your Honor, it's a yes or no question. Objection, non-responsive.

THE COURT: Sustained. Why don't you just ask his question. Your counsel can clean that up.

BY MR. DISHER:

Q That resolution to set the litigation minimum at $100 million, that was passed by the board at that February 16th meeting?

A Correct.

Q Okay. Next meeting, March 5th, same exhibit. If we go to Slide Number 2 --

A Correct, yep.

Q -- we see the updated chart that was presented to the board on March 5th?

A Yes.

Q And it has the risk damages range?

A Yes.

Q Now, that risk damages range, that's still based on the numbers in the chart that was presented to the board on February 16th?

A Look, I'll explain the differences. It's based on $125 million that --

Q Let me pause you right there. That's the $125 million that was presented to the board on February 16th?

A Right.

Q Right. Okay. Keep going.

A So, that $125 million is the risk expected value, but it's not discounted. So we had some feedback. We learned some things between February 16th and March 5th. We had a

mediation. We got feedback from the exit financing process that the lender that we had high hopes for that was -- you know, that provided our DIP financing was not going to get there. And the only term sheet we had had a cost of capital that was in excess of 30 percent.

Q Okay.

A So that was one thing we learned. The other thing that I learned and others on the valuation, you know, side of things learned was the litigators and others sort of said to us, you're not going to collect this in a year. You're going to collect this in a couple of years.

So, you know, with that information, we did two things. We took that $125 million. We slightly adjusted the discount rate from 25 to 30 percent to tie to the term sheet, the one term sheet that we had. And then we also discounted it by two years instead of one year.

Q Right.

A So, if you take that $125 million, divide it by 1.3 to the second power, that's $74 million, so roughly $75 million.

Q And that is what is reflected in the commentary on Slide Number 2 in the material that was presented to the board. It says reduced estimates by $25 million. Do you see that?

A Correct.

Q So that reduction of the estimates by $25 million, that's the result of the process you just described of increasing the discount rate --

A Right.

Q -- from 20 percent -- excuse me -- from 25 percent to 30 percent --

A Yes.

Q -- and then adding another year of that discount rate?

A Right.

Q And just to be clear, that 30 percent, you then also use that same 30 percent discount rate for the discounted cash flow analysis that you presented to the board on March 5th, right?

A You mean for the ongoing business?

Q Correct.

A Correct.

Q Okay. The decision to, "reduce estimates by $25 million", you and Michael Robinson, again, were the ones who made that decision prior to the March 5th board meeting?

A I would say yes. And I don't recall if we socialized that before the board meeting, but we did, and we explained it at the board meeting --

Q Right.

A -- and had a robust discussion about it.

Q And even once you and Michael Robinson decide to reduce

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

A Correct.

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

A Correct.

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

A Yes.

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

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

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

A Correct.

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

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

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

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

A Correct.

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

A Correct.

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

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

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

A Right.

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

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

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

with me?
A Yeah, I'm with you.
Q Okay. So the first email in LKC Exhibit 17 is an email from you to Mr. Topping and some other folks at Rhodium?
A Yes.
Q And if we skip down to the next email, it looks like you were forwarded an email from Mr. Topping, right?
A Yes.
Q Mr. Topping was forwarding you an email from Mr. Lockhart?
A Yes.
Q Mr. Lockhart, of course, is one of the lawyers for Whinstone?
A Yes.
Q And here he says, "Patty: Below, please find Whinstone's objections to Rhodium's purchase price allocation." And there's a bullet. That's $33.42 million in tangible assets, right?
A Mm hmm.
Q So that was Rhodium's initial proposed allocation to tangible assets was $33.42 million?
A Yes.
Q And if we look at the next page, there's a sub-bullet that says, "Based on our third-party valuation, the amount is approximately $7.2 million." That's Whinstone's

objection to the $33.42 million in tangible assets, right?
A Correct.
Q So Whinstone is saying, we think the tangible assets should only be allocated $7.2 million, right?
A For the fixed assets, correct.
Q Then, if we look at the next bullet point, $70.46 million in intangible assets. Do you see that?
A I do.
Q Whinstone, in responding to that proposed allocation, says it assigns zero value to any tangible asset, right?
A Yeah. I mean, we talked about this email at the deposition. I think this email was -- I think he was confused.
Q But my question was simply yes or no. The lawyer for Whinstone is saying, in response to Rhodium's initial allocation, that Whinstone assigns zero value to any intangible asset, right?
A Yeah, but that doesn't mean he doesn't put value on the energy contracts.
Q What he's saying here is zero value to any intangible assets. That's all he's saying. I'm just -- it's a yes or no question.
A That's what he's saying, but --
Q Right.
A -- this is a confusing email.

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

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

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

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

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

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

back, and we don't think the document is privileged at all. I would be happy to provide the Court a copy of it, should the Court want to review it.

THE COURT: Let me hear from Mr. Schmeltz.

MR. DISHER: And just -- it's this document.

MR. SCHMELTZ: So, first of all, Your Honor, I want to address the delay in claw back. It's a little bit of a right-hand, left-hand. I had a misunderstanding with Quinn as to the scope of what aspects of the privilege we would be waiving. And Ms. Tomasco brought to my attention that I misunderstood a conversation she and I had about how that was to work, and I immediately said about clawing it back.

It was not her intent for me to produce this document, ever, and we shouldn't have produced it. So it was an error on my part, and it was a misunderstanding on my part. So we addressed it as quickly as I could, given the circumstances.

The document itself is, you know, 100 percent the provision of legal advice in a dispute, and it's why you hire an accountant on a Kovel agreement, because you've got to know how the accountant approaches it so that you can give appropriate legal advice. And Ms. Tomasco is literally referring to going to talk to the accountant to get some information so that she can give that legal advice. I

think, again, that's exactly why you hire that consultant, and it is the provision of legal advice. I know Ms. Tomasco has risen to address it as well. I want to (indiscernible) have an opportunity, if Your Honor will allow her to address it as well.

THE COURT: Yes.

MS. TOMASCO: I didn't know this was going to come up today, but I will tell you what the mistake was. It was not a misunderstanding. The at-issue waiver of the privilege applies to anything that was happening between LKC and the Debtor prior to the dispute arising between the parties.

Once the dispute arise, the at-issue waiver no longer applies to communications. The review team viewed it as a temporal matter that there was no distinction. But this email -- and to be honest, it's quite innocuous, and this is more a matter of I never waived the privilege.

I never agreed to have this communication, which we had carefully engaged Riveron under a Kovel agreement so that our Quinn Emanuel tax legal team could give advice to Rhodium with respect to tax issues that were going to arise from the allocation. All right?

In that context, a dispute arose previously with respect to LKC. So the -- I can brief this for Your Honor, but the at-issue privilege waiver, as you know, pertains to

the conversations that we've been going through where LKC is on and the Rhodium board is on, and that at-issue waiver is because there is a dispute between the law firm and the client. That doesn't apply after the dispute has arisen, and I'm giving advice about a completely different thing. Right?

So, there is a temporal nature to the at-issue, once the dispute arises. If I wanted to go to Rhodium, to Chuck Topping, and say, you know, I think LKC is wrong on this point, obviously the at-issue waiver does not apply to that communication because now there is a dispute between Rhodium and LKC.

This email, to the extent it even applies to the LKC dispute -- and I don't think it does -- it's privileged as between myself and Rhodium. And the fact that this was inadvertently produced because of a misunderstanding of the scope of the at-issue waiver between LKC and Rhodium should have nothing to do with the veracity of the claw back. And if you read the parties' 502 agreement, it says that any of this is not a waiver. You can't waive it once you have a 502 agreement, and they do.

So this is one of the things that has raised my hackles up to here because, number one, I didn't know this email was produced. Number two, the at-issue waiver that has been the prevalent issue between these parties, the

Special Committee and LKC, it only applies to communications between LKC and Rhodium before the dispute arose.

After the dispute arose, Rhodium is entitled to my counsel, his counsel, counsel of their choosing. The attorney-client privilege, after the dispute arises, cannot be breached. And that's what this is. This is a July 15th. And as you know, we had a whole bunch of adversity with LKC well before then. And so this privilege cannot be waived.

THE COURT: When do you -- what date do you determine there was adversity with LKC?

MS. TOMASCO: I believe when they would have -- well, they've made a lot of threats -- but I believe when -- after we filed the amended application to retain them with more detail about the contingency fee. But certainly by this point, we understood, and we were not sharing with them as counsel anything to do with valuation, because we understood it was going to be an issue with how do you determine what their fee is.

MR. SCHMELTZ: And by this time, Your Honor, I had made a settlement -- this is -- I made that settlement offer in May, at or about the date that we -- let me just grab the first exhibit. Hang on. June 27th. "Please find attached."

So by June, right after we made the tax allocation proposal to Riot Whinstone, I made a settlement offer to

Lehotsky Keller and Cohn, through Josh Wolfshohl, which was met with a great deal of antagonism. So you're right in -- I mean, we're right on the cusp of it.

But again, Your Honor, this is why we negotiated a 502(d) agreement. We knew we were moving awful fast. We took Your Honor's, you know, be transparent and get it done very seriously, and our team put the jets on to do that. And this was a mistake on our part. I own it. And that's why we had a 502(d) in place. And I pointed it out to them as soon as I realized where this fell on the wrong side of the (indiscernible).

MR. DISHER: A couple of responses, Your Honor. First of all, I think that from the substance of this email on its face, it's clear that this is not the provision of legal advice. This is business advice. So I don't think this is covered by privilege at all, whether it's within the scope of the limited waiver or not. This is just not privileged because it's not the provision of legal advice.

Second, the claw back was way late. If they really thought this was a privileged document, you act on that immediately. You can't wait four days after it's used for the second time in a second deposition and then belatedly try to claw this back, just because they don't like the answers that this witness gave about this document. That's not the proper use of a claw back.

And then third, they're saying that -- somehow, they're saying that... Well, I'll leave it at that. I'll leave it at those two points.

MR. SCHMELTZ: I do want to note a hyper-contempt with the answers (indiscernible) with the scale of the documents has nothing to do with that. I mean, this is an absolute provision of legal advice at the time --

THE COURT: Let me look at it. Ms. Tomasco, what is it that is here providing legal advice?

MS. TOMASCO: Can I see it again? I mean, I feel like this is a trap, Your Honor. If I explained to you how this relates to other legal advice I'm giving the client with respect to its tax matters, I would be waiving the privilege because --

THE COURT: I don't see anything in there about -- in your email about tax. So, maybe we just need to brief this.

MS. TOMASCO: I'm happy to brief it, Your Honor. I feel quite strongly about this, because the only reason why, at this point, Chris Wheeler was involved was under a Kovel agreement with Quinn Emanuel to provide privileged tax advice in running through the various --

THE COURT: Let me -- I must have missed the tax advice part of it in what you're saying in that email. Let me see that again? I mean, the attachment is Mr. Lockhart's

email, which is already in evidence. So we're only looking at the first email. Is that correct?

MR. DISHER: Mr. Lockhart's email will be in evidence, once I offer it. I haven't --

THE COURT: Okay.

MR. DISHER: So, Exhibit 17 is the one we already looked at. I'm going to offer that into evidence. This is Exhibit 18, which we included the redacted version. If Your Honor rules that the claw back was improper, we obviously will offer the unredacted version of 18 into evidence.

THE COURT: I'm going to let you make a record, and then I'll decide after we get the briefing.

MR. DISHER: Thank you, Your Honor. At this point we offer LKC Exhibit 17, which is not the subject of the claw back. That's the prior one we were talking about a minute ago. We offer that into evidence.

THE COURT: Any objection?

MR. SCHMELTZ: None, Your Honor.

MR. DISHER: Your Honor, we offer Exhibit 18. We have included a version of that on the exhibits that we filed with the Court in which the claw back portion was redacted. We also would offer to the Court the unredacted version of Exhibit 18, and with the argument that this is not privileged, it's business advice, it's not the provision

of legal advice, and any privilege that might have been associated with this was waived because they didn't act expeditiously in order to claw this back.

THE COURT: All right.

MR. DISHER: Would you like me to leave this with...?

THE COURT: No, you can keep it.

MR. DISHER: Okay.

THE COURT: And I'll just wait for the briefing.

MR. SCHMELTZ: Your Honor, with respect to the redacted version of 18, no objection. Obviously, with respect to the unredacted version, we're going to brief it.

BY MR. DISHER:

Q Okay, Mr. Hayes, just a few final questions here. I want to stay on line with the tax allocation, just to close the loop on this. Will you turn to Tab 23 in the black binder, please?

A Sure. Yes, I'm here.

Q If you go to -- it's this -- it's Page Number 2. It's probably about four or five pages in, Article 2, Section 2.3?

A Yep.

Q There's a provision about purchase price allocation?

A Mm hmm.

Q The first three words of that provision say "for tax

purposes", right?
A Correct.
Q So this purchase price allocation is done for tax purposes, correct?
A Correct.
Q Okay. Now, if we look at the very last sentence of Section 2.3, I'm just going to read it. "For the avoidance of doubt, nothing contained herein shall be deemed an allocation of asset value for purposes of distribution to any seller's stakeholders." Did I read that right?
A You read it right.
Q Great. Now, finally, let's go back to Exhibit 14, please.
A Okay.
Q There's been some discussion about the energy contracts.
A Yes, 14, right?
Q Yes. If you go to Slide 7, which is the last slide in the presentation of the board --
A Sure.
Q -- you see the first bullet point that says, "Energy contracts should be worth more to Riot than to Rhodium (and any other buyer)."?
A Yes, I see that.
Q You wrote that sentence?

A Yeah.
Q Yeah.
A I believe I did.
Q Now, the first bullet point is talking about Riot. The second bullet point is talking about Rhodium. Do you see that?
A Correct.
Q And it says, "Whinstone contracts valuable, but need to be deployed in a business with significant risk, market volatility, execution, future litigation." Right?
A Correct.
Q And you wrote that sentence?
A I believe so, yes.
Q And then, finally, you conclude it with a sentence in red that says, "Another buyer likely has similar risks in assuming the contracts." Right?
A Yeah. Notice it's in brackets. But, yes, I did put that in there.
Q One of the risks that another buyer would likely have is future litigation risk, correct?
A Yes.
Q And that's the future litigation with Whinstone, correct?
A Correct.
Q And you, of course, don't dispute that the litigation

against Whinstone is adversely affecting Rhodium's ability to raise money, right?

A Yes.

Q Do you have any reason to dispute that when Rhodium filed for Chapter 11 bankruptcy, it had just $2.5 million cash on hand?

A I don't have any reason to dispute that.

Q If Rhodium had not been able to get DIP financing, Rhodium could not have made payroll, right?

A I mean, it would have made payroll for presumably a few periods, but, yeah, we would have run out of money.

Q From May 2024 through Rhodium's initial Chapter 11 filing, Rhodium did not have a month that it was cash flow positive?

A That sounds right. I don't know that for a fact, but that sounds about right.

Q Thank you, Mr. Hayes.

A Due in large part to a lot of litigation expense.

Q Thank you, Mr. Hayes. Nothing further.

THE COURT: I think he's going to re-cross you.

THE WITNESS: Oh. I'm sorry.

MR. SCHMELTZ: We'll see how far I can go. I know you need to get out of here.

REDIRECT EXAMINATION OF KEVIN HAYES

BY MR. SCHMELTZ:

Q You have significant experience in your career making projections, right?
A I do.
Q Are the tools that you used in these financial projections tools, like, plus or minus $25 million in discount rate, standard tools for projecting how something economic might come out?
A Yes.
Q They certainly were tools that you applied from your experience, and I doubt to kind of cook the books here.

MR. DISHER: Objection, Your Honor. Leading.

THE COURT: Sustained.

BY MR. SCHMELTZ:
Q Did you use these tools to try to cook the books?
A No. No. My -- I was worried about presenting a fair valuation, a fair view of the valuation to the board to give them the best data to make a good decision. And where I used plus or minus $25 million, I think it reflected the -- I think it was -- it would be intellectually dishonest to say that the right number is, you know, $100.2 million. That's way too much specificity for what the damages were. And so I merely rounded it and added plus or minus $25 million to translate something and kind of make it easy to follow and realistic for the board.
Q You mentioned that Will Thompson and you had had an

exchange about prejudgment interest, right?

MR. DISHER: Objection. Misstates the testimony.

THE COURT: I don't remember that.

MR. SCHMELTZ: Pardon me?

THE COURT: I don't remember that testimony.

THE WITNESS: No, I didn't -- I didn't mention that. I don't remember mentioning that.

THE COURT: I don't think he mentioned it.

MR. SCHMELTZ: My apologies.

BY MR. SCHMELTZ:

Q You mentioned that you and Will Thompson had a back and forth about discounts, present value and risking the damages, right?

A Yeah, it was a brief email exchange before the February 12th board meeting.

Q Let's take a look at Exhibit 259, please, which is in the white binders?

A Okay.

Q Let's take a look at -- do you recognize this document?

A I do.

Q 259?

A Yes, I do.

Q Is this the email exchange you were describing?

A Yes, it is.

Q And it's an email exchange, at least for the first

several emails, that is between you and Will Thompson, correct?

A Correct.

MR. SCHMELTZ: Move admission of 259 into evidence.

THE COURT: Any objection?

MR. DISHER: No objection, Your Honor.

THE COURT: Admitted.

(Exhibit 259 entered into evidence)

BY MR. SCHMELTZ:

Q Let's start with at the top of 259.002, email where you respond to John Cohn and Will Thompson. Do you see that?

A Yes, I do.

THE COURT: Wait, I'm sorry. What page are you on?

MR. SCHMELTZ: 002.

BY MR. SCHMELTZ:

Q It says, "Will, I understand you'll be available to join the board call. When we get to that Slide Number 3, I will turn it over to you." Did I read that correctly?

A Yes, you did.

THE COURT: I'm sorry, Mr. Schmeltz. I don't know --

MR. SCHMELTZ: 002.

THE COURT: (indiscernible) 259?

MR. SCHMELTZ: 002.

THE WITNESS: 259.

BY MR. SCHMELTZ:

Q And Slide 3 that you're describing is the damages -- risk-based damages calculation we've been talking about, right?

A Yes.

Q And that's the risk-based damages calculation that had a discount rate, right?

A Of 25 -- yes.

Q And plus or minus $25 million?

A Correct.

Q And Mr. Thompson says to you, "Thanks for sharing these. This is on 001. If you're already in the board meeting, I don't mean to interrupt you. If you're not in that meeting, it might make sense to connect briefly on the low-high range you provided. I want to make sure we're on the same page. Of course, I don't have a problem with your range. I just want to avoid stepping on your toes and confirm I understand how you calculated it." Have I read that correctly?

A You have.

Q Explain your response to him to the Court, please?

A Well, I can read it. "Good question. I simply took the risk value, discounted at a year at 25 percent, and

roughly added and subtracted $25 million."
Q He responds, "That makes sense to me. I won't plan to talk about it at all. If I were pressed, I'd say that the range of possible litigation outcomes is very wide, but I can certainly understand why, from a business perspective, it might make sense to look at the kind of band you're using." Have I read that correctly?
A Correct.
Q He didn't suggest to you that you should add pre-judgment interest, right?
MR. DISHER: Objection, leading, Your Honor.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Did he make any suggestion about how you should tweak your risk adjustment?
A No.
Q Did he ever make any suggestion about how you should tweak your risk adjustment?
A No.
Q You were asked about -- prior to the board meeting on February 16th, whether you had consulted with Stris or LKC about your adjustment to Building D. Do you remember that?
A Yes.
Q I think when I asked you if you remembered about what happened in your conversation at the board about that, you

did not recall, right? When we were...
A Right. No objections on the board call.
Q Is it possible that if I showed you a copy of the minutes from that meeting, it might refresh your recollection about the back and forth you might have had with Stris LKC at that board meeting?
A Yes.
MR. SCHMELTZ: Your Honor, may I approach the witness?
THE COURT: Yes.
MR. SCHMELTZ: Oh, I'm sorry.
THE COURT: I'm sorry. I said yes.
BY MR. SCHMELTZ:
Q Could you take a look at the Mediation Strategies section? Take a look at it.
A Mm hmm.
Q Let me know if it refreshes your recollection. And if it does, I'm going to have you hand me that document back, and we'll hear what you think. Okay?
A Yep. It does.
Q And what is your refreshed recollection about what occurred at the board meeting in conversation about Building D?
A I think I began the discussion of the valuation to point out -- to make it crystal clear to everybody, that the

only thing we changed from four days ago was Building D. And we changed it from $66 million to $33 million, or, you know, from a 40 percent success factor to a 20 percent success factor. I didn't hear anybody push back on that. And, in fact, there were comments from Will and John Stokes that said --

MR. DISHER: (indiscernible) object, Your Honor.

BY MR. SCHMELTZ:

A -- that makes sense, and they agree with that.

MR. DISHER: Hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

A We decided that because LKC wasn't a party opponent then, but they are now, their statements about what they believed about Building D then aren't -- or don't fall under that exception, because I think --

MR. DISHER: (indiscernible)

THE COURT: I'm sorry. I think he's -- do you recall what Mr. Thompson said specifically?

THE WITNESS: He said he didn't have a problem with it, and John Stokes said he agreed.

MR. DISHER: (indiscernible) I will object to that, as hearsay.

MR. SCHMELTZ: Okay. I think Mr. Thompson's views about Building D and the success rate --

THE COURT: Well, they weren't a party opponent at this time, right?

MR. SCHMELTZ: But they surely are now. The idea of a statement of a party opponent does not require you to have been an opponent at the time. It is about what you say is reliable for the truth of the matter asserted, because you are presently a party opponent. Certainly the reliability of what LKC was saying about Building D at the time is reliable, which is why it comes in as non-hearsay, now that they are in a statement of -- that they are an opponent. Right? So what you say is reliable.

MR. DISHER: I think the reliability is contingent on the adversity. Right? There's no reason to lend additional credibility to what your own lawyer says at the time that there was no adversity. The reason something becomes more reliable is because there is adversity at the time that it was said.

MR. SCHMELTZ: No, what makes it reliable is that you are adverse to the current situation. And so, what you said then we take as reliably true because now you are adverse to the situation. So light was red, light was green. Whatever you said then, you're adverse to the situation now. We take as true reliably what you said then. That's the way that works.

THE COURT: All right. I'm going to let it in for

now, but I'll -- you know, I'll make a final decision.

MR. SCHMELTZ: Thank you. I also think it's a present-tense impression, non-hearsay, as well as Ms. Lohse reminds me, this is his immediate reaction upon hearing it. Present-tense impression would suggest that that is non-hearsay --

THE COURT: If you literally read this, one could say that he joined the meeting after this was said. Okay? So it's not clear to me from these minutes what, in fact, was being said. So we'll leave it at that.

MR. SCHMELTZ: Well, I think it's joined the conversation as opposed to the meeting, but I take your point, Your Honor.

THE COURT: Yeah, you know, and --

MR. SCHMELTZ: And the witness's recollection is refreshed, and that's what we're bringing in to evidence at this point.

BY MR. SCHMELTZ:

Q Exhibit 6 in the black binder, the question was about zero value to intangible assets. Do you remember that?

A Yes.

Q What, in fact -- you mentioned that you thought the attorney from Foley was confused. Why don't you explain your answer?

A Yeah, I think their email was confused. We had

subsequent discussions with them to clarify. But their statement -- and this is my impression, and, you know, others could perhaps recall their -- they could share as well. But that $73 million, that did not apply to the energy contracts. That applied to intangibles, and I think he was confused. And if, you know, intangibles, in fact, meant the energy contracts, that was not his intent.

And I think in subsequent calls, we quickly clarified that. Riot certainly was buying us for the energy contracts. That's why they were buying us. Nobody questions that.

MR. SCHMELTZ: I have no further questions of this witness. Thank you.

MR. DISHER: Just briefly, Your Honor.

THE COURT: Sure.

RECROSS EXAMINATION OF KEVIN HAYES

BY MR. DISHER:

Q You looked at Exhibit 259 on redirect in the white binder?

A Okay.

Q This is the back and forth between you and Mr. Thompson prior to the February 12th board meeting?

A Correct.

Q Do you know what experience Mr. Thompson has, if any, with discount rates at this point?

A I don't. Although that he said that makes sense to me.
Q Now, after you applied the 25 percent discount, and after you applied your range of plus or minus $25 million, the low end of that range that was presented to the board on February 12th was $100 million, right?
A Yes, with a $66 million value for Building D, but yes.
Q And that is the $100 million, the low-end estimate presented to the board on February 12th, that we use in our fee application pending in front of the Judge. Correct?
A Correct.

MR. DISHER: Nothing further.

THE COURT: Anything further?

MR. SCHMELTZ: Nothing further for this witness. I'd like to call Mr. Eaton to the stand.

THE COURT: All right. We've got to stop at 6:00, so are we going to get done with him by 6:00?

MR. SCHMELTZ: Yes.

THE COURT: All right. I'm going to stop at 6:00, and if we're in the middle of a cross, we'll just have to come back.

MR. SCHMELTZ: It's not optimal, but I want to be efficient.

THE COURT: Okay.

MR. SCHMELTZ: And ideally, I wouldn't put my witness on for a half hour, and if we're crossing, to give

them another week to figure out more cross. But I want to be --

MS. TOMASCO: Right.

MR. SCHMELTZ: I'll take your preference, but I'd like to --

THE COURT: No, no, no. I'm --

MS. TOMASCO: My new friend Sarah Schultz is concerned about catching a plane, so we're wondering, are we coming back tomorrow or sometime when the Court has another availability?

THE COURT: No, sometime when the Court has another availability. I'm pretty much booked up through -- I have a four-day trial next week.

MS. TOMASCO: I'm aware.

MR. SCHMELTZ: So, if I might, then, I'd like to not call Mr. Eaton tonight --

THE COURT: Okay.

MR. SCHMELTZ: -- and we'll bring him -- we'll do it all at once. He's my last witness, and then we'd have argument.

MR. DISHER: I'd love to just finish tonight. I mean, he can take 20 minutes, I can take 10 minutes, and we'd be done.

MR. SCHMELTZ: I don't think I can take 20. I mean, I think I'm closer to half hour, 40 minutes. I'm

pushing it at 30, so...

THE COURT: Okay. Well, we will then come back.

MR. SCHMELTZ: Thank you.

THE COURT: All right, we'll be in recess.

(Proceedings adjourned at 5:31 p.m.)

CERTIFICATION

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



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 10, 2025

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:	CAMERON KELLY PATRICIA B. TOMASCO Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
For Special Committee:	TRACE SCHMELTZ CATHERINE PAIGE LOHSE Barnes & Thornburg LLP One N. Wacker Drive, Suite 4400 Chicago, IL 60606
For Lehotsky Keller Cohn:	WILLIAM THOMAS THOMPSON Lehotsky Keller Cohn 7500 Rialto Boulevard, Suite 1-250 Austin, TX 78735
For Official Committee:	NATHANIEL ALLARD McDermott Will & Schulte One Vanderbilt Avenue New York, NY 10017
Court Reporter:	AKEITA HOUSE
Courtroom Deputy:	AKEITA HOUSE

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

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

INDEX

PLAINTIFFS' WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
David Eaton	5	29	33	

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS

PLAINTIFFS' EXHIBITS	RECEIVED

GOVERNMENT'S EXHIBITS	RECEIVED

HOUSTON, TEXAS; THURSDAY, DECEMBER 11, 2025; 1:00 PM

(Call to Order)

THE COURT: Good afternoon. It is 1 p.m. on Thursday, December 11, 2025. We're here in case number 24-90448, Rhodium. Why don't we get appearances of counsel and then we can proceed.

MR. KELLY: Good afternoon, Your Honor. Cameron Kelly from Quinn Emanuel Urquhart & Sullivan on behalf of the debtors. I'm joined by Patty Tomasco on the GoToMeeting.

THE COURT: All right, thank you.

MR. SCHMELTZ: Good morning, Your Honor. Trace Schmeltz and my partner Paige Lohse from Barnes & Thornburg on behalf of the Special Committee.

THE COURT: All right, good afternoon.

MR. SCHMELTZ: Afternoon.

MR. THOMPSON: Good afternoon, Your Honor. This is Will Thompson from Lehotsky Keller Cohn.

THE COURT: Good afternoon.

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

THE COURT: All right, thank you.

All right, Mr. Schmeltz, are you going to take the lead?

MR. SCHMELTZ: I am, Your Honor. At this time,

the Special Committee would like to call David Eaton to the stand, Your Honor.

THE COURT: All right. Mr. Eaton, can you hear me?

MR. EATON: I can hear you. Can you hear me?

THE COURT: Yes, I can. Okay, would you raise your right hand, sir?

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

THE WITNESS: I do.

THE COURT: All right, thank you. Go ahead, Mr. Schmeltz.

DIRECT EXAMINATION OF DAVID EATON

BY MR. SCHMELTZ:

Q Mr. Eaton, would you please state your full name and introduce yourself to the court?

A Thank you, Your Honor. I'm David Eaton, and for over 47 years, I've been involved in business (indiscernible). I've been involved in business and sponsoring matters.

THE WITNESS: Can you still hear me, Your Honor? I'm sorry. I've got a lot of feedback.

THE COURT: I'll tell you what. Let me activate the hand-raising feature, so hit five-star one time.

AUTOMATED VOICE: Conference muted.

THE WITNESS: Good not.

THE COURT: All right, I can hear you. Go ahead, sir.

THE WITNESS: Okay, thanks, Your Honor. Your Honor, for over 47 years, I've been involved in business restructuring matters. That includes decades, decades as a restructuring partner at Kirkland & Ellis. As an investment banker, I also managed PricewaterhouseCoopers Special Situations Investment Banking Group.

In the course of my career, I also co-founded a financial advisory firm and have experience acting as a financial advisor and chief restructuring officer. I also taught international bankruptcy law as an adjunct professor for years at University of Illinois College of Law, and I've regularly acted as an independent director in restructuring situations.

BY MR. SCHMELTZ:

Q Sir, would you mind explaining what position you hold with Rhodium?

A I am one of two independent directors, and I'm a member of the Special Committee that deals with -- a committee of two -- that deals with potential conflict matters.

Q In your role as a member of the Special Committee, did you and the committee become involved in a question of the LKC success fee?

A We did, because we have no stake in the outcome, and it

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

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

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

A Yes, I'm aware of that.

Q Do you know who at the company made that allocation?

A Yes. Kevin Hayes, our CFO, did that in conjunction with Chris Wheeler, who was a tax expert that had been retained by counsel.

Q Did you review that allocation in your role as a member of the Special Committee?

A I did.

Q From your perspective, is it appropriate to use the same amount for purposes of the tax allocation and the LKC fee?

A I would give that a qualified yes.

Q Would you explain your qualification, sir?

A Yes. I'm satisfied that the source of that number had been prepared by Kevin and others and that the numbers were accurate and sound, and I've seen it presented to the full board of directors. I'm also satisfied that using $75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit.

But the data that was used -- my qualification is that the data that was used was created for much different purposes before it was transferred over to apply to the settlement of success fees, and I think it substantially overweights the value of litigation claims; and so I would say it is at the absolute top of any number that should be used for a gross settlement recovery for a couple of reasons.

Q Why don't we get into those couple of reasons? What are they, sir?

A The first one is that in the final settlement discussions with Rhodium, all we ever talked about was the value of the assets in their hands and that the enterprise value was much more valuable to them and accretive to them immediately than where we were at and the -- than the numbers that were being bounced around in that negotiation.

And in fact, in that negotiation, we never even discussed the litigation claims because they had told us in

no uncertain terms, they did not want to discuss them, and we'd heard that before when months earlier in a different context, we tried to settle with them. So that's the first reason. We were -- is that the settlement discussions were solely centered around the value of the business.

But the second point that was a real game-changer was that --

MR. THOMPSON: Your Honor -- I'm sorry, Your Honor, I think I was muted. I'm sorry to interrupt, Mr. Eaton. I was trying to object, and I think I was objecting into a mute button.

I'm objecting to the discussion of things that Whinstone allegedly said when no one has called anyone from Whinstone to the stand, so it's a hearsay objection, Your Honor.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Okay.

A All right. And the second point -- nonetheless --

Q You can continue with your answer.

A Okay. I will tell you -- I will just tell you that we -- that I only discussed the enterprise value and trying to get the highest settlement. And the second point that was a real game-changer is that within days after the mediation, but before our final deal discussions with Riot, it became

apparent that we'd been unable to obtain exit financing to pursue a reorganization plan built around it.

Q I appreciate the two points, and I want to go back. Were you personally involved in negotiations with Riot-Whinstone?

A Yes, I was.

Q And were you involved in the negotiations after the mediation and up until the time there was a finished deal with Riot-Whinstone?

A That's exactly right.

Q And during that time, did you ever discuss one way or the other the claims or the value of the claims?

A Not with Riot.

Q Was there ever an opportunity in your discussions with Riot to discuss the value of the claims?

A I suppose we could have mentioned it, but there were reasons that we didn't.

Q And from your perspective, why did you not mention it?

A Well, there's a couple. I have to say, I had -- we'd been admonished that it was of no value to engage in that discussion, but more importantly --

MR. THOMPSON: Objection, Your Honor.

THE WITNESS: -- is that -- but you know, when I talked -- the other reason really relates to what I mentioned as the second what I call game-changing factor.

And so maybe I can -- maybe I'll explain what that is.

BY MR. SCHMELTZ:

Q Why don't you do that?

A Okay. The only committed financing that we had, which came out with finality like day -- after the mediation, but a couple of days before we met to see if we could negotiate a final deal, was a $75 million face amount, which would have enabled us to pay general unsecureds and secured creditors and provide some working capital, but it was so exorbitantly priced that if we took two years to pay it, which was the expected timeframe to get -- to obtain and collect, if possible, a judgment, the SAFEs and the equity holders would have been behind two times below, or about $150 million in new senior debt before they could recover a penny.

Q And how did that -- let me ask you a question. So you had this expensive exit financing that required you to pay two times the loan amount; how did that compare to other alternatives Rhodium had at that point in time?

A Okay. So the alternative that was in front of us was that the SAFEs had reached a very high floor in their negotiation with Riot at the mediation and had presented a settlement totaling $177 million to the estate that would have paid all creditors I discussed, and in addition, have $90 plus million to distribute immediately to the SAFEs and

equity holders.

Q And so did you -- as a fiduciary, how did you weigh those two alternatives?

A Well, at that point, coming fresh off the unacceptable and untenable exit financing, I thought it would have been irresponsible to roll the dice by saddling the company with this super expensive new debt to fight litigation for a couple of years, where our business would be -- end up highly leveraged, greater risk, and far less valuable than it would be through an immediate sale.

And so from a fiduciary point of view -- so to me, since the only way you could achieve any value at all for the claims was to operate the business and fund it for a couple of years to get to that end point, to me, the value of the claims was effectively going to zero because we couldn't responsibly afford that alternative.

So at best, the claims became the tail on the dog. And so by comparison, we already had in the hand a $90-plus million, even after creditors were paid, a proposal that we could -- we thought we could and did approve in our final discussion, our final settlement with Riot.

So that comes back to explaining why essentially the value of the claims were diminishing and to me could have gone to zero because we weren't -- that was not going to lead us anywhere. We could never -- we couldn't get the

verdict in a fiduciarily responsible way. So that's why we focused on the sale and the enterprise value of the business to Riot.

Q You've mentioned the enterprise value of the business to Riot. How, if at all, does the enterprise value of the business to Riot differ from a discounted cash flow analysis of the business in the hands of Rhodium?

A Well, the value to Riot, even though the value to us was what we looked at as declining because of the additional risk that we'd be putting on or if we ever even -- with that exit financing, or -- and we're a private company facing financing with a huge coupon on it. On the other hand, Riot was a well-capitalized public company with a much lower, significantly lower cost of capital.

And the value to them wasn't changing. The value for them to gain control of these assets was much higher than it is for a smaller private riskier company on a discounted cash flow basis than it was to Riot, as I mentioned, a well-capitalized public company, you know, with a much smaller discount rate, so --

Q Can you quantify -- can you quantify that value?

A I can't quantify it. We -- yes. We had presentations from management before the mediation that in the hands of Riot, the business value alone, the DCF alone was upwards -- was nearly $500 million. So multiples of what we were

looking at with our risk factors and discount.

And then we -- for tax purposes, we also had an independent third-party valuation of the business that we had sold. And that came out with a minimum of $173 million, and the high range of that was $207 million, the midpoint of that being $190 million, which was in fact very close to what we had achieved in the final settlement. So those were checks on a market value and a DCF value.

Q In a context in which --

A I -- go ahead, I'm sorry.

Q In the context in which you have enterprise values as high as almost $500 million, an independent valuation with a midpoint of $190 million, is there any reason that the Special Committee hasn't pushed for a lower allocation to settlement than the $75 million that's been allocated?

A I -- personally, I felt that the 75 was, for lack of a better word, over generous. It was at the very end, very top end of a range of numbers. But it would comply with the contract, surely; was consistent with the allocation, which was a benefit for the reason I mentioned; and it recognized the good work that LKC had done.

So we stuck with the number that Kevin had proposed and testified was the midpoint of the last numbers he presented to the board even before the Riot deal was struck. And I'll say, I think it's at the top end of what should have been

done, but it creates a windfall for LKC. That is my view.
Q But you're not walking away from that number, right?
A No, no.
Q Let's shift gears a little bit and talk a little bit about the calculation of the success fee. I want to start by talking about the LKC success fee for energy credits. Do you understand how the energy credits work under the March -- sorry. Do you understand how success fee for energy credit claims works under the March 2025 engagement letter?
A Yes. The success fee for energy credit claims is 5 percent on the first $5 million and 1 percent for everything after $5 million.
Q How would that compare to the success fee for non-energy credit claims?
A For non-energy credit claims, the success fee is 10 percent of those claims.
Q From your perspective, is it appropriate for LKC to eliminate the energy credit claim related to Winter Storm Uri from the calculation of the success fee?
MR. THOMPSON: Objection, Your Honor. I have to object to asking this witness about what percentage of total damages ought to be allocated to energy credit. The debtors put up a 30(b)(6) witness on the topic of the LKC success fee. As Your Honor may recall from a hearing in October, that witness was unable to share any position of the debtors

on how much money ought to be allocated to the energy credit. He explained on the record that he wasn't prepared to address that. Mr. Schmeltz confirmed it. I can pull up the transcript if we need to, but I think it's undisputed.

We have disagreements about whether that should preclude them from putting on a witness on this topic at all. The debtors then decided that they would try a different witness, and I think Your Honor said if they can produce them for a deposition, that would be all right. They used an expert named Mr. Reston from PDO. In the face of our motion to strike that witness, they have withdrawn that witness.

So we've gone through two witnesses who should have been able to give us discovery on what Rhodium's position was with regard to the energy credit allocation. Neither one of them has done it, and so I think it's inappropriate for Rhodium having told us during a 30(b)(6) depo they haven't -- they7 can't tell us any position on that matter, and now try to elicit such a position through Mr. Eaton.

THE COURT: Mr. Schmeltz?

MR. SCHMELTZ: Two responses. First of all, Mr. Eaton was presented as a witness to talk about the D&O settlement. The D&O settlement relates to Winter Storm Uri. Mr. Eaton has already testified on Winter Storm Uri and on

that energy credit. We also have testimony on Building D, which Mr. Eaton will speak to briefly.

I direct Your Honor's attention to Johnson v. Big Lots Stores, Inc., 2008 WL 6928161 at 5. It is an Eastern District, Louisiana court. I understand it's not binding on this Court, but it provides specifically that a party at trial may use the testimony of a witness who is not its corporate representative during a prior 30(b)(6) witness deposition.

It goes on to note that "30(b)(6) does not require a corporate party to exclusively call its designees at trial, nor does it prohibit calling other employees as witnesses. The new witness may testify," that court says, "about the same subject matter so long as the testimony is based on personal knowledge." That case cites Union Pump Company v. Centrifugal Tech, Inc., 404 F. App'x 899, 907-908 (5th Cir. 2010).

At trial, Johnson goes on to say, "A party is not foreclosed from introducing testimony by a new witness, even if it may differ from or explain statements made by its Rule 30(b)(6) designee. Testimony by the new witness may even contradict the 30(b)(6) representative," and the proper course of action is for counsel, as Mr. Thompson has suggested, to impeach with the prior testimony. That's from Crompton Greaves, Ltd. v. Shipper's Stevedoring Company, 776

F.Supp.2d 375 (S.D. Tex. 2011).

Ultimately, 30(b)(6) testimony is not binding judicial admission if it's evidence subject to contradiction, explanation, or impeachment by other testimony, and it's for the trier of fact to decide its weight.

Mr. Eaton will tell you that he has personal knowledge of the Winter Storm Uri claim and why it was appropriately mediated. He will also tell you that he has personal knowledge as a board member of the Building D claim and how it was presented.

Both of those things will be the subject of his testimony. He is not going to be calculating the success fee, which is the issue Mr. Thompson has raised and the issue for which we had Mr. Reston originally to come in to calculate. I'm going to do that because it's simple math in my closing, Your Honor. We don't need a witness. I can do that for you, and I will do it at closing.

Mr. Eaton is instead testifying as to components of the claim and damages, and I want to be clear on that. He will not be calculating a fee for you, which again would have been what Mr. Thompson asked Mr. Topping, who was not prepared to answer that, and what Mr. Thompson asked Mr. Reston about as well.

THE COURT: All right, I'm going to sustain the

objection. I'm not going to let him testify about Winter Storm Uri. I don't think when one party asked for information regarding that and the person isn't able to testify, I'm not going to let them bring that at trial. So why don't you move on?

MR. SCHMELTZ: I want to be clear. Mr. Eaton was our designee to talk about Winter Storm Uri. He -- what he's not -- what Mr. Thompson is saying is they had a witness to do the calculation. Mr. Eaton is not doing the calculation. He was the designee for Winter Storm Uri. He --

MR. THOMPSON: Maybe it'd help if I just read the question that led to the problem at the deposition, Your Honor. The question was, "Does Rhodium have a position on what portion of the $75 million it mentioned is allocable to energy credits?"

As I understand it from Mr. Schmeltz's introduction to his line of questioning, that's the purpose of this line of questioning. He wants to establish what portion of the 75 Mr. Eaton was just talking about should go to energy credits and what portion should go to other stuff.

They couldn't tell us that during the 30(b)(6) deposition, and I don't think there's any other reason to have Mr. Eaton testify on the other topics that Mr. Schmeltz is talking about.

MR. SCHMELTZ: Mr. Eaton was the designee to talk about why Winter Storm Uri was included in the Whinstone mediation, Your Honor. That's what he testified.

THE COURT: All right. I've made my ruling. Move on.

MR. SCHMELTZ: Your Honor, may I have five minutes?

THE COURT: Excuse me?

MR. SCHMELTZ: May I have a five-minute recess, Your Honor?

THE COURT: Sure.

(Recess)

MR. SCHMELTZ: Your Honor, when you're ready.

THE COURT: I'm ready. Go ahead.

MR. SCHMELTZ: Two things. First of all, Mr. Topping was the witness that Mr. Thompson was just referring to in Pages 53 to 58 of Mr. Topping's deposition as a 30(b)(6). He testified to Winter Storm Uri and its inclusion in the mediation and how it's appropriate to include it in a damages calculation. I would offer that, first of all, Your Honor, for a reason to allow me to go forward.

If Your Honor prefers to stick with your ruling, which I respect, I'd ask to make an offer of proof such that I can preserve the issue for appeal. The pages are of the

deposition.

MS. LOHSE: No, that's the November 3rd hearing.

MR. SCHMELTZ: Oh, also at the November 3rd hearing, Mr. Topping was permitted to testify Pages 199 to 200 to this topic, which is all I'm asking for an opportunity to bring this through this witness quickly to bring the issue to a close.

MS. LOHSE: And 198 to 200.

MR. SCHMELTZ: Thank you, 198 to 200 of the November 3rd transcript.

THE COURT: All right. After the close of the hearing, you can make your proffer. All right, let's continue on.

MR. SCHMELTZ: Thank you, Your Honor. Thank you.

BY MR. SCHMELTZ:

Q Sir, were you -- you sat on -- regularly on the Board of Directors in your capacity as a Special Committee member; is that correct?

A Yes.

Q Were you in February 16, 2025 board meeting where various claims were discussed?

A Yes, I was.

Q Were the claims that were discussed in that board meeting claims that were expected to be mediated in the upcoming mediation with Riot-Whinstone?

A Yes.
Q Did those claims include the claim for Winter Storm Uri and Building D?
A Yes, both of those.
Q Were you involved in a conversation about the chance of success for Building D as a claim?
MR. THOMPSON: Objection. We're getting into a fair number of leading questions now.
MR. SCHMELTZ: I asked, were you involved in a conversation about the chance of success for Building D?
THE COURT: Yeah, overruled. Go ahead and answer that.
THE WITNESS: Yes, I was present for and heard that. I don't recall piping in on it, but I was there for the conversation.
BY MR. SCHMELTZ:
Q Was the conversation around the chance of success for that claim, if you recall?
A Yes, it was.
Q Do you recall what the conclusion in that meeting was in terms of the chance of success for Building D?
A Yes, that the risk-adjusted probability of recovering at Building D was reduced from 40 percent to 20 percent.
Q Were litigation attorneys from LKC and Stritz & Mayer present in that conversation?

A Yes, they both were.
Q Do you recall whether either lawyer from LKC or Stritz agreed or disagreed with that conclusion?
A No one disagreed, and I do remember that in fact they concurred with that decision.
MR. SCHMELTZ: Your Honor, may I please have screen share capability?
THE COURT: You have that?
MR. SCHMELTZ: Thank you, Your Honor. Now I have to figure out if I'm competent enough to use it.
CLERK: If you want to click the PDF, (indiscernible) declaration form.
MR. SCHMELTZ: Why is that the thing -- no, it's not what I want.
CLERK: Then you might need to go back to the GoTo. There you go.
MR. SCHMELTZ: There we go.
CLERK: Sorry about that.
MR. SCHMELTZ: No worries.
Your Honor, I'm putting on the screen Exhibit 334, which has been provisionally or taken under advisement by the Court.
BY MR. SCHMELTZ:
Q Mr. Eaton, do you recognize this document?
A Yes, I do recognize the document.

Q And what do you recognize the document to be?
A To be minutes of the Board of Directors meeting on -- we had two that day, but this was the first one, February 16, 2025.
Q Have you reviewed these minutes?
A I have.
Q Do they reflect fairly and accurately the meeting from your perspective?
A Yes, they do.
Q Were they taken by someone at the meeting in real time?
A Yes.
Q Who was that?
A That was Becky Rice.
Q Was that ordinary for Rhodium to do that that way?
A Yes, that was how it was done.
Q And are these minutes kept in the ordinary course of Rhodium's business for its business purposes?
A Yes, they are.

MR. SCHMELTZ: Your Honor, I would move again for the admission of Exhibit 334 into evidence.

MR. THOMPSON: We stand on the same objections as last time, Your Honor. This is, I believe, (indiscernible) untimely exhibit and it was -- Mr. Eaton did not testify that he wrote any of these. If he wants to testify about his recollection from the meeting, that seems like a more

sensible way to proceed.

MR. SCHMELTZ: Your Honor, if I might direct your attention to U.S. Commodity Futures Trading Commission v. DeZona, Fifth Circuit case, 594 F.3d 408, 415. "There's no requirement that the offering witness be able to testify to the record's accuracy. A qualified offering witness simply must explain the recordkeeping system of the organization and vouch that the requirements of 803.6 were met."

Mr. Eaton has met all three, all of the requirements of 803.6, that the record was made at or at time by or from information transmitted by someone with knowledge; that the record was kept in the ordinary course of a business activity; that it was part of the regular practice of that activity.

Those, under 803.6(e), that does not need to be done by a custodian. It simply needs to be done by a qualified witness. And under the case of Morris v. B.C. Olympiakos, 721 F.2d 546 at 551 (S.D. Tex. 2010), the court made it clear that the -- it is not essential that the offering witness be the person who actually recorded the events.

THE COURT: Okay, so --

MR. SCHMELTZ: For that, I think we've laid a proper foundation, Your Honor.

THE COURT: Okay, so what exhibit is it again?

It's not Exhibit 334.

MR. SCHMELTZ: It's what I show as 334 in my exhibit list, Your Honor.

THE COURT: It says 334 down here, but do you know where it is in the record? Because my Exhibit 334 is a confidential placement memorandum.

MR. SCHMELTZ: Paige, can you see in the transcript what we called it last time, please?

THE COURT: Let me see, there's another Exhibit 334.

MR. SCHMELTZ: Understood, Your Honor.

MS. LOHSE: 334 --

MR. SCHMELTZ: Say again?

MS. LOHSE: Page 157 of the transcript shows it's Exhibit 334.]

MR. SCHMELTZ: Page 157 of the last day's trial transcript shows it as 334 as well, Your Honor. I don't know if I double-labeled. I don't have anything else. I mean, our last exhibit was 331, and then this was, as you know, offered late, as we've explained, and we've explained why.

THE COURT: Okay. Do you -- but do you know where it is on the docket, filed on the docket?

MS. LOHSE: It has not been filed.

MR. SCHMELTZ: I don't think it's been filed on

the docket, because we presented it to Your Honor, and you took it under advisement when we were there last. I can email it to Mr. Laws right now.

THE COURT: No, that's okay. All right.

MR. SCHMELTZ: And I can page through it here on the screen as well.

THE COURT: No, no, I remember the document. I just wanted to look at it. Yeah, I'm going to have to look -- I'm going to have to find the document to look at it again.

MR. SCHMELTZ: Your Honor, may I ask questions from it directly, or do you want me to have the witness give his best recollection, or how do you want me to do that?

THE COURT: No, why don't you go ahead and ask him the questions, and then when I look at it, I'll make a decision as to whether to admit it.

And by the way, we basically have 15 more minutes, so if we can't finish, then we're going to need to go to the 17th.

MR. SCHMELTZ: I just have two questions for him.

THE COURT: Okay, go ahead.

BY MR. SCHMELTZ:

Q I have on the screen the mediation strategies discussion. Do you see that, Mr. Eaton?

A Yes, I do.

Q It notes, "Mr. Hayes informed the board this presentation was the same as presented to the board at Wednesday's board meeting with one small revision. The base success percentage for the Building D litigation has been downgraded from 40 percent to 20 percent." Do you see that?
A Yes, I do.
Q That comport with your recollection of what Mr. Hayes reported at the meeting?
A Definitely.
Q It then notes, "Mr. Thompson then joined the conversation by stating he had gone through the litigation buckets at Wednesday's meeting and appreciated why the Building D bucket had been revised and did not have any material concerns about this revision, and Mr. Stokes concurred." Does that comport with your recollection of what happened at the meeting?
A It does. I didn't know that it was Mr. Thompson. I knew that there was an LKC attorney and Mr. Stokes were on, and I knew that -- and so this definitely comports with my recollection of what happened at the meeting.
Q And I guess my final question. Mr. Thompson -- did Mr. Thompson join the meeting at that moment, or was he already present to the best of your recollection?
A I believe he was already present when we started the meeting.

MR. SCHMELTZ: Thank you. I have no further questions for this witness, Your Honor.

THE COURT: All right. Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. Will Thompson from LKC. I also don't have an electronic copy, I think, of those minutes, but if I need to figure it out, I guess I will.

CROSS-EXAMINATION OF DAVID EATON

BY MR. THOMPSON:

Q Mr. Eaton, you were just talking about February 15th board meeting. Do you remember that board meeting?

A February 16th.

Q February 16th.

A Yes.

Q Do you remember setting a minimum value for the litigation claims to be used in mediation at that board meeting?

A I remember that the board discussed the minimum -- the amounts that they wanted to go into the mediation requesting.

Q Let me ask you using the right words here, Mr. Eaton. Did the board establish a minimum mediation litigation settlement amount of $100 million?

A I believe -- well, oh --

Q Just answer the question, sir.

MR. SCHMELTZ: I think he's trying to answer it.

THE WITNESS: I'm going to answer it. I believe that was -- my recollection is that that was authorized, that number was authorized to accept, and if it was lower that people were instructed to come back to the board.

BY MR. THOMPSON:

Q So it's correct that the board establishes a minimum mediation litigation settlement amount of $100 million on February 16th, correct?

A That was the target, and yes, on February 16th, that occurred.

Q Now, Mr. Eaton, you got into this a little bit in your direct. Mister -- you've heard Mr. Schmeltz in these proceedings because you've been the representative for the Special Committee in the courtroom, right?

A Yes.

Q Because you weren't excluded under the rule. You were in the courtroom for many of the days that we've been here for this matter, right?

A Yes.

Q So you've heard Mr. Schmeltz make a lot of claims about what I said during the February 16th board meeting, right?

A I've heard Mr. Schmeltz talk about that, yes.

Q Are you aware that the Special Committee didn't seek my deposition in this matter?

A I wasn't aware one way or another about that.
Q Were you aware the Special Committee didn't put me on a witness list?
A I was not aware one way or the other about that.
Q And before you heard Mr. Schmeltz's questions during this proceeding, during your deposition, you didn't remember ever talking to me before, right?
A That's not correct. I remembered not speaking with you to my knowledge, but that we may have been on some calls together and I just wasn't aware that the particular person speaking was you.
Q During your deposition, do you remember testifying, we've never spoken before? Remember saying that?
A Yes, that was my recollection that we had never directly spoken before.
Q Okay. On direct, Mr. Eaton, you also testified about exit financing. Do you remember talking about that?
A Yes.
Q Now, it became apparent around the time of the mediation that Rhodium's ability to get exit financing was evaporating, right?
A Yes, I agree with that.
Q It also was apparent that because of the market in general, but in particular, Whinstone's actions and the fact that Whinstone owned the property and the fact that there

was a limited energy contract that was favorable to produce the positive cash flow, that there was only one buyer, and that was Whinstone, right?

A I think that's -- I happen to agree with that. Whinstone was the one we had to sell the assets to as a practical matter.

Q So Rhodium wasn't going to be able to continue and it wasn't going to be able to sell to a third party, and so it found a way out by selling its assets and selling its claims with Whinstone, right?

A Well, we sold the assets, and to me, the claims were along for the ride.

Q That's not the wording you used during your deposition, is it?

A I don't remember exactly the words I used.

Q When I asked, so Rhodium wasn't going to be able to continue and it wasn't going to be able to sell to a third party, and so it found a way out by selling its assets and settling its claims with Whinstone, right, you answered yes. Do you remember that?

A Okay, yeah. I confirm that.

Q All right. On direct, you talked about having to operate the business to fund the claims against Whinstone. Do you remember that testimony?

A Yes.

Q Did you hear Chase Blackmon's testimony in Houston about LKC and Stritz enthusiastically offering to take the claims against Whinstone on a pure contingency basis?
A I don't recall that testimony.
Q Do you maybe recall Chuck Topping's testimony confirming Mr. Blackmon's testimony?
A I have a vague recollection that it was discussed.
MR. THOMPSON: No further questions, Your Honor. Thank you.
THE COURT: All right, Mr. Schmeltz?
REDIRECT EXAMINATION OF DAVID EATON
BY MR. SCHMELTZ:
Q Had LKC taken on the claims on a pure contingency basis, would that have been sufficient to bring the same value to creditors through the reorganization process that the sale to Riot-Whinstone achieved?
A No, there's no way that could have occurred. Because to take the claims on a contingent basis, we could not have sold -- I do agree, we could not have sold the assets to Riot without, as I said, the tail on the dog, settling the claims along with it. And if there's nobody else to sell it to, that means we got to operate the business under -- to enable the continuation of the litigation or wind down and liquidate the business without having almost $200 million of value in front of us.

Q So in your 47 years of experience --
A -- it's not possible to separate -- I'm sorry. You can't just say someone would have done on a contingency without considering what alternatives and what the consequences would be for selling the business.
Q In your 47 years of experience in bankruptcy, is a straight liquidation of assets likely to bring more value or less value than a sale of the business?
A Far less value than selling the business intact.
MR. SCHMELTZ: Thank you. I have no further questions, Your Honor. I would like to make my proffer when it's appropriate.
THE COURT: Mr. Thompson?
MR. THOMPSON: Other than -- nothing further, Your Honor. Thank you.
THE COURT: All right. So, Mr. Smeltz, why don't you just file your proffer and we'll just include that in the record?
MR. SCHMELTZ: I will. Thank you, Your Honor.
THE COURT: All right. And so we'll be in recess till the 17th, correct?
MR. SCHMELTZ: Yes, Your Honor.
THE COURT: Yeah, one o'clock on the 17th. All right, thank you.
MR. SCHMELTZ: Thank you, Your Honor.

MR. THOMPSON: Thank you.

(Proceedings adjourned at 1:54 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: December 15, 2025

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Rhodium Encore LLC and Air HPC LLC Debtor.	)	CASE NO: 24-90448
	)	Houston, Texas
	)	Thursday,
	)	October 30, 2025

MOTION HEARING
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Lehotsky Keller Cohn LLP:
JOSHUA W. WOLFSHOHL
WILLIAM THOMPSON
Porter Hedges LLP
1000 Main, 36th Floor
Houston, TX 77002

For the special Committee:
CATHERINE PAIGE LOHSE
Barnes & Thornburg LLP
1 N. Wacker Drive, Suite 4400
Chicago, IL 60606

For Ad Hoc Group of SAFE Parties:
SARAH A SCHULTZ
Akin Gump Strauss Hauer & Feld LLP
2300 N. Field St., Suite 1800
Dallas, TX 75201

For The Official Committee of Unsecured Creditors:
NATHANIEL ALLARD
McDermott Will & Schulte LLP
2801 N. Harwood St., Suite 2600
Dallas, TX 75201

Court Reporter:

Courtroom Deputy:

Transcribed by: Veritext Legal Solutions
330 Old Country Road, Suite 300
Mineola, NY 11501
Tel: 800-727-6396

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

HOUSTON, TEXAS; THURSDAY, OCTOBER 31, 2025

(Call to Order)

THE COURT: Case number 24-90448, Rhodium Enterprises, Rhodium Encore.

Why don't we get appearances of Counsel? I think Mr. Wolfshohl is here in the courtroom, but --

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl, on behalf of Lehotsky Keller Cohn. And Bill Thompson is on the line as well. He can introduce himself.

THE COURT: All right. All right. Thank you.

All right. Let's go -- Go ahead. Why don't we get appearances of Counsel on the line.

MS. LOHSE: Your Honor, this is Paige Lohse, on --

MR. THOMPSON: Your Honor, this is Will Thomson --

THE COURT: Go ahead.

MR. THOMPSON: Sorry, Your Honor. This is --

MS. LOHSE: Your Honor, this is Paige Lohse, on behalf of the Special Committee.

THE COURT: All right. Thank you, Ms. Lohse.

Mr. Thompson?

MR. THOMPSON: Apologies, Your Honor. Will Thompson, on behalf of LKC.

THE COURT: All right. Ms. Schultz?

MS. SCHULTZ: Good afternoon, Your Honor. Sarah

Schultz, on behalf of the SAFE AHG.

THE COURT: All right. Mr. Allard?

MR. ALLARD: Thank you, Your Honor. Nathaniel Allard of McDermott Will & Schulte, for the Official Committee of Unsecured Creditors.

THE COURT: All right. So we have a couple of motions that are sent for this afternoon. Where are the parties with respect to them?

MS. LOHSE: Your Honor, this is Paige Lohse speaking.

It's my understanding that LKC does not oppose the Special Committee's motion for sealing the courtroom, but we will still need to discuss logistics for that.

THE COURT: Yes

MS. LOHSE: My understanding is the Special Committee's second motion is opposed, however/

THE COURT: Okay.

MS. LOHSE: Their motion for the protective order.

THE COURT: Ah. I actually have a problem with sealing the courtroom. I think that we're going to need to kind of figure out what parts of the testimony are going to be -- that have to be under seal. But I'm not going to seal the entire, you know, the entire hearing without -- I'm going to only seal those portions of the hearing that need to be sealed. And I don't know how you all are intending to

work through it, but what I need to do is --

I'm going to -- Somebody's typing furiously.

But anyway, so I fully understand and respect the need to maintain the confidentiality of a lot of these documents and a lot of the testimony, but I don't -- I just don't want to blanket do it. So if you -- if you all can agree on, you know, what documents, what -- you know, what testimony regarding the documents is -- needs to be sealed, we'll go ahead and do that, and then we'll just try to have, you know, the sealed part of the hearing at one time, and then everything else together. But I don't think, you know, that opening statements or anything like that should be sealed. I think we can do it in a way that that doesn't do it.

But again, I'm reluctant to enter the order, but I'm happy to grant the relief with respect to specific items and specific testimony.

MS. SCHULTZ: Your Honor --

MS. LOHSE: Thank you, Your Honor.

THE COURT: Yes, Ms. Schultz.

MS. SCHULTZ: Your Honor, thank you. For the record, Sarah Schultz, on behalf of the SAFE AHG.

If I could just ask a clarifying question? We're trying to be conservative with our fees, but would like to request that parties keep us in the loop with respect to

what they intend to try to seal and not seal. We, for example, have requested from Mr. Wolfshohl a copy of the sealed exhibits that he put on the docket today, and have not yet received that, although we have executed the protective order. So we just want to make sure we have everything in hand. If not, I suspect we, and although I don't want to speak on behalf of the Official Committee, I assume they're in a similar position, and we'd need to be there live on Monday, as opposed to considering participating virtually.

THE COURT: Okay. All right, yeah, you can speak to -- yeah, Mr. Maxwell about that. I mean, obviously, go ahead and do that.

All right. So then, I think we have the motion for a protective order. So go ahead, Ms. Lohse. It's your motion.

MS. LOHSE: Your Honor, we've moved for a protective order to prevent LKC from forcing us to produce witnesses on topics designated as number 8 and 9 in their notice of Rule 30(b)(6) deposition. Topic 8 focuses on a common interest privilege between SAFE and the Debtors and the Special Committee, which we view as irrelevant, and certainly unduly burdensome under the timeframe of discovery for this hearing. It's unlikely to have any probative effect on the ruling on this issue.

THE COURT: Okay. So my understanding in reading topic number 8 is they just want whether there is any agreements. Right?

MS. LOHSE: We read it as broader, Your Honor.

THE COURT: All right. Mr. Thompson, are you going to be arguing this? I thought this was just, do they exist, and who knows about them, and what's the scope? That's what I -- that's the way I read this.

MR. THOMPSON: That is what we were looking for, Your Honor. But I think I can short circuit some of this, if that would be helpful.

So just by way of background, we served these topics on the 18th. On the 28th, at 10 p.m., they served their objections, which was less than 12 hours before the deposition started. They did not produce witnesses to address topics 8 or 9. At this point, I'm really not looking to multiply the depositions, and go back and make them answer a bunch of these questions. What we were really just (indiscernible) the fact that they didn't produce a witness on this topic, they won't introduce evidence about these topics at the hearing.

And so what I'm assuming we can do is, given that they wouldn't tell us about any common interest agreements with the SAFE, they won't be asserting a common interest privilege against our objections a the hearing.

Similar story for topic 9. Topic 9 has to do with their communications with third parties related to our fees. And if we're, you know, we're not able to question anyone from the Debtors about that, I hope that we won't be hearing from third parties about our fees, who received information from the Debtors, or are working on behalf of the Debtors and that kind of thing at the hearing. Unfortunately, it appears, based on the witness list filed slightly after noon today, that they do intend to call third parties, such as a witness, purported both fact and expert witness, from BDO. And then, they also want to include a purported fact and expert witness from what I understand to be an investment bank called B. Riley.

So our view of this is that if they're not willing to produce witnesses at the corporate representative level to discuss these topics, they should be precluded from introducing evidence about these topics at the hearing, and hopefully that can avoid the need for increased legal spend on things like doing 30(b)(6) depositions.

MS. LOHSE: Your Honor, if I may respond to that?

The Special Committee Counsel has been conferring with LKC for over a week now, or at least a week, on what witnesses we intend to call at the hearing on Monday, and so LKC has been informed for a while now about the Special Committees' intent. We've also been conferring on 30(b)(6)

representatives that we are willing to produce, and on what topics. And so LKC has been informed orally through the course of these conferrals on the Special Committees' intent with witnesses, so LKC was not surprised by the timing of those designations. It was simply a formality to ensure it was in writing, where we corresponded and discussed this previously.

Additionally, the rule -- the topic 9 that they've identified in their designation is essentially the same as their topic 1, but it's seeking to obtain information about communications with any third party at all. We have identified corporate representatives who are third parties to speak to topic 1 and topic 2. And so we're agreeing to it in a limited scope, and we believe that topic 9 is an unduly broad expansion of those initial two topics. So we only seek to obtain a protective order on topic 9, to the extent it goes further than what topics 1 and 2 cover. And 4.

THE COURT: Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. I apologize, I'm trying not to interrupt. I'm not very good at the virtual appearance.

With respect to my friend on the other side, I don't think that's fully accurate. I learned about this potential BDO witness yesterday, in person, during the

30(b)(6) deposition, when the witness designated to talk on topics 1 and 2, which are about our engagement letters and our success fee, was unable to answer questions about Rhodium's position on what numbers should be fed into the success fee formula. I think my question was something like, what is Rhodium's position on how much money should be allocated to energy credits for the 1% part of the success fee formula? And the answer turned out to be that the corporate representative on topics 1 and 2 was unable to answer, and that they did not have anyone to testify about that. There was no one designated to explain Rhodium's position on the success fees.

That's when my friend on the other side told me that they had been considering, and would now find someone from BDO to testify about that. So I don't think yesterday afternoon was the appropriate time for that.

THE COURT: Well, to the extent that they had --

MS. LOHSE: Your Honor, if I may?

THE COURT: Yeah, go ahead.

MS. LOHSE: Conferrals on Rule 30(b)(6)s are intended to be iterative and cooperative. And for instance, topic 2 seeks communication, discussions, negotiations, and analyses concerning the LKC success fee. One could interpret that as negotiations around the success fee, and one could also interpret that as evaluation and mathematical

formula around the success fee.

And so through the course of events in this very short, less than two-week timeframe in which we've been engaging in these 30(b)(6)s, we found that LKC wanted to cover a topic that was broader than we anticipated based on conferrals to date. It had been unclear before. And so now that the clarity has arisen, we're responding to that in turn to ensure that they get the discovery they need on the topic, and we're offering up a witness, and we're willing to provide it. This is part of the iterative process, and it's just a little bit faster under the timeframe.

THE COURT: Well, I will tell you that if your 30(b)(6) witness was unable to testify on that topic, I don't know how you're going to defend their, you know, their witness on that topic. And to the extent that now you're designating -- Are you designating one of these individuals now as a 30(b)(6)?

MS. LOHSE: Yes, Your Honor. We sent a letter to LKC about this prior to this hearing. We had five, four or five individuals represent -- designated for various topics, because these are broad and varying topics on their 30(b)(6) designations. And so now that we know a specific part of one topic they want to cover, we plan to provide a witness to speak to that. It's simply a damage and calculation, while they were questioning a witness who was prepared to

speak more from the perspective of contract negotiation.

THE COURT: All right. Well, to the extent that that person is not the --

Go ahead, Mr. Thompson.

MR. THOMPSON: I don't mean to nitpick, Your Honor. But the purported new designations we got on the 30(b)(6), if I'm looking at the right email, are from 3:15 p.m. today, less than an hour before this hearing was supposed to start, and well after the witness and exhibit deadline.

MS. LOHSE: Your Honor, it was something that was discussed yesterday. Mr. Thompson did know it was going to be a BDO representative who we designated, added to this designation. And under the timeframe of discovery in this matter, it seems that allowing time for the merits, rather than strict enforcement of procedure, is probably allowing for further discovery when we're offering it. Telling LKC we can have a witness prepared on this topic promptly seems like thee -- seems like a reasonable route to take here.

THE COURT: All right. Well, I'm not -- So if you can present them for deposition before the start of the hearing on Tuesday, and giving, you know, LKC sufficient time to take the deposition, I'll let that happen. And then we'll go forward, and then at the hearing we'll determine whether that person can testify or not. But I'm going to go

ahead and allow you to take the deposition of that person. And I guess he's going to produce an expert report that -- that, and you provide all of the information regarding the expert report, what he was given, etc.

So let's go -- Going back to the motion for protection --

MS. LOHSE: Your Honor, back to the motion for protection. On topic 9, we are willing to produce witnesses, and have, on the topics to the extent they pertain to communications between Debtors and LKC. But any third party is incredibly broad and unnecessary. And so to the extent third parties are relevant, they fall within the scope of what we have already provided. This is simply preventing overreach.

THE COURT: Well -- well, any other third party may be too broad, but I'm going to -- I'm going to not grant it with respect to -- I think topic 8 is not an issue at this point. It doesn't add up here that there is any witness from the SAFE AG that's going to be testifying at the hearing. Is that correct?

MS. LOHSE: Correct, Your Honor.

THE COURT: Okay. So I think topic 8 is not an issue. With respect to topic 9, any party is too broad. But I am going to -- I am going to make you produce it with respect to the parties, you know, the parties who have been

active in the case, the SAFE AG, the other objectors, the Committee, those parties, yes. But not any other party, but parties who have been active in the case.

And I think that's probably, Mr. Thompson, what you really meant here, not anybody off the street.

MR. THOMPSON: Right. We don't anticipate that they've been speaking to random people off the street.

THE COURT: Right.

MR. THOMPSON: Really, we're just trying to get at whoever you've been talking to about our success fee, whoever's helping you calculate it, or anything like that. That's what we want to know.

THE COURT: Right. Yeah. And obviously, to the extent that, you know, you talk to other people about the success fee in a material fashion, then I think those would need to be produced. And then, you can have them do that.

MS. LOHSE: Understood.

THE COURT: All right. Any other issues?

MS. LOHSE: Your Honor, we did want to make an oral request today for a witness to appear remotely to testify. Our witness from B. Riley will only have limited testimony, and he lives in Virginia. And so we would like to request the ability for him to testify remotely, rather than fly in in person.

THE COURT: All right. What is he testifying on?

MS. LOHSE: A valuation of the company as it pertains to the success fee.

MR. THOMPSON: Your Honor, they have not provided an expert report in connection with this. They didn't identify him as an expert, they did put expert next to his name on the witness and exhibit list, which they filed a little bit after the deadline today. They've offered him up for a one-hour remote deposition on Sunday. We're preparing for a hearing on Monday. This is too little, too late.

THE COURT: Yep.

MR. THOMPSON: And the idea that he would get up and testify on valuation when it is a fundamental issue that they should have brought up during the period that we were taking discovery -- We've taken, like, four, or -- I think, four different depositions. I mean, this is something that they are springing -- They are attempting to do trial by ambush, and I don't think that that should be permitted, Your Honor.

THE COURT: Yeah, unless you can produce his report, and make him available for deposition tomorrow, I think this is a situation where it's too late, you know? So if you can produce his report and make him available for deposition tomorrow afternoon, so that they have an opportunity to study and maybe get their own person to look at it -- You know, this is not intended to be a trial by

ambush.

MS. LOHSE: Your Honor, we did produce his report as part of our exhibit. It's listed in our exhibit list, and we did supplement our documents earlier today with that report.

MR. THOMPSON: After the deadline. It doesn't meet the requirements of Rule 26. I don't think that they've met the requirements, Your Honor. And frankly, it was never -- Nobody ever said ahead of today's deadline that B. Riley was going to be an expert, testifying in an expert capacity. They are the hired investment banker. They mentioned the possibility of B. Riley testifying, that, you know, they might be a fact witness about something. But telling us that they can testify for one hour remotely on Sunday before a hearing that's on Monday, that's just --

THE COURT: Yeah, that's not acceptable. So make him available for a deposition tomorrow, if that's the case. And if the expert report is there already, then it's there. So make him available for a deposition tomorrow, if you want to.

MS. LOHSE: Okay. Thank you, Your Honor.

THE COURT: All right. Anything further?

All right. Okay. So we'll be in recess until tomorrow morning.

MR. THOMPSON: Thank you, Your Honor.

MS. LOHSE: Oh, Your Honor -- I'm sorry, just one more thing.

THE COURT: Yes. Yes.

MS. LOHSE: We believe that the testimony for this hearing is likely to last of full day, and right now, the hearing is set to begin on Monday, at 2 p.m. And so for scheduling purposes, we wanted to raise this issue with you in advance, so we could schedule accordingly.

THE COURT: Well, my other hearing doesn't start until 9:00 the next morning, so we can go as late as you want.

MS. LOHSE: Okay.

MR. THOMPSON: Your Honor, I think our case in chief is going to be an hour. We're going to focus on what's relevant. I'm not sure what they're planning on doing on Monday, but I think we're probably going to be an hour.

THE COURT: Yeah, no, so just -- I mean, I was intending on going as late as need be.

MS. LOHSE: Understood. Thank you.

THE COURT: And you know, I would have some time the next day. I would have to squeeze it in, but I would probably have a couple of hours the next day.

And you know, I'm really focused on, you know, what does the contract say, and evidence regarding that.

All right. Okay. So we'll be in recess until tomorrow morning. Thank you.

MR. THOMPSON: Thank you, Your Honor.

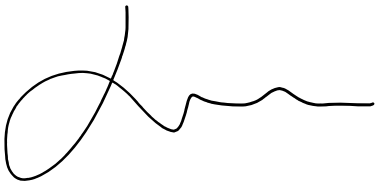
MS. LOHSE: Thank you, Your Honor.

MR. WOLFSHOHL: Thank you, Your Honor.

(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.



Lindsay Peacock

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 31, 2025

Exhibit 5
to B&T's Witness and Exhibit List for 6/4/26 Hearing

ECF No. 2374 - Filed Under Seal

Exhibit 6
to B&T's Witness and Exhibit List for 6/4/26 Hearing

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 SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE AND BARNES & THORNBURG LLP
[Relates to ECF Nos. 2302, 2303, 2337, 2338, 2373, and 2374]

Lehotsky Keller Cohn LLP ("***LKC***") files this supplement brief 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] ("***Sanctions Motion***") and respectfully states as follows:

1. At the status conference on the Sanctions Motion, the Special Committee argued that its "response to the sanctions motion[] raised threshold legal issues[:] Specifically, whether or not the sanctions notion is barred by the *ASARCO* ruling and the *ASARCO* opinion in the Supreme Court. Hearing Tr., Apr. 30, 2026, at 10:4-9 (citing *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015)). The Special Committee proposed "an oral argument on the *ASARCO* issue." *Id.* at

[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.

10:17-18. The Court obliged, setting a non-evidentiary hearing and permitting "any additional pleadings that [the parties] want [the Court] to consider." *Id.* at 13:20-14:3. LKC submits this supplement brief addressing the purported "threshold legal issues." *Id.* at 10:4-9.

2. The Special Committee's contention that *ASARCO* bars the Sanctions Motion is both new and contradicted by precedent. Previously, in its response brief, the Special Committee asserted only that *ASARCO* affects LKC's alternative argument for fees under Section 328, not that *ASARCO* affects sanctions. *See* ECF No. 2338 at 29 ("*ASARCO* bars LKC's attempt to collect attorneys' fees and expenses . . . *under 11 U.S.C. § 328*." (emphasis added). The brief did not argue that the "sanctions [m]otion is barred by the *ASARCO* ruling." Hearing Tr., Apr. 30, 2026, at 10:7-9. To the contrary, the brief expressly acknowledged that this Court has "inherent authority" and "discretion" to impose sanctions, ECF No. 2338 at ¶¶ 35-38, and simply took issue with whether the Special Committee acted in bad faith, *id.* ¶ 46, a plainly factual question.

3. Likewise, the response brief filed by Barnes & Thornburg LLP did not argue that *ASARCO* affects the availability of sanctions. Citing the opinion in only one paragraph, Barnes & Thornburg argued only that "LKC seeks sanctions instead" of "accept[ing] the rule from *ASARCO*," "the rule that costs incurred defending a fee application are not recoverable under 11 U.S.C. § 330(a)(1)." ECF No. 2337 at ¶ 3. That is irrelevant because LKC's Sanctions Motion does not rely on Section 330. As Barnes & Thornburg recognized, the Sanctions Motion turns on "bad faith or abuse of the judicial process," *id.*, which require an assessment of the "evidence," *id.* at ¶¶ 5, 22, 26, 56, 72 (which Barnes & Thornburg then disregards, *see infra* ¶ 9).

4. Regardless, *ASARCO* does not bar a sanctions motion. *ASARCO* itself notes that its interpretation of Section 330 does not foreclose sanctions for "frivolous objections to fee applications" and "bad-faith litigation conduct." 576 U.S. at 134 n.4.

5. Accordingly, as Judge Rodriguez explained: "This Court does not read the holding in *Baker Botts* [*v. ASARCO*] as precluding this Court's ability to award attorneys' fees, including fees incurred defending a fee application, as a sanction for bad faith conduct under § 105(a). This Court, as well as the Fifth Circuit, has upheld a bankruptcy court's authority to award attorney's fees as a sanction under § 105(a) since the *Baker Botts* decision." *In re Trevino*, 648 B.R. 847, 905 (Bankr. SD Tex 2023). *ASARCO*'s "analysis focused on the express language of § 330(a)(1)," and "the Supreme Court's rationale in limiting fee awards under § 330(a)(1) is highly dependent on the specific limiting language 'services rendered' that appears in the statute." *Id.* (citation and internal quotation marks omitted).

6. Moreover, the Supreme Court has made clear that "a court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. Nasco*, 501 U.S. 32, 45-46 (1991) (citation and internal quotation marks omitted). Bad faith is an exception to the "so-called 'American Rule' prohibit[ing] fee shifting in most cases." *Id.* at 45. Courts "may assess attorney's fees" when "a party 'shows bad faith by delaying or disrupting the litigation.'" *Id.* at 46 (quoting *Hutto v. Finney*, 437 U.S. 678, 689, n.14 (1978)). Contrary to the Special Committee and Barnes & Thornburg's position on *ASARCO*:

> The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy."

Id. (quoting *Hutto*, 437 U.S. at 689, n.14) (brackets in original).

7. The Fifth Circuit has similarly recognized that "the bankruptcy court has numerous tools by which to sanction the conduct of individuals," including "'inherent powers'" and statutory authorities, such as the All Writs Act, 28 U.S.C. § 1651, and 11 U.S.C. § 105. *In re Carroll*, 850

F.3d 811, 816 (5th Cir. 2017) (quoting Scaife v. Associated Air Ctr. Inc., 100 F.3d 406, 411 (5th Cir. 1996)). In *Carroll*, the Fifth Circuit affirmed a bankruptcy court's order requiring payment of attorneys' fees incurred in "responding to certain instances of . . . bad faith [and] . . . vexatious conduct," after concluding that the bankruptcy court's findings were not clearly erroneous. *Id.*; *see also Ratliff v. Stewart*, 508 F.3d 225, 235 (5th Cir. 2007) (holding that once the vexatiousness requirement is met, "*all fees thereafter bec[o]me recoverable*") (emphasis added); *In re Rodriguez*, 652 B.R. 750, 764 (Bankr. S.D. Tex. 2023) (noting sanctions "include actual damages incurred and reasonable attorney's fees" and courts "may exercise discretion and judgment in allocating litigation expenses, and may take into account its overall sense of a suit") (citation and internal quotation marks omitted).

8. The Special Committee's newest position lacks support and, if adopted, would invite widespread abuse. Under the Special Committee's view, it could engage in bad faith behavior in fee disputes with impunity, rendering the Court powerless to impose sanctions.

9. There is no need to envision a worst-case scenario. The facts of this case tell a grim tale—with the Special Committee and Barnes & Thornburg repeatedly and maliciously defaming LKC, peddling a fiction to the Court about a purported "agreed-upon" tax allocation that did not exist and that Debtors later admitted was "not connected to LKC at all," threatening a frivolous fiduciary-duty claim, actually filing that claim and doing it publicly for maximum damage, requesting sanctions for LKC's discovery requests, failing to appear for a deposition, failing to produce documents specifically ordered by this Court, engaging in expert ambush, and refusing to pay the fees ordered by this Court until LKC moved for contempt. *See* ECF No. 2374 at 3-4 (citations omitted). Under the Special Committee's view, this Court is powerless to stop any of that, including the fraudulent tax canard, *see also id.* ¶¶ 12-17.

10. Nor is the Special Committee's more limited argument meritorious. As LKC previously explained, *ASARCO*'s interpretation of Section 330 does not apply to Section 328. *See* ECF No. 2302 at 22 n.4; ECF No. 2373 at ¶ 47. The Court's textual analysis of the phrase "actual, necessary services rendered" in Section 330, *see ASARCO*, 576 U.S. at 128 (citation and quotation marks omitted), does not control the application of a different provision lacking that phrase.

11. LKC respectfully requests that this Court grant the Sanctions Motion.

Dated: May 28, 2026
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl (TX Bar No. 24038592)
Michael B. Dearman (TX Bar No. 24116270)
PORTER HEDGES LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6000
Facsimile: (713) 226-6248
jwolfshohl@porterhedges.com
mdearman@porterhedges.com

Counsel to Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I hereby certify that, on May 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

Exhibit 7
to B&T's Witness and Exhibit List for 6/4/26 Hearing

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 SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE AND BARNES & THORNBURG LLP

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 Supplemental Brief in Support of Its Motion for Sanctions [ECF No. 2389] (the "Sanctions Motion") filed by Lehotsky Keller Cohn LLP ("LKC").

I. INTRODUCTION

1. The Court set a non-evidentiary hearing for June 4, 2026 to resolve threshold legal questions, including whether *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015), bars the relief requested in LKC's Sanctions Motion. LKC's Supplemental Brief largely avoids that question, devoting most of its five pages to reciting factual allegations and arguing that the Special Committee's *ASARCO* defense is somehow "new." Supplemental Brief ¶¶ 2–3, 6, 8–9. The Court should not be distracted by these diversions. LKC's Sanctions Motion seeks more than $1.5

[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.

million in fees and expenses that LKC incurred in defending its own Fee Application. Whether that relief is labeled "sanctions" or "additional compensation under Section 328," it remains fee-shifting for the cost of fee-defense litigation—precisely what *ASARCO* prohibits. The Sanctions Motion is barred as a matter of law, and the Court need not consider the underlying facts (which have already been developed and fully presented in connection with LKC's motion) to resolve this threshold legal issue.

2. LKC's Supplemental Brief fails to support the relief sought in the Sanctions Motion for three independent reasons. ***First***, LKC's contention that the Special Committee's *ASARCO* arguments are "new" is belied by the record: The Special Committee raised *ASARCO* squarely in its Response [ECF No. 2338] (the "Response"). ***Second***, *ASARCO* bars the specific relief LKC seeks—fee-shifting outside the fee application process—through an after-the-fact motion that is functionally indistinguishable from the fee-defense recovery the Supreme Court held impermissible. ***Third***, LKC's alternative Section 328 argument fails because that provision governs compensation arrangements for estate professionals; it does not authorize fee-shifting sanctions against estate fiduciaries and their counsel.

II. ARGUMENT

A. LKC's characterization of the Special Committee's *ASARCO* arguments as "new" is meritless.

3. LKC asserts that the Special Committee's *ASARCO* argument is "new." Supplemental Brief ¶ 2. This is wrong. In its Response, the Special Committee dedicated Section III(C), spanning pages 29 to 31, to arguing that "*ASARCO* bars LKC's attempt to collect attorneys' fees and expenses for defending its Fee Application under 11 U.S.C. § 328." ECF No. 2338 at 29–31. The Response explained that the Supreme Court "held that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee

applications," and argued that LKC's request was a "transparent attempt at circumventing" that principle, reasoning that *ASARCO*'s holding "applies equally to Section 328." ECF No. 2338 ¶¶ 85–87.

4. LKC selectively quotes a single sentence from the Response to suggest the Special Committee limited *ASARCO* to Section 328. This is nitpicking, not legal argument. The Response addressed the Sanctions Motion in its entirety; the common denominator across all of LKC's theories is fee-shifting for the cost of defending a fee application, and the Special Committee's invocation of *ASARCO* was directed at that common denominator.

5. LKC further claims that the Special Committee "expressly acknowledged" inherent authority and merely "took issue with whether the Special Committee acted in bad faith." Supplemental Brief ¶ 2. But acknowledging that a court possesses inherent authority in the abstract does not concede that such authority may be deployed to accomplish what *ASARCO* expressly forbids. The Special Committee raised both legal defenses (including *ASARCO*) and merits defenses (including good faith), and they are not mutually exclusive. LKC's effort to recast the Special Committee's *ASARCO* argument as "new" is designed to divert the Court from the threshold legal question it set the June 4 hearing to resolve.

B. *ASARCO* bars LKC's after-the-fact sanctions motion because it seeks the same prohibited relief.

6. Contrary to LKC's accusations, the Special Committee does not argue that *ASARCO* categorically bars *all discrete sanctions motions* in bankruptcy cases; the Court unquestionably retains its inherent authority to sanction egregious, bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991). Rather, the Special Committee's argument is narrower and more targeted: *ASARCO* bars *this particular* Sanctions Motion because its sole

purpose and effect is to shift fee-defense costs incurred by an estate-retained professional onto estate fiduciaries who exercised their statutory right to object under Section 330(a)(2).

7. In *ASARCO*, the Supreme Court held that Section 330(a)(1) "does not permit bankruptcy courts to award compensation" for fee-defense litigation because it "does not explicitly override the American Rule with respect to fee-defense litigation." 576 U.S. at 135. The Court grounded its holding in 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." *Id.* at 126 (quoting *Hardt v. Reliance Std. Life Ins. Co.*, 560 U.S. 242, 252–53 (2010)).

8. LKC's Supplemental Brief seizes on *ASARCO*'s footnote 4, which observed that the Court's interpretation of Section 330 "does not foreclose sanctions for 'frivolous objections to fee applications' and 'bad-faith litigation conduct.'" Supplemental Brief ¶ 4; *ASARCO*, 576 U.S. at 134 n.4. But this footnote does not create an open-ended authorization for estate-retained professionals to recover all their fee-defense costs simply by invoking the word "sanctions." It acknowledges that courts retain inherent power to police genuinely bad-faith conduct through narrowly tailored sanctions; it does not enable estate-retained professionals to recover the precise relief that *ASARCO* bars by bringing a sanctions motion after prevailing on a fee application. If LKC's reading were correct, *ASARCO* would be meaningless: Any prevailing applicant could repackage a request for its fee-defense costs as a sanctions motion by alleging "bad faith," and the American Rule would apply only to professionals who lose their fee disputes. That result would be both absurd and contrary to the Supreme Court's express holding.

9. Post-*ASARCO* authority supports rejecting creative attempts to work around ASARCO's prohibition. For example, in *In re Boomerang Tube, Inc.*, 548 B.R. 69 (Bankr. D. Del. 2016), the court sustained the United States Trustee's objection to fee-defense provisions in

professionals' retention applications, holding that Section 328(a), "like section 330, is not a 'specific and explicit' statute which 'authorize[s] the award of a reasonable attorney's fee,' 'fees,' or 'litigation costs.'" *Id.* at 72. LKC's use of an after-the-fact sanctions motion rather than a contractual fee-defense provision does not change the analysis.

10. LKC's reliance on *In re Trevino*, 648 B.R. 847, 905 (Bankr. S.D. Tex. 2023), does not alter this conclusion. *Trevino* addressed sanctions for bad-faith conduct under Section 105(a) in a factual context distinct from this case. The Special Committee does not argue that *ASARCO* eliminates the Court's inherent power to sanction bad-faith in all contexts—only that where, as here, the movant is an estate professional seeking to recover fees incurred in its own compensation dispute, the Court must scrutinize whether the "sanctions" label is being used to circumvent what the Supreme Court has prohibited.

11. The policy consequences of adopting LKC's position underscore the correctness of the Special Committee's argument. If estate fiduciaries face personal fee-shifting liability every time they exercise their statutory right to scrutinize fee applications under Section 330(a)(2), independent directors, committee members, and other stakeholders will be deterred from raising even legitimate objections (or even serving in a fiduciary capacity)—undermining the fee-review process that Congress established. The Special Committee's objection was filed in accordance with LKC's own Court-approved engagement letter, which expressly provided that fee disputes "shall be resolved by the Bankruptcy Court." ECF No. 835 at 15. That LKC now does not like what it agreed to is irrelevant.

C. LKC's Section 328 argument fails because Section 328 does not authorize fee-shifting against estate fiduciaries.

12. LKC's Supplemental Brief reasserts its alternative argument that the Court should award LKC additional compensation under Section 328(a), contending that *ASARCO*'s "textual

analysis of the phrase 'actual, necessary services rendered' in Section 330" does not "control the application of a different provision lacking that phrase." Supplemental Brief ¶ 10. This argument fails for multiple independent reasons.

13. ***First***, Section 328(a) does not provide the fee-shifting authority LKC seeks. Section 328(a) permits employment of professionals "on any reasonable terms and conditions," and allows post-engagement compensation adjustments only if the original terms "prove to have been improvident in light of developments not capable of being anticipated." 11 U.S.C. § 328(a). The statute says nothing about fee-shifting, prevailing parties, or adversarial litigation. As the *Boomerang Tube* court explained, Section 328's "text does not refer to the award of defense fees to a prevailing party," and, like Section 330, it is not a "specific and explicit" exception to the American Rule. 548 B.R. at 72.

14. ***Second***, the fees LKC seeks are not for services rendered to the Debtors. Section 328(a) "permits only approval of fees or expenses for performing services for the" trustee or committee. *Boomerang Tube*, 548 B.R. at 78. Because the fees LKC seeks were incurred in defending its own Fee Application—*i.e.*, "for services performed for the professionals, not for the [applicable] Committee"—Section 328(a) does not authorize the recovery LKC seeks. *Id.* at 75 (concluding fee-defense provisions were "not reasonable terms for the employment of Committee Counsel because they [did] not involve any services for the Committee" but rather were "for services performed by Committee Counsel only for their own interests"); *see also In re Capitol Litho Printing Corp.*, 573 B.R. 771, 776 (Bankr. D. Ariz. 2017) (denying fee-defense costs because such work "in no way benefitted the estate, but benefitted only the [professional]").

15. ***Third***, even assuming Section 328(a) could authorize a post-engagement compensation adjustment in this context, nothing in the statute contemplates or provides for estate

fiduciaries or their counsel to bear such a compensation obligation. By its plain terms, Section 328(a) authorizes "[t]he trustee, or a committee appointed under section 1102 of this title," to "employ or authorize the employment of a professional person under section 327 or 1103 . . . on any reasonable terms and conditions of employment." 11 U.S.C. § 328(a). The statute does not speak to, much less impose any obligation upon, third-party estate fiduciaries such as the Special Committee members, or their separately retained counsel such as Barnes & Thornburg. LKC's Sanctions Motion seeks to conscript the Special Committee and Barnes & Thornburg into paying LKC's fee-defense costs, but Section 328 provides no mechanism for imposing compensation obligations on them; to do so would be contrary to the statute's plain meaning and structure, and would effectively transform a compensation-adjustment provision into a sanctions mechanism—something Congress plainly did not intend.

16. ***Fourth***, LKC cannot satisfy Section 328(a)'s demanding "improvidence" standard. The Fifth Circuit has recognized that Section 328(a) "creates a 'high hurdle'" requiring the movant to prove "that the subsequent developments were 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). Here, LKC's own revised engagement letter expressly contemplated that the parties might be unable to agree on the success fee and provided that "such dispute shall be resolved by the Bankruptcy Court." ECF No. 835 at 15. A fee dispute was not merely foreseeable—it was expressly anticipated as a possibility and contractually addressed. LKC cannot claim that the very fee dispute mechanism it bargained for was "incapable of being anticipated."

17. LKC's Supplemental Brief attempts to distinguish *Boomerang Tube* by asserting that it addressed pre-approved fee-defense provisions rather than after-the-fact compensation adjustments. Supplemental Brief ¶ 10 (citing ECF No. 2374 ¶ 47). That is a distinction without a

difference. Whether fee-defense costs are sought through a pre-approved provision or through an after-the-fact motion, the result is the same: The estate bears the cost of a professional's fee-defense litigation. Indeed, an after-the-fact attempt is more objectionable because it denies the estate and the Court the opportunity to evaluate and consent to such terms at the outset of the engagement.

III. CONCLUSION

18. The threshold legal issue before the Court is straightforward. LKC's Sanctions Motion seeks fee-shifting for the cost of defending its own Fee Application. That is the very relief *ASARCO* held impermissible, and LKC cannot circumvent the American Rule by relabeling that relief as "sanctions" or a "Section 328 adjustment." LKC's arguments in its Supplemental Brief to the contrary are meritless.

19. For the foregoing reasons, the Special Committee respectfully requests that the Court find that LKC's Sanctions Motion is barred by *ASARCO* and deny the Sanctions Motion in its entirety.

[Remainder Intentionally Left Blank]

Dated: May 29, 2026

Respectfully Submitted,

BAKER BOTTS L.L.P.

/s/ Travis A. McRoberts

Thomas E. O'Brien (TX 24046543)
Travis A. McRoberts (TX 24088040)
Kevin Chiu (TX 24019723)
2001 Ross Avenue, Suite 900
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
Email: tom.obrien@bakerbotts.com
travis.mcroberts@bakerbotts.com
kevin.chiu@bakerbotts.com

-and-

Matthew G. Sheridan (TX 24088404)
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: (713) 229-1568
Email: matthew.sheridan@bakerbotts.com

Counsel for David L. Eaton and Spencer Wells

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 29, 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 8
to B&T's Witness and Exhibit List for 6/4/26 Hearing

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHER DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	§
	§
RHODIUM ENCORE LLC, et al.,	§
	§
Debtors,	§
	§
	§
	§

****

CONFIDENTIAL

ORAL AND ZOOM DEPOSITION OF

CHARLES TOPPING

JUNE 2, 2025

****

The Oral and Zoom Deposition of CHARLES TOPPING, produced as a witness at the instance of the SAFE AD HOC GROUP, and duly sworn, was taken in the above-styled and numbered cause on JUNE 2, 2025, from 12:06 p.m. to 2:59 p.m., before Nicole A. Hatler, CSR No. 11275 in and for the State of Texas, reported by machine shorthand, in their respective locations via Zoom, pursuant to the Texas Rules of Civil Procedure.

---oOo---

APPEARANCES ALL REMOTELY VIA ZOOM
For the AD HOC GROUP of SAFE PARTIES:
KATHERINE PORTER
KAREN YANG
MITCHELL HURLEY
SARAH SCHULTZ
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
(212) 872-7467
Kporter@akingump.com
SSchultz@AkinGump.com
For Debtors:
ELIZABETH BRANNEN
JOHN STOKES
BRIDGET ASAY
Stris & Maher LLP
17785 Center Court Drive N., Suite 600
Cerritos, CA 90703
(213) 995-6809
Ebrannen@stris.com

For Lehotsky Keller Cohn:

JOSHUA WOLFSHOHL
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, TX 77002
(713) 226-6695
Jwolfshohl@porterhedges.com
For the Special Committee:
PAIGE LOHSE
Barnes & Thornburg LLP
1 N Wacker Drive
Chicago, IL 60606-2833
(312) 214-8301
Paige.Lohse@btlaw.com

For Imperium:
RHONDA MATES
Streusand Landon Ozburn Lemmon LLP
1801 S Mopac Expressway, Suite 320
Austin, TX 78746
(512) 220-2689
For DLT Data Center 1 LLC:
MICHAEL FOX
THOMAS FLEMING
Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
(212) 451-2277
Mfox@olshanlaw.com
Also present:
Molly Novin
Mitch Hurley

INDEX

PAGE
Appearances.....2

WITNESS:

CHARLES TOPPING

Examination by MS. PORTER.....6

Reporter's Certificate.....109

E X H I B I T S

PAGE
SAFE AD HOC GROUP'S
Exhibit 1 Declaration of Mr. Topping dated.....13
May 14, 2025

Exhibit 2 Transcript excerpt of March 19, 2025.....39
hearing
Exhibit 3 Redline of Letters - SAFE AHG Exhibit....61
Exhibit 4 August 2024 engagement letter.....65
Exhibit 5 September 2024 engagement letter.....65
Exhibit 6 July invoice.....65
Exhibit 7 LKC's reply brief.....89

CHARLES TOPPING
sworn as a witness
testified as follows:

THE REPORTER: Good morning. My name is Nicole Hatler, Texas Certified Shorthand Reporter No. 11275. This deposition will be stenographically reported.

Q. EXAMINATION BY MS. PORTER: Good afternoon, Mr. Topping. Thank you for your time today. My name is Katherine Porter. I'm an attorney with Akin Gump. We represent the SAFE Ad Hoc Group in connection with the Rhodium bankruptcy proceedings.

Could you, again, state your name for the record, please?

A. Charles Topping.

Q. And what is your role with the debtors?

A. I am the secretary and general counsel.

Q. Have you been deposed before, Mr. Topping?

A. No.

Q. I suspect, given that you're an attorney, you know the rules of the road, but just to reiterate, your answers and my questions are all being recorded. For the clarify of the record, if you would wait until I finish my questions before answering, that would be very helpful.

Is that all right?

A. Okay.

Q. Please give audible answers instead of shaking your head or nodding your head, as those gestures cannot be recorded.

A. Okay.

Q. And if at any time you'd like to take a break, that's fine. Just let me know. We are, however, trying to keep this deposition very short. So we're going to try to minimize disruptions and interruptions, if that's okay.

A. Okay.

Q. And if at any point during the deposition your attorney objects to one of my questions, I would ask that you go ahead and answer it, unless they specifically instruct you not to answer the question.

Is that okay?

A. Okay

Q. Great. Are you aware of any reason that you may not be able to answer any questions truthfully and completely?

A. I am not.

Q. How did you prepare for your deposition today?

A. I reviewed --

MS. BRANNEN: I --

THE WITNESS: -- my declaration.

Q. BY MS. PORTER: Which declaration was that?

A. I reviewed -- I reviewed both -- both my original declaration filed in connection with the original retention application, as well as the more recent one.

Q. And by the more resent one, you mean the one dated -- give me a moment -- May 15th, 2025 --

A. Yes.

Q. -- May 14th, 2025?

A. The -- yeah. The one filed last month.

Q. Did you meet with counsel?

A. Yes.

Q. Who was present at those meetings?

A. I met with Elizabeth Brannen, I think that Bridget Asay may have been present for part of that time, and also John Stokes may have been present for part of that time, as well.

Q. Did you meet with LKC?

A. To prepare for the deposition, no.

Q. Did you meet with counsel to LKC?

A. No.

Q. Did you -- aside from the individuals you identified, have you discussed this deposition with anyone else?

A. Have I discussed this deposition with anyone else? The only other discussion I had about the deposition was just to inform Chase Blackmon that I would be -- you know, as to the date and time of the deposition. He -- he is the person I report to.

Q. And what is his role?

A. He is the CEO.

Q. Of the debtors?

A. Yes -- oh, yeah.

Q. Did you review any documents other than your original declaration and the May 14, 2025, declarations?

A. I reviewed the retention applications, the original retention application as well as the amended -- the updated retention application for LKC.

Q. Did that include their attachments?

A. Yes.

Q. Did those refresh your recollection in any way?

A. Probably.

Q. Did you do anything else to prepare for your deposition today?

A. I -- I did, at one point, review the pleadings related to the updated retention application. So the briefs that were filed by the parties. Let me think. I think I reviewed some of the invoices that LKC had, but -- the invoices that were produced to Akin -- the

LKC pre-petition invoices, I reviewed a couple of those.

Q. Okay. Thank you.

Mr. Topping, what is your educational background?

A. I have a bachelor of arts degree, and I have a JD degree.

Q. And where did you go to school?

A. I went to college at the University of Dayton where I received a bachelor of arts degree in philosophy and history, and then I went to law school at Notre Dame Law School where I received my JD.

Q. And are you still a practicing attorney?

A. Yes.

Q. And what would you describe is your area of expertise in the law, if any?

A. I -- I don't -- I'm not certified as an expert in any particular area of law.

Q. Do you have any background in bankruptcy law?

A. No.

Q. Did you have any experience with bankruptcy prior to Rhodium filing for bankruptcy?

A. Experience -- what do you mean by experience with bankruptcy?

I'm not sure I understand what you're referring to.

Q. Have you ever practiced bankruptcy law prior to Rhodium's filing for bankruptcy?

A. No. I have never practiced bankruptcy law before.

Q. And how long have you worked as general counsel for Rhodium?

A. I've been with Rhodium since May 1st of 2021.

Q. Have you previously represented Rhodium in any legal capacity?

A. In court --

Q. Serve as a lawyer in any way --

A. Like -- like filing an appearance as an attorney?

Q. Right. Did you -- were you their counsel prior to being their general counsel?

A. I did do legal work that -- when I was at Fornaro Law -- Rhodium was a client Fornaro Law before I joined Rhodium.

Q. And is that litigation work or corporate work?

A. I don't think there was any litigation involved with that representation. I think it was all transactional work, corporate transactional.

Q. Have you been interviewed before in these Chapter 11 cases?

A. Have I been interviewed? No.

Q. Okay. I believe that you're aware that this deposition is about the debtor's application for an updated order authorizing the retention of Lehotsky Keller & Cohn; is that right?

Are you aware that that's the topic of today's deposition?

A. Yes. Yes, I am.

Q. And throughout this deposition, when I refer to this application, I'll be referring to the application for an updated order that was filed in March of 2025 at ECF 835. **

Will you know what I mean when I refer to the application?

A. Yes, uh-huh.

Q. Likewise, if I ever refer to the original application, by that I'll be meaning the -- the original application to retain LKC that was filed at the state of these bankruptcy cases in September of 2024.

Are you -- do you agree with me on those terms?

A. Yes. Understood.

Q. And finally, I'll refer to Lehotsky Keller & Cohn as LKC, just to make it shorter.

A. Okay.

Q. You'll know what I mean?

A. Yes.

Q. Good. Thank you.

And we've previously agreed with your attorneys that, the fact that you're here for today's deposition on this topic, will not be cited as a reason that you should not appear for a different deposition on different topics in these bankruptcy cases.

Are you aware of that agreement?

A. Yes.

Q. Thank you. Let's turn now to your declaration that was submitted in connection with -- with the -- with the application. It's dated May 14th, 2025, and it was submitted in further support of modifying the order authorizing the retention of LKC; is that right?

A. I don't -- I don't have it in front of me. Is there something I should be referring to or --

Q. Sure.

MS. PORTER: Karen, why don't you pull that up. That will be our first exhibit.

(Exhibit 1 was marked for identification.)

MS. PORTER: Thank you.

So this -- let's go to the date.

Q. BY MS. PORTER: So this is your May 14, 2025, declaration that you've submitted in further support of modifying the order authorizing the retention of LKC; is

that right?

A. It -- it does appear to be -- I haven't looked at every single page, but it does appear to be that declaration.

Q. Thank you.

This declaration was submitted in connection with two replies in further support of the application, one filed by LKC and one filed by the debtors; is that -- is that right?

A. Yes. It was attached to two pleadings, one was the one that was filed by LKC, and the other one was the one that was filed by the debtors.

Q. But it's the same declaration in both filings; is that right?

A. Yes.

Q. Who authorized you to give this declaration bound both for the debtors and LKC's reply briefs?

A. I'm sorry. Who authorized -- I didn't get the question.

Q. Who authorized you to give this declaration to be filed with both the debtors and LKC's reply briefs?

A. I -- I did authorize the -- the -- the declaration to be provided to LKC --

Q. You would have --

A. -- in connection with their in connection with

their --

Q. Sorry. I --

A. What's that?

Q. -- didn't mean to speak over you.

I said, are you the person who provided that authorization?

A. Yes. I -- I did provide that authorization. Correct.

Q. Did the board provide any authorization regarding this declaration?

MS. BRANNEN: And I'll instruct you to answer that yes or no and take it in steps to preserve privilege.

THE WITNESS: The -- yes.

Q. BY MS. PORTER: The full board?

A. Yes.

Q. Did the full board authorize you to submit this declaration in connection with the debtors' reply brief?

A. Yes.

Q. And did the full board also authorize you to submit this declaration with LKC's reply brief?

MS. BRANNEN: Objection. Form.

THE WITNESS: I -- I believe that the authorization encompassed that.

Q. BY MS. PORTER: Did the debtor's chief

restructuring officers provide any authorization to submit this declaration?

A. Did the debtor's -- I'm sorry?

Q. CRO, chief restructuring officer.

A. I don't recall.

Q. Do you recall speaking with the debtors' CRO about this declaration?

A. I don't recall having a discussion with the CRO about the declaration.

Q. Do you recall having a discussion with the debtors' CRO about entering into an amended engagement letter in March of 2025?

A. There may have been a discussion.

Q. But you don't --

A. Don't recall -- I don't recall specifically.

Q. So you don't know, one way or the other, if that discussion happened?

A. There -- there may have been one. I don't recall, specifically.

Q. Did you discuss the declaration with a special committee for the debtor?

A. I may have.

Q. You don't recall, one way or the other?

A. No.

Q. Who wrote the first draft of your declaration?

A. I supervised the creation of the declaration.

Q. But who typed out the first draft?

A. I don't know.

Q. It wasn't you?

A. I reviewed it and -- and approved it. I -- I supervised the formation of the declaration, the construction and phraseology. I don't know who actually put fingers to the keyboard, if that's your question.

Q. Was it somebody from the company?

A. Counsel assisted me with the creation of this declaration.

Q. And counsel from which firm?

A. Stris & Maher.

Q. Did LKC receive drafts of your declaration before it was finalized?

A. I'm not aware of any -- any anything along those lines.

Q. Did LKC receive -- did LKC's counsel receive any draft of this declaration before it was finalized?

A. I'm not aware of that.

Q. Did you discuss this declaration with LKC before it was finalized?

A. No.

Q. Are you aware of whether your counsel discussed this declaration with LKC before it was finalized?

A. I'm not aware.

Q. Are you aware of whether any representative of the debtor discussed this declaration with LKC or LKC's counsel before it was finalized?

A. No.

Q. So conversations may have happened. You just don't know, one way or the other?

A. I'm not aware of any.

Q. They could have happened, but you just don't know, one way or the other?

MS. BRANNEN: Objection. Form.

Q. BY MS. PORTER: Are you aware that no -- are you -- do you know whether or not those conversations happened?

A. I don't know.

Q. LKC filed your declaration with its reply one day before the debtors' filed its reply; is that right?

A. Yes. That sounds right.

Q. How did LKC obtain your declaration?

A. It at some point it was provided to them after I had signed it.

Q. By whom?

A. By Stris & Maher.

Q. I'd like to ask you some questions now about your declaration. The first one, we're going straight

to paragraph 3.

So this -- this paragraph attaches to the original retention of LKC. Were you involved with that original retention?

A. Yes.

Q. Were you involved in choosing LKC?

A. In retaining LKC?

Q. Yes. In choosing LKC to be counsel for Rhodium.

A. Yes.

Q. And you chose them because they're sophisticated counsel, I assume?

A. You're asking if I thought they were sophisticated counsel?

Q. Correct.

A. I guess yes.

Q. Capable of analyzing strategic issues, risks, contracts, et cetera?

A. I guess so.

Q. And now in paragraph 4, it states that Rhodium and LKC negotiated the terms of the May 2023 engagement letter, the original one, I believe, at arm's length.

Do you see that?

A. Yeah. That's in the first sentence of paragraph 4.

Q. Right.

Were you involved in those arm's length negotiations?

A. Yes.

Q. And I assume those negotiations incurred -- included back and forth about the terms of any potential success fee; is that right?

A. They were discussed.

Q. My understanding is a success fee would only kick in if Rhodium were to file affirmative claims; is that right?

In fact, it states so in your declaration.

A. You're -- so you're asking would the success fee apply only if Rhodium filed affirmative claims?

Q. That's right. I see that from your second sentence here on paragraph 4.

A. Yeah. So the success fee --

MS. BRANNEN: Object.

THE WITNESS: -- what that says is that the potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages, but there are also components that would apply if that was not the case.

Q. BY MS. PORTER: And in any case, the success fee would not be paid in the instance where benchmarks

weren't met or if the affirmative damages were not sought; is that right?

A. It would not apply if, I'm sorry, what?

Q. If the terms of the success fee were not satisfied, or if Rhodium never filed affirmative claims, in those instances, no success fee would be paid; is that right?

MS. BRANNEN: Objection. Form.

THE WITNESS: Possibly.

Q. BY MS. PORTER: What do you mean by possibly?

A. Well, it's just hard to understand that -- what you're driving at with that question. I think that there were definitely -- there was definitely language in the -- in the engagement letter that provided for payment of the success fee if certain conditions were -- were met. So if you're asking was it necessary for those conditions to be in that -- in order for the success fee to be paid as per the language in that letter, the answer would be yes.

Q. Thank you. That was my question. Let's turn to paragraph 7.

Mr. Topping, are you familiar with the protective order that is in place in these bankruptcy cases?

A. I know that there is one. I don't have -- I

mean, beyond that, I'm not, you know, intimately familiar with it.

Q. Are you aware that there are also rules in bankruptcy that allow for filings under seal, if appropriate circumstances are present?

A. Yes.

Q. In this paragraph 7, you write that Rhodium did not include the May 2023 engagement letter because Rhodium didn't want to reveal to Whinstone the details of Rhodium's agreement with LKC; is that right?

A. Well, it says it was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. That -- that's correct.

Q. Okay. Thank you.

Did you consider filing the May 2023 engagement letter under seal?

A. So that question -- the question that -- for me to answer it, it would require me to disclose information that is protected from disclosure by privilege, and Rhodium did not authorize me to disclose privileged information. So I'm -- I'm not able to answer that question.

Q. Okay. So you can answer yes or no if the subject matter was discussed. Don't tell me the contents of your discussion. But unless your counsel

instructs you otherwise, you can tell me yes or no was the topic of filing under seal discussed in September 2024.

A. I don't recall.

Q. Just so the record is clear, you don't recall whether or not anyone discussed the possibility of filing the May 2023 engagement letter under seal in September of 2024; is that right?

A. Yeah. I think a number of things were discussed, but I can't reveal the content of those discussions.

Q. Right.

But yes or no, you don't recall whether or not this question of filing under seal was discussed in September 2024; is that right?

A. Yeah. I don't recall discussing it.

Q. Thank you.

Mr. Topping, you also filed a declaration in connection with the original application; is that right?

A. Yes.

Q. And in that declaration, you also did not disclose any details about the contingency fee, correct?

A. I --

MS. BRANNEN: Objection.

THE WITNESS: I do not agree with that characterization.

Q. BY MS. PORTER: Did you identify the fixed fee of $600,000?

A. To my recollection, I don't think that was in the declaration. I don't have it in front of me, but --

Q. Did you reveal the percentages associated with any recovery of credit for damages?

A. I don't recall that being in the declaration. Again, I don't have it in front of me.

Q. Did you recall -- did you disclose the circumstances of when this contingency fee would apply?

A. I'd have to review the declaration.

Q. Now this paragraph also says that Jonathan Cohn from LKC drafted a retention application that sets forth those specific terms, including the rate discounts specific to Rhodium.

Do you see that sentence in your declaration?

A. Yes.

Q. Did you receive a copy of this September 14th, 2024, draft from Jonathan Cohn in September of 2024?

A. I did. Yeah.

Q. Did you, personally, review it?

A. I -- I probably would have reviewed it. I

don't recall for sure either way, but probably something I would have reviewed.

Q. Do you recall when you received this draft?

A. It would have been around that time, September 14th, 2024.

Q. Thank you.

Mr. Topping, do you know when the debtors did disclose the terms of the May 16, 2023, engagement agreement to the SAFE AHG?

A. I know for sure that details were disclosed in the updated retention application that was filed on -- you know, on the docket in March.

Q. March of 2025?

A. Yes. I'm not sure --

Q. To your knowledge, is that the first time they were disclosed to the SAFE AHG?

A. I don't recall, personally, having any interaction with the the SAFE AHG concerning those matters.

Q. You're not aware of any prior disclosures; is that right?

A. I don't recall.

Q. Okay. Thank you.

Let's turn to paragraph 8. It says here that it was your understanding, at the time of the

initial retention application, that the description of the partial contingency fee based on the outcome of the litigation, quote, Sufficient to inform creditors and other interested parties about the existence of the success fee.

Do you see that sentence?

A. Yes.

Q. Where did the notion that the description of the contingency fee is, quote, sufficient come from?

MS. BRANNEN: Objection. You may answer, but I caution you to please do so without revealing the substance of attorney-client communications or work product.

THE WITNESS: That -- that was my understanding.

Q. BY MS. PORTER: Do you have any knowledge about the sufficiency of notice required in bankruptcy cases?

A. No. I'm no expert in that area.

Q. Do you know what bankruptcy rule applies to retention applications in bankruptcy?

MS. BRANNEN: Objection. Form.

THE WITNESS: No. I -- as I -- I don't.

Q. BY MS. PORTER: Can you name any applicable bankruptcy rules that govern the retention of professionals in bankruptcy?

MS. BRANNEN: Objection. Form.

THE WITNESS: Not -- no. I don't have those rules memorized.

Q. BY MS. PORTER: Did you read any case law about the notice -- sufficiency of notice in bankruptcy?

MS. BRANNEN: Objection.

THE WITNESS: When?

Q. BY MS. PORTER: In connection with the initial retention application.

A. I don't recall reading any case law at the time.

Q. I think that's enough on that paragraph. We can turn to paragraph 10 now.

This paragraph states that, after Rhodium became aware that the Ad Hoc Group had raised an issue about the disclosure of contingency fee, Rhodium decided to address it, regardless of whether the Ad Hoc Group's belatedly expressed concern was valid. Do you see that?

A. Yes.

Q. Was the concern valid or not?

A. You're asking --

Q. Yeah. What is --

A. -- for my --

Q. -- your view?

Was the concern valid?

A. I -- I don't have a view on whether it's valid or not.

Q. If it wasn't valid, why was it necessary to address it?

MS. BRANNEN: Objection.

THE WITNESS: I don't know. I guess I'd have to speculate on that. The -- I think that Rhodium made a decision to -- to address the issue. I'm not really sure what more to say beyond that.

Q. BY MS. PORTER: Why was it necessary to address the issue, if it was not a valid issue?

A. I don't think it was necessary. I think it was a decision that Rhodium made.

Q. Whose idea was it to enter into the amended March 2024 engagement agreement?

MS. BRANNEN: Objection. Form.

THE WITNESS: I think there was -- I really can't recall who -- who first came up with the idea.

Q. BY MS. PORTER: Was it your idea?

A. No. I don't think I was the one who first came up with it.

Q. Was it LKC's idea?

A. It's possible. I don't recall.

Q. Who else might have had this idea?

A. I'm not sure. It could have been -- I'm not --

I don't know.

Q. When -- when did -- when was this decision made to enter into the March 4, 2025, engagement letter?

A. I don't recall the exact date or time that --

Q. Was it around March 4, 2025?

A. It was somewhere around that time frame.

Q. Was it within a few days?

A. Probably. I'm -- yeah. Most likely. I mean, it was -- it would have been within somewhere between -- it would have been sometime between February, when the issue first arose, and -- and the date when the amended redemption application was filed.

Q. Do you recall who negotiated the March 4, 2025, engagement letter?

A. Let's see. There were several people involved. Myself, Jon Cohn, Chase Blackmon. I believe other members of management may have had some level of involvement. Possibly David Eaton, possibly Michael Robinson. There may have been others, but those are -- those are the -- the ones I can recall.

Q. Were any counsel for the debtors involved in negotiating the March 4, 2025, engagement letter with -- with LKC other than counsel at LKC?

A. Well, the negotiation, I'm -- I -- I -- they may have been. I just don't recall specifically. You

know, Debtor's counsel may have been involved, to some extent, but I -- I don't recall.

Q. Anyone from Quinn?

A. Possibly.

Q. Who was the primary negotiator for the debtors?

A. It was probably myself and/or Chase Blackmon.

Q. And who was the primary negotiator for LKC?

A. John Cohn.

Q. Do you recall the date of the first draft of the amended March 2025 engagement letter?

A. No.

Q. Do you recall how many drafts were exchanged, approximately --

A. No.

Q. -- between the debtor and LKC?

A. No, I don't.

Q. Was it more than one?

A. May have been -- I think there may have been more than one. A lot of the terms were discussed before they were reduced to writing, so I don't recall for sure. It might have been more than one.

Q. But less than three?

A. Don't know.

Q. If you had to guess, approximately, how many drafts -- written drafts went back and forth?

A. If I had to guess, I'd say five or less just to be safe, but I really don't recall.

Q. And how many -- you said they were discussed orally before they were written down; is that right?

A. There were whole discusses. Yes.

Q. Were -- when and where did those take place?

A. They were remote.

Q. Over the phone?

A. Over the phone, yes.

Q. Approximately, how many discussions took place?

A. I don't recall the -- the number.

Q. Less than five?

A. I'd -- I'd have to guess.

Q. Okay. If you had to give your best guess, approximately, how many discussions took place regarding amending the March 2025 engagement letter?

A. Maybe somewhere around five or ten.

Q. Over how many days?

A. Over several days. I don't recall exact time period.

Q. "Several," being less than five?

A. I don't recall.

Q. So based on the colloquy we just had, what's your best guess about when these discussions started?

A. It was -- again, they started sometime in

February, and they were concluded as of the time that the ameanded retention application was filed in March.

Q. At the end of February?

Did they start at the end of February?

A. Possible -- it's possible that that might have been when they started.

Q. So the mediation began February 19th; is that right?

A. That sounds right.

Q. Did they start before or after mediation on February 19th?

A. I really can't recall if there were any discussions that took place during the -- like, while the mediation was ongoing. My -- my best recollection, that they would have started sometime after the mediation.

Q. Okay. Thank you.

Let me turn to paragraph 9 of your declaration. Here, you say that, On or around February 17th, you learned that counsel for the Ad Hoc Group had recently asserted the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee.

Do you see that?

A. Yes.

Q. So in any event, the discussions regarding amending the LKC retention application must have begun after February 17th, 2025; is that right?

A. Yeah. I can't say for certain, but --

Q. Do you think it's possible that you and LKC started discussing amending the retention application before the Ad Hoc Group raised questions about payment of the contingency fee on February 17, 2025?

A. I don't recall any discussions about amending the retention application prior to that time.

Q. Would you have had any reason to discuss amending the retention application before questions were raised on February 17, 2025?

A. I don't think so.

Q. Between February 19 and March 4th, the debtors were in active negotiations with Whinstone; is that right?

MS. BRANNEN: Objection. Form.

THE WITNESS: Yes. In connection with the -- the mediation proceedings, that's -- that's right. Yeah.

Q. BY MS. PORTER: Approximately, how many calls, meetings, e-mails do you think were exchanged with Whinstone concerning the settlement during that period?

A. There were a lot. There were -- well, I would

not -- most -- I was not on all of the calls or discussions. In fact, I wasn't on most of them. So -- but it's my understanding that there were discussions and calls taking place.

Q. Were you present at the mediation?

A. Yes.

Q. Was LKC present at the mediation?

A. Yes.

Q. Were you present on any calls following the mediation regarding finalizing the terms of the Whinstone settlement?

A. I'm not sure if I was on any calls directly with Whinstone's counsel.

Q. Were you present at any meetings concerning the Whinstone settlement following the February 19th mediation?

A. We definitely met with our counsel -- with debtors' counsel.

Q. Was LKC present at those meetings?

A. LKC may have been. It's possible. I don't recall specifically, but -- but they were definitely -- they were -- they, along with Stris & Maher, were our -- our litigation counsel on the matter. So it's possible that they may have been involved with some of the -- the meetings.

Q. Were they involved in discussions regarding the form of the settlement with Whinstone?

A. I believe that there were discussions with all of our counsel concerning those matters. I can't get into the content of those discussions, obviously, but we had discussions --

Q. Right.

A. -- with all of our counsel, the debtor's counsel with Quinn, with Stris & Maher, and also with LKC.

Q. Regarding the -- the form of the settlement -- the form of the settlement that Whinstone would take and the structure of that settlement?

MS. BRANNEN: Objection.

THE WITNESS: Regarding the settlement -- I'm not sure what you meany by form and structure, but they -- they were -- there were discussions about the settlement.

Q. BY MS. PORTER: And those discussions that LKC was part of, they took place between February 19th and March 4th; is that right?

A. They -- it's possible. I don't know for sure the exact dates when they took place.

Q. That was an active period of discussing the terms of the settlement with Whinstone; is that right?

A. So there was a period following the mediation when there were no discussions because the mediation -- I don't want to go into anything that's privileged with regard to the mediation, but there was a period when the parties were not communicating, and that lasted several days, and then I think communications resumed again.

So I -- but in terms of exact dates, I can't hazard a guess as to that.

Q. How long was that period of quiet after the mediation?

Two days?

A. How long was what period?

Q. I believe you just said there was a period of relative quiet --

A. Oh, there was --

Q. -- after the mediation.

A. It was -- it was more than several -- it was several -- several days. I don't remember how long it lasted for sure.

Q. Could you give me your best guess of how many days it was?

A. I was not involved in communicating directly with Whinstone. So I don't know when communication may have resumed. But I know that -- my understanding that there was a period in which, you know, there may have

not have been further negotiation or discussion concerning settlement for a short time. I don't know. Maybe it was a week. Maybe it might have been slightly more; might have been slightly less. And then discussions resumed.

Q. So for approximately one week following the February 19 mediation, there was a period of relative quiet, and then there were active negotiations regarding the settlement again; is that right?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I would just stick with my -- my prior answer.

Q. BY MS. PORTER: I believe -- so I just want to make sure I understand your testimony correctly. So it sounds like there was February 19 mediation, period of relative quiet that lasted approximately one week, and then the negotiations resumed.

And you, as general counsel, were being kept apprized of the progress; is that right?

MS. BRANNEN: Objection.

THE WITNESS: I can't get into privileged communications that I had with our counsel.

Q. BY MS. PORTER: Right. I'm just asking about the timing.

A. Yeah. That -- that -- that's -- that's my

understanding.

Q. Okay. We can turn to paragraph 11 now. You say here -- the second sentence begins, At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving both the affirmative case for damages and the sale to Whinstone of Rhodium assets in Rockdale.

Do you see that sentence?

A. Yes.

Q. What are you -- what time frame do you mean by, "At that point"?

A. That would have been between the end of the mediation, which would have been February 19th, and the date when the amended retention application was filed.

Q. And this was the resolution that was addressed at the February 19 mediation, correct?

A. Can you repeat the question?

Q. This resolution -- the potential resolution of a settlement involving both the affirmative case for damages and the sale of assets at Rockdale is the resolution that was discussed during the February 19 mediation; is that right?

MS. BRANNEN: Objection. Form.

THE WITNESS: I -- I don't want to breach mediation privilege and discuss what was discussed

during the mediation.

Q. BY MS. PORTER: I'm not asking you for what was discussed at the mediation, but the -- this was the resolution that was -- this resolution came out of that mediation, right?

MS. BRANNEN: Objection. Form.

THE WITNESS: I don't know.

MS. PORTER: Karen, can you please pull up the next exhibit, which will be tab two.

(Exhibit 2 was marked for identification.)

MS. PORTER: Can you go to the first page?

I guess I'll just represent to you, you can see at the top, it says, Transcript of March 19, 2025, hearing.

THE WITNESS: I'm --

MS. BRANNEN: Sorry?

MS. PORTER: I'm telling Mr. Topping.

Q. BY MS. PORTER: The -- the very top of this PDF, it says the transcript of the March 19, 2025, hearing in the debtors' bankruptcy cases.

A. What I see on my screen, it says page 5 at the top.

Q. Yes. Do you see the blue strip at the top?

A. No.

Q. Do you see the blue strip at the absolute top

of the -- of the screen share above the PDF page?

A. No. I'm not -- it's not showing on my screen.

Q. Okay. Well, I apologize. It should have had the top of the transcript on it.

This was an excerpt of the March 19, 2025, hearing. Do you see that the person speaking is named Ms. Tomasco?

A. Yes, I do.

Q. Is that counsel for the debtors?

A. Yes.

Q. Now if you look on page 6 at line 12, there -- Ms. Tomasco is thanking Judge Mullin for helping to mediate and getting us, quote, most of the way there.

Do you agree that, here, she is referring to the Whinstone sale and the mediation that happened on February 19th?

MS. BRANNEN: Objection to form.

THE WITNESS: I think that -- when she mentions Judge Mullin, I assume that she must be referring to the mediation. As to the rest of the statement, I'm not sure.

Q. BY MS. PORTER: You mean the February 19th mediation that took place with Judge Mullin?

A. It was actually two -- I -- yeah. That's right. February 19th mediation, yeah.

Q. We can return to your declaration now. This is the same paragraph we were discussing previously, paragraph 11.

Do you see where you write that, Rhodium believed that LKC was owed a contingency fee under the terms of the agreement?

Do you see that sentence?

A. Yes.

Q. So when the debtor is entered into the March 4, 2025, letter agreement, had the debtors already concluded that LKC was entitled to a contingency fee?

A. I think that -- what - what I mean to say here in this sentence is that, under this specific scenario -- it was our belief that, in the event of this scenario coming to pass, that LKC would be owed a contingency fee under the terms of the engagement agreement.

Q. Exactly when did the debtor conclude that LKC is entitled to a contingency fee?

MS. BRANNEN: Objection. Form.

THE WITNESS: When did the debtors believe that LKC was entitled to a contingency fee?

Q. BY MS. PORTER: Correct.

A. I think that there were two events, both of which were probably close in time to each other, but one

of them would have been closing of the -- the asset -- you know, basically, the execution of the asset purchase -- purchase and sale agreement, and the other would have been the dismissal of the appeal.

There was an appeal filed -- there was an appeal of the court's ruling on the assumption motion, and that appeal was dismissed. So at that point, it became a final order. So I think both of those things tied to different components of the success fee.

Q. And so, when did the debtors -- did there come a point in time when the debtors concluded that LKC is entitled to a contingency fee?

A. I'm not sure what you mean by debtors concluded. Are you asking if there was, like, a board resolution where the board concluded that they were entitled to something or that there was some --

Q. Has there - has there been a board resolution where the board concluded that LKC is entitled to a contingency fee?

A. So -- and then I guess the other reason why it's hard to answer this question, are you talking about under the existing retention agreement or under the amended retention agreement?

Q. I agree with you that they're different, so let's start with the first one.

The -- let's start with the 2023 retention agreement. Had the debtors concluded that LKC is entitled to a contingency fee under the May 2023 engagement letter?

MS. BRANNEN: Objection to form.

THE WITNESS: So I'm -- I'm not sure if I have a statement or a revolution or anything along those lines saying, We hereby concluded that, okay, she is entitled to a -- a success fee based on those engagements, nor would I expect to have something like that. But I think the -- the issue here is that -- and the reason why I wouldn't expect to have a statement like that is because we currently have an amended retention application that's pending. The court hasn't approved it yet.

And under the amended retention application, the success fee does require bankruptcy court approval. So I assume that the debtors are probably awaiting, you know, ruling on that.

Q. BY MS. PORTER: What role did LKC play in negotiating, structuring, or facilitating the proposed sale of Rhodium to Whinstone?

A. What role did LKC play in -- well, I know that LKC was advising management and advising the board.

Q. In connection with structuring and facilitating

the proposed sale to Whinstone?

MS. BRANNEN: Objection to form.

THE WITNESS: At that time, they were advising management and advising the board. I don't -- I don't --

Q. BY MS. PORTER: I want to make sure I'm clear --

A. -- I don't --

Q. -- that is concluded on the record --

A. I don't want to go into the content of their recommendations or their advice.

Q. Right. Don't give me the content of the recommendations.

But just yes or no, it included the topics of the proposed sale to Whinstone?

A. It --

Q. Just yes or no.

A. Probably -- probably would have.

(Reporter clarification.)

Q. BY MS. PORTER: Returning to paragraph 11, this states that Rhodium was concerned that the Whinstone sale documents might not identify what portion of total proceeds was attributable to the affirmative case; is that right?

A. Yes.

Q. Rhodium could also have negotiated those terms with Whinstone, correct.

A. I'm not sure.

MS. BRANNEN: Objection. Form.

Q. BY MS. PORTER: Is there any reason that Rhodium could not have negotiated those terms with Whinstone?

A. It's hard to answer that question because I wasn't directly involved in the negotiations.

Q. You're not aware of any reason that Rhodium could not negotiate those terms with Whinstone?

MS. BRANNEN: Objection.

THE WITNESS: No.

Q. BY MS. PORTER: Thank you.

Turning to paragraph 14 of your declaration, it says Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee; is that right?

A. That's right.

Q. So the concern here is that the deal did circumvent the terms of the success fee, right?

A. I don't think there was a deal that had been struck at that time.

Q. The concern is that a deal, as described earlier in paragraph 11, would circumvent LKC's success

fee as written in the original engagement agreement, right?

MS. BRANNEN: Objection.

THE WITNESS: No. There was no intent to try to circumvent.

Q. BY MS. PORTER: I'm not asking about your intent. I'm asking about the effect. The concern was the effect was to circumvent the terms of the success fee in the original engagement letter, right?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I didn't -- I'm not -- I'm not sure that -- I mean, at the time, there was no deal -- there was -- no deal had been concluded. So --

Q. BY MS. PORTER: Right. I'm asking about the possible deal described in paragraph 11 of your declaration. The concern here -- the possible deal that you've described here in 11, the concern that you're expressing in 14 -- paragraph 14 is that -- that such a deal would circumvent the application of the success fee as described in the original engagement letter.

MS. BRANNEN: Objection to form.

Q. BY MS. PORTER: Not the intent. The effect.

A. The specific concern had to do with a deal that did not allocate between the -- the amount attributable to the asset sale and the amount attributable to the

settlement of the -- the claims.

Q. Right. And the concern was that would circumvent the terms of the success fee in the original engagement letter, right?

It would have that effect?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I -- I don't -- the -- the reason why I'm having trouble answering this is because I don't -- what I'm talking about in paragraph 14 is the intent, and what you're talking about is the effect.

Q. BY MS. PORTER: Right. And you did not intend that effect, right?

A. We did not intend to circumvent LKC's success fee.

Q. So the concern is that you might circumvent it?

It would have that effect?

MS. BRANNEN: Objection. Form.

Q. BY MS. PORTER: You did not intend that effect, correct?

A. No. The concern was that there would be a structure that would not allocate -- as to the total price in the asset purchase, it wouldn't allocate -- it wouldn't apportion that amount between the amount attributable to the assets and the amount attributable

to the settlement.

Q. Right. And the concern is that structure that you just described would not fit into the terms of the success fee as written in the existing retention letter, right?

MS. BRANNEN: Objection to form.

THE WITNESS: I'm not sure that that was a concern.

Q. BY MS. PORTER: Then why were you worried about circumventing it?

A. Why what? Sorry.

Q. You write here that you have a concern about circumventing the terms of the success fee.

Why did you have that concern --

MS. BRANNEN: Objection.

Q. BY MS. PORTER: -- if you didn't think that was a possibility?

MS. BRANNEN: Objection to form.

THE WITNESS: Actually, what I'm talking about in paragraph 14 is the intent, not whether or not it actually happened.

Q. BY MS. PORTER: Right. I understand.

And the -- what you're talking about, though, is that you had no intent -- intent to produce a certain effect. The concern --

A. That's right.

Q. -- being that you might produce that effect, right?

MS. BRANNEN: Objection to form.

THE WITNESS: No, I don't agree with that.

Q. BY MS. PORTER: What -- how would you explain it then?

A. I would explain it the way I -- I did.

That we were concerned that, as stated in the earlier paragraph, there was a -- that there was an agreement that did not allocate between the assets being purchased and the claims being dismissed or settled. That -- that was a concern.

Q. Have you seen the objection to the application that was filed about the SAFE Ad Hoc Group?

A. Yes.

Q. Did you see the redlines that was attached to that objection that showed the changes between the May 2023 engagement letter and the proposed March 2025 engagement letter?

A. Yes. I do recall seeing it.

Q. Do you agree that that is an accurate reflection of the changes between the two engagement letters?

A. I don't know.

Q. Do you have any reason to believe that those are not -- that's not an accurate reflection of the changes between the two engagement letters?

A. I don't know, one way or the other. I didn't do the redline.

Q. When you reviewed the redline did anything look incorrect to you?

MS. BRANNEN: Objection.

THE WITNESS: What do you mean by that?

Q. BY MS. PORTER: Did Anything look like it was not an accurate reflection of the changes that you approved between the two engagement letters?

A. I didn't analyze that.

Q. Okay. Let's look at the redline together. And if anything looks incorrect to you, please identify it.

A. Okay.

Q. Will you do that?

A. Okay.

Q. Great. Thank you.

If -- if you don't identify anything that looks incorrect, I'm going to understand that to mean that you agree that -- recognize that as an accurate modification to the engagement letter. Okay?

A. I have no way of knowing whether this is accurate.

Q. I know, but I'm asking you, as the person who was involved in negotiating this, to let me know if anything looks wrong. If not, we'll understand that this is an accurate reflection of the changes between the engagement letters. Okay?

MS. BRANNEN: Objection to form.

THE WITNESS: I'll do the best I can.

Q. BY MS. PORTER: Okay. Thank you.

Before we go through these changes, just a few other things I want to make -- return to from our previous colloquy.

I think I forgot to ask you at the top of the deposition, who represents you, Mr. Topping, in connection with this matter?

A. Sorry?

Q. Who represents you?

MS. BRANNEN: I'm here today, Elizabeth Brannen, from Stris & Maher on behalf of the debtors and the witness.

MS. PORTER: Thank you.

And does anyone else represent Mr. Topping?

MS. BRANNEN: I believe I'm the only one representing him today.

MS. PORTER: Thank you.

Q. BY MS. PORTER: Earlier, I asked you a few

questions about the -- the debtor's board. Could you, please, define the full board?

A. Would I what? I'm sorry.

Q. Earlier today, I asked you a few questions about the debtor's board.

A. Ha.

Q. Could you, please, define for me who is on the debtor's board?

A. Identify who serves on the board --

Q. Yeah.

A. -- who the current directors are?

Q. Right.

A. The current directors are Chase Blackmon, Cameron Blackmon, Jonas Norr, Renata Szkoda, David Eaton, and Spencer Wells.

Q. Thank you.

And who, from the full board, conveyed the authorization that you described for me earlier to submit this -- your declaration?

A. There was a board resolution that authorized the filing of declarations in support of retention applications -- authorized me to sign documents in support of retention applications.

Q. Okay. Thank you. I think, if it works for you, we can take a short break now and then start having

questions about -- about the redline of the declaration?

A. Okay. That's fine.

Q. Okay. Can we return at 1:30 your time?

A. 1:30. Okay. 1:30 Central.

Q. Okay. Thank you.

(A recess was held from 1:18 p.m. to 1:32 p.m.)

MS. BRANNEN: This is Elizabeth Brannen for the debtors. Before Ms. Porter continues her questions, I just wanted to designate the transcript confidential under the protective order, and we will review it later to determine which portions need to stay that way.

MS. PORTER: Thank you.

Q. BY MS. PORTER: Mr. Topping, you mentioned earlier that you supervised the drafting of your declaration. Who did you supervise?

A. Stris & Maher assisted with it.

Q. And who, specifically?

A. The attorneys at Stris & Maher that I interacted with concerning my declaration were John Stokes, Elizabeth Brannen, and Bridget Asay.

Q. And with respect to your original declaration attached to your original application, did you use the same process to draft that declaration?

A. I -- I don't recall what that process was at that time.

Q. Do you recall drafting it yourself?

A. I -- I was involved in supervising the drafting. I think that it may have been drafted -- I think that LKC may have been involved in the drafting of that declaration at that time and then, possibly, also -- probably also debtors -- probably Quinn -- Quinn Emanuel.

Q. Do you remember who from Quinn helped you draft --

A. The people I interacted with on the declaration at LKC were Will Tompson and Jon Cohn. And the person at Quinn that I interacted with was Patty Tomasco.

Q. And do you recall earlier we had a discussion about how you developed -- let's turn to the actual paragraph -- I believe it's paragraph 8 of declaration in which you say that the initial retention application -- the descriptions in the initial retention application were, quote, sufficient to inform creditors.

Do you recall that discussion?

MS. BRANNEN: Did you say paragraph 8?

MS. PORTER: Yes.

MS. BRANNEN: Thank you.

Q. BY MS. PORTER: Was this --

A. Yes, I do -- I do recall that statement in my declaration.

Q. Thank you.

Did you base this understanding on the advice of counsel?

MS. BRANNEN: And I'll caution the witness that he can answer that yes or no to provide the level of information commensurate with what might appear on a privilege log as long as you are not intending to elicit a waiver.

THE WITNESS: My understanding may have been formed, in part, based on that.

Q. BY MS. PORTER: Do you not -- do you recall whether or not your understanding was based on the advice of counsel?

MS. BRANNEN: And again, same instruction. The witness may answer yes or no.

THE WITNESS: I recall that that was my understanding.

Q. BY MS. PORTER: Do you -- do you recall if the understanding was based on the advice of counsel, yes or no?

A. It may have been. I don't recall.

Q. If it was, which counsel would you have been relying upon?

A. I don't recall.

Q. Do you -- who -- who, at the debtors, made the

decision to enter into the March 2025 agreement with LKC?

MS. BRANNEN: Objection to form.

THE WITNESS: So the March 2025 agreement with LKC is pending before the court. It's pending court approval. It's the subject of the retention application. So we haven't entered into it yet.

Q. BY MS. PORTER: Who, at the debtors, made the decision to seek to enter into a March 2025 agreement with LKC?

A. That was -- that was made by management.

Q. And who in management?

A. Chase Blackmon; I believe the CROs may have been involved; possibly David Eaton. There may have been others. You know, Cameron Blackmon may have been involved.

Q. But you don't know if -- you do not know, one way or the other, whether or not Eaton was involved?

A. I know that he was involved.

Q. So Eaton was -- was involved --

A. Yes.

Q. -- in the decision to enter into the March 2025 engagement agreement with LKC -- to seek to enter into that agreement?

A. He was -- he was involved.

And again, this was a decision to seek court approval, not to enter into it. We wouldn't do that without court approval.

But this was to seek court approval for that -- that retention application.

Q. Got it.

So when you said possibly Eaton, what you meant was definitely Eaton?

A. Well, I know that he was involved in discussions about it.

Q. Thank you.

And earlier, I asked you who was involved in discussions and negotiations with Whinstone, and you said possibly Eaton, possibly Robinson, I believe.

A. When -- when you say discussions with Whinstone, what -- what do you mean?

Q. Discussions with Whinstone about the settlement that was structured as a sale.

A. So you're talking about the discussion that led to the asset purchase agreement --

Q. Correct.

A. -- and the settlement?

Q. Right.

A. So it's my understanding that David Eaton, Spencer Wells, Michael Robinson, Patty Tomasco -- there

may have been other Quinn lawyers involved. You're talking about discussions directly with Whinstone's counsel?

Trace Schmeltz may have been involved. There may have been other lawyers from Barnes & Thornburg that might have been involved. That's --

Q. Was Eaton --

A. -- everyone I can think of who may have been involved.

Q. Was Eaton involved in discussions about the negotiations and settlement with Whinstone that was structured as a sale?

A. My understanding is they was -- again, I wasn't present for those. So -- but that's my understanding.

Q. How about Robinson, was he involved?

A. That's my understanding.

Q. What is that understanding based on?

A. That was --

MS. BRANNEN: Objection. Caution the witness.

But you may answer on the level of the privilege log.

THE WITNESS: Right. Based on my personal knowledge.

Q. BY MS. PORTER: With respect to the decision to

enter into the March 2025 engagement letter, what was Eaton's involvement in that decision?

MS. BRANNEN: Objection to form.

THE WITNESS: I think that the -- the matter was discussed with him.

Q. BY MS. PORTER: Did you discuss it with him?

A. I did.

Q. Do you recall those discussions?

MS. BRANNEN: You may answer yes or no.

THE WITNESS: Some of them, yes.

Q. BY MS. PORTER: Do you recall what was discussed?

A. Yes.

Q. So the March 2025 agreement is signed. Who made the decision, as the debtor, to sign that agreement?

A. I -- I don't think --

MS. BRANNEN: Objection to form.

THE WITNESS: -- it's been signed by the debtors. I think it's been signed by LKC.

MS. PORTER: Okay. The -- the -- the application to retain -- to enter into the amended engagement letter with LKC and the reply brief submitted in respect of that same application referenced -- referenced drafts of the LKC letter.

Can we, please, have a copy of all of those drafts?

I don't -- and you testified earlier that several drafts were exchanged back and forth. I don't believe we've received any of those drafts.

I would ask that those be produced. Is that -- that's directed to you, Ms. Brannen.

MS. BRANNEN: We would have to confirm that that -- and address it -- I can't address it on the fly. I need time to confer and get back to you about that.

MS. PORTER: Okay.

MS. BRANNEN: You're asking for all of the draft of the -- that were exchanged -- can you state which drafts you're requesting?

MS. PORTER: So Mr. Topping testified earlier that drafts of the LTC engagement agreement and -- in March of 2025 were exchanged. I think he said up to five drafts. We would like to see those drafts, please.

MS. BRANNEN: Exchanged between him and his counsel?

MS. PORTER: Exchanged between the debtors and LKC. Mr. Topping can correct me if I have his testimony wrong, but I think he said up to five drafts were negotiated between the debtors and LKC.

MS. BRANNEN: I'm not sure you're recalling his testimony correctly, but we'll have to confer about this request.

Q. BY MS. PORTER: Okay. Mr. Topping, did you testify earlier that you had -- that the debtors and LKC exchanged drafts of the engagement letter in March of 2025?

A. We -- we may have. I know that language was discussed, and there may have been drafts exchanged. I just don't recall for sure. I think you asked me to guess how many might have been exchanged, and I hazard -- I, kind of, made a guess it could have been as many as five, but I don't recall for sure.

MS. PORTER: So we would like all those drafts, please.

MS. BRANNEN: We'll take it under consideration if they exist and have to confer with you.

Q. BY MS. PORTER: Okay. Let's turn now to the redline, which I believe is Exhibit 3.

(Exhibit 3 was marked for identification.)

Q. BY MS. PORTER: Mr. Topping, it was your testimony -- is it your testimony that the second engagement letter does not change the terms of the first engagement letter?

A. No. I think there are some minor clarifying

changes in the -- in -- in the -- in the updated one.

Q. Got it.

So the second engagement letter does change the terms of the original engagement letter?

A. This is actually the -- the third, if not the fourth engagement letter. There was one --

Q. Right.

A. -- in May of 2025 -- I'm sorry -- 2023, and there was one in August of 2024, and then there was in September of 2024. So this would be the fourth, probably.

Q. Right. I -- thank you. I recall that, as well. So that is something I wanted to clarify with you.

Those four engagement letters you just mentioned, those are the only engagement letters that have ever been entered into or sought to be entered into between LKC and Rhodium; is that right?

A. No.

Q. There are no other drafts or iterations?

A. No. LKC has provided representation to Rhodium on other matters.

Q. On this matter relating to the Rhodium and Whinstone dispute, there are only the four engagement letters you just mentioned -- May 2023, August 2024,

September 2024, and now this new March 2025 engagement letter; is that right?

A. Yes.

Q. Okay. And the terms of the success fee are unchanged in the first three letters; is that right?

So May 2023, August 2024, and September 2024, the terms of the success fee are the same in all three of those; is that right?

A. That is my -- my recollection. I -- I'd have to look at them, but I -- my -- my recollection is consistent with that.

Q. In fact, you put that in your declaration, I believe. Let's see if I have that right.

In any event, the -- the terms of the success fee, it's your recollection, and mine as well, that they are consistent in the first three engagement letters; is that right?

A. I think they are -- they are largely consistent. That's my recollection.

Q. And they are changed in the most recent March 2025 engagement letter, correct?

The March 2025 engagement letter changes the terms of the success fee?

A. There were some minor clarifying changes made.

Q. The -- so your testimony is that the March 2025

engagement letter does change the terms related to the success fee; is that right?

MS. BRANNEN: Objection to form.

THE WITNESS: I think what I would say is, as I stated in my declaration, that there were minor clarifying changes made to -- to -- to the -- the new amended March engagement letter.

Q. BY MS. PORTER: Let's turn to the redline. The first thing that I'd like to point out is that this -- sorry. Go down, please.

This is the redline that compares the original May 2023 engagement letter to the currently proposed March 2025 engagement letter. The fees section in this letter notes that the fees for all the attorneys are increasing by $100 an hour.

Do you see that?

A. Yes.

Q. It says, These standard rates were in effect on January 1, 2024.

Do you see that?

A. Yes.

Q. I'd like to compare this with the August and September 2024 engagement letters.

MS. PORTER: Karen, can you please introduce those and can we mark those as exhibits,

please?

(Exhibits 4 and 5 were marked for identification.)

Q. BY MS. PORTER: So this is an August 2024 engagement letter. The rates here have increased in August of 2024 to $1,400 an hour, $1,300 an hour, et cetera?

A. Increased from the May 2023?

Q. Correct. Yes.

So this is where the rate increase is reflected here in August 2024 engagement letter?

A. Yes. To the best of my recollection, that's -- that's correct.

Q. And is it your recollection that this is when the rate increase was applied, in August of 2024?

A. I don't recall when it was applied.

MS. PORTER: Karen, can you please pull up the July invoice. That's 4. And let's mark this as our next exhibit, please.

(Exhibit 6 was marked for identification.)

MS. PORTER: Can you please turn to page 13.

Q. BY MS. PORTER: Do you see here, Mr. Topping, that the rates that are being applied here in July 2024 are the rates that are identified in the original engagement letter?

A. Yeah. Looking at this, that does appear to be the case.

Q. Okay. Thank you.

Now let's look, again, at the August 2024 engagement letter.

Underneath the rates section setting out the rates -- if you scroll down a little bit, Karen. Scroll up a little bit, please -- you'll see there is no sentence here about these rates applying since January 1, 2024.

A. There's no sentence about that on the claim since January 2024?

Q. Correct.

A. Not -- not in this section of the engagement letter. No.

Q. Right. And let's compare that to the currently proposed March 2025 engagement letter. This introduces a new sentence that says, These standard rates were in effect on January 1, 2024.

Do you see that?

A. Yes.

Q. But do you agree with me that it looks like, in fact, the 2023 rates were applied through July 2024?

A. It's possible.

Q. Do you know what rates the debtors were paying

for LKC's services for the first several months of 2024?

MS. BRANNEN: Objection to form.

THE WITNESS: Not -- not by heart. I'd have to go look at the invoices and refresh on that.

Q. BY MS. PORTER: Would you like to look again on the July invoice that we just looked at?

A. No. I don't need to do that.

Q. Okay. So do you think that the July invoice accurately reflects what rates were being applied to LKC's work in the first months of 2024?

A. I -- I think it's likely that those rates were the same rates that were charged for prior months of that year. The --

Q. What does this mean about the rates that were in effect for January 1, 2024?

What are the debtors agreeing to with the sentence right here?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I -- when I looked at this, I assumed that what this meant was these were the standard rates that the firm charged all of its clients, but I'm -- maybe I'm mistaken on that.

My interpretation of this language was that this was simply an informational statement about the date on which the firm's changes to its standard hourly

rates went into effect.

I do recall that there was language that may have appeared in the engagement letters about rates being increased. It might have been under the retention applications. I can't remember where I saw it, but there was language about the firm increasing its rates in January -- on January 1st of each year, but I -- I didn't take the sentence to indicate that they were, necessarily, charging us those rates as of -- effective as of January 1st, 2024. That may have been what it was intended to convey, but my understanding was that this was simply a statement of what their standard rates were and when they went into effect.

Q. BY MS. PORTER: So you don't know if these were the rates that were actually charged to the debtors in the first half of 2024?

MS. BRANNEN: Objection to form.

THE WITNESS: I would have to look at the invoices.

Q. BY MS. PORTER: Do you have any understanding that -- well, we just looked at the invoice. Do you want to look at it again?

A. As of July 2024, those rates were -- were not being charged, at least for that month.

Q. So do you have any expectation about whether or

not the debtors will be responsible for the delta between these rates for the first seven months of 2024?

A. I -- I would not expect to be requested to pay retroactively for rates that were -- I would not expect to pay retroactively rates that were not reflected in the invoices.

Q. Did you discuss with LKC what this sentence means?

A. I don't recall if that was discussed.

Q. Do you know whether or not LKC expects the debtors to pay the 2024 rates for the first seven months of 2024?

A. My understanding was that they -- that they are not requesting that. That would have been pre-petition. So I think I would be surprised if they would attempt now to recoup or seek some retroactive application of pre-petition invoices.

Q. Did you discuss this with them?

A. It's possible that it might have been discussed. I don't recall.

Q. You don't know whether or not you discussed which rates should apply to the 2024 work?

MS. BRANNEN: Objection to form.

THE WITNESS: I just don't recall. It's possible that that might have been discussed.

Q. BY MS. PORTER: Next, you'll see that there's a portion of the free structure for Jonathan Cohn, $25,000 a month, and that has been struck, the fixed fee for all the work performed by Mr. Cohn every month.

Do you see that?

A. Yes. That was struck in the September 2024 letter.

Q. Do you know how much Mr. Cohn was paid based on the $25,000 a month fee --

A. What the aggregate is?

Q. -- in total?

Correct.

A. No. No.

Q. Would it surprise you to learn it's close to $400,000 since the first engagement letter until the petition date?

A. No.

Q. Given that there's no contractual obligation to provide that $25,000 a month fee, will the debtors be seeking to have those fees returned?

MS. BRANNEN: Objection to form.

THE WITNESS: I think I -- I -- I -- you asked, kind of, a question about what a contractual obligation is, and I'm not -- I'm not sure I can provide an opinion on that.

Q. BY MS. PORTER: Well, this engagement letter supercedes the prior engagement letters, right?

That's what it says up there?

A. If -- if approved by the court, this will supercede the prior engagement letters. Yes.

Q. And therefore, there will be no contractual obligation to have paid $25,000 a month as a fixed fee for Mr. Cohn's -- for Mr. Cohn's representation, correct?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I don't have an opinion as to what the contractual obligation is.

Q. BY MS. PORTER: Have the debtors discussed seeking a return of those fees?

A. I'm sorry --

MS. BRANNEN: Objection.

THE WITNESS: -- return?

Q. BY MS. PORTER: Of the fees paid on account of the mixed monthly fixed fee.

A. A return of the pre-petition amounts paid to Jon Cohn?

Q. Uh-huh.

MS. BRANNEN: You can answer yes or no, if you are able, but I would caution the witness to be -- take care with regard to any information beyond that

which may be subject to privilege.

THE WITNESS: I -- I, personally, have not requested that Jon Cohn return all of the fees paid to him prior to the filing of Rhodium's Chapter 11 cases.

Q. BY MS. PORTER: Were there any -- were there any bills submitted or any invoices detailing the work performed by Mr. Cohn during the month where he was receiving the monthly fixed fee?

A. I do think his name was list on the -- on the invoices.

Q. Do you know if it was listed on the invoices?

A. I know that there was a line item for Mr. Cohn on prior invoices.

Q. Do you believe that there were time entries for Mr. Cohn on the invoices?

A. I don't recall -- I don't recall seeing time entries for Mr. Cohn on the pre-petition invoices.

Q. How -- let's turn to how the potential success fee is calculated under the March 2025 letter.

Has the debtor determined -- let's turn to that portion of the engagement letter, please.

Have the debtors determined how much LKC would get if the March 2025 letter were enforced?

A. I don't know.

Q. Have the debtors done any calculations, at all?

A. I believe that -- that the debtors may have performed calculations, but I have not been involved in that.

Q. Who, at the debtors, would have performed those calculations?

A. It's possible that the members of, you know, the Province -- some of the professionals with Province may have performed calculations. It's possible that people within our finance department may have performed those calculations. I just can't be sure.

Q. Do you know, one way or the other, whether or not any calculations have been performed by the debtors?

A. Based on -- it's my understanding that there may have been calculations performed. I don't know if they were performed based on the March letter or based on a prior engagement letter.

So I don't know which letter they may have been based on.

Q. And those calculations could be different based on which letter they were based on?

A. I don't --

MS. BRANNEN: Objection to form.

Q. BY MS. PORTER: Where did you -- where did you get the understanding that some calculations have been performed?

A. Just based on my personal knowledge.
Q. Which is based on what?
A. I -- I -- because some of the communications in which that information may have been learned may be privileged, I don't want to disclose the content of -- of those communications.
Q. So --
A. I'm not authorized to do so.
Q. Yeah. So you have counsel. You can let your counsel make your privilege objections.
MS. BRANNEN: I make the privilege objection. The witness is also general counsel who's been very forthcoming today with your questions. So please respect -- if you ask a question that he feels elicits privilege and I may not realize that the basis is privileged, it is perfectly appropriate, in fact, vital, for him to exercise, on behalf of his client, the instruction they've given him to preserve that privilege. And we will continue to do so and ask you to not try to elicit a waiver because that would be improper.
MS. PORTER: I'm not seeking to elicit a waiver, but it is imperative that he answer my questions unless instructed by you not to answer them.
MS. BRANNEN: Consider yourself so

instructed, Mr. Topping.
Q. BY MS. PORTER: Mr. Topping, have you seen any calculations?
A. No.
Q. Are you aware of who performed calculations regarding the amount that LKC believed it is entitled to -- or may be entitled to on account of the success fee?
A. I already gave you the names of people who may have been involved in that.
Q. But I believe that you said they may have been involved. Do you know, yes or no, if any one of those individuals was involved?
A. I don't know.
Q. Has LKC told -- what do you believe -- the calculations that you are aware of, what is the amount that the debtors have calculated that LKC would be entitled to based on a success fee?
A. I don't know.
MS. BRANNEN: Objection.
Q. BY MS. PORTER: Do you know, approximately, the amount?
A. No.
Q. So you're aware that calculations may have been done -- or calculations -- you're aware that

calculations have been done, but don't know by whom and you don't know by how much?
A. That's right.
MS. BRANNEN: Objection to form.
Q. BY MS. PORTER: When were the calculations done?
MS. BRANNEN: Objection to form.
THE WITNESS: I don't know.
Q. BY MS. PORTER: So you're aware that calculations were done about how much LKC may be entitled to on account of the success fee, but you don't know who did the calculations, what the calculations -- what the calculations -- what the -- what amount the calculations resulted in, or when the calculation were done?
MS. BRANNEN: Objection to form.
THE WITNESS: Correct.
Q. BY MS. PORTER: Has LKC told the debtors what LKC thinks its entitled to under the terms of the March 2025 letter?
A. I don't know. They -- they have --
Q. You don't know --
(Reporter clarification.)
THE WITNESS: Sorry. Let me just finish my answer.

THE REPORTER: I did not get the question or answer.
Q. BY MS. PORTER: Has LKC told the debtors that LKC thinks it IS entitled to under the terms of the March 2025 letter?
A. It -- it's possiblE. I don't know. I have not been privy to any such communications.
Q. Have you been informed whether or not LKC has communicated a number to the debtors?
A. I don't -- I'm sorry. I'm just trying to recall. I can't recall being informed of any -- anything specific. No.
Q. How about anything nonspecific?
A. What do you mean by nonspecific?
Q. You said the word specific. I wasn't sure what you meant by it.
A. No. I just don't -- nothing sticks out.
Q. Are you aware that LKC has claimed it is entitled to a success fee of close to $10 million based on the March 2025 letter?
A. Not -- that hasn't been communicated to me.
Q. Does that strike you as a reasonable amount to pay for a success fee under the terms of the March 2025 letter?
MS. BRANNEN: Objection to form.

THE WITNESS: You're asking for my opinion?
Q. BY MS. PORTER: Yes.
A. In order to reach a conclusion on that, I would need to understand what the allocation is between the different components in the success fee. So in other words, how -- how -- what kind of allocation has been reached between, for example, subparagraph B and subparagraph C, and then what is the total aggregate value being attributed -- attributed to the -- the settlement.
Q. And that allocation is to be determined between the debtors and LKC, is that right, under the terms of the March 2025 letter?
A. I'm not aware that any determination has been made.
Q. Just procedurally, under the terms of the March 2025 letter, the allocation is one that will be devised by the debtors and LKC and only the debtors and LKC; is that right?
A. No.
MS. BRANNEN: Objection to form.
Q. BY MS. PORTER: Who else is involved?
A. Well, it would be subject to bankruptcy court approval.
Q. Right. But who is involved in setting those

allocations?
A. Well, it would be the debtors, LKC, and the bankruptcy court.
Q. Who is involved in setting the allocation?
MS. BRANNEN: Objection to form; asked and answered.
THE WITNESS: I think I answered your question.
Q. BY MS. PORTER: You'll be involving in the bankruptcy court in setting the allocation, or will you be presenting the final determination to the bankruptcy court for approval?
A. I believe it would be that an allocation would be presented to the court and then the court would -- would then approve it.
Q. So before it's presented to the court, who is involved in coming up with that allocation?
Just the debtors and LKC; is that right?
A. That's my understanding.
Q. So not Whinstone?
A. Pursuant to the purchase and sale agreement, there is a provision that required Whinstone and Rhodium to agree on an allocation, as between the allocation with regard to the asset purchase and with regard to the settlement. So there is process in which Whinstone

would be involved in -- that -- that may or may not have a bearing on -- on the process here.
Q. So the allocation reached to Whinstone may be different from the allocation reached at LKC; is that right?
A. I think there might be overlap.
Q. But there's nothing here that requires it to be the same?
MS. BRANNEN: Objection to form.
THE WITNESS: There -- there is no express language in this letter that requires that the allocation be identical to the allocation agreed upon between Rhodium and Whinstone in the PSA.
Q. BY MS. PORTER: Right. So Rhodium and Whinstone in the PSA may reach one allocation, and then Rhodium and LKC, pursuant to this engagement letter, may reach a different allocation; is that right?
MS. BRANNEN: Objection to form.
THE WITNESS: I think it's unlikely, but I suppose it's a possibility.
Q. BY MS. PORTER: And there's no creditor involvement in reaching the allocation contemplated by this subsection D; is that right?
A. No. This did not expressly require creditors -- creditor involvement.

Q. Have the debtors started discussing with LKC what the allegations ought to be under this subsection D?
A. I have not been involved in those discussions.
Q. Do you know if anyone is involved in those discussions?
A. Possible. I don't know.
Q. Do you know if those discussions are happening currently?
A. It's possible that they -- they could be.
Q. Do you know if they're happening, yes or no?
MS. BRANNEN: Objection to form.
THE WITNESS: It's my understanding that there -- there could be discussions happening.
Q. BY MS. PORTER: Is it your understanding that there are discussions happening?
A. I'm not part of those discussions. So I don't know, specifically, what's -- what's being discussed.
Q. So you're not part of them, but you understand that they are currently happening?
A. It's possible that these matters may be under discussion, presently. I -- I'm not involved in those, so I don't know what's being discussed.
Q. Who are you aware -- who is engaging in discussions currently that you're aware of?

A. The special committee, perhaps; Province, perhaps.

Q. What is that understanding based on?

A. My --

MS. BRANNEN: Objection. Let me caution you to be mindful of the privilege in crafting your answer and answer, if you can, without waiving.

MS. LOHSE: And this is Paige Lohse objecting, as well, on the same basis.

THE WITNESS: I'll decline to answer, based on my counsel's instruction.

Q. BY MS. PORTER: Mr. Topping, you just mentioned a special committee. Who is the special committee or what is the special committee?

A. A special committee is a committee that was appointed by the board consisting of the independent directors David Eaton and Spencer Wells.

Q. And what is their role in setting the allocation for purposes of a success fee to be paid to LKC under the March 2025 engagement letter?

A. I don't know.

Q. Do they have the role?

MS. BRANNEN: Objection.

You may answer -- you may answer yes or no, but anything beyond that, we have to exercise caution.

Q. BY MS. PORTER: Do they have a role?

MS. BRANNEN: Same request.

THE WITNESS: I'm not sure.

Q. BY MS. PORTER: Why would you speculate that they would be involved in setting the allocation?

MS. BRANNEN: Objection to form.

THE WITNESS: Why would I -- why would I -- sorry. What was the question?

Q. BY MS. PORTER: Why did you speculate that the special committee was the party that was involved in having the negotiations or discussions regarding the allocation that LKC was to be paid under subsection D of the March 2025 engagement letter?

MS. BRANNEN: Objection to form.

THE WITNESS: I'm not sure who else it would be-- other than Province or, you know, the special committee, I'm not sure who else would be involved.

Q. BY MS. PORTER: And what is the special committee's role in respect of paying LKC under the terms -- a success fee under the terms of the March 2025 engagement letter?

MS. BRANNEN: Objection. And I caution the witness not to answer without revealing privilege information.

THE WITNESS: I'm -- I'm unaware of what the role is.

Q. BY MS. PORTER: I think you mentioned earlier that it was the full board that authorized the decision to enter into the March 2025 engagement letter and authorized you to submit your declaration; is that right?

A. No.

Q. Okay. Please correct me, then.

A. I know that members of the board were involved, but I don't know if the full board authorized the -- the filing of the amended retention application. The full board did authorize me to sign documents in connection with retention applications.

Q. Got it. So the full board authorized you to sign -- to submit your declaration; is that right?

A. The full board authorized me to sign documents in connection with retention applications.

Q. How does the company know that any of the Whinstone sale should be allocable to the energy credit portion?

MS. BRANNEN: Objection.

THE WITNESS: I don't have -- I don't know. I would not be part of that process.

Q. BY MS. PORTER: Who would be?

A. Members of our finance department, Province, there might be other retained professionals that might be involved.

Q. Sorry. I meant for the allocation process.

How did the company know that any of the portion of the asset sales would be allocable to energy credits?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I believe I answered your question.

Q. BY MS. PORTER: Could you answer it again?

A. If you could read the question again, I'll try my best to answer it.

Q. How did the company know that any portion of the Whinstone sale was actually allocable to Whinstone wanting to get rid of any energy credit payouts?

MS. BRANNEN: Objection to form.

THE WITNESS: I -- I don't know how. That's -- that's not my area.

Q. BY MS. PORTER: Whose area is it?

A. It would be, most likely, someone on our finance team, retained professionals, someone else that has an analysis of energy sales.

Q. By the time of this engagement, the Whinstone assumption litigation had concluded; is that right?

A. No.

Q. By March of 2025?

A. No.

Oh, the Whinstone assumption litigation had not concluded. Although, the court had entered an order in December, that order was under appeal.

Q. How active was that litigation in March of 2025?

A. I know the appeal was pending. Work was being done on an affirmative case against Whinstone for over 300 million. Now, at some point, there was an agreement to stay, and I think work -- things started to slow down. I don't know when that actually happened, but it happened at some point between, I would say, sometime maybe in -- sometime between March and the end April.

Q. Stris also litigated on the debtor's behalf in connection with the assumption litigation; is that right?

A. Yes.

Q. Which firm was lead counsel to the debtors on the assumption litigation?

MS. BRANNEN: Objection to form.

THE WITNESS: Can you repeat the question?

Q. BY MS. PORTER: Which firm, between Stris and LKC, was lead counsel for the debtors in connection with

the assumption litigation?

MS. BRANNEN: Objection to form.

THE WITNESS: Lead counsel. So we we had two -- two partners from each firm at counsel's table during the assumption litigation, and I'm not sure if -- I don't recall if I recall there being a single -- singular individual from both firms who was lead counsel.

Q. BY MS. PORTER: Were their contributions, roughly, equal in that case, from your perspective?

A. Yeah. I think rough -- I think both firms carried a fair amount of water. It would be very difficult for me to allocate, like, a percentage between the two. Both of them were very, very heavily involved.

Q. Does Stris have a claim for a success fee?

A. To the best of my knowledge, Stris' engagement agreement does not call for a success fee.

Q. Do they have a contingency fee?

A. To the best of my knowledge, no.

Q. Do they have any form of compensation other than hourly rates?

A. As far as I can recall, no.

Q. Have the debtors --

(Reporter clarification.)

Q. BY MS. PORTER: Have the debtors ever discussed

with Stris including a contingent element to its fee structure?

MS. BRANNEN: And I need to lodge an objection here on two grounds. The -- at least two grounds, the first being scope. We have been trying to be accommodating but had agreed, based on the representation, Katherine, in your May 23rd e-mail that this deposition will be limited to two hours. It's certainly been longer than that on the record now. And also, that it would be limited to issues related directly to the retention application for LKC.

So if you have any other questions about that, I'd ask you to cover them. I'm not sure if you know how much time you have left, but these other matters that you're asking about, I believe, are of record elsewhere. And so, I'm not sure why there's a need to quiz Mr. Topping about them.

MS. PORTER: Okay. We -- we're very close to the end of my outline. So I think we're close to wrapping up.

MS. BRANNEN: Thank you.

MS. PORTER: Are you instructing Mr. Topping not to answer the question about the Stris fee?

MS. BRANNEN: I'm not, but I just wanted to

move it along. And please, try to keep it focused on things that relate to the LKC application.

MS. PORTER: Got it.

Q. BY MS. PORTER: Mr. Topping, do you know -- do you know the answer to my question?

A. So the concept of Stris going on a contingency fee basis may have been discussed at one time or another prior to -- it may have been discussed. I think it may have been discussed. I don't recall specifics. Nothing was ever reduced to writing.

Q. I'd like to turn now to our next exhibit which will be LKC's reply brief, which is ECF1105. Can we mark this as our next exhibit.

(Exhibit 7 was marked for identification.)

Q. BY MS. PORTER: Can we turn -- have you -- have you reviewed this document before, Mr. Topping?

A. Yes. I reviewed it after it was filed.

Q. Thank you.

Can we turn to paragraph 7. It says here, Debtor's bankruptcy counsel instructed LKC to delete them, being the information about the contingency fee, at the request of Debtor's general -- at the request of -- Debtor's bankruptcy counsel instructed LKC to delete them at the request of Debtor's general counsel.

Do you see that?

A. I do.
Q. And you are the debtor's general counsel?
A. Yes.
Q. Did you, in fact, provide this instruction?
A. I did make a request. Yes. I did make a request along those lines.
Q. So this is accurate?
This sentence is accurate?
MS. BRANNEN: Objection to form.
THE WITNESS: I'm just reading it again. Bear with me.
All I can say is that I do recall making a request along those lines. I don't know if -- if the -- the sequence is correct in the way it's represented here, but I do recall making such a request.
Q. BY MS. PORTER: Was your decision based on the advice of counsel?
MS. BRANNEN: Objection to form.
Q. BY MS. PORTER: Yes or no?
A. I don't recall. It may have been informed in some way, but I don't recall, one way or another.
Q. You don't know whether or not your decision to instruct Debtor's bankruptcy counsel had LKC delete the details about the contingency fee from the application was based on advice of counsel?

MS. BRANNEN: Objection to form.
THE WITNESS: I don't understand your question. I -- I --
Q. BY MS. PORTER: Yeah. Go ahead.
A. The --
Q. The sentence says here, Debtor's bankruptcy counsel instructed LKC to delete them at the request of Debtor's general counsel.
And my request for you is, did you make that request on the advice of counsel, yes or no?
MS. BRANNEN: Objection to --
THE WITNESS: I don't recall. Sorry.
MS. BRANNEN: Sorry.
Q. BY MS. PORTER: You don't recall if you based this decision on discussions with your own counsel?
MS. BRANNEN: Objection to form.
THE WITNESS: I don't recall, specifically. No.
Q. BY MS. PORTER: Okay. So let's turn to paragraph 63.
Do you see where it says that no objection would have merit because LKC's -- LKC's fees do not exceed the reasonable value of the firm's services, and Rhodium Enterprises, Inc., listed the legal representation agreement on their amended schedules as

an executory contract.
Do you see that?
A. Yes.
Q. Is it your understanding that LKC was not required to file a proof of claim by the bar date because the agreement was listed on the amended schedule as an executory contract?
MS. BRANNEN: Objection to form.
THE WITNESS: I have not formulated an opinion either way on that question.
Q. BY MS. PORTER: Got it.
Have you discussed that with anyone at the debtors?
A. I -- I -- if I -- I'm going to decline to answer that.
Q. Okay. Based on --
A. Any discussions I might have had on the topic would be privileged and the debtor has not authorized me to waive privilege.
Q. Have you had discussions on this topic, yes or no?
A. I don't recall.
Q. Turning to the next paragraph 66, it says here that, because of LKC's work developing an affirmative case against Whinstone, the debtors obtained this

$185 million settlement.
Do you see that?
A. Yes.
Q. And this settlement is -- includes the work that LKC had performed for the debtor; is that right?
That's your view?
MS. BRANNEN: Objection to form.
THE WITNESS: My view is that the settlement would not have been possible if it wasn't for the work that LKC did.
Q. BY MS. PORTER: And LKC was involved in negotiating the settlement?
MS. BRANNEN: Objection to form.
THE WITNESS: LKC did attend the -- the mediation on February 19th. I'm not sure what involvement they -- I'm not aware of any -- I'm not sure what involvement they may have had beyond that.
Q. BY MS. PORTER: Next -- just two more topics and they'll both be very quick -- or possibly three.
We'll turn to our next exhibit, which is the Stris brief, paragraph 4 -- actually, you know what, I think we've covered this sufficiently. We can -- we can take this down.
Mr. Topping, Quinn Emanuel filed the original retention application; is that correct?

A. Yes.

Q. And they also filed the application at issue now, correct?

A. They -- I don't see anything on my screen right now.

Q. We can -- we can pull up the application, if you'll like.

MS. PORTER: Karen, can we pull up the application?

MS. BRANNEN: Remind me which one?

MS. PORTER: It is ECF 835.

MS. BRANNEN: Give me one moment.

MS. PORTER: We can just go straight to the signature block.

Q. BY MS. PORTER: Mr. Topping, do you recognize this as the application filed in March of 2025?

A. I'm sorry. Can you enlarge it slightly?

Thank you.

Yes. I do recognize it as the application that was filed in March of '25.

MS. PORTER: And Karen, please go to page 4.

Q. BY MS. PORTER: And Quinn Emanuel is the debtor's counsel that submitted this; is that right?

A. Yes.

Q. But this is the law firm that filed the reply on behalf of the debtor in support of this application.

Is that also right?

A. That's right.

Q. And indeed, the debtors are seeking to retain Stris related to this dispute now?

MS. BRANNEN: Objection to form.

Q. BY MS. PORTER: Are the debtors seeking to retain Stris related to the dispute?

A. I think the court approved the Stris retention as special counsel in connection with this -- this matter.

Q. So have the debtors switched counsel from Quinn to Stris in connection with the LKC retention?

MS. BRANNEN: Objection to form.

THE WITNESS: Yes. That's correct. LKC -- or I'm sorry. Stris & Maher is debtors' counsel in connection with that.

Q. BY MS. PORTER: And Quinn is no longer debtors' counsel in connection with this issue?

MS. BRANNEN: Objection to form.

THE WITNESS: I would not expect that Quinn would be performing work on -- in connection with this. That -- that wouldn't -- would not be my expectation.

Q. BY MS. PORTER: And why is that?

A. To avoid duplication.

Q. Why did the debtor switch from Quinn to Stris in the middle of the pending application?

MS. BRANNEN: Objection. I caution you to be mindful in your answer. You can answer, at a high level, if you are able to, but only with the level of information that would appear on a privilege log. Please don't get into any details.

THE WITNESS: I think that the rationale was fully explained in the filings that were made in connection with Stris' amendment to its retention application.

Q. BY MS. PORTER: I'd like to hear your understanding as the debtors' general counsel, please.

A. It's -- it is.

MS. BRANNEN: Objection to form.

THE WITNESS: It -- my understanding is consistent with everything that has been set forth in the pleadings filed in connection with the Stris & Maher retention application.

Q. BY MS. PORTER: And could you summarize those for me, please?

MS. BRANNEN: We object and ask you to show him the document.

MS. PORTER: I'm asking for his

understanding, and he's referencing a document. So if he could tell me what his understanding is, I'll just take that, as well.

THE WITNESS: My understanding is consistent with the representations made in those pleadings.

Q. BY MS. PORTER: And what are those representations?

MS. BRANNEN: Objection to form.

THE WITNESS: I would have to review them to refresh my recollection and understanding of that, but I do recall that, when I did review them, they were consistent with -- with my understanding, as well.

Q. BY MS. PORTER: How can you know -- could you just tell me your own understanding now?

Sitting here right now, what is your understanding about why the debtor switched from Quinn to Stris in connection with the LKC retention issue?

MS. BRANNEN: Objection to form; and instruct caution with respect to privilege.

THE WITNESS: I'm not able to provide any information concerning that beyond what's already been provided in connection with those pleadings.

Q. BY MS. PORTER: Do you not have a view?

MS. BRANNEN: Objection.

THE WITNESS: A view of what?

Q. BY MS. PORTER: Why the debtors have switched from Quinn to Stris in connection with the LKC retention application.

A. My -- my view is consistent with what's been stated in -- in those pleadings.

Q. Right. And I'm asking you to tell me what that is.

MS. BRANNEN: Objection to form; asked and answered. I believe this --.

MS. PORTER: He hasn't actually given any substantive answer, at all.

MS. BRANNEN: You don't like his answer, but he has given it several times now. Can you please move on or show him the document?

MS. PORTER: He said it's consistent with something that he can't articulate, at all.

MS. BRANNEN: If you show it to him, perhaps he can. And it's well -- we're bordering on three hours here, and this is far afield from the subject of the actual application for LKC's retention, which is what we understood you'd be limiting your questions to. So I'm asking you to, please, either show him the document or move on.

Q. BY MS. PORTER: Would Quinn face a conflict of

interest in continuing to represent the debtors with respect to the new application?

MS. BRANNEN: Nope. Objection to form.

And I instruct you not to answer that. It's privileged, and it's totally beyond the scope of what this deposition was represented it would be about. And if needed, we'll go off the record, and I'll seek a protective order.

MS. PORTER: This is absolutely relevant to the question of whether or not the debtors' judgment in entering into this amended retention application.

Q. BY MS. PORTER: Has LKC advised that it may have a claim against Quinn relating to the retention application?

MS. BRANNEN: Objection.

MS. PORTER: On what basis?

MS. BRANNEN: Form; scope. And he needs to be very careful not to answer if anything that would inform his answer is based on privileged communication.

MS. PORTER: There is absolutely nothing privileged about whether or not there has been a claim related to Quinn. That's not legal advice. It's a fact.

MS. BRANNEN: If the -- if there are communications about that, and I'm not saying there are,

I'm just cautioning the witness to be mindful of the attorney-client privilege and work product that the debtors would enjoy with respect to any dispute. And I would -- I would assume you would seek not to invade that. I don't think this is the proper place to try to ask the witness about something far afield from LKC's amended retention application.

Q. BY MS. PORTER: Mr. Topping, do you know, yes or no, whether or not LKC has advised that it may have a claim against either Quinn or the debtors relating to the retention application?

A. I'm not -- I'm not aware of -- I'm not aware of a -- you're asking if LKC has asserted a claim. I'm not aware of any claims that have been asserted by LKC against Quinn Emanuel.

Q. Are aware of whether or not LKC has suggested that it might have a claim against either Quinn or the debtors in respect of the LKC retention application?

MS. BRANNEN: Objection to form.

THE WITNESS: No. I don't recall LKC forming -- providing me with a -- like, a position on that question.

Q. BY MS. PORTER: Are you aware of whether LKC has conveyed to anybody that it may have a claim against Quinn or the debtors in respect of the LKC retention

application?

A. No. I don't -- I don't think anyone has brought to my attention any -- I don't recall anything -- I don't recall anything specific about that, and I am thinking carefully about -- I can't recall anything specific along those lines.

Q. Do you recall any discussions, general or specific, regarding the possibility that LKC might have a claim against Quinn or the debtors relating to the retention application?

MS. BRANNEN: And I object.

You may answer, but please do so without revealing any privileged communications.

THE WITNESS: Yeah. Beyond the answers I've already provided, I'm not able to provide any further information that is -- is not privileged. I have not been authorized to waive privilege. So I'm not able to provide any further information on -- on that.

Q. BY MS. PORTER: What changed between the filing of the application in March 2025 and the reply in May of 2025 that caused the switch from Quinn to Stris as counsel to the debtors in respect of the LKC retention application?

MS. BRANNEN: Objection to form.

THE WITNESS: I'm sorry. Can you repeat

the question?
Q. BY MS. PORTER: Sure.
What changed between March of 2025 and May of 2025 that caused the switch from Quinn to Stris representing the debtors in respect to the LKC retention application?
MS. BRANNEN: Objection to form.
THE WITNESS: I think that, again, my understanding is consist with what's been provided in the pleadings filed with the court in connection with the amended retention application that the court approved for Stris --
Q. BY MS. PORTER: So You're not capable of telling me what the -- what the issues are?
MS. BRANNEN: Objection. That's, kind of, harassing and completely ignores his answer. Can we, please, wrap this up?
MS. PORTER: I'll try one more time.
Q. BY MS. PORTER: If you could tell me, beyond referencing the filings, what caused the switch from Quinn to Stris in respect to the LKC retention application, that -- that is the information I'm asking for, your understanding right here, right now.
MS. BRANNEN: Objection to form.
THE WITNESS: My -- my own understanding is

consistent with everything that's been filed in connection with the retention application and was approved by the court for Stris & Maher.
Q. BY MS. PORTER: And just for the record, I've asked you several times what that is, and I have not yet received an answer.
MS. BRANNEN: Objection --
THE WITNESS: I feel --
MS. BRANNEN: -- to the extent that is not -- that's not a question. If you have a question for the witness -- a question directly related to the LKC retention application, please go ahead and ask that.
Q. BY MS. PORTER: Are you capable of saying, in your own words, what the reason was for the switch to Stris in respect of the LKC retention application?
MS. BRANNEN: Objection to form.
THE WITNESS: I've said it several times.
Q. BY MS. PORTER: Did you review the monthly statements from LKC over the period when they were performing their work?
A. Either myself or a member of my department reviewed them.
Q. Did you review them to ensure there with no duplication of services between LKC and Stris?
A. Yes.

Q. Did you consider the LKC charges to reflect heavy discounts?
A. I'm sorry. I didn't -- you were, kind of, garbled on that last question.
Q. Apologies.
Did you consider the LKC charges to reflect heavy discounts?
A. The discounts were applied on the -- I think on the last page or one of the last pages of the invoice. It showed the application of the -- of the discounts.
Q. Did you consider those to reflect heavy discounts?
MS. BRANNEN: Objection to form.
THE WITNESS: Yes.
Q. BY MS. PORTER: Could you explain to me your knowledge of the pre-petition sale interest by Whinstone and Riot [phonetic]?
A. The -- I'm sorry. The pre-petition what?
Q. Sale interest by Whinstone and Riot.
MS. BRANNEN: Objection to form; and scope.
THE WITNESS: The pre-petition sale interest? Is that -- I'm sorry. I didn't --
Q. BY MS. PORTER: Yes. And whether they were reflected in the original engagement letter.
A. I -- I -- I'm -- I don't understand your

question. I'm sorry.
Q. Okay. We can move on.
Do you know how much LKC says -- how much discounts and services LKC says it has provided to the debtors, overall?
A. I do recall the number from one of its pleadings. I think it was over a million since inception and over 700,000 since the petition date. That's my recollection.
Q. Would you consider a return of eight or nine times the amount of discounts provided to be fair?
MS. BRANNEN: Objection to form.
THE WITNESS: And I -- I -- I apologize. It must be a technical thing. But the question came across in a -- kind of, a garbled manner. So if you could, please, repeat it, I would appreciate it.
Q. BY MS. PORTER: Would you consider a return that was eight or nine times the amount of the discount provided to be fair?
MS. BRANNEN: Objection to form.
THE WITNESS: In -- in -- in the abstract, I don't know. It would -- to answer that question in the abstract, I would need more information.
Q. BY MS. PORTER: What information would you need?

A. I mean, are you asking specifically about LKC?
Q. Correct.
A. In my view -- you're asking for my opinion.
In my view, LKC took substantial risk when it agreed to perform work on this case in exchange for discounted rates. And it -- it -- it's appropriate to honor the terms of the deal that was struck between Rhodium and LKC, given the substantial value that they created for the estate, the fact that they allowed a -- because of their work, allowed Rhodium to stay in business.
There were at least three different injunctions from three different juris that allowed Rhodium to continue to operate. And then they won the assumption motion; they also won a motion to compel arbitration. They won an appeal on -- on the arbitration question. The value of those services is tremendous, and the value that they brought to the estate in allowing the Whinstone settlement to --
MS. PORTER: Sarah, you're not on mute.
THE WITNESS: -- occur is tremendous.
(Multiple speakers.)
THE WITNESS: So I think that it's the -- it's -- given the risk -- the risk that they took and the value that they created, I think it is certainly not

unfair, in my opinion.
MS. PORTER: Those are my question. I'm wrapped up. I want to open it up and see if anyone else would like to to ask Mr. Topping any questions.
Mr. Topping, thank you for your time today.
MS. BRANNEN: Well, this is Elizabeth Brannen for the debtors. I have no questions. And I'm hoping that -- we were hearing none, but I'm not sure if anyone else will confirm.
MR. WOLFSHOHL: No questions from LKC, either.
MS. PORTER: Okay. Mr. Topping, thanks again for your time. Appreciate it.
(Reporter order clarification.)
MS. BRANNEN: For the debtors, Stris & Maher would like a copy on those terms, please.
THE REPORTER: And Ms. Porter, you want that, as well?
MS. PORTER: I'm sorry. Can you repeat it?
THE REPORTER: Rough today. Final tomorrow.
MS. PORTER: Correct. Yes. Thank you.
MR. WOLFSHOHL: LKC would like the same, please.
THE REPORTER: Okay. Off the record.

MS. PORTER: Thanks, everyone.
(Whereupon proceedings concluded at 2:59 p.m.)

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHER DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	§
	§
RHODIUM ENCORE LLC, et al.,	§
	§
Debtors,	§
	§
	§
	§

REPORTER'S CERTIFICATION
ORAL AND ZOOM
DEPOSITION OF CHARLES TOPPING
JUNE 2, 2025

I, Nicole A. Hatler, Certified Shorthand Reporter No. 11275 in and for the State of Texas, hereby certify to the following:
That the witness, CHARLES TOPPING, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;
That the original deposition transcript was delivered to _____;
That the copy of this certificate was served on all parties and/or the witness shown herein on _____;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a part before the completion of the deposition and that the signature is to be before any notary public and returned within 30 days from the date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefore:

__X__ was not requested by the deponent or a part before the completion of the deposition.

I further certify I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 3rd day of June, 2025.

_____

Nicole A. Hatler, Texas CSR 11275
Expiration Date: 11/30/22
NHatler@Ymail.com

A
able 7:20 22:21 71:24 96:6 97:21 101:15,18
above-styled 1:18
absolute 39:25
absolutely 99:9,20
abstract 105:21,23
accommodating 88:6
account 71:18 75:7 76:11
accurate 49:22 50:2,11,22,25 51:4 90:7,8
accurately 67:9
action 110:14,16
active 33:16 35:24 37:8 86:7
actual 54:14 98:21
Ad 1:17 2:2 5:3 6:11 27:15,17 32:20 33:7 49:15
address 27:17 28:4 28:8,10 60:9,9
addressed 38:15
advice 44:11 55:3 55:13,19 90:17 90:25 91:10 99:22
advised 99:12 100:9
advising 43:24,24 44:4,4
affirmative 20:10 20:14,21 21:1,5 38:6,19 44:23 86:10 92:24
afield 98:20 100:6
afternoon 6:8
aggregate 70:10 78:8
agree 12:19 24:1 40:14 42:24 49:5 49:22 50:22 66:22 79:23
agreed 13:3 80:12 88:6 106:5
agreeing 67:16
agreement 13:8 22:10,13 25:9 28:15 41:6,10,17 42:3,22,23 43:2 46:1 49:11 56:1,4 56:9,23,24 57:20 59:14,16 60:16 79:21 86:11 87:17 91:25 92:6
ahead 7:15 91:4 103:12
AHG 5:7 25:9,16 25:18
Akin 2:5 6:10 9:25
al 1:5 109:5
allegations 81:2
allocable 84:20 85:6,15
allocate 46:24 47:22,23 49:11 87:13
allocation 78:4,6 78:11,17 79:4,10 79:13,17,23,23 80:3,4,12,12,15 80:17,22 82:19 83:5,12 85:4
allocations 79:1
allow 22:4
allowed 106:9,10 106:13
allowing 106:19
ameanded 32:2
amended 9:13 16:11 28:14 29:11 30:10 38:14 42:23 43:13,16 59:22 64:7 84:12 91:25 92:6 99:11 100:7 102:11
amending 31:16 33:2,6,9,12
amendment 96:11
America 2:6
Americas 3:7
amount 46:24,25 47:24,24,25 75:6 75:16,22 76:13 77:22 87:12 105:11,18
amounts 71:20
analysis 85:23
analyze 50:13
analyzing 19:17
and/or 30:6 109:24
answer 7:15,16,20 15:12 21:19 22:18,22,23 26:10 37:12 42:21 45:8 55:5 55:15 58:21 59:9 71:23 74:23,24 76:25 77:2 82:7,7 82:10,24,24 83:24 85:11,13 88:23 89:5 92:15 96:5,5 98:12,13 99:4,18,19 101:12 102:16 103:6 105:22
answered 79:6,7 85:9 98:10
answering 6:24 47:8
answers 6:22 7:3 101:14
anybody 100:24
Apologies 104:5
apologize 40:3 105:13
appeal 42:4,5,6,7 86:6,9 106:16
appear 13:6 14:2,3 55:6 66:1 96:7
appearance 11:12
Appearances 2:1 4:3
appeared 38:4 68:3
applicable 26:23
application 8:5 9:13,14,22 12:2,9 12:9,13,16,17 13:12 14:8 23:19 24:15 25:11 26:1 27:9 29:12 32:2 33:2,6,10,12 38:14 43:14,17 46:19 49:14 53:22 54:17,18 56:7 57:5 59:22 59:24 69:16 84:12 88:11 89:2 90:24 93:25 94:2 94:6,9,16,19 95:2 96:3,12,20 98:4 98:21 99:2,11,14 100:7,11,18 101:1,10,20,23 102:6,11,22 103:2,12,15 104:10
applications 9:12 26:20 52:22,23 68:5 84:14,18
applied 65:14,15 65:23 66:23 67:9 104:8
applies 26:19
apply 20:14,21,23 21:3 24:12 69:22
applying 66:9
appointed 82:16
apportion 47:24
appreciate 105:16 107:13
apprized 37:19
appropriate 22:5 74:16 106:6
approval 43:18 56:6 57:2,3,4 78:24 79:12
approve 79:15
approved 17:5 43:15 50:12 71:4 95:10 102:12 103:3
approximately 30:13,24 31:10 31:15 33:22 37:6 37:16 75:21
April 86:15
arbitration 106:16 106:17
area 10:14,17 26:18 85:19,20
arm's 19:22 20:2
arose 29:11
articulate 98:17
arts 10:5,9
Asay 2:11 8:16 53:20
aside 8:23
asked 51:25 52:4 57:12 61:10 70:23 79:5 98:9 103:5
asking 19:13 20:13 21:16 27:21 37:23 39:2 42:14 46:6,7,14 51:1 60:12 78:1 88:15 96:25 98:7,23 100:13 102:22 106:1,3
asserted 32:21 100:13,14
asset 42:1,2 46:25 47:23 57:20 79:24 85:6
assets 38:7,20 47:25 49:11
assisted 17:10 53:16
associated 24:7

assume 19:12 20:5 40:19 43:18 100:4
assumed 67:20
assumption 42:6 85:25 86:4,17,21 87:1,5 106:15
attached 14:10 49:17 53:22 110:7
attaches 19:2
attachments 9:15
attempt 45:17 69:15
attend 93:14
attention 101:3
attorney 6:10,20 7:14 10:12 11:13
attorney-client 26:12 100:2
attorneys 13:4 53:18 64:14 110:14
attributable 44:23 46:24,25 47:25 47:25
attributed 78:9,9
audible 7:3
August 5:8 62:9,25 63:6 64:22 65:3,5 65:10,14 66:4
Austin 3:3
authorization 15:6 15:7,9,24 16:1 52:18
authorize 14:22 15:17,20 22:20 84:13
authorized 14:16 14:18,20 52:20 52:22 74:8 84:4,6 84:11,15,17 92:18 101:17
authorizing 12:3 13:14,25
Avenue 3:7
avoid 96:1
awaiting 43:19
aware 7:19 12:1,5 13:8 17:16,20,24 18:1,2,8,12 22:3 25:20 27:15 45:10 75:5,16,24 75:25 76:9 77:18 78:14 81:24,25 93:16 100:12,12 100:14,16,23

B

B 5:1 78:7
bachelor 10:5,9
back 20:6 30:25 60:4,10
background 10:4 10:18
Bank 2:6
bankruptcy 1:1 6:12 10:18,20,21 10:23 11:1,2,3 12:18 13:7 21:23 22:4 26:17,19,20 26:24,25 27:5 39:20 43:17 78:23 79:3,10,11 89:20,23 90:23 91:6 109:1
bar 92:5
Barnes 2:20 58:5
base 55:2
based 26:2 31:23 43:9 55:10,12,19 58:17,23 70:8 73:13,15,15,18 73:19,20 74:1,2 75:18 77:19 82:3 82:10 88:6 90:16 90:25 91:14 92:16 99:19
basically 42:2
basis 74:15 82:9 89:7 99:16
be-- 83:16
Bear 90:11
bearing 80:2
began 32:7
begins 38:3
begun 33:2
behalf 51:18 74:17 86:16 95:2
belatedly 27:18
belief 41:14
believe 12:1 15:23 19:22 29:16 35:3 36:13 37:13 41:21 50:1 51:22 54:15 56:13 57:14 60:5 61:19 63:13 72:14 73:1 75:11,15 79:13 85:9 88:15 98:10
believed 41:5 75:6
benchmarks 20:25
best 31:14,24 32:14 36:20 51:7 65:11 85:13 87:16,19
beyond 22:1 28:9 71:25 82:25 93:17 97:22 99:5 101:14 102:19
bills 72:6
bit 66:7,8
Blackmon 9:3 29:16 30:6 52:13 52:14 56:13,15
block 94:14
blue 39:23,25
board 15:9,15,17 15:20 42:14,15 42:17,18 43:24 44:4 52:1,2,5,8,9 52:17,20 82:16 84:4,10,11,13,15 84:17
bordering 98:19
bound 14:17
Brannen 2:10 7:25 8:15 15:11,22 18:11 20:18 21:8 23:25 26:10,21 27:1,6 28:5,16 33:18 35:14 37:10,20 38:23 39:6,16 40:17 41:20 43:5 44:2 45:4,12 46:3,10 46:21 47:6,18 48:6,15,18 49:4 50:8 51:6,17,18 51:22 53:7,7,20 54:20,22 55:4,14 56:3 58:19 59:3,9 59:18 60:7,8,12 60:20 61:1,16 64:3 67:2,18 68:17 69:23 70:21 71:10,16 71:23 73:22 74:11,25 75:20 76:4,7,16 77:25 78:21 79:5 80:9 80:18 81:12 82:5 82:23 83:2,6,14 83:23 84:22 85:8 85:17 86:22 87:2 88:3,21,25 90:9 90:18 91:1,11,13 91:16 92:8 93:7 93:13 94:10,12 95:7,15,21 96:4 96:16,23 97:9,19 97:25 98:9,13,18 99:3,15,17,24 100:19 101:11,24 102:7,15,24 103:7,9,16 104:13,20 105:12 105:20 107:6,7 107:15
breach 38:24
break 7:7 52:25
Bridget 2:11 8:16 53:20
brief 5:11 15:18,21 59:23 89:12 93:21
briefs 9:23 14:17 14:21
brought 101:3 106:18
Bryant 2:5
business 106:11

C

C 78:8
CA 2:12
calculated 72:19 75:17
calculation 76:14
calculations 72:25 73:2,5,8,10,12,14 73:19,24 75:3,5 75:16,24,25 76:1 76:5,10,12,12,13 76:14
call 87:17
calls 33:22 34:1,4,9 34:12
Cameron 52:14 56:15
capable 19:17 102:13 103:13
capacity 11:9
care 71:25
careful 99:18
carefully 101:5
carried 87:12
case 20:23,24 27:4 27:10 38:6,19 44:23 66:2 86:10 87:10 92:25 106:5
cases 11:24 12:18 13:7 21:24 26:17 39:20 72:4

cause 1:18
caused 101:21 102:4,20
caution 26:11 55:4 58:19 71:24 82:5 82:25 83:23 96:4 97:20
cautioning 100:1
Center 2:12 3:5
Central 53:4
CEO 9:7
Cerritos 2:12
certain 21:15 33:4 48:25
certainly 88:9 106:25
certificate 4:10 109:23
CERTIFICATI... 109:9
certified 6:5 10:16 109:14 110:17
certify 109:16 110:1,12
cetera 19:18 65:6
change 61:23 62:3 64:1
changed 63:20 101:19 102:3
changes 49:18,23 50:3,11 51:4,9 62:1 63:22,24 64:6 67:25 110:7 110:8
Chapter 11:24 72:4
characterization 24:2
charged 67:12,21 68:15,24
charges 104:1,6
charging 68:9
Charles 1:11,15 4:5 6:1,15 109:11 109:17
Chase 9:3 29:16 30:6 52:13 56:13
Chicago 2:21
chief 15:25 16:4
choosing 19:6,8
chose 19:11
circumstances 22:5 24:12
circumvent 45:17 45:21,25 46:5,8 46:19 47:3,14,16
circumventing 48:10,13
cited 13:5
Civil 1:22
claim 66:11 87:15 92:5 99:13,21 100:10,13,17,24 101:9
claimed 77:18
claims 20:10,14,21 21:5 47:1 49:12 100:14
clarification 44:19 76:23 87:24 107:14
clarify 6:23 62:13
clarifying 61:25 63:24 64:6
clear 23:5 44:7
client 11:17 74:17
clients 67:21
close 41:25 70:14 77:19 88:18,19
closing 42:1
Cohn 2:14 12:4,23 24:14,22 29:16 30:8 54:11 70:2,4 70:8 71:21 72:3,7 72:12,15,17
Cohn's 71:8,8
college 10:8
colloquy 31:23 51:11
come 26:9 42:10
coming 41:15 79:17
commensurate 55:6
committee 2:19 16:21 82:1,13,13 82:14,15,15 83:10,17
committee's 83:20
communicated 77:9,21
communicating 36:5,22
communication 36:23 99:19
communications 26:12 36:6 37:22 74:3,6 77:7 99:25 101:13
company 17:9 84:19 85:5,14
compare 64:22 66:16
compares 64:11
compel 106:15
compensation 87:20
completely 7:21 102:16
completion 110:4 110:11
components 20:20 20:22 42:9 78:5
concept 89:6
concern 27:18,20 27:25 45:20,24 46:7,16,17,23 47:2,16,21 48:2,8 48:12,14,25 49:13
concerned 44:21 49:9
concerning 25:18 33:24 34:14 35:4 37:2 53:19 97:22
conclude 41:18
concluded 32:1 41:11 42:11,14 42:15,18 43:2,8 44:9 46:13 85:25 86:5 108:2
conclusion 78:3
conditions 21:15 21:17
confer 60:10 61:2 61:17
confidential 1:9 53:9
confirm 60:8 107:9
conflict 98:25
connection 6:11 8:4 13:11 14:7,25 14:25 15:18 23:19 27:8 33:19 43:25 51:14 84:13,18 86:17 86:25 95:11,14 95:18,20,23 96:11,19 97:18 97:23 98:3 102:10 103:2
consider 22:15 74:25 104:1,6,11 105:10,17
consideration 61:17
consist 102:9
consistent 63:11 63:16,19 96:18 97:5,13 98:5,16 103:1
consisting 82:16
construction 17:7
contains 110:8
contemplated 80:22
content 23:10 35:5 44:10,12 74:5
contents 22:25
contingency 23:23 24:12 26:2,9 27:16 32:22,23 33:8 41:5,11,16 41:19,22 42:12 42:19 43:3 87:18 89:6,21 90:24
contingent 88:1
continue 74:19 106:14
continues 53:8
continuing 99:1
contract 92:1,7
contracts 19:18
contractual 70:18 70:23 71:6,12
contributions 87:9
conversations 18:6 18:13
convey 68:11
conveyed 52:17 100:24
copy 24:21 60:1 107:16 109:23
corporate 11:19,22
correct 15:8 19:15 22:13 23:23 38:16 41:23 45:2 47:20 57:21 60:23 63:21 65:8 65:12 66:13 70:12 71:9 76:17 84:9 90:14 93:25 94:3 95:16 106:2 107:22
correctly 37:14 61:2
counsel 6:17 8:12 8:21 11:5,14,15 17:10,12,18,24 18:4 19:8,12,14 22:25 29:21,23 30:1 32:20 34:13 34:17,18,23 35:4 35:8,9 37:18,22 40:9 55:3,13,19

55:22 58:3 60:21 74:9,10,12 86:20 86:25 87:3,8 89:20,23,24 90:2 90:17,23,25 91:7 91:8,10,15 94:24 95:11,13,17,20 96:14 101:22 110:12
counsel's 82:11 87:4
couple 10:1
court 1:1 2:12 11:10 43:14,18 56:5,6 57:2,3,4 71:4 78:23 79:3 79:10,12,14,14 79:16 86:5 95:10 102:10,11 103:3 109:1
court's 42:6
cover 88:13
covered 93:22
crafting 82:6
created 106:9,25
creation 17:1,10
credit 24:8 84:20 85:16
creditor 80:21,25
creditors 26:3 54:18 80:25
credits 85:7
CRO 16:4,6,8,11
CROs 56:13
CSR 1:19 110:20
current 52:11,13
currently 43:13 64:12 66:16 81:9 81:20,25

D

D 80:23 81:3 83:12
damages 20:22 21:1 24:8 38:6,20
Dame 10:10
Data 3:5
date 9:4 13:22 29:4 29:11 30:9 38:14 67:25 70:16 92:5 105:8 110:6,21
dated 5:4 8:8 13:12
dates 35:23 36:7
David 29:18 52:14 56:14 57:24 82:17
day 18:17 110:17
days 29:7 31:18,19 36:6,11,18,21 110:6
Dayton 10:8
deal 45:17,20,22 45:24 46:13,13 46:15,16,19,23 106:7
debtor 16:21 18:3 30:15 41:9,18 59:15 72:20 92:18 93:5 95:2 96:2 97:17
debtor's 12:2 15:25 16:3 30:1 35:8 52:1,5,8 86:16 89:20,22 89:23,24 90:2,23 91:6,8 94:24
debtors 1:6 2:9 6:16 9:8 14:9,12 14:17,21 25:7 29:21 30:5 33:15 40:9 41:10,21 42:10,11,13 43:2 43:18 51:18 53:8 54:6 55:25 56:8 59:20 60:22,25 61:5 66:25 67:16 68:15 69:1,11 70:19 71:13 72:22,25 73:1,4 73:12 75:17 76:18 77:3,9 78:12,18,18 79:2 79:18 81:1 86:20 86:25 87:23,25 92:13,25 95:5,8 95:13 98:2 99:1 100:3,10,18,25 101:9,22 102:5 105:5 107:7,15 109:6
debtors' 15:18 16:6,11 18:17 34:18 39:20 95:17,19 96:14 99:10
December 86:6
decided 27:16
decision 28:8,13 29:2 56:1,9,22 57:1 58:25 59:2 59:15 84:4 90:16 90:22 91:15
declaration 5:4 8:1 8:2,4 9:11 13:10 13:24 14:4,6,13 14:16,20,23 15:10,18,21 16:2 16:7,9,20,25 17:1 17:6,11,14,19,21 17:25 18:3,16,19 18:25 20:12 23:18,22 24:6,9 24:13,19 32:19 41:1 45:16 46:16 52:19 53:1,15,19 53:21,23 54:5,10 54:15,25 63:12 64:5 84:6,16
declarations 9:11 52:21
decline 82:10 92:14
define 52:2,7
definitely 21:13,13 34:17,21 57:8
degree 10:5,6,9
delete 89:20,24 90:23 91:7
delivered 109:22
delta 69:1
department 73:9 85:1 103:21
deponent 110:2,3 110:10
deposed 6:18
deposition 1:10,15 6:6 7:9,13,23 8:20,24 9:1,3,5 9:20 12:2,6,8 13:5,6 51:13 88:8 99:6 109:11,19 109:21 110:4,11
describe 10:14
described 45:24 46:15,17,20 48:3 52:18
description 26:1,8
descriptions 54:17
designate 53:9
detailing 72:6
details 22:9,12 23:23 25:10 32:21 90:24 96:8
determination 78:14 79:11
determine 53:11
determined 72:20 72:22 78:11
developed 54:14
developing 92:24
devised 78:18
different 13:6,7 42:9,24 73:19 78:5 80:4,17 106:12,13
difficult 87:13
directed 60:7
directly 34:12 36:22 45:9 58:2 88:11 103:11
directors 52:11,13 82:17
disclose 22:12,18 22:20 23:23 24:11 25:8 74:5
disclosed 25:10,16 32:22
disclosure 22:19 27:16
disclosures 25:20
discount 105:18
discounted 106:6
discounts 24:16 104:2,7,8,10,12 105:4,11
discuss 16:20 17:21 33:11 38:25 59:6 69:7 69:18
discussed 8:24 9:1 17:24 18:3 20:8 22:24 23:2,6,10 23:14 30:19 31:3 38:21,25 39:3 59:5,12 61:9 69:9 69:20,21,25 71:13 81:18,23 87:25 89:7,8,9 92:12
discusses 31:5
discussing 23:16 33:6 35:24 41:2 81:1
discussion 9:2 16:8 16:10,13,17 22:25 37:1 54:13 54:19 57:19 81:22
discussions 23:11 31:10,15,24 32:13 33:1,9 34:2 34:3 35:1,3,5,6 35:17,19 36:2 37:5 57:10,13,15 57:17 58:2,10

59:8 81:4,6,8,14 81:16,17,25 83:11 91:15 92:17,20 101:7
dismissal 42:4
dismissed 42:7 49:12
dispute 62:24 95:6 95:9 100:3
disruptions 7:10
DISTRICT 1:2 109:2
DIVISION 1:3 109:3
DLT 3:5
docket 25:12
document 89:16 96:24 97:1 98:15 98:24
documents 9:10 44:22 52:22 84:13,17
draft 16:25 17:2 17:19 24:22 25:3 30:9 53:23 54:9 60:13
drafted 24:15 54:3
drafting 53:14 54:1,3,4
drafts 17:14 30:12 30:25,25 59:25 60:2,4,5,14,16,18 60:18,24 61:6,9 61:15 62:20
Drive 2:12,21
driving 21:12
duly 1:17 109:17
duplication 96:1 103:24

E

E 5:1
e-mail 88:7
e-mails 33:23
earlier 45:25 49:10 51:25 52:4,18 53:14 54:13 57:12 60:3,16 61:5 84:3
Eaton 29:18 52:15 56:14,18,20 57:7 57:8,14,24 58:7 58:10 82:17
Eaton's 59:2
Ebrannen@stris... 2:13
ECF 12:11 94:11
ECF1105 89:12
educational 10:3
effect 46:7,8,22 47:5,11,13,17,19 48:25 49:2 64:18 66:19 67:15 68:1 68:13
effective 68:9
eight 105:10,18
either 25:1 92:10 98:23 100:10,17 103:21 107:11
element 88:1
elicit 55:7 74:20,22
elicits 74:15
Elizabeth 2:10 8:15 51:17 53:7 53:20 107:6
Emanuel 54:7 93:24 94:23 100:15
employed 110:13
encompassed 15:24
ENCORE 1:4 109:4
energy 84:20 85:6 85:16,23
enforced 72:23
engagement 5:8,9 16:11 19:21 21:14 22:8,16 23:7 25:8 28:15 29:3,14,22 30:10 31:16 41:16 43:4 46:1,9,20 47:4 49:19,20,23 50:3 50:12,23 51:5 56:23 59:1,23 60:16 61:6,23,24 62:3,4,6,15,16,24 63:1,16,21,22 64:1,7,12,13,23 65:4,10,25 66:5 66:14,17 68:3 70:15 71:1,2,5 72:21 73:16 80:16 82:20 83:13,22 84:5 85:24 87:16 104:24
engagements 43:10
engaging 81:24
enjoy 100:3
enlarge 94:17
ensure 103:23
enter 28:14 29:3 56:1,9,22,23 57:2 59:1,22 84:5
entered 41:9 56:7 62:17,17 86:5
entering 16:11 99:11
Enterprises 91:24
entitled 41:11,19 41:22 42:12,16 42:18 43:3,9 75:6 75:7,18 76:11,19 77:4,19
entries 72:14,17
equal 87:10
estate 106:9,19
et 1:4 19:18 65:5 109:4
event 33:1 41:14 63:14
events 41:24
exact 29:4 31:19 35:23 36:7
Exactly 41:18
Examination 4:6 6:8
example 78:7
exceed 91:23
excerpt 5:5 40:5
exchange 106:5
exchanged 30:12 33:23 60:4,13,17 60:20,22 61:6,9 61:11
execution 42:2
executory 92:1,7
exercise 74:17 82:25
exhibit 5:4,5,7,7,8 5:9,10,11 13:19 13:20 39:9,10 61:19,20 65:18 65:19 89:11,13 89:14 93:20
exhibits 64:25 65:2
exist 61:17
existence 26:4
existing 42:22 48:4
expect 43:10,12 69:3,4 95:22
expectation 68:25 95:24
expects 69:10
experience 10:20 10:22,22
expert 10:16 26:18
expertise 10:15
Expiration 110:21
explain 49:6,8 104:15
explained 96:10
express 80:10
expressed 27:18
expressing 46:18
expressly 80:24
Expressway 3:3
extent 30:2 103:9

F

face 98:25
facilitating 43:21 43:25
fact 13:4 20:12 34:2 63:12 66:23 74:16 90:4 99:23 106:9
fair 87:12 105:11 105:19
familiar 21:22 22:2
far 87:22 98:20 100:6
February 29:10 32:1,3,4,7,11,20 33:3,8,13,15 34:15 35:20 37:7 37:15 38:13,16 38:21 40:16,22 40:25 93:15
fee 20:7,9,14,17,20 20:25 21:4,6,15 21:18 23:23 24:3 24:12 26:2,5,9 27:16 32:22,23 33:8 41:5,11,16 41:19,22 42:9,12 42:19 43:3,9,17 45:18,21 46:1,9 46:19 47:3,15 48:4,13 63:4,7,15 63:23 64:2 70:3,9 70:19 71:7,19 72:8,19 75:8,18 76:11 77:19,23 78:5 82:19 83:21 87:15,17,18 88:1 88:24 89:7,21 90:24
feel 103:8
feels 74:14
fees 64:13,14 70:20

71:14,18 72:3 91:22
Feld 2:5
file 20:10,21 92:5
filed 8:4,11 9:23 12:10,17 14:8,8 14:11,12,21 18:16,17 20:14 21:5 23:18 25:11 29:12 32:2 38:14 42:5 49:15 89:17 93:24 94:2,16,20 95:1 96:19 102:10 103:1
filing 10:21 11:2 11:12 22:15 23:2 23:7,14 52:21 72:4 84:12 101:19
filings 14:13 22:4 96:10 102:20
final 42:8 79:11 107:20
finalized 17:15,19 17:22,25 18:4
finalizing 34:10
finally 12:22
finance 73:9 85:1 85:22
financially 110:15
fine 7:8 53:2
fingers 17:8
finish 6:24 76:24
firm 17:12 67:21 68:6 86:20,24 87:4 95:1
firm's 67:25 91:23
firms 87:7,11
first 13:19 16:25 17:2 18:25 19:24 25:15 28:18,20 29:11 30:9 39:11 42:25 61:23 63:5 63:16 64:9 67:1 67:10 68:16 69:2 69:11 70:15 88:5
fit 48:3
five 31:1,12,17,21 60:18,24 61:13
fixed 24:3 70:3 71:7,19 72:8
FLEMING 3:6
Floor 2:16
fly 60:9
focused 89:1
following 34:9,15 36:1 37:6 109:16
follows 6:3
forgot 51:12
form 15:22 18:11 21:8 26:21 27:1 28:16 33:18 35:2 35:11,12,16 37:10 38:23 39:6 40:17 41:20 43:5 44:2 45:4 46:10 46:21 47:6,18 48:6,18 49:4 51:6 56:3 59:3,18 64:3 67:2,18 68:17 69:23 70:21 71:10 73:22 76:4 76:7,16 77:25 78:21 79:5 80:9 80:18 81:12 83:6 83:14 85:8,17 86:22 87:2,20 90:9,18 91:1,16 92:8 93:7,13 95:7 95:15,21 96:16 97:9,19 98:9 99:3 99:17 100:19 101:24 102:7,24 103:16 104:13,20 105:12,20
formation 17:6
formed 55:10
forming 100:21
formulated 92:9
Fornaro 11:17,17
forth 20:6 24:15 30:25 60:4 96:18
forthcoming 74:13
four 62:15,24
fourth 62:6,10
FOX 3:6
frame 29:6 38:10
FRCP 110:1
free 70:2
Frome 3:7
front 13:15 24:6 24:10
full 15:15,17,20 52:2,17 84:4,11 84:12,15,17
fully 96:10
further 13:13,24 14:7 37:1 101:16 101:18 110:1,12 110:15

G

garbled 104:4 105:15
general 6:17 11:5 11:15 37:18 74:12 89:22,24 90:2 91:8 96:14 101:7
gestures 7:4
getting 40:13
give 7:3 8:8 14:16 14:20 31:14 36:20 44:12 94:12
given 6:20 70:18 74:18 98:11,14 106:8,24 109:19
go 7:15 10:7 13:22 36:3 39:11 44:10 51:9 64:10 67:4 91:4 94:13,21 99:7 103:12
going 7:9 18:25 50:21 89:6 92:14
Good 6:4,8 13:2
govern 26:24
Great 7:19 50:19
grounds 88:4,5
Group 1:17 2:2 6:11 27:15 32:21 33:7 49:15
Group's 5:3 27:17
guess 19:16,19 28:6 30:24 31:1 31:13,14,24 36:8 36:20 39:12 42:20 61:11,12
Gump 2:5 6:10

H

H 5:1
Ha 52:6
half 68:16
happened 16:17 18:6,9,14 40:15 48:21 86:13,14
happening 81:8,11 81:14,16,20
harassing 102:16
hard 21:11 42:21 45:8
Hatler 1:19 6:5 109:14 110:20
Hauer 2:5
hazard 36:8 61:12
head 7:4,4
hear 96:13
hearing 5:6 39:14 39:20 40:6 107:8
heart 67:3
heavily 87:14
heavy 104:2,7,11
Hedges 2:16
held 53:6
helped 54:8
helpful 6:25
helping 40:12
high 96:5
history 10:10
Hoc 1:17 2:2 5:3 6:11 27:15,17 32:20 33:7 49:15
honor 106:7
hoping 107:8
hour 64:15 65:5,5
hourly 67:25 87:21
hours 88:8 98:20
Houston 1:3 2:17 109:3
Hurley 2:4 3:11

I

idea 28:14,18,19 28:22,24
identical 80:12
identification 13:20 39:10 61:20 65:2,19 89:14
identified 8:24 65:24
identify 24:3 44:22 50:15,20 52:9
ignores 102:16
IL 2:21
imperative 74:23
Imperium 3:1
improper 74:21
inception 105:8
include 9:15 22:8
included 20:6,20 44:14
includes 93:4
including 24:16 88:1
incorrect 50:7,15 50:21
increase 65:9,14
increased 65:4,7 68:4
increasing 64:15 68:6
incurred 20:5
independent 82:16

INDEX 4:1
indicate 68:8
individual 87:7
individuals 8:23 75:13
inform 9:3 26:3 54:18 99:19
information 22:19 22:21 55:6 71:25 74:4 83:25 89:21 96:7 97:22 101:16,18 102:22 105:23,24
informational 67:24
informed 77:8,11 90:20
initial 26:1 27:8 54:16,17
injunctions 106:13
instance 1:16 20:25
instances 21:6
instruct 7:16 15:11 90:23 97:20 99:4
instructed 74:24 75:1 89:20,23 91:7
instructing 88:22
instruction 55:14 74:18 82:11 90:4
instructs 23:1
intend 47:12,14,19
intended 68:11
intending 55:7
intent 45:16 46:4,7 46:22 47:10 48:20,24,24
interacted 53:19 54:10,12
interaction 25:18
interest 22:11 99:1 104:16,19,22
interested 26:4 110:16
interpretation 67:23
interruptions 7:10
interviewed 11:23 11:25
intimately 22:1
introduce 64:25
introduces 66:17
invade 100:4
invoice 5:10 65:17 67:6,8 68:21 104:9
invoices 9:24,25 10:1 67:4 68:19 69:6,17 72:6,10 72:11,13,15,17
involved 11:20 19:3,6 20:2 29:15 29:21 30:1 34:24 35:1 36:22 45:9 51:2 54:2,4 56:14 56:16,18,19,20 56:25 57:9,12 58:1,4,6,9,10,15 73:2 75:10,12,13 78:22,25 79:4,17 80:1 81:4,5,22 83:5,10,18 84:10 85:3 87:14 93:11
involvement 29:18 59:2 80:22,25 93:16,17
involving 38:5,19 79:9
issue 27:15 28:8,11 28:11 29:11 43:11 94:2 95:20 97:18
issues 19:17 88:10 102:14
item 72:12
iterations 62:20

J

January 64:19
66:9,12,19 67:15 68:7,7,10
JD 10:6,11
John 2:10 8:17 30:8 53:19
joined 11:18
Jon 29:16 54:11 71:21 72:3
Jonas 52:14
Jonathan 24:14,22 70:2
JOSHUA 2:15
Judge 40:12,19,23
judgment 99:10
July 5:10 65:17,23 66:23 67:6,8 68:23
June 1:12,18 109:12 110:17
juris 106:13
Jwolfshohl@por... 2:18

K

Karen 2:3 13:18 39:8 64:24 65:16 66:7 94:8,21
Katherine 2:3 6:10 88:7
keep 7:9 89:1
Keller 2:14 12:4 12:22
kept 37:19
keyboard 17:8
kick 20:10
kind 61:12 70:23 78:6 102:15 104:3 105:15
know 6:21 7:8 9:4 12:12,25 16:16 17:3,7 18:7,10,13 18:15 21:25 22:1 25:7,10,12 26:19 28:6 29:1 30:1,23 35:22 36:23,24 36:25 37:2 39:7 42:2 43:19,23 49:25 50:4 51:1,2 56:15,17,17,19 57:9 61:8 66:25 68:14 69:10,21 70:8 72:11,12,24 73:6,11,14,17 75:12,14,19,21 76:1,2,8,12,21,22 77:6 81:5,7,8,11 81:18,23 82:21 83:16 84:10,11 84:19,23 85:5,14 85:18 86:9,13 88:14 89:4,5 90:13,22 93:21 97:14 100:8 105:3,22
knowing 50:24
knowledge 25:15 26:16 58:24 74:1 87:16,19 104:16
Kporter@aking... 2:7

L

Landon 3:2
language 21:13,18 61:8 67:23 68:2,6 80:11
largely 63:18
lasted 36:5,19 37:16
law 10:10,11,15,17 10:18 11:1,3,17 11:17 27:4,10 95:1
lawyer 11:11
lawyers 58:1,5
lead 86:20,25 87:3 87:7
learn 70:14
learned 32:20 74:4
led 57:19
left 88:14
legal 11:9,16 91:24 99:22
Lehotsky 2:14 12:3,22
Lemmon 3:2
length 19:22 20:2
let's 13:10,22 21:20 25:24 29:15 42:25 43:1 50:14 54:14 61:18 63:13 64:8 65:17 66:4,16 72:18,20 91:19
letter 5:8,9 16:12 19:22 21:14,19 22:8,16 23:7 29:3 29:14,22 30:10 31:16 41:10 43:4 46:9,20 47:4 48:4 49:19,20 50:23 59:1,23,25 61:6 61:23,24 62:3,4,6 63:2,21,22 64:1,7 64:12,13,14 65:4 65:10,25 66:5,15 66:17 70:7,15 71:1 72:19,21,23 73:15,16,17,20 76:20 77:5,20,24 78:13,17 80:11 80:16 82:20 83:13,22 84:5 104:24
letters 5:7 49:24 50:3,12 51:5 62:15,16,25 63:5 63:17 64:23 68:3 71:2,5
level 29:17 55:5 58:21 96:6,6
Likewise 12:15
limited 88:8,10
limiting 98:22
line 40:11 72:12

lines 17:17 43:8 90:6,13 101:6
list 72:9
listed 72:11 91:24 92:6
litigated 86:16
litigation 11:19,20 26:3 34:23 85:25 86:4,7,17,21 87:1 87:5
little 66:7,8
LKC 8:19,21 9:14 9:24 10:1 12:17 12:23 13:14,25 14:8,11,23 17:14 17:18,21,25 18:3 18:16,19 19:3,6,7 19:8,21 22:10,13 24:15 29:23,23 30:7,15 32:21,22 33:2,5 34:7,19,20 35:10,19 41:5,11 41:15,18,22 42:11,18 43:2,20 43:23,24 54:4,11 56:2,5,10,23 59:20,23,25 60:23,25 61:5 62:18,21 69:7,10 72:22 75:6,15,17 76:10,18,19 77:3 77:4,8,18 78:12 78:18,19 79:2,18 80:4,16 81:1 82:20 83:12,20 86:25 88:11 89:2 89:20,23 90:23 91:7 92:4 93:5,10 93:11,14 95:14 95:16 97:18 98:3 99:12 100:9,13 100:14,16,18,20 100:23,25 101:8 101:22 102:5,21 103:12,15,19,24 104:1,6 105:3,4 106:1,4,8 107:10 107:23
LKC's 5:11 14:17 14:21 15:21 17:18 18:3 28:22 45:18,25 47:14 67:1,10 89:12 91:22,22 92:24 98:21 100:6
LLC 1:4 3:5 109:4
LLP 2:5,11,16,20 3:2,7
locations 1:21
lodge 88:3
log 55:7 58:22 96:7
Lohse 2:20 82:8,8
long 11:5 36:9,12 36:18 55:7
longer 88:9 95:19
look 40:11 50:6,10 50:14 63:10 66:4 67:4,5 68:18,22
looked 14:2 67:6 67:19 68:21
Looking 66:1
looks 50:15,21 51:3 66:22
lot 30:19 33:25
LTC 60:16

M

machine 1:21
Maher 2:11 17:13 18:23 34:22 35:9 51:18 53:16,18 95:17 96:19 103:3 107:16
Main 2:16
making 90:12,15
management 29:17 43:24 44:4 56:11,12
manner 105:15
March 5:5 12:10 16:12 25:12,13 28:15 29:3,5,13 29:22 30:10 31:16 32:2 33:15 35:21 39:13,19 40:5 41:9 49:19 56:1,4,9,22 59:1 59:14 60:17 61:6 63:1,20,22,25 64:7,13 66:17 72:19,23 73:15 76:19 77:5,20,23 78:13,17 82:20 83:13,21 84:5 86:2,7,15 94:16 94:20 101:20 102:3
mark 64:25 65:17 89:13
marked 13:20 39:10 61:20 65:2 65:19 89:14
MATES 3:2
matter 22:24 34:23 51:14 59:5 62:23 95:12
matters 25:19 35:4 62:22 81:21 88:15
mean 8:7 10:22 12:12,25 15:4 21:10 22:1 29:8 38:10 40:22 41:12 42:13 46:12 50:9,21 57:16 67:14 77:14 106:1
meaning 12:16
means 69:8
meant 57:8 67:20 77:16 85:4
meany 35:16
mediate 40:13
mediation 32:7,10 32:14,16 33:20 34:5,7,10,16 36:1 36:2,4,10,16 37:7 37:15 38:13,16 38:22,25 39:1,3,5 40:15,20,23,25 93:15
meet 8:12,19,21
meetings 8:14 33:23 34:14,19 34:25
member 103:21
members 29:17 73:6 84:10 85:1
memorized 27:3
mentioned 53:13 62:16,25 82:12 84:3
mentions 40:19
merit 91:22
met 8:15 21:1,16 34:17
Mfox@olshanla... 3:9
Michael 3:6 29:18 57:25
middle 96:3
million 77:19 86:11 93:1 105:7
mindful 82:6 96:5 100:1
mine 63:15
minimize 7:10
minor 61:25 63:24 64:5
mistaken 67:22
Mitch 3:11
MITCHELL 2:4
mixed 71:19
modification 50:23
modifying 13:13 13:25
Molly 3:11
moment 8:8 94:12
month 8:11 68:24 70:3,4,9,19 71:7 72:7
monthly 71:19 72:8 103:18
months 67:1,10,12 69:2,11
Mopac 3:3
morning 6:4
motion 42:6 106:15,15
move 89:1 98:15 98:24 105:2
Mullin 40:12,19,23
Multiple 106:22
mute 106:20

N

N 2:12,21
name 6:4,9,13 26:23 72:9
named 40:6
names 75:9
necessarily 68:9
necessary 21:16 28:3,10,12
need 53:11 60:10 67:7 78:4 88:3,17 105:23,25
needed 99:7
needs 99:17
negotiate 45:11
negotiated 19:21 29:13 45:1,6 60:25
negotiating 29:22 43:21 51:2 93:12
negotiation 29:24 37:1
negotiations 20:3,5 33:16 37:8,17 45:9 57:13 58:11 83:11
negotiator 30:5,7
neither 110:12
never 11:3 21:5
new 2:6 3:8 63:1

64:6 66:18 99:2
NHatler@Ymail... 110:21
Nicole 1:19 6:5 109:14 110:20
nine 105:10,18
nodding 7:4
nonspecific 77:13 77:14
Nope 99:3
Norr 52:14
notary 110:5
notes 64:14
notice 26:17 27:5,5
notion 26:8
Notre 10:10
Novin 3:11
number 23:9 31:11 77:9 105:6
numbered 1:18
NY 2:6 3:8

O

object 20:18 96:23 101:11
objecting 82:9
objection 15:22 18:11 21:8 23:25 26:10,21 27:1,6 28:5,16 33:18 35:14 37:10,20 38:23 39:6 40:17 41:20 43:5 44:2 45:4,12 46:3,10 46:21 47:6,18 48:6,15,18 49:4 49:14,18 50:8 51:6 56:3 58:19 59:3,18 64:3 67:2 67:18 68:17 69:23 70:21 71:10,16 73:22 74:12 75:20 76:4 76:7,16 77:25 78:21 79:5 80:9 80:18 81:12 82:5 82:23 83:6,14,23 84:22 85:8,17 86:22 87:2 88:4 90:9,18 91:1,11 91:16,21 92:8 93:7,13 95:7,15 95:21 96:4,16 97:9,19,25 98:9 99:3,15 100:19 101:24 102:7,15 102:24 103:7,16 104:13,20 105:12 105:20
objections 74:10
objects 7:14
obligation 70:18 70:24 71:7,12
obtain 18:19
obtained 92:25
obviously 35:5
occur 106:21
officer 16:4 109:18
officers 16:1
oh 9:9 36:15 86:4
okay 7:2,6,11,12 7:17,18 10:2 12:1 12:24 22:14,23 25:23 31:14 32:17 38:2 40:3 43:8 50:14,16,18 50:23 51:5,8 52:24 53:2,3,4,5 59:21 60:11 61:4 61:18 63:4 66:3 67:8 84:9 88:18 91:19 92:16 105:2 107:12,25
Olshan 3:7
ones 29:20
ongoing 32:14
oOo--- 1:25
open 107:3
operate 106:14
opinion 70:25 71:11 78:1 92:10 106:3 107:1
oral 1:10,15 109:10,18
orally 31:4
order 12:3,10 13:13,25 21:17 21:23 32:22 42:8 53:10 78:3 86:5,6 99:8 107:14
original 8:4,5 9:11 9:13 12:15,16 19:3,4,22 23:19 46:1,9,20 47:3 53:21,22 62:4 64:12 65:24 93:25 104:24 109:21
ought 81:2
outcome 26:2 110:16
outline 88:19
overall 105:5
overlap 80:6
owed 41:5,15
Ozburn 3:2

P

p.m 1:19,19 53:6,6 108:2
page 4:2 5:2 14:3 39:11,21 40:1,11 65:20 94:21 104:9 110:8
pages 104:9
paid 20:25 21:6,18 32:23 70:8 71:7 71:18,20 72:3 82:19 83:12
Paige 2:20 82:8
Paige.Lohse@bt... 2:22
paragraph 19:1,2 19:20,25 20:16 21:21 22:7 24:14 25:24 27:12,13 27:14 32:18 38:2 41:2,3 44:20 45:15,25 46:15 46:18 47:9 48:20 49:10 54:15,15 54:20 89:19 91:20 92:23 93:21
Park 2:5
part 8:16,18 35:20 55:10 81:17,19 84:24 110:3,11
partial 26:2
particular 10:17
parties 2:2 9:23 26:4 36:5 109:24 110:13
partners 87:4
party 83:10
pass 41:15
Patty 54:12 57:25
pay 69:3,5,11 77:23
paying 66:25 83:20
payment 21:15 33:7
payouts 85:16
PDF 39:19 40:1
pending 43:14 56:5,5 86:9 96:3
people 29:15 54:10 73:9 75:9
percentage 87:13
percentages 24:7
perfectly 74:16
perform 106:5
performed 70:4 72:7 73:2,4,8,9 73:12,14,15,25 75:5 93:5
performing 95:23 103:20
period 31:20 33:24 35:24 36:1,4,9,12 36:13,25 37:7,15 103:19
person 9:5 15:5 40:6 51:1 54:11
personal 58:23 74:1
personally 24:24 25:17 72:2
perspective 87:10
petition 70:16 105:8
philosophy 10:9
phone 31:8,9
phonetic 104:17
phraseology 17:7
place 21:23 31:6 31:10,15 32:13 34:4 35:20,23 40:23 100:5
play 43:20,23
pleadings 9:21 14:10 96:19 97:6 97:23 98:6 102:10 105:7
please 6:14 7:3 26:11 39:8 50:15 52:2,7 60:1,19 61:15 64:10,24 65:1,16,18,20 66:8 72:21 74:14 84:9 89:1 94:21 96:8,14,22 98:14 98:23 101:12 102:17 103:12 105:16 107:16,24
point 7:13 9:21 18:20 38:3,11 42:7,11 64:9 86:11,14
Porter 2:3,16 4:6 6:8,10 8:2 13:18 13:21,23 15:15 15:25 18:12 20:24 21:10 24:3 26:16,23 27:4,8

28:10,19 33:22 35:19 37:13,23 39:2,8,11,17,18 40:22 41:23 43:20 44:6,20 45:5,14 46:6,14 46:22 47:12,19 48:9,16,22 49:6 50:10 51:8,20,24 51:25 53:8,12,13 54:21,23 55:11 55:18 56:8 58:25 59:6,11,21 60:11 60:15,22 61:4,14 61:18,21 64:8,24 65:3,16,20,22 67:5 68:14,20 70:1 71:1,13,18 72:5 73:23 74:22 75:2,21 76:5,9,18 77:3 78:2,22 79:9 80:14,21 81:15 82:12 83:1,4,9,19 84:3,25 85:11,20 86:24 87:9,25 88:18,22 89:3,4 89:15 90:16,19 91:4,14,19 92:11 93:11,18 94:8,11 94:13,15,21,23 95:8,19,25 96:13 96:21,25 97:7,14 97:24 98:2,11,16 98:25 99:9,12,16 99:20 100:8,23 101:19 102:2,13 102:18,19 103:4 103:13,18 104:15 104:23 105:17,24 106:20 107:2,12 107:17,19,22 108:1

portion 44:22 70:2 72:21 84:21 85:6 85:14

portions 53:11

position 100:21

possibility 23:6 48:17 80:20 101:8

possible 28:23 32:5 32:5 33:5 34:20 34:23 35:22 38:4 46:15,16 66:24 69:19,25 73:6,8 77:6 81:7,10,21 93:9

possibly 21:9,10 29:18,18 30:4 54:5 56:14 57:7 57:14,14 93:19

potential 20:6,20 38:18 72:18

practiced 11:1,3

practicing 10:12

pre-petition 10:1 69:14,17 71:20 72:17 104:16,18 104:21

prepare 7:23 8:20 9:19

present 3:10 8:14 8:16,17 22:5 34:5 34:7,9,14,19 58:14

presented 79:14,16

presenting 79:11

presently 81:22

preserve 15:12 74:18

previous 51:11

previously 11:8 13:3 41:2

price 47:23

primary 30:5,7

prior 10:21 11:1 11:14 25:20 33:10 37:12 67:12 71:2,5 72:4 72:13 73:16 89:8

privilege 15:13 22:20 38:25 55:7 58:22 72:1 74:10 74:11,15,19 82:6 83:24 92:19 96:7 97:20 100:2 101:17

privileged 22:21 36:3 37:21 74:5 74:16 92:18 99:5 99:19,21 101:13 101:16

privy 77:7

probably 9:18 24:25 25:1 29:8 30:6 41:25 43:19 44:18,18 54:6,6 62:11

procedurally 78:16

Procedure 1:22

proceeding 110:14

proceedings 6:12 33:20 108:2

proceeds 44:23

process 53:23,24 79:25 80:2 84:24 85:4

produce 48:24 49:2

produced 1:16 9:25 60:6

product 26:13 100:2

professionals 26:25 73:7 85:2 85:22

progress 37:19

proof 92:5

proper 100:5

proposed 43:21 44:1,15 49:19 64:13 66:17

protected 22:19

protective 21:23 53:10 99:8

provide 15:7,9 16:1 55:5 70:19 70:24 90:4 97:21 101:15,18

provided 14:23 15:5 18:20 21:14 62:21 97:23 101:15 102:9 105:4,11,19

providing 100:21

Province 73:7,7 82:1 83:16 85:1

provision 79:22

PSA 80:13,15

public 110:5

pull 13:18 39:8 65:16 94:6,8

purchase 42:3,3 47:23 57:20 79:21,24

purchased 49:12

purposes 82:19

pursuant 1:22 79:21 80:16 110:1

put 17:8 63:12

Q

question 7:16 14:19 17:8 21:12 21:20 22:17,17 22:22 23:14 38:17 42:21 45:8 70:23 74:14 77:1 79:8 83:8 85:10 85:12 86:23 88:23 89:5 91:3 92:10 99:10 100:22 102:1 103:10,10,11 104:4 105:1,14 105:22 106:17 107:2

questions 6:22,24 7:14,20 18:24 33:7,12 52:1,4 53:1,8 74:13,23 88:12 98:23 107:4,7,10

quick 93:19

quiet 36:9,14 37:8 37:16

Quinn 30:3 35:9 54:6,6,8,12 58:1 93:24 94:23 95:13,19,22 96:2 97:17 98:3,25 99:13,22 100:10 100:15,17,25 101:9,21 102:4 102:21

quiz 88:17

quote 26:3,9 40:13 54:18

R

raised 27:15 33:7 33:13

rate 24:16 65:9,14

rates 64:18 65:4,23 65:24 66:6,7,9,18 66:23,25 67:9,11 67:12,14,21 68:1 68:3,6,9,12,15,23 69:2,4,5,11,22 87:21 106:6

rationale 96:9

reach 38:5 78:3 80:15,17

reached 78:7 80:3 80:4

reaching 80:22

read 27:4 85:12

reading 27:10 90:10

realize 74:15

really 28:9,17 31:2 32:12

reason 7:19 13:5

33:11 42:20 43:12 45:5,10 47:8 50:1 103:14
reasonable 77:22 91:23
reasons 110:8
recall 16:5,6,8,10 16:15,15,19,23 23:4,5,13,16 24:9 24:11 25:1,3,17 25:22 27:10 28:18,23 29:4,13 29:20,25 30:2,9 30:12,20 31:2,11 31:19,22 32:12 33:9 34:21 49:21 53:24 54:1,13,19 54:24 55:11,16 55:18,21,24 59:8 59:11 61:10,13 62:12 65:15 68:2 69:9,20,24 72:16 72:16 77:11,11 87:6,6,22 89:9 90:12,15,20,21 91:12,14,17 92:22 97:12 100:20 101:3,4,5 101:7 105:6
recalling 61:1
receipt 110:6
receive 17:14,18 17:18 24:21
received 10:9,11 25:3 60:5 103:6
receiving 72:8
recess 53:6
recognize 50:22 94:15,19
recollection 9:17 24:5 32:14 63:9 63:10,15,19 65:11,13 97:11 105:9
recommendations 44:11,13
record 6:14,23 23:5 44:9 88:9,16 99:7 103:4 107:25 109:19
recorded 6:22 7:5
recoup 69:16
recovery 24:8
redemption 29:12
redline 5:7 50:5,6 50:14 53:1 61:19 64:8,11
redlines 49:17
reduced 30:20 89:10
refer 12:8,12,15,22
referenced 59:24 59:25
referencing 97:1 102:20
referring 10:25 12:9 13:16 40:14 40:20
reflect 104:1,6,11
reflected 65:10 69:5 104:24
reflection 49:23 50:2,11 51:4
reflects 67:9
refresh 9:17 67:4 97:11
regard 36:4 71:25 79:24,24
regarding 15:10 31:15 33:1 34:10 35:1,11,15 37:8 75:6 83:11 101:8
regardless 27:17
reiterate 6:21
relate 89:2
related 9:22 64:1 88:10 95:6,9 99:22 103:11 110:13
relating 62:23 99:13 100:10 101:9
relative 36:14 37:7 37:16
relevant 99:9
relying 55:23
remember 36:18 54:8 68:5
Remind 94:10
remote 31:7
REMOTELY 2:1
Renata 52:14
repeat 38:17 86:23 101:25 105:16 107:19
replies 14:7
reply 5:11 14:17 14:21 15:18,21 18:16,17 59:23 89:12 95:1 101:20
report 9:5
reported 1:20 6:7
Reporter 6:4,5 44:19 76:23 77:1 87:24 107:14,17 107:20,25 109:15
Reporter's 4:10 109:9
represent 6:11 39:12 51:21 99:1
representation 11:21 62:21 71:8 88:7 91:25
representations 97:5,8
representative 18:2
represented 11:8 90:14 99:6
representing 51:23 102:5
represents 51:13 51:16
request 61:3 83:2 89:22,22,24 90:5 90:6,13,15 91:7,9 91:10
requested 69:3 72:3 110:3,10
requesting 60:14 69:14
require 22:18 43:17 80:24
required 26:17 79:22 92:5
requires 80:7,11
resent 8:7
resolution 38:15 38:18,18,21 39:4 39:4 42:15,17 52:20
respect 53:21 58:25 59:24 74:14 83:20 97:20 99:2 100:3 100:18,25 101:22 102:5,21 103:15
respective 1:21
responsible 69:1
rest 40:20
restructuring 16:1 16:4
resulted 76:14
resumed 36:6,24 37:5,17
retain 12:17 59:22 95:5,9
retained 85:2,22
retaining 19:7
retention 8:5 9:12 9:13,14,22 12:3 13:14,25 19:3,4 24:15 25:11 26:1 26:20,24 27:9 32:2 33:2,6,10,12 38:14 42:22,23 43:1,14,16 48:4 52:21,23 54:16 54:17 56:6 57:5 68:4 84:12,14,18 88:11 93:25 95:10,14 96:11 96:20 97:18 98:3 98:21 99:11,13 100:7,11,18,25 101:10,22 102:5 102:11,21 103:2 103:12,15
retroactive 69:16
retroactively 69:4 69:5
return 41:1 51:10 53:3 71:14,17,20 72:3 105:10,17
returned 70:20 110:5,7
Returning 44:20
reveal 22:9 23:10 24:7
revealing 26:11 83:24 101:13
review 9:10,21 24:13,24 53:10 97:10,12 103:18 103:23
reviewed 7:24 8:3 8:3 9:12,24 10:1 17:5 24:25 25:2 50:6 89:16,17 103:22
revolution 43:7
Rhodium 1:4 6:12 10:21 11:6,7,8,17 11:18 19:9,20 20:10,14,21 21:5 22:7,9,20 24:17 27:14,16 28:7,13 38:4,7 41:4 43:22 44:21 45:1,6,10 45:16 62:18,21 62:23 79:22 80:13,14,16 91:24 106:8,10 106:14 109:4

Rhodium's 11:2 22:10,11,12 72:4
RHONDA 3:2
rid 85:16
right 7:1 11:14 12:4 13:14 14:1,9 14:14 18:17,18 20:1,7,11,15 21:2 21:7 22:10 23:8 23:12,15,20 25:21 31:4 32:8,9 33:3,17,21 35:7 35:21,25 37:9,19 37:23 38:22 39:5 40:25 44:12,24 45:18,19,21 46:2 46:9,14 47:2,4,12 47:13 48:2,5,22 49:1,3 52:12 57:23 58:23 62:7 62:12,18 63:2,5,8 63:13,17 64:2 66:16 67:17 71:2 76:3 78:12,19,25 79:18 80:5,14,17 80:23 84:7,16 85:25 86:18 93:5 94:4,24 95:3,4 97:16 98:7 102:23,23
Riot 104:17,19
risk 106:4,24,24
risks 19:17
road 6:21
Robinson 29:19 57:14,25 58:15
Rockdale 38:7,20
role 6:16 9:6 43:20 43:23 82:18,22 83:1,20 84:2
rough 87:11 107:20
roughly 87:10
rule 26:19 110:1
rules 1:22 6:21
22:3 26:24 27:3
ruling 42:6 43:19

S

S 3:3 5:1
safe 1:17 2:2 5:3,7 6:11 25:9,16,18 31:2 49:15
sale 38:6,20 40:15 42:3 43:22 44:1 44:15,22 46:25 57:18 58:12 79:21 84:20 85:15 104:16,19 104:21
sales 85:6,23
Sarah 2:4 106:20
satisfied 21:5
saw 68:5
saying 43:8 99:25 103:13
says 20:19 22:11 24:14 25:24 39:13,19,21 45:16 64:18 66:18 71:3 89:19 91:6,21 92:23 105:3,4
scenario 41:14,15
schedule 92:6
schedules 91:25
Schmeltz 58:4
school 10:7,10,11
SCHULTZ 2:4
scope 88:5 99:5,17 104:20
screen 39:21 40:1 40:2 94:4
scroll 66:7,8
seal 22:4,16 23:2,7 23:14
second 20:15 38:3 61:22 62:3
secretary 6:17
section 64:13 66:6 66:14
see 19:23 20:15 24:18 26:6 27:18 29:15 32:24 38:8 39:13,21,23,25 40:6 41:4,7 49:17 60:18 63:13 64:16,20 65:22 66:8,20 70:1,5 89:25 91:21 92:2 93:2 94:4 107:3
seeing 49:21 72:16
seek 56:9,23 57:1,4 69:16 99:7 100:4
seeking 70:20 71:14 74:22 95:5 95:8
seen 49:14 75:2
sentence 19:24 20:16 24:18 26:6 38:3,8 41:7,13 66:9,11,18 67:17 68:8 69:7 90:8 91:6
September 5:9 12:18 23:3,8,15 24:21,22 25:5 62:10 63:1,7 64:23 70:6
sequence 90:14
Serve 11:11
served 109:23
serves 52:9
services 67:1 91:23 103:24 105:4 106:17
set 96:18
sets 24:15
setting 66:6 78:25 79:4,10 82:18 83:5
settled 49:12
settlement 33:24 34:11,15 35:2,11 35:12,13,15,18 35:25 37:2,9 38:5 38:19 47:1 48:1 57:17,22 58:11 78:10 79:25 93:1 93:4,9,12 106:19
seven 69:2,11
shaking 7:3
share 40:1
short 7:9 37:2 52:25
shorter 12:23
shorthand 1:21 6:5 109:14
show 96:23 98:15 98:18,23
showed 49:18 104:10
showing 40:2
shown 109:24
sign 52:22 59:15 84:13,16,17
signature 94:14 110:2,5,8
signed 18:21 59:14 59:19,20
simply 67:24 68:12
single 14:3 87:6
singular 87:7
Sitting 97:16
slightly 37:3,4 94:17
slow 86:12
somebody 17:9
sophisticated 19:12,14
sorry 14:18 15:2 16:3 21:3 39:16 48:11 51:15 52:3 62:8 64:10 71:15 76:24 77:10 83:8 85:4 91:12,13 94:17 95:17 101:25 104:3,18 104:22 105:1 107:19
sought 21:2 62:17
sounds 18:18 32:9 37:15
SOUTHER 1:2 109:2
speak 15:4
speakers 106:22
speaking 16:6 40:6
special 2:19 16:20 82:1,13,13,14,15 83:10,17,19 95:11
specific 24:16,17 41:13 46:23 77:12,15 101:4,6 101:8
specifically 7:16 16:15,19 29:25 34:21 53:17 81:18 91:17 106:1
specifics 89:9
speculate 28:7 83:4,9
Spencer 52:15 57:25 82:17
SSchultz@Akin... 2:8
standard 64:18 66:18 67:21,25 68:12
start 32:4,10 42:25 43:1 52:25
started 31:24,25 32:6,15 33:6 81:1 86:12
state 1:20 6:13 12:17 60:13 109:15
stated 49:9 64:5 98:6
statement 40:21 43:7,12 54:24 67:24 68:12
statements 103:19

states 1:1 19:20 20:12 27:14 44:21 109:1
stay 53:11 86:12 106:10
stenographically 6:6
steps 15:12
stick 37:11
sticks 77:17
Stokes 2:10 8:17 53:20
straight 18:25 94:13
strategic 19:17
Strauss 2:5
Street 2:16
Streusand 3:2
strike 77:22
strip 39:23,25
Stris 2:11 17:13 18:23 34:22 35:9 51:18 53:16,18 86:16,24 87:15 88:1,23 89:6 93:21 95:6,9,10 95:14,17 96:2,19 97:18 98:3 101:21 102:4,12 102:21 103:3,15 103:24 107:15
Stris' 87:16 96:11
struck 45:23 70:3 70:6 106:7
structure 35:13,16 45:16 47:22 48:2 70:2 88:2
structured 57:18 58:12
structuring 43:21 43:25
subject 22:24 56:6 72:1 78:23 98:21
submit 15:17,21 16:2 52:19 84:6 84:16
submitted 13:11 13:13,24 14:6 59:23 72:6 94:24
subparagraph 78:7,8
subsection 80:23 81:2 83:12
substance 26:12
substantial 106:4,8
substantive 98:12
success 20:7,9,13 20:17,20,24 21:4 21:6,15,18 26:5 42:9 43:9,17 45:18,21,25 46:8 46:19 47:3,14 48:4,13 63:4,7,15 63:23 64:2 72:18 75:7,18 76:11 77:19,23 78:5 82:19 83:21 87:15,17
sufficiency 26:17 27:5
sufficient 26:3,9 54:18
sufficiently 93:22
suggested 100:16
Suite 2:12 3:3
summarize 96:21
supercede 71:5
supercedes 71:2
supervise 53:15
supervised 17:1,6 53:14
supervising 54:2
support 13:13,24 14:7 52:21,23 95:2
suppose 80:20
sure 10:24 13:17 25:1,10,14 28:9 28:25 30:21 34:12 35:16,22 36:19 37:14 40:21 42:13 43:6 44:6 45:3 46:12 48:7 61:1,10,13 70:24 73:10 77:15 83:3,15,17 87:5 88:13,16 93:15,16 102:2 107:8
surprise 70:14
surprised 69:15
suspect 6:20
switch 96:2 101:21 102:4,20 103:14
switched 95:13 97:17 98:2
sworn 1:17 6:2 109:18
Szkoda 52:14

T

T 5:1
tab 39:9
table 87:4
take 7:7 15:12 31:6 35:12 52:25 61:16 68:8 71:25 93:23 97:3
taken 1:17 110:15
talking 42:21 47:9 47:10 48:19,23 57:19 58:2
team 85:22
technical 105:14
tell 22:24 23:1 97:2 97:15 98:7 102:19
telling 39:17 102:14
ten 31:17
terms 12:20 19:21 20:6 21:4 24:16 25:8 30:19 34:10 35:25 36:7 41:6 41:16 45:1,6,11 45:21 46:8 47:3 48:3,13 61:23 62:4 63:4,7,14,23 64:1 76:19 77:4 77:23 78:12,16 83:21,21 106:7 107:16
testified 6:3 60:3 60:15
testify 61:5
testimony 37:14 60:24 61:2,22,22 63:25 109:19
Texas 1:2,20,22 6:5 109:2,15 110:20
thank 6:9 10:2 13:2,10,21 14:5 21:20 22:14 23:17 25:6,23 32:17 45:14 50:19 51:8,20,24 52:16,24 53:5,12 54:22 55:1 57:11 62:12 66:3 88:21 89:18 94:18 107:5,22
thanking 40:12
thanks 107:12 108:1
thing 64:9 105:14
things 23:9 42:8 51:10 86:12 89:2
think 8:15 9:23,24 11:20,21 21:12 23:9 24:5 27:12 28:7,12,12,17,20 30:18 33:5,14,23 36:6 40:18 41:12 41:24 42:8 43:11 45:22 48:16 51:12 52:24 54:3 54:4 58:8 59:4,17 59:20 60:17,24 61:10,25 63:18 64:4 67:8,11 69:15 70:22 72:9 79:7 80:6,19 84:3 86:12 87:11,11 88:19 89:8 93:22 95:10 96:9 100:5 101:2 102:8 104:8 105:7 106:23,25
thinking 101:5
thinks 76:19 77:4
third 62:5
THOMAS 3:6
Thornburg 2:20 58:6
thought 19:13
three 30:22 63:5,8 63:16 93:19 98:20 106:12,13
tied 42:9
time 6:9 7:7 8:17 8:18 9:4 25:4,15 25:25 27:11 29:4 29:6 31:19 32:1 33:10 37:2 38:10 41:25 42:11 44:3 45:23 46:12 53:3 53:25 54:5 60:10 72:14,16 85:24 88:14 89:7 102:18 107:5,13
times 98:14 103:5 103:17 105:11,18
timing 37:24
today 6:9 7:23 9:20 51:17,23 52:4 74:13 107:5 107:20
today's 12:6 13:4
told 75:15 76:18 77:3
Tomasco 40:7,12 54:12 57:25
tomorrow 107:21
Tompson 54:11

top 39:13,18,22,23 39:25 40:4 51:12
topic 12:5 13:5 23:2 92:17,20
topics 13:7 44:14 93:18
Topping 1:11,16 4:5 5:4 6:1,9,15 6:18 10:3 21:22 23:18 25:7 39:17 51:13,21 53:13 60:15,23 61:4,21 65:22 75:1,2 82:12 88:17,23 89:4,16 93:24 94:15 100:8 107:4,5,12 109:11,17
total 44:22 47:22 70:11 78:8
totally 99:5
Tower 2:6
Trace 58:4
transactional 11:22,22
transcript 5:5 39:13,19 40:4 53:9 109:18,21 110:7
tremendous 106:18,21
trouble 47:8
true 109:19
truthfully 7:20
try 7:10 46:5 74:20 85:12 89:1 100:5 102:18
trying 7:8 77:10 88:5
turn 13:10 21:20 25:24 27:13 32:18 38:2 54:14 61:18 64:8 65:20 72:18,20 89:11 89:15,19 91:19 93:20
Turning 45:15 92:23
two 14:7,10 36:11 39:9 40:24 41:24 49:23 50:3,12 87:4,4,14 88:4,4 88:8 93:18
TX 2:17 3:3
typed 17:2

U

uh-huh 12:14 71:22
unaware 84:1
unchanged 63:5
Underneath 66:6
understand 10:24 21:11 37:14 48:22 50:21 51:3 78:4 81:19 91:2 104:25
understanding 20:9 25:25 26:15 34:3 36:24 38:1 55:2,9,12,17,19 57:24 58:13,14 58:16,17 68:11 68:20 69:13 73:13,24 79:19 81:13,15 82:3 92:4 96:14,17 97:1,2,4,11,13,15 97:17 102:9,23 102:25
understood 12:21 98:22
unfair 107:1
UNITED 1:1 109:1
University 10:8
updated 9:14,22 12:3,10 25:11 62:1
use 53:22

V

valid 27:18,20,25 28:1,3,11
value 78:9 91:23 106:8,17,18,25
view 27:24 28:1 93:6,8 97:24 98:1 98:5 106:3,4
vital 74:17

W

Wacker 2:21
wait 6:23
waive 92:19 101:17
waiver 55:8 74:20 74:23
waiving 82:7
want 22:9 36:3 37:13 38:24 44:6 44:10 51:10 68:22 74:5 107:3 107:17
wanted 53:9 62:13 88:25
wanting 85:16
wasn't 17:4 28:3 34:2 45:9 58:13 77:15 93:9
water 87:12
way 9:17 11:11 16:16,23 18:7,10 25:1 40:13 49:8 50:4,24 53:11 56:18 73:11 90:14,21,21 92:10
we'll 51:3 61:2,16 93:20 99:7
we're 7:9 18:25 88:18,19 98:19
we've 13:3 60:5 93:22
week 37:3,6,16
Wells 52:15 57:25 82:17
went 10:8,10 30:25 68:1,13
weren't 21:1
Whinstone 20:22 22:9,12 33:16,24 34:11,15 35:2,12 35:25 36:23 38:5 38:6 40:15 43:22 44:1,15,21 45:2,7 45:11,17 57:13 57:16,17 58:11 62:24 79:20,22 79:25 80:3,13,15 84:20 85:15,15 85:24 86:4,10 92:25 104:16,19 106:19
Whinstone's 34:13 58:2
witness 1:16 4:4 6:2 8:1 15:14,23 20:19 21:9 24:1 26:14,22 27:2,7 28:6,17 33:19 35:15 37:11,21 38:24 39:7,15 40:18 41:21 43:6 44:3 45:13 46:4 46:11 47:7 48:7 48:19 49:5 50:9 51:7,19 55:4,9,15 55:16 56:4 58:20 58:23 59:4,10,19 64:4 67:3,19 68:18 69:24 70:22 71:11,17 71:24 72:2 74:12 76:8,17,24 78:1 79:7 80:10,19 81:13 82:10 83:3 83:7,15,24 84:1 84:23 85:9,18 86:23 87:3 90:10 91:2,12,17 92:9 93:8,14 95:16,22 96:9,17 97:4,10 97:21 98:1 100:1 100:6,20 101:14 101:25 102:8,25 103:8,11,17 104:14,21 105:13 105:21 106:21,23 109:17,20,24
WOLFSHOHL 2:15 107:10,23
Wolosky 3:7
won 106:14,15,16
word 77:15
words 78:6 103:14
work 11:16,19,19 11:22 26:12 67:10 69:22 70:4 72:6 86:9,12 92:24 93:4,10 95:23 100:2 103:20 106:5,10
worked 11:5
works 52:24
worried 48:9
wouldn't 43:12 47:23,24 57:2 95:24
wrap 102:17
wrapped 107:3
wrapping 88:20
write 22:7 41:4 48:12
writing 30:20 89:10
written 30:25 31:4 46:1 48:4
wrong 51:3 60:24
wrote 16:25

X

X 5:1 110:10

Y

YANG 2:3

yeah 8:11 9:9 19:24 20:17 23:9 23:16 24:23 27:22 29:8 33:4 33:21 37:25 40:24,25 52:10 66:1 74:9 87:11 91:4 101:14
year 67:13 68:7
York 2:6 3:8

Z

Zoom 1:10,15,22 2:1 109:10

0

1

1 2:21 3:5 5:4 13:20 64:19 66:10,19 67:15
1,300 65:5
1,400 65:5
1:18 53:6
1:30 53:3,4,4
1:32 53:6
10 27:13 77:19
100 64:15
1000 2:16
10019 3:8
10036-6745 2:6
109 4:10
11 11:24 38:2 41:3 44:20 45:25 46:15,17 72:4
11/30/22 110:21
11275 1:20 6:6 109:15 110:20
12 40:11
12:06 1:19
13 5:4 65:21
1325 3:7
14 5:4 9:11 13:23 45:15 46:18,18 47:10 48:20
14th 8:10 13:12 24:21 25:5
15th 8:8
16 25:8
17 33:8,13
17785 2:12
17th 32:20 33:3
1801 3:3
185 93:1
19 5:5 33:15 37:7 37:15 38:16,21 39:13,19 40:5
19th 32:7,11 34:15 35:20 38:13 40:16,22,25 93:15
1st 11:7 68:7,10

2

2 1:12,18 4:3 5:5 39:10 109:12
2:59 1:19 108:2
2021 11:7
2023 19:21 22:8,15 23:7 25:8 43:1,3 49:19 62:8,25 63:6 64:12 65:7 66:23
2024 5:8,9 12:18 23:3,8,15 24:22 24:22 25:5 28:15 62:9,10,25 63:1,6 63:7 64:19,23 65:3,5,10,14,23 66:4,10,12,19,23 67:1,10,15 68:10 68:16,23 69:2,11 69:12,22 70:6
2025 1:12,18 5:4,5 8:8,10 9:11 12:10 13:12,23 16:12 25:13 29:3,5,13 29:22 30:10 31:16 33:3,8,13 39:13,19 40:5 41:10 49:19 56:1 56:4,9,22 59:1,14 60:17 61:7 62:8 63:1,21,22,25 64:13 66:17 72:19,23 76:20 77:5,20,23 78:13 78:17 82:20 83:13,21 84:5 86:2,8 94:16 101:20,21 102:3 102:4 109:12 110:17
212 2:7 3:8
213 2:13
214-8301 2:22
220-2689 3:4
226-6695 2:17
23rd 88:7
25 94:20
25,000 70:2,9,19 71:7

3

3 5:7 19:1 61:19,20
30 110:6
30(f)(1) 110:2
300 86:11
312 2:22
320 3:3
36th 2:16
39 5:5
3rd 110:17

4

4 5:8 19:20,25 20:16 29:3,5,13 29:22 41:9 65:2 65:17 93:21 94:22
400,000 70:15
451-2277 3:8
4th 33:15 35:21

5

5 5:9 39:21 65:2
512 3:4

6

6 4:6 5:10 40:11 65:19
600 2:12
600,000 24:4
60606-2833 2:21
61 5:7
63 91:20
65 5:8,9,10
66 92:23

7

7 5:11 21:21 22:7 89:14,19
700,000 105:8
713 2:17
77002 2:17
78746 3:3

8

8 25:24 54:15,20
835 12:11 94:11
872-7467 2:7
89 5:11

9

9 32:18
90703 2:12
995-6809 2:13

Exhibit 9
to B&T's Witness and Exhibit List for 6/4/26 Hearing

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	)	
	)	
RHODIUM ENCORE LLC, ET AL,	)	CASE NO.: 24-90448(ARP)
	)	
Debtors.	)	

****

ORAL AND VIDEOTAPED DEPOSITION OF

CHARLES TOPPING

OCTOBER 29, 2025

****

ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING, produced as a witness at the instance of LEHOTSKY KELLER COHN LLP, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 29, 2025, from 3:20 p.m. to 5:25 p.m., before SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand, at 901 South Mopac Expressway, Suite 300, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

CHARLES TOPPING - October 29, 2025

APPEARANCES

FOR LEHOTSKY KELLER COHN, LLP:
MR. WILL THOMPSON
LEHOTSKY KELLER COHN LLP
7500 Rialto Boulevard
Building 1, Suite 250
Austin, Texas 78735
210-286-0806
will@lkcfirm.com

FOR THE SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS OF RHODIUM ENTERPRISES, INC.:
MR. VINCENT P. (TRACE) SCHMELTZ III
MS. HALEY CASPER (VIA ZOOM)
BARNES & THORNBURG LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
312-357-1313
tschmeltz@btlaw.com
haley.casper@btlaw.com

FOR IMPERIUM INVESTMENT HOLDINGS, LLC, AND CHASE BLACKMON, CAMERON BLACKMON, AND NATHAN NICHOLS:
MS. RHONDA MATES
STREUSAND LANDON OZBURN LEMMON
1801 South Mopac Expressway
Suite 320
Austin, Texas 78746
512-220-2689
mates@slollp.com
(Not Present)

APPEARANCES (Continued)

FOR THE AD HOC GROUP OF SAFE PARTIES:
MS. ELIZABETH D. SCOTT (VIA ZOOM)
MS. SARAH LINK SCHULTZ (VIA ZOOM)
MS. SAMANTHA BAHAM (VIA ZOOM)
AKIN GUMP STRAUSS HAUER & FELD, LLP
2300 North Field Street
Suite 1800
Dallas, Texas 75201-2481
214-969-2800
edscott@akingump.com
sschultz@akingump.com
sbaham@akingump.com

FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS:
MR. NATHANIEL ALLARD (VIA ZOOM)
MR. DANIEL H. KALTMAN (VIA ZOOM)
MCDERMOTT WILL & SCHULTE
One Vanderbilt Avenue
New York, New York 10017-3852
212-547-5366
nallard@mwe.com
dkaltman@mwe.com

FOR THE TRANSCEND GROUP, TRANSCEND PARTNERS LEGEND FUND LLC, VALLEY HIGH LP, GR FAIRBAIRN FAMILY TRUST, GRANT FAIRBAIRN REVOCABLE TRUST, NINA CLAIRE FAIRBAIRN REVOCABLE TRUST, NCF EAGLE TRUST, GRF TIGER TRUST, AND NC FAIRBAIRN FAMILY TRUST:

MS. ANNA OLIN RICHARDSON (VIA ZOOM)
IACUONE MCALLISTER POTTER PLLC
4925 Greenville Avenue
Suite 1112
Dallas, Texas 75206
214-432-1536
anna@imcplaw.com

APPEARANCES (Continued)

FOR THE DEBTORS:
MR. ALAIN JAQUET (VIA ZOOM)
MS. LINDSAY WEBER (VIA ZOOM)
1300 I Street NW
Suite 900
Washington, D.C. 20005
202-538-8000
alainjaquet@quinnemanuel.com
lindsayweber@quinnemanuel.com

ALSO PRESENT:
Morgan Soule (Via Zoom)
Scott Kintz (Via Zoom)
Nina Fairbairn (Via Zoom)
Tim Bishop, Videographer

INDEX

	PAGE
Appearances	2
Examination by Mr. Thompson 3:20 p.m. - 4:42 p.m. 5:11 p.m. - 5:21 p.m.	6
Changes and Corrections	62
Signature	63
Reporter's Certification	64

EXHIBIT INDEX

NO.	DESCRIPTION	PAGE
10	Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	9
11	Emergency Motion for Authority to Pay Fees to Lehotsky Keller & Cohn LLP	11
12	Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	15
13	Email Dated February 11, 2025	53

CHARLES TOPPING - October 29, 2025

Page 6

VIDEOGRAPHER: Okay. This is the deposition of Charles Topping. The date is October 29, 2025. The time is 3:20.

You may swear in the witness.

(Witness sworn)

CHARLES TOPPING,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. THOMPSON:

Q. Mr. Topping, good afternoon.

A. Good afternoon.

Q. It's good to see you again; but I'm going to try to be efficient with your time here; so instead of catching up, I will direct you to Exhibit 1, which is -- well, do you recognize Exhibit 1 as the deposition notice pursuant to which you are testifying?

A. Yes.

Q. All right. And you'll see on Exhibit 2 that you have been designated as a corporate representative for Rhodium on a few different topics. Are you aware of that?

A. Yes.

Q. And do you have an understanding of which topics you were designated to testify on behalf of Rhodium about?

Page 7

A. I do.

Q. Which ones?

A. Topic No. 1, Topic No. 2, Topic No. 3, and Topic No. 4.

Q. Great.

MR. THOMPSON: And just for the record, Mr. Schmeltz, we actually have done witnesses on Topics 5 and 6 already and you are not today putting up anyone on 7, 8, or 9, correct?

MR. SCHMELTZ: We've objected on 8 and 9. And on 7 -- we object on all three of those. On 7, we designated Kevin Hays and we had an agreement that we could post designate deposition transcripts and we did that last night and sent that over.

MR. THOMPSON: And I'm not agreeing or disagreeing with your agreement I think you might have had with Josh or something. I just want to make clear I'm not asking Mr. Topping about 7, 8, or 9.

MR. SCHMELTZ: That's correct.

Q. (BY MR. THOMPSON) All right. Mr. Topping, this is not the first time you've provided sworn testimony in this case, correct?

A. That's correct.

Q. I'm going to try to avoid having to go through a bunch of the details of your previous testimony, so let me try it this way. Do you still stand by the declaration you filed in support of the application for an updated order retaining LKC?

A. Yes.

Q. Do you stand by the deposition testimony you gave on, I believe, June 2nd, 2025, when you were deposed by the SAFE ad hoc group?

A. Yes.

Q. Do you stand by the hearing testimony from June 4th, 2025, when you testified in court about the application for an updated order retaining LKC?

A. Yes.

MR. SCHMELTZ: Mr. Thompson, you're doing something I would expect, but I hadn't thought of it in this way. He's not now adopting those as the voice of -- as a 30(b)(6), right? He's standing by those things as his Chuck Topping self, right?

MR. THOMPSON: You know, that's an interesting ambiguity I had not thought of.

Q. (BY MR. THOMPSON) So far have you been answering the question as Chuck Topping or as Rhodium?

A. Those -- the testimony that you mentioned was given in my capacity as Chuck Topping, so I'm answering those questions in that capacity, yes.

Q. Great.

Page 9

You'll recall that the debtors, Rhodium, filed a reply in support of the application for an updated retention order about LKC. Do you stand by that submission in your capacity as Chuck Topping?

A. Are you talking about the declaration?

Q. No. The -- the brief it was attached to. Do you want me to show it to you?

A. I'd have to review it.

Q. I'm going to hand you what should be marked as Exhibit 10.

(Exhibit No. 10 marked)

MR. THOMPSON: I'm going to try to put this in the chat for everyone else; but for anyone following along on Zoom, it's ECF 1111.

MS. SCOTT: Apologies for interrupting. Just while he's reviewing, we've lost all video feed on the Zoom as far as I can tell. I'm wondering if the technical team can maybe get that set back up.

Oh, there we go. Thank you. Apologies.

MR. THOMPSON: No, thanks for raising it.

THE WITNESS: I was in support of this brief, so I -- did I answer your question?

Q. (BY MR. THOMPSON) I'll try to be specific.

You're the general counsel of Rhodium, correct?

Page 10

A. Yes.
Q. And you often review litigation filings before they are filed on Rhodium's behalf, correct?
A. Yes, that's right.
Q. Did you review ECF 1111 before it was filed?
A. Yes.
Q. And did you authorize it to be filed?
A. Yes.
Q. And that was because you thought it was truthful and accurate?
A. To my recollection, yes.
Q. And to the best of your understanding today, there's nothing in ECF 1111 that you think is false or inaccurate?
A. That's correct.
Q. Okay. Now, Mr. Schmeltz brought up a good point about you being Chuck Topping, the individual, but also a corporate representative; and I understand you just stood by some previous testimony in your capacity as Chuck Topping, the individual.
But I do want to know kind of if your preparation as a corporate representative has revealed to you any divergence between the official Rhodium views you will testify about today as a corporate representative and the previous testimony you gave --

Page 11

you've given in this matter as an individual.
A. I'm not -- I don't think I'm aware of any divergence. If anything comes to mind, I can certainly let you know.
Q. I would appreciate that.
So you may be aware that the debtors and the Special Committee recently filed an emergency motion for authority to pay fees to LKC. Are you --
A. Yes.
Q. And I will hand you a copy which we will mark as Exhibit 11.
(Exhibit No. 11 marked)
Q. (BY MR. THOMPSON) Do you recognize Exhibit 11, Mr. Topping?
A. I have it in front of me, yeah.
MR. THOMPSON: I'm putting it in the chat for the people on Zoom.
Q. (BY MR. THOMPSON) And the reason I found it notable -- this is, I think, on page nine, but you probably just know it without looking -- is that it referred to an investigation related to things you had previously said in this case. Do you know what I'm talking about?
A. Yes.
Q. Did someone investigate your statements

Page 12

recently?
A. Yes. The Special Committee.
Q. And can you explain to me your understanding of what they were investigating and why they were doing so?
A. I think that --
Q. And I don't mean to put you on the spot. Just anything brief to give me an overview.
A. No, no. I think that there was discovery in connection with this case; and in connection with that discovery, there were documents produced that included statements that I made, that there was concern that it might be inconsistent with statements that I made in my declaration and statements that I made in in-court testimony. So I think that was the purpose.
Q. And --
A. That's my understanding of what the purpose was.
Q. To the best of your understanding, the investigation didn't find any wrongdoing on your part, right?
A. That's my understanding.
Q. And regardless of what anyone else thinks, what is your position on whether you were telling the truth?
A. In my testimony?
Q. Uh-huh.

Page 13

A. My position is that I was telling the truth in my testimony.
Q. And is it your position your statements just weren't inconsistent?
A. Which statements?
Q. The ones that -- whichever ones the Special Committee was investigating.
A. I -- I don't think that they were inconsistent. I think that, you know, a reading of the statements might suggest that they were; but there was a negotiation that was taking place between Mr. Cohn and I, and I was trying to get him to agree to a number and I was -- I was kind of adopting a very hard-line negotiating tactic.
Q. I see. Okay. So the statements they were investigating were not statements you made under oath.
A. That's right.
Q. They were statements you made in the context of negotiating at least somewhat adversely to Mr. Cohn about the success fee?
A. Yes.
Q. Got it.
And you were -- in that situation, your client was Rhodium, right?
A. Of course.

Page 14

Q. And you were trying to protect Rhodium's interests?
A. Yes.
Q. And so you -- I think you said you took a hard line in your negotiations with Mr. Cohn because you felt it was your duty to do so?
A. I was -- yes. I was trying to adopt an interpretation that would support a numerical amount that we were trying to get -- reach agreement on as it related to the success fee.
Q. And there's nothing wrong with a lawyer in your position trying to reduce the success fee, if lawful and possible, that Rhodium would have to pay LKC, right?
A. Not in my view.
Q. You're just doing your job?
A. Yes.
Q. And then when you went to court or submitted testimony in writing, you told the truth, right?
A. Can you repeat that?
Q. When you -- after you were finished with negotiations with Mr. Cohn and then you provided sworn testimony to the Court, you were telling the truth to the Court, right?
A. Yes.
Q. I'm going to hand you what will be marked as

Page 15

Exhibit 12.
(Exhibit No. 12 marked)
Q. (BY MR. THOMPSON) Do you recognize Exhibit 12?
A. Yes.
Q. Is it the application for an updated order authorizing the retention and employment of LKC as special litigation counsel?
A. Yes.
Q. At the top, you see it's marked as ECF 835 in this case, right? Where it says "Document" at the top of the page?
A. Yes, that's right.
Q. And the part I wanted to bring your attention to is the March 2025 engagement letter which is attached as Exhibit B to this filing and it's on page 13 of 16 if you use the page numbers at the top.
A. Yeah. I have it.
Q. This is the updated engagement letter that underlied the filing with the Court, right?
A. This is the engagement letter that -- the updated engagement letter that was included as part of the updated retention application.
Q. It's fair to say this is what resulted from those negotiations you had with Mr. Cohn?
A. Correct.

Page 16

Q. So if we turn to just the next page, you see on pages 14 to 15 is the section that describes the success fee and how it's calculated. Do you have that in front of you?
A. Yes.
Q. And you see there are lettered paragraphs (a), (b), (c), and (d)?
A. Uh-huh.
Q. I'm just going to go through those in order with you if you don't mind.
A. Okay.
Q. So Paragraph (a) talks about a 600,000-dollar payment if the Bankruptcy Court's order on a debtor's motion to assume is upheld in a non-appealable final judgment or if the appeal is dismissed and some other contingencies.
Rhodium agrees that the $600,000 should be and has, in fact, been paid, right?
A. Correct.
Q. There's no dispute as to the 600,000-dollar Paragraph (a) part of the success fee, correct?
A. Right.
Q. Okay. So Paragraph (b), this is the one that talks about energy credits, right?
A. Yes.

Page 17

Q. What is Rhodium's position regarding the amount of energy credits that should go into the Paragraph (b) calculation?
MR. SCHMELTZ: Is it your contention that this falls under No. 2?
MR. THOMPSON: Well, my guess is it would fall under multiple topics, but I think it would fall under 2.
MR. SCHMELTZ: I'm going to object as outside of the scope, but I'm going to let the witness do his best to answer. We can talk about the scope question later. I don't want to hold up your --
MR. THOMPSON: We don't need to argue about it now. I guess my initial position is it fits probably both within 2 and 1; but we can resolve the objection at a future time, I'm sure, if needed.
MR. SCHMELTZ: Just give the best answer you can in your personal capacity and we'll go from there, Chuck.
THE WITNESS: Can you repeat the question?
Q. (BY MR. THOMPSON) What is Rhodium's position regarding the amount of energy credits that ought to be input into the Paragraph (b) part of the formula?
A. Rhodium has -- an order has been entered by the Court authorizing Rhodium to pay an undisputed amount

Page 18

corresponding to Paragraphs (b) and (c). That undisputed amount is based on an allocation that assumes that all of that amount is allocable to energy credits. The Court entered an order authorizing that. And a payment -- my understanding is that a payment has now been issued by wire for that amount. So Rhodium's position is that, at minimum, that that is undisputed, that that has been earned and that that amount has been paid. As to whether -- so that's with regard to Paragraph (b).

I'm not sure if I have any further personal understanding with regard to the amount allocable, but Rhodium does agree that a portion of the 75 million that's mentioned in that -- in that motion is allocable to energy credits.

Q. So as you sit here today, does Rhodium have a position on what portion of the 75 million dollars it mentioned is allocable to energy credits?

MR. SCHMELTZ: Same objection.

We probably ought to go off the record and talk about this because it's going to --

MR. THOMPSON: That's fine. Yeah, we can go off the record.

VIDEOGRAPHER: Okay. The time, 3:41. Off.

Page 19

(Discussion off the record)

VIDEOGRAPHER: Okay. 3:48, on the record.

MR. THOMPSON: Okay. Mr. Schmeltz and I have just conferred about a discovery issue and I understand he wants to make a statement on the record.

MR. SCHMELTZ: I do. The Topic No. 2 particularly, communications, documents, discussions, negotiations, and analyses concerning the LKC success fee, I concede on the record is super broad, which is why we objected that it was super broad; and I concede that it likely covers the topic that Mr. Thompson is about to get into, which is how do you actually allocate the fee between Buckets (b) and (c) in the letter.

We didn't read it that way and Mr. Topping isn't prepared to talk about that particular issue. He's probably more on lines of communications, et cetera, around the success fee. And that falls on me. He isn't going to be prepared to talk in the granularity that would be our corporate representative for that. And we do have a separate witness for that and are prepared to make that person available very quickly. And we'll do that.

But that's our position on this. And I apologize. Wherever, in our meet and confer on this issue -- or maybe we will. I don't remember actually having a meet and confer on this issue. But we didn't see it that way. But we're -- we have a witness and we're prepared to make them available for deposition.

Page 20

MR. THOMPSON: I appreciate that, Mr. Schmeltz. And I don't know if there have been other communication on this while we've been in this deposition. I believe our conversation is the first I'm hearing about the other witness who will testify about this. I guess we will meet and confer regarding the possibility of you calling and us deposing that witness.

And so I take it the Special Committee's position is that Mr. Topping is not designated as a corporate representative to answer questions on behalf of Rhodium about what amounts of money Rhodium thinks are appropriate to pay under the different components of the success fee. Is that fair?

MR. SCHMELTZ: That is correct.

Q. (BY MR. THOMPSON) All right. Mr. Topping, I'll just ask in your personal capacity whether you have -- whether you know what Rhodium's positions are with regard to how much money should be paid to LKC under the different components of the success fee.

A. Beyond the answer I gave, I don't have anything else to add to that.

Q. And the answer you gave is the one you're referring to about the undisputed payment?

A. That's right.

Q. Thank you.

MR. THOMPSON: And I guess, for the record, we object and think that Mr. Topping should have been prepared on this topic and that the Special Committee has forfeited the right to have a Rhodium witness address this topic at the hearing. But I understand Mr. Schmeltz disagrees, and we will meet and confer and deal with that as needed.

Page 21

Q. (BY MR. THOMPSON) Mr. Topping, I don't know if we're about to get into the same issue or if this is sufficiently different.

We just went through over all the things about the different components of the success fee. Are you able to testify about Rhodium's position regarding how much money should be allocated to damages generally, including both the energy credits and the other damages? If it's the same situation, you can just --

MR. SCHMELTZ: Can you just read the question back to me? I was just texting someone. We need to get a person -- our person ready, maybe even today. I'm just trying to be proactive.

Can I have the question?

THE REPORTER: Question: "Mr. Topping, I

CHARLES TOPPING - October 29, 2025

don't know if we're about to get into the same issue or if this is sufficiently different."

"We just went through over all the things about the different components of the success fee. Are you able to testify about Rhodium's position regarding how much money should be allocated to damages generally, including both the energy credits and the other damages? If it's the same situation, you can just --"

MR. SCHMELTZ: No, it's a totally different situation in that Kevin Hays testified on that and we designated his transcript last night on that, those issues. That's why we've got this down as a twofer with Kevin Hays and Chuck Topping.

MR. THOMPSON: Just so I understand, for purposes of the deposition I'm trying to take now, Mr. Topping is not able to testify about that? That's Mr. Hays?

MR. SCHMELTZ: That was Mr. Hays. And Mr. Hays -- we've designated his transcript on that. And that's how we agreed with Josh Wolfshohl -- I thought you were on that meet and confer, but I don't recall -- how we would handle this.

MR. THOMPSON: I don't remember it, but I'm sure we can talk to Mr. Wolfshohl about whatever the two of you may have agreed to.

Q. (BY MR. THOMPSON) Mr. Topping, putting aside your capacity as a 30(b)(6) witness and asking you based on your personal knowledge, do you have any personal knowledge of Rhodium's position regarding the amount of money that should be allocated to damages as a whole, both energy credits and other?

A. Yes.

Q. And what is it that you know about that?

A. That the amount is 75 million.

Q. Anything else?

A. I'm not sure what else to add.

Q. Do you know the basis for that position?

A. I believe I would have to defer to Kevin Hays for that explanation, but I don't think there's anything that I'm aware of that Kevin has testified about that I disagree with.

Q. Have you reviewed Mr. Hays' testimony?

A. I sat in on portions of his deposition. I have not reviewed his testimony in a transcript or anything like that.

Q. Do you have knowledge about the basis for the 75-million-dollar allocation apart from hearing Mr. Hays' testimony?

A. I was present during discussions about that with Mr. Hays and other professionals.

Q. What discussions are we talking about?

A. What's that?

Q. What discussions are you referring to?

A. There were a number of discussions during the mediation while negotiation -- settlement negotiations with Whinstone were going on about the allocation, the amount allocable to the value of the business and then the amount allocable to damages. I was involved in some, not all. There were also discussions at the board level during this time.

Q. And based on those discussions, what is the basis for allocating 75 million dollars to damages?

A. I think it would be consistent with the information that was prepared and compiled by Kevin and the other professionals who worked on it and presented to the board.

Q. And by Kevin, you mean Mr. Hays, the CFO?

A. Yes.

Q. And who are the other professionals who presented this information to the board?

A. My understanding is that Michael Robinson was involved in that process as well.

Q. Are you aware of anyone else who was involved?

A. No. It would be speculation. I'm not sure who else might have been involved.

Q. To the best of your knowledge, the outside litigation team wasn't involved in that?

A. I -- there was no interaction that I was involved in that also involved the outside litigation team in connection with that analysis.

Q. Mr. Hays and Mr. Robinson are not attorneys, correct?

A. That's correct.

Q. In your view, are they equipped to evaluate the likelihood of success on legal claims?

A. With input from counsel, I think they are.

Q. And do you know one way or the other whether they got input from counsel on the numbers they presented to the board?

A. During this process they did receive input from counsel, yes, from LKC, from Stris, from myself, from Quinn. I think that counsel was involved.

Q. Help me if I'm remembering this correctly. There were estimates of the expected value of damages claims prepared by, I guess, among others, LKC and Stris working together. Do you remember that kind of spreadsheet?

A. Yes.

Q. And I think -- I'm truly just trying to remember, so tell me if I'm wrong. I think Mr. Hays

Page 26

made kind of an edit to that spreadsheet and that's where the 75-million-dollar number came from. Is that right?

A. I don't know if I would describe it that way. I think it was a very thorough, in-depth analysis that was undertaken, taking into account the advice that was received from outside counsel, also in consultation with myself and Mr. Robinson. And I believe Mr. Robinson had information and feedback from exit financing lenders that was also taken into account.

Q. And I'm sorry. I'm not trying to belittle whatever it is they did. I mean, there was a table that was prepared by outside counsel and Kevin had a similar table where I think all the input numbers were the same except for one, right?

A. It's my recollection that Building D changed. That particular number had changed. The -- I'm not sure if there may have been some others that did, but I do recall Building D changed.

Q. And that Building D change was to move the likelihood of success from 40 percent to 20 percent, correct?

A. That's consistent with my recollection.

Q. And so I think my question earlier may not have been very clear. What I'm wondering is whether Mr. Hays

Page 27

or Mr. Robinson got input from attorneys with regard to that change from 40 percent to 20 percent.

A. They did receive input from me.

Q. And what did they ask you and what did you say?

A. We had an in-depth discussion about Building D. I think Michael mentioned that he felt that the 40 percent was too high in light of the fact that we didn't know much about the claim. There hadn't been a lot of discovery. It was kind of an undeveloped claim.

One concern that I had -- I had some concerns. I had some concerns about the language of the contract and the limitation of damages that appeared in it. I also had concerns about the fact that Rhodium had not really spent a lot of -- had not made a huge investment in Building D and so the damages that Rhodium would be able to recover as a result of that claim might not be very significant.

Now, the adjustment was made in the probability of success. Maybe it should have been made in the damages. Maybe the damages figure should have come down. But there were concerns about that claim. So Kevin Hays and Michael Robinson both felt that it would be appropriate, to be conservative, to revise that number from 40 percent downward and I was in agreement with that.

Page 28

Q. And to the best of your knowledge, did Mr. Robinson or Mr. Hays get input from other attorneys regarding that change?

A. I don't have any knowledge of whether they did.

Q. I want to go through the things you just mentioned.

The limitation of -- the limitation on damages in the Building D contract, you're talking about a contractual provision that limits the monetary recovery one party to the contract can get from suing another party to the contract; is that right?

A. I don't recall the details, but I do recall being concerned about language that appeared in that document.

Q. Do you recall that the limitation on damages provision in the Building D contract is materially identical to the limitation on damages provisions in other contracts that Rhodium had with Whinstone?

A. I have no recollection one way or the other. I don't know if I did a comparison.

Q. Do you remember whether Rhodium had analyzed, either in-house or through its outside counsel, whether it would be able to overcome such limitations on damages clauses?

A. I didn't personally do an analysis like that.

Page 29

Q. Do you know whether LKC did?

A. I don't.

Q. Do you know whether Stris did?

A. I do not.

Q. Do you know whether, under Texas law, limitations on damages clauses are uniformly enforceable or sometimes not enforceable?

A. I don't agree with the question, but I -- I don't have an in-depth knowledge of Texas law on the issue.

Q. I'm not trying to be difficult. What about the question do you not agree with?

A. I don't know if it's an either/or proposition.

Q. I see. I'll break it down and avoid the compound question.

A. Yeah.

Q. Do you know whether contractual clauses limiting damages liability are uniformly enforceable in Texas?

A. To a certainty, I do not.

Q. Do you know whether there are situations in which a plaintiff can convince a Court to hold that the limitation on damages provision is not enforceable?

A. I do know that there probably -- that there are, yes.

Page 30

Q. And I understand you're not a Texas lawyer, right?
A. That's right.
Q. So you've just never spent any time researching whether -- what the standard is for that under Texas law. Fair?
A. That's fair.
Q. In fact, you often hire outside counsel to handle those problems for you, correct?
A. I do.
Q. I'm going to ask you to look at Exhibit 5 that is in front of you.
A. Okay.
Q. Do you see that Exhibit 5 is an email that Kevin Hays sent to you as well as Morgan Soule?
A. Yes.
Q. And you see that he's forwarding a message from a tax advisor at Riveron?
A. Yes.
Q. I don't know Ms. Nicholes. Do you know her?
A. I do. I don't think we've ever met in person, but I have had conversations with her. I've been on calls that she's also been on.
Q. Okay. I see that her title is director. And so I guess what I'm wondering is: Do you understand her

Page 31

to be a knowledgeable person about tax issues who provides professional advice to Rhodium?
A. That's my understanding.
MR. SCHMELTZ: But that is definitely outside of the scope, asking if Maryam Nicholes is knowledgeable about it.
Q. (BY MR. THOMPSON) Now, the information that Mr. Hays forwarded to you from Ms. Nicholes includes a sentence in numbered Paragraph 1, "Rhodium has a lot of self-created contracts/goodwill which would be treated as capital gain assets."
Do you see that?
A. Yes.
Q. And I should have asked, did you review this email when you received it or sometime after you received it?
A. I -- I have no specific -- I assume that I did. I probably did. I don't know if I have any specific or particular recollection, but I probably did.
Q. And do you see the sentence that says, at the end of numbered Paragraph 2, "Note however that settlement of a law suit/damages is likely taxed at ordinary income rates"?
A. Yes, I see that.
Q. So is it fair to say that, you know, as of

Page 32

roughly March 8th, 2025, you were aware that an allocation that moved value from the power contracts to damages would increase the amount of money that was taxed at ordinary income rates?
MR. SCHMELTZ: Outside of the scope of this witness' testimony. Mr. Wheeler already testified about that.
Q. (BY MR. THOMPSON) I'm just asking about your personal knowledge.
A. Can you -- I'm sorry. Can you repeat the question?
Q. Yeah.
Is it fair to say that based on this email, you were aware in March 2025 that increasing the amount of money allocated to damages would increase the amount of money that would be taxed at ordinary income rates?
A. I don't think I had an understanding one way or the other.
Q. You didn't gain an understanding of that from this email?
MR. SCHMELTZ: Objection, asked and answered. He's --
(Simultaneous cross-talk interrupted by the reporter)

Page 33

MR. SCHMELTZ: Objection, asked and answered. He's already explained his views of this email.
THE WITNESS: Your question is whether or not I had an understanding as to whether it would cause the ordinary income tax rate to increase.
Q. (BY MR. THOMPSON) No. Maybe I was unclear. Not to make the rate increase.
A. The amount.
Q. To increase the amount of money that would be subject to an ordinary rate as opposed to a capital gains rate?
A. As to whether or not the movement that you described would result in that happening, I have no understanding.
Q. Would you take a look at Exhibit 6 next, please? This is another email to you. Do you see that Ms. Tomasco from Quinn-Emanuel sent you this email?
A. Yes.
MR. SCHMELTZ: This is the same objection I had earlier. We'll talk about sealing the transcript and this portion of the transcript. And we understand we're at odds on whether this is something that should be used since we are clawing it back.
MR. THOMPSON: Sure. We disagree, but we

Page 34

will meet and confer to work through it.
MR. JAQUET: This is Alain Jaquet with Quinn-Emanuel. We have also the same objection raised before.
MR. THOMPSON: Noted.
Q. (BY MR. THOMPSON) In this email to you, Ms. Tomasco says "Of course this allocation will favor LKC" -- I'm in the third line -- "which we will also have to calculate into the mix of pluses and minuses."
Do you see that?
A. I do.
Q. Was your understanding that an allocation favoring LKC would be a plus or a minus for Rhodium?
A. I -- I don't think I had any understanding in that regard. I don't think it -- I didn't look at it that way at all. I can't really give any better answer than that.
Q. Do you expect that you reviewed the email at or after the time Ms. Tomasco sent it to you?
A. I do recall I -- yes, I did. Yeah.
Q. Did you just disagree with Ms. Tomasco's statement?
A. I didn't understand it.
Q. Did you tell Ms. Tomasco that you didn't understand her statement?

Page 35

A. Are you asking me about my communications with Ms. Tomasco?
MR. SCHMELTZ: I'd agree. That's privileged. Thanks for --
MR. THOMPSON: I assume you're instructing him not to answer.
MR. SCHMELTZ: I am.
Q. (BY MR. THOMPSON) You're going to take his advice?
A. Yes.
MS. WEBER: And I'm also chiming in here from Quinn-Emanuel and instructing him not to answer. Thanks.
Q. (BY MR. THOMPSON) Outside the context of privileged communications, did you tell anyone else, "Hey, I don't understand what Ms. Tomasco means by this"?
(Clarification requested by the reporter)
THE WITNESS: Outside of the context of privilege, I don't have any recollection of a discussion to that effect.
Q. (BY MR. THOMPSON) Putting aside communications with Ms. Tomasco, did whether an allocation would favor LKC or not affect Rhodium's calculus of whether it was an appropriate allocation to use for purposes of the

Page 36

success fee?
A. No.
Q. And what's your basis for saying that?
A. I was not directly involved in the tax allocation work stream, so the basis is my understanding of how it was conducted, but it is -- but it is limited because I wasn't directly involved in a lot of the discussions that took place. I was an invitee on a lot of the meetings, but the work that was done by the professionals was work that largely took place without my involvement.
Q. Ms. Tomasco was involved in the tax allocation work stream, right?
A. Yes. And to what extent, I'm not sure.
Q. Are you aware that the tax professionals at Riveron were purportedly working under a Kovel agreement, where they were helping Ms. Tomasco provide legal advice to Rhodium?
A. Yes.
Q. So it's fair to say that the tax professionals at Riveron had been retained by Quinn-Emanuel, right?
MS. WEBER: Objection, foundation.
Q. (BY MR. THOMPSON) If you know.
MR. SCHMELTZ: It's certainly outside of the scope of the 30(b)(6).

Page 37

THE WITNESS: I think you're -- to the best of my understanding, they were retained by counsel.
Q. (BY MR. THOMPSON) And did you have an understanding one way or the other of whether they worked at Ms. Tomasco's direction?
MS. WEBER: Same objection.
THE WITNESS: I generally understood that they were.
Q. (BY MR. THOMPSON) That's required for a Kovel --
A. I think that they were working under counsel's direction. I'm not sure if it was Ms. Tomasco or a different lawyer. I don't know.
Q. That would be required for a Kovel agreement, right?
A. I don't want to hazard an opinion as to what the legal requirements are for a Kovel agreement.
Q. I don't want to get into details about this. Does Ms. Tomasco like Mr. Cohn?
MR. SCHMELTZ: Isn't that privileged? I think it is. I think it's privileged. I think any communication she would have had with Mr. Topping about how she feels about Mr. Cohn is privileged.
Q. (BY MR. THOMPSON) I'm not asking about communications. I'm just asking whether she likes him

CHARLES TOPPING - October 29, 2025

Page 38

in your understanding.
MS. WEBER: I'm going to object on just relevance grounds. Of course, if he can answer, go ahead. But I think this is an absurd question. Go ahead.
THE WITNESS: I -- I don't know. I don't know if she ever told me she liked him. I don't know if she ever told me she hated him. I'm not waiving privilege. I just don't have -- I'm not sure if I have any basis upon which to reliably answer your question.
Q. (BY MR. THOMPSON) One of the topics you are designated to testify on relates to the LKC hourly bills.
A. Yes.
Q. Are you aware of that?
A. Yeah.
Q. Are you aware of the objection that the Special Committee has filed regarding some of the hourly bills?
A. I am.
Q. Are you aware of the basis for that objection?
A. I am.
Q. Can you explain to me the basis for the objection to the hourly bills and expenses?
A. I don't have it in front of me. I don't -- I think there -- there are some time entries and expenses

Page 39

that are being objected to. And I think that one of the requirements in the engagement agreement is that the invoices need to be submitted, you know, bills for expenses, invoices, and so forth. The engagement agreement also requires that they be reasonable. And there was no submittal made to Rhodium prior to the fee application being filed.
When the fee application was filed, there was no basis upon which to evaluate whether or not the expenses being objected to are reasonable. The burden is on LKC under the bankruptcy rules as I understand them. And granted, my understanding is limited. We -- I -- we have a duty to avoid duplication. When LKC was first retained, I actually filed a declaration with the Court in which I said that I was convinced that there would be no duplication.
So there's concern that there may be duplication, especially in the situation where we did have counsel that championed the cause of the amended retention application. So beyond -- beyond that, I don't -- I'm not sure if there's anything in that -- in those pleadings that I disagreed with.
I also know that an offer was made to LKC to discuss, to confer about those invoices, and to make a determination, that there was certain information

Page 40

about time entries that were not known and it might be a basis upon which to withdraw the objection to some of them. But that's -- that -- that's my understanding.
Q. You have already in front of you somewhere Exhibit 12, which includes --
A. Exhibit 12?
Q. Exhibit 12 includes the March 2025 engagement letter. I think you alluded to some language in that letter. I just want to make sure we're talking about the same thing. The front of Exhibit 12 looks like this.
A. Got it.
Q. And so I'm looking at almost the very back. It's page 14 of 16 based on the stamp at the top.
A. Okay.
Q. Earlier you were testifying about the reasonableness of expenses and some of the requirements of the engagement letter. Were you talking about this paragraph on page 14 of 16 that begins "We will continue"?
A. That's -- it's within that provision, yes.
Q. All right. And so I want to look at that language a little bit more closely. The last sentence in that paragraph says "Bills for the hourly fees and reasonable expenses (including but not limited to

Page 41

photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance."
Did I read that correctly?
A. Yes.
Q. Do you have an understanding of what legal advice on retention and compensation matters means?
A. Yes.
Q. What is that understanding?
A. The understanding was that there would be a need for LKC to obtain limited advice on retention and compensation matters from a bankruptcy expert.
Q. That was Mr. Wolfshohl from Porter Hedges?
A. It was my understanding that that was the role that that firm was going to have, yeah.
Q. And so you were expecting that Rhodium would pay reasonable expenses for legal advice on retention and compensation matters that LKC incurred by hiring Mr. Wolfshohl, correct?
A. Yes.
Q. So Rhodium is not categorically against reimbursing LKC for the Porter Hedges expenses, right?
A. I will say this: That when I saw those numbers, they were astounding to me. I didn't expect to

Page 42

see numbers that high for, you know, legal advice on retention and compensation matters. But to answer your question, yes, we did expect to pay reasonable expenses associated with that.

Q. And I'm just -- I understand we're not in full alignment here. I just want to make sure I understand the scope of our disagreement.

A. Yeah.

Q. So Rhodium expected to pay something, but maybe not that much, for the Porter Hedges expenses. Is that what I'm getting from you?

A. Yes. Yeah. Yeah, that the concern is duplication. We had a firm, Stris & Maher, that championed the cause of the amended retention application. And asking debtors in a Chapter 11 case to pay for multiple firms doing the same work, that's -- that's an issue.

Q. It is.

A. So that -- that was a concern.

Q. With regard to the application for an updated retention order, Stris was representing the debtors, correct?

A. Yes. Yeah.

Q. And Porter Hedges was representing LKC, correct?

Page 43

A. Yes.

Q. The debtors filed a reply in support of the application for an updated application and I think we looked at that earlier, right?

A. Yeah, I think we looked at that, yeah.

Q. And LKC filed a separate reply in support of the debtors' motion, correct? Or I should have said -- excuse me. LKC filed a separate reply in support of the debtors' application.

A. Yes. That's my recollection as well.

Q. And it was filed by Mr. Wolfshohl, right?

A. To my recollection, yeah.

Q. And so Mr. Wolfshohl was representing LKC in support of an application the debtors had filed. Fair?

A. Uh-huh. Yes.

Q. And you knew that Mr. Wolfshohl would be doing that before he did it, correct? "You" being Rhodium.

A. I'm not sure if I did.

Q. Do you remember that Mr. Wolfshohl and Mr. Stokes coordinated with each other in supporting the debtors' updated application?

A. Yes. I -- yeah.

Q. So when Mr. Wolfshohl was in the middle of that work, Mr. Stokes at least, representing Rhodium, was aware of the work he was doing, correct?

Page 44

A. Yes.

Q. Did Rhodium at any time say to LKC, "Hey, why do you guys have Wolfshohl and Porter Hedges doing all this work? They should be doing less"?

A. I do remember that there was discussion about whether or not that was going to get paid or approved. I don't recall when that was. And I think it was Mr. Stokes. I'm not sure who he spoke with about that. Beyond that, I'm not sure what additional discussions may have taken place.

Q. I appreciate the answer. I'm not totally sure I understood it.

There were discussions between Mr. Stokes and whom about whether the Porter Hedges expenses would be paid?

A. Someone on the LKC legal team. Whether it was someone at LKC or someone at Porter Hedges, I'm not sure.

Q. Do you know the substance of that conversation?

A. Only that there was a question as to whether or not it was going to be paid or approved.

Q. Right. So perhaps Mr. Wolfshohl said "Is this going to be paid or approved" and Mr. Stokes said "Yes"?

A. I don't know. I don't know the details. I can't recall anything beyond that. Yeah, I don't -- I don't have any further recollection of that.

Page 45

Q. That's fine. I'm not -- we often don't remember things.

I think Exhibit 4 in front of you is the purchase and sale agreement.

A. Yes, sir.

Q. I'm sorry. I told you I didn't think we were going to go through a bunch of those and I was just completely wrong.

MR. SCHMELTZ: No lawyer has ever misrepresented what they're going to do in a deposition.

MR. THOMPSON: As long as it's an innocent one.

MR. SCHMELTZ: I agree. I agree.

MR. THOMPSON: Not to beat a dead horse, but I was planning on talking about other things for a long time.

MR. SCHMELTZ: Touche.

Q. (BY MR. THOMPSON) Okay. You recognize this as the PSA between Rhodium and Whinstone, right?

A. Yes.

Q. I admire your lawyerly precision in looking for the signature page.

Let's look at the page seven based on the numbers at the top of the page.

Page 46

A. **Okay.**
Q. Do you see Section 2.3?
A. **Yes.**
Q. You are familiar with Section 2.3, correct?
A. **Yeah.**
Q. And I believe you're designated to talk about Section 2.3 as a corporate representative today, right?
A. **Yes.**
Q. Under Section 2.3, the allocation statement is prepared for tax purposes, right?
A. **The words "allocation statement" do appear in that section. It's a defined term.**
Q. Yeah. Sorry. I'm asking something a little bit different.
I understand allocation statement is a defined term. I'm saying that defined term allocation statement is prepared for tax purposes under the contract, right?
A. **Yes.**
Q. In fact, the first words of Section 2.3 after the heading are "for tax purposes," correct?
A. **Correct.**
Q. And we can go through the specific details if you'd like to, but I know you're familiar with the provision. Is it fair to say that, in general, Section

Page 47

2.3 requires Rhodium and Whinstone to follow the allocation statement when making tax filings, right?
MR. SCHMELTZ: Can you -- which topic do you think this falls under, may I ask?
MR. THOMPSON: I think we're talking about Topic 4 right now.
THE WITNESS: Yeah, this -- this section does set forth the procedure by which the parties would confer and then agree upon and file a Form 8594 or equivalent certificate allocating the purchase price among the property as that term is defined in the PSA.
Q. (BY MR. THOMPSON) Right. And so when Whinstone and Rhodium make their tax filings, they need to follow the allocation statement, whether it's because they agree on something or because the Court sets the agreement for them, right?
A. **That's my presumption. I don't purport to be a tax professional. But I mean, I would kind of defer to Mr. Wheeler on exactly what process would be followed after this process is completed with regard to Rhodium's filing of taxes.**
Q. Fair enough.
MR. SCHMELTZ: And we will designate Mr. Wheeler, as we've been allowed to do after the fact, for some of this as well.

Page 48

Q. (BY MR. THOMPSON) I wanted to take -- turn your attention to the last sentence in Section 2.3. It's on the next page.
A. **The last sentence, yeah.**
Q. I'll just read it for you. You see that it says, quote, "For the avoidance of doubt, nothing contained herein shall be deemed an allocation of asset value for purposes of distribution to any Seller's stakeholders."
A. **Yes, sir. You read it correctly.**
Q. And in this agreement, your understanding is that seller refers to Rhodium entities, right?
A. **Seller refers to the Rhodium entities.**
Q. LKC is a Rhodium stakeholder, correct?
A. **I have not formulated an opinion on whether or not the word "stakeholder" encompasses LKC.**
Q. You don't have a view one way or the other?
A. **I would have to analyze and research that question. I don't know the answer to that question.**
Q. Under Section 2.3, Rhodium is not required to use the tax allocation for non-tax purposes, correct?
MR. SCHMELTZ: May I have the question back?
THE REPORTER: Question: "Under Section 2.3, Rhodium is not required to use the tax allocation

Page 49

for non-tax purposes, correct?"
MR. SCHMELTZ: Answer as best you can.
THE WITNESS: I'm not sure if I'm seeing anything to that effect here. I don't see -- I do see the language at the beginning of the section that says "for tax purposes," but I don't see any language explicitly to the effect of what you -- what you've asked about.
Q. (BY MR. THOMPSON) To the best of your knowledge as a corporate representative, has Rhodium conducted any analysis of whether Section 2.3 requires it to use the tax allocation for non-tax purposes?
MR. SCHMELTZ: I would suggest Mr. Wheeler's answer on that is authoritative, but let the witness answer as best he can.
MR. THOMPSON: I almost admire the gumption of the speaking objection on that one, Mr. Schmeltz.
THE WITNESS: So I'm answering in my personal capacity?
MR. SCHMELTZ: Yes.
THE WITNESS: In my personal capacity, I'm not aware of any such analysis.
Q. (BY MR. THOMPSON) And if you don't know in your corporate representative capacity, then I guess you

Page 50

don't know. But you are designated as a corporate representative regarding analyses concerning the Whinstone PSA, including, but not limited to, Section 2.3 of the Whinstone PSA, correct?

MR. SCHMELTZ: And I have noted we'll extend that to Mr. Wheeler.

THE WITNESS: I am designated on the topic.

Q. (BY MR. THOMPSON) Regardless of whatever Mr. Schmeltz may do in the future with regard to designating Mr. Wheeler, as the corporate representative sitting in front of me at the moment, you're not able to tell me about any analysis concerning the Whinstone PSA and whether Section 2.3 requires Rhodium to use the tax allocation for non-tax purposes, correct?

A. I'm not sure why Rhodium would undertake that type of an analysis as to whether or not Section 2.3 of the purchase agreement in and of itself requires Rhodium to use the allocation for non-tax purposes. I'm not sure if it's an analysis that would normally be conducted in connection with an agreement like this.

But as to whether or not our tax professionals at Riveron or Mr. Wheeler has done that, I can't -- I can't say one way or another. It may have been something that was undertaken as part of his

Page 51

analysis work on the tax allocation. Beyond that, I'm -- and so if one was done by him, I -- I would have to defer to him on that. But as to whether or not something else was done by someone else concerning Section 2.3 of the PSA, I'm not able to -- I have no awareness of that.

Q. You've previously testified that it's possible that Rhodium and Whinstone in the PSA would reach one allocation and then Rhodium and LKC pursuant to the engagement letter would reach a different allocation, correct?

A. I don't think that's correct. I don't think that's a fair recitation of my testimony. I do recall testifying that there is a theoretical possibility that there could be an allocation reached between them, but I also said that it's unlikely. Did I want to foreclose the possibility and say never, it can never possibly happen? No. And that's why I testified the way I did.

Q. Yeah.

A. For example, this agreement could be amended. There could be an amendment. You could take out this provision. You could take out this section. The Court could rule a certain way. I didn't want to foreclose -- you know, I just didn't want to say the word "never". But I think it's very unlikely.

Page 52

Q. It's unlikely because Rhodium should try to find the right answer in both contexts, right?

A. We would not want to have a situation where there were two sets of operative facts that could result in liability exposure and could result in tax exposure, tax liability exposure. So, yes, the right answer being one set of operative facts that governs what we file with the IRS that also governs everything else.

Q. But it's a possibility because the law doesn't actually prohibit having different allocations, correct?

A. I'm not able to provide an opinion on that.

Q. You don't know one way or the other?

A. I don't.

Q. I apologize, Mr. Topping. I think we've been talking for a bit over an hour and I have not offered you a break. Would you care for a break?

A. That would be great.

MR. THOMPSON: Let's go off the record.

VIDEOGRAPHER: 4:41, off.

(Recess from 4:42 p.m. to 5:11 p.m.)

VIDEOGRAPHER: Okay. The time is 5:10. On the record.

Q. (BY MR. THOMPSON) Welcome back from the break, Mr. Topping.

Mr. Schmeltz and I have just conferred off

Page 53

the record and reached an agreement about -- that should save us some time or not require me to depose you on various topics.

MR. THOMPSON: I say that because I don't actually think I've gotten your response yet if you just sent it. Maybe it's just my wi-fi.

MR. SCHMELTZ: Well, let's make sure you have it. My response was agreed -- just so the record is clear, I said "Agreed. We will file something with the Court by Monday morning."

That went out at 5:11 p.m. to you and our team. I'll show it to you on my phone.

MR. THOMPSON: I just got it. Thank you.

MR. SCHMELTZ: All right. All right.

MR. THOMPSON: Okay. That resolves that.

Q. (BY MR. THOMPSON) Mr. Topping, I'm going to hand you what will be marked as Exhibit 13.

(Exhibit No. 13 marked)

Q. (BY MR. THOMPSON) Do you recognize Exhibit 13 in front of you?

A. I do.

Q. Is it an email that you sent to Mr. Cohn?

A. Yes.

Q. And in that email, you said "Jon, We would like to get the version of the complaint against Whinstone

Page 54

that does not include the fraudulent inducement count on file prior to day's end today."

Did I read that correctly?

A. Yes.

Q. And I'm really just showing this to you for context to kind of set the time frame right.

In February of 2025 the litigation team of LKC and Stris was authorized to file a complaint against Whinstone but not authorized to include the fraudulent inducement count against Whinstone, correct?

A. There was a complaint against Whinstone that was publicly filed on a -- in the public record. And there was one version of the complaint that was prepared that included the fraudulent inducement count. There was another version that did not. And in this email, I'm stating that I'd like to get the complaint against Whinstone that does not -- in other words, the version that does not include the fraudulent inducement count on file prior to the end of the day.

Q. So let's just do it in chronological order.

LKC and Stris prepared, I'm sure in coordination with Rhodium, a complaint against Whinstone that included fraudulent inducement, correct?

A. Yes.

Q. And then the Special Committee asked for the

Page 55

fraudulent inducement claim to be dropped from the filing of that complaint, correct?

A. That's my recollection.

Q. And I know there were a lot of discussions back and forth and we don't have to get into all the detail of it. But the end result was you instructed the litigation team to file the version that didn't have the fraudulent inducement claim, right?

A. Yes.

Q. And you knew that, like in most Federal cases, it's possible to amend a complaint later, right?

A. Yes.

Q. But Rhodium did not, in fact, amend its complaint before the matter was settled, right?

A. Correct.

Q. And you attended the mediation on behalf of Rhodium, right?

A. Yes.

Q. And we didn't present any arguments to Whinstone really at all in that mediation, much less with regard to fraudulent inducement. Fair?

A. No. The underlying facts that formed the basis for the fraudulent inducement claim, to my recollection, were included in the mediation statement that was submitted to the mediator.

Page 56

Q. Did the mediation statement argue that Rhodium had reasonably relied on Mr. Harris' misrepresentations about Winter Storm Uri and the energy credits?

A. To my recollection, the facts and the damages that formed the basis for that claim were included in the mediation statement. The actual ad damnum for -- in other words, that's -- that's probably not the right word. The actual cause of action for fraudulent inducement I don't think was included. But --

Q. Some facts that were -- that would be relevant to fraudulent inducement were included in the mediation statement, correct?

A. Yes.

Q. But not all facts one would need to establish for fraudulent inducement, right?

A. It's possible that not all were. I'd have to look back at the, you know, iterations of the mediation statement.

Q. You approved the mediation statement before it was filed, right?

A. I probably did.

Q. And do you remember who drafted it?

A. I believe it was LKC and Stris in combination. I don't know specifically, you know, who, you know, put fingers to the keyboard. I think it was a collaboration

Page 57

of multiple attorneys.

Q. Sure. If I tell you that I think Stris took the first pen, but obviously people across multiple law firms were working on it, would you have any reason to disagree?

A. No.

Q. And again, you're a very talented lawyer and I don't mean to pick on you by saying you're not a Texas lawyer. There are many fine states out there. But you're not familiar with the elements of fraudulent inducement under Texas law, right?

A. I don't have them memorized, no.

Q. And so you don't know one way or the other whether justifiable reliance would be a requirement for fraudulent inducement?

A. I have a rough understanding that it is something that would be required.

Q. And do you similarly have a rough understanding that a party has not justifiably relied if it hasn't done its own due diligence?

A. Sorry. Can you repeat that?

Q. Sure.

Based on your understanding, if a party hasn't done due diligence, can it have justifiably relied on a misrepresentation?

Page 58

MR. SCHMELTZ: Which topic does this pertain to?
MR. THOMPSON: Just his personal knowledge.
MR. SCHMELTZ: I'll take that then as not the voice of Rhodium. Thank you.
THE WITNESS: So you're asking about a theoretical situation where -- like a hypothetical, where if someone had not justifiably done -- if someone had not done diligence, they cannot have justifiably relied?
Q. (BY MR. THOMPSON) Yeah. I'm asking whether that is an accurate statement or an inaccurate statement in your understanding.
A. I don't really have -- I mean, it -- I don't know.
Q. Fair enough. I'm not trying to make you know something you don't know.
A. Yeah.
Q. You were involved in hiring both LKC and Stris to represent Rhodium, right?
A. Yes.
Q. Are you glad you hired LKC?
A. Was I glad that I hired LKC?
MR. SCHMELTZ: It's obviously on his

Page 59

personal testimony, right?
MR. THOMPSON: Yeah.
MR. SCHMELTZ: Great.
THE WITNESS: Yes, sir.
Q. (BY MR. THOMPSON) Are you glad you hired Stris?
A. Yes, sir.
Q. Do you trust that those firms did the best they could for you?
A. I do.
Q. And do you trust that they gave you the best advice they could?
A. Yes. I have no reason to think otherwise.
Q. Well, it was a pleasure working together for those years and --
A. It was a pleasure working with you, sir.
MR. THOMPSON: I want to say thank you for your time.
And I will pass the witness.
MR. SCHMELTZ: I have no questions of the witness.
MR. THOMPSON: Anyone on Zoom?
Hearing none, thank you, Mr. Topping.
THE WITNESS: Thank you.
VIDEOGRAPHER: 5:21, off.
(Discussion off the record)

Page 60

VIDEOGRAPHER: The time is 5:23. On the record.
MR. THOMPSON: Okay. We are stopping the deposition for the day but holding it open subject to resolution of various issues Mr. Schmeltz and I are going to confer about and potentially have the Court rule on regarding the 30(b)(6) deposition.
Agreed, Mr. Schmeltz?
MR. SCHMELTZ: Agreed. We also are endeavoring to put that supplemental 30(b)(6) in your hands tomorrow, which I think was the original date for our 30(b)(6) before the Court moved the hearing. So hopefully we will -- we will mitigate.
MR. THOMPSON: And now the court reporter would like the people on Zoom who are ordering a copy of the transcript to say so on the record, please.
MS. SCOTT: Thank you very much, Will.
This is Elizabeth Scott from Akin on behalf of the SAFE ad hoc group. We'd like to request a copy of the rough and final transcripts for all three witnesses from today and we'd like to receive them on the same expedited schedule as already agreed between the other parties. Thank you.
MS. RICHARDSON: This is Anna Richardson, Iacuone McAllister Potter, on behalf of the Transcend

Page 61

Group. I'm not sure what the expedited schedule is. I would think just final copies for us are fine. But just given this timeline, my understanding is they'll be pretty quick; but if not, then we'd like the roughs as well.
Will, what is the schedule that you all agreed to?
MR. THOMPSON: I think we might have agreed to the expedited finals on Saturday. The court reporter is nodding.
MS. RICHARDSON: Okay. We're good with that as well.
VIDEOGRAPHER: Is that it?
MR. THOMPSON: I think we're finished. Thank you, everybody.
VIDEOGRAPHER: 5:25, off.
(Proceedings concluded at 5:25 p.m.)

CHARLES TOPPING - October 29, 2025

CHANGES AND CORRECTIONS

WITNESS NAME: CHARLES TOPPING

DATE OF DEPOSITION: OCTOBER 29, 2025

PAGE	LINE	CHANGE	REASON

I, CHARLES TOPPING, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

CHARLES TOPPING

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared CHARLES TOPPING, known to me (or proved to me under oath or through _____) (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR
THE STATE OF_____
COMMISSION EXPIRES:_____

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)
)
RHODIUM ENCORE LLC, ET AL,)CASE NO.: 24-90448(ARP)
)
Debtors.)

****

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING
OCTOBER 29, 2025

****

I, SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CHARLES TOPPING, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

__x__ was requested by the deponent or a party before the completion of the deposition and returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

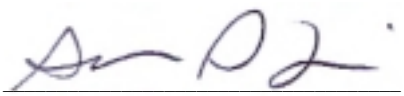
_____ was not requested by the deponent or a party before the completion of the deposition.

That the amount of time used by each party at the deposition is as follows:

MR. WILL THOMPSON.... 1 Hour, 32 Minutes
MR. VINCENT P. TRACE SCHMELTZ III.... 0 Hours, 0 Minutes
MS. ELIZABETH D. SCOTT.... 0 Hours, 0 Minutes
MR. NATHANIEL ALLARD.... 0 Hours, 0 Minutes
MS. ANNA OLIN RICHARDSON.... 0 Hours, 0 Minutes
MR. ALAIN JAQUET.... 0 Hours, 0 Minutes

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 31st day of October, 2025.



SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 5/31/26
COURT REPORTERS CLEARINGHOUSE
Firm Registration No. 556
13809 Research Boulevard, Suite 500
Austin, Texas 78750
(512) 732-1805

Exhibit 10
to B&T's Witness and Exhibit List
for 6/4/26 Hearing

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	
	:	Chapter 11
RHODIUM ENCORE LLC, et al.,	:	
	:	Case No.
Debtors.	:	24-90448 (ARP)
	:	

VIDEO-RECORDED DEPOSITION OF JONATHAN COHN

DATE:	Tuesday, October 28, 2025
TIME:	8:43 a.m.
LOCATION:	Barnes & Thornburg, LLP 555 12th Street, N.W., Suite 1200 Washington, D.C. 20004
REPORTED BY:	Erick M. Thacker Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 901
Washington, D.C. 20005

APPEARANCES

On behalf of Special Committee of the Board of Directors of Rhodium Enterprises:

VINCENT P. (TRACE) SCHMELTZ III, ESQUIRE
KEVIN D. WARREN, ESQUIRE
HALEY HINTON CASPER, ESQUIRE (Via Zoom)
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
tschmeltz@btlaw.com
kevin.warren@btlaw.com
haley.hinton@btlaw.com

On behalf of the Witness:

TODD DISHER, ESQUIRE
WILL THOMPSON, ESQUIRE (Via Zoom)
Lehotsky Keller Cohn LLP
919 Congress Avenue
Suite 1100
Austin, Texas 78701
todd@lkcfirm.com
will@lkcfirm.com

On behalf of Lehotsky Keller Cohn LLP:

JOSHUA WOLFSHOHL, ESQUIRE (Via Zoom)
Porter Hedges LLP
1000 Main Street
36th Floor
Houston, Texas 77002
jwolfshohl@porterhedges.com

APPEARANCES

On behalf of the Ad Hoc Group of SAFE Parties:

ELIZABETH SCOTT, ESQUIRE (Via Zoom)
SARAH LINK SCHULTZ, ESQUIRE (Via Zoom)
KAILA ZAHARIS, ESQUIRE (Via Zoom)
Akin Gump Strauss Hauer & Feld LLP
2300 North Field Street
Suite 1800
Dallas, Texas 75201
edscott@akingump.com
sschultz@akingump.com
kzaharis@akingump.com

On behalf of the Rhodium Debtors:

LINDSAY M. WEBER, ESQUIRE (Via Zoom)
Quinn Emanuel Urquhart & Sullivan LLP
295 5th Avenue
Ninth Floor
New York, New York 10016
lindsayweber@quinnemanuel.com
- and -
ALAIN JAQUET, ESQUIRE (Via Zoom)
Quinn Emanuel Urquhart & Sullivan LLP
1300 I Street, Northwest
Suite 900
Washington, D.C. 20005
alainjaquet@quinnemanuel.com

ALSO PRESENT:

Orson Braithwaite, Video Technician
Andy Bos, Concierge Tech (Via Zoom)
Morgan Soule (Via Zoom)
Scott Kintz (Via Zoom)
Charles Topping (Via Zoom)

CONTENTS

EXAMINATION BY:	PAGE
Mr. Schmeltz	7
Mr. Disher	410
Ms. Weber	413

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Cohn Exhibit 1	E-mail correspondence SpecialCommittee_LKC_00004845 - 853	14
Cohn Exhibit 2	Letter dated 5/16/2023 from Jonathan Cohn to Cameron Blackmon	75
Cohn Exhibit 3	Letter dated 3/4/2025 from Jonathan Cohn to Cameron Blackmon	82
Cohn Exhibit 4	E-mail correspondence SpecialCommittee_LKC_00004813 - 816	99
Cohn Exhibit 5	E-mail correspondence SpecialCommittee_LKC_00004838 - 844	103
Cohn Exhibit 6	E-mail correspondence SpecialCommittee_LKC_00004819 - 821	130
Cohn Exhibit 7	Complaint	137
Cohn Exhibit 8	E-mail correspondence SpecialCommittee_LKC_00000037 - 038	149
Cohn Exhibit 9	Redlined Complaint	146
Cohn Exhibit 10	E-mail correspondence SpecialCommittee_LKC_00003477 - 505	191
Cohn Exhibit 11	E-mail correspondence dated 2/11/2025 from Will Thompson to Charles Topping	211

CONTENTS (Continued)

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Cohn Exhibit 12	E-mail correspondence SpecialCommittee_LKC_00003534 - 535	241
Cohn Exhibit 13	E-mail correspondence SpecialCommittee_LKC_00003460 - 462	277
Cohn Exhibit 14	E-mail correspondence dated 11/20/2024	290
Cohn Exhibit 15	E-mail correspondence SpecialCommittee_LKC_00002426 - 427	292
Cohn Exhibit 16	PowerPoint Presentation SpecialCommittee_LKC_00002428 - 434	303
Cohn Exhibit 17	E-mail correspondence SpecialCommittee_LKC_00000073 - 074	344
Cohn Exhibit 18	E-mail correspondence SpecialCommittee_LKC_00001445 - 451	361
Cohn Exhibit 19	E-mail correspondence SpecialCommittee_LKC_00000923 - 926	375
Cohn Exhibit 20	E-mail correspondence SpecialCommittee_LKC_00002143	382
Cohn Exhibit 21	E-mail correspondence SpecialCommittee_LKC_00002150 - 154	387
Cohn Exhibit 22	E-mail correspondence SpecialCommittee_LKC_00000759 - 761	394
Cohn Exhibit 23	E-mail correspondence SpecialCommittee_LKC_00001272 - 274	398

(*Exhibits attached to transcript.)

Page 6

P R O C E E D I N G S

VIDEO TECHNICIAN: Good morning. We are going on the record at 8:43 a.m. on October 28th, 2025. Please note that the microphones are sensitive and may pick up whispering and private conversations. Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video-recorded deposition of Mr. Jonathan Cohn in the matter of In re: Rhodium Encore, LLC, et al., filed in the United States Bankruptcy Court, Southern District of Texas, Houston Division, Case No. 24-90448 (ARP).

My name is Orson Braithwaite, representing Veritext Legal Solutions, and I'm the videographer. The court reporter is Erick Thacker from the firm Veritext Legal Solutions.

Counsel will now state their appearances and affiliations for the record, beginning with the noticing attorney.

Page 7

MR. SCHMELTZ: Trace Schmeltz and Kevin Warren from Barnes & Thornburg on behalf of the Special Committee of the Board of Directors of Rhodium Enterprises.

MR. DISHER: Todd Disher with Lehotsky Keller Cohn LLP.

MS. SCOTT: Elizabeth Scott from Akin Gump on behalf of the SAFE Ad Hoc Group. I'm joined by my colleagues, Sarah Schultz and Kaila Zaharis.

MS. WEBER: Lindsay Weber from Quinn Emanuel on behalf of the Rhodium Debtors.

VIDEO TECHNICIAN: Thank you. Will the court reporter please swear in the witness?

WHEREUPON,

JONATHAN COHN

called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE SPECIAL COMMITTEE

BY MR. SCHMELTZ

Q Sir, would you mind introducing yourself and spelling your name for the court reporter?

A Jonathan Cohn, J-O-N-A-T-H-A-N. Cohn is C-O-H-N.

Q Mr. Cohn, you're a named partner in the firm Lehotsky Keller & Cohn; is that correct?

A You inserted an "and." Otherwise, it's correct.

Q I'm going to refer to Lehotsky Keller Cohn today as LKC; is that fair?

A Sounds fair to me.

Q You understand that you're under oath today, sir?

A I do.

Q And you understand that's the same oath that you would take in a court of law, right?

A Yes, it is.

Q And it's an oath to tell the truth, right?

A Yes.

Q Do you have any impediment in telling the truth today?

Page 9

A Not to my knowledge.

Q Are you on any medication that would impair your memory or your ability to give truthful and accurate testimony?

A No, sir.

Q Do you have any medical conditions that would impair your ability to give truthful and accurate testimony today?

A None.

Q You've given a deposition before, I presume?

A Given? No.

Q This is your first ever?

A As a deponent, yes.

Q You understand as a lawyer the basic rules, but I'm going to go through some that are important from my perspective.

One, I'm going to do my level best not to talk over you today, and I would ask that you let me finish my questions before you start your answers. Is that fair?

A Yes.

Page 10

Q I'm going to ask that if you don't understand a question of mine, you ask me to clarify it. Is that fair?
A Yes.
Q If you answer my questions, I'm going to assume that you've understood them. Is that fair?
A I mean, you can assume what you want, but, sure.
Q You understand that if you need to take a break today at any point, I will accommodate you as long as there's not a question pending; is that fair?
A Yes.
Q I assume you're going to be at the hearing and testifying on November 3; is that correct?
A I don't know.
Q You don't know if you'll appear, or you don't know if you'll testify?
A I have tickets to go down to the hearing. I don't know if I'll be testifying.

Page 11

Q Okay. It was my understanding from your counsel that you would be the lead witness for LKC in this fee dispute. Is that not correct?
MR. DISHER: Objection. Vague.
THE WITNESS: As for your understanding, I don't know if your understanding is correct or not correct, but I can tell you it's not definite that I'll be testifying at the hearing.
BY MR. SCHMELTZ
Q Your law firm filed a lawsuit against Rhodium to recover fees; is that correct?
MR. DISHER: Objection. Vague. Lacks foundation.
THE WITNESS: We didn't file a lawsuit, no.
BY MR. SCHMELTZ
Q You filed a claim in bankruptcy, correct?
MR. DISHER: Objection. Vague.
THE WITNESS: We filed a fee

Page 12

application like other firms do, which is, as I understand it, the way you do it in bankruptcy court.
BY MR. SCHMELTZ
Q And in your fee application, you have asserted that there's a dispute with your client around the fee that you're owed; is that correct?
MR. DISHER: Objection. Vague.
THE WITNESS: If you show me the fee application, I can take a look at it.
As I understand it, we filed a fee application, and then the Special Committee opposed it, creating a dispute.
BY MR. SCHMELTZ
Q What do you understand the dispute to be with Rhodium around your fees?
MR. DISHER: Objection. Vague. Foundation. Misstates testimony.
THE WITNESS: I'm not sure I do, because we have not seen an allocation from the Special Committee, which did not present any calculation or numbers or analysis in its brief.

Page 13

The Court asked the Special Committee to pay the uncontested amount, and the Special Committee did not pay any of the success fee. So I assume the dispute concerns the entirety of our success fee, plus about 60 percent of the hourly fees and expenses, but I don't know for sure.
I mean, the Court found that position of the Special Committee very surprising. I don't know if the Special Committee has reevaluated its position, but at this point, as best I can tell, that is the dispute.
MR. SCHMELTZ: I'm going to ask Mr. Warren to put Exhibit 1 up on the screen, please. And for the record, while this is coming in, this is a June 2025 e-mail exchange between me and Mr. Wolfshohl.
(Cohn Exhibit Number 1 was marked for identification.)
BY MR. SCHMELTZ
Q And Josh Wolfshohl is a lawyer that represents you; isn't that correct, sir?
MR. DISHER: Objection. Vague.

Page 14

THE WITNESS: Me personally, no.
BY MR. SCHMELTZ
Q LKC?
A Correct.
Q The document, which I'm hoping will come up soon here, bears the Bates range Special Committee LKC 4845 through 4853. And I'm going to start on a May 31st, 2025 e-mail from me to Mr. Wolfshohl that's on 4851.
A I don't have that on my screen. I can tell you what I have on mine, though, if you'd like.
VIDEO TECHNICIAN: Can we go off for a second? The time is 8:52 a.m. We're off the record.
(Recess 8:52 a.m. to 8:55 a.m.)
VIDEO TECHNICIAN: The time is 8:55 a.m. We're on the record.
BY MR. SCHMELTZ
Q So we're going to start in this e-mail exchange at 4851, which is a May 31st e-mail from me to Mr. Wolfshohl. And I understand from your

Page 15

testimony that you have not seen numbers from the Special Committee and don't understand the Special Committee's calculations, so I want to start here --
MR. DISHER: Objection. Misstates the testimony.
BY MR. SCHMELTZ
Q -- so I want to start here in order to --
MR. SCHMELTZ: And if you would, Mr. Disher, let me finish my question before you --
MR. DISHER: I thought you were done --
MR. SCHMELTZ: -- object.
MR. DISHER: I apologize.
BY MR. SCHMELTZ
Q I want to start here so that we can frame the numbers that have been exchanged to date.
And in this e-mail, I say, "Dear Joshua, I hope this message finds you well. Let's collaborate to find a solution regarding

Page 16

the LKC contingency fee calculation."
Have I read those first two sentences correctly?
MR. DISHER: And I will now that you've asked a question lodge my objection that you've misstated his testimony.
But you can go ahead and answer the question that's been asked of you.
THE WITNESS: I'm sorry. I'm not seeing what you're reading from, Trace.
BY MR. SCHMELTZ
Q Are you on the screen with the exhibit concierge? Because he's got you right where you need to be.
A No. So you said the first e-mail? The first e-mail at the bottom is from Josh Wolfshohl.
Q 4851, May 31st, 2025, my e-mail to Josh Wolfshohl. If you would follow where the exhibit concierge has you, he has you right where you need to be.
A I'm sorry. I'm not following because I

Page 17

can control this, and you directed me to the first --
Q If you would go to the screen where the exhibit concierge has you, you would be right near where you need to be.
MR. DISHER: Well, but he's also looking at the exhibit on his screen so he can see the whole thing in context. If you could just direct him to where --
MR. SCHMELTZ: I have three times said Bates number 4851, Mr. Disher. It's hard to be more precise than that.
THE WITNESS: Okay. So you want me at 4851 or the first e-mail?
MR. SCHMELTZ: I want you where I asked you to be, at 4851.
THE WITNESS: Okay. So not the first e-mail?
MR. SCHMELTZ: I never said the first e-mail.
THE WITNESS: Then my apologies. I misunderstood you.

Page 18

BY MR. SCHMELTZ
Q Have I read the first two sentences correctly?
A Can you read them again?
MR. SCHMELTZ: No. Erick, would you mind?
(Whereupon, the reporter read the record as requested.)
THE WITNESS: You did.
BY MR. SCHMELTZ
Q Then I say, "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."
Have I read that correctly?
A Yes, you have.
Q Does LKC have a dispute with its client Rhodium over whether $75 million is the appropriate amount to attribute to the settlement between Riot Whinstone and Rhodium?

Page 19

MR. DISHER: Objection. Vague. Lacks foundation.
THE WITNESS: I don't know. I mean, in this e-mail which is -- begins with "Rule 408 Discussion," you say, we see $75 million attributed to the settlement --
BY MR. SCHMELTZ
Q Do you understand my question, sir?
MR. DISHER: Can you please let him -- he is answering.
MR. SCHMELTZ: No, he -- Mr. Disher --
MR. DISHER: He is answering your --
MR. SCHMELTZ: -- it's the same thing you did --
MR. DISHER: -- question.
MR. SCHMELTZ: -- with my client.
MR. DISHER: He is answering your question.
MR. SCHMELTZ: He's not, actually.
MR. DISHER: And you insisted that your client be able to answer --
MR. SCHMELTZ: Mr. Disher --

Page 20

MR. DISHER: -- the question --
MR. SCHMELTZ: And you blew me off.
MR. DISHER: -- just as I am insisting --
MR. SCHMELTZ: And you blew me off the same way --
MR. DISHER: Mr. Cohn --
MR. SCHMELTZ: -- I'm going to blow you off, Mr. Disher.
MR. DISHER: -- answer his question.
BY MR. SCHMELTZ
Q Do you understand my question? My --
A No.
Q -- question is: Does LKC have a dispute with its client Rhodium over whether $75 million is the appropriate amount to attribute to the settlement of damages between Rhodium and Whinstone?
MR. DISHER: And I will object. That's vague. Lacks foundation. And he was trying to answer your question.
But go ahead and answer it if you can.

Page 21

THE WITNESS: I was answering your question before you --
BY MR. SCHMELTZ
Q Does -- does LKC have a dispute with its client Rhodium over whether $75 million is the appropriate amount to attribute to the settlement of damages between Rhodium and Whinstone?
MR. DISHER: Objection. Vague. Lacks foundation.
THE WITNESS: I've now tried to answer that question, and both times you cut me off in the middle of it.
I don't know what the Special Committee's position is. In this e-mail, which is --
BY MR. SCHMELTZ
Q That's not my question, sir. Does LKC have a dispute that -- let me rephrase it.
Does LKC dispute that $75 million is the appropriate amount to attribute to the settlement between Whinstone and Rhodium?

Page 22

MR. DISHER: Objection. Vague. Lacks foundation. He is attempting to answer your question, so just go ahead and let him answer your question.

Please, Jon, proceed.

THE WITNESS: Yeah, it's kind of hard to answer a question when I get cut off every time. But as you rephrased it, LKC does not believe the $75 million is the correct allocation. As we laid out in our fee application, we believe that a correct and indeed conservative allocation would be $100 million.

BY MR. SCHMELTZ

Q In the next sentence, I note, "We see 50 million of that to energy credits."

Did I read that correctly?

A Yes, sir.

Q Does LKC dispute that $50 million of the $75 million in settlement or the $100 million in settlement goes to energy credits?

MR. DISHER: Objection. Vague.

Page 23

Compound.

THE WITNESS: Yeah. I'll tell you that we do not believe that $50 million of the litigation value should be assigned to energy credits. Our fee application lays out what we believe the proper allocation is.

BY MR. SCHMELTZ

Q I believe you've taken the position in this dispute that the Special Committee has refused to negotiate with LKC.

Do I understand that correctly?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I believe what we've said is the Special Committee has refused to negotiate in good faith with LKC, which is correct.

I also note that these numbers were floated in May of this year, prior to the Court's decision on the fee application, and to the best of my recollection, the Special Committee has not engaged in any negotiations with LKC or its attorneys since the Court issued its ruling.

Page 24

BY MR. SCHMELTZ

Q In the third paragraph of this e-mail, I say, "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."

Have I read that correctly?

A You have.

Q On the next page at -- the previous page -- pardon me -- 4850, at the bottom of the page, there's a an e-mail from Mr. Wolfshohl to me, dated May 31st, 2025, at 3:46 p.m.

Do you see that e-mail?

A What time did you give?

Q 3:46 p.m.

A And 19 seconds, yes.

Q The e-mail from Mr. Wolfshohl says, "Trace, thank you for your e-mail. I have forwarded it to my client and hope to speak with him again later today. I'll tell you that he is

Page 25

extremely unhappy and not currently interested in countering what he views as another low-ball offer."

Have I read that correctly?

A You have.

Q He goes on to say, "As I've mentioned to you before, LKC's position is that it should get more than the 6.25 million you shared with other stakeholders. I realize you've characterized 6.25 million as a top line number, but my client strongly disagrees and sees it as below the lowest possible calculation. Your 3.8 million number is well below even that."

Have I read that correctly?

A Yes.

Q I respond at 4:28 p.m. on the same day. Do you see that e-mail?

A I do. Now, just I want to note, you didn't -- just to be clear for the record, you didn't read the entirety of Josh's e-mail. I'm not sure if that was intentional.

Q I respond at 4:28 p.m. Do you see that

Page 26

e-mail?
A Yes.
Q And I say, "Josh, I have it on good authority that your client was willing to cap his fee at 2.5 percent 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."
Have I read that correctly?
A Roughly. I mean, to be precise, you left out the dollars, but I think it's probably close enough. I follow what you're saying.
Q And then Mr. Wolfshohl responds in a lengthy e-mail that starts at 4848 and ends at the top of 4850. That e-mail response is on Sunday, June 1, at 9:02:39 in the a.m.
Do you see that?
A Yes, I do.

Page 27

Q I'm going to start at the very end of that e-mail with the very last bullet, but we're going to talk about some of the logic that he lays out in the e-mail in a moment.
At the top of 4850, there is a bullet point that starts, "in terms of a counter."
Do you see that?
A Yes.
Q He makes a contingent counter, in other words, a counter that only comes into existence if the debtors agree to bracket.
Do you see that?
MR. DISHER: Objection. Vague. Document speaks for itself.
THE WITNESS: I mean, the sentence does speak for itself, but I do see the sentence to which you are referring.
BY MR. SCHMELTZ
Q And you agree with me that it is a contingent counter that is contingent on the debtors agreeing to a certain bracket, right?
MR. DISHER: Objection. Vague.

Page 28

Foundation.
THE WITNESS: I might need to read the whole e-mail to figure out --
BY MR. SCHMELTZ
Q Well, let me read the sentence into the record.
"In terms of a counter, we will make one contingent" -- and you'd agree with me the word "contingent" is italicized, right?
A Yes.
Q -- "on the Debtors understanding that the 'brackets' are $8.1 million and $5.2 million, not $3.8 million."
Have I read that correctly?
A You have.
Q "With that," he says, "we can offer $7.56 million, which is the lower number on the attached spreadsheet (plus our fees and expenses as noted above)."
Have I read that correctly?
A Yes.
Q And then he said, "If the Debtors want

Page 29

the negotiations to continue, they need to make an offer above $5.2 million."
Have I read that correctly?
A Yes.
Q So in -- and this is on June 1.
As of June 1, 2025, LKC's stated position was that it would not negotiate with the debtors unless they made an offer over $5.2 million, right?
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: We say "they," meaning you guys need to make an offer above $5.2 million.
BY MR. SCHMELTZ
Q You actually say, "if the Debtors want the negotiations to continue," correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I do see that language. I'm not sure we're disagreeing, but, look, you guys gave a low-ball number, and we were saying,

Page 30

if you wanted to have negotiations, you need to make an offer above 5.2 million.
BY MR. SCHMELTZ
Q And, actually, if the debtors want the negotiations to continue at all, that's where they had to be is over 5.2 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I'm not sure I understand the question, but the document speaks for itself. And I explained to you what my position was, and that was, if you guys wanted to continue to negotiate, you needed to make an offer that was not a low-ball number. You needed to make an offer above 5.2 million.
BY MR. SCHMELTZ
Q All right. At 4849, Mr. Wolfshohl shares an analysis that he suggests you prepared with me under the heading or -- or the statement, "Josh, please share this analysis with Trace."
Do you see that?
A I do.

Page 31

Q And are those your words in the bullet points that follow the phrase, "Josh, please share this analysis with Trace"?
A Probably. I've not seen this e-mail in quite some time. Was this Special Committee part of the production you sent after midnight? I haven't -- I haven't looked at it, if you give me a moment.
Okay. I'm ready.
Q And those are your words on 4849, correct?
MR. DISHER: Objection. Vague.
THE WITNESS: I think they are. It doesn't say it in this e-mail, but I had conversations and exchanges with my attorney. So I assume these are my words, but I'm not seeing confirmation in this e-mail chain.
BY MR. SCHMELTZ
Q So if you look above the "Josh, please share this analysis" --
A Yeah.
Q -- in the paragraph above it, the last

Page 32

sentence is, "For a further explanation of its position, LKC asked me to send you the following."
Do you see that?
A I do. And to clarify, that says LKC.
Q I understand. And my question, follow-up question, was going to be: Are you the one who wrote LKC's position?
MR. DISHER: Objection. Vague.
THE WITNESS: Well, that's how I understood the first e-mail. And my answer is, I assume, but I don't remember, and I don't know if I was the only person involved in drafting this, so I can't say for sure.
BY MR. SCHMELTZ
Q Okay. In the first bullet point, it notes -- you note or someone from LKC notes, "we are not going to return to the deal the Debtors breached."
Have I read that correctly?
A I'm sorry. I don't see that.
Q First bullet point, 4849. "As an

Page 33

initial matter, no, we are not going to return to the deal the Debtors breached."
Have I read that correctly?
A Yes, sir.
Q Then -- and I'm skipping the sentence and I'm starting in the next sentence in the -- in the middle of the sentence.
It says, "We endured months of threats, litigation, and a multi-headed effort to pressure us to compromise our fee."
Have I read that correctly?
A I'm trying to keep up with you, because you said you skipped a sentence. Okay. So you skipped a sentence, and then that's the third sentence, and I do believe you read the third sentence correctly.
Q What are the threats to which LKC is referring in that -- in that sentence?
A Well, I'm trying to distinguish now the threats that you made back in -- or before June and the ones that you've made since, but there were threats not to pay us any fee at all. There

Page 34

are threats to file ethics complaints. There are threats to bring affirmative claims against the firm. There are threats impugning our integrity. I'm sure there are other threats.

It's been a long time since I saw this e-mail, but you made tons of threats throughout this entire process, and at this point, I can't tell you exactly how many threats were made, what exactly the threats were and which of those threats were before June 1st, but there are a whole lot of threats.

Q So you would agree with me that I sent your counsel an e-mail when it was clear that LKC was going to file papers with the Court that included -- included allegations about the tax allocation. I'm not talking about that or anything that followed that.

I'm talking about, prior to June 1, what threats did the Special Committee or the debtors make to LKC about its fees?

MR. DISHER: Objection. Vague. Foundation. Asked and answered.

Page 35

THE WITNESS: Yeah, I mean, as I said, I can't recall specifically which threats --

MR. SCHMELTZ: Okay.

THE WITNESS: -- that you made when --

MR. SCHMELTZ: All right. What litigation --

THE WITNESS: -- but --

MR. DISHER: Let him -- let him finish his answer.

MR. SCHMELTZ: No, that's --

MR. DISHER: Yes. You asked him a question. Keep going, Jon.

BY MR. SCHMELTZ

Q If you can't recall specifically -- I want specifics, so I don't care about generalities. What litigation --

MR. DISHER: To the best of your recollection, go ahead and respond.

MR. SCHMELTZ: It's not your deposition, Mr. Disher.

MR. DISHER: He is -- I know. It's yours, and he's answering --

Page 36

MR. SCHMELTZ: And I'm going to --

MR. DISHER: -- your question.

MR. SCHMELTZ: -- cut him off.

MR. DISHER: He's answering your question.

MR. SCHMELTZ: I'm cutting him off.

BY MR. SCHMELTZ

Q What litigation is LKC referring to here?

A Well, to answer the prior question --

Q I don't want an answer to the prior question with any generality. So what I want to do is move on to the question of what litigation are you referring to here.

MR. DISHER: And just to be clear, you're not letting him answer your prior question, which he was attempting to do before you cut him off.

THE WITNESS: And I wouldn't even say it's a generality. I mean --

MR. SCHMELTZ: I don't want an answer. I want an answer to the question of what

Page 37

litigation are you referring to in this e-mail?

MR. DISHER: So you don't want him to answer your prior question about threats?

MR. SCHMELTZ: Could I have been any more clear, Mr. Disher?

MR. DISHER: No, you couldn't, because I still --

MR. SCHMELTZ: Thank you.

MR. DISHER: -- don't understand your position.

BY MR. SCHMELTZ

Q I want an answer to the question of what litigation are you referring to here?

A All right. So I'm trying to think of the timeline here, but we had litigation against the SAFE ad hoc group -- you're sighing? What's wrong?

Q I'm breathing. It's totally fine. It's a --

A Okay.

Q -- normal -- what normal human people do.

Page 38

A Oh, my apologies.
So we had litigation against the SAFE ad hoc group which attempted to zero out our fees. I assume that's what I'm referring to here or whoever wrote this e-mail, but it's been a long time. Threats, litigation, and multi-headed effort. Yeah. Probably it's referring to the litigation by the SAFE ad hoc group and then also by the joiners, who also challenged us. So it's probably referring to those two things --
Q Okay.
A -- to the best of my recollection.
Q The -- the e-mail then discusses a multi-headed effort to pressure us to compromise our fee.
What is the multi-headed effort to which you're referring?
A That would be -- that would be you and Patty and the Special Committee with whom you asserted a common interest, and all three of you were pressuring us to accept really low amounts, including zero.

Page 39

I have some recollection of the e-mails, but it's been a really long time since I've looked at them. But, for instance, Mitch Hurley threatened that we would get zero. Patty asked us to forego part of our fees. In one e-mail, she said we should give up the entirety of the $600,000.
There are other negotiations, which I suppose we could go into since we're talking about negotiations, even though it probably would not be admissible, but you had threatened Josh that you could give us even zero or close to zero. Chuck, at one point, said that we shouldn't get anything, if I recall.
So I believe the multi-headed effort was everyone who was trying to get us to give up our fees and making threats to us, the threats you don't want me to talk about.
Q You -- I asked about the multi-headed effort, and you referenced the Special Committee, me personally, Patty, and then Mitch Hurley.
What e-mails do you have from the

Page 40

Special Committee that are part of the multi-headed effort to get you to compromise your fee? What e-mails from the Special Committee?
A E-mails from the Special Committee. I don't know sitting here. I mean, for one thing, the e-mails might have gone to Josh.
Second, it's been a really long time and I haven't looked at them, but we also had phone calls, Trace. You had phone calls with me, and you had phone calls with Josh. And you made claims that you thought that maybe we shouldn't get any money at all, and, in fact, that's consistent with the position that you took recently in court in which you said you were contesting everything except for our $600,000 fee and 40 percent of our hourlies and expenses.
So, in effect, you're still taking the position which you took with me and/or Josh many months ago that we should not get anything of our $8.3 million fee, and to be quite honest, I thought that was bad faith. I thought that was not good form.

Page 41

Q On June --
A I thought that you should not be taking the position that we get zero, because the executives at debtor -- at the debtors thought that we deserved many million dollars.
And also referred to in this chain is the fact that you had a $6.25 million number in some waterfall document that you shared with everyone else except for us, acknowledging that we deserved a many million dollar fee, and despite all that, both before and after this e-mail, you were taking the position that we should get zero.
Q Can you point to any writing anywhere in this litigation in which I said you should get zero?
MR. DISHER: Objection. Vague.
BY MR. SCHMELTZ
Q Because that's just made up out of whole cloth, and you know that.
A Not at all.
MR. DISHER: Object to the testimony,

Page 42

but also object to the vague.
Go ahead and answer the question if you can.
BY MR. SCHMELTZ
Q Are you aware of a single e-mail in which I suggest you should get zero dollars?
A An e-mail? No, not the e-mail, but you did make --
Q No. My question is: Is there an e-mail? Thank you.
A I don't remember --
Q Let's look at 48 --
A Mr. Trace --
Q -- 48. Let's look at --
A -- can I answer your questions?
Q No, you've answered it. There's not an e-mail.
A I have not fully answered --
MR. DISHER: He has not --
THE WITNESS: -- my question.
MR. DISHER: -- answered it.
MR. SCHMELTZ: You've answered --

Page 43

MR. DISHER: Let him answer --
MR. SCHMELTZ: -- there's not an e-mail.
MR. DISHER: -- the question.
BY MR. SCHMELTZ
Q So let's look at 4848. Let's look at Special Committee LKC 4848, June 1, 2025, at 3:26 p.m.
Do you see that e-mail?
A I just want to say, I did not fully answer your question --
Q That's fine.
A -- and you cut me off.
Q Mr. Disher will --
A Well, no, it's --
Q -- pick you up later. Thank you.
A I just want to say --
Q Mr. Disher --
A -- if you want to have a record --
Q No, I'm good. Mr. Disher will pick you up later. That's what -- that's what his -- he's here for.

Page 44

A No, that's not how depositions --
Q It is exactly how it works.
MR. DISHER: You cut off his question.
MR. SCHMELTZ: I did --
MR. DISHER: Yeah.
MR. SCHMELTZ: -- and I'm done.
BY MR. SCHMELTZ
Q Let's look at 4848 at the e-mail June 1 at 3:26 p.m. Do you see that?
A I want to say that --
Q In that paragraph --
A -- by cutting me off --
Q Do you see that? Do you -- the question pending, sir, is: Do you see my e-mail --
MR. DISHER: And --
BY MR. SCHMELTZ
Q -- at 3:26 p.m.?
MR. SCHMELTZ: If you have an objection, object, but --
MR. DISHER: I do.
MR. SCHMELTZ: -- your speaking

Page 45

continual --
MR. DISHER: I have an objection to you --
MR. SCHMELTZ: -- is --
MR. DISHER: -- cutting off his testimony --
MR. SCHMELTZ: That's fine.
MR. DISHER: -- and his answer.
MR. SCHMELTZ: It's lodged.
MR. DISHER: And the --
MR. SCHMELTZ: And you'll deal with it later.
MR. DISHER: And the record will reflect --
MR. SCHMELTZ: It's --
MR. DISHER: -- that you're not letting him answer your question. Let's move on.
BY MR. SCHMELTZ
Q Do you see --
MR. DISHER: Go to the next question.
BY MR. SCHMELTZ
Q -- my e-mail at 3:26 p.m.?

Page 46

A No, I don't.
Q At 4848.
A Okay. So this is interesting, because it doesn't have the heading that other e-mails have, but I do see some -- I'm sorry. I want to --
Q I'm just asking if you see the e-mail at 3:26 p.m. It is a yes or no question.
Do you see it?
A Actually, no, because my screen now has lost it entirely. I can try to pull it back up. Oh, here we go. And I was trying to answer your question --
Q It's a yes or no question. Do you see the e-mail?
MR. DISHER: Which e-mail are you talking about?
BY MR. SCHMELTZ
Q 3:26 p.m. Do you see my e-mail?
A I'll go with I'm not sure.
Q It starts with "Josh, thanks for this." Do you see that?

Page 47

A So I was trying to explain here --
Q No. Do you see it? Simple question. Yes or no answer. Do you see it?
A Do I see what?
Q The e-mail that says, "Josh, thanks for this" at 3:26 p.m. on 4848.
A I see the words "Josh, thanks for this."
Q Okay.
A However --
Q All right. That's the question.
MR. DISHER: But he doesn't know if it's an e-mail from you or not. Can you just let him answer your question?
MR. SCHMELTZ: No. It's a yes or no, and I have the answer.
MR. DISHER: But he can't --
MR. SCHMELTZ: He sees it.
MR. DISHER: -- answer yes or no to that, and he didn't, and the record --
MR. SCHMELTZ: The --
MR. DISHER: -- is going to show that

Page 48

he didn't answer yes or no to your question --
MR. SCHMELTZ: In that paragraph --
MR. DISHER: -- because you didn't let him answer your question.
MR. SCHMELTZ: In that paragraph -- enough of the speaking objections.
MR. DISHER: I'm just trying to -- I'm trying to --
MR. SCHMELTZ: Enough.
MR. DISHER: -- help you have the record --
MR. SCHMELTZ: I don't need your help.
MR. DISHER: He is not answering your question because you're not letting him answer your question.
MR. SCHMELTZ: Nobody asked. And enough of the speaking objections.
MR. DISHER: You're not letting him --
MR. SCHMELTZ: Off the record --
MR. DISHER: -- answer your --
MR. SCHMELTZ: -- now.
MR. DISHER: -- question.

Page 49

MR. SCHMELTZ: Disher, we're calling the Court.
VIDEO TECHNICIAN: The time is --
MR. DISHER: Go ahead.
VIDEO TECHNICIAN: -- 9:25 a.m. We're off the record.
(Recess 9:25 a.m. to 9:28 a.m.)
VIDEO TECHNICIAN: The time is 9:28 a.m. We're on the record.
BY MR. SCHMELTZ
Q At Special Committee LKC 4848, it says, "On June 1, 2025, at 3:26 p.m., Schmeltz, Trace wrote, colon."
Do you see that?
A I do.
Q Below that, there is a paragraph that starts with "Josh, thanks for this."
Do you see that?
A I do.
Q In the second to last sentence of that first paragraph, it says, "We actually believe a fair assessment would lead to a success fee much

Page 50

closer to $2 million."
Have I read that correctly?
A You did.
Q And then in the next paragraph, I say, "In any event, we are prepared to make one more offer. Please call me to discuss, as we do not think the e-mail dialogue is as productive as one might hope."
Have I read that correctly?
A Yes.
Q And so, as of June 2025, the Special Committee's counsel had made an offer of $3.8 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I'm not quite sure I would call it an offer, but I see the $3.8 million number.
BY MR. SCHMELTZ
Q And had suggested that the success fee could be as low as $2 million, correct?
MR. DISHER: Objection. Vague.

Page 51

Foundation.
THE WITNESS: Correct.
BY MR. SCHMELTZ
Q And your counsel suggested that the proper bracket for negotiations was between 5.2 million and 8.1 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: That is correct.
BY MR. SCHMELTZ
Q And your counsel noted that if the debtors want the negotiations to continue, they need to make an offer above 5.2 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Correct.
BY MR. SCHMELTZ
Q I want to go back and run some basics. Well, before I do, there's a disagreement between LKC and Rhodium as to whether the number on which a success fee should be calculated is 75 million or 100 million, right?

Page 52

MR. DISHER: Objection. Vague.
THE WITNESS: Well, I tried to explain this before, and you cut me off a few times. I would not agree with what you just said.
Our position, as we lay out in the fee application, is that $100 million is a conservative number to use. I don't know what the Special Committee's number is because they have never laid out their number. In this e-mail, you suggest 75.
I also know from other conversations that you have suggested it might be a lot lower. And then, when the Court asked you to pay the amount that's not in dispute, you gave us a zero. So I can't say what Rhodium's or the debtors or the Special Committee's position is.
I also know that you've told us many, many times, you can't give a number until the debtors and Whinstone reach an agreement, and so I don't know if you're now telling me your number is 75 and if that's actually your number, but in the past, you said you could not give a number

Page 53

until Whinstone and the debtors reached an agreement for tax purposes.
BY MR. SCHMELTZ
Q If the number from Rhodium's perspective is $75 million, you would agree with me that the dispute between LKC and Rhodium is as to whether the number on which LKC's success fee is determined is $75 million or $100 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: If your number is 75 -- and I agree your number is 75 -- and our number is 100, the dispute would be between 100 and 75.
BY MR. SCHMELTZ
Q And there is a dispute -- to the extent the Special Committee believes that $50 million or more of the amount on which LKC's fees should be determined relates to energy credits, there is a dispute over that amount as well, right?
A That is a bit of a complicated

Page 54

sentence. I don't know what the Special Committee's position is on the energy credits. I do know that our position is the one that we laid out in our fee application.

Q And as you sit here right now, what do you recall that to be?

A Define "that."

Q The subject that we're talking about, energy credits.

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I'm sorry. I'm not following the question now.

BY MR. SCHMELTZ

Q As you sit here right now, what do you understand your position to be regarding energy credits?

A Well, I mean, it's laid out in the fee application, and that is our position.

To the best of my knowledge, we maxed out on the amount of energy credits that could be assigned in this case, and, in essence, it is the

Page 55

credits that were for anything except for Winter Storm Uri, and we used a discount rate that was -- I'm sorry -- odds of success that were agreed upon by the entire litigation team that we used in a board presentation on February 12th, and I now see that the Board used similar numbers beyond then.

And then Kevin Hays, the CFO, had applied a discount rate to all the numbers, which seemed a little bit odd to us and -- but using that discount rate of 25 percent, we took the numbers for the energy credits, applied the discount, and that ended up being 20 or $21 million, whatever is reflected in the fee application, and that's the amount that we allocated to the energy credits.

Q All right. Let's take a look back at Exhibit 1 and at -- let's go to, please, the Bates number 4849. And I want to ask a couple of questions about it before I move on.

Do you see at 4849 a bullet that starts with we appreciate -- "We appreciate Trace's

Page 56

attempt to further allocate between damages and energy credits, and his percentages, 10, 5, and 1, are correct."

Other than skipping the percentage, have I read that correctly?

A I wasn't at the page when you started speaking, so I can't say definitively, but you've been pretty good at reading what's in the document, so I will assume you read it correctly. I do see what's in front of me now.

Q All right. And in that bullet point, you take issue with the question of whether Uri-related energy credits could have been settled in the Whinstone matter, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I mean, you sort of packed a lot in there. Maybe it's better just to read what's in the paragraph.

BY MR. SCHMELTZ

Q You would agree with me that a point of disagreement in this litigation is whether or not

Page 57

the Uri-related energy credits were settled as part of the Whinstone settlement, right?

MR. DISHER: Objection. Vague.

THE WITNESS: I definitely would not phrase it that way, because the settlement covered all the claims. There was a broad release for everything. But that really isn't the question that we're talking about here.

BY MR. SCHMELTZ

Q You note in this bullet point that my error is allocating 50 million to energy credits, right?

A Correct.

Q And in the next sub-bullet, you say, "Trace can claim only the value of the non-Uri-related credits, which is $36 million, according to the Debtors' expert," correct?

A That is correct.

Q And then you note in the next sub-bullet, "In the attached spreadsheet, I modeled our contingency fee in two scenarios: first, using the 25 million expected value;

Page 58

second, using the full 36 million maximum value."
Have I read that correctly?
A You have.
Q And then you go down two more sub-bullets, there is a sub-bullet that says, "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."
Have I read that correctly?
A Yes, you have.
Q And you say in that bullet point that the Special Committee -- and I'm going to quote from the very last sentence -- "would not let us make the fraud argument in the first place."
Have I read that correctly?
A I'm trying to find that. The "you" meaning LKC. So here's the sentence I think you're talking about, and tell me if I'm not reading the right sentence.
I said, "And if they are planning on maintaining their argument about the founders'

Page 59

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."
Is that what you're talking about?
Q That is.
A Okay.
Q And it's your position that the Special Committee would not let LKC make a fraudulent inducement argument in an amended complaint it wanted to file; is that correct?
A Well, they explicitly told us to remove the fraudulent inducement argument from the complaint, which was extremely contentious, and a lot of people vehemently disagreed with the Special Committee's decision, including, I think, the entire litigation team.
And then, after that, we said, look, you're not going to be able to recover unless we can plead and prove fraud. We wanted to amend the complaint, and we never got authorization to amend the complaint. There was no amended

Page 60

complaint. We were never allowed the opportunity to plead and prove fraud.
Q You all right?
A Yeah. Just a little bit of a hiccup there, but thank you for asking.
Q If, in fact, LKC and Stris, the two law firms that were litigating on behalf of Rhodium in the Riot Whinstone litigation, were able to mediate the question of the Winter Storm Uri energy credits, that would increase the amount of energy credits that would have been recovered as part of that settlement; is that right?
MR. DISHER: Objection. Form. Vague. Foundation.
THE WITNESS: No, that's -- that's not right.
BY MR. SCHMELTZ
Q It's your position that absent a pleading that included a fraudulent inducement claim, LKC could not have recovered in a mediation energy credits related to Winter Storm Uri; is that right?

Page 61

MR. DISHER: Objection. Vague.
THE WITNESS: That's not --
MR. DISHER: Foundation.
THE WITNESS: That's not my position, either.
BY MR. SCHMELTZ
Q Do you have a position one way or the other as to whether LKC and Stris recovered energy credits related to Winter Storm Uri as part of the Riot Whinstone settlement?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: We were unable to argue fraud. There's no conceivable way to conclude that the Whinstone settlement included some amount for the Uri energy credits. Number one, we were never allowed to plead and prove fraud.
Number two, we never argued fraud to Whinstone, nor would I have felt comfortable trying to do that since the Special Committee was very explicit that it was not permitted to plead, prove or argue fraud.

Page 62

Our mediation brief did not argue fraud. I never argued fraud at any point during the mediation, and, again, I wouldn't have felt comfortable doing so.

And then we discovered recently in documents you produced late at night that even after the mediation, the Special Committee had taken the position that the founders had acted unreasonably, unjustifiably, in fact, so unreasonably that they violated the business judgment rule and breached their fiduciary duties. They failed, the Special Committee claimed, even to take minimal diligence.

For those reasons, it would have been impossible for us to argue fraud. One of the elements of fraud is justifiable reliance, and the Special Committee took a position that was diametrically opposite to that.

BY MR. SCHMELTZ

Q So it's your position that -- so let's -- let's back up here.

When I refer to the Riot Whinstone

Page 63

settlement, can you and I agree that I am referring to the $185 million transaction and settlement between Rhodium and Riot Whinstone that was approved by the Court in this bankruptcy case?

A Sure.

Q And can you and I agree that LKC and Stris were the -- alongside of Quinn Emanuel were counsel for the debtors in that litigation?

A Define "that litigation."

Q That Riot Whinstone litigation that was the subject of the settlement.

A Yes.

Q And I think you said a moment ago that all claims that the debtor had against Riot Whinstone were settled and released as part of that Riot Whinstone settlement.

Did I understand your testimony correctly?

A I don't know if you understood it correctly, and I don't have the terms of the agreement before me, but my recollection is, as

Page 64

in most settlement agreements, the parties have broad releases on anything and everything, so I think all the claims anyone had were disposed of.

And if the release is as broad as I recall, that would have disposed of everything, including any kind of energy credit claim. But if you want me to take a look at the release language, I can confirm whether it was, in fact, released.

Q And so any claim that Rhodium would have had against Riot Whinstone related to energy credits coming from the Winter Storm Uri would have been settled and released as part of that settlement; is that correct?

MR. DISHER: Objection. Vague. Foundation. Asked and answered.

THE WITNESS: With the assumption I made of the release covering anything and everything, then, by definition, anything and everything was released.

BY MR. SCHMELTZ

Q Including the Winter Storm Uri credit

Page 65

claim, correct?

A Sure.

MR. DISHER: Same objections.

MR. SCHMELTZ: Did you get his answer, Erick?

THE REPORTER: (Nodding.)

MR. SCHMELTZ: Thank you.

THE WITNESS: It was "sure" if you didn't get it.

BY MR. SCHMELTZ

Q What did you do to prepare for this deposition, sir?

A I met with Mr. Disher yesterday. We had some turkey sandwiches. We talked for a few hours. Will Thompson and Jacob Richards joined the conversation.

And then, aside from that, on Saturday, I guess it was, I spent some time just thinking about the deposition. And I guess on the drive over here I thought about it some more.

Q Did you talk to any non-lawyers in preparation for this deposition?

A Not at all.
Q Did you review documents prior to your testimony today?
A I did.
Q Which documents?
A I can't remember. Oh, no, I do remember one. I looked at the fee application, of course. I reviewed that one and looked at the PowerPoint presentation from February. I looked at some other documents that we discussed with Chase Blackmon. It probably was limited to those.
Q In preparation for your deposition, did you review any e-mails or documents in which the debtor through any of its representatives suggested that LKC should get zero dollars for its fees?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No.
BY MR. SCHMELTZ
Q Have you reviewed the document requests

that the Special Committee served on LKC?
A Yes.
Q Who is responsible for the collection, review and production of documents on behalf of LKC, if you know?
A There are a few of us. So Todd and I and Will Thompson, Jacob Richards and Alexis Swartz reviewed e-mails.
We sent e-mails that -- very broad bucket of e-mails. Basically, anything that was in the Rhodium files or had the word "Rhodium," we sent it on to Alexis, and she was then responsible in reading the many, many e-mails to find ones that were responsive and not privileged and not covered by work product.
Q If you know, how many documents did you ultimately produce to the Special Committee?
A I don't. I recall that you and your partners were unhappy with it, so I assume it was a number that's lower than what you expected, but I don't recall the number of documents.
Q And I think you've said you didn't

produce any privileged e-mail exchanges between LKC and the debtors, correct?
THE WITNESS: No.
MR. DISHER: Well, hold on. Objection. Vague. Foundation. Misstates testimony.
THE WITNESS: No, that's not what I -- so there were documents you were seeking specifically about e-mails we had with Porter Hedges, and we're not going to produce our e-mails with our attorney at Porter Hedges.
We didn't produce those, some work product e-mails, things that -- basically, stuff during the course of this current fee dispute, we're not going to produce that.
And then -- and we explain all this in our document responses, and we've met and conferred about them, so I think you know our position. But we didn't produce documents that you guys already have, and that was the lion's share of the -- almost all the documents we had are ones that the debtors or their agents had, and we didn't produce those, as you know. We

talked about it.
Does that answer your question?
BY MR. SCHMELTZ
Q Is there a rule that you're aware of that affords you the ability not to produce to an opposing party documents because it's possible the opposing party already has them in its possession?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, you know, as we discussed, actually -- and this was, I think, two weeks ago -- there's a split in authority, and it depends upon the circumstances, takes into account, among other things, burden, relevancy, whether the -- whether the document request was made for purposes of harassment, the time available. And our position in consultation with our attorneys was that we were not going to produce those, and we explained that to you about two weeks ago. And you didn't file a motion to compel. I'll also add that --

Page 70

BY MR. SCHMELTZ
Q And my question was: Is there a rule that you're aware of? So I think you've referenced the rule.
Are you referencing a further rule, or are you just talking about something else now? Because unless you're referencing another rule, it's not responsive to my question.
A I disagree about that, respectfully.
Q Are you referencing another rule?
A I'm explaining the rule, which you asked me to identify.
Q I didn't ask for an explanation of the rule. I asked for a rule.
A Okay.
Q All right. Are you done identifying the rule?
A I wouldn't say that, but if you want me to stop talking, I'll stop talking.
Q Did you search your text messages for relevant texts?
A Well, again, this is something that we

Page 71

talked about with you guys two weeks ago, and I offered to do that if it was reciprocal, and you said it was too big a burden.
Q So the answer to my question is no; is that correct?
A That's correct.
Q Do you have a personal e-mail account?
A I do.
Q Did you search that personal e-mail account for documents responsive to our requests?
A I did not.
Q Do you have hard copy documents in an office at home?
A I do.
Q Did you search those documents for documents responsive to our request?
A I did.
Q And did you find any?
A There was nothing that was responsive.
Q Nothing that was responsive or nothing that was responsive that, from your view, the debtors didn't already have?

Page 72

A Well, they didn't have my hard copy documents, my notes. So, yeah, there's just nothing that was responsive.
Q Are the debtor entities still your clients?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I'm not sure how to answer that. We filed a final fee application, so I don't know if, technically, under bankruptcy law, they're still our clients or not.
As I understand it, the only holdup to our fee application being approved is the Special Committee has filed objections. So, maybe, technically, they're still my client, but I think that's a question of bankruptcy law.
BY MR. SCHMELTZ
Q You've not filed any kind of withdrawal or sent a withdrawal letter to the client; is that right?
A That is correct.
Q You've not sent a our work is

Page 73

terminated type letter to the client, correct?
A That is correct.
Q You mentioned a payment that the Special Committee authorized and made to Lehotsky Keller Cohn relative to this dispute.
Do you remember that conversation or reference in your testimony today?
A Authorization and approved, do I remember that discussion or testimony? And there are a few things going on there. I do recall --
Q The Special Committee authorized -- let me withdraw it and start over.
The debtor has paid $765,000 to Lehotsky Keller Cohn related to its work in the Riot Whinstone litigation, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: We received a wire. I don't know -- I mean, you know this, and we can just clarify it, but I don't know if the Court has approved that unilateral decision to send us a wire of $765,000.

Page 74

BY MR. SCHMELTZ
Q You're aware that 600,000 of the $765,000 is related to a provision in your engagement letter for a potential success fee, aren't you?
A Okay. A lot going on there. There was a $600,000 -- under the engagement letter, for prevailing on the motion to assume, there's $600,000. That is different from the success fee that we're talking about, which relates to the portion of the settlement, the transaction value, that relates to damages or energy credits.
Q Let's take a look at --
MR. DISHER: Can we take a break? We've been going for a while.
MR. SCHMELTZ: Yeah, that's --
MR. DISHER: Can we go off the record?
MR. SCHMELTZ: That's fine.
VIDEO TECHNICIAN: The time is 9:57 a.m. This ends Unit 1. Off the record.
(Recess 9:57 a.m. to 10:10 a.m.)
VIDEO TECHNICIAN: The time is

Page 75

10:10 a.m. This begins Unit No. 2. We're on the record.
MR. SCHMELTZ: We were starting to talk about the success fee and the components of the success fee and payment, and I thought it might make sense to put some documents in front of us and level set.
So let's take a look at Exhibit 2, Cohn Exhibit 2, which for the record is the May 16, 2023 Lehotsky Keller Cohn fee agreement or engagement letter that was filed on the docket in this case or in the bankruptcy at docket 835.
(Cohn Exhibit Number 2 was marked for identification.)
BY MR. SCHMELTZ
Q Let me know when that document comes up in front of you.
A I have it now.
Q And do you recognize this document?
A Yes.
Q What do you recognize it to be?
A It is our engagement letter dated

Page 76

May 16, 2023.
Q In this engagement letter, you lay out a series of fees and hourly rates.
Do you see that under the heading "Fees"?
A Yes.
Q And, originally, you were to receive a $25,000 monthly fixed fee, correct, for your time?
A So, under this engagement letter, there was a $25,000 monthly fixed fee for all the work done by me, me personally, as opposed to other attorneys or paralegals at the law firm.
Q And then you set forth standard rates for LKC lawyers and proposed discounts on those rates, right?
A To be clear, the discounts are not on a sort of per-rate basis, but it's when we get to 200 -- I'm sorry -- for the first $250,000 of time, there's a 20 percent discount, and then it goes up for additional amounts of time.
Q It goes up to 25 percent above

Page 77

$250,000 a month, right?
A And then it goes to 30 percent after that.
Q All right. And then the engagement letter lays out the potential success fee that has three components, correct?
A Correct.
Q And the first of those components is, "$600,000 if (i) the contracts at issue in the matter including those you seek to enforce are not terminated and, if addressed by a court, your interpretation of key contractual provisions, as identified by the attached e-mail dated on May 16, 2023, is upheld or (ii) you are acquired by Whinstone or an affiliate," right?
A There's more to the sentence, but you were reading it correctly until that point.
Q And so $600,000 is one component of a success fee, correct?
A Correct.
Q And so to the extent the Court ordered the debtors to consider paying a component of the

Page 78

success fee that was not in dispute, the debtors would be complying with that order by paying $600,000, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I mean, not necessarily, right? So I guess the question is how much was in dispute.

We understood you guys as disputing everything aside from the $600,000, and that's why you paid us only the $600,000 plus a fraction of our hourly fees and expenses.

If, as you are now suggesting, you actually were willing to pay us more and more was undisputed, then I wouldn't say you complied with the Court's order.

BY MR. SCHMELTZ

Q All right. But a $600,000 payment is a component of the success fee, correct?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: 600 -- and, first of all,

Page 79

you're looking at an outdated engagement letter, but you're correct that the $600,000 is a component of both that engagement letter success fee and the subsequent ones.

MR. SCHMELTZ: Okay.

THE WITNESS: It is a component of it. Does that answer your question?

MR. SCHMELTZ: It does.

THE WITNESS: Okay. Good.

BY MR. SCHMELTZ

Q In this engagement letter, section -- so that -- I just read from page 2, Section (a) of the potential success fee, right?

A Correct.

Q Section (b) of the potential success fee is "5 percent of any recovered energy credits up to $5 million, and 1 percent of any additional recovered energy credits," right?

A Again, you didn't read the entire sentence, but that's right. And, again, I want to note that --

Q And what I'm leaving out is when it's

Page 80

to be paid. I'm trying to establish what the components of the success fee are, and I'm leaving out intentionally when they're to be paid. Okay? Not to mislead anyone, but because I'm just trying to establish the three components. Okay. Is that fair?

A I don't think it's fair, because you're still looking at the wrong engagement letter.

Q I understand that. We're going to look at the first engagement letter, and we're going to compare it to the second one. Okay? That's -- that's what I'm trying to do here, so bear with me.

MR. DISHER: Is it possible to enlarge the exhibit? Is the concierge listening? Thank you. Maybe one more. There. Thank you.

BY MR. SCHMELTZ

Q So in the original engagement letter, there were three components of the potential success fee, right?

A That is correct.

Q The first one is under Section (a),

Page 81

which I've read, right?

A You read most of it, but, yeah.

Q And the second one is under Section (b), and I read all of that except when it is to be paid, right?

A Correct.

Q All right. And the third component is under Section (c), and that's "10 percent of any additional amounts not attributable to energy credits that you recover," and it goes on from there to describe various components of that 10 percent, right?

A Let me read it. I mean, there's a lot of other stuff going on there, but I agree that 10 percent is the relevant percentage.

Q All right. And those were the three components at the time of this May engagement letter, right?

A That is correct.

Q Did you have a view at the time of this May 2023 engagement letter as to whether your success fee would have been capped at $600,000 in

Page 82

the event that Rhodium is acquired by Whinstone or an affiliate?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Our view has always been that if Rhodium is acquired by Whinstone or an affiliate in a transaction that covers both the business value and the litigation value that the parties would proceed in good faith to determine an allocation, what portion of that goes to the business and what portion of it goes to the energy credits and the other damages. That's always been our view.
MR. SCHMELTZ: Let's take a look at Cohn Exhibit 3. And Cohn Exhibit 3, for the record, is the March 4, 2025 engagement letter between you and Cameron Blackmon at Rhodium. It was marked originally in the Chase Blackmon deposition as Exhibit 7, and it is filed with the Court at docket 835 as well.
(Cohn Exhibit Number 3 was marked for identification.)

Page 83

BY MR. SCHMELTZ
Q Do you have that in front of you, sir?
A Yes, I do.
Q And what do you recognize Cohn Exhibit 3 to be?
A This is our engagement letter dated March 4, 2025.
Q If you know -- well, let me ask it this way: Let's take a look at page 2. There's a provision for a potential success fee here, right?
A That is correct.
Q And the first three components of the potential success fee under a, b and c are similar in all material respects to the original engagement letter; is that correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah. I think as Mr. Topping put it in his declaration and his testimony in his declaration -- in his deposition and at court, the only changes were minor

Page 84

clarifying changes.
BY MR. SCHMELTZ
Q Section (d) was added to this engagement letter at page 2, correct?
A That is correct.
Q What was the purpose of Section (d) from your perspective?
A It was, again, as Chuck put it, a minor clarifying change to address explicitly what the parties had understood their agreement to be, which is, if there is a transaction that both covers the sale of the business and settlement of our affirmative claims against Whinstone, then the parties would -- the parties being the client and Lehotsky Keller Cohn LLP, quote, "will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c)."
Q From your perspective, that good faith determination of the amount allocable to the settlement, if Rhodium disagrees with your

Page 85

calculation but has a principal calculation of its own, is Rhodium acting in good faith in pursuing a calculation of its own?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I must say that that question was hard for at least -- at least me to follow. If it was just me, I apologize, but --
BY MR. SCHMELTZ
Q Let me -- let me break it down, then.
Your -- your allocation or LKC's allocation to settlement at this point in time is $100 million, correct?
MR. DISHER: Oh, sorry. Hold on one second. I dropped my mic. I'm sorry. Could you repeat the question?
BY MR. SCHMELTZ
Q LKC's allocation to settlement at this point in time is $100 million, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: When you say "at this

Page 86

point in time," do you mean as of March 4, 2025, or --

MR. SCHMELTZ: As of --

THE WITNESS: -- as of today?

BY MR. SCHMELTZ

Q As of this moment, where you and I are sitting in the universe.

MR. DISHER: Still objection; vague and foundation.

THE WITNESS: Well, the position in our fee application is $100 million, as -- as we've said. That is a very conservative number. Probably, it should be higher, but, you know, our fee application was meant to be a good faith, reasonable, but conservative estimate, and that's $100 million.

BY MR. SCHMELTZ

Q From your point of view, is the $75 million that I proposed in May of 2025 to your -- you through your lawyer, Josh Wolfshohl, a good faith estimate of the amount allocated to settlement?

Page 87

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I'd say there are a few things going on there. Number one, the Special Committee has not staked out the position that it thinks 75 million is the right amount.

Second, we viewed what was relevant was your number, and your number was the result of two assumptions, both of which we thought were incorrect. But compounding those two incorrect assumptions, you got a number which, in our view, is not a good faith number.

BY MR. SCHMELTZ

Q The ultimate number, the 3.8 million that we proposed, was not a good faith number. That's what you're talking about?

A That is correct.

Q And my question is: Is $75 million a good faith allocation to settlement in this case or not?

MR. DISHER: Objection. Vague. Foundation.

Page 88

THE WITNESS: I would say no, but the relevant question is --

BY MR. SCHMELTZ

Q I'm not asking --

A -- not --

Q -- for your view of a relevant question. I'm asking a yes or no question. You've answered it no, and my follow-up is: Why not?

A So, two things. What's relevant is your offer and not each --

Q So I'm not asking -- why is $75 million not a good faith estimate of the amount allocated to settlement? I'm not asking for the base -- the ultimate offer. I'm asking about the 75 million.

MR. DISHER: And he's trying to explain that.

MR. SCHMELTZ: Well, respectfully, I don't think he is.

BY MR. SCHMELTZ

Q I want to know why the $75 million in

Page 89

and of itself, by itself, is not a good faith allocation.

A Well, one, I don't think you can look at each component in isolation individually, but, second, even if you were to engage in that endeavor, it's still not a good faith number because it is below -- well below the ranges that we were talking about.

When I say "we," I mean the litigation team. I mean the executives, the board at that meeting on February 12th. Kevin Hays, the CFO, took three deductions from the numbers the litigation team collaborated upon. Those numbers resulted in an expected value of $158 million.

He then took three deductions from that, all of which we think were not well founded, but even after those three deductions, he came down to the $100 million that we're going to use, that we proposed using, that we did use in our fee application. And we used that number even though the value of the settlement, the total transaction value, is $185 million, which

Page 90

was more than $10 million above the total asset value that Kevin calculated using both the litigation value and the business value. And despite the fact that there's more than a $10 million overage, we assigned none of that to the litigation value.

So, in short, the $100 million has none of the overage, and it also has three deductions from Kevin, which we were -- we think were incorrect. After all that, you then took an additional 25 percent discount, so we think that was not in good faith.

But more importantly, you can't look at each individual mistake in isolation. You have to look at them combined with the other mistakes, and that yielded a number, which was definitely not a good faith number.

Q What are the three deductions that Kevin Hays made with which you disagree?

MR. DISHER: Objection. Vague. Foundation. Go ahead.

THE WITNESS: It might be easier if we

Page 91

have the PowerPoint presentation in front of us, but I can do it without that if you'd prefer.

MR. SCHMELTZ: Do you want to reread my question?

(Whereupon, the reporter read the record as requested.)

THE WITNESS: I'm sorry. Is that question still on the table?

MR. SCHMELTZ: Do you need it read again?

THE WITNESS: No, no, I don't, but I just wanted to know if you wanted to have the document as I walk you through the mistakes, and -- and you didn't answer my question, but that's fine. I can -- I can do without the documents. It's probably better for everyone to have the document, but if you prefer, I could just walk you through them without the document.

MR. SCHMELTZ: Do you need to hear my question back, or can you answer my question?

MR. DISHER: He did answer your question.

Page 92

THE WITNESS: I don't need to hear the question back.

BY MR. SCHMELTZ

Q Okay. Why don't you go ahead and answer it?

MR. DISHER: Objection. Asked and answered.

THE WITNESS: So -- and, again, my apologies for those who don't have the document in front, but Kevin Hays did make three mistakes, and the first mistake he made was he applied a 25 percent discount factor to the $158 million that the litigation team came up with. And that was kind of a weird thing to do, because the time value of money, if anything, is captured by prejudgment interest, and he didn't take into account prejudgment interest. Instead, he applied a discount rate.

Moreover, the discount rate that he applied of 25 percent is one -- is not one that is linked to the risk, if any, on the litigation. Instead, it was the risk inherent in the Bitcoin

Page 93

mining business, so it pertains to a different risk on a different cash flow for a different asset.

And that seemed kind of weird, but, look, you know, Kevin is the CFO. I think his mistake is one that, you know, MBAs would not be making, but he made a mistake and that's the first mistake. He used a discount rate. It was a very large discount rate, and it reflects the risk on the wrong cash flow. So that's mistake number one, and he didn't take into account prejudgment interest.

Am I going too fast?

MR. SCHMELTZ: No.

THE WITNESS: Okay. Good. I just want to make sure you write it down. So that's the first thing.

Second, he then lopped off $1.4 million. His number was 126.4 million, so he already knocked off 21.6 million -- I think my math is correct. 30 million? I used to do this better in the sixth grade, but -- so he knocked

Page 94

off 25 percent, and then he knocked off an additional $1.4 million to get down to 125. And I don't know why he knocked off $1.4 million, but he knocked off $1.4 million.

Then the third mistake he made was knocking off another $25 million.

Now, on this one, I can kind of understand what he's trying to do. He wanted to provide a range, and he just chose to have $25 million on either end, but the real number he has is 125 million. The ranges captures a lower scenario and a higher scenario, and then we used the lowest scenario possible of 100 million.

BY MR. SCHMELTZ

Q What prejudgment interest do you think should have applied to this calculation that we've just been discussing?

A The one provided under Texas law.

Q And to the best of your knowledge, what is that percentage at currently?

A I don't know.

Q Okay. What was the proper discount

Page 95

rate to have been applied to the calculation we've just been discussing?

A Well, typically --

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I mean, I think, typically, you would use the amount for prejudgment interest, and you wouldn't discount it. You would just recognize that the future cash flows are adjusted because of the prejudgment interest, and you wouldn't take an additional discount.

Now, if you want to get into an economic discussion of whether the Court's prejudgment interest rate adequately reflects the risk of the cash flows, I guess one could have that kind of discussion, but, you know, you would not -- you would not take the discount rate for a different risk on a different cash flow on a different set of assets.

BY MR. SCHMELTZ

Q In your job, are you regularly called

Page 96

to evaluate the present value of future cash flow?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Am I called to evaluate? I'm not sure if I follow the question.

BY MR. SCHMELTZ

Q The present value of future cash flows.

A No, I know what the --

MR. DISHER: Hold --

THE WITNESS: -- words mean, except for a call to evaluate. As an expert? No.

BY MR. SCHMELTZ

Q You don't spend any time testifying about the present value of future cash flows in your current job; is that correct?

A Well, I've never testified before today, so I think the answer would be, yeah, I don't testify about anything, so that would include present value, future cash flows or anything else.

Q You're not hired by clients as an

Page 97

expert in evaluating present value of future cash flows, are you?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I think I'm hired for a lot of reasons, and I think clients appreciate that I have some understanding of the numbers that are often at issue in cases.

BY MR. SCHMELTZ

Q And you have not had experience as an investment banker; is that correct?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Thankfully, no.

BY MR. SCHMELTZ

Q And you've not spent time as a chief financial officer of a company; is that correct?

A That is correct.

Q Around the time of settlement negotiations with Riot Whinstone, you were aware that Province was trying to secure exit financing on behalf of the debtors, right?

A Could you repeat the first part of the question?
Q Around the time of the settlement negotiations with Riot Whinstone, you were aware that Province was trying to secure exit financing for the debtors, right?
A That is correct.
Q Were you aware of the extent of Province's efforts to secure that financing?
MR. DISHER: Objection. Vague.
THE WITNESS: Aware of the extent. Hard to say, because that implies that there is some amount of information out there. And I guess I don't know what I don't know, but I was aware of many of their efforts, and I know that they were unable to find exit financing that the debtors could live with. It was not exit financing with which they could survive.
BY MR. SCHMELTZ
Q The -- you were involved in assisting Province in preparing presentations to exit finance; is that correct?

A I don't think that's right.
MR. SCHMELTZ: Skip 3. Do tab 4, please. I'm going to put a document into evidence that is an e-mail chain that involves you and John Stokes and Kevin Hays and others from late January of 2025, and it bears the Bates numbers of Special Committee LKC 4813 to 4816.
Let me know when you have that document in front of you.
(Cohn Exhibit Number 4 was marked for identification.)
MR. DISHER: I'm sorry. Do you know when this document was produced? It doesn't look familiar to me.
MR. SCHMELTZ: I don't.
BY MR. SCHMELTZ
Q Do you have the document in front of you, sir?
A I do.
Q Do you recognize the document?
A No.
Q Okay. If you would, start at page

4815, e-mail from Morgan Soule to John Stokes, Jon Cohn, Will Thompson and others.
Do you see that at the bottom of page 4815? It's from 28 January at 12:03 p.m.
A I do. I see it.
Q Who is Morgan Soule?
A She is one of Charles Topping's -- I'm not sure if the term is deputy or associate -- oh, here it says assistant general counsel.
Q For Rhodium Enterprises, Inc., right?
A That is correct.
Q She says in this e-mail, "As part of exit financing due diligence, the attached slides have been prepared. Can your teams please review ASAP?"
Have I read that correctly?
A You did.
Q She says, "Apologies for the fire drill -- it shouldn't be too heavy of a lift but want your eyes on it since it relates to damages."
Have I read that correctly?

A Yes.
Q Bridget Asay responds in an e-mail above that. Do you see that e-mail?
A I do.
Q Who is Bridget Asay, if you know?
A I think you mispronounced her last name, but she is a partner at the Stris law firm.
Q How do you pronounce her last name?
A Asay.
Q Asay. My apologies to Ms. Asay.
She says, "Are you able to provide us some context for the source of the numbers in these slides?"
Have I read that correctly?
A Yes.
Q And Ms. Soule responds above that, "Adding at Kevin Hays because I do not have insight to the numbers."
Have I read that correctly?
A Correct.
Q Mr. Hays then responds at Bates number 4814 at 1:01 p.m. on January 28th, and he says,

Page 102

"The source of the numbers from the slides are based on publicly available historical electricity prices and hashprices."

Have I read that correctly?

A You did.

Q He goes on to say, "In the spreadsheet, we then calculated based on the electricity contracts, theoretical electricity sales whenever the electricity price exceeds 350 percent our cost plus 250 percent of our contract rate, or 59.675 a megawatt hour."

Have I read that correctly?

A Yes.

Q What do you understand him to be referring to in that paragraph at Bates 4814?

MR. DISHER: Objection. Foundation.

THE WITNESS: I don't know.

BY MR. SCHMELTZ

Q Mr. Stokes responds at 4813, and you respond. Both of you agree that the slides look good or are fine, right?

MR. DISHER: Hold on. Which -- where

Page 103

are you looking now?

MR. SCHMELTZ: 4813.

THE WITNESS: To be precise, what I say is, "LKC is fine with this too."

BY MR. SCHMELTZ

Q And Mr. Stokes responds, "The revised version looks good from the Stris side," right?

A That is what the e-mail says.

Q John Stokes is your co-counsel in the litigation against Riot Whinstone, correct?

A That is correct.

Q Partner at the Stris & Maher firm, right?

A Yes, he is.

MR. SCHMELTZ: Can I have Exhibit 5 now? Let's do tab 4, tab 4a. The next document will be Cohn Exhibit 5, and it bears Bates numbers Special Committee LKC 4838 through 4844.

(Cohn Exhibit Number 5 was marked for identification.)

BY MR. SCHMELTZ

Q And what I'd draw your attention to

Page 104

when you have the document up is the slide deck that starts at 4842.

Do you see that?

A No. All right. So I have a deck here. How do I turn it so I can -- kind of clockwise 90 degrees?

CONCIERGE TECH: At the top left, there's a little -- it says view control if you hover over it.

THE WITNESS: All right. I got it. Yeah, sure.

BY MR. SCHMELTZ

Q All right. Do you see that?

A See what?

Q The slide deck.

A I see a slide deck.

Q And have you seen this -- is this the slide deck that you reviewed and responded to in the e-mail we just looked at in Cohn Exhibit 4?

A I don't know, and I also don't know if I reviewed the slide deck then. If I reviewed a slide deck, I don't know if it's this one or a

Page 105

different one.

Q Okay. If you would then go back to 4838 in this same exhibit and then follow up to Mr. Hays' January 28th e-mail from which I read in Cohn Exhibit 4, Kevin Hays sends an e-mail on 29 January saying, "As a follow up to our conversation, attached please find updated slides."

Do you see that?

A I do.

Q And this is on an e-mail you received, correct?

A That is correct.

Q And if you would go back to Cohn Exhibit 4 with me, you can see that the response that you and Mr. Stokes make is in response to Kevin Hays' e-mail saying, "As a follow up to our conversation, attached please find updated slides," right?

A We did respond to that e-mail.

Q Okay. In other words, your response, "LKC is fine with this too," is in response to

Page 106

the e-mail we see in Cohn Exhibit 5 with the slide deck we see in Cohn Exhibit 5, right?
MR. DISHER: Object to foundation.
THE WITNESS: Assuming that you have correctly attached the slide deck that was attached to Cohn Exhibit 5, then the line "LKC is fine with this too" does refer to that slide deck.
BY MR. SCHMELTZ
Q Okay. And the slide deck in Cohn Exhibit 5 starts with a background page that focuses on the availability of power credits given the deregulated electricity market in Texas, right?
A Can you direct me to a page?
Q It's at exhibit -- it's at page 4842 we were looking at a moment ago with the title "Background."
Do you see that?
A I do see the title "Background," yes.
MR. SCHMELTZ: Erick, do you mind rereading my question about that page?

Page 107

(Whereupon, the reporter read the record as requested.)
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: It says, title, "Background." I haven't read the slide to summarize it.
BY MR. SCHMELTZ
Q Why don't you -- why don't you read it and see if it comports with my summary, please.
A Okay. I've read it.
MR. DISHER: Hold on. Okay. Thank you.
BY MR. SCHMELTZ
Q Does it comport with my summary?
MR. DISHER: Can we read the summary back? Apologies. Now that we've read it, I'd like to hear your summary of it.
THE REPORTER: Was it that last question?
MR. SCHMELTZ: Yes.
MR. DISHER: Yes.

Page 108

(Whereupon, the reporter read the record as requested.)
MR. DISHER: Objection. Vague. The document speaks for itself.
Go ahead and answer.
THE WITNESS: I'm reading it again just to see, but you mentioned deregulated power market. And I might just be missing it -- if so, my apologies -- but I'm not seeing reference to the deregulated power market. If you could direct me to it, I'd be happy to take a look at that.
BY MR. SCHMELTZ
Q You understand Texas has a deregulated power market?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I'm not sure I do. They have a power market. I don't know about the word "deregulated" or what that means.
BY MR. SCHMELTZ
Q Okay. Great. Let's do it this way:

Page 109

The first bullet point of the background slide found at Cohn 48 -- or pardon me -- Special Committee LKC 4842 says, "Given the volatility of electricity prices in Texas and the attractive, low-cost electricity contract that Rhodium" -- and I'm skipping the parenthetical -- "is the beneficiary of" -- I'm skipping another parenthetical -- "episodic opportunities exist where it is highly profitable to sell electricity back to the grid as opposed to mining Bitcoin."
Have I read that correctly?
A Yes.
Q You understand that that is referring to an opportunity that Rhodium would have to sell power that it pays a low price for at a much higher, more profitable price back to the electricity grid, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I think you might be getting the subject of the sentence wrong, because Rhodium, I don't believe, is the one that

Page 110

would be selling the electricity back to the grid, but under the contract, it would be a beneficiary for sales of the electricity back to the grid.
BY MR. SCHMELTZ
Q That's a good clarification, and, in fact, the next bullet point references exactly what you've described, right?
A Let me take a look at it. Well, this is actually a little bit more detailed, and so -- should I read it?
Q No.
A Okay.
Q Under this bullet point, it provides that Rhodium has agreements with Whinstone, correct?
A Rhodium did have agreements with Whinstone, correct.
Q And in those agreements, there was a requirement for Whinstone to sell electricity above a certain price back to the electricity grid, correct?

Page 111

A Correct.
Q And under the agreement, it specifically provided -- and I quote -- "Whinstone will sell electricity in lieu of providing electricity to the Customer if the ERCOT Market profitability exceeds the 250 percent of the contract price. The profit will be distributed 100 percent to the Customer."
Have I read that correctly?
A You did.
Q And in the third bullet on the background page, it says, "Whinstone has historically sold electricity during periods of extreme prices, retaining all profits for itself by alleging that the contracts with Rhodium were invalid."
Have I read that correctly?
A You have.
Q And then it provides, "On December 16, 2024, Judge Perez delivered a ruling that confirmed that none of Rhodium's contracts with Whinstone had been superseded or terminated."

Page 112

Did I read that correctly?
A Yes, sir.
Q This slide is referencing energy credits Whinstone received that it should have passed along to Rhodium, but it didn't because it was claiming contracts were invalid, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yes.
BY MR. SCHMELTZ
Q And those are the same energy credits that were the basis of a claim or claims that LKC and Stris was pursuing -- were pursuing against Riot Whinstone, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, I wouldn't agree, because the Special Committee did not permit us to pursue claims for the Uri energy credits. We really wanted to. We thought it was our mutual obligation to do so to maximize the value of the estate. We thought it was a strong claim.

Page 113

If I recall, we thought we had a 60 percent chance of prevailing on that claim, but the only way we'd recover those energy credits, only way, was if we were allowed to plead and prove fraud. The problem with this is that Rhodium had signed a release giving up any claim to those energy credits, and that release, if it were enforceable, would give us zero, zero dollars, for the Uri energy credits.
We needed some basis to overcome that release, and the only basis we could think of and still think of was by pleading and proving fraud, because Chad Harris fraudulently induced Rhodium to enter into that release, but we were not allowed to make that claim.
So those energy credits were not on the table because the Special Committee would not let us make that claim.
BY MR. SCHMELTZ
Q You would agree with me there were two buckets of energy credits, one involving Winter Storm Uri and one not involving Winter Storm Uri,

Page 114

correct?
A That is correct.
Q And so your answer relates to the second bucket of energy credits relating to Uri, but not the first bucket, right?
A That is correct.
Q You actually did bring a claim for energy credits; isn't that right?
A We did.
Q And in that claim, you pursued all of the energy credits, both Uri related and non-Uri related; isn't that right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No, we didn't. We were not --
MR. SCHMELTZ: Okay.
THE WITNESS: -- allowed --
BY MR. SCHMELTZ
Q We'll get to your words later and your e-mail, so I hear what you're saying. We'll get to that later.

Page 115

This slide deck discusses the value of energy credits that Rhodium was seeking to recover, correct?
MR. DISHER: Objection. Vague. Foundation. Compound.
THE WITNESS: I haven't reviewed the entire slide deck.
MR. SCHMELTZ: Why don't you do that, and let me know when you're done.
THE WITNESS: All right. I've reviewed the slide deck.
BY MR. SCHMELTZ
Q And the slide deck refers to the value of energy credits that Rhodium had a -- claimed it had a contractural right to receive, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I would say no. Should I explain?
BY MR. SCHMELTZ
Q Let's take a look at page 4843 of the slide deck. Take a look at the fourth bullet

Page 116

under "Calculation of Theoretical Historical Electricity Sales." Okay?
And it says, Note that, historically, Whinstone has not followed the contract. This analysis tests what would have resulted if the contract was filed -- pardon me -- followed and with the additional assumptions below.
Have I read that correctly?
A You have.
Q And then let's take a look at the next page, 4844, "Key Factors and Observations."
"Electricity Sales opportunities largely happen with weather/grid driven spikes in electricity costs."
Have I read that correctly?
A Correct.
Q And it says, "approximately 19.3 million average annual theoretical electricity sales revenue from 2022 to 2024."
Have I read that correctly?
A You have.
Q And then it refers to Winter Storm Uri,

Page 117

and it says, "Winter Storm Uri accounts for approximately 90 million in theoretical electricity sales in 2021," right?
A Are you asking if you read it correctly?
Q That's what it says, right?
A It does.
Q In other words, the slide deck is telling potential exit financers that there is a valuable piece of Rhodium's business that relates to energy credits, and it is projecting out what those credits might look like in the future to these potential exit financers, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I wouldn't agree with your summary for three reasons.
BY MR. SCHMELTZ
Q Okay. Let's hear them.
A Number one, it uses the word "theoretical."
Number two, there's a note at the

Page 118

bottom of the page that you didn't reference or read, and it says, "this analysis does not represent actuals or asserted damages."

Number three, by this point in time, the Special Committee had not forbade us from pleading and proving fraud, which was necessary to recover the Uri energy credits. And insofar as the Special Committee was using this slide deck after it forbade us from pleading and proving fraud, then it really should have told the exit financers it was not allowing us to recover those Uri energy credits.

MR. SCHMELTZ: Erick, do you mind rereading the question that I actually asked, because Mr. Cohn and I are at cross purposes?

(Whereupon, the reporter read the record as requested.)

BY MR. SCHMELTZ

Q So you understand that my question related -- my question was: This slide deck projects out potential credits into the future for exit financers to take a look at, right?

Page 119

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I'm not following that because what I --

BY MR. SCHMELTZ

Q It's not about damages that exist in the moment; it's about future potential energy credits, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Yeah, I was going to answer the last question. I don't follow. I'm trying to be as helpful as possible. But this actually refers to energy credits from prior years, and it's theoretical historical electricity sales by year, not offered for damages, and it predates the Special Committee's directive that we could not plead and prove fraud on Winter Storm Uri, taking those credits off the table.

BY MR. SCHMELTZ

Q You're right. It is historical, but it

Page 120

is a projection of energy credits to give the exit financers an understanding of how valuable energy credits are to Rhodium's business, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Look, I don't know about, like, purpose and Kevin's purpose in putting this together. All I can tell you is what's on this document, and I'm not going to try to speculate as to what people's purposes were.

But I will tell you, as I mentioned already, that this slide predates the Special Committee's directive that we could not plead and prove fraud, which was absolutely essentially for attempting to recover the Uri energy credits.

BY MR. SCHMELTZ

Q Did you understand that in an effort to get exit financing, Rhodium was presenting to potential lenders a valuable aspect of its business, that being its ability to sell -- to reap the profits of energy sold back to the grid in certain circumstances?

Page 121

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I want to make sure I understand your question so I can answer it properly.

BY MR. SCHMELTZ

Q All right. Let me break it down, then.

A Sure.

Q This is a slide deck that was going to be presented to exit financers, right?

A I believe that's what Kevin said on the prior document. We can take a look back at it if you want to make sure.

Q And this slide deck provides hypothetical historical electricity sales, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: That level of generality and vagueness, yes.

BY MR. SCHMELTZ

Q And, specifically, it is providing on the page 4844, where it says, "Theoretical

Page 122

Historical Electricity Sales By Year," the sales estimates specifically related to energy credits as we've discussed them already, right?

A As we've discussed them already. It has a chart which says yearly energy sales estimates, and it gives estimates for four years.

Q Let's go -- we just did this, but we'll do it again. Page 4833, "Calculation of Theoretical Historical Electricity Sales," right?

A I'm with you.

Q And it is explaining that these there these theoretical historical electricity sales are based on the concept of when the ERCOT market profitability exceeds the 250 percent of the contract price, right?

A Correct.

Q And we agreed that provision is the provision that the basis of the energy credit claim as pleaded by Stris and LKC against Riot Whinstone, right?

MR. DISHER: Objection. Vague. Foundation.

Page 123

THE WITNESS: Well, see, there is where I think I disagree with you, because this slide deck includes Uri on page 4844, and we were not allowed to plead what we had to plead to get the Uri energy credits. The Special Committee expressly forbade us from doing so.

Now, that came after this deck was created, but we were not permitted to plead or prove fraud --

MR. SCHMELTZ: Okay.

THE WITNESS: -- which we needed --

BY MR. SCHMELTZ

Q I'm asking what this deck is presenting to the exit financers.

This deck is presenting hypothetical historical electricity sales related to energy credits; isn't that right?

MR. DISHER: Objection. Vague. Foundation. Asked and answered.

THE WITNESS: Yeah, and I think I said on that level of generality and vagueness, yes, you're correct.

Page 124

BY MR. SCHMELTZ

Q And so you understood as of January 28th and 29th of 2025 that one of the significant ways in which Rhodium was trying to pursue exit financing was to present to exit finance -- potential exit finance partners the opportunity to sell energy -- to reap profits from energy credits, right?

MR. DISHER: Objection. Vague. Compound. Foundation.

THE WITNESS: I think I see where you're getting at, but there's some things going on with that sentence. You're asking me for my state of mind on January 29th? Is that it?

BY MR. SCHMELTZ

Q You reviewed the deck on January 29th, right?

A You meaning LKC, yes, LKC did.

Q And LKC reviewed a deck that was going to be presented to exit finance partners, potential exit finance partners, right?

A That is -- I just want to read the

Page 125

e-mail to make sure, but I think that's right. I'm looking for it. If you would point me to it, that would be helpful, but I just want to make sure I answer it correctly.

Q If you don't recall, feel free to read your e-mail. Take your time. You've taken about 45 seconds so far. Take as much time as you need to refresh your recollection about the e-mail we just read.

A So I can tell you what I'm seeing, and let me know if I'm missing something else.

But Morgan's e-mail says, "As part of exit financing due diligence, the attached slides have been prepared." So I see that.

Maybe you could repeat your question, but before you do, if there's more language here I should look at, let me know.

Q Do you have an understanding one way or the other as to whether the slide deck we've been looking at in Cohn Exhibit 5 was going to be presented to or provided to exit financing partners?

Page 126

MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Do I have an understanding now? I mean, I could speculate --
BY MR. SCHMELTZ
Q Did you know then?
MR. DISHER: Same objections.
THE WITNESS: I have no idea what I know then, and --
MR. SCHMELTZ: Okay.
THE WITNESS: -- all I can say is, looking at this, Morgan said there's a fire drill. We had a few hours to look at it.
I don't recall if I personally looked at it. I probably had Will Thompson look at it, maybe Todd Disher, maybe others on our team.
And then I see that after whoever looked at it, I sent an e-mail saying, "LKC is fine with this too," but I can't tell you even now, let alone then, what I thought the slide deck was going to be used for.

Page 127

BY MR. SCHMELTZ
Q Okay. And Rhodium was in an e-mail telling you that this would be part of exit financing due diligence, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: That is correct.
BY MR. SCHMELTZ
Q And you certainly read the e-mail before you responded to it, right?
A I think so, but I also know that I have immense trust and faith in my teams, including the litigators who are more involved with the energy credits and understood them better than I did, so I suspect I would have read the e-mail.
I can't say for sure, but I'm also pretty confident I would have relied upon the guidance of my colleagues, who are more familiar with these issues.
Q And the PowerPoint that we've just looked at in Cohn Exhibit 5 pertains to the sale of energy credits, right?

Page 128

MR. DISHER: Objection. Vague. Foundation. Asked and answered.
THE WITNESS: Again, on that level of generality, yes.
BY MR. SCHMELTZ
Q You commented earlier that Kevin Hays made certain changes to numbers with which you disagreed. Do you remember that testimony?
A I do.
Q You, in fact, during the course of your representation of Rhodium, relied on finance professionals to help you make damage calculations and come up with base numbers for damages, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Finance professionals, we relied upon Province for a series of numbers. I don't recall if we relied on Kevin Hays for numbers.
BY MR. SCHMELTZ
Q There's not anything inherently wrong

Page 129

with relying on finance professionals to help assess numbers for damages calculations, is there?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I guess it depends on which numbers you're referring to. So I can break this down more clearly for the record if you'd like.
BY MR. SCHMELTZ
Q No. It's a yes or no question.
A I don't think it is a yes or no question with --
Q Okay.
A -- with respect.
Q Well, I think your answer -- I have your equivocal answer, and Mr. Disher can fish out how you want to clarify it later.
Let's take a look at what we'll mark at Cohn Exhibit 6.
(Cohn Exhibit Number 6 was marked for identification.)

Page 130

MR. DISHER: Why don't we take a -- let's take a break.
MR. SCHMELTZ: That's fine.
VIDEO TECHNICIAN: The time is 11:13 a.m. This ends Unit 2. We're off the record.
(Recess 11:13 a.m. to 11:22 a.m.)
VIDEO TECHNICIAN: The time is 11:22 a.m. This begins Unit No. 3. We're on the record.
BY MR. SCHMELTZ
Q Cohn 6. Do you have Cohn Deposition 6 in front of you, sir?
A No. It's not up yet.
Q How about now?
A Yes.
Q All right. For the record, this is a February 2025 e-mail exchange between you and Andrew Popescu of Province. It bears Special Committee LKC 4819 through 4821. And if we can, let's start at 4821, which is the very first e-mail in the chain.

Page 131

And you know who Andrew Popescu is, right?
A I'm not sure I've had the pleasure of meeting him, but I understand that he is a vice president at Province.
Q And Province is the financial advisor to the debtors, right?
A That's my understanding.
Q And Michael Robinson and David Dunn from Province also serve as the chief restructuring officers for the debtors, correct?
A I think it's the co-chief restructuring officers, but, yes.
Q And here in this e-mail of February 5 at 11:09 a.m., you say, "Andrew: Michael and I just spoke about potential damages we can seek against Whinstone and Riot," right?
A You read it correctly.
Q And you go on to say, "There are two buckets of damages that Michael thought you could help us out with," correct?
A That is correct.

Page 132

Q And the second bucket relates to Building D, correct?
A That is correct.
Q And in the second bullet under "Building D," you say, "We are trying to ballpark the total value of that contract over the 10-year term," right?
A That is correct.
Q And then you ask, "Just let me know if this makes sense to you and if this is something you could help us out with," right?
A That is correct.
Q And at least here in this instance, you thought it was appropriate to lean into one of the financial folks, a non-lawyer, to help you in calculating a damage number, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, in calculating the base amount, and for Building D, that was something in which they had to calculate the value of these below-market contracts to provide

Page 133

for energy at a below-market rate, and for that sort of thing, I thought it was definitely appropriate to seek the advice of the financial people.
BY MR. SCHMELTZ
Q All right. And Mr. Popescu provided you with a calculation -- we see it at 4820 -- that has the net present value of savings under 100 megawatts at $164.50 million, right?
A Well --
MR. DISHER: I'm sorry. I don't see that on the screen here.
MR. SCHMELTZ: It's at the top of page 4820. There's a chart, and the bottom line in the chart is what I've just read.
THE WITNESS: I'm sorry. Is there a question pending?
MR. SCHMELTZ: Erick, do you want to read my question back?
(Whereupon, the reporter read the record as requested.)
MR. DISHER: Object. Vague.

Page 134

Foundation.
THE WITNESS: So I want to pick up on the language of the net present value. There's a number here, but this is not the updated number that Andrew came up with at some point later on, I guess about -- maybe two weeks later.
BY MR. SCHMELTZ
Q I'm asking you if that's the number in the chart that we -- in the page that we've just read.
A I'm sorry. If what's the number in the chart?
Q $164.50 million as the net present value of the 100-megawatt contract.
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: That is the number that is on this page.
BY MR. SCHMELTZ
Q And that's a number that you carried forward in your claims analyses as a base amount in presentations and analyses you provided to the

Page 135

board of directors at Rhodium, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: For the base amount, I want to clarify, because you've used some imprecise terms here. This is the base amount as opposed to, for instance, the expected value, which depends upon a litigation assessment of the odds of success. So I want to make --
BY MR. SCHMELTZ
Q I'm just -- my question is very simple. This is the number that you carried forward at the base amount in analyses that you presented to the board of directors of Rhodium; isn't that right, sir?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yes.
BY MR. SCHMELTZ
Q Thank you. And you, in fact, at 4819, say, "Andrew, thank you. I will dig into this, but I'm Quick Look, incredibly helpful."

Page 136

Have I read that correctly?
A What page are you at?
Q 4819, top of the page.
A You read it correctly, yeah.
Q Now, I don't know what on quick look means, but you did say it's incredibly helpful, right?
A Those words do appear on that page.
Q And you sign it, "Much appreciated, Jon," correct?
A That is correct.
Q We'll come back to Building D in a bit. I want to talk for a minute about the question of what was or was not pleaded in an amended complaint that your team and the Stris team filed on February 11, 2025, around Winter Storm Uri. Okay? Okay. Can we talk about that?
A Sure.
MR. SCHMELTZ: Let's take a look at Cohn 7. And for the record, this is a document filed in Case No. 25-03047. It is Document 1, and it is a complaint in an adversary proceeding

Page 137

by the debtors against Whinstone US, Inc. and Riot Platforms, Inc.
(Cohn Exhibit Number 7 was marked for identification.)
BY MR. SCHMELTZ
Q Do you recognize this document, sir?
A Yes, I do.
Q And why do you recognize this document, sir?
A Well, I looked at it a few days ago when I was deposing Chase Blackmon.
Q I understand that, but you were involved in drafting this document; isn't that right, sir?
A That is correct.
Q And this complaint that -- and your -- let me start that question again.
You have -- your signature block appears on this complaint, right, your firm's signature block?
A I can check.
Q It's at page 33.

Page 138

A That is correct.
Q And so, while you were not a signatory on this complaint, you reviewed it and commented on it before it was filed, right?
A That is correct.
Q At paragraph 12 of the complaint that was filed, Cohn Exhibit 7, it provides that "The total damages caused by Riot and Whinstone's unlawful actions exceed $300 million," right?
A "Not including pre- and post-judgment interest, exemplary damages, and attorneys' fees." That is what it says.
Q You have said several times that the Special Committee prohibited your team from filing claims about Winter Storm Uri, correct?
A It prohibited us from making the fraudulent inducement claim, which was the only way to actually recover those energy credits, and as we made clear in numerous e-mails and phone calls during that very contentious period, it is one thing to seek damages for energy credits. It's quite different to actually collect or

Page 139

recover them, and for that you have to have a viable claim.
Here you had to have a viable theory for overcoming the release that the executives had signed, and the only way to overcome that release was to plead and prove fraud.
Q All right. At paragraph 10 of the complaint at Cohn Exhibit 7, it provides, "Moreover, Whinstone's malicious conduct was not limited to willfully breaching agreements and taking Rhodium's power. In 2021, Whinstone flat-out lied to Rhodium in an effort to underpay energy credits."
Have I read that correctly so far?
A You have read it correctly.
Q "During Winter Storm Uri," that paragraph goes on to say, "Whinstone turned off Rhodium's power and sold it back to the grid, grabbing a massive windfall."
Have I read that correctly?
A You have.
Q And then it says, "Under the parties'

Page 140

contracts, a significant portion of those profits belonged to Rhodium," right?
A It does say that.
Q And then it says, "Well aware of this fact, Chad Harris -- a co-founder of Whinstone and Whinstone's former CEO -- lied to Rhodium and claimed that Whinstone had received no energy credits. To this day, Whinstone and Riot have not paid those -- or any -- energy credits."
I've read that correctly, haven't I?
A You did indeed.
Q Let's take a look at paragraph 37. Paragraph 37 provides, "Having failed to amend the contracts, Riot and Whinstone began an unlawful campaign to punish Rhodium and put it out of business. Their tactics have included, colon," and then it has an (a) through (f) list, right?
A I'm with you.
Q And (a) in the (a) through (f) list, is "Refusing to pay -- and lying about -- the energy credits owed to Rhodium," correct?

Page 141

A That is correct.
Q And then let's take a look at paragraphs 39 to 42. And this is under the heading III, "Whinstone and Mr. Harris misrepresent and fail to pay tens of millions of dollars of credits owed to Rhodium," correct?
A That is correct.
Q Paragraph 39, "Whinstone and its former CEO, Mr. Harris, have also misrepresented basic facts to Rhodium about energy credits," right?
A That is correct.
Q Paragraph 40, "Shortly before Riot completed its purchase of Whinstone, Winter Storm Uri struck. Whinstone curtailed power at the Rockdale facility for nearly two weeks, which prevented Rhodium from mining Bitcoin. Whinstone instead sold the power back to the energy grid, reaping over $125 million," right?
A Are you asking if you read it correctly? You did.
Q And then, in paragraphs 41 and 42, there are allegations about misrepresentations

Page 142

Mr. Harris made to Rhodium about whether or not Whinstone had obtained money or credits for that power, right?
A I'd have to read them, but the paragraphs probably do speak for themselves.
Q And, in fact, paragraph 42 says, "Mr. Harris's representation that Whinstone received no energy credits from TXU was a baldfaced lie," right?
A That is what it says.
Q And it goes on to say, "In fact, on April 7, 2021 -- a month before telling Rhodium otherwise -- Whinstone agreed to accept from TXU $125.1 million in energy credits due to Winter Storm Uri," right?
A Are you asking if that's what it says?
Q Yes, sir.
A Yeah. It says that.
Q And then it ends with the sentence, "Nonetheless, Whinstone and Riot still have not paid Rhodium any energy credits," correct?
A It says that, too.

Page 143

Q And in this complaint, you seek on behalf of Rhodium return of all unpaid energy credits, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I'm not sure I see the word "all" in there. We do seek tens of millions of dollars in energy credits, but as we've discussed numerous times, both contemporaneously and more recently, in numerous e-mails --
MR. SCHMELTZ: I don't need you to repeat your prior answer.
THE WITNESS: I'm --
MR. DISHER: He's trying to answer your question, Trace.
MR. SCHMELTZ: So I will go to the spot in the complaint where this exists, and we --
MR. DISHER: And if you --
MR. SCHMELTZ: -- can talk about --
MR. DISHER: -- need to finish your answer, please do.
MR. SCHMELTZ: No, I'm good.

Page 144

THE WITNESS: But you're not. You asked --
MR. SCHMELTZ: Listen --
THE WITNESS: -- a question and I'm going --
MR. SCHMELTZ: Mr. Disher --
THE WITNESS: -- to answer --
MR. DISHER: He's just trying to answer your question.
MR. SCHMELTZ: Mr. Disher, you can get it from him --
MR. DISHER: No, he's --
MR. SCHMELTZ: -- later. I'm good.
MR. DISHER: All I am telling you is that he is answering your question --
MR. SCHMELTZ: That's fine. I'm good.
MR. DISHER: -- and you're refusing to let him finish answering your question.
MR. SCHMELTZ: That's fine. You can bring it out from him later. That's totally fine.
THE WITNESS: So to complete my

Page 145

answer --
MR. SCHMELTZ: No, I'm good.
THE WITNESS: -- there's a big difference --
MR. SCHMELTZ: I'm good, sir.
THE WITNESS: -- between seeking --
MR. SCHMELTZ: I'm good.
THE WITNESS: -- energy credits --
MR. SCHMELTZ: Sir --
THE WITNESS: -- and recovering --
MR. SCHMELTZ: We're moving on.
THE WITNESS: -- energy credits.
MR. SCHMELTZ: If you would --
THE WITNESS: We seek tens of millions of dollars of energy credits, but as we explained in numerous e-mails and phone calls to the Special Committee and the debtors, we would not have any chance of recovering the energy credits for Uri unless we plead and proved fraud.
That's on numerous PowerPoint presentations. It's many e-mails, many phone calls. I was asked directly what the odds of

Page 146

recovering if we don't plead and prove fraud, and I said the odds likely go to zero. This was the collective judgment of the litigation team that the odds of recovering the energy credits likely go to zero if we can't plead and prove fraud, and we were never allowed to plead and prove fraud.

MR. SCHMELTZ: Let's put Cohn Exhibit 8 into the record, please.

(Cohn Exhibit Number 8 was marked for identification.)

And while we're getting it into the record, I'll just introduce it. It is a document bearing the Bates number Special Committee LKC 37 through 38. It has a redlined complaint attached to it that is LKC -- Special Committee LKC 39 through 72, and this will be marked as Cohn Exhibit 8.

Do you want to mark the e-mail, Kevin, as 8 and the attachment as 9?

MR. WARREN: We do.

(Cohn Exhibit Number 9 was marked for identification.)

Page 147

BY MR. SCHMELTZ

Q Okay. Cohn 8 is the e-mail. Cohn 9 is the redlined complaint.

And this e-mail is a 7th of February 2025 e-mail from you to a host of people, including Chuck Topping, the general counsel of Rhodium, Morgan Soule, the assistant general counsel of Rhodium, Chase Blackmon, the chairman of the board of Rhodium, Cameron Blackmon, who's both an officer and a director of Rhodium, Patty Tomasco, debtors counsel for Rhodium, and Kevin Hays, the CFO for Rhodium, right? Those are the cc's.

A Oh, I was not tracking every cc you mentioned, but I assume that you read them correctly.

Q And this is your e-mail on 7 February attaching the revised version of the complaint, right?

A A revised version, I believe. There were several.

Q And what you say here -- and this is

Page 148

apropos of the question that I asked a moment ago that you answered at length. It says, "Dear All: The Independent Directors requested that the complaint not plead the Uri fraud claims."

Have I read that correctly?

A Yes.

Q Now, you're a lawyer, right?

A Yes.

Q You've been practicing law for 27, almost 28 years, right?

A Sounds about right.

Q Graduated from Harvard Law in 1997, right?

A That is correct.

Q And as a lawyer, you choose your words carefully, right?

A Sometimes.

Q You've shown today that you spoke with precision, and you expect the people around you to speak with precision, right?

A I'm not sure we always expect that from people. I hope they speak with precision, but,

Page 149

you know, it depends. If you're on the record under oath, I think it's very important that you try your best to speak with precision and accuracy. I would agree with that.

Q You try your best to speak with precision at all times with your clients, don't you?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I don't -- I don't know. I'm not sure if that's right. You know, I think when you speak with your clients, you speak with the context of the other e-mails and phone calls that you've had with them, and they generally know what you're talking about.

When you need to be precise, you're more precise, but when it's clear to everyone what the issues are and what the background is and what the context is and the circumstances are, then you can rely upon that background, understanding and the context and not microspect (ph) every single word that you might send in an

Page 150

e-mail.
BY MR. SCHMELTZ
Q I mean, you're so precise with your clients that your clients refer to you as a law god; isn't that right?
MR. DISHER: Objection. Foundation.
THE WITNESS: Clients have referred to me as that. I don't know if that depends upon the precision I've used in e-mails or other context, but, yes, a couple of clients have used that accolade.
BY MR. SCHMELTZ
Q How many clients call you a law god?
A At least two.
Q And they're not immediate family members?
A No, Trace, they're not immediate family members.
Q That's good. That's good.
So, here, you, as a 27-year practicing lawyer, say, "The Independent Directors requested that the complaint not plead the Uri fraud

Page 151

claims," right?
A That is correct.
Q You don't say that the independent directors requested that we never bring the Uri fraud claims, do you?
A No, and quite the contrary. I say --
Q You don't say --
A -- we can --
Q That's a yes or no question. You've --
A Well, I --
Q -- answered it.
A I need to --
Q No, no. I don't -- Mr. Disher will get an explanation from you.
A What I say is that --
MR. DISHER: He's simply trying to answer --
MR. SCHMELTZ: No, no.
MR. DISHER: -- your question.
MR. SCHMELTZ: It's a yes or no question, and we have --
THE WITNESS: It's not a yes --

Page 152

MR. SCHMELTZ: -- a no.
THE WITNESS: -- or no question.
MR. DISHER: It's not --
MR. SCHMELTZ: It is.
MR. DISHER: No, if --
MR. SCHMELTZ: Mr. Disher --
MR. DISHER: It is not --
MR. SCHMELTZ: -- you --
MR. DISHER: -- a yes or no question.
MR. SCHMELTZ: -- on redirect can get more out of him.
MR. DISHER: And he is allowed to give a fulsome --
MR. SCHMELTZ: No, he's not.
MR. DISHER: -- answer.
MR. SCHMELTZ: No, he's not.
MR. DISHER: He's not allowed a fulsome --
MR. SCHMELTZ: It's a yes --
MR. DISHER: -- answer --
MR. SCHMELTZ: -- or no --
MR. DISHER: -- to the question?

Page 153

MR. SCHMELTZ: It's a yes or no question. I got a no.
MR. DISHER: He can't answer --
THE WITNESS: It wasn't a yes or --
MR. DISHER: -- yes or no --
THE WITNESS: -- no question.
BY MR. SCHMELTZ
Q It doesn't say -- it doesn't say the independent directors have prohibited us from bringing a Uri fraud claim for all time, does it? Yes or no?
A Well, it's not a yes or no question.
Q Can you answer it yes or no?
A If I wanted to be misleading, I guess I could, but that would not be a fulsome answer. It would not be --
Q The sentence does not say, the independent directors have prohibited us from bringing the Uri fraud claims, does it?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: This particular

Page 154

sentence --
MR. SCHMELTZ: It's a yes or no question, sir.
THE WITNESS: -- in this particular e-mail --
BY MR. SCHMELTZ
Q Does it say that or not?
A This particular sentence in this particular e-mail --
Q It's a yes or no question, sir.
MR. DISHER: He's simply --
BY MR. SCHMELTZ
Q Does it say that or not?
MR. DISHER: He is trying to answer your --
BY MR. SCHMELTZ
Q Yes --
MR. DISHER: -- question.
BY MR. SCHMELTZ
Q -- or no?
A When you say "this" --
Q The sentence in the e-mail at Bates 37,

Page 155

"The Independent Directors requested that the complaint not plead the Uri fraud claims," does not say that the independent directors prohibited us from ever bringing the Uri fraud claims, does it, sir?
A That particular sentence --
Q Yes or no?
A -- on that particular --
Q Yes or no, sir?
MR. DISHER: Keep going, Jon. You can answer his question.
BY MR. SCHMELTZ
Q Yes or no, sir?
A That particular --
Q Yes or no, sir?
A That --
Q Yes or no, sir?
A That --
Q Yes or no, sir?
MR. DISHER: He is just trying to answer your question.
MR. SCHMELTZ: No, he's not.

Page 156

MR. DISHER: Yes, he is.
BY MR. SCHMELTZ
Q Yes or no, sir?
A You're not letting me --
Q Yes or no, sir? Yes or no, sir?
A Trace, I'm --
Q Yes or no, sir?
MR. DISHER: He can't answer yes or no to that.
MR. SCHMELTZ: Yes, he can.
BY MR. SCHMELTZ
Q Yes or no, sir?
MR. SCHMELTZ: Please mark the time at 11:48.
MR. DISHER: Can I just make clear for the record, Jon, are you --
MR. SCHMELTZ: No.
MR. DISHER: -- refusing to answer that question?
MR. SCHMELTZ: You're speaking.
THE WITNESS: I am not refusing to answer the question.

Page 157

BY MR. SCHMELTZ
Q Yes or no, sir?
A I'm trying --
Q Yes or no, sir?
A Let the record show --
Q Yes or no, sir?
MR. DISHER: He is trying to answer your question.
BY MR. SCHMELTZ
Q Yes or no, sir?
MR. DISHER: He is not going to give misleading --
MR. SCHMELTZ: Disher --
MR. DISHER: -- testimony.
MR. SCHMELTZ: You've got to stop talking.
MR. DISHER: I'm telling you that he is not going to give misleading testimony --
BY MR. SCHMELTZ
Q Yes or no, sir?
MR. DISHER: -- and I'm not going to instruct him to answer in way that's misleading.

Page 158

BY MR. SCHMELTZ
Q Yes or no, sir? Let the record reflect it's now 11:49 a.m.
Yes or no, sir?
A Trace, I have --
Q Yes or no, sir?
MR. SCHMELTZ: Let the record reflect it's 11:50 a.m.
MR. DISHER: Can you read back the question, please?
(Whereupon, the reporter read the record as requested.)
THE WITNESS: And that sentence is not --
BY MR. SCHMELTZ
Q Yes or no, sir?
A That sentence --
Q Yes or no, sir?
MR. DISHER: Jon, please answer the question to the best of your ability.
THE WITNESS: To the best of --

Page 159

BY MR. SCHMELTZ
Q Yes or no, sir?
MR. DISHER: Are you not letting him answer your question?
MR. SCHMELTZ: It's a yes or no question. If we were in a court --
MR. DISHER: He can't answer it yes --
MR. SCHMELTZ: -- I guarantee --
MR. DISHER: -- or no.
MR. SCHMELTZ: -- you the judge would say, answer yes or no, sir.
THE WITNESS: I'm sure you would be --
BY MR. SCHMELTZ
Q Yes or no, sir?
Let the record reflect it's 11:51 a.m.
MR. DISHER: He is trying to answer your question, and you are --
BY MR. SCHMELTZ
Q Yes or no, sir?
MR. DISHER: -- preventing him from doing so.
MR. SCHMELTZ: No. It's a yes or no

Page 160

question. I want a yes or a no.
MR. DISHER: He's not going to give untruthful testimony.
MR. SCHMELTZ: I want a yes or a no, Mr. Disher. Please stop talking on the record.
BY MR. SCHMELTZ
Q You seem upset. Are you doing okay, sir?
A I'm not upset at all.
Q You just sighed heavily, so I just want to make sure you're doing okay.
MR. DISHER: He did not sigh heavily.
MR. SCHMELTZ: He actually did.
MR. DISHER: You are making that up.
MR. SCHMELTZ: No, I'm not.
BY MR. SCHMELTZ
Q Yes or no, sir?
A Do you want to go off the record, Trace?
Q No.
A Okay.
Q Let the record reflect it's 11:52 a.m.

Page 161

Yes or no, sir?
A I assure you, if you let --
Q Sir, yes --
A -- me answer --
Q -- or no?
A -- the question --
Q Yes or no, sir?
A -- you would not be unhappy.
Q Yes or no, sir?
A What I will say --
Q I don't --
A -- if you keep on --
Q Yes or no, sir?
A -- interrupting me --
Q No. Yes or no, sir?
A -- is that that particular --
Q I want a yes or --
A -- sentence --
Q No, sir. I want a yes or a no answer.
A I know what you want.
Q I don't want any other answer.
A Okay.

Page 162

Q It's a yes or a no.
A That --
Q No. Yes or no, sir?
A It's not appropriate --
Q Yes or no, sir?
A -- for you to keep on --
Q No.
A -- interrupting me.
Q It is 100 percent appropriate, sir.
A That particular --
Q Yeah. No.
A -- sentence --
Q Yes or no, sir?
A -- which you read --
Q No.
A -- speaks for itself.
Q Yes or no, sir?
A It says --
(Reporter clarification.)
MR. DISHER: Right. And he is just simply trying to answer the question that's asked --

Page 163

MR. SCHMELTZ: Jon --
MR. DISHER: -- so please stop --
MR. SCHMELTZ: I mean, Mr. Disher --
MR. DISHER: -- interrupting him.
MR. SCHMELTZ: -- stop talking on my record.
BY MR. SCHMELTZ
Q I want a yes or no answer, and we'll sit and wait until you can answer the question yes or no.
A That particular sentence --
Q Sir, yes --
A -- speaks for itself --
Q -- or no?
A -- and does not use the word "never." And I hope that answers your question, but I wanted to contextualize it that that particular sentence which you're asking about and that sentence clearly speaks for itself, but there are other sentences in this e-mail and other e-mails and other phone calls.
Q So is that a no?

Page 164

A Can you repeat the question?
MR. DISHER: Hold on. Objection. Asked and --
BY MR. SCHMELTZ
Q The sentence --
MR. DISHER: -- answered. Objection. Asked and answered.
BY MR. SCHMELTZ
Q -- "The Independent Directors requested that the complaint not plead the Uri fraud claims" doesn't say the independent directors prohibited us from ever bringing the Uri fraud claims, does it, sir?
MR. DISHER: Objection. Asked and answered. Foundation.
BY MR. SCHMELTZ
Q Yes or no?
MR. DISHER: The document speaks for itself.
BY MR. SCHMELTZ
Q It's a yes or no.
A To be clear, you're asking about that

Page 165

particular --
Q I want a yes or a no question.
A I want to clarify this. Are you saying --
Q The sentence. That --
A That sentence?
Q Yes or no?
A I've been trying to say for the past --
Q Yes or no?
(Reporter clarification.)
MR. SCHMELTZ: Understood. Understood.
BY MR. SCHMELTZ
Q Mr. Cohn, if you can't answer yes or no --
A I've been trying to tell you --
Q -- I'm going to sit and wait --
A -- for the past --
Q -- for a yes or no.
A -- ten minutes.
Q All right. I'm going to ask my question one more time. The sentence, "The Independent Directors requested that the

Page 166

complaint not plead the Uri fraud claims" does not say the independent directors prohibited us from ever pleading the Uri fraud claims, does it, sir?

MR. DISHER: Objection. Asked and answered.

BY MR. SCHMELTZ

Q Yes or no?

MR. DISHER: Document speaks for itself.

BY MR. SCHMELTZ

Q Yes or no?

MR. DISHER: Same objections.

THE WITNESS: As particularly phrased --

BY MR. SCHMELTZ

Q Yes or no, sir?

A Trace, this --

Q Yes or no, sir?

A -- could be a lot -- if I may speak --

Q Yes or no, sir? Mr. Disher can get your further answer later.

Page 167

Yes or no, sir?

A With the objections on the table --

Q Yes or no, sir?

A -- and with the clarification I sought --

Q Yes or no, sir?

A -- that particular sentence says what it says. It doesn't use the word "never." So if you want to phrase the question --

Q I want a yes or no answer to my question, sir.

A Well, I was trying to seek a clarification to make sure I was answering it correctly. You refused to give one.

As I understand the question, focused on that sentence without any clarification, but focused on that sentence, the answer would be no. And I was just simply trying to get clarification.

Q Let the record reflect that it's 11:55 a.m.

That e-mail then says, "We still seek

Page 168

the same amount of energy credits."

Isn't that right? That's what the e-mail says?

A The e-mail says that.

Q So when I asked you earlier if the complaint we were looking at in Cohn Exhibit --

MR. WARREN: Seven.

BY MR. SCHMELTZ

Q -- 7 sought the same amount of energy credits, that's, in fact, what it does, right? It seeks the full amount of energy credits, Winter Storm Uri plus non-winter Storm Uri, right?

MR. DISHER: Objection. Vague. Foundation. Misstates testimony. Document speaks for itself.

THE WITNESS: You're building a lot of things into that, too.

BY MR. SCHMELTZ

Q All right. Let me break it down. The complaint you filed at Exhibit 7 seeks recovery of all energy credits related to Winter Storm Uri

Page 169

and otherwise, doesn't it?

MR. DISHER: Objection. Vague. Document speaks for itself. Foundation. Asked and answered.

THE WITNESS: Yeah, Trace, look --

BY MR. SCHMELTZ

Q It's a yes or no question. You've said in this e-mail that "we still seek the same amount of energy credits." That refers to energy credits relating to Winter Storm Uri and not relating to Winter Storm Uri, doesn't it?

MR. DISHER: Objection. Vague.

THE WITNESS: We don't break it down. We seek the same amount of energy credits as we sought before, but as you made abundantly clear to everyone both before and after this, there's a difference between seeking energy credits or damages and actually recovering --

MR. SCHMELTZ: I'm not asking --

THE WITNESS: -- energy --

MR. SCHMELTZ: -- sir --

THE WITNESS: -- credit --

Page 170

MR. SCHMELTZ: I'm not asking --
MR. DISHER: Let him finish his answer.
MR. SCHMELTZ: -- for an explanation.
MR. DISHER: Yes. He --
MR. SCHMELTZ: By --
MR. DISHER: You asked him a question.
MR. SCHMELTZ: No.
MR. DISHER: He gets to answer --
MR. SCHMELTZ: Here's --
MR. DISHER: -- the question.
MR. SCHMELTZ: -- my question. It's not answering my question. Okay?
BY MR. SCHMELTZ
Q By "we still seek the same amount of energy credits," you mean we are seeking energy credits related to Winter Storm Uri and energy credits not related to Winter Storm Uri, right?
MR. DISHER: Objection. Vague.
MR. SCHMELTZ: It's a yes or no.
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
MR. SCHMELTZ: It's a yes or no.

Page 171

MR. DISHER: Same objections.
THE WITNESS: Trace, I've tried to explain --
BY MR. SCHMELTZ
Q That's what you meant. You meant Winter Storm Uri credits and non-winter Storm Uri credits, correct?
MR. DISHER: Object -- hold on. Objection. Vague. Foundation. Asked and answered.
THE WITNESS: Trace, I could give you more help --
MR. SCHMELTZ: It's a yes or no question, sir.
THE WITNESS: I'm trying to help you --
MR. DISHER: It's not a yes or no question.
MR. SCHMELTZ: It is. It is a yes or no question.
THE WITNESS: There's so many things pounded into it. I can give --
MR. SCHMELTZ: No. I'm asking --

Page 172

THE WITNESS: If you'd let me complete a sentence --
MR. SCHMELTZ: By the --
THE WITNESS: -- I can give you testimony --
MR. SCHMELTZ: By the --
THE WITNESS: -- that you can --
MR. SCHMELTZ: No.
THE WITNESS: -- then use and move on. I'm really trying to be helpful here, Trace.
BY MR. SCHMELTZ
Q By the -- by the -- if you were trying to be helpful, you would answer a yes or no question with a yes or no. Your counsel can pull out of you later whatever you want to add.
By the same amount --
MR. DISHER: He can't answer yes or no if the answer --
MR. SCHMELTZ: I'm asking --
MR. DISHER: -- is not yes or no.
MR. SCHMELTZ: Mr. Disher, you continue to speak on my record.

Page 173

MR. DISHER: You are not letting the witness --
MR. SCHMELTZ: You get --
MR. DISHER: -- answer --
MR. SCHMELTZ: -- to object --
MR. DISHER: -- the question.
MR. SCHMELTZ: -- or not.
MR. DISHER: I also get to object to your questioning --
MR. SCHMELTZ: This is not --
MR. DISHER: -- where you do not get -- where you do not let him answer his question.
MR. SCHMELTZ: It's my record. It's the same thing you did to my witnesses, my man.
MR. DISHER: And you --
MR. SCHMELTZ: Sauce goose, sauce gander. Thank you.
BY MR. SCHMELTZ
Q "We still seek the same amount of energy credits" refers to Winter Storm Uri credits and non-winter Storm Uri credits, right?
MR. DISHER: And just to let the record

Page 174

reflect --
BY MR. SCHMELTZ
Q Right?
MR. DISHER: -- I did allow your witness --
MR. SCHMELTZ: You're still talking.
MR. DISHER: -- to answer --
MR. SCHMELTZ: You're still talking. You're still --
MR. DISHER: -- the question.
MR. SCHMELTZ: -- talking on my record.
MR. DISHER: Mr. Cohn, go ahead.
BY MR. SCHMELTZ
Q Right? It's a yes or no question.
A I'm sort of lost and confused at this point --
Q The phrase --
A -- Trace.
Q -- "We still seek the same amount of energy credits" in Cohn Exhibit 8 refers to Winter Storm Uri credits and non-winter Storm Uri credits, right?

Page 175

MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: You're not phrasing it right, but I assure you I can give you testimony that will allow you to move on.
MR. SCHMELTZ: It's a yes or no question.
MR. DISHER: Same objections.
THE WITNESS: In the complaint --
BY MR. SCHMELTZ
Q It's a yes or no question.
A Look --
Q It's a yes or no question, sir.
MR. DISHER: Can you read the question again, please?
(Whereupon, the reporter read the record as requested.)
MR. DISHER: Objection. Vague. Document speaks for itself. Foundation. Asked and answered.
BY MR. SCHMELTZ
Q Yes or no question, sir.

Page 176

A I think I take issue with the word "referring." I --
Q It's a yes or no question, sir.
A I can go with --
Q It's a yes or no question, sir.
Let the record reflect we've been at this since 11:58, and it's 12:01 now.
MR. DISHER: Can you read the question one more time, please?
(Whereupon, the reporter read the record as requested.)
MR. DISHER: I will continue to object. That question is vague. It misstates the document. The document speaks for itself, and it lacks foundation.
THE WITNESS: I just want to say the way you're --
BY MR. SCHMELTZ
Q It's a yes or no question.
A The way -- the way --
Q It's a yes --
A -- you're asking --

Page 177

Q No, sir. It's a yes or no question. I'm not here to get schooled on how to ask questions.
A I'm not trying --
Q It's a yes or no question.
A -- to school you on how to ask questions.
Q Answer yes or no, sir.
A I'm trying to say that the way you're asking --
Q No. Sir --
A -- the question, it is imprecise.
Q It's a yes or no question.
A It refers to the amount of energy credits that we sought in the complaint, the tens of millions of dollars.
If you're asking me if those tens of millions of dollars which we were seeking include energy credits for Winter Storm Uri, the answer to that question is yes. We were seeking an amount of energy credits that would include the energy credits for Winter Storm Uri.

Page 178

Q The sentence here in this e-mail then goes on to say, "this draft still says Chad lied. We just don't call it fraud."
Correct?
A You read it correctly.
Q It then says, "We can amend at later date if we want to add back the fraud claim. Patty can give more context."
Have I read that right?
A You read it correctly.
Q It doesn't say, at this point, I believe the Special Committee will prohibit us from amending at a later date, does it?
A It being that paragraph?
Q It being that sentence that I've just read.
A "Patty can give more context"?
Q No, the "We can amend at a later date."
MR. DISHER: Hold on. Now I'm confused. Objection. Vague.
BY MR. SCHMELTZ
Q The sentence says, "We can amend at a

Page 179

later date if we want to add back the fraud claim," correct?
A That's what it says.
Q It doesn't say, I believe the Special Committee will prohibit us from adding back the fraud claim, does it?
A That is correct.
Q And, in fact, you know that the Special Committee greenlighted amending the complaint if the case didn't settle to add the Winter Storm Uri fraudulent inducement claim, don't you?
MR. DISHER: Objection. Vague.
THE WITNESS: That is false.
MR. DISHER: Foundation.
THE WITNESS: That's --
MR. DISHER: Go ahead.
THE WITNESS: That's actually false. It's --
MR. SCHMELTZ: You --
THE WITNESS: -- completely false.
BY MR. SCHMELTZ
Q You also -- you also know that in a

Page 180

conversation that you and I had, my suggestion was that you not file the complaint, but that you amend it to include the fraudulent inducement claim and you produce it to the other side during the mediation, but simply not file it, right?
MR. DISHER: Hold on. Objection. Vague. Foundation.
THE WITNESS: And it's also completely false. You did not want us to file the complaint at all. There was never any --
MR. SCHMELTZ: That's not --
THE WITNESS: -- authorization --
MR. SCHMELTZ: -- not --
THE WITNESS: -- to include --
MR. SCHMELTZ: That's not what I'm talking about.
MR. DISHER: He's answering your question.
MR. SCHMELTZ: I'm not talking about filing it.
MR. DISHER: Yes.
MR. SCHMELTZ: No.

Page 181

MR. DISHER: He is answering --
MR. SCHMELTZ: That's actually not an answer to my question.
MR. DISHER: He is answering --
BY MR. SCHMELTZ
Q My question was --
MR. DISHER: -- your question.
BY MR. SCHMELTZ
Q -- you know that what I suggested was that you amend the complaint to include the fraudulent inducement claim, but not file it, and instead provide it to Riot Whinstone prior to the mediation, right?
MR. DISHER: Objection.
THE WITNESS: That's false.
MR. DISHER: Vague. Hold on. Objection. Vague. Foundation.
THE WITNESS: That's also completely false.
BY MR. SCHMELTZ
Q Okay. You understood that the Special Committee's concern around Winter Storm Uri was

Page 182

that by pleading a claim of fraudulent inducement before the Special Committee issued its report, you would give the impression that the Special Committee's report was being influenced by the debtors' counsel, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: And that's actually false. That does not capture the many e-mails and conversations that we had with the Special Committee.
And the documents are very clear. The Special Committee did not allow us to amend the complaint. It did not allow us to plead and prove fraud.
And until recently, we didn't have the complete story. We might still not have the complete story because you have not produced all the D&O documents, but there's a letter from you dated April 19th, 2025, to the lawyers for the executives in which you completely undercut any possibility for anyone ever making a fraud claim,

Page 183

because you take the position that the founders, that the executives, were unreasonable, that they were not justified --
MR. SCHMELTZ: By April --
THE WITNESS: -- and you argue --
MR. SCHMELTZ: By April 19th --
MR. DISHER: Keep going, Jon.
BY MR. SCHMELTZ
Q By April 19th, the Riot Whinstone matter had been settled, and that settlement had been approved by the Court; isn't that right?
A I had not finished my answer.
Q By April 19th, the Riot Whinstone matter had settled, right?
A I had not finished my answer.
MR. DISHER: Finish your answer.
MR. SCHMELTZ: I don't care.
MR. DISHER: Finish your answer.
MR. SCHMELTZ: It's not an answer to my question.
THE WITNESS: That was most certainly --

Page 184

(Inaudible crosstalk.)
MR. SCHMELTZ: It certainly is not.
THE WITNESS: -- an answer to your question.
MR. SCHMELTZ: It is not.
(Inaudible crosstalk.)
MR. DISHER: -- answering your question.
BY MR. SCHMELTZ
Q You had a conversation -- you had multiple conversations with David Eaton about whether or not to plead fraudulent inducement, right?
A With him and others.
Q You had conversations with me about that topic, right?
A I had one conversation with you.
Q You talked to Chuck Topping about that --
MR. DISHER: Objection.
MR. SCHMELTZ: -- about that --
MR. DISHER: Foundation.

Page 185

MR. SCHMELTZ: Can I finish?
MR. DISHER: I thought you were done.
BY MR. SCHMELTZ
Q You talked to Chuck Topping about the question of whether or not to plead fraudulent inducement, right?
MR. DISHER: Objection. Foundation. Vague.
THE WITNESS: I had multiple conversations and e-mails with Chuck Topping about whether to include fraudulent inducement. That is correct.
BY MR. SCHMELTZ
Q You talked to Patty Tomasco about whether to plead fraudulent inducement, correct?
A Not individually, I don't think. She was on a couple of the calls that we had to address the issue. I don't believe I ever spoke with her one on one.
Q And you understood that one approach would be to amend the complaint to include a fraudulent inducement claim, but not file it,

Page 186

right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No, no one suggested that possibility, and I really wanted to amend the complaint. And, of course, drafting a complaint -- we had a prior draft. I think that was the draft that predates this one.
MR. SCHMELTZ: I think you answered my --
MR. DISHER: No, he didn't --
MR. SCHMELTZ: -- question --
MR. DISHER: -- answer the rest --
MR. SCHMELTZ: -- when you got to no.
MR. DISHER: No.
MR. SCHMELTZ: I think the answer was no.
MR. DISHER: No, he's -- he is answering --
MR. SCHMELTZ: Hold on.
MR. DISHER: -- your question.
MR. SCHMELTZ: Erick, would you read my

Page 187

question and the start of his answer? Because, Mr. Disher, he answered the question.
(Whereupon, the reporter read the record as requested.)
MR. SCHMELTZ: All right. That's the answer to my question. That's all we need. We can move on from there.
THE WITNESS: I believe in having --
MR. SCHMELTZ: I think --
THE WITNESS: -- a complete record --
MR. SCHMELTZ: No, that's --
THE WITNESS: -- for the Court. No. And I have to --
MR. SCHMELTZ: I don't --
THE WITNESS: -- explain this to you.
MR. SCHMELTZ: And Mr. Disher can seek your explanation later. He's super competent. That's what he does. That's why you have a lawyer. I don't need you to keep going. I have limited time. He'll do that for us. Thank you.
MR. DISHER: Trace, I don't appreciate --

Page 188

MR. SCHMELTZ: Let's take a break.
THE WITNESS: -- the attitude or --
MR. SCHMELTZ: Let's go off the record.
THE WITNESS: -- tone. I haven't finished my answer.
MR. SCHMELTZ: No, you have. Let's go off the record, please.
VIDEO TECHNICIAN: The time is 12:08 p.m. This ends Unit 3. We're off the record.
(Whereupon, at 12:08 p.m., a luncheon recess was taken.)

Page 189

AFTERNOON SESSION
(12:59 p.m.)
VIDEO TECHNICIAN: The time is 12:59 p.m. This begins Unit No. 4. We're on the record.
WHEREUPON,
JONATHAN COHN
was called for continued examination, and having been previously duly sworn, was examined and testified further as follows:
EXAMINATION BY COUNSEL FOR THE SPECIAL COMMITTEE CONTINUED
BY MR. SCHMELTZ
Q I just want to return to Cohn Exhibit 8, and I'd ask you to turn to Special Committee LKC 38, and that's a February 2, 2025 e-mail from you to Chase Blackmon and others.
Do you see that e-mail at the bottom of the page on 38, sir?
A The one from 2:29 p.m.?
Q Correct.
A Yes, I do.

Page 190

Q The second paragraph begins, "in comment bubbles."
Do you see that?
A Yes, I do.
Q It says, "we flagged a few issues for your consideration," right?
A That is correct.
Q And then it says, "In addition, I want to raise the question of Building D," correct?
A That is correct.
Q You ask, "Did we have a contractually binding commitment to space and power in Building D," right?
A Correct.
Q And you say, "If so, we should add that to the complaint. If not the relevance of Building D is less clear to me." Right?
A Correct.
Q You ultimately added a Building D count to the complaint that was filed, the one that we looked at in Cohn Exhibit 7, right?
A That is correct.

Page 191

Q Did you ever look at the contract for Building D before authorizing filing that complaint?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Me personally, I'm pretty sure I did. We certainly had lawyers from both teams looking at it, but I believe I looked at it personally myself, too.
MR. SCHMELTZ: Okay. I'm going to have what's going to be marked as Cohn Exhibit 10, and that's because Cohn Exhibit 9, which we've not seen, is a redline of the complaint. We may or may not come back to it.
Cohn Exhibit 10 is an e-mail that bears Bates numbers Special Committee LKC 3477 through 3505, and it is a February 3, 2025 e-mail from Chuck Topping to you and others.
(Cohn Exhibit Number 10 was marked for identification.)
BY MR. SCHMELTZ
Q Do you see that e-mail?

Page 192

A No.
MR. DISHER: Yeah. Mine's not pulling up either.
MR. SCHMELTZ: Okay. We should have it there in a sec. You should.
CONCIERGE TECH: It's really slow right now. I apologize.
THE WITNESS: I see an Exhibit 9. I'm not yet seeing an Exhibit 10.
MR. SCHMELTZ: And it's this one, right?
MR. WARREN: Yeah.
MR. SCHMELTZ: Okay. And it's -- it should be posted now. Maybe if you refresh, it will --
THE WITNESS: Mine is still not showing any Exhibit 10.
MR. DISHER: Mine neither.
MR. SCHMELTZ: I tried a case in chancery court years ago, and Bernie Nussbaum was on the other side, and whenever one of his exhibits wouldn't come up fast enough, he would

Page 193

just start freaking out on the poor person in the hot seat. It was just -- it's just been my constant reminder that, like, sometimes exhibits don't come up timely and it is what it is. Don't be Bernie Nussbaum.
CONCIERGE TECH: Yeah, it's really slow right now, but it's coming up shortly.
All right. It should be there.
MR. SCHMELTZ: Super.
BY MR. SCHMELTZ
Q So do you see Chuck's February 3 e-mail to you in which he says, "Regarding Building D, attached please find the fully executed Building D contract"?
A I do.
Q And that contract starts at the page bearing Bates number 3479 where it says "Hosting Agreement."
Do you see that?
A I do.
Q And as Chuck has explained, this is the contract. And if you would -- do you remember

Page 194

looking at this at the time? Feel free to flip through.
A I'm sure I did --
Q Okay.
A -- looking at this e-mail chain. And I can't say I specifically recall the moment when I was looking at it, but I know I did look at the Building D contract.
Q Okay. Let me ask you a question. The $164.5 million that Mr. Popescu put together on a sort of net present value of a ten-year savings on the contract, how would you characterize those as a lawyer?
MR. DISHER: Objection. Vague. Foundation.
MR. SCHMELTZ: His damages, how would you characterize those?
MR. DISHER: Same objections.
THE WITNESS: I'm sorry. You said those or the damages -- what should I characterize?

Page 195

BY MR. SCHMELTZ
Q The $164.5 million number that Mr. Popescu put together related to Building D, in terms of damages, how would you characterize that sum?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, so, in terms of damages, there are two relevant components, at least two. One would be the base amount that you think you can get if you win the claim, and the second would be the odds of prevailing on that claim.
As for the base amount, he calculated roughly $165 million.
BY MR. SCHMELTZ
Q Yeah, and I -- my question's imprecise, so I'm going to pause you, respectfully, because you're answering a perfect question, and mine was imperfect.
I want to know, would you consider the $165 million to be direct damages, indirect

Page 196

damages, exemplary damages, or some other kind of damages?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, I'm not sure if I'm understanding. It's definitely not exemplary damages.
So I will tell you, first of all, I don't know if 165 million is the right figure. That was the figure that Andrew gave me, and that's the figure that we relied on. We think it's a conservative estimate. But Michael Robinson told me later that Andrew came up with a different number of 195 million, and we've asked for that in our discovery. I don't believe we've gotten it.
So we'll look at the 165, but I do think it might be a conservative estimate.
BY MR. SCHMELTZ
Q Are they indirect damages? Are they incidental damages? Are they direct damages from your perspective as a lawyer?

Page 197

MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, I mean, I don't know quite how to answer that question, but I think they would be the direct damages of breaching the contract.
BY MR. SCHMELTZ
Q Okay. Take a look at Special Committee LKC 3494. Section 13 of the Building D contract has a provision titled "Exclusion and Limitation of Liability."
Do you see that?
MR. DISHER: What page did you say?
MR. SCHMELTZ: 3494.
THE WITNESS: Okay.
BY MR. SCHMELTZ
Q You see that heading that I'm referring to, 13, "Exclusion and Limitation of Liability," right?
A I do.
Q And take a look at 13.2. In all caps, 13.2, do you see it?

Page 198

A I do.
Q It says, "The total aggregate liability of provider (for any and all claims) for direct damages under or in connection with this agreement shall be limited to the total amount paid by customer to provider for the services in the six (6) months immediately preceding the event(s) that first gave rise to a claim. Provider shall not be deemed to be a bailee in respect of any customer equipment."
Have I read that correctly?
A I believe you have.
Q As of February 2, 2025, you know that Rhodium had actually paid zero dollars to Riot Whinstone in connection with this agreement, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, I'm not sure that is correct.
I also know that -- first of all, I think you're probably using the incorrect date

Page 199

for when the events first gave rise to the claim.
Second of all, there are, as I understand it from my Texas litigators, there's case law on when limitations of liability like this are enforceable or not enforceable.
BY MR. SCHMELTZ
Q Okay. You know that the Building D project never got off the ground, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: And I'm not sure what you mean by got off the ground. The parties proceeded -- they acted as if there was an agreement. Whinstone never delivered. But I do not know what you mean by off the ground.
BY MR. SCHMELTZ
Q Okay. You know Whinstone rescinded the contract before a building was built or equipment was put in, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: They sent an e-mail in

Page 200

which I think they meant to say rescinded, but Chad said resended. It was an anticipatory repudiation. I guess there's a question of when the damages would start to accrue.
MR. SCHMELTZ: Okay. And you know that no building --
MR. DISHER: Hold on. Let him finish. Jon, were you done?
BY MR. SCHMELTZ
Q No building had been built --
A I was not --
Q -- at the time he had sent that e-mail, right?
MR. DISHER: He was trying to finish your question.
BY MR. SCHMELTZ
Q No building had been built at the time Chad Harris sent that e-mail, right?
A If you tell me. I don't know one way or another.
Q Okay. And no equipment had been installed at the time Chad Harris sent that

Page 201

building [sic], right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: And, again, if you're telling me that, I have no reason to confirm or deny that testimony --
MR. SCHMELTZ: Okay.
THE WITNESS: -- at this mo- --
MR. SCHMELTZ: If Kevin --
THE WITNESS: -- -ment.
BY MR. SCHMELTZ
Q If Kevin Hays and Chuck Topping were to testify that Rhodium spent no money in exchange for services under the contract we're looking at here under Cohn Dep Exhibit No. 10, you would have no basis with which to -- from which to disagree with them, right?
MR. DISHER: Objection. Vague.
THE WITNESS: I don't know --
MR. DISHER: Foundation.
THE WITNESS: -- if that's true. I mean, you're asking me right now about a claim

Page 202

that neither you nor they have ever raised before. I would have to consult my colleagues and look at the factual record of this case and make an assessment about it.

But in any event, as I was saying before -- and we have reviewed --

MR. SCHMELTZ: So it's not in any event as you were saying before. My question is --

MR. DISHER: He's trying to answer --

MR. SCHMELTZ: -- specific --

MR. DISHER: -- your question.

MR. SCHMELTZ: He's not. He's --

MR. DISHER: Are you refusing --

MR. SCHMELTZ: -- going back to --

MR. DISHER: -- to let him answer?

MR. SCHMELTZ: He's actually going back --

MR. DISHER: No, he's --

MR. SCHMELTZ: -- to another --

MR. DISHER: -- trying to give you a fulsome --

MR. SCHMELTZ: -- question.

Page 203

MR. DISHER: -- answer to your question --

MR. SCHMELTZ: He's actually going back --

MR. DISHER: -- in an accurate way --

MR. SCHMELTZ: -- to another question.

MR. DISHER: -- and you're not letting him answer. Let the record reflect that.

MR. SCHMELTZ: And you can handle it on redirect.

MR. DISHER: I don't have to. He has the opportunity --

BY MR. SCHMELTZ

Q Are you aware --

MR. DISHER: -- to answer your question.

BY MR. SCHMELTZ

Q Are you aware --

MR. DISHER: You're preventing him from doing that.

BY MR. SCHMELTZ

Q Are you aware of any evidence

Page 204

suggesting that -- as you sit here today, are you aware of any evidence that Rhodium paid for services under the contract we're looking at here in Cohn Exhibit 10?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Aware of meaning what's in my mind right now or as to what I might have access to? Because I'll tell you --

BY MR. SCHMELTZ

Q I'm asking if you're --

A If I may --

Q -- aware as you sit here right now of any evidence.

Suggesting that Rhodium paid money for services under the contract here in Cohn Exhibit 10?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I will tell you that sitting here today, many, many months removed from when I was first thinking about this

Page 205

contract, I'm not familiar with the evidence one way or another about that, but if you want to make this an issue, I suppose I could consult my colleagues and the record in the case and make a proper evaluation. But sitting here today many, many months removed, I don't know one way or another.

BY MR. SCHMELTZ

Q So that's a no, right, in answer to my question?

A I think --

MR. DISHER: Objection. Hold on. Objection. Asked and answered.

BY MR. SCHMELTZ

Q No, you have no -- you can think of no evidence, right?

MR. DISHER: Objection. Misstates testimony. Objection. Asked and answered.

THE WITNESS: That's actually also a different question than what you just asked. Right now, I cannot think of evidence one way or another.

Page 206

BY MR. SCHMELTZ
Q Did you evaluate at the time you were putting a damage number forward with a base amount of $165 million whether that damage limitation we've just looked at would or would not impact Rhodium's ability to recover on a claim?
MR. DISHER: Objection. Vague. Foundation.
BY MR. SCHMELTZ
Q On a breach of -- on a breach of contract claim.
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: To the best of my recollection, we did, because we had two law firms working together to review this Building D claim, if you learned about in the beginning of February, and Chase and Chuck thought there's a lot of value there. So the team collectively vetted the issues.
I was not personally involved in every

Page 207

conversation that we had about them, but I can tell you we were thorough in evaluating the claims and defenses, and to the best of my recollection, we did address this, too. And as I mentioned earlier, my Texas colleagues have informed me that limitations of liability like this one have their limits.
BY MR. SCHMELTZ
Q Let's take a look at Cohn Exhibit 11. I want to go back to the topic of Winter Storm Uri.
A Can I just say something in respect to the questions you were asking about, which is directly applicable? You never directed me to the next paragraph, and now it's coming back to me. But Section 13.3 says, "Notwithstanding anything in this agreement to the contrary, Provider's liability in connection with this agreement for or arising from Provider's recklessness, gross negligence, fraud, or willful misconduct shall be unlimited."
Does that answer your question?

Page 208

Q No. Let's take a look at Exhibit 11. Your claim on Building D was a breach of contract claim; isn't that right?
MR. DISHER: Objection. Vague.
THE WITNESS: I believe that's --
MR. DISHER: Foundation.
THE WITNESS: -- correct. We can look -- sorry, Todd -- but we can look at the contract to confirm --
MR. SCHMELTZ: Yeah.
THE WITNESS: -- that.
MR. SCHMELTZ: All right.
THE WITNESS: Look at the complaint, rather.
BY MR. SCHMELTZ
Q And recklessness, gross negligence, fraud and willful misconduct are tort claims, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No. Willful misconduct is not a tort claim. And you can have breaches

Page 209

which are willful, and this would have been a willful breach. It was willful misconduct.
And I do recall we all looked at this, and my Texas colleagues, who are exceptionally good, made an evaluation, and our conclusion was that we had a strong claim on Building D. Now, our odds were 40 percent, and that was the collective judgment taking into account all the possible defenses and the fact that we had not yet commenced discovery into that claim. But that was the collective understanding taking into account this issue and other issues.
I mean, really, if you want me to study this whole contract, I can do so.
BY MR. SCHMELTZ
Q Honestly, there's no question pending. I'm waiting on --
A Okay.
Q -- a printout of a document.
A Oh, my apologies.
Q Are you looking at Exhibit 11?
A No.

Page 210

Q I've asked you to look at Exhibit 11 maybe three times.
MR. DISHER: There's no Exhibit 11.
VIDEO TECHNICIAN: Well, why don't we refresh until it arrives.
CONCIERGE TECH: What tab number is it for Exhibit 11?
MR. SCHMELTZ: He just put it in a minute ago. I don't know. Let me move over and look.
Did you already put 11 in the queue? Okay. Everybody's looking for it.
CONCIERGE TECH: Not yet.
MR. SCHMELTZ: Kevin thinks you put it there. He's here. He's back. Why don't you tell him what you've done. Thank you.
While we're waiting for that, just for the record, Exhibit 11, Cohn Exhibit 11, is -- was previously marked as Chase Blackmon Exhibit 15, and it's an un-Bates-stamped e-mail of six pages long of a February 11, 2025 e-mail exchange that involves Will Topping -- pardon me -- Will

Page 211

Thompson, Chuck Topping, Jon Cohn.
(Cohn Exhibit Number 11 was marked for identification.)
CONCIERGE TECH: It should be up there. Sorry, Trace.
MR. SCHMELTZ: It's okay.
THE WITNESS: I'm sorry. Is there a question pending?
BY MR. SCHMELTZ
Q No. Do you have the document in front of you?
A I do.
Q Do you recognize this e-mail?
A I do. And to be precise, I think there are a couple e-mails here.
Q There are. Would you take a look at page 3 of 6, which is an e-mail that you wrote on February 10 at 4:04 p.m. to Mr. Topping, cc'ing Mr. Thompson, and the subject is "Rhodium: Recent Correspondence on Complaint and Consulting Agreement."
Do you see that?

Page 212

A I do.
Q And you purport to summarize calls that you've had with various people, right?
A I'm not sure I'm purporting that, but give me a moment.
Q In the second paragraph under the heading "Complaint," it says, "On Friday morning at 9:30 a.m. ET, at David Eaton's request, I joined a call to discuss the Rhodium complaint. There were 12 invitees, including Spencer Wells, Trace Schmeltz, and David Dunn. On the call, Mr. Eaton requested that we remove the fraud claim."
Have I read that correctly?
A I'm not sure. I was still reading the e-mail when you started reading that, but you've been pretty good about reading e-mails correctly, so I will assume you read this correctly.
Q And then you describe a call you had with Ms. Tomasco, right?
A I mention things from that call.
Q And then you describe a text exchange

Page 213

and a further conversation that you had with Mr. Eaton, right?
MR. DISHER: Objection. The document speaks for itself.
THE WITNESS: I don't know if it was a text exchange. It says "you." That's referring to Chuck.
BY MR. SCHMELTZ
Q Oh, you're right. A text from Chuck that you should -- you should speak to Mr. Eaton. And then you describe some things from that conversation with Mr. Eaton, right?
A Let me read it.
I'm sorry. What's your question?
Q And then you describe some things with the -- that have occurred in the conversation you had with Mr. Eaton, right?
A That is correct.
Q Okay. In the last sentence of the third paragraph under the heading "Complaint," starting with "She also said," which refers to Ms. Tomasco, it says, "Mr. Eaton was considering

Page 214

whether we should file the complaint at all before the mediation."
Have I read that correctly?
A I don't know, because I don't know where you are.
Q Third paragraph under the heading "Complaint" on page 3 of 6, last sentence. "She also said."
Do you see that?
A I see the sentence now, yes.
Q Ms. Tomasco said that "Mr. Eaton" -- and I'm quoting -- "was considering whether we should file the complaint at all at before the mediation," right?
A You read it correctly.
Q And is it a fair assumption that it should read, "We should file the complaint at all before the mediation" and that the "at" in between "all" and "before" is errant?
A Yeah, it's a typo.
Q If I understood your earlier testimony correctly, you testified that no one suggested

Page 215

that you keep the fraudulent inducement claim in a draft complaint and simply not file it before the mediation.
Did I understand your prior testimony correctly?
MR. DISHER: Objection. Misstates prior testimony.
THE WITNESS: No, you don't understand it. And this was one of the things, if I recall, us trying to explain, and you wouldn't let me explain it. Would you like me to --
BY MR. SCHMELTZ
Q Okay. Well, you've said I don't understand your testimony correctly.
When you spoke to Mr. Eaton, did he talk to you about the idea of keeping the fraudulent inducement claim in the complaint and simply not filing the complaint?
MR. DISHER: Objection. Vague and foundation.
THE WITNESS: No, and that doesn't make any sense, if I may --

Page 216

MR. SCHMELTZ: Okay.
THE WITNESS: -- explain.
MR. SCHMELTZ: No. He didn't talk to you --
MR. DISHER: Just to be clear, you don't want him to explain --
MR. SCHMELTZ: It's a --
MR. DISHER: -- his answer to you?
MR. SCHMELTZ: It's a yes or no question --
THE WITNESS: It's not.
MR. DISHER: It's not.
MR. SCHMELTZ: -- and he said no.
MR. DISHER: And I'm saying he --
MR. SCHMELTZ: I want to --
MR. DISHER: -- can provide --
MR. SCHMELTZ: -- follow up --
MR. DISHER: -- an explanation.
MR. SCHMELTZ: -- on the no, Mr. Disher, and then we'll get there.
MR. DISHER: And you're just -- you're saying you don't want his explanation?

Page 217

MR. SCHMELTZ: I do not.
MR. DISHER: Okay.
BY MR. SCHMELTZ
Q You -- Mr. Eaton did not -- so I understand you correctly that Mr. Eaton did not tell you, keep the fraudulent inducement claim in the complaint, but don't file it?
MR. DISHER: Objection. Vague.
BY MR. SCHMELTZ
Q Yes or no?
MR. DISHER: Objection. Vague. Objection. Foundation.
THE WITNESS: Okay. So there's a double negative there.
BY MR. SCHMELTZ
Q Do I understand you correctly that Mr. Eaton did not say, keep the fraudulent inducement claim in the complaint, but don't file it?
MR. DISHER: Objection. Vague.
BY MR. SCHMELTZ
Q Do I understand you correctly; yes or

Page 218

no?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Can I ask a clarification?
MR. SCHMELTZ: Sure.
THE WITNESS: Are you aware we had a draft complaint already with a fraud claim and he asked me to remove it?
MR. SCHMELTZ: I am aware of that.
THE WITNESS: Okay. Yeah, we had that draft complaint, and he told me we could not file it. He said we had to file the draft that didn't have it.
And there's also a question about whether we could file any complaint at all, which I thought was disconcerting since we had some viable claims, and he was backtracking.
So, first, he wouldn't let us make the fraud claim, and then, on that call, he was suggesting we shouldn't file any complaint at all before the mediation.

Page 219

BY MR. SCHMELTZ
Q Okay. And it's your testimony that he was instructing you -- hold on. Let me redo this.
You had no conversation with Mr. Eaton about the concept of keeping the fraudulent inducement claim in the complaint and simply not filing the complaint at all, but using it as a negotiating point in the mediation?
A Absolutely not.
MR. DISHER: Hold on.
THE WITNESS: Sorry about that again, Todd.
MR. DISHER: Objection. Vague. Objection. Foundation. Objection to the extent it attempts to characterize his prior testimony, and objection asked and answered.
Go ahead.
THE WITNESS: And the answer is absolutely not.
BY MR. SCHMELTZ
Q So if Chuck Topping testifies in this

Page 220

matter that it was his understanding the Special Committee was willing to allow the fraudulent inducement claim to stay in the complaint and simply not being filed, he would be wrong; is that correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, there are a couple things going on there. It's a different question. You were asking me about what Mr. Eaton told me, and now you're asking about Chuck's understanding, which was not based upon that call, because Chuck --
MR. SCHMELTZ: All right.
THE WITNESS: -- was not present on that call. Also --
MR. SCHMELTZ: That's a fair point. Fair point.
THE WITNESS: Could I --
BY MR. SCHMELTZ
Q No. So I will withdraw the question. Okay. Did you understand one way or the other

Page 221

that the Special Committee was willing to allow the LKC and Stris combined litigation team to keep the fraudulent inducement claim in the complaint and simply not file it, but use it at the mediation? Were you aware one way or the other?
MR. DISHER: Objection. Vague. Objection. Foundation.
THE WITNESS: I was aware that we never had the authorization to make a fraud claim, nor would it have made any sense, nor would I have felt comfortable doing so. Mr. Eaton was very clear that we could not plead and prove the fraud claim --
MR. SCHMELTZ: So he --
THE WITNESS: -- and he was clear why.
MR. SCHMELTZ: In 27 --
THE WITNESS: He said --
MR. SCHMELTZ: -- years --
MR. DISHER: Let him finish --
MR. SCHMELTZ: -- of your --
MR. DISHER: -- Trace.

Page 222

MR. SCHMELTZ: I didn't ask why Mr. Eaton did or didn't say something --
MR. DISHER: He's giving you a fulsome --
MR. SCHMELTZ: No.
MR. DISHER: -- answer.
MR. SCHMELTZ: It's not -- he's not.
MR. DISHER: You're cutting him off again.
MR. SCHMELTZ: I asked if the Special -- if he knew one way or the other whether the Special Committee would allow him to keep it in there and simply not file it.
MR. DISHER: And he is answering your question.
MR. SCHMELTZ: No, he's going on to add more color.
BY MR. SCHMELTZ
Q Let me ask a follow-up question.
In your 27 years of practice, you certainly have gone to a mediation anticipating amending claims that you have not yet amended,

Page 223

haven't you?
MR. DISHER: Objection. Vague. Foundation.
And I will instruct the witness not to answer to the extent it would implicate any attorney-client or otherwise privileged conversations you might have had in the past 27 years of your law practice, but if you can answer without violating those privileges, then go ahead.
THE WITNESS: And the answer is -- and I'm not sure I even understand the question, but to the extent I do, the answer is, I don't know.
BY MR. SCHMELTZ
Q You certainly are aware that one can mediate claims one has never filed, correct?
A Yeah.
MR. DISHER: Objection. Vague.
Go ahead.
THE WITNESS: Sure. One could mediate claims that one does not file. We didn't mediate the fraud claim. We didn't argue fraud. I was

Page 224

not authorized to plead and prove fraud. We did not put fraud in the mediation brief. I didn't utter the word "fraud" once during the mediation. I don't think anyone uttered the word "fraud" once during the mediation.
And arguing fraud in a non-privileged scenario would have been ill-advised considering that the Special Committee was thinking about and eventually did take a position against the executives that was diametrically opposite to making the fraud claim.
BY MR. SCHMELTZ
Q You understand, in Texas, there's a mediation privilege that is a very strict privilege about what can and can't be said outside of a mediation, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I would not say I understand the contours or details of the Texas mediation privilege.

Page 225

BY MR. SCHMELTZ
Q You understand that the mediation between Rhodium and Riot Whinstone was conducted under a mediation privilege, right?
A Correct.
Q And you understand that the mediation statement that LKC and Stris submitted on behalf of Rhodium was submitted for the mediator's eyes only, right?
A I don't remember. You say we submitted. I know that John Stokes signed it. I would like to think that was for the mediator's eyes only, but I can tell you that didn't argue fraud or use the word "fraud."
Q But it was for the mediator's eyes only, right?
A If you tell me.
Q And during the mediation with Riot Whinstone, in point of fact, the mediator spent most of the day with the SAFE AHG and very little of the day with the debtors, correct?
MR. DISHER: Objection. Vague.

Page 226

Foundation.
THE WITNESS: I don't know about the first part of that question. I do know that we were in the conference room for close to ten hours with very little interaction with the mediator, but as for whether he was meeting with someone else and, if so, whom, I couldn't tell you about that.
BY MR. SCHMELTZ
Q And you're aware that the mediator reported a potential settlement opportunity to the debtors that was based on a proposal that had been negotiated with the SAFE AHG during that mediation, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I know that at the end of the mediation -- and hope this is responsive. If not, tell me -- the mediator walked in along with attorneys for Whinstone and attorneys for the SAFE AHG, and they made a proposal. As for what happened behind closed doors, I can't say.

Page 227

BY MR. SCHMELTZ
Q Right. You can't say because you weren't there, right?
A When you say wasn't there, you mean behind the closed doors with them? No. I was in a separate room. I was not with either Whinstone's attorneys or the SAFE AHGs' attorneys.
And with one exception. The very beginning of the mediation, I found it kind of odd, but at least a couple of the attorneys for the SAFE AHG were in the same room as us for a brief period of time in which Michael and Patty said some things, and I thought that was kind of strange because, you know, the SAFE AHGs were not entirely simpatico with us. But aside from that, we weren't in the same room with the SAFE AHGs until the very end when their counsel walked in with the mediator and Whinstone's counsel.
Q And so to quote Lin-Manuel Miranda, you were not in the room where it happened, right?
MR. DISHER: Objection. Vague.

Page 228

Foundation.
THE WITNESS: I guess it depends on what you mean by "it."
BY MR. SCHMELTZ
Q You were not in the room where the proposal that was presented to you was concocted, were you?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Concocted? I'm not sure what --
MR. SCHMELTZ: Negotiated?
MR. DISHER: Same objections.
THE WITNESS: I'll tell you the room I was in. I don't want -- I just want the record to be clear. I was in the room when they delivered the proposal to us. I was not in the room with them when either they with the mediator or they together or all them together negotiated the proposal that they then presented to us.
BY MR. SCHMELTZ
Q So you don't know what claims they

Page 229

discussed in those conversations, do you?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: That is correct.
BY MR. SCHMELTZ
Q You don't know whether they discussed fraud one way or the other, do you?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't know if they were talking about 2024 Olympics, because I don't know what they were talking about.
BY MR. SCHMELTZ
Q Okay. You don't know if they discussed Winter Storm Uri power credits, do you?
MR. DISHER: Same objections.
THE WITNESS: I do not.
BY MR. SCHMELTZ
Q You don't know if they discussed the value of power credits generally, do you?
MR. DISHER: Same objections.
THE WITNESS: I do not know what they

Page 230

discussed.
BY MR. SCHMELTZ
Q And you don't know whether Whinstone agreed to pay any money based on any particular aspect of claims that Rhodium may or may not have brought by that -- at that point, do you?
MR. DISHER: Objection. Vague. Compound. Foundation.
THE WITNESS: Yeah, I can tell you I don't know if they attributed 100 cents on the dollar or zero cents on the dollar of their proposal to damages or energy credits or zero, nothing.
BY MR. SCHMELTZ
Q And you don't know if they placed any value on eliminating any future obligation to pay to Rhodium the type of energy credits we've been discussing today, do you?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah. I think I've been very clear in my testimony. I don't know what

Page 231

they were discussing behind closed doors without us --
MR. SCHMELTZ: Okay.
THE WITNESS: -- or if they were discussing the mediation or anything else.
BY MR. SCHMELTZ
Q In -- is this 11? In Cohn 11, we looked at the sentence in which Patty said that Mr. Eaton was considering whether we should file the complaint at all at or -- at before the mediation.
I want to direct your attention to the next page, 4 of 6, and the very last paragraph -- well, first of all, I want to direct your attention to David Dunn's e-mail in the middle of the page in which he says, "Jon, with respect, you don't have the authority to dictate when the complaint will be filed," right?
A And he said some other stuff. Correct.
Q Yeah. But the first thing he says is, "you don't have the authority to dictate when the complaint will be filed," right?

Page 232

A Well, that's not even the whole sentence.
Q I'm saying the first thing that he says is that "you don't have the authority to dictate when the complaint will be filed," correct?
A I guess it's a question of the word "thing," but the document speaks for itself, because the rest of it is "or with respect to the inclusion or removal of certain counts," and this is in the context of --
Q He says --
A -- the Special --
Q He says to you, "you don't have the authority to dictate when the complaint will be filed," correct?
MR. DISHER: Objection. Asked and answered. Objection. Document speaks for itself.
THE WITNESS: Trace, you're cutting it off in the middle of the sentence.
BY MR. SCHMELTZ
Q But that phrase, I've read that

Page 233

correctly, right?
A You read that portion of the sentence correctly.
Q And you agree with me you didn't have the authority to dictate when the complaint would be filed, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I wasn't professing to have the authority to dictate when the complaint will be filed or with respect to the inclusion or removal of certain counts, and that's why I was seeking to get clear guidance.
And, unfortunately, I had two different people, the Special Committee and Chuck Topping, who were giving me inconsistent advice and directions. And as you see from their e-mail -- e-mail chain and the stuff that follows, I simply wanted to get one set of directions, and I eventually did when the Special Committee said with Chuck's blessing, I could not plead and prove fraud.

Page 234

BY MR. SCHMELTZ
Q Mr. Dunn is the chief restructuring officer -- co-chief restructuring officer of Rhodium, correct?
A He is one of the co-chief restructuring officers.
Q There's that precision that makes you a god of law.
He goes on -- he goes on to say, "we can always amend the complaint if needed," correct?
MR. DISHER: Objection. Document speaks for itself.
THE WITNESS: I'm looking for where you're saying this. What are you looking at? I'm sorry, Trace. Can you show me where you're looking?
BY MR. SCHMELTZ
Q The same thing that we've been looking at, David's e-mail to you that you excerpt in your -- in your e-mail.
A Oh, the very last sentence. It does

Page 235

say, "We can always amend the complaint if needed," and we never got --
Q He doesn't --
A -- authorization to amend the complaint. We were never allowed to plead and prove fraud.
Q It -- yeah. The case settled, didn't it?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: The case did eventually settle --
MR. SCHMELTZ: Okay.
THE WITNESS: -- and both before and after that, the Special Committee took the position that the founders had violated their fiduciary duties because they improperly, unjustifiably, unreasonably relied upon Chad Harris's lies, so much so that they violated the business judgment rule and breached their duty.
BY MR. SCHMELTZ
Q That's funny. My question was: The

Page 236

case settled. Your answer has lots in it other than, yes or no, the case settled.
A But I wanted to make clear about timing --
Q Yeah.
A -- because --
Q You wanted --
A -- you had a case --
Q -- to do what you wanted to do. I have a question, and I'm going to ask it.
Mr. Dunn doesn't say to you, we will not allow LKC and Stris to amend the complaint, does he?
MR. DISHER: Objection. Foundation. Document speaks for itself.
THE WITNESS: Are you talking about --
MR. SCHMELTZ: Yes or --
THE WITNESS: -- this e-mail?
BY MR. SCHMELTZ
Q It's a yes or no question.
Does the -- in his --
A Ask your --

Page 237

Q -- e-mail, did Mr. Dunn say, we will not allow LKC and Stris to amend the complaint?
MR. DISHER: Same objections.
THE WITNESS: He does not say that.
BY MR. SCHMELTZ
Q Then, in the last paragraph on that page, you describe parts of a conversation that you had with me and Will Thompson.
Do you see that?
A Let me read the paragraph. All right. I've read it.
Q In this paragraph, you say, "Will Thompson and I called Mr. Schmeltz, who stated his view that we should not file the complaint at all."
Have I read that portion of the sentence correctly?
A You did.
Q And I -- if I understand your earlier testimony correctly, it's your testimony that I did not say on that call that you could keep the fraudulent inducement claim in and simply not

Page 238

file the complaint at that time, right?
MR. DISHER: Objection. Vague. Foundation.
BY MR. SCHMELTZ
Q Isn't that your earlier testimony?
MR. DISHER: Objection. Vague. Foundation. Misstates prior testimony.
THE WITNESS: We can look at what I said, but I also note the next sentence, which you did not read --
BY MR. SCHMELTZ
Q I'm not asking about that. I'm asking: It's your testimony in this case that I did not say you can keep the fraudulent inducement claim in and not file it?
MR. DISHER: Objection.
THE WITNESS: Yeah, that's --
MR. DISHER: Vague. Foundation.
THE WITNESS: Correct. You didn't say that and --
MR. SCHMELTZ: Okay.
THE WITNESS: -- it's --

Page 239

MR. SCHMELTZ: That's all I'm asking.
THE WITNESS: But it doesn't make --
BY MR. SCHMELTZ
Q You're saying I didn't say that. You can talk about the rest of the paragraph later.
So Mr. Dunn says, "you don't have the authority to dictate when the complaint will be filed," right?
MR. DISHER: Objection. Document speaks for itself.
THE WITNESS: And a whole lot more.
BY MR. SCHMELTZ
Q And Mr. Dunn says, "We can always amend the complaint if needed," right?
MR. DISHER: Same objection.
THE WITNESS: Correct.
BY MR. SCHMELTZ
Q And in two places in this e-mail, there is a suggestion that the complaint not be filed at all, right?
MR. DISHER: Objection. Document speaks for itself.

Page 240

THE WITNESS: That is correct.
BY MR. SCHMELTZ
Q You understood the idea of the complaint not be filing -- not being filed at all was simply a question of timing, didn't you?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No. And there's --
MR. SCHMELTZ: Okay.
THE WITNESS: -- a lot going on --
BY MR. SCHMELTZ
Q That's all I need. That's a yes or no question. That's a yes or no answer. Thank you.
A I do want to say --
Q No. That's all --
A -- you are --
Q No. There's no question --
A -- misrepresenting --
Q -- pending.
A -- this very document and --
Q I'm not.
A -- leaving out --

Page 241

Q Listen --
A -- the very next sentence, but if you want --
Q You'll --
A -- the Court --
Q Mr. Disher will have a chance to do that. That's what Mr. Disher's here for, not just to make speaking objections on the record.
Let's move on to a new topic. Let's take tab 15, please. I'm going to put in Cohn Deposition Exhibit 12.
For the record, this is a document that has the Bates number 3534 to 3535. It is an e-mail exchange on 10 February, and there are a couple of e-mails in here, one from you to Chuck Topping, one from Chuck Topping to Chase Blackmon and a host of people, and -- pardon me -- one from Jon -- pardon me -- Chase Blackmon to Jon Cohn, John Stokes and a host of people.
(Cohn Exhibit Number 12 was marked for identification.)

Page 242

BY MR. SCHMELTZ
Q Do you recognize this e-mail, sir?
A I don't have it on my screen.
Q Do you see it in the queue? What happens when you hit refresh?
CONCIERGE TECH: It's in the queue.
THE WITNESS: I now have Exhibit 12.
BY MR. SCHMELTZ
Q Thank you. Do you recognize this e-mail?
A I do.
Q This is an e-mail in which, among other things, Mr. Blackmon uses the phrase "a team of winners win," right?
A I think what he said is, "I've never seen a team of winners win so perfectly and with such consistency."
Q You talked to him about that in his deposition, right?
A I did.
Q In the very next -- and that was a very memorable phrase to you, right?

Page 243

A He used it enough times, and I appreciated the accolades for the team. It was a great bunch of attorneys from two -- from two law firms.
Q And it was -- it was so memorable that you brought it up in his deposition a few times, right?
A I'm not sure if I did it because it was memorable or because it was suitable for the circumstances and very relevant, but whatever.
Q Well, perhaps the next sentence will be equally as memorable. In the very next sentence, he says, "Kevin and I were reviewing the exit financing term sheets we have received from Invesco and Galaxy, and it appears that we're going to need" -- and that's in all caps -- "to have the damages collected within roughly 1 year to be able to survive these aggressive financing terms."
Have I read that correctly?
MR. DISHER: Objection.
Mischaracterizes document.

Page 244

BY MR. SCHMELTZ
Q Have I read that correctly?
MR. DISHER: Same objection.
THE WITNESS: Honestly, midway through it, I was not focused on the words to see if you had read it all correctly, but if you want to try it again, I could do it.
BY MR. SCHMELTZ
Q I don't think I need to try it again, but I'll break it down anyway.
In the first clause, Mr. Blackmon refers to reviewing exit financing term sheets from Invesco and Galaxy, right?
A Yes.
Q And then he refers to the idea that Rhodium is going to need -- and he uses all caps in the word "need" -- to have the damages collected within roughly one year, right?
A To be able to --
Q Well, I'm about to get there, but that's that part of the phrase, right? You agree with me?

Page 245

A I --
Q Have to have it collected within a year, right?
A But you're not --
Q We'll get to the why in a second. We're getting to the why.
He stressed that Rhodium was going to need to have the damages collected within roughly year, right?
MR. DISHER: Objection. Mischaracterizes --
THE WITNESS: You can't read --
MR. DISHER: -- document.
THE WITNESS: -- a sentence that way. Sorry, Todd. You can't read a sentence that way.
BY MR. SCHMELTZ
Q Okay. You don't agree that he was -- was saying at least in part that they had to have the damages collected within a year?
MR. DISHER: Objection.
THE WITNESS: To --
MR. DISHER: Vague. Hold on.

Page 246

THE WITNESS: Sorry.
MR. DISHER: Objection. Vague. Foundation.
MR. SCHMELTZ: Okay.
MR. DISHER: Mischaracterizes the document.
BY MR. SCHMELTZ
Q And the reason that they needed -- so let me -- the phrase says, "it appears we're going to need to have the damages collected within roughly 1 year."
To that point, have I read that phrase correctly?
A You have read that phrase correctly.
Q And then the why that he gives for having to have the damages collected within roughly one year is so that Rhodium can survive these aggressive financing terms.
Have I read that correctly?
A Your characterization of it as being a why is incorrect. You read the words on the page correctly.

Page 247

Q It's your testimony that the reason Rhodium was going to need to have damages collected within a year is so that it could survive the aggressive financing terms from the exit financers?
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: They're going to need to have the damages collected within roughly a year to be able to survive these aggressive financing terms.
BY MR. SCHMELTZ
Q In other words, if Rhodium accepted exit financing on the terms proposed by either Invesco or Galaxy, it would be critical for Rhodium to have the damages collected from the Riot Whinstone litigation within a year, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: If it wanted to survive as opposed to be, I guess -- or be a litigation trust and it was going to maybe stretch my bounds

Page 248

of bankruptcy knowledge, but -- whether it's Chapter 11 or Chapter 7, I don't know, but you could have a litigation asset that could still pursue the claims against Whinstone and Riot.
BY MR. SCHMELTZ
Q But for Rhodium to survive as a business, it would need to have the damages collected within roughly one year, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I would say to survive as an ongoing concern, to survive these aggressive financing terms.
BY MR. SCHMELTZ
Q He asks a few questions then in his e-mail, correct?
A He does.
Q The first one is under the heading "Collectability," right?
A Yes, that is correct.
Q He says, "Everyone is very confident that we are going to succeed on the merits of the

Page 249

damages case, but considerably less confident w/r/t collectability of the damages."
Have I read that correctly?
A Yes you have.
Q Did you understand him to be saying that -- well, let's start with everyone.
By everyone, did you understand him to be referring to Rhodium's outside professionals, including lawyers at Stris & Maher and LKC?
A I think I construed the word "everyone" to be everyone, including the outside professionals, including the executives, including the board. I read everyone to mean everyone.
Q And then did you understand him to say that people were confident about success, but less confident with respect to collectability of damages?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I read him as saying everyone is very confident that we are going to

Page 250

succeed on the merits of the damages case, but considerably less confident with respect to collectability of the damages.
BY MR. SCHMELTZ
Q And then he asks, "Can someone please expand upon what the issues would be regarding collections," right?
A He does ask that question.
Q In addition to collectability, he then refers to timing.
Do you see that?
A I do.
Q And he says, "When do y'all think we would have X dollars actually hit our bank account," right?
A That is correct.
Q He asks if the damages would come in waves, a monthly payment or a lump sump, right?
A That is correct.
Q And then he asks if Riot Whinstone would appeal and how that might affect timing, right?

Page 251

A That is correct.
Q As you sit here today, do you have a sense one way or the other as an experienced litigator of how long it might have taken for Rhodium to collect damages from Riot Whinstone if it had been successful in litigation?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, I think that would depend, one, on how long the trial before Judge Perez would take, and, two, whether Whinstone and Riot would appeal the ruling, and how long those appeals, if any, would take.
And I believe we discussed this as a litigation team. I think the rest of the e-mail chain talks about it. I would trust the collective judgment of the litigation team back in February more than whatever I'd have to say right now, and I want to defer to the collective judgment, but there would be a range depending upon the speed of the Court's ruling and the number of appeals, if any.

Page 252

BY MR. SCHMELTZ
Q You would agree it would be highly likely it would take more than a year for the damages to actually hit Rhodium's bank account, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't know if that's right. Judge Perez did seem to move very quickly, and if he issued a ruling, they could appeal it, but I guess it depends on whether or not they obtained a stay pending appeal. I don't know if there's an automatic stay if they were to appeal to the district court, and this is probably something we looked at back then, but if they didn't get a stay, then I guess we would get the amount when Judge Perez entered judgment.
I also want to say that this is all from the vantage point of collecting it to a company that was an ongoing concern where the business continued, because it's not as if the damages claim disappears if the company stopped

Page 253

being a going concern. I mean, if anything the damages might have gone up at that point.
But to answer your question, I think the timing varies, and it's possible we could have gotten it within a year depending upon the speed of the Court's ruling and whether or not there was a stay and whether or not there's an appeal.
BY MR. SCHMELTZ
Q It's possible. Was it likely?
MR. DISHER: Objection. Foundation.
THE WITNESS: I think it was likely that Judge Perez would issue his ruling within a year, but the Court knows better than I do how long the Court would need to adjudicate this claim.
And I'd really have to get back to you on whether or not there would be a stay, the likelihood of getting that, because if there wasn't a stay on the money, then I think we would have gotten it pretty expeditiously. So it turns on that.

Page 254

BY MR. SCHMELTZ
Q I'm asking if in your experience, 27 years of litigating, it was likely that you would get a verdict within a year of February 10th and collect the money on that verdict?
MR. DISHER: Objection. Vague. Foundation. Asked and answered.
THE WITNESS: Yeah, I think I answered to the best of my ability. I mean, this is the first case I've had in any bankruptcy court, let alone the Southern District of Texas Bankruptcy Court, and I just don't know if there would be stay of the damages pending an appeal, if any, to the district court.
I mean, I wish I knew the answer. I want to be helpful, but I just --
MR. SCHMELTZ: So --
THE WITNESS: -- don't think I know that answer right now.
BY MR. SCHMELTZ
Q So it's your testimony as you sit here today with 27 years of litigation experience that

Page 255

you could not offer an opinion as to whether it was likely that Rhodium would have a verdict and collect on that verdict within a year of the e-mail we have here in Cohn Exhibit 12?
MR. DISHER: Objection. Asked and answered. Mischaracterizes testimony.
THE WITNESS: I think I've answered the question as best as I could. And I know there are other e-mails to this point, and I really tried not to give my own reactions, because we had an exemplary team of litigators from two law firms, many of whom are more familiar with Texas law than I am, and we made careful, diligent, collective judgments, including this one. And if I had to remember, we thought it could take more than a year, but I don't want to get ahead of what the litigation team thought contemporaneously with this e-mail exchange.
BY MR. SCHMELTZ
Q I'm asking if, as you sit here right now with 27 years of litigation experience, you can offer an opinion as to whether it was likely

Page 256

that Rhodium would collect money from a -- from a judgment from Riot Whinstone within one year of this e-mail. Yes or no?
MR. DISHER: Objection. Asked and answered. Vague.
BY MR. SCHMELTZ
Q Yes or no?
MR. DISHER: Objection. Asked and answered. Vague. Foundation.
THE WITNESS: So I'll tell you --
BY MR. SCHMELTZ
Q Yes or no?
A Can I ask for a clarification?
Q Yes.
A I can ask for a clarification?
Q Yes.
A Am I allowed to do legal research before I give you an answer? Because in the real world, I would do legal research, and my 27 or whatever number of years of experience taught me not to give off-the-cuff answers to questions. I would want to do legal research. I'd want to

Page 257

look at the facts. I'd want to talk about it with my team.
So if I could do legal research here, I could give you a better answer, but I can't do legal research, and the answer to your question is going to be no. I can't give you an off-the-cuff answer.
Q I'm going to ask my question again because I'm not asking for certainty. I'm not asking for you to be 100 percent sure.
I am asking if, as you sit here today with 27 years of experience as a trial lawyer, as a litigator, you could give an opinion one way or another as to whether it is likely that Rhodium would collect on a verdict from Whinstone and Riot within one year of this e-mail.
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q Yes or no?
MR. DISHER: Objection. Form. Objection. Vague. Foundation. Asked and answered.

Page 258

THE WITNESS: If a client asked me to give an opinion on that, I would not give an opinion until speaking with my team --
BY MR. SCHMELTZ
Q That's not my question. It's a yes or no answer.
A Well, it is and it isn't.
Q Could you -- as you sit here today, are you able to give an opinion as to whether it is likely that Rhodium would collect on a judgment from Whinstone and Riot within one year of this e-mail; yes or no?
MR. DISHER: Objection. Asked and answered five times.
THE WITNESS: Not a reliable estimate, not a reliable opinion, not one I'd feel comfortable doing, and it's not something I would do in practice without talking to my team and looking at the facts and having someone do relevant research.
BY MR. SCHMELTZ
Q So that's a no, correct?

Page 259

A Well, with --
MR. DISHER: Hold on.
THE WITNESS: I'm sorry.
MR. DISHER: Objection. Mischaracterizes testimony. Asked and answered.
BY MR. SCHMELTZ
Q So that's a no, correct?
MR. DISHER: Objection. Mischaracterizes testimony. Asked and answered.
THE WITNESS: Can you clarify your question, because you asked if I was able to? And, I mean, I can give estimates. They're not ones I feel comfortable giving. It's not ones that would be reliable. So built into your question, is it a reliable estimate or just something, because, I mean, I can give estimates in all sorts of things, but they might not be ones that are worth much.
BY MR. SCHMELTZ
Q So, as you sit here today, you could not give a reliable estimate as to whether or not it was likely that Rhodium would have obtained

Page 260

and collected on a judgment within one year of this e-mail; is that correct?
MR. DISHER: Hold on.
THE WITNESS: Sorry.
MR. DISHER: Objection. Asked and answered. Vague. Foundation.
MR. SCHMELTZ: It's a new question, so it's not asked and answered.
MR. DISHER: He's answered it six times.
MR. SCHMELTZ: It's a brand new question. Why don't you read it again, Erick, because Mr. Disher clearly didn't hear it.
(Whereupon, the reporter read the record as requested.)
MR. DISHER: What is the new element?
MR. SCHMELTZ: Reliable.
MR. DISHER: So, earlier, you were asking him if he could give any estimate at all regardless of reliability?
MR. SCHMELTZ: The word "reliable" is in the question.

Page 261

MR. DISHER: So now you're asking him if he could give a reliable estimate. I will object to vague. Foundation. And I do think he's already answered it.
But to the extent you have anything else to add, please go ahead.
THE WITNESS: And just to be clear, sitting here today looking only at this e-mail, not having the opportunity to talk to my team, not having the chance to do legal research, look at any relevant facts, this many months removed from the operative decision, the answer is no, I would not give a reliable estimate. I couldn't do it. There's so many things I'd have to do to give a reliable estimate.
BY MR. SCHMELTZ
Q I'm going to ask the question one more time. It's a yes or no question, and I want a yes or no to my question. Again, if you want Mr. Disher later to come back and have you flesh out your yes or your no, you can do that.
But as you sit here today with 27 years

of litigation experience, you could not give a reliable answer to the question of whether or not Rhodium could obtain and collect on a judgment from Riot Whinstone within one year of the e-mail in Exhibit 12; is that correct? Yes --

MR. DISHER: Object --

BY MR. SCHMELTZ

Q -- or no?

MR. DISHER: Objection. Foundation. Objection. Vague. Objection. Asked and answered.

THE WITNESS: With all those objections and --

BY MR. SCHMELTZ

Q Yes or no?

A The clarification --

Q Yes --

A -- I tried --

Q -- or no?

A -- to get --

Q Yes or no?

A The answer --

Q Yes or no?

MR. DISHER: He's trying to give you the answer.

MR. SCHMELTZ: It's a yes --

MR. DISHER: He just said the answer --

MR. SCHMELTZ: -- or a no.

MR. DISHER: -- and you cut him off.

BY MR. SCHMELTZ

Q Yes or no?

A Let's try it this way, Trace.

Q Yes or no, sir?

A With all the --

Q Yes --

A -- objections --

Q -- or --

A -- and --

Q Sir --

A -- caveats and --

Q -- yes or no?

A -- clarifi- -- could you --

Q I'm going to --

A -- re-read the question?

Q -- ask this question --

A Yeah, please.

Q -- all day.

A Yeah, please. Go for it.

Q It's a yes or no question.

As you sit here today with 27 years of litigation experience, you could not give a reliable answer to the question of whether Rhodium could obtain and collect on a judgment within one year of this e-mail, could you, sir?

MR. DISHER: Objection.

BY MR. SCHMELTZ

Q Yes or no?

MR. DISHER: Asked and answered.

BY MR. SCHMELTZ

Q Yes or no?

MR. DISHER: Same objection. Asked and answered.

THE WITNESS: With those objections, the answer is yes.

MR. DISHER: Let's take a break.

VIDEO TECHNICIAN: The time is

2:07 p.m. This ends Unit 4. We're off the record.

(Recess 2:07 p.m. to 2:19 p.m.)

VIDEO TECHNICIAN: The time is 2:19 p.m. This begins Unit No. 5. We're on the record.

BY MR. SCHMELTZ

Q When we -- right before we broke, you answered my question about your ability to give a reliable estimate with a yes.

What is your reliable estimate of how long it would take from this e-mail for Rhodium to get a judgment and make a collection?

MR. DISHER: Objection. Mischaracterizes testimony.

THE WITNESS: Yeah, I think you -- you got the answer wrong.

Could you read back the question and my answer?

(Whereupon, the reporter read the record as requested.)

MR. SCHMELTZ: You're right. I

Page 266

misunderstood. Thank you.
BY MR. SCHMELTZ
Q The last question that Mr. Blackmon asks -- and you'd agree with me, Mr. Blackmon's mail is addressed to at Jon Cohn and at John Stokes, right?
MR. DISHER: Objection. Document speaks for itself.
THE WITNESS: Yes, and there are a bunch of other people who are on there, too.
BY MR. SCHMELTZ
Q I'm talking about not the to and cc, but in the text where it has the underscore at Jon Cohn and underscore at John Stokes. You see that, right?
A Oh, you mean below the to and the cc?
Q Correct, in the text of the e-mail.
A It does say at Jon Cohn, at John Stokes.
Q And you understood that's sort of newfangled parlance in e-mail like the old way we would say in a letter, dear so and so and so and

Page 267

so. It's calling this e-mail to your specific attention, right?
A I'm not going to try to get in the mind of Chase Blackmon, but I think he understood that Mr. Stokes and I were, you know, essentially the point people for the two law firms that are working together, and he included in many other attorneys that are part of our teams or team, you might call it. But I don't want to hypothesize for why he mentioned the two of us there but included many other names in the to line.
Q And I'm not asking what he meant. I'm asking, do you have an understanding in common usage that that use of an at with someone's name is a way to draw it specifically to their attention? Do you understand that?
A Well, I mean, I've seen it. I've never done it myself. But we can assume that -- I don't know. I mean, I've -- I've seen people do that. I don't know if it's common or not, but he did mention our names.
Q And in the last bullet, he references

Page 268

the concept of reliability, right?
A He does.
MR. DISHER: Hold on.
THE WITNESS: Oh, sorry.
MR. DISHER: Oh, I'm sorry. Yes. No objection.
MR. SCHMELTZ: I have never done that.
MR. DISHER: Done what?
MR. SCHMELTZ: Started an objection and then thought I don't have one. I'm teasing. It's all good.
MR. DISHER: Okay.
BY MR. SCHMELTZ
Q He says, "Lastly, and most importantly, does the litigation team believe we can rely" -- and rely is in all caps and bold -- "on the WUS damages to help us survive the aggressive financing terms being offered?"
Have I read that correctly?
A You have, yes.
Q I think we'd agreed that earlier in the document, he said we need to have the damages

Page 269

collected within roughly one year to survive the aggressive financing terms, right?
A Well, I mean, to use your word, a bit more precise is "to survive these aggressive financing terms." That would put aside the possibility of getting either more tolerable financing terms at that time or even in the future.
I mean, I know that there were some conversations -- and I can't recall exactly when, but around this time -- in which the issue was getting exit financing now, and then, once we got the favorable judgment, possibly getting less aggressive, less onerous, more tolerable financing terms after that, because at that point we'd have a judgment in hand.
So when you say the aggressive financing terms, I think you have to be a bit more specific.
Q Well, earlier in the document, he references needing to be able to collect the damages within roughly a year to survive the

Page 270

aggressive financing terms being offered by Invesco and Galaxy, right?
MR. DISHER: Objection. Foundation.
THE WITNESS: And you changed a word.
BY MR. SCHMELTZ
Q It doesn't matter. Do you understand my question?
A No.
MR. DISHER: Objection. Foundation.
THE WITNESS: I don't because you changed a word, and it was specifically about these aggressive financing terms and --
BY MR. SCHMELTZ
Q From Invesco and Galaxy, right?
A Talking about particular aggressive financing terms being offered as of that time on February 10th.
Q From Invesco and Galaxy, right?
A I'm sorry. Because you cut me off in the middle of the sentence, can you say it again?
Q Earlier in the document, Mr. Blackmon suggests that Rhodium would need to have the

Page 271

damages collected within roughly one year to be able to survive these aggressive financing terms being offered from Invesco and Galaxy, right?
A It says it appears that we're going to, but, yes, the rest of the sentence was read correctly.
Q I'm not asking if I read it correctly. I'm saying that's, in fact, what he was suggesting, right?
MR. DISHER: Objection. Vague. Mischaracterizes the document. Calls for speculation.
THE WITNESS: Yeah, I would say he was suggesting what he said in the sentence.
"It appears that we're going to need to have the damages collected within roughly one year to be able to survive these aggressive financing terms."
I think he was just --
BY MR. SCHMELTZ
Q From Invesco and Galaxy, right?
A Yeah, that's correct.

Page 272

Q And in the last bullet, he says, do you believe we can rely on it, that we can rely on those damages to help us survive the aggressive financing terms being offered, right?
A Yeah, that's what he says.
Q In other words, he's looking for certainty or near certainty on this question, right?
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: Yeah, I don't agree with that.
BY MR. SCHMELTZ
Q Okay. You don't think the CEO of Rhodium was asking if they could rely on the WUS damages to help them survive the aggressive financing terms being offered by Invesco and Galaxy?
MR. DISHER: Objection. Vague. Objection. Mischaracterizes testimony.
THE WITNESS: Yeah. I don't know if this was intentional, but you phrased the

Page 273

question differently that time, and it does use the word "rely" there.
BY MR. SCHMELTZ
Q I'm sorry. You believe the word "rely" and the concept of certainty aren't remotely similar?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't think rely and certainty mean the same thing.
BY MR. SCHMELTZ
Q That's fine. Based on this document, did you have a sense one way or the other that it would or it could materially impact Rhodium if it could not collect the Whinstone damages within one year?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't know, because as I mentioned earlier -- and I can't recall when the conversation was had, whether it was before the 10th, on the 10th, after the 10th, but we had

Page 274

other conversations about exit financing. And one thing that was discussed was getting whatever exit financing we could and then getting better exit financing once we got the judgment in our favor.

And that actually would change the calculus regarding collectability, because even if we couldn't collect it while it was on appeal -- and I don't know the answer, as I made clear before -- it is very possible we could have gotten different exit financing after we got the judgment, allowing us to continue with the case with a going concern while the appeal was pending.

And then, separately, there's the issue we talked about of, even if Rhodium was not a going concern, the litigation could have continued, and if anything, at that point, the damages would have gone up.

BY MR. SCHMELTZ

Q And who to the best of your recollection told you that it was possible that

Page 275

Rhodium could get exit financing, obtain a judgment against Whinstone, and then, without collecting on that judgment, renegotiate its exit financing or obtain new exit financing?

A So, Michael Robinson was definitely involved in those conversations. I remember one of them after that very long mediation, we were eating together at a Mexican restaurant, and the topic came up about exit financing and the possibility of just getting what we can now and then getting something later.

Oh, and we also discussed the possibility of just getting exit financing to cover the business as opposed to litigation, because it was around that time, also, I believe, that Chase and Chuck asked me and John Stokes if we were willing to handle the litigation on a contingency. I think that was all discussed around the same time, including at that meal we had at the Mexican restaurant.

Q Who else was in the conversation at the Mexican restaurant about this exit finance two

Page 276

step?

A Two step? I'm sorry. What's the -- two step? I didn't follow that.

Q Can you answer my question or no?

A I'm not sure I understand the question. You mentioned a two step.

Q Who else was in the exit financing conversation at the Mexican restaurant?

A All right. I can tell you who was at the table. As for who was participating and listening, I'm not sure. But we had -- Will Thompson was there. Michael Robinson was there. I think Patty was still there. Chase. I can't recall if Cameron was there. And Chuck there at the dinner.

MR. SCHMELTZ: Let's take a look at Cohn Exhibit 13. It's tab 16, Special Committee LKC 3460 to 3462.

For the record, this is an 11 February e-mail exchange that involves Kevin Hays and a whole host of folks, and it follows up on that set of questions that Chase Blackmon asked in his

Page 277

prior e-mail.

(Cohn Exhibit Number 13 was marked for identification.)

BY MR. SCHMELTZ

Q Let me know when you have that in front of you.

A I do.

Q Let's first take a look at the top of page 3461. Do you see there it says, "Chase, we will take a look and get back to you shortly"?

Do you see that?

A I do.

Q That's your response to the e-mail that we were just discussing from Cohn 11, right?

A Yes, it is.

Q Do you believe as you sit here today that you provided a written response to Chase Blackmon in response to his questions about collectability, timing and reliability?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I can't remember. We

Page 278

either had a written response or he talked about it or both.
BY MR. SCHMELTZ
Q And as you sit here today, do you remember what your response was at all?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No, which, again, is why earlier I said I would have wanted to find out what the team collectively thought.
BY MR. SCHMELTZ
Q At the top of 3460, Kevin Hays addresses an e-mail to Jon and team, and I note it's Jon without an H, which, as I've learned the hard way, is you as opposed to Mr. Stokes, right?
A Is the question whether J-O-N is me?
Q Yes.
A Yes, that is correct.
Q And he says, "Chase asked me to pull together some evaluation analysis for our Board call tomorrow," right?
A That is correct.

Page 279

Q And the Board was going to discuss that valuation information in advance of the upcoming mediation with Riot Whinstone, right?
MR. DISHER: I'm sorry. Can you repeat that?
THE WITNESS: Yeah.
(Whereupon, the reporter read the record as requested.)
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yes.
BY MR. SCHMELTZ
Q And he says a big part of the valuation analysis would be a revised view on damages for your team, but I'm assuming he means from your team, right?
A So is the question what it says or what he meant?
Q What did you understand?
A I'm sorry. Could you repeat it, then?
Q Do you understand he wanted you to update your view of damages?

Page 280

A Well, I think he wanted the view collectively of the litigation team, Jon and team, and that refers to, I think, the entire team, including those that are in the to line, including John Stokes, Bridget, Elizabeth Brannen, Victor O'Connell, Will Thompson, Alexis Swartz, Todd Disher.
Q And he says, can you -- "Could you guys provide revised thoughts -- maybe adding some categories like impairment of the Temple Sale to Marathon, Building D, et cetera anything else, that add to the risked expected value," right?
A That is correct.
Q And he says, we don't need a final answer, but a revised listing that we can use for discussion, right?
MR. DISHER: Objection. Foundation.
THE WITNESS: I mean, you left out a phrase, but, yes.
BY MR. SCHMELTZ
Q And then he sets out a chart that has Tier I and Tier II claims and damages, right?

Page 281

A He does.
Q And he is suggesting that this is how we laid it out a few months ago in a board discussion, right?
A Oh, I now see that phrase you're talking about. He does say that, correct.
Q Were you involved in preparing the analysis reflected here on Cohn Exhibit 12 [sic] --
MR. DISHER: Objection. Vague.
BY MR. SCHMELTZ
Q -- for potential damages, Tier I and Tier II?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: You mean the chart here as opposed to the revised numbers that he asked us to come up with?
MR. SCHMELTZ: Yes.
THE WITNESS: Yeah, I don't think I put together those, but I must say he's referring to something laid out in a board meeting a few

Page 282

months before February. So I can't say for sure, but I don't believe I put together those numbers. If you show me a document, I'm happy to take a look at it, but I don't believe I did.
BY MR. SCHMELTZ
Q I think for the record I have referred to this as Exhibit 12 a couple of times. It's Exhibit 13. Make sure I get that right.
In Exhibit 13, it indicates owed energy credits excluding Uri Whinstone damages of almost $66 million, right?
A It does have that number there, correct.
Q Do you have any idea where that number comes from?
A I do not.
Q Did you agree with that number?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't think so. The numbers that we believed with -- believed in were the ones that we presented in a spreadsheet that

Page 283

then became part of Kevin's PowerPoint presentation.
I think the number here you have for energy credits excluding Uri is far too high and doesn't reflect what the expert came up with. His last name was Griffey. Elizabeth Brannen worked with him. So I think the actual number that we agreed with was the one that Griffey and Elizabeth Brannen gave us.
BY MR. SCHMELTZ
Q It shows those same owed energy credits as having a risk percentage of 70 percentage, right?
A This chart here does say 70 percent.
Q And does that mean a 70 percent likelihood of success, to the best of your knowledge?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't know because I did not put together this chart, so I don't know -- or I don't think I put together this

Page 284

chart, so I don't know what risk percentage means there.
I could tell you what it means in the chart that we put together, but I can't say what it means in Kevin's chart here.
BY MR. SCHMELTZ
Q You would agree with me that 46,000,013 -- pardon me -- $46.13 million is 70 percent of $65.90 million, right?
A I haven't done the math precisely in my head, but eyeballing it, that seems roughly right.
Q In Tier II, it indicates $28.7 million of damages related to the Uri energy credits. Do you see that?
A I do.
Q And that shows a 30 percent risk, correct?
A Correct.
Q In later versions of this type of chart, the Uri credits move up to 60 percent likelihood of success; is that right?

Page 285

MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: If we look at the document, we can see.
BY MR. SCHMELTZ
Q Okay. You don't remember as you sit here?
A No. And I think, actually, there are two different numbers, one for exemplary and one for punitives, and I think the numbers were different for the -- for the two of them.
Q Yeah. It was 60/40, and here it's 30/20, you see punitive damages at the bottom of 28.7 million?
A I do.
Q As you sit here, you don't recall who provided the numbers on the chart we're looking at in 3460 of Cohn Exhibit 13; is that right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Kevin provided them. It's in Kevin's e-mail. Kevin provides them.

Page 286

BY MR. SCHMELTZ
Q And as you sit here, do you know who prepared the risk percentages in this Exhibit 13?
MR. DISHER: Objection. Objection. Vague. Foundation.
THE WITNESS: I do not.
BY MR. SCHMELTZ
Q There's a discount rate applied here of 20 percent; is that right?
A Oh, below the total additional potential damages?
Q Correct.
A There is.
Q So, as of at least the first time -- well, let me take that back.
So, at least as of February 11, 2025, you were aware that in analyses Kevin Hays was preparing, he would include a discount rate --
MR. DISHER: Objection. Form.
BY MR. SCHMELTZ
Q -- right?
MR. DISHER: Objection. Form.

Page 287

Foundation. Vague.
THE WITNESS: I'm sure I did see that Kevin had applied a 20 percent discount rate.
BY MR. SCHMELTZ
Q And as of February 11, 2025, you were aware that Kevin was not including prejudgment interest in his calculations of potential damages, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: He doesn't apply prejudgment interest in this chart. That is correct.
MR. SCHMELTZ: Now, do you see -- can we go off the record for a minute? I'm going to take a five-minute break.
VIDEO TECHNICIAN: The time is 2:44 p.m. We're off the record.
(Recess 2:44 p.m. to 2:59 p.m.)
VIDEO TECHNICIAN: The time is 2:59 p.m. We're on the record.

Page 288

BY MR. SCHMELTZ
Q I think when we were talking a moment ago, you suggested that the table that we were looking at in Cohn Exhibit 13 at LKC 3460, that those numbers came from Kevin.
Did I understand your testimony correctly?
MR. DISHER: Objection. Misstates testimony.
THE WITNESS: This e-mail's from Kevin.
BY MR. SCHMELTZ
Q I asked if the numbers came from you, and you said they came from Kevin --
MR. DISHER: Objection. Misstates --
BY MR. SCHMELTZ
Q -- right?
MR. DISHER: Objection. Misstates testimony.
THE WITNESS: We can have the testimony be read back, but I was referring to the numbers in the e-mail, and the numbers in this e-mail came from Kevin.

Page 289

I think we were also clear earlier that I don't know where these numbers originally came from, except he says, "Below is how we laid it out a few months ago in a Board discussion." And I don't recall that board discussion or when it happened, but as I said, if you have documents on this, I'm happy to take a look at it. I'd love to have my recollection be refreshed.
BY MR. SCHMELTZ
Q Let's look at, in this same exhibit, Bates 3461, the next page of the document. And down at the bottom, underneath below Chase Blackmon's e-mail that we've -- you and I have discussed at some length is a Charles Topping e-mail to Chase, Cameron, Nathan, Kevin and Morgan, right, and updated November 20, 2024?
Do you see that?
A I do see that e-mail.
Q He says, "Spoke with Stris/LKC. Revised attached."
Right?
A He does.

Page 290

Q And if you look at 3462, the start of the chain, it's an e-mail from you to Chuck, to John Stokes, Will Thompson, and the subject is "Revised Damages Expert."
Have I read that correctly?
A You have.
Q And it says, "Chuck, this draft changes the number for the blocked Temple sale 75 million to 50 million. A few other numbers change because of that. Looking forward to the next call."
Have I read that correctly?
A You have.
MR. SCHMELTZ: Okay. We're going to put into the exhibits as Exhibit 14 the attachment to that e-mail, to that 3462 e-mail. And this will be Cohn Exhibit 14. It's not been produced, but we'll produce it today. Let me know when --
(Cohn Exhibit Number 14 was marked for identification.)
CONCIERGE TECH: Is that tab 15A?

Page 291

MR. SCHMELTZ: Is that where we're going, 15A?
MR. WARREN: No. No. I'm going to load it in.
MR. SCHMELTZ: I think we're still -- I think we're loading, so just be patient with us. It won't load?
MR. WARREN: It will.
MR. SCHMELTZ: So we're going to come back to that in the interest of time, although I'm probably messing with you because you're trying to do two things at once.
MR. WARREN: No worries.
MR. SCHMELTZ: Can you put 17 in while we're waiting for that, or will that just mess it up? We're going to put -- tell me when it --
MR. WARREN: And that is 15 or --
MR. SCHMELTZ: Will it become 15? Because we were at 13, and the attachment was going to be 14, right? This would be 15.
CONCIERGE TECH: Exhibit 15 is up there now.

Page 292

MR. SCHMELTZ: Great. So we'll come back to 14.
Let's take a look at Exhibit 15, which for the record is a document bearing Bates numbers Special Committee LKC 2426 to 2427. And this is an e-mail exchange on February 12th, 2025, and there's several e-mails from you to Chuck Topping and then from Kevin Hays to the group.
(Cohn Exhibit Number 15 was marked for identification.)
BY MR. SCHMELTZ
Q Do you see that?
A I might have misheard you, or we're not looking at the same document.
What I see here is, at the bottom, there's an e-mail from me to Chuck cc'ing some people, and then from me to a whole bunch of to's, and then there's the e-mail, I guess from Kevin, but the firm is chopped off.
Q Exactly. We're looking at the same thing. That top e-mail's from Kevin. We only

Page 293

know that because it says, Thanks Kevin." I don't know why the from is chopped. It's chopped on mine as well. But the -- the bottom e-mail that you wrote is the one I want to start with, 2026, bottom of the page, 9:11 a.m., right?
And you write to Chuck and Kevin, but Kevin's not -- doesn't appear to be on copy, right? You agree with that?
A I think -- I think that's all correct.
Q And you say, "Attached is a revised damages template, reflecting our current views of the claims in the complaint," right?
A Correct.
Q And then you note that the legal team had discussed the odds at length, right?
MR. DISHER: Objection. Vague. Document speaks for itself.
THE WITNESS: It says, "John, Will, Todd, Alexis, and I discussed the odds yesterday."
BY MR. SCHMELTZ
Q You'd agree with me that's the outside

Page 294

legal team from Stris and LKC, right?
A No.
MR. DISHER: Objection. Vague. Foundation.
BY MR. SCHMELTZ
Q All right. They're not the legal team from Stris and LKC?
A It's part of the legal team.
Q All right. On the next page, 2427, there's a first, second and a third, right?
A Correct.
Q And the first thing that you say is, "the base amounts are estimates and subject to change, especially as we continue to work with our damage's expert," right?
A Correct.
Q And so anything in your table of damages would be considered an estimate, and the base amount itself, not the percentage likelihood, but the base amount could go up or down, right?
MR. DISHER: Objection. Vague.

Page 295

Compound. Foundation.
BY MR. SCHMELTZ
Q I'm trying to understand what you meant by the estimate -- they're estimates and subject to change.
MR. DISHER: Same objections.
THE WITNESS: What I meant was, the base amounts are estimates and subject to change.
BY MR. SCHMELTZ
Q So they could go up or down irrespective of the percentage likelihood of success, right?
A Theoretically, though I think the less of the -- rest of the sentence explains what's going on here. And I could also talk you through what we did, but most importantly, we are working with our damages expert. We're also working with Charles Griffey, our ERCOT expert. We're working with Dr. Miljkovic for the numbers on the shutdown and the water, and we were also getting some numbers from Province, for instance, on Building D and the amount of the attorneys' fees.

Page 296

So it wasn't as if we were just moving numbers up or down. We were doing the absolute best we could trying to get reliable estimates of the base amount. Our notation was, we're going to continue to refine. We're going to make this as good as we can possibly make it.
Q But they were estimates and they were subject to change, and that can mean up or down, right?
A Sure.
Q All right. Then you note that "the base amounts reflect the damages that Rhodium would receive in litigation," right?
A That is what it says.
Q And you refer to something known as a synthetic dividend that would go to Whinstone.
Do you see that?
A I do.
Q What does that mean?
A So that was a big subject during the initial litigation, the trial that we had in November, because there was a dispute as to what

Page 297

portion of profits Whinstone would get, and it depended upon the entity. And so what I'm saying here is, we're talking about the amount that Rhodium gets, not the amount that would end up going to equity holders. And, of course, you have the synthetic dividend. There are other stakeholders as well, as we know. I was making clear that we're talking about the amount that Rhodium would receive, not that equity holders would receive.
Q All right. And the amount that equity holders would receive because of that synthetic dividend would be lower than your estimated 158 million, right?
A That is correct.
Q How much lower?
A I don't know offhand. I would have to do calculations to try to figure that out.
Q As you sit here today, to the best of your recollection, is it more than 20 million lower?
MR. DISHER: Objection. Foundation.

Page 298

THE WITNESS: I don't. So the bulk of it, I think -- so for the bulk of the -- and look, you're just talking -- well, it's kind of a complicated question because you have other stakeholders as well.

As for the synthetic dividend, for Rhodium JV, 12-and-a-half percent would go to Whinstone. And I don't know offhand looking at this how much of this would turn on Building D versus other stuff.

BY MR. SCHMELTZ

Q Okay. And off of 158 million, 12-and-a-half percent, give or take, is just under 20 million, right?

A I haven't done the math, but if you did the math on your calculator, assuming you put the numbers in correctly, I can assume your numbers are right.

Q I think you mentioned earlier that Kevin Hays in his estimates had a plus or minus 25 million that he just applied to the number, right?

Page 299

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Not to the 158.

BY MR. SCHMELTZ

Q No, I'm asking if -- if you -- you mentioned earlier that Kevin in his analysis -- this is separate from the discount rate -- had just a plus or minus 25 million that he applied. Remember that?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: So that was the third step he took. So, first, he applied the discount rate. Then he knocked down 1.4 million, and then he had a range of plus or minus 25 million.

BY MR. SCHMELTZ

Q Within that range -- well, let me say it differently.

That range on the minus side, at least, would account for at least some amount of the synthetic dividend, right?

MR. DISHER: Objection. Vague.

Page 300

Foundation.

THE WITNESS: I don't think that range has anything to do with the synthetic dividend --

MR. SCHMELTZ: I understand that.

THE WITNESS: -- and I don't --

MR. SCHMELTZ: I asked if it would account for it.

MR. DISHER: Same objections.

THE WITNESS: Yeah, I don't know what you mean by account, and I can't get inside the head of Kevin for why he would have that plus or minus $25 million.

If the question is whether 25 million is more than 20 million, I can agree with that.

MR. SCHMELTZ: Okay. Can you read back what he just said, because I think I heard something I haven't heard today, and I want to make sure I heard it.

(Whereupon, the reporter read the record as requested.)

MR. SCHMELTZ: Thank you.

Page 301

BY MR. SCHMELTZ

Q The last substantive paragraph in the e-mail says, "Third, the Uri claim assumes we are allowed to argue fraud. If we are not permitted to argue fraud, then the value of that claim likely goes to zero."

Right?

A You did read that correctly.

Q And that's a point you and I talked about at length earlier today, right?

A We did talk about the Uri claim earlier today.

Q And we talked about the idea that there's value there if you're allowed to plead and prove it, right?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Yes.

BY MR. SCHMELTZ

Q Do you know what day the Special Committee report came out?

A I'm not sure which Special Committee

Page 302

report you're referring to.
Q The report issued by the Special Committee of the Board of Directors of Rhodium Enterprises.
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah. I don't know how many reports the committee has issued. I don't know if we have all the reports. If you show me a report, I can tell you the date.
BY MR. SCHMELTZ
Q Are you aware that the Special Committee of the Board of Directors of Rhodium Enterprises issued a report on February 26th, 2025?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't have that date in my head, but if you show me the document, I can probably find the date on it.
MR. SCHMELTZ: I just asked if you were aware.

Page 303

The -- let's mark the damages analysis to this e-mail as Exhibit 16. We'll get back to 14 in a minute.
MR. WARREN: 17A?
MR. SCHMELTZ: Yeah.
(Cohn Exhibit Number 16 was marked for identification.)
BY MR. SCHMELTZ
Q And I just -- I just want to note again that your e-mail in Exhibit 15 that we just talked about said that "John, Will, Todd, Alexis, and I discussed the odds at length yesterday," right?
So, on February 12, you were telling Chuck Topping that as of February 11, you, Will Thompson, Todd Disher, Alexis -- oh, my goodness. I'm so embarrassed.
MR. DISHER: Swartz.
BY MR. SCHMELTZ
Q -- my apologies -- Alexis Swartz and John Stokes had discussed the odds at length together, right?

Page 304

A With me, yes.
Q Okay. Turning to Exhibit 16, this is a February 12, 2025 board presentation. It's at least a draft of it, as Kevin has attached it to that e-mail exchange we just looked at.
Do you recognize this document?
A Yes, I do.
Q And let's take a look at the third page of the document. It's the second substantive page. And for the record, the document itself bears the Bates range Special Committee LKC 2428 through 2434, and I'd like to direct your attention to 2430.
A Okay.
Q And this document shows ERCOT curtailment no Uri as having a base amount of $36 million, right?
A That is correct.
Q And there's no caveat in the commentary section about those power credits, is there?
A Correct.
Q And that $36 million is down from what

Page 305

we looked at a minute ago in Exhibit 13, where you and I talked about that number being 6590, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Which exhibit?
BY MR. SCHMELTZ
Q Thirteen, which was the February 11 document, where Kevin asked you and your team to take a look at the numbers and supplement it or change it, right?
A Yeah. That has 65.90. I see that.
Q And your team took a look and came back with 36 million, right?
MR. DISHER: Objection. Vague. Foundation. Compound.
THE WITNESS: So the litigation team took a look, and I think what we have here is 36 million as the base amount for no Uri and then 29 million as the base amount for Uri --
MR. SCHMELTZ: Right.
THE WITNESS: -- the sum of which is

Page 306

65 million and both numbers of which we got from Mr. Charles Griffey, our damages expert --
MR. SCHMELTZ: Okay.
THE WITNESS: -- who was working with Liz Brannen.
BY MR. SCHMELTZ
Q Okay. Go back to 13 again. In 13, you have 65.90 for energy credits excluding Uri, right?
MR. DISHER: Objection. Vague. Document speaks for itself. Foundation.
THE WITNESS: I'm sorry. Can you repeat the question?
MR. SCHMELTZ: Erick, just do me a favor and read it back.
(Whereupon, the reporter read the record as requested.)
MR. DISHER: Same objection. Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: The word "you" throws me. I will tell you that this spreadsheet in Kevin's

Page 307

e-mail on February 11th does have a number, 65.90 excluding Uri.
BY MR. SCHMELTZ
Q Okay. And then under potential damages Tier II, there's a Uri energy credits Whinstone damages of 28.70, right?
A That is correct.
Q Okay. And there's a punitive damages of 28.70 in that same column, right?
A That is correct.
Q Okay. And in Exhibit 16, there's ERCOT curtailment no Uri at 36 million and ERCOT curtailment Uri at 29 million, right?
A For the base amount, that is correct.
Q As you sit here today, do you know why between February 11 and February 12, you and the litigation team took ERCOT curtailment no Uri down from 65.9 to 36 million?
MR. DISHER: Objection. Vague. Foundation. Go ahead.
MR. SCHMELTZ: There's not a need for -- when the question is "do you know," maybe

Page 308

we stow the foundation objection.
THE WITNESS: I think there's a premise in your question which might be incorrect.
So, for a while, Liz and Mr. Griffey were working on the numbers for energy credits. And I don't know at what point they refined their numbers, if it was on February 11th, 12th, or a week or more before that, but they're the ones who are working on these base amounts, and they're the ones who gave me these base amounts.
So, as for why the numbers in Kevin's spreadsheet are different, I don't know, but I can tell you where these numbers came from, and they came from the expert, Charles Griffey, working with Liz.
BY MR. SCHMELTZ
Q And by these numbers, you're referring to the numbers in Exhibit 16 at Bates number 2430, correct?
A Correct.
Q Is it your contention that the numbers in Exhibit 13 did not also come from Mr. Griffey?

Page 309

A I honestly have no idea where those numbers came from.
Q Okay.
A I don't recall. If you want to show me more documents, I can take a look at them.
Q In Exhibit 13, the energy credits for Whinstone are shown at a 30 percent likelihood in that February 11 e-mail from Kevin Hays, right?
A I can go back and look. Can you repeat the question?
Q On February 11, in Kevin Hays' e-mail, Cohn Exhibit 11 -- 13, the Uri energy credits Whinstone damages is shown as a 30 percent likelihood of success, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: The number on the page is 30 percent.
BY MR. SCHMELTZ
Q And the next day, after the litigation team met -- and I think your words -- and I want to make sure they're your words, not mine --

discussed the odds at length.
In Exhibit 16, the odds went from 30 percent on Uri to 60 percent, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Well, again, I don't know when that 30 percent was calculated or by whom or how, so I can't attest to the accuracy of the 30 percent at whatever point in time in which someone came up with it.
But I can tell you that for the 60 percent, which is in Exhibit 16, those numbers were the result of a very long conversation and a careful analysis of at least part of the litigation team, and I'm pretty confident, knowing John Stokes, he probably spoke with his colleagues to get their viewpoints as well.
So I can tell you that the 60 percent number, subject to the commentary, this assumes we're allowed to plead and prove fraud, is a number that we collaborated on and had a reasonable degree of confidence on, and that was

our collective best judgment.
BY MR. SCHMELTZ
Q Okay. I want to be abundantly clear. On February 11, you and your team received a document from Kevin Hays that had a 30 percent chance of success for ERCOT curtailment Winter Storm Uri, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: That is what Exhibit 13 shows.
BY MR. SCHMELTZ
Q And then next day, in response to Mr. Hays' request, after your team carefully considered the odds, the litigation team came back with 60 percent for the Winter Storm Uri ERCOT curtailment claim, right?
MR. DISHER: Can you repeat that, please?
(Whereupon, the reporter read the record as requested.)
THE WITNESS: 60 percent was the

litigation team's best judgment.
BY MR. SCHMELTZ
Q And as of February 12th, all of that back and forth that we looked at earlier with Mr. Dunn and Mr. Eaton and me about whether to plead it, whether to file it, et cetera, all of that back and forth had already occurred, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I mean, that was not the last of the issue, but I believe the documents you referred to earlier predated February 12th.
MR. SCHMELTZ: And now let's take a look at Cohn Exhibit 14, which we've had in the bullpen, and it's an e-mail -- what we're going to do -- Erick can you sticker that? We were unable to -- as 14, or just even if you want me to write on it, I'll do that.
(Reporter clarification.)
MR. SCHMELTZ: Yeah, you want to do it after?

MR. DISHER: Do you have a copy for me?
MR. SCHMELTZ: Of course we do. Thank you. Do you have one for me, too?
BY MR. SCHMELTZ
Q Cohn Exhibit 14, for the record, is a -- is the e-mail that's at the bottom of Cohn Exhibit 13, and it has the attachment. So it's the November 20 exchange where you forward to Jon -- I mean, to Chuck, and Chuck forwards to his team an analysis.
And I want to start at the bottom e-mail --
MR. DISHER: And I have no reason to doubt what you just said, but -- my question is, on Exhibit 13, the last e-mail doesn't indicate -- I'm sorry. Am I looking at -- which e-mail is this attached to?
MR. SCHMELTZ: If you looked at Exhibit 13 and you looked at the bottom of Exhibit 13, you would see the chain. I had to go find the chain to find the attachment, and that's what you have here. You have the first two e-mails and

Page 314

the attachment --
MR. DISHER: Okay.
MR. SCHMELTZ: -- which we'll -- which we'll produce today.
MR. DISHER: Yeah, appreciate that. And, again, no reason to doubt that's what it is. I just -- this, to me, doesn't match Exhibit 13. I don't mean to be --
MR. SCHMELTZ: I'm not saying it is part of -- it is -- 13 is the chain without the attachment. This is the original two e-mails with the attachment. I had to go find the original two. I only had the chain.
We can talk about that off the record more, and if you want to lodge an objection, you're welcome to.
MR. DISHER: Yeah. Just for the record, I just object. Foundation. But we can go ahead with the examination.
MS. WEBER: I -- sorry. This is Lindsay from Quinn. I think maybe we did exhibits twice with 13, maybe.

Page 315

MR. SCHMELTZ: No, no. So this is --
MS. WEBER: Just adding that, maybe --
MR. SCHMELTZ: This is --
MS. WEBER: -- that's the confusion.
MR. SCHMELTZ: No. This is -- this is 14, and all I'm saying --
MS. WEBER: Fourteen.
MR. SCHMELTZ: And you don't have it because it's not published. We'll put it in the chat.
MS. WEBER: Sure. Understood.
MR. SCHMELTZ: And what you'll see, Lindsay, when you get it, is it is the bottom two e-mails that exist in a chain, a larger chain, in 13.
MS. WEBER: Which is the previous exhibit.
MR. SCHMELTZ: Exactly.
MS. WEBER: Understood.
MR. DISHER: And my only point -- again, no reason to doubt -- I don't see any of the e-mails in Exhibit 13 reflected in Exhibit

Page 316

14.
MR. SCHMELTZ: If you go to Special Committee LKC 3461 and 3462.
MR. DISHER: Okay. I'm there.
MR. SCHMELTZ: You'd see that Chuck Topping spoke with Stirs and LKC, revised attached, right?
I don't know -- and then Jon Cohn, November 20. Well, I'm going to agree with you -- I'm going to agree with you this is not the precise one. You're right. I went to go find the precise one.
All right. All right. I withdraw the foundational statements I have made. This is an e-mail exchange on the same day with an attachment that I believe correlates to what would have been attached -- attached to 13, but we'll ask questions and see where we go. Okay? My apologies for that. That was a miss on my part.
BY MR. SCHMELTZ
Q The bottom of the first page, Jon Cohn

Page 317

to Charles Topping, November 20, 2024, copy Will Thompson, John Stokes, subject, "Damages Analysis," do you see that?
A No, actually, I was still trying to look at Exhibit 13. Are you on to 14 now?
Q I am.
A And in -- where should I look?
Q The bottom of the first page.
A Okay.
Q This is your e-mail to Chuck Topping, right?
A It is.
Q And you say, "Chuck: John, Will, and I put our heads together."
Who were you referring to when you say John, Will and I?
A That would be John Stokes, Will Thompson and I, meaning myself.
Q "Put our heads together after reviewing our team's research on damages," right?
A That is correct.
Q "Attached is a spreadsheet sharing our

Page 318

collective thoughts," right?
A That is correct.
Q "We note that this modeling is based on several assumptions, which we would like to discuss with you orally at your convenience," right?
A Correct.
Q Now let's look at the attachment. The attachment has a claim for ERCOT curtailment no Uri --
VIDEO TECHNICIAN: Counsel --
MR. SCHMELTZ: Yeah.
VIDEO TECHNICIAN: -- your hand's covering your mouth.
BY MR. SCHMELTZ
Q -- ERCOT curtailment no Uri to the tune of $65.9 million. Do you see that?
A I do.
Q 70 percent likelihood of success, right?
A I see that.
Q Does that refresh your recollection one

Page 319

way or the other where the 65.9 million came from on Exhibit 13?
MR. DISHER: Objection. Vague.
THE WITNESS: It doesn't. I imagine at the time in November, we thought this was the best number that we had.
Looking at the date, this was shortly after, maybe during the trial. I can't recall the exact amount, but we continued to do a lot of significant diligence over the few -- next few months refining our numbers, adding claims like Building D, getting new information from our experts, doing more research, doing more diligence, having more collaboration, and we had different numbers.
So the number we got and that we put in the February 12th spreadsheet we looked at, that came from our expert.
As for this earlier number, I can't recall where it came from, but I can tell you that after the series of conversations mostly between Charles Griffey and Liz Brannen,

Page 320

Mr. Griffey said that the better numbers or, I guess, the best numbers are the ones that we put in that spreadsheet that became part of Kevin Hays' PowerPoint presentation.
BY MR. SCHMELTZ
Q The percentage likelihood of success for ERCOT curtailment no Uri in the November 20 analysis you forwarded to Chuck Topping is 70 percent, right?
A I'm sorry. Which document now?
Q Same document. I haven't moved documents. Same document.
A So we're at Exhibit 14?
Q Yes, sir.
A Exhibit 14. For no Uri?
Q No Uri.
A That says 70 percent.
Q Okay. And that's the same number that was in Exhibit 16, the February 12th analysis, right, 70 percent?
MR. DISHER: Objection. Foundation. Go ahead.

Page 321

THE WITNESS: That is correct.
BY MR. SCHMELTZ
Q But ERCOT curtailment Uri in Exhibit 14 from your team was a 30 percent likelihood of success on November 20, 2024, right?
MR. DISHER: Objection. Foundation. Vague.
THE WITNESS: So the number on Exhibit 14 is 30 percent. That is correct.
BY MR. SCHMELTZ
Q And that comes from your team, right?
MR. DISHER: Objection. Foundation.
THE WITNESS: Well, I think --
MR. DISHER: Vague. Excuse me. Go ahead.
THE WITNESS: Sorry. That comes from John, Will and I on November 20th.
BY MR. SCHMELTZ
Q And is it your collective thoughts, right?
A Yeah, that's right.
Q And on February 12th, 2025, your

Page 322

chances of success when you consulted with your litigation team doubled over what you had reflected at -- on November 20, 2024, correct?
A Incorrect. For some numbers, it went up. For --
Q Just Winter --
A -- some numbers --
Q -- Storm Uri. Just Winter Storm Uri. Let me rephrase.
A Yeah.
Q On February 12th, after consulting with your litigation team, the likelihood of success on the Winter Storm Uri claim doubled over where you had it on November 20, 2024, correct?
A For the base success as opposed to exemplaries, correct?
Q Exemplaries, now that you say that, are also doubled, though, right?
You had punitives on Exhibit 14 as of November 20 at a 20 percent chance of success, correct?
A I don't know if the punitives on

Page 323

Exhibit 14 relate to Uri or not. It just says punitives.
Q At this point in time, you didn't have your tortious interference claims in the case, right?
MR. DISHER: Objection. Vague.
THE WITNESS: That's not right --
MR. DISHER: Foundation.
THE WITNESS: -- actually. Yeah, that's actually not right because we --
MR. SCHMELTZ: Okay.
THE WITNESS: -- have block of Temple sale in here.
BY MR. SCHMELTZ
Q You agree with me that in every analysis you and I have looked at, the numbers for base damages and exemplary damages on Winter Storm Uri have always matched. The base amount has always matched, right?
MR. DISHER: Objection. Foundation.
THE WITNESS: Actually, I don't even follow the question.

Page 324

BY MR. SCHMELTZ
Q All right. The base amount on Exhibit 14 for punitives and ERCOT curtailment Uri is the same, 28.7 million, right?
A The same as what?
Q They are the same as one another.
A I'm sorry. Which two numbers are the same?
Q Punitives and the base amount for ERCOT curtailment Winter Storm Uri, right, they're both 28.7 million, correct?
A They are.
Q And in Exhibit 16, in the February 12th PowerPoint presentation, the punitives and base amount for Winter Storm Uri are both the same at 29 million, correct?
A That is correct.
Q But the percentage likelihood on exemplaries is at 40 percent as of February 12th, right?
A That is correct.
Q And punitives in Exhibit 14, whether it

Page 325

is correlated or not, is at 20 percent likelihood of success, right?
A That is right.
Q So one reading of the analysis is that your team, between November 20th of 2024 and February 12th of 2025, doubled its views of the likelihood of success on Winter Storm Uri as a base claim and a punitives claim, right?
A Well, first, I take issue with the my team. I would love to take credit for the entire team. We had a lot of exceptional lawyers at two different law firms. I don't think John Stokes or Peter Stris or the lawyers from that law firm would say it's my team, but I do appreciate it, because it was a wonderful team that did fantastic work. And I don't deserve the credit for what they did, but if you're going to give it to me, that's terrific.
As for your question about the odds going up, yeah, they did, and as best I can say is, between November 20th and February 12th, the lawyers in these two fantastic law firms put

Page 326

their heads together, had many conversations, did a lot more research, better understood the claims, refind our analyses, had a better sense of how we can plead them.

We put together a complaint. The complaint, we thought, was very compelling. The clients thought it was compelling, too.

So, three months later, after all that analysis, we thought the best odds were 60 percent for the base success and 40 percent for the exemplaries. But I must say, none of this really matters because we were not allowed to plead and prove fraud, so the odds went to zero.

Q The odds would have gone to zero if you weren't allowed to plead and prove fraud. Isn't that what you've said in your e-mails?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: We were not allowed to plead and prove fraud, so as we made abundantly clear in e-mails and phone calls, the odds would

Page 327

likely go to zero and they did because we were not allowed to plead and prove fraud.

MR. SCHMELTZ: So, in fact, let's -- let's get another exhibit up, because that's not actually what you said.

So let's look at -- oh, no, yeah, we can do it with -- this is Exhibit 15, is that right, this e-mail?

MR. WARREN: Tab 17.

BY MR. SCHMELTZ

Q Yeah. Let's go back to 15, and let's see what you actually said, then, because now you're saying something different.

What you said to Chuck on February 12th -- when the odds of this claim doubled over what you had represented on November 20th, what you said is, "If we are not permitted to argue fraud, then the value of that claim likely goes to zero."

Have I read that correctly?

MR. DISHER: I'll just object to any mischaracterization of his testimony, but go

Page 328

ahead and answer the question.

THE WITNESS: There's also a lot of preface, which I don't know --

BY MR. SCHMELTZ

Q Have I read that correctly?

A I'm sorry. Have you read what?

Q This --

A Because this is different from what you said before.

Q It's different than what you said before.

MR. DISHER: And, again, object to mischaracterizing his testimony.

MR. SCHMELTZ: What you said --

MR. DISHER: The record speaks --

MR. SCHMELTZ: -- to Chuck --

MR. DISHER: -- for itself.

BY MR. SCHMELTZ

Q What you said to Chuck Topping on February 12th, 2025, when the litigation team had concluded that the odds of success for a Winter Storm Uri curtailment claim had doubled over what

Page 329

was represented on November 20, '24, your e-mail says, "If we are not permitted to argue fraud, then the value of that claim likely goes to zero," right?

A Well, I disagree with the entire first part of your question, if that was part of the question. If you're simply asking me what the sentence on this page says, you read that sentence correctly.

Q And I think you've already agreed with me that the odds on February 12th of success for a Winter Storm Uri claim had doubled over what was represented on November 20, 2024, right?

A If we were allowed to plead and prove fraud, which we were not.

Q But as of February 12th, 2025, you still believed you might be permitted to argue fraud, correct?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I was hopeful, and I certainly spoke to many people, including Chuck

Page 330

and Chase, about the importance and how critical it was to amend the complaint and plead and prove fraud. I thought the Special Committee and its attorneys were doing a disservice by not letting us amend the complaint. Nonetheless, they never let us amend the complaint.

Instead, they took a different path, one which they accused the founders of violating their fiduciary duties and breaching the business judgment rule and contending that they acted unreasonably and unjustifiably. And I thought that was a mistake and I still do.

MR. SCHMELTZ: Hey, Erick, could you read back my question?

(Whereupon, the reporter read the record as requested.)

MR. DISHER: Asked and answered. Objection. Asked and answered.

MR. SCHMELTZ: His answer rambled on outside of the bounds of that. I want to know what he thought about on February 12th.

MR. DISHER: Objection. Asked and

Page 331

answered.

THE WITNESS: I told you I hoped we would. If the question is believed, no, because I thought the Special Committee was so --

MR. SCHMELTZ: That's not --

THE WITNESS: -- dug in in an incorrect position, an erroneous position adverse to the interest of the estate, I thought we were not going to do it, and I was correct. My belief, my prediction, was correct. They never let us plead and prove fraud.

BY MR. SCHMELTZ

Q It's your testimony as you sit here today that when you wrote the words, "If we are not permitted to argue fraud, then the value of that claim likely goes to zero," what you meant is that we will not likely be allowed to argue fraud?

MR. DISHER: Objection.

BY MR. SCHMELTZ

Q Is that your testimony today, sir?

MR. DISHER: Objection.

Page 332

Mischaracterizes testimony.

THE WITNESS: Yeah, you're confusing a lot of things there, Trace. So --

MR. SCHMELTZ: No, you're --

THE WITNESS: -- this e-mail was written on February 12th at 9:00 a.m. before the board meeting. I hoped that the Board would allow us to plead and prove fraud. I wanted to argue fraud. I was not especially optimistic because of the hard line they had taken and the tone they had taken in e-mails and on phone calls and, frankly, the tone that you had with me, too, Trace, but I still hoped.

But I was correct in the end. They did not allow us to plead and prove fraud. We were not permitted to argue fraud.

I put this in here because I wanted to make it clear to Charles Topping once again the importance of being allowed to plead and prove fraud, and that's why I said, if we're not permitted to argue fraud, then the value of that claim likely goes to zero. Nonetheless, despite

Page 333

my best efforts, at that board meeting and thereafter, we were not allowed to plead and prove fraud.

BY MR. SCHMELTZ

Q Do you -- how long did you work with Charles Topping?

A We looked at the engagement letter earlier. I believe that was sometime in May of 2023.

Q Did you find Charles Topping to be a truthful and honorable man?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: What point in time?

BY MR. SCHMELTZ

Q During the course of your working with him.

A I mean, it depends. You know, as you know, over the past few months, this has been a very difficult period, and I don't see eye to eye with Mr. Topping.

I don't feel the need to go into the

Page 334

record on things that I feel that he has done incorrectly, because I think he at his heart is a good man. I think he's a good father. I respect the fact that he goes to see his kids' hockey games. I personally liked him a lot, and I'm going to try to separate the last few months, which might not even be his fault, and take that away from the equation.

Q So you don't have an answer to my question as to whether you find him to be a truthful and honorable man; is that correct?

MR. DISHER: Objection. Asked and answered. Foundation.

THE WITNESS: Yeah, I mean, look, in the abstract, I don't know. I'm trying not to impugn him because I know he's probably placed in a difficult situation. There are a lot of things I like about him, but I would not necessarily agree with his approach over the last several months on this.

BY MR. SCHMELTZ

Q In your experience with David Dunn, did

Page 335

you find him to be a truthful and honorable man?

MR. DISHER: Objection. Foundation. Vague.

THE WITNESS: I only had one interaction, really, I can remember, and I thought that his e-mail was -- I'll just say unfair, accusatory and not entirely correct, but I'm not going to judge a human by one e-mail. I'm sure he has a lot of positive attributes, and, you know, I'm not going to judge him based upon one e-mail.

BY MR. SCHMELTZ

Q Did you think that Mr. Dunn was being truthful with you when he said, "We can always amend the complaint if needed"?

MR. DISHER: Objection.

THE WITNESS: I'm not --

MR. DISHER: Vague. Foundation.

THE WITNESS: -- going to speculate as to what's going through David Dunn's head.

MR. SCHMELTZ: I didn't ask you to do that. I said -- Erick, reread my question. It's

Page 336

a very simple question, sir.

(Whereupon, the reporter read the record as requested.)

MR. DISHER: Same objections.

THE WITNESS: I'm not sure I paid too much thought to that sentence in his e-mail. What I can tell you --

BY MR. SCHMELTZ

Q No. Did you think Mr. Dunn was being truthful when he said to you, "We can always amend the complaint if needed"?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I don't think I thought about it one way or another.

BY MR. SCHMELTZ

Q Okay. And David Eaton, did you find David Eaton to be truthful and honorable in your dealings with him?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: Not entirely.

Page 337

BY MR. SCHMELTZ

Q And, of course, you did not find me to be truthful and honorable in your dealings with me; isn't that correct?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: I'm not sure why you want to go into this on the record, Trace, but you and I clearly feel differently about a lot of things.

BY MR. SCHMELTZ

Q So it's fair to say there's not a single person on the debtors' team that you dealt with on the question of Winter Storm Uri who you find to be truthful and honorable; is that right?

MR. DISHER: Objection. Mischaracterizes testimony. Vague. Foundation.

THE WITNESS: That's definitely not right. Look, Trace, I think, as you know, you've kind of put us through hell for the last several months. And I don't know if that's coming solely from you or if it's other people, but I don't think you and anyone else involved in this has

Page 338

treated us fairly.
So if you want me to say on the record that I don't think you've been truthful and honorable, I mean, I can say it, but I don't feel we need to have that on the record.
MR. SCHMELTZ: I think the record of your level of disbelief of people is thorough enough. Let's take a break.
MR. DISHER: Objection to the testimony from the lawyer there.
VIDEO TECHNICIAN: The time is --
MR. SCHMELTZ: Whatever.
VIDEO TECHNICIAN: -- 3:52 p.m. This ends Unit 5. We're off the record.
(Recess 3:13 p.m. to 4:04 p.m.)
VIDEO TECHNICIAN: The time is 4:04 p.m. This begins Unit No. 6. We're on the record.
BY MR. SCHMELTZ
Q In the -- in Exhibit 14, the two-pager on paper that we looked at -- it's right there in front of you -- the expected value of damages was

Page 339

$85.64 million, right?
A That is correct.
Q And in Exhibit 13, which is the e-mail that we looked at from Kevin Hays, that 80 -- that number is a little higher.
The base expected is at 89 million, right? Do you see that?
A I do.
Q But he applies a discount rate and knocks that down to $74 million as an expected collection, right?
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q Do you see that?
MR. DISHER: Objection. Foundation. Vague.
THE WITNESS: I see he applies a 20 percent discount rate, which, now that I look at it, that's actually different from the discount rate he applied the very next day, I believe. Yeah. So he has a higher number --
MR. SCHMELTZ: Yeah.

Page 340

THE WITNESS: -- than what's on Exhibit 14.
MR. SCHMELTZ: Yeah.
THE WITNESS: And then he applies a 20 percent discount rate and gets a lower number and --
BY MR. SCHMELTZ
Q But do you see what he calls that number on Exhibit 13?
MR. DISHER: Objection. Vague.
THE WITNESS: On Exhibit 13? Which number?
BY MR. SCHMELTZ
Q 74.2 million. Do you see what he labels it as?
MR. DISHER: Objection. Foundation.
THE WITNESS: I do see what he labels it as.
BY MR. SCHMELTZ
Q What is it? Read it.
A "EOY 2025 Expected Collection."
Q You understand EOY meaning end of year,

Page 341

right?
A I assume that's what he means.
Q And so he's applied a 20 percent discount rate as of February 2025 to something that's expected to be collected within 2025, right?
MR. DISHER: Objection. Foundation. Vague.
THE WITNESS: I don't know. I'm just reading what he has here.
BY MR. SCHMELTZ
Q Okay. You didn't write an e-mail in response to this that says, why are you applying a discount rate, right?
A I don't know. Are you telling me this? I'm not seeing an e-mail here.
Q Let's take a look at the chart in Exhibit 17 that we were looking at earlier. LKC 2430 is the Bates.
MR. DISHER: I don't have an Exhibit 17.
THE WITNESS: Neither do I.

Page 342

BY MR. SCHMELTZ
Q My apologies. 16. And there's a 25 percent discount rate, right?
A There is.
Q And it's an EOY 2025 expected collection, right?
A That's what the next line says.
Q And there the expected value is 126.4 million, right?
A I wouldn't say that's the expected value. I'd say the expected value is 158 million, and then he applied a discount rate.
Q And with the discount rate applied, the expected value is 126.4 million, correct?
MR. DISHER: Objection. Foundation. Document speaks for itself.
THE WITNESS: Yeah, I mean, once you apply a 25 percent discount rate, which is inconsistent with the discount rate he had the day before and is more than three times the discount rate that Andrew Popescu used in Exhibit 4, you then reduce the 158 million to

Page 343

126.4 million. That is correct.
BY MR. SCHMELTZ
Q The -- you participated in a board call on February 12th in which these numbers were discussed, right?
A By you, do you mean LKC or Jon Cohn?
Q Jon Cohn.
A I did not.
Q Someone from LKC participated; is that correct?
A That is correct.
Q Who was it from LKC to the best of your knowledge?
A Will Thompson.
Q And coming out of that meeting, did you and Will Thompson have any kind of conversation about Kevin Hays' use of a discount rate?
A We definitely had a conversation. I can't recall if we had a conversation about Kevin Hays' use of a discount rate.
Q Okay. And I can find no record of an e-mail from you to anyone at Rhodium in that time

Page 344

frame questioning the use of a discount rate.
Are you aware of one?
A I haven't looked for one. Sitting here right now, I can't tell you one way or another whether I have an e-mail that's discussing Kevin Hays' use of a discount rate, which is higher than the discount rate he used the day before, which is more than three times the discount rate that Andrew at Province used.
Q You haven't produced one in this litigation, right?
A That's probably right.
Q You only produced 14 documents in this litigation, right?
A I thought you said six earlier.
Q I didn't make a number earlier.
A Oh, okay. If you say so.
MR. SCHMELTZ: Let's mark tab 18 as Exhibit 17, please.
(Cohn Exhibit Number 17 was marked for identification.)

Page 345

BY MR. SCHMELTZ
Q The Riot Whinstone mediation occurred on 19 February 2025, correct?
A That was one of them. I guess one could suggest that's when it started. That's the only one I attended. I understand there are different conversations. I don't know if those are considered part of the mediation or not, but the one I attended and at least the first session was on February 19th.
Q On the day before that mediation, you prepared a modified version of, I think, what you called Kevin's first spreadsheet to calculate the value of claims.
Do you recall doing that?
A I do.
Q And do you have in front of you Cohn Exhibit 17?
A Yeah.
Q For the record, this is an 18 February 2025 e-mail from Jon Cohn to a host of folks. It is Bates labeled Special Committee LKC

Page 346

73 and 74.
You wrote this e-mail, correct?
A I must have. It's -- it says, "All the best, Jon," and I'm Jon.
Q And in it you indicate changes that you've made to a spreadsheet to come up with a new total of damages of $440 million, correct?
A That is correct.
Q And in this -- let the record reflect I doubled your number of documents you produced. You produced seven. I was optimistic with 14, but I digress.
In a bullet point under a paragraph stating "As requested," the third bullet point, you say, "What would change the bottom line would be rosier predictions on the big-ticket items -- energy credits and Building D."
Have I read that sentence correctly?
A From a reading context. The rest of the stuff --
Q I'm asking if I read that sentence correctly.

Page 347

A Well, I was trying to find the sentence when you started talking.
Q "What would change the bottom line would be rosier predictions on the big-ticket items -- energy credits and Building D."
Have I read that sentence correctly?
A You did, yes.
Q And then you say, "If we push up the odds on Uri exemplaries to 60 percent and the odds on Building D to 50 percent, which I think is high for this claim, the bottom line increases to $183 million."
Have I read that sentence correctly?
A You did.
Q In the November 20, 2024 analysis that we looked at in Exhibit 14, the odds for Uri exemplaries were 20 percent, right?
MR. DISHER: I'm sorry. Which exhibit?
MR. SCHMELTZ: Fourteen.
THE WITNESS: Well, we discussed this earlier, and we're assuming now that the punitives means that relates to Uri, and making

Page 348

that assumption, then the likelihood of success on this document is 20 percent.
BY MR. SCHMELTZ
Q And as of February 12th, the likelihood for success for Uri exemplaries went to 40 percent, correct?
A That is correct.
Q And that was based on an analysis by the litigation team at Stris and LKC, right?
A That is correct.
Q And in your e-mail here on 18 February, six days later, that's -- that -- odds are going up another 60 percent on your rosier predictions document, right?
MR. DISHER: Object --
THE WITNESS: Sorry. Go ahead.
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
Go ahead.
THE WITNESS: I'm sorry. Could you repeat the question?
MR. SCHMELTZ: Erick, can you read what

Page 349

you have as a question? And I thought he answered it. I'd love to hear both things.
(Whereupon, the reporter read the record as requested.)
BY MR. SCHMELTZ
Q Let me ask the question again.
And here in your e-mail of 18 February, six days after the February 12th presentation, the odds go up another 20 percent on Uri exemplaries up to 60 percent in your rosier prediction document, right?
MR. DISHER: Objection. Vague. Foundation. Document speaks for itself.
THE WITNESS: I think you're misphrasing it. What I say is, if we push up the odds on Uri exemplaries to 60 percent, yada, yada, yada, bottom line increases to $183 million, and that is the rosier prediction which management asked me to make. This wasn't the collective judgment of the litigation team. It wasn't my judgment. They asked us to come in with rosier, more optimistic predictions, and we

Page 350

did so.
And then I said -- and I use the word "I" because I was talking about myself, but this also reflects the prior analysis of the litigation team. "I remain of the view that we should aim to settle damages in the 100 to $150 million ballpark."
And I still think that was a reasonable range since our estimate of the expected value is 158. And we're going into a mediation, and we understand that in mediations you make compromises, and getting the money in February or March of 2025 would have been a good thing for the company, and that's why I stuck to the range.
So what you can see is, I was not changing my view based upon the rosier predictions, which were the request of Rhodium management.
BY MR. SCHMELTZ
Q It's your testimony that Rhodium management specifically asked you to move the chances of success on Uri exemplaries from

Page 351

40 percent to 60 percent? Is that your testimony?
MR. DISHER: Objection. Misstates the testimony.
THE WITNESS: Yeah, you are. So what I'll say is what Chase Blackmon said in his deposition not that long ago, that Rhodium management asked us to come in with a more optimistic scenario, and that's what we did. I don't think he said specifically, raise the number for Uri, let alone raise it to 60 percent. He wanted more optimistic odds, and so we obliged by providing more optimistic odds.
BY MR. SCHMELTZ
Q And you chose which odds to raise; is that correct?
MR. DISHER: Objection. Vague.
THE WITNESS: The you --
BY MR. SCHMELTZ
Q Jon Cohn.
A I highly doubt I did it by myself, because I relied on the team for a ton, so it

Page 352

probably was some kind of a collective thing. But what we did here, if we push up the odds -- yeah, I mean, so we understood the task --
Q You're now wandering --
A I don't think I am.
Q -- from the question.
A If I am --
Q Was it --
A -- apologizing, but --
Q Was it you --
A -- you were --
Q -- who chose which odds to raise in response to Mr. Blackmon's question?
MR. DISHER: Objection. Vague.
THE WITNESS: So I was trying to answer that question, and I think the answer is no.
MR. SCHMELTZ: Okay.
THE WITNESS: I think --
MR. SCHMELTZ: Thank you.
THE WITNESS: -- probably --
MR. SCHMELTZ: Thank you. I can follow up.

Page 353

THE WITNESS: Okay.
BY MR. SCHMELTZ
Q Did you make that decision as to which odds to bump up in conjunction with other outside lawyers?
MR. DISHER: Objection. Vague.
THE WITNESS: Yeah, it's not the phrasing I would use. I would say that we --
MR. SCHMELTZ: Let me ask a different question, then.
THE WITNESS: Sure.
BY MR. SCHMELTZ
Q Did you make the decision as to which odds to raise in response to Mr. Blackmon's question in conjunction with anyone working for Rhodium?
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q Employed by Rhodium directly.
A Honestly, I -- I can't remember. This was several months ago, and I can't recall the specifics of the conversation I had with Chase or

Page 354

anyone else, but as Chase testified just recently, Rhodium management asked us to have more optimistic predictions and --

Q That's the part I understand. The part I don't understand and that I'm trying to ask you questions about is who chose which claims to push the odds up. Who chose it?

A I can't recall. We use the word "we" in here, "if we push up the odds," and I can't recall who suggested it first and who said what, but reading this now several months later, I think it was a collective judgment as we tried to implement the task that Chase assigned to us.

Q And is that a subset of the same group of people that we looked at earlier with Alexis and Todd and Will and John with an H and you, to the best --

A A subset --

Q -- of your recollection?

A Oh, I don't know.

Q Fair to say the day before the mediation with Riot Whinstone, you and some

Page 355

collection of others decided to push up the odds on Uri exemplaries to 60 percent and convey that as an option for a rosier outlook to your client?

MR. DISHER: Objection. Vague.

THE WITNESS: Yeah, and that's not right. We didn't think these were the best predictions. We remained of the view that the best prediction was the one that we put in the February 12th spreadsheet.

BY MR. SCHMELTZ

Q I didn't ask if you thought they were the best projections. I said, is it fair to say that you working with some others chose Winter Storm Uri exemplaries to raise the percentage likelihood of success in order to present the rosier prediction the company asked for?

MR. DISHER: Objection. Vague. Lacks foundation.

THE WITNESS: Yeah, I thought I was clear that Chase Blackmon asked us to have a rosier set of --

Page 356

BY MR. SCHMELTZ

Q That isn't what I'm asking. I'm asking, is it fair to say that you and some people working with you chose Uri exemplaries as -- as a claim to raise the odds up in order to give Mr. Blackmon what he had asked for, that being a rosier prediction?

MR. DISHER: Objection. Vague.

THE WITNESS: Yeah.

MR. DISHER: Foundation.

THE WITNESS: I don't know. He wanted rosier predictions. I can't recall who suggested changing that number versus other numbers, but he wanted something that was rosier, and so --

BY MR. SCHMELTZ

Q Do you think it was Michael Robinson?

A Probably not.

Q Do you think it was David Dunn?

A I do not.

Q Do you think it was David Eaton?

A Don't think so.

Q Do you think it was Spencer Wells?

Page 357

A No.

Q Do you think it was Patty Tomasco?

MS. WEBER: I'm objecting to there's no foundation for these questions.

(Reporter clarification.)

MS. WEBER: Sorry. Lindsay from Quinn.

BY MR. SCHMELTZ

Q Do you think it was Patty Tomasco?

A Probably not. I mean, she's on this e-mail, and she did join calls of ours. If I had to guess -- and I'm just guessing -- it didn't come from her, but I honestly don't remember anything aside from Chase asked us to prepare some rosier predictions, not ones that we believed in, and we gave him some higher numbers.

As for why we chose these numbers to inflate versus others, I don't know, but these are not the odds that we thought were the best odds. They were odds that we thought were responsive to the task given to us by our client.

Q And by "we," you don't know who you're referring to; is that correct?

Page 358

A Well --
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, I mean --
MR. DISHER: Misstates --
THE WITNESS: -- look, I'm talking about the people that I probably spoke with and relied on, which would be probably Todd and Will and John Stokes and others, but I can't recall every person who participated in that conversation.
And we were following the request, the directive, from Chase, and that's what we're doing, not because we believe these odds. We didn't think these odds were right, but we were simply doing something responsive to a request coming from the CEO who wanted something more optimistic, as he himself testified to a few days ago.
BY MR. SCHMELTZ
Q And this is -- this is odds that you raised the day before the mediation with Riot

Page 359

Whinstone, right?
A Well, that's when we got the request.
Q The mediation with Riot Whinstone in which you've testified that you did not intend and you did not raise the word "fraud" at any point in time; is that right?
MR. DISHER: Objection. Vague. Misstates testimony.
THE WITNESS: Yeah, that's not precisely what I said, but I can tell you we definitely did not raise or argue fraud during that mediation.
BY MR. SCHMELTZ
Q But the day before the mediation, you were raising the odds on exemplary damages for something that can only come from fraud, right?
A Well, as you look at these spreadsheets that you left off --
Q Answer my --
A -- of --
Q -- question.
MR. DISHER: He is answering your

Page 360

question.
THE WITNESS: I'm answering --
MR. SCHMELTZ: No, you're not.
THE WITNESS: -- your question --
MR. DISHER: Yes, he is.
THE WITNESS: -- and I do not want --
MR. SCHMELTZ: No.
THE WITNESS: -- you to be deceitful, Trace, which you've done before.
But if you want to look at the spreadsheets that are attached to this, they explicitly say, if we are allowed to plead and prove fraud. I see you left off those spreadsheets, but I think the Court should know that there are spreadsheets which explicitly say, assumes we can plead and prove fraud.
BY MR. SCHMELTZ
Q As of February 18, those spreadsheets didn't express the view that you likely wouldn't be able to plead and prove fraud, did they?
MR. DISHER: Objection. Vague. Foundation.

Page 361

THE WITNESS: I don't understand the question.
MR. SCHMELTZ: That's fine. You do you. What's my next exhibit?
MR. WARREN: Eighteen.
MR. SCHMELTZ: Cohn 18 is a document -- this is tab 20 -- Special Committee LKC 1445 through 1451.
(Cohn Exhibit Number 18 was marked for identification.)
BY MR. SCHMELTZ
Q After the mediation on February 19th, you went through a period with the client in which you were renegotiating a success fee and potentially negotiating a number, a hard number, to get paid for your work; is that correct?
A I'm sorry. Page 8? Exhibit 18 just popped up.
Q Yeah, I know, but I'm asking you a question that is irrespective of the exhibit.
Before you look at the exhibit --
A I'm looking at it right now.

Page 362

Q Before you look at the exhibit --
A It's too late.
Q -- can you answer my --
MR. SCHMELTZ: Erick, would you reread my question?
I just want you to listen to and answer my question. Kind of the thing about depositions.
(Whereupon, the reporter read the record as requested.)
MR. DISHER: Objection. Vague. Compound. Foundation.
THE WITNESS: Yeah, I wouldn't agree with that phrasing because, ultimately, what we did was, in Chuck Topping's words, make minor clarifying changes. There's a whole history there, which we can get into, but you probably want to ask questions leading up to it. But I wouldn't say I agreed with your phrasing there.
BY MR. SCHMELTZ
Q You entered into a phase of negotiation with your client; is that correct?

Page 363

A A phase of negotiation? I'm not sure I used that phraseology, but we did at some point have a negotiation on the success fee. In the end, the client decided not to go with some stuff we've been talking about, instead just to make the minor clarifying changes that materialized into the March 2025 engagement letter, which Chuck Topping described in his declaration and testified about in both his deposition and at the hearing.
Q Let's take a look at Cohn 18, and let's go to the start of the chain, which is at 1450. And this is a reference by Will Thompson to you about Quinn Emanuel filing their new hourly rates. Do you see that?
A Mine disappeared. Okay. I'm with you. 1450?
Q Yes.
A Yeah. Will Thompson tells me Quinn Emanuel just filed their new hourly rates.
Q Do you know why he was sending you that information?

Page 364

A Probably because he thought that those rates were very high.
Q Let's take a look at 1449. At the bottom of the page, February 24th, 2025, you write Chase and Chuck an e-mail, and you forward these rate increases.
Do you see that?
A I do.
Q You comment on Quinn's rates, right?
A I do.
Q You note that you -- LKC had agreed not to raise its rates in 2025, right?
A That is correct.
Q You note that LKC provided the debtors steep discounts in exchange for a success fee, correct?
A That is correct.
Q And then, in the fourth bullet, you say, "Last week, Patty informed me that at least part of our success fee was in jeopardy because we did not provide the details of our contingency arrangement in our retention filing with the

Page 365

Court. An original draft included those details, but Chuck requested that we removed them, and Patty never said that was a problem until last week."
Have I read that correctly?
A You did.
Q On the next page, you describe a new proposal that Chuck had explained to you on the phone, right?
A Next page or previous page?
Q The next page, 1450.
A I see that.
Q And you note that part of Chuck's proposal is, "In the event of a sale to Whinstone, the maximum success fee would be $2 million," right?
A That is correct.
Q And that amount would include both the 600,000 LKC was entitled to get under the pre-existing arrangement and any success fee for damages, right?
A You're saying Chuck's proposal?

Page 366

Q That's the way you describe it here, correct?
A That was Chuck's proposal.
Q And that's how you described it here, right?
A Yeah, I'm not sure I follow, but this is Chuck's proposal. I'm describing Chuck's proposal. He's -- yes.
Q What I'm asking --
A I'm not saying that that was what the engagement letter was. This is Chuck's proposal as he explained it to me on the phone.
Q And then you comment that you're wondering how they reached that number and that your feeling is the success fee should be substantially higher, right?
A That's part of it. I mean, you're kind of missing a whole lot of stuff here. But Chuck had proposed a change to the engagement letter, which would plug in a number, and I can tell you why he proposed doing it.
Q So not -- not my question. My question

Page 367

is: That's what the e-mail says, right?
MR. DISHER: Objection. Document speaks for itself.
MR. SCHMELTZ: I am going to go to the Court and ask for more time for this deposition given the way it's been conducted on your side. All right? I'm just letting you know that now.
MR. DISHER: On what grounds? You still have another hour and a half left on the record.
MR. SCHMELTZ: I have an hour.
MR. DISHER: And he's -- he has actually tried to answer your questions, and you have --
MR. SCHMELTZ: No, he hasn't.
MR. DISHER: -- repeatedly cut him off.
MR. SCHMELTZ: You know what I'm going to say to the Court. I don't want to have this conversation and labor the record any further.
THE WITNESS: Well, why don't you just go to the Court, Trace?
MR. SCHMELTZ: I will, ultimately, but

Page 368

let's finish.
BY MR. SCHMELTZ
Q Chuck responds to your e-mail, right?
A I'm sorry. So what's the question at the table now, because --
Q Chuck responds to your e-mail, correct?
A Yes.
Q And on page 1449, he says, "My reading of the present engagement letter is that in the event of an acquisition by Whinstone or Riot, the success fee would be limited to $600,000."
Have I read that correctly?
MR. DISHER: Objection. Document speaks for itself.
THE WITNESS: I think you did read that correctly.
BY MR. SCHMELTZ
Q And then he says, "I am attempting to solve for that problem," right?
A You're reading the words correctly.
Q And do you believe that the sentence "My reading of the present engagement letter is

Page 369

that in the event of an acquisition by Whinstone or Riot the success fee would be limited to $600,000" is inconsistent with Chuck Topping's later testimony that there is no difference between the current engagement letter and the former engagement letter?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: My belief is that Chuck was either playing hardball or he was confused at the moment, but if you look at the rest of the e-mail chain -- and this is consistent with many phone calls that I had with him -- he understood what was going on.
BY MR. SCHMELTZ
Q On page 1448, you respond to Chuck's e-mail, right?
A That's correct.
Q And you note that there are three components of the success fee, right?
A Oh, mine disappeared again.
That is correct.

Page 370

Q And you note the three components as 600,000, plus an amount for energy credits, plus 10 percent of any additional amounts not attributable to energy credits, right?
A And there's some stuff that follows, correct.
Q But what you were emphasizing is that they are plus, they are additive, not in the disjunctive, correct?
A The three elements, correct.
Q And you actually say, we are not suggesting that we should get a piece of the sale of the business, but a large chunk of any settlement with Whinstone would be attributable to the damages case, right?
A Well, I thank you for not pointing out my typo, but I think I said "a large chuck," Freudian slip, perhaps. But with that exception, I believe you read the sentence correctly.
Q I don't think I could say large chuck without chuckling, so I skipped over it, but thank you.

Page 371

November 20 -- or pardon me -- February 25th, then there is a sort of series of back and forths between you and -- and Chuck, and Chase Blackmon gets involved all around the success fee and how to handle it, correct?
A You're summarizing a bunch of stuff, so let me just -- I'll say there are a bunch of e-mails involving me, Chase, Chuck and Will pertaining to the success fee.
Q And would you describe the back and forth at this point between you, Chuck and Chase as a collaborative effort to try to solve a problem?
MR. DISHER: Objection. Vague.
THE WITNESS: Not entirely. Honestly, there was a lot going on here, and these e-mails were kind of contemporaneous with and certainly followed some phone calls.
I was quite upset because of the mistake that Patty and Quinn Emanuel made, and Chuck proposed a resolution. And so he had suggested making some changes to the engagement

Page 372

letter to plug in a number, and that was his idea. And he started with a really low number, and I thought he was playing hardball or just being confused.
So was it collaborative? I'm not sure I'd use the word "collaborative."
BY MR. SCHMELTZ
Q Okay. You, on 1446, discuss some options, right?
A I don't know. I can look.
Q Maybe I should say it differently.
You express concerns about Riot's incentives on 1446, correct?
A Yeah, because we never intended Riot or Whinstone to have any say with respect to our contingency fee. That would have been crazy, as Chase put it, and I didn't want to have some kind of a new structure in which Riot or Whinstone would somehow be allowed to decide how much LKC gets paid.
Q And we'll come back to that.
You ask if it makes sense to have a

Page 373

provision like this, quote, "If you are acquired by Whinstone or an affiliate in a transaction that resolves or otherwise terminated the Matter, the above terms [success fee] will not apply, and instead LKC will receive blank percent of any gross proceeds from the acquisition, to be paid 30 days after the closing of such acquisition."
Did I read that correctly?
A I think you did.
Q And then you and Chuck and Chase talk about percentages that might make sense, right?
A I'm not sure I'd add the phrase "that might make sense." We talked about percentages, and it was at that point -- I would say, at that point, we were negotiating possible numbers.
Q Okay. You suggest 3.5 percent in this e-mail that we're looking at, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, just -- just to clarify, I sketch out the thinking, and I was using some numbers of Kevin's. And they wanted

Page 374

me to use Kevin's numbers, and they weren't even looking at the right numbers, but using the numbers they wanted me to use, you ended up with a .036 or 3.6 percent. I rounded down and then proposed 3.5 percent.

And, look, I did this obviously in the confines of a negotiation. I really wanted to avoid any contentious litigation like what we've had over the past ten months. I wanted some degree of certainty and clarity, and for that reason, I was willing to leave some money on the table. And then they came back, and we negotiated some more, and we had some other numbers and ideas.

And I hope that answers your question, but if it doesn't, then just ask me to clarify.

BY MR. SCHMELTZ

Q Here, you suggest that on Kevin's numbers, about 35 percent of the value of the litigation is in energy credits, right?

A Based upon those numbers of Kevin, sure.

Page 375

MR. SCHMELTZ: Bless you.

MR. DISHER: Thank you.

MR. SCHMELTZ: Let's mark Cohn 19.

MR. WARREN: Is this 21?

MR. SCHMELTZ: Yes. This is a document Special Committee LKC 923 to 926.

(Cohn Exhibit Number 19 was marked for identification.)

BY MR. SCHMELTZ

Q And this e-mail chain picks up on February 26th, so it's the day after Cohn 19 ends. And if you take a look specifically at the bottom of 925, you'll see that is an e-mail from you to Chuck and Chase as of February 26th, right?

A 926?

Q 925. Bottom of 925. You see February 26th is the date you wrote Chase and Chuck, right? It's just a landmarking question.

A I'm just reading this e-mail chain. I mean, there are e-mails from the 26th, and there are e-mails from the 27th and the 28th.

Page 376

Q I'm asking you, at the start of the chain, that the first e-mail is on February 26th, right?

A Yes, I'm with you.

Q All right. And in the second e-mail in the chain, you write, "Two other thoughts," and you say, "The Kevin numbers assume the Building D claim is worth 165 million, which was the original number from Province. At the mediation, Michael said that they refined their analysis and increased the value to 195 million. That would slightly increase the 2.8 percent, but I am ok with sticking with the Kevin numbers. As Michael said, we need to move this forward."

Have I read that correctly?

A You did.

Q Does that suggest that you were willing to consider 2.8 percent of the -- of the value of a transaction with Riot Whinstone as a success fee?

MR. DISHER: Objection. Vague. Foundation.

Page 377

THE WITNESS: Yeah. On February 26th, in order to get closure and clarity, at that point in time, I was willing to accept that number because I really wanted to avoid what we had to experience over the past eight months.

And I was using Kevin's numbers with which I did not fully agree, and those numbers had assumptions in there, which, you know, we have talked about and can talk about some more. For instance, regarding Uri credits, I believe Kevin also recognized that that depends on our pleading and proving fraud.

But just to get some clarity and closure on February 26th, I was willing to use Kevin's numbers and use 2.8 percent to get a deal.

BY MR. SCHMELTZ

Q And then, at page 924, February 26th, you start your e-mail with, "Dear All: Thanks again for your time this evening."

Does that indicate that you had a call with Chuck and Chase?

Page 378

A That sounds right.
Q "We have considered your offer of lowering the allocation percentage to 2.25 percent."
Do you believe that they proposed in a call lowering the allocation percentage to 2.25 percent?
A That seems to be the implication.
Q And you said "we" -- well, you say "are wondering," but it's referring to you and Will Thompson -- "are wondering if we could split the difference and make it 2.5 percent," right?
A That's what the e-mail says.
Q A few paragraphs down, you also say, "Also, we are willing to agree to the cap you proposed, limiting our 2.5 percent return to a sale up to $200 million," right?
A That's what it says.
Q And you say, "We would recover no additional amounts in the event of a higher -- of a higher sales prices, even though the Board's current bottom line is 225 million, and even

Page 379

though our expected value of the damages case is at least 150 million."
Have I read that sentence correctly?
A You did.
Q After that, in parenthetical, you say, "We understand that Kevin's estimate is slightly lower."
Have I read that correctly?
A You did.
Q As of February 26th, 2025, how much lower did you understand Kevin's estimate to be?
A I can't remember exactly. We could look at the documents to confirm.
So let's see. He had taken the 25 percent discount. He also knocked off 1.4 million. He then had the 25 percent plus or minus. And I think, by that point, he also might have reduced for -- I don't know why he did this, but he reduced the odds for Building D. So I was probably using Kevin's estimate, even though it was inconsistent with what the litigation team collectively thought was the right set of odds.

Page 380

Q And Kevin's midpoint was approximately what, to the best of your recollection?
A Well, I guess it depends on which spreadsheet we're looking at. We can probably find this out by pulling up whatever attachments were there, but -- so it depends on what range -- he had proposed two different ranges, right, so one at 100 to 150, and then another one I think at 75 to 125. And sitting here today, I can't tell you which set of Kevin numbers we were looking at on February 26th.
Q Okay. Chuck responds to your proposal at 9:23 at 11:50 a.m. on February 27th saying, "Chase and I are good with your proposal to split the difference and make it 2.5 percent," right?
A I don't see him saying that.
Q LKC --
A Where --
Q -- 923 at --
A Okay.
Q -- 11:50 a.m. "Chase and I are good with your proposal to split the difference and

Page 381

make it 2.5 percent."
Do you see that?
A I do. Yeah. Thank you.
Q You respond, "The below language constitutes an unambiguous agreement. You decided to breach the agreement. I am disappointed and hope you will promptly rectify this." Correct?
A Yeah. A bunch of stuff happened in between.
Q Between 11:50 a.m. on Thursday, February 27th and 1:40 p.m. on Friday, February 28th?
A Yeah.
Q Okay.
MR. DISHER: And I'll just object to the foundation on that timestamp.
THE WITNESS: I assume -- yeah, I don't know what time zone that's using. I think it might have been later in the day, if I recall. But a lot did happen between those two e-mails. I can tell you about it if you're interested, but

Page 382

it appears you're not interested. It's fine.
MR. SCHMELTZ: Let's take a look at Cohn 20, which is Special Committee LKC 2143. It's a single-page e-mail, and it's a February 21st e-mail between you and Patty and Chuck.
(Cohn Exhibit Number 20 was marked for identification.)
BY MR. SCHMELTZ
Q Do you see that?
A Hold on a second. We're also looking at different dates. Yes, the last e-mail -- okay. So there's Thursday, February 27th, at 11:50 a.m., and then the next one is Friday, the next day --
Q That's what I said.
A Okay.
Q That's exactly what I said. Can we please move on to Cohn 20, which is a February 21st e-mail exchange with you, Patty and Chuck Topping?
Do you see that?

Page 383

A I do.
Q And on Friday, February 21st, 2025, at 10:46 in the morning, you wrote Patty, Michael Robinson and Chuck Topping, subject, "Retention Application," and you say, "Ok, I tried to do this the nice way. Patty, if you have any documents that are inconsistent with this declaration, please provide. Otherwise, we will draft a motion and proposed order."
Have I read that correctly?
MR. DISHER: I'm just going to object to the foundation again on the timestamp.
THE WITNESS: Trace, you did read those sentences correctly.
BY MR. SCHMELTZ
Q Within -- sometime on the same day, acceding that there may be timestamp issues, but on the same day, you wrote back saying, "Patty, having heard nothing further from you, we will go ahead and prepare our filing, including the declaration," right?
A You read the sentences correctly.

Page 384

Q The declaration that you're proposing to file and the motion describe from your perspective what went wrong with the filing of your original retention agreement, right?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Yeah, actually, I can't remember exactly what was in that declaration. If you have it, I'd be happy to look at it and talk about it with you, but I don't remember that draft declaration now eight months after the fact.
BY MR. SCHMELTZ
Q Okay. You recall that the issue on the table was there had been an objection to your getting a fee because it wasn't purportedly properly disclosed to the Court, right?
A There wasn't an objection at that point. So what happened was, a couple days earlier, my understanding -- and this is, you know, a couple chains removed from the conversation, but Mitch told someone at Rhodium,

Page 385

I think Michael Robinson, that in his view, our application was infirm because we didn't describe the details of the success fee or attach our engagement letter. And we didn't do so because Chuck had asked us not to include it, and we didn't know what the answer was in bankruptcy law.
So one of us -- I think it was Will -- maybe it was me, but I think it was Will -- said, Patty, what should we do here? And she said, just delete. And so she instructed us to delete those details which we had included in our application. And we deleted those details, and it was that deletion that gave rise to the issue with Mitch.
So, then, the trouble was, you go a few days forward to February 21, and Patty was denying having told us to delete the e-mails, which I found disconcerting and surprising, because there's an e-mail in which she explicitly said, just delete, and so -- anyway, there's that backdrop, and we wanted to fix it, and she didn't

Page 386

want to fix it, and she wouldn't even help with the filing. And then, after this, Chuck gave me a call and said, let's amend the engagement letter.

Q You and Patty got into a disagreement over who gave the instruction about attaching or not attaching the engagement letter to your fee application, right?

A I think you phrased it a little bit incorrectly. She didn't want to own up to the fact that she had told us to, quote, just delete the details, and I didn't know why she didn't want to own up to it. It seemed like a pretty easy fix. I think if she had just said to the Court, mea culpa, I told them to delete it, my bad, we could have fixed this really quickly and easily, but she didn't want to do it. She denied even having given the instruction despite it being plain as day on the e-mail, and she made it a bigger deal than it had to be.

So I thought this was a little bit disconcerting, and that's -- the e-mail's here,

Page 387

and as I mentioned, we then spoke to Chuck, and he had a solution for it.

MR. SCHMELTZ: Take a look at Cohn Exhibit 21, which is Special Committee LKC 2150 through 2154. And in the middle of this chain --

(Cohn Exhibit Number 21 was marked for identification.)

MR. DISHER: Wait. I lost it. I thought I saw it. Now it's gone. Oh, no, I'm sorry. I saw tab 21. I don't think we have Exhibit 21 yet.

MR. SCHMELTZ: It's tab 23.

MR. DISHER: There we go.

BY MR. SCHMELTZ

Q In the middle of this exhibit at Bates 2151, there's an e-mail from Patty to you at 12 -- at 2/21/2025, February 21, 2025, and she says, "Here's one of several e-mails where we suggested putting in your declaration the details of the contingency fee. We did tell you."

Have I read that correctly?

A I don't know where you are.

Page 388

Q In the middle of the page on LKC 2151 in a February 21st e-mail from Patty to you.

A Correct.

Q And you respond, The e-mail does not -- does appear to say what you think it says.

Have I read that correctly?

A Well, so you --

Q I want to know if you read --

A Originally --

Q "The e-mail does appear to say what you think it says." That's what it says.

Did I --

A And --

Q -- read it correctly?

A Well, you first read it the way it was intended to be written.

Q No.

A There's --

Q Did I read it correctly is my question.

A Well, the first time, when you included the "not," was how it was intended, but you're right. There's a word missing here --

Page 389

Q Okay.

A -- which is clear from the context.

Q You are, in fact, disagreeing with Patty, and you say, "I do not understand why you are -- why you are being uncooperative," right?

A I do say that. And if you look down in that e-mail, where she says, here's one of several emails where we suggest putting your declaration, it doesn't --

Q I'm not --

A -- actually --

Q -- asking -- I'm not --

A -- say that.

Q -- asking for that.

A Well, I'm just clarifying this because you asked --

Q On page --

A -- a question, and I want the record --

Q I'm --

A -- for the Court to be clear.

Q It will be clear --

A And if you look --

Page 390

Q -- when you and Mr. Disher get a chance to talk.
A Well --
Q At 21 --
A This is not how --
Q -- 50 --
A -- it works, Trace.
Q It is.
A You're trying --
Q It's my deposition.
A -- to create a misleading record --
Q At -- at exhibit --
A -- and I'm trying to answer your question.
Q At Bates number --
MS. WEBER: I'm putting in my objections here, too, because I'm going to have a chance to talk as well, but -- this is Lindsay from Quinn, just for the record. And you guys can keep talking over each other, but just putting that on. Thanks.
THE WITNESS: And I do also want to

Page 391

say, thank you, Lindsay, that this is material that Trace just a couple days ago claimed was privileged and wouldn't allow me to ask Chase about.
MR. SCHMELTZ: I disagree with that.
BY MR. SCHMELTZ
Q At exhibit -- at page 2150, the conversation is -- Ms. Tomasco says, "I am being cooperative. I made suggestions for what I think is the best way to handle it. There is a risk that the retroactive application of a contingency fee will be met with opposition whereas the prospective damages case contingency should not garner any opposition. You want to blame me for you not following our advice earlier and that is offensive and not productive. We definitely proposed in September to put the contingency fee portion under seal as the best way to do things. Again, that was your choice. We can draft an amended retention application with these principles in mind and send for your review."
Have I read that correctly?

Page 392

A You did.
Q And your response was, "Patty, you are re-creating history," correct?
A That's part of the response.
Q And then you say, "I will revise my declaration, laying out the actual facts, including your conflict, which appears to be coloring your judgment once again," correct?
MR. DISHER: Objection. Foundation.
THE WITNESS: And you missed some other language there.
BY MR. SCHMELTZ
Q I'm asking if that's the response you made at the top of the chain.
A Well, you asked about my response, and you read one sentence. You then skipped the next two, and then you went above it to read another response. And I think the record should be clear and the document does speak for itself.
As to whether you read those particular sentences correctly, you did.
Q So, in this e-mail, you've accused

Page 393

Ms. Tomasco of not being cooperative, right?
MR. DISHER: Objection. Foundation. The document speaks for itself.
THE WITNESS: What I said was, "I do not understand why you are being uncooperative."
BY MR. SCHMELTZ
Q And then you accused her of re-creating history, correct?
MR. DISHER: Same objection.
THE WITNESS: I did say, "Patty, you are re-creating history."
BY MR. SCHMELTZ
Q And then you insisted on filing your own document to lay out the facts the way you saw them, right?
MR. DISHER: Objection. Foundation.
THE WITNESS: I think that's incorrect, because Chuck and I had multiple phone calls, and he explained what he thought the proper solution was, and I never filed my declaration. We ended up having a process afterwards with some negotiations, ultimately culminating with the

Page 394

engagement letter that we filed with the Court in March of 2025, which, in Chuck Topping's own words, made minor clarifying changes. And the declaration that I filed was a different declaration, and it was one that Chuck and others, maybe even Quinn Emanuel, reviewed and approved.

MR. SCHMELTZ: I want to put up in front of you Cohn Exhibit 22. I want to test this proposition that you've just suggested. This is tab 25. And for the record, this is Special Committee LKC 759 through 761.

(Cohn Exhibit Number 22 was marked for identification.)

BY MR. SCHMELTZ

Q On February 28th, 2025, after the exchange we've just looked at, you say, "Dear Chase and Chuck: Attached is the declaration I will file at noon CT. If you have any comments, let me know. The declaration is 100 percent accurate and does not disclose any attorney-client communications, but I nonetheless

Page 395

want to provide you with the opportunity to review."

Have I read that correctly?

A You did.

Q You say -- you then say, "Also, at 3:00 p.m. CT, I plan to seek counsel to represent LKC in this dispute. We can discuss the claims and a compromise at your convenience."

Correct?

A I did, and I -- but I think you're mixing up two e-mail chains. This one is on February 28th. Let me go back to the other one regarding Patty.

Q I'm not attempting to do anything --

A Well, no, you did --

Q -- except --

A -- because you said you were going to test the proposition, and then you brought up an e-mail chain that's a week later referring to different stuff.

Q I'll get to the proposition that I want to test in a minute, sir.

Page 396

You -- Mr. Topping, at 760 -- are you at 760?

A I am.

Q -- responds, "Your proposed declaration would cause a material adverse effect to the interests of Rhodium. Please refer to the other e-mail for your -- for our recommendation; we ask that you review the other e-mail and proceed with that recommendation. Thank you."

Have I read that correctly?

A You did read it correctly.

Q On February 28th, you are telling the company you're going to file your own declaration, and the general counsel is telling you that that declaration would cause a material adverse effect to the interests of Rhodium, correct?

MR. DISHER: Objection. Vague. Foundation.

THE WITNESS: So, one, I don't think this is the same declaration that was referred to in the prior e-mail chain.

Page 397

BY MR. SCHMELTZ

Q It doesn't matter to me. My question is: You are saying you're going to file it, and then general counsel is telling you it would have a material adverse effect to the interests of Rhodium, correct?

A And I didn't file it.

Q I'm asking if that's correct.

MR. DISHER: Objection. Foundation.

THE WITNESS: If you're asking me whether you read the sentences correctly, I can confirm you read the sentences correctly. The implication you're drawing from them is inaccurate.

BY MR. SCHMELTZ

Q In fact, Mr. Topping goes so far as to say at 759, "You are formally instructed not to file the declaration you attached to your e-mail below," correct?

MR. DISHER: Objection. Foundation. Document speaks for itself.

THE WITNESS: You read the sentence

Page 398

correctly.
MR. SCHMELTZ: Finally, I'm going to put in front of you Cohn Exhibit 23.
(Cohn Exhibit Number 23 was marked for identification.)
BY MR. SCHMELTZ
Q After Chuck Topping said, "You are formally instructed not to file the declaration you attached to your e-mail below," you responded with an e-mail, and this is on Special Committee LKC 1272 in an e-mail that goes from 1272 to 1274.
A I don't want to interrupt --
Q You say --
A -- but it hasn't pulled up yet. Oh, here we go. Where --
Q It is --
A -- are you, Trace?
Q -- top of the page, 1272. You say, "Chuck, are you taking the position that the CEO's e-mail -- a writing that includes a signature line at the bottom -- assenting to the

Page 399

agreement is not binding? I disagree. And, as an officer of the Court, I cannot hide material agreements from the Court. Noon CT is getting close." Have I read that correctly?
A No.
Q What did I miss?
A Well, why don't you start again with the word after "Chuck"?
Q "Are you taking the position that the CEO's e-mail -- a writing that includes a signature line at the bottom -- assenting to the agreement is not binding? I disagree."
A You read it correctly that time.
Q "And as an officer of the Court, I cannot hide material agreements from the Court. Noon CT is getting close."
Have I read that correctly?
A You did.
Q In early February of 2025, a dispute arose over whether you should file a complaint that had a fraudulent inducement claim, right?
MR. DISHER: Objection. Vague.

Page 400

Foundation.
THE WITNESS: Oh, you're referring to the Special Committee directing us to remove the fraudulent inducement claim that was --
MR. SCHMELTZ: Yes.
THE WITNESS: You said early?
BY MR. SCHMELTZ
Q Early February of 2025.
A Early, mid -- okay.
Q Right?
A I'm sorry. What's the question?
Q Early February 2025, a dispute arose over whether you should file a complaint that included a fraudulent inducement claim in it, correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: On that level of generality, sure, that's correct.
MR. SCHMELTZ: And you insisted that you had to file that complaint with that claim in it, right?

Page 401

MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: No, I think that's incorrect. And I followed the Special Committee's direction of removing the fraudulent inducement claim, taking out the allegations pertaining to reliance, and I removed the claim in its entirety.
BY MR. SCHMELTZ
Q We looked at several e-mails in which you told Mr. Topping it was very, very important to include that claim, right?
MR. DISHER: Objection. Foundation. Objection. Misstates the record.
THE WITNESS: The entire litigation team thought that we should include that claim. Mr. Topping thought we should include that claim. Chase Blackmon thought we should include that claim. I think all the founders thought we should include that claim, but the Special Committee disagreed, and so, ultimately, I took the direction of the Special Committee. I pled

Page 402

my case.
Afterwards, I wanted to amend the complaint. I was never allowed to amend the complaint, never allowed to plead and prove fraud. I followed the direction.
BY MR. SCHMELTZ
Q But you have questioned the integrity of Mr. Eaton, right?
MR. DISHER: Objection. Form. Misstates testimony. Vague. Foundation.
THE WITNESS: Yeah, we could look back at the question and answer I gave before. I think that probably is more precise.
BY MR. SCHMELTZ
Q And you questioned my integrity, right?
MR. DISHER: Same objection. Misstates testimony. Vague. Foundation.
THE WITNESS: I think, actually, I did not want to answer your question. I thought it was inappropriate for you to be asking questions about what I thought about you on the record, but, again, we can take a look back at the

Page 403

transcript to find out exactly what the question was and what I said in response.
BY MR. SCHMELTZ
Q And we've seen e-mails that, subsequent to that, when you disagreed with Ms. Tomasco's view of how to proceed with the fee application, you questioned whether she was being cooperative and suggested she had a conflict, correct?
MR. DISHER: Objection. Foundation. Misstates the exhibits.
THE WITNESS: Yeah, I think the documents speak for themselves.
BY MR. SCHMELTZ
Q And when Mr. Topping forbade you from filing a declaration, you told him you, as an officer of the Court, were going to have to bring claims to the Court's attention, and you kind of gave him a tick-tock, noon is coming, right? Isn't that right?
MR. DISHER: Objection. Vague. Foundation. Compound. Documents speaks for themselves.

Page 404

THE WITNESS: And you're looking at only part of the e-mail chain and ignoring the rest of it and conversations we had.
And, ultimately, I listened to Charles, Chuck. We had several more weeks of e-mails and phone calls, and we eventually agreed to do what he suggested, which is make minor clarifying changes as he explained in his declaration and under both -- under oath, both in his deposition and also at the trial. And that was the outcome, and I followed what he wanted to do, and we did what he wanted to do.
BY MR. SCHMELTZ
Q Not without having first picked a fight with him, though, right?
MR. DISHER: Objection. Vague. Misleading. Foundation.
THE WITNESS: Yeah, I wouldn't say I picked a fight with him at all, so I'd have to disagree with that.
BY MR. SCHMELTZ
Q It's fair to say, in every e-mail that

Page 405

we've looked at, when you've disagreed with someone, you have responded to them very sharply about their views and their actions, right?
MR. DISHER: Objection. Vague. Foundation. Documents speak for themselves.
THE WITNESS: Yeah, I disagree. We've looked at a ton of e-mails today, Trace, and these e-mails are a very small percentage of the e-mails that I was a part of over the last couple of years. So I disagree with your statement.
BY MR. SCHMELTZ
Q In fact, the first e-mails we looked at, in fact, the very first e-mail today, we saw that your counsel suggested that unless the Special Committee put a bid in over $5.2 million, the LKC team would not negotiate with the Special Committee over LKC's fees; isn't that right?
MR. DISHER: Objection. Foundation. Document speaks for itself. Asked and answered.
THE WITNESS: Yeah, I mean, the document speaks for itself. We can go back to it and look at it.

Page 406

BY MR. SCHMELTZ
Q It's fair to say that at every step along the way, when given a choice between fighting or being collaborative, you've chose fighting; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes the record. Mischaracterizes prior testimony.
THE WITNESS: And also really incorrect. So, no, it's not correct. That would not be fair to say.
BY MR. SCHMELTZ
Q In point of fact, you've picked a fight with everyone who's disagreed with you; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes.
THE WITNESS: Yeah, definitely not. I would say that pretty much everyone I've dealt with in this case has complained to me about your behavior, including people who are on this call, people who are not on this call, and you've

Page 407

treated many people very poorly.
But the answer to your question is no. I think what you're saying is incorrect. And this is probably just another attempt by you to try to get people aggravated at you, and I don't know why you roll that way, Trace. I really wish you didn't. I know you've had a tough year, but that's no reason to be the way you are to other people who are trying their best to be professional.
BY MR. SCHMELTZ
Q You don't consider telling someone that they're re-creating history picking a fight with them; is that correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't. I do think that you have tried very hard to pick fights, both during this deposition and on very -- many other phone calls. I disagree. We all disagree with the tactics you've taken. And this is, of course, not the first case in which you have

Page 408

skirted the lines on appropriate behavior. I think everyone knows how you were held in contempt of court before, and I don't know if you're trying to do it again, but I do disagree with your statement.
I think what your statement is, it's unfair, it's unprofessional, and I would just politely suggest that whatever is going on in your life, you leave it aside when it comes to a deposition.
BY MR. SCHMELTZ
Q I think that sort of characterizes exactly the way your behavior has been this entire case. When confronted with disagreement, you go on an ad hominem attack; isn't that right, sir, as you just have now?
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q That's your -- that's your MO, isn't it, sir?
MR. DISHER: Objection. Argumentative. Misstates testimony.

Page 409

THE WITNESS: Yeah.
MR. DISHER: Foundation.
BY MR. SCHMELTZ
Q You wouldn't describe what you just did as an ad hominem attack; is that --
A No, not at all.
MR. SCHMELTZ: Okay.
THE WITNESS: I would say --
MR. SCHMELTZ: I have no further --
THE WITNESS: -- Trace --
MR. SCHMELTZ: -- questions.
THE WITNESS: I'm not done answering.
MR. SCHMELTZ: You are.
THE WITNESS: No, I'm not.
MR. SCHMELTZ: I have no further questions.
THE WITNESS: No, so I --
MR. SCHMELTZ: I said, would you describe it as an ad hominem attack, and you said no. We're done.
THE WITNESS: So let me explain.
MR. SCHMELTZ: No, no need to explain.

Page 410

We can go off the record.
THE WITNESS: We're not off the record.
MR. SCHMELTZ: We can go off the record.
THE WITNESS: We're not off the record.
MR. SCHMELTZ: It's my record. Yes, we can.
MR. DISHER: I certainly have the opportunity to ask him questions, as you've made abundantly clear throughout the day.
How long have we been on the record?
VIDEO TECHNICIAN: Six hours and 37 minutes.
EXAMINATION BY COUNSEL FOR THE WITNESS
BY MR. SCHMELTZ
Q Okay. Mr. Cohn, would you like to explain your last answer, please?
A Yeah, I would. I don't think anything I was saying was an ad hominem attack. I think the record and the video speak for itself, and Trace was trying really hard to get my goat, and I don't think he did.

Page 411

I will say that -- and I think many people involved in this case could echo this -- that Mr. Schmeltz has not acquitted himself with professionalism. He has sent nasty e-mails to many people who are involved in this case. He has personally tried to berate me and my colleagues and my attorney, and I don't know why he's doing it.
I think he's been disingenuous in this deposition. He has misrepresented things to the Court and just -- I wanted to get the record straight. And I really hope at the end of the day that the Special Committee will focus on the merits of the fee application and not any emotions or consternations felt by Mr. Schmeltz.
MR. DISHER: Thank you. We'll reserve for trial.
MS. WEBER: Is everybody done? I have just a couple of follow-up questions. I can put myself on camera, so it's less --
MR. DISHER: And I'm sorry. Who's speaking?

Page 412

MS. WEBER: It's Lindsay from Quinn Emanuel, Lindsay Weber.
MR. DISHER: Hey, Ms. Weber. Did you cross-notice the deposition today?
MS. WEBER: I did not, but there were issues that were brought up --
MR. SCHMELTZ: The Special Committee will --
MS. WEBER: -- about our law firm that I would like to ask about. I can reserve time for another period if we're going to hold over or -- it's up to everybody else.
MR. DISHER: Yeah. We're -- this is Todd Disher. We're fine with you asking, you know, a couple of questions. We're all here, so we can just knock it out if it's going to be quick.
MS. WEBER: Sure. Yeah. Not long at all. Let me just see if I can get on camera real quick. The password didn't work. It's just loading. One second.
THE WITNESS: You okay, Trace?

Page 413

MR. SCHMELTZ: No problems at all. Thank you so much for your courtesy.
THE WITNESS: You're welcome.
MS. WEBER: Well, I'm having problems.
THE WITNESS: Lindsay, I don't need to --
MR. DISHER: Yeah, I'm fine with you asking questions without --
MS. WEBER: It's fine.
MR. DISHER: -- the video.
EXAMINATION BY COUNSEL FOR THE RHODIUM DEBTORS
BY MS. WEBER
Q So I just -- I just wanted to follow-up on a couple of things that were discussed in connection especially with Patty. I know that you had discussed having an issue with fee increases that you had seen, and that was in an e-mail that was introduced today.
I wanted to ask whether or not you had an understanding of whether that fee increase or the fees that are being charged are within or

without industry standards.
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: Lindsay, to be clear, I don't have an issue with Quinn's fee increases. There was some context that was being lost with Trace's use of the e-mail and the context. But, no, I do not have issues with your fee increases, and I have not challenged your fee increases.
BY MS. WEBER
Q Okay. And I think you had said earlier that you're not necessarily frequent in bankruptcy courts.
Are you aware that all fee payments are subject to U.S. Trustee review?
A I think I've heard something along those lines, and I definitely don't have a basis to disagree with what you just said.
Q Okay. And do you know that they're also reviewed by the bankruptcy court and approved?
A That I think I know all too well now.

Q I think that's probably right.
And then there was discussion about an e-mail in connection with a deletion of certain language, I think -- I don't know that it came out directly, but do you -- do you know if that e-mail exists?
A It does, and we reference it and I think maybe attached it to one of the briefs that we filed in the context of the last fee dispute. I can try to look for it, but I think we attached it. As long as Trace is not going to assert privilege over this, but you would have it, but, anyway, happy to send it to you.
Q Oh, sure. No, if it's -- if it's publicly filed and not under seal for some reason, then -- and I can't imagine that we don't have access to it since we're on it. That should be fine.
A Okay.
MS. WEBER: And I think that's everything I wanted to cover. I just wanted to clear some of those things up.

THE WITNESS: Great. I hope I helped.
MS. WEBER: Yeah, thank you. And sorry for the add-on. I know it's been a long day.
MR. DISHER: No problem at all. Happy to accommodate.
And how long have we been on the record now?
VIDEO TECHNICIAN: Six hours and 42 minutes.
MR. DISHER: Thank you. I have nothing further at this time.
VIDEO TECHNICIAN: The time is 5:23 p.m. We're off the record.
(Whereupon, at 5:23 p.m., the deposition of JONATHAN COHN was concluded.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

I, ERICK M. THACKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ERICK M. THACKER
Notary Public in and for the
District of Columbia
My commission expires:
June 30, 2029

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

October 31, 2025
To: Todd Disher
Case Name: In Re Rhodium Encore LLC, Et. Al., v.
Veritext Reference Number: 7680676
Witness: Jonathan Cohn Deposition Date: 10/28/2025
Dear Sir/Madam:
Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Jonathan Cohn
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Jonathan Cohn

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 7680676

PAGE/LINE(S) / CHANGE /REASON

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Date Jonathan Cohn
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20_____ .

_____
Notary Public

_____
Commission Expiration Date

&

& 1:14 2:5 3:4 3:10,14 7:2 8:6 103:12 249:9

0

00000037 4:18
00000073 5:11
00000759 5:19
00000923 5:14
00001272 5:20
00001445 5:13
00002143 5:16
00002150 5:17
00002426 5:8
00002428 5:10
00003460 5:6
00003477 4:21
00003534 5:4
00004813 4:13
00004819 4:16
00004838 4:14
00004845 4:8
036 374:4
038 4:18
074 5:11

1

1 4:8 6:10 13:13,17 26:20 29:5,6 34:18 43:7 44:8 49:12 55:18 56:3 74:20 79:17 136:21 243:17 246:11
1.4 93:19 94:2 94:3,4 299:14 379:16
10 4:20 56:2 81:8,12,15 90:1,5 132:6 139:7 191:11 191:15,19 192:9,17 201:15 204:4 204:17 211:18 241:14 370:3
10/28/2025 418:8 419:3 420:3
100 22:12,20 51:22 52:6 53:8,14,14 85:13,19 86:11 86:16 89:18 90:7 94:13 111:8 133:9 134:14 162:9 230:10 257:10 350:6 380:8 394:20
1000 2:17
10016 3:11
103 4:14
10:10 74:21 75:1
10:46 383:3
10th 254:4 270:17 273:22 273:22,22
11 1:4 4:22 136:16 207:9 208:1 209:21 210:1,3,7,11,18 210:18,21 211:2 231:7,7 248:2 276:19 277:14 286:16 287:5 303:15 305:8 307:16 309:8,11,12 311:4
11/20/2024 5:7
1100 2:12 418:1
11:09 131:15
11:13 130:5,7
11:22 130:7,9
11:48 156:14
11:49 158:3
11:50 158:8 380:13,21 381:11 382:14
11:51 159:15
11:52 160:22
11:55 167:21
11:58 176:7
11th 307:1 308:7
12 5:4 138:6 212:10 241:11 241:20 242:7 255:4 262:5 281:8 282:7 298:7,13 303:14 304:3 307:16 387:17
1200 1:14
125 94:2,11 141:18 380:9
125.1 142:14
1250 1:21
126.4 93:19 342:9,14 343:1
1272 398:11,11 398:19
1274 398:12
12:01 176:7
12:03 100:4
12:08 188:9,11
12:59 189:2,4
12th 1:14 55:5 89:11 292:6 308:7 312:3,13 319:17 320:19 321:22 322:11 324:13,19 325:6,21 327:15 328:20 329:11,16 330:21 332:6 343:4 348:4 349:8 355:9

13 5:5 197:9,18 276:17 277:2 282:8,9 285:18 286:3 288:4 291:19 305:1 306:7,7 308:22 309:6,12 311:10 313:7 313:15,19,19 314:7,10,22 315:15,22 316:17 317:5 319:2 339:3 340:9,11
13.2 197:22
13.2. 197:21
13.3 207:16
130 4:15
1300 3:15
13397 417:17
137 4:17
14 4:8 5:7 290:15,17,20 291:20 292:2 303:3 312:15 312:18 313:5 315:6 316:1 317:5 320:13 320:15 321:3,9 322:19 323:1 324:3,22 338:20 340:2 344:13 346:11 347:16
1445 361:7
1446 372:8,13
1448 369:16
1449 364:3 368:8
1450 363:12,17 365:11
1451 361:8
146 4:19
149 4:18
15 5:8 210:20 241:10 291:17 291:18,20,21 292:3,10 303:10 327:7 327:11
150 350:7 379:2 380:8
154 5:17
158 89:14 92:13 297:14 298:12 299:3 342:12,22 350:10
15a 290:22 291:2
16 5:9 75:9 76:1 77:14 111:19 276:17 303:2,6 304:2 307:11 308:18 310:2,12 320:19 324:13 342:2
164.5 194:10 195:2
164.50 133:9 134:13
165 195:15,22 196:9,17 206:4 376:8
17 5:11 291:14 327:9 341:18 341:21 344:19 344:20 345:18
17a 303:4
18 5:12 344:18 345:20 348:11 349:7 360:18 361:6,9,17 363:11
1800 3:5
1820 418:2
183 347:12 349:17
185 26:6 63:2 89:22
19 5:14 24:18 345:3 375:3,7 375:11
19.3 116:18
191 4:20
195 196:14 376:11
1997 148:12
19th 182:20 183:6,9,13 345:10 361:12
1:01 101:22
1:40 381:12
1st 34:10

2

2 4:9 50:1,21 75:1,8,9,13 79:12 83:9 84:4 130:5 189:16 198:13 365:16
2.25 378:4,7
2.5 26:5 378:12 378:16 380:15 381:1
2.8 376:12,18 377:15
2/11/2025 4:22
2/21/2025 387:17
20 5:15 55:13 76:20 286:9 287:3 289:16 297:20 298:14 300:14 313:8 316:9 317:1 320:7 321:5 322:3,14,20,20 325:1 329:1,13 339:18 340:5 341:3 347:15 347:17 348:2 349:9 361:7 371:1 382:3,7

382:19 419:16 420:22 421:22
200 26:5 76:19 378:17
20004 1:15
20005 1:22 3:16
2021 117:3 139:11 142:12
2022 116:19
2023 75:10 76:1 77:14 81:21 333:9
2024 111:20 116:19 229:11 289:16 317:1 321:5 322:3,14 325:5 329:13 347:15
2025 1:12 6:4 13:15 14:8 16:18 24:14 29:6 43:7 49:12 50:11 82:16 83:7 86:1,19 99:6 124:3 130:18 136:16 147:5 182:20 189:16 191:17 198:13 210:21 286:16 287:5 292:7 302:15 304:3 321:22 325:6 328:20 329:16 340:21 341:4,5 342:5 345:3,21 350:13 363:7 364:4,12 379:10 383:2 387:17 394:2 394:16 399:19 400:8,12 418:4
2026 293:5
2029 417:22
20th 321:17 325:5,21 327:17
21 5:17 55:14 375:4 385:17 387:4,6,10,11 387:17 390:4
21.6 93:20
211 4:22
2143 382:3
2150 387:4 391:7
2151 387:16 388:1
2154 387:5
216-523-1313 418:3
21st 382:5,20 383:2 388:2
22 5:18 394:9 394:13
225 378:22
23 5:20 387:12 398:3,4
2300 3:5
24 329:1
24-90448 1:5 6:15
241 5:4
2426 292:5
2427 292:5 294:9
2428 304:11
2430 304:13 308:19 341:19
2434 304:12
24th 364:4
25 55:11 57:22 76:22 90:11 92:12,20 94:1 94:6,10 298:21 299:8,15 300:12,13 342:3,18 379:15,16 394:11
25,000 76:8,11
25-03047 136:21
250 102:10 111:7 122:14
250,000 76:19 77:1
25th 371:2
26th 302:14 375:11,14,18 375:21 376:2 377:1,14,18 379:10 380:11
27 148:9 150:20 221:17 222:20 223:7 254:2,22 255:21 256:19 257:12 261:22 264:6
274 5:20
277 5:5
27th 375:22 380:13 381:12 382:13
28 1:12 100:4 148:10
28.7 284:14 285:14 324:4 324:11
28.70 307:6,9
28th 6:4 101:22 105:4 124:3 375:22 381:13 394:16 395:12 396:12
29 105:6 305:20 307:13 324:16
290 5:7
292 5:8
295 3:10
29th 124:3,14 124:16

2:07 265:1,3
2:19 265:3,5
2:29 189:20
2:44 287:18,19
2:59 287:19,21

3

3 4:11 10:16 82:15,15,21 83:5 99:2 130:9 188:9 191:17 193:11 211:17 214:7
3.5 373:16 374:5
3.6 374:4
3.8 24:4 25:13 26:8 28:13 50:13,18 87:14
3/4/2025 4:11
30 77:2 93:21 284:17 309:7 309:13,18 310:3,7,9 311:5 321:4,9 373:7 417:22
30/20 285:13
300 138:9
303 5:9
31 418:4
31st 14:8,21 16:18 24:14
33 137:22
344 5:11
3460 276:18 278:12 285:18 288:4
3461 277:9 289:11 316:3
3462 276:18 290:1,16 316:3
3477 191:16
3479 193:17
3494 197:9,14
35 374:19
350 102:9
3505 191:17
3534 241:13
3535 241:13
36 57:16 58:1,8 304:17,22 305:14,19 307:12,18
361 5:12
36th 2:18
37 140:12,13 146:13 154:22 410:12
375 5:14
38 146:14 189:16,19
382 5:15
387 5:17
39 141:3,8 146:15
394 5:18
398 5:20
3:00 395:6
3:13 338:15
3:26 43:8 44:9 44:18 45:22 46:8,19 47:6 49:12
3:46 24:14,17
3:52 338:13

4

4 4:12 82:16 83:7 86:1 99:2 99:10 103:16 104:19 105:5 105:15 189:4 231:13 265:1 342:22
4.6 26:7
40 40:16 141:12 209:7 324:19 326:10 348:6 351:1
408 19:4
41 141:21
410 4:4
413 4:5
42 141:3,21 142:6 416:8
427 5:8
434 5:10
440 346:7
4400 2:6
44114 418:2
45 125:7
451 5:13
46,000,013 284:8
46.13 284:8
462 5:6
48 42:12,14 109:2
4813 99:7 102:19 103:2
4814 101:22 102:15
4815 100:1,4
4816 99:7
4819 130:20 135:20 136:3
4820 133:7,14
4821 130:20,21
4833 122:8
4838 103:18 105:3
4842 104:2 106:16 109:3
4843 115:21
4844 103:18 116:11 121:22 123:3
4845 14:7
4848 26:18 43:6,7 44:8 46:2 47:6 49:11

4849 30:17 31:10 32:22 55:19,21
4850 24:12 26:19 27:5
4851 14:9,21 16:18 17:11,14 17:16
4853 14:7
4:04 211:18 338:15,17
4:28 25:16,22
4a 103:16

5

5 4:14 56:2 79:16,17 103:15,17,19 106:1,2,6,11 125:20 127:21 131:14 265:5 338:14
5.2 26:8,10 28:12 29:2,9 29:14 30:2,6 30:15 51:6,13 405:15
5/16/2023 4:9
50 22:15,18 23:3 53:18 57:11 290:9 347:10 390:6
505 4:21
535 5:4
555 1:14
59.675 102:11
5:23 416:13,14
5th 3:10

6

6 4:15 129:20 129:21 130:12 130:12 198:7 211:17 214:7 231:13 338:17
6.25 25:8,10 41:7
60 13:5 113:2 284:21 310:3 310:12,18 311:16,22 326:10 347:9 348:13 349:10 349:16 351:1 351:11 355:2
60/40 285:12
600 78:22
600,000 26:7 39:7 40:15 74:2,7,9 77:9 77:18 78:3,10 78:11,18 79:2 81:22 365:19 368:11 369:3 370:2
60606 2:6
65 306:1
65.9 307:18 318:17 319:1
65.90 284:9 306:8 307:1
65.90. 305:12
6590 305:2
66 282:11

7

7 4:3,17 82:19 136:20 137:3 138:7 139:8 142:12 147:17 168:9,21 190:21 248:2
7.56 28:17
70 283:12,14,15 284:9 318:19 320:9,17,20
72 146:16
73 346:1
74 339:10 346:1
74.2 340:14
75 4:9 18:12,20 19:6 20:16 21:5,20 22:9 22:19 51:21 52:10,21 53:5 53:8,12,13,14 86:19 87:6,18 88:13,16,22 290:8 380:9
75201 3:6
759 394:12 397:17
760 396:1,2
761 5:19 394:12
765,000 73:13 73:22 74:3
7680676 418:7 419:2 420:2 421:2
77002 2:18
78701 2:13
7th 147:4

8

8 4:18 146:7,9 146:17,19 147:2 174:20 189:15 361:17
8.1 24:4 26:10 28:12 51:6
8.3 40:20
80 339:4
816 4:13
82 4:11
821 4:16
835 75:12 82:20
844 4:14
85.64 339:1
853 4:8
89 339:6

8:43 1:13 6:3
8:52 14:14,16
8:55 14:16,18

9

9 4:19 146:19 146:21 147:2 191:12 192:8
90 104:5 117:2
900 3:15
901 1:21
919 2:12
923 375:6 380:19
924 377:18
925 375:13,17 375:17
926 5:14 375:6 375:16
99 4:12
9:00 332:6
9:02:39 26:20
9:11 293:5
9:23 380:13
9:25 49:5,7
9:28 49:7,9
9:30 212:8
9:57 74:20,21

a

a.m. 1:13 6:3 14:14,16,16,18 26:20 49:5,7,7 49:9 74:20,21 74:21 75:1 130:5,7,7,9 131:15 158:3,8 159:15 160:22 167:21 212:8 293:5 332:6 380:13,21 381:11 382:14
ability 9:3,7 69:5 120:20 158:20 206:6 254:9 265:9
able 19:21 26:11 59:19 60:8 101:11 243:18 244:19 247:10 258:9 259:11 269:21 271:2,17 360:20
above 26:10 28:19 29:2,13 30:2,15 31:19 31:22 51:13 76:22 90:1 101:3,16 110:21 373:4 392:17 418:15
absent 60:18
absolute 296:2
absolutely 120:14 219:10 219:20
abstract 334:15
abundantly 169:15 311:3 326:21 410:10
acceding 383:17
accept 38:21 142:13 377:3
accepted 247:13
access 204:9 415:17
accolade 150:11
accolades 243:2
accommodate 10:11 416:5
accordance 419:5 420:5
account 69:15 71:7,10 92:17 93:11 209:8,12 250:15 252:4 299:20 300:7 300:10
accounts 117:1
accrue 200:4
accuracy 149:4 310:8
accurate 9:4,8 203:5 394:21
accusatory 335:7
accused 330:8 392:22 393:7
acknowledge 419:11 420:16
acknowledging 41:9
acquired 77:14 82:1,6 373:1
acquisition 368:10 369:1 373:6,7
acquitted 411:3
act 419:14 420:20
acted 62:8 199:13 330:10
acting 85:2
action 417:12 417:17
actions 138:9 405:3
actual 283:7 392:6
actually 19:19 29:16 30:4 46:10 49:21 52:21 69:12 78:14 110:10 114:7 118:14 119:14 138:18 138:22 160:13 169:18 179:17 181:2 182:8 198:14 202:16

203:3 205:19 250:14 252:4 274:6 285:8 317:4 323:9,10 323:21 327:5 327:12 339:19 367:13 370:11 384:7 389:11 402:18
actuals 118:3
ad 3:2 7:8 37:16 38:3,8 408:15 409:5 409:19 410:19
add 69:22 172:15 178:7 179:1,10 190:15 222:16 261:6 280:12 373:12 416:3
added 84:3 190:19
adding 101:17 179:5 280:9 315:2 319:11
addition 190:8 250:9
additional 76:21 79:17 81:9 90:11 94:2 95:12 116:7 286:10 370:3 378:20
additive 370:8
address 84:9 185:18 207:4 418:14
addressed 77:11 266:5
addresses 278:13
adequately 95:15
adjudicate 253:15
adjusted 95:10
admissible 39:11
advance 279:2
adversary 136:22
adverse 331:7 396:5,16 397:5
advice 18:14 133:3 233:16 391:15
advised 224:7
advisor 131:6
affect 250:21
affiliate 77:15 82:2,7 373:2
affiliations 6:21
affirmative 34:2 84:13
affixed 419:15 420:21
affords 69:5
agents 68:21
aggravated 407:5
aggregate 198:2
aggressive 243:18 246:18 247:4,10 248:12 268:17 269:2,4,14,17 270:1,12,15 271:2,17 272:3 272:16
ago 40:19 63:14 69:13,21 71:1 106:17 137:10 148:1 192:20 210:9 281:3 288:3 289:4 305:1 351:7 353:21 358:19 391:2
agree 6:9 27:11 27:19 28:8 34:12 52:4 53:5,13 56:21 63:1,7 81:14 102:20 112:17 113:20 117:16 149:4 233:4 244:21 245:17 252:2 266:4 272:11 282:17 284:7 293:8,22 300:14 316:9 316:10 323:15 334:19 362:13 377:7 378:15
agreed 55:4 122:17 142:13 230:4 268:21 283:8 329:10 362:19 364:11 404:6
agreeing 27:21
agreement 26:12 52:19 53:2 63:22 75:10 84:10 111:2 193:18 198:5,15 199:14 207:17 207:19 211:21 381:5,6 384:4 399:1,12
agreements 64:1 110:15,17 110:19 139:10 399:3,15
ahead 16:7 20:22 22:3 35:18 42:2 49:4 90:21 92:4 108:5 174:12 179:16 219:18 223:10 223:19 255:16

261:6 307:20 314:19 320:22 321:15 328:1 348:16,19 383:20
ahg 225:20 226:13,21 227:12
ahgs 227:7,15 227:17
aim 350:6
akin 3:4 7:7
akingump.com 3:6,7,7
al 1:4 6:12 418:6 419:3 420:3
alain 3:14
alainjaquet 3:16
alexis 67:7,12 280:6 293:19 303:11,16,20 354:15
allegations 34:15 141:22 401:6
alleging 111:15
allocable 84:17 84:21
allocate 56:1
allocated 55:16 58:8 86:21 88:14
allocating 57:11
allocation 12:20 22:10,12 23:6 34:16 82:10 85:11,12 85:18 87:19 89:2 378:3,6
allow 174:4 175:5 182:13 182:14 220:2 221:1 222:12 236:12 237:2 332:8,15 391:3
allowed 60:1 61:17 113:4,15 114:18 123:4 146:6 152:12 152:17 235:5 256:17 301:4 301:14 310:20 326:12,16,20 327:2 329:14 331:17 332:19 333:2 360:12 372:19 402:3,4
allowing 118:11 274:12
alongside 63:8
amend 59:20 59:22 140:13 178:6,18,22 180:3 181:10 182:13 185:21 186:5 234:10 235:1,4 236:12 237:2 239:13 330:2,5,6 335:15 336:11 386:3 402:2,3
amended 59:10 59:22 136:14 222:22 391:20
amending 178:13 179:9 222:22
amount 13:2 18:21 20:16 21:6,21 52:14 53:18,20 54:21 55:15 60:10 61:16 84:21 86:21 87:6 88:14 95:7 98:13 132:20 134:21 135:4,6 135:13 168:1,9 168:11 169:9 169:14 170:14 172:16 173:19 174:19 177:14 177:21 195:10 195:14 198:5 206:4 252:17 294:19,20 295:22 296:4 297:3,4,8,11 299:20 304:16 305:19,20 307:14 319:9 323:18 324:2,9 324:15 365:18 370:2
amounts 38:21 76:21 81:9 294:13 295:8 296:12 308:9 308:10 370:3 378:20
analyses 134:21,22 135:13 286:17 326:3
analysis 12:22 30:18,20 31:3 31:20 116:5 118:2 278:20 279:14 281:8 299:6 303:1 310:14 313:10 317:3 320:8,19 323:16 325:4 326:9 347:15 348:8 350:4 376:10
andrew 130:19 131:1,15 134:5 135:21 196:10 196:13 342:21 344:9
andy 3:19

annual 116:18
answer 10:5
16:7 19:21
20:10,21,22
21:11 22:2,3,7
32:11 35:9
36:10,11,16,21
36:22 37:3,12
42:2,15 43:1
43:11 45:8,17
46:12 47:3,14
47:16,19 48:1
48:4,14,20
65:4 69:2 71:4
72:9 79:7
91:14,20,21
92:5 96:18
108:5 114:3
119:12 121:4
125:4 129:16
129:17 143:12
143:14,21
144:7,8 145:1
151:17 152:15
152:20 153:3
153:13,15
154:14 155:11
155:21 156:8
156:18,22
157:7,22
158:19 159:4,7
159:11,16
161:4,19,21
162:21 163:8,9
165:13 166:22
167:10,17
170:2,8 172:13
172:17,18
173:4,12 174:7
177:8,19 181:3
183:12,15,16
183:18,19
184:3 186:13
186:16 187:1,6
188:5 197:4
202:9,15 203:1
203:8,15 205:9
207:22 216:8
219:19 222:6
223:5,8,11,13
236:1 240:13
253:3 254:15
254:19 256:18
257:4,5,7
258:6 261:12
262:2,22 263:3
263:5 264:8,20
265:17,19
274:9 276:4
280:15 328:1
330:19 334:9
352:15,16
359:19 362:3,6
367:13 385:6
390:13 402:12
402:19 407:2
410:17
answered
34:22 42:16,18
42:21,22 64:16
88:8 92:7
123:19 128:2
148:2 151:11
164:6,7,15
166:6 169:4
171:10 175:20
186:9 187:2
205:13,18
219:17 232:17
254:7,8 255:6
255:7 256:5,9
257:22 258:14
259:5,9 260:6
260:8,9 261:4
262:11 264:14
264:18 265:9
330:17,18
331:1 334:13
349:2 405:19
answering
19:10,12,17
21:1 35:22
36:4 48:13
144:15,18
167:13 170:12
180:17 181:1,4
184:7 186:19
195:19 222:14
359:22 360:2
409:12
answers 9:21
163:16 256:21
374:15
anticipating
222:21
anticipatory
200:2
anyway 244:10
385:21 415:13
apologies 17:21
38:1 92:9
100:18 101:10
107:17 108:9
209:20 303:20
316:19 342:2
apologize 15:15
85:8 192:7
apologizing
352:9
appeal 250:21
251:12 252:11
252:12,14
253:8 254:13
274:9,13
appeals 251:13
251:22
appear 10:19
136:8 293:7
388:5,10
419:11 420:15
appearances
6:21
appears 137:19
243:15 246:9

271:4,15 382:1 392:7 417:4
appended 420:11,18
applicable 207:14
application 12:1,5,10,12 22:11 23:5,19 52:6 54:4,19 55:15 66:7 72:9,13 86:11 86:14 89:20 383:5 385:2,13 386:8 391:11 391:20 403:6 411:14
applied 55:9,12 92:11,18,20 94:16 95:1 286:8 287:3 298:21 299:8 299:13 339:20 341:3 342:12 342:13
applies 339:9 339:17 340:4
apply 287:11 342:18 373:4
applying 341:13
appreciate 24:5 55:22,22 97:6 187:22 314:5 325:14
appreciated 136:9 243:2
approach 185:20 334:19
appropriate 18:21 20:16 21:6,21 132:14 133:3 162:4,9 408:1
approved 63:4 72:13 73:8,21 183:11 394:7 414:21
approximately 116:17 117:2 380:1
april 142:12 182:20 183:4,6 183:9,13
apropos 148:1
argue 58:7 59:2 61:13,22 62:1 62:15 183:5 223:22 225:13 301:4,5 327:18 329:2,17 331:15,17 332:9,16,21 359:11
argued 61:18 62:2
arguing 224:6
argument 58:15,22 59:4 59:10,13
argumentative 408:21
arising 207:19
arose 399:20 400:12
arp 1:5 6:15
arrangement 364:22 365:20
arrives 210:5
asap 100:15
asay 101:2,5,9 101:10,10
aside 65:17 78:10 227:16 269:5 357:13 408:9
asked 13:1 16:5 16:8 17:15 32:2 34:22 35:11 39:5,19 48:16 52:13 64:16 70:12,14 92:6 118:14 123:19 128:2 144:2 145:22 148:1 162:21 164:3,7,14 166:5 168:5 169:3 170:6 171:9 175:19 196:14 205:13 205:18,20 210:1 218:9 219:17 222:10 232:16 254:7 255:5 256:4,8 257:21 258:1 258:13 259:5,9 259:11 260:5,8 262:10 264:14 264:17 275:16 276:22 278:19 281:17 288:12 300:6 302:21 305:9 330:17 330:18,22 334:12 349:19 349:21 350:21 351:8 354:2 355:16,20 356:6 357:13 385:5 389:16 392:15 405:19
asking 46:7 60:5 88:4,7,12 88:14,15 117:4 123:13 124:13 134:8 141:19 142:16 163:18 164:22 169:19 170:1 171:22 172:19 176:22 177:10,17 201:22 204:11 207:13 220:10

220:11 238:12 238:12 239:1 254:2 255:20 257:9,10,11 260:19 261:1 267:12,13 271:7 272:15 299:5 329:7 346:21 356:2,3 361:19 366:9 376:1 389:12 389:14 392:13 397:8,10 402:20 412:14 413:8
asks 248:15 250:5,17,20 266:4
aspect 120:19 230:5
assenting 398:22 399:11
assert 415:11
asserted 12:6 38:20 118:3
assess 129:2
assessment 49:22 135:8 202:4
asset 90:1 93:3 248:3
assets 95:20
assigned 23:4 54:22 90:5 354:13
assignment 419:2 420:2 421:2
assistant 100:9 147:7
assisting 98:20
associate 100:8
assume 10:6,8 10:15 13:4 31:16 32:12 38:4 56:9 67:19 74:8 147:15 212:18 267:18 298:17 341:2 376:7 381:18
assumes 301:3 310:19 360:16
assuming 106:4 279:15 298:16 347:21
assumption 64:17 214:16 348:1
assumptions 87:9,11 116:7 318:4 377:8
assure 161:2 175:4
attach 385:3
attached 5:22 28:18 57:20 77:13 100:13 105:7,18 106:5 106:6 125:13 146:14 193:13 289:20 293:10 304:4 313:17 316:7,17,17 317:22 360:11 394:18 397:18 398:9 415:8,10 420:7
attaching 147:18 386:6,7
attachment 146:19 290:16 291:19 313:7 313:21 314:1 314:11,12 316:16 318:8,9
attachments 380:5
attack 408:15 409:5,19 410:19
attempt 56:1 407:4
attempted 38:3
attempting 22:2 36:17 120:15 368:18 395:14
attempts 219:16
attended 345:6 345:9
attention 103:22 231:12 231:15 267:2 267:16 304:13 403:17
attest 310:8
attitude 188:2
attorney 6:22 31:15 68:10 223:6 394:22 411:7 417:14
attorneys 23:22 69:19 76:13 138:11 226:20 226:20 227:7,8 227:11 243:3 267:8 295:22 330:4
attractive 109:4
attributable 81:9 370:4,14
attribute 18:21 20:17 21:6,21
attributed 18:12 19:6 230:10
attributes 335:9
audio 6:7
austin 2:13
authority 26:4 69:13 231:17 231:21 232:4

232:14 233:5 233:10 239:7
authorization 59:21 73:8 180:12 221:10 235:4
authorize 420:11
authorized 73:4,11 224:1
authorizing 191:2
automatic 252:13
availability 106:12
available 69:18 102:2
ave 418:1
avenue 2:12 3:10
average 116:18
avoid 374:8 377:4
aware 42:5 69:4 70:3 74:2 97:20 98:4,8 98:11,15 140:4 203:14,18,22 204:2,7,13 218:7,10 221:5 221:9 223:15 226:10 286:17 287:6 302:12 302:22 344:2 414:14

b

b 4:6 5:2 79:15 81:4 83:14 84:19
back 26:6 33:20 46:11 51:18 55:17 62:21 91:20 92:2 105:2,14 107:17 109:10 109:16 110:1,3 110:21 120:21 121:12 133:19 136:12 139:18 141:17 158:9 178:7 179:1,5 191:14 202:14 202:17 203:3 207:10,15 210:15 251:17 252:15 253:17 261:20 265:18 277:10 286:15 288:20 291:10 292:2 300:15 303:2 305:13 306:7,15 309:9 311:16 312:4,7 327:11 330:14 371:3,10 372:21 374:12 383:18 395:12 402:11,22 405:21 418:14
backdrop 385:22
background 106:11,18,20 107:6 109:1 111:12 149:18 149:20
backtracking 218:18
bad 40:21 386:16
bailee 198:9
baldfaced 142:9
ball 25:2 26:8 29:22 30:14
ballpark 132:5 350:7
bank 250:14 252:4
banker 97:11
bankruptcy 1:1 6:13 11:19 12:2 63:4 72:10,16 75:12 248:1 254:10 254:11 385:6 414:13,20
barnes 1:14 2:5 7:2
base 88:15 128:13 132:20 134:21 135:4,6 135:13 195:10 195:14 206:3 294:13,19,20 295:8 296:4,12 304:16 305:19 305:20 307:14 308:9,10 322:15 323:17 323:18 324:2,9 324:14 325:8 326:10 339:6
based 18:11 102:2,7 122:13 220:12 226:12 230:4 273:12 318:3 335:10 348:8 350:16 374:21
basic 9:15 141:9
basically 67:10 68:12
basics 51:18
basis 76:18 112:12 113:10 113:11 122:18 201:16 414:17
bates 14:6 17:11 55:19 99:6 101:21 102:15 103:17

146:13 154:22 191:16 193:17 210:20 241:13 289:11 292:4 304:11 308:18 341:19 345:22 387:15 390:15
bear 80:13
bearing 146:13 193:17 292:4
bears 14:6 99:6 103:17 130:19 191:15 304:11
began 140:14
beginning 6:22 206:18 227:10
begins 19:4 75:1 130:9 189:4 190:1 265:5 338:17
behalf 2:2,9,15 3:2,8 7:2,8,12 60:7 67:4 97:22 143:2 225:7
behavior 406:21 408:1 408:13
belief 331:9 369:9
believe 22:9,11 23:3,6,8,14 33:15 39:15 49:21 109:22 121:11 147:20 178:12 179:4 185:18 187:8 191:8 196:15 198:12 208:5 251:14 268:15 272:2 273:4 275:15 277:16 282:2,4 312:12 316:16 333:8 339:21 358:14 368:21 370:19 377:10 378:5
believed 282:21 282:21 329:17 331:3 357:15
believes 53:17
belonged 140:2
beneficiary 109:7 110:3
berate 411:6
bernie 192:20 193:5
best 9:18 13:11 23:19 35:17 38:12 54:20 94:19 149:3,5 158:20,21 206:15 207:3 254:9 255:8 274:21 283:16 296:3 297:19 311:1 312:1 319:6 320:2 325:20 326:9 333:1 343:12 346:4 354:17 355:6,8,12 357:18 380:2 391:10,18 407:9
better 56:18 91:16 93:22 127:14 253:14 257:4 274:3 320:1 326:2,3
beyond 55:7
bid 405:15
big 71:3 145:4 279:13 296:20 346:16 347:4
bigger 386:20
binding 190:12 399:1,12
bit 53:22 55:10 60:4 110:10 136:12 269:3 269:18 386:9 386:21
bitcoin 92:22 109:10 141:16
blackmon 4:10 4:11 66:11 82:17,18 137:11 147:8,9 189:17 210:19 241:16,18 242:13 244:11 266:3 267:4 270:21 276:22 277:18 351:6 355:20 356:6 371:4 401:18
blackmon's 266:4 289:13 352:13 353:14
blame 391:14
blank 373:5
bless 375:1
blessing 233:21
blew 20:2,5
block 137:18 137:20 323:12
blocked 290:8
blow 20:8
board 2:2 7:3 55:5,6 89:10 135:1,14 147:9 249:13 278:20 279:1 281:3,22 289:4,5 302:3 302:13 304:3 332:7,7 333:1 343:3
board's 378:21
bold 268:16
bos 3:19
bottom 16:16 24:12 100:3 118:1 133:14 189:18 285:14 289:12 292:16

293:3,5 313:6 313:11,19 315:13 316:22 317:8 346:15 347:3,11 349:17 364:4 375:13,17 378:22 398:22 399:11
bounds 247:22 330:20
bracket 27:11 27:21 51:5
brackets 26:11 28:12
braithwaite 3:19 6:16
brand 260:11
brannen 280:6 283:6,9 306:5 319:22
breach 206:11 206:11 208:2 209:2 381:6
breached 32:19 33:2 62:11 235:20
breaches 208:22
breaching 139:10 197:6 330:9
break 10:11 74:14 85:10 121:7 129:8 130:2 168:20 169:13 188:1 244:10 264:21 287:16 338:8
breathing 37:18
bridget 101:2,5 280:5
brief 12:22 62:1 224:2 227:13
briefs 415:8
bring 34:2 114:7 144:20 151:4 403:16
bringing 153:10,19 155:4 164:12
broad 57:6 64:2,4 67:9
broke 265:8
brought 230:6 243:6 395:18 412:6
btlaw.com 2:7 2:7,8
bubbles 190:2
bucket 67:10 114:4,5 132:1
buckets 113:21 131:20
building 132:2 132:5,20 136:12 168:17 190:9,12,17,19 191:2 193:12 193:13 194:8 195:3 197:9 199:7,18 200:6 200:10,17 201:1 206:17 208:2 209:6 280:11 295:22 298:9 319:12 346:17 347:5 347:10 376:7 379:19
built 199:18 200:10,17 259:14
bulk 298:1,2
bullet 27:2,5 31:1 32:16,22 55:21 56:11 57:10,14,20 58:5,12 109:1 110:7,14 111:11 115:22 132:4 267:22 272:1 346:13 346:14 364:18
bullets 58:5
bullpen 312:16
bump 353:4
bunch 243:3 266:10 292:18 371:6,7 381:9
burden 69:15 71:3
business 62:10 82:8,11 84:12 90:3 93:1 117:10 120:3 120:20 140:16 235:20 248:7 252:21 275:14 330:9 370:13

c

c 2:1 3:1 4:1 5:1 6:1 8:4 81:8 83:14 84:19
ca 418:22
calculate 132:21 345:13
calculated 51:21 90:2 102:7 195:14 310:7
calculating 132:16,19
calculation 12:22 16:1 25:12 85:1,1,3 94:16 95:1 116:1 122:8 133:7
calculations 15:3 128:13 129:2 287:7 297:18

calculator 298:16
calculus 274:7
call 50:6,17 96:12 150:13 178:3 212:9,11 212:19,21 218:20 220:13 220:16 237:21 267:9 278:21 290:11 343:3 377:21 378:6 386:3 406:21 406:22
called 7:17 95:22 96:5 189:8 237:13 345:13
calling 49:1 267:1
calls 40:9,9,10 138:20 145:16 145:22 149:13 163:21 185:17 212:2 271:11 326:22 332:11 340:8 357:10 369:13 371:18 393:18 404:6 407:20
camera 411:20 412:19
cameron 4:10 4:11 82:17 147:9 276:14 289:15
campaign 140:15
cap 26:4 378:15
capped 81:22
caps 197:21 243:16 244:16 268:16
capture 182:9
captured 92:16
captures 94:11
care 35:15 59:1 183:17
careful 255:13 310:14
carefully 148:16 311:14
carried 134:20 135:12
case 1:5 6:15 54:22 63:5 75:12 87:19 136:21 179:10 192:19 199:4 202:3 205:4 235:7,11 236:1 236:2,8 238:13 249:1 250:1 254:10 274:12 323:4 370:15 379:1 391:13 402:1 406:20 407:22 408:14 411:2,5 418:6 419:3 420:3
cases 97:8
cash 93:2,10 95:10,16,19 96:1,8,15,20 97:1
casper 2:4
categories 280:10
cause 396:5,15
caused 138:8
caveat 304:19
caveats 263:18
cc 147:14 266:12,16
cc'ing 211:18 292:17
cc's 147:13
cents 230:10,11
ceo 140:6 141:9 272:14 358:17
ceo's 398:21 399:10
certain 27:21 110:21 120:22 128:7 232:9 233:12 415:3
certainly 127:9 183:22 184:2 191:7 222:21 223:15 329:22 371:17 410:8
certainty 257:9 272:7,7 273:5 273:10 374:10
certificate 417:1 420:11
certification 419:1 420:1
certify 417:4
cetera 280:11 312:6
cfo 55:8 89:11 93:5 147:12
chad 113:13 140:5 178:2 200:2,18,22 235:18
chain 31:17 41:6 99:4 130:22 194:5 233:18 251:16 290:2 313:20 313:21 314:10 314:13 315:14 315:14 363:12 369:12 375:10 375:20 376:2,6 387:5 392:14 395:19 396:22 404:2
chains 384:21 395:11
chairman 147:8

challenged 38:9 414:9
chance 113:2 145:18 241:6 261:10 311:6 322:20 390:1 390:18
chancery 192:20
chances 322:1 350:22
change 84:9 274:6 290:9 294:14 295:5,8 296:8 305:11 346:15 347:3 366:19 418:12 418:13 420:8 421:3
changed 270:4 270:11
changes 83:22 84:1 128:7 290:7 346:5 362:16 363:6 371:22 394:3 404:8 418:11 419:7 420:7,9
changing 350:16 356:13
chapter 1:4 248:2,2
characterizati... 246:20
characterize 194:12,17,21 195:4 219:16
characterized 25:10
characterizes 408:12
charged 413:22
charles 3:21 4:22 100:7 289:14 295:18 306:2 308:14 317:1 319:22 332:18 333:6 333:10 404:4
chart 122:5 133:14,15 134:9,12 280:21 281:16 283:14,21 284:1,4,5,21 285:17 287:12 341:17
chase 66:11 82:18 137:11 147:8 189:17 206:19 210:19 241:16,18 267:4 275:16 276:13,22 277:9,17 278:19 289:12 289:15 330:1 351:6 353:22 354:1,13 355:20 357:13 358:13 364:5 371:4,8,11 372:17 373:10 375:14,18 377:22 380:14 380:21 391:3 394:18 401:18
chat 315:10
check 137:21
chicago 2:6
chief 97:16 131:10,12 234:2,3,5
choice 391:19 406:3
choose 148:15
chopped 292:20 293:2,2
chose 94:9 351:15 352:12 354:6,7 355:13 356:4 357:16 406:4
chuck 39:13 84:8 147:6 184:18 185:4 185:10 191:18 193:21 201:12 206:19 211:1 213:7,9 219:22 220:13 233:15 241:15,16 275:16 276:14 290:2,7 292:8 292:17 293:6 303:15 313:9,9 316:5 317:10 317:13 320:8 327:14 328:16 328:19 329:22 362:15 363:8 364:5 365:2,8 366:18 368:3,6 369:3,9 370:17 370:20 371:3,8 371:11,21 373:10 375:14 375:19 377:22 380:12 382:6 382:21 383:4 385:5 386:2 387:1 393:18 394:2,5,18 398:7,20 399:8 404:5
chuck's 193:11 220:12 233:21 365:13,22 366:3,7,7,11 369:16
chuckling 370:21
chunk 370:13
circumstances 69:14 120:22 149:19 243:10

civil 419:5 420:5
claim 11:19 57:15 60:20 64:6,10 65:1 112:12,22 113:2,7,15,18 114:7,10 122:19 138:17 139:2 153:10 178:7 179:2,6 179:11 180:4 181:11 182:1 182:22 185:22 195:11,13 198:8 199:1 201:22 206:7 206:12,18 208:2,3,22 209:6,10 212:13 215:1 215:17 217:6 217:18 218:8 218:20 219:7 220:3 221:3,10 221:14 223:22 224:11 237:22 238:14 252:22 253:16 301:3,5 301:11 311:17 318:9 322:13 325:8,8 327:15 327:18 328:22 329:3,12 331:16 332:22 347:11 356:5 376:8 399:21 400:4,14,21 401:6,7,12,16 401:17,19,20
claimed 62:13 115:14 140:7 391:2
claiming 112:6
claims 34:2 40:11 57:6 63:15 64:3 84:13 112:12 112:19 134:21 138:15 148:4 151:1,5 153:19 155:2,4 164:11 164:13 166:1,3 198:3 207:3 208:17 218:18 222:22 223:16 223:21 228:22 230:5 248:4 280:22 293:12 319:11 323:4 326:3 345:14 354:6 395:7 403:17
clarifi 263:20
clarification 110:6 162:19 165:10 167:4 167:13,16,19 218:5 256:13 256:15 262:16 312:20 357:5
clarify 10:3 32:5 73:20 129:18 135:5 165:3 259:10 373:21 374:16
clarifying 84:1 84:9 362:16 363:6 389:15 394:3 404:7
clarity 374:10 377:2,13
clause 244:11
clear 25:19 34:13 36:15 37:5 76:17 138:19 149:17 156:15 164:22 169:15 182:12 190:17 216:5 221:13,16 228:16 230:22 233:13 236:3 261:7 274:10 289:1 297:8 311:3 326:22 332:18 355:20 389:2,20,21 392:18 410:10 414:4 415:22
clearly 129:8 163:19 260:13 337:9
cleveland 418:2
client 12:6 18:19 19:16,21 20:15 21:5 24:21 25:11 26:4 72:15,19 73:1 84:14,17 223:6 258:1 355:3 357:20 361:13 362:22 363:4 394:22
clients 72:5,11 96:22 97:6 149:6,12 150:4 150:4,7,10,13 326:7
clockwise 104:5
close 26:16 39:12 226:4 399:4,16
closed 226:22 227:5 231:1
closer 50:1
closing 373:7
closure 377:2 377:14
cloth 41:20
cohn 1:9 2:11 2:15 4:8,9,10 4:11,11,12,14 4:15,17,18,19 4:20,22 5:4,5,7

5:8,9,11,12,14
5:15,17,18,20
6:11 7:6,16 8:3
8:3,5,6,10
13:17 20:7
73:5,14 75:8
75:10,13 82:15
82:15,21 83:4
84:15 99:10
100:2 103:17
103:19 104:19
105:5,14 106:1
106:2,6,10
109:2 118:15
125:20 127:21
129:20,21
130:12,12
136:20 137:3
138:7 139:8
146:7,9,16,21
147:2,2 165:13
168:6 174:12
174:20 189:7
189:14 190:21
191:11,12,15
191:19 201:15
204:4,16 207:9
210:18 211:1,2
231:7 241:10
241:19,20
255:4 266:5,14
266:18 276:17
277:2,14 281:8
285:18 288:4
290:17,20
292:10 303:6
309:12 312:15
313:5,6 316:8
316:22 343:6,7
344:20 345:17
345:21 351:20
361:6,9 363:11
375:3,7,11
382:3,7,19
387:3,6 394:9
394:13 398:3,4
410:16 416:15
418:8 419:4,9
420:4,13
421:20
collaborate 15:22
collaborated 89:13 310:21
collaboration 319:14
collaborative 371:12 372:5,6
406:4
colleagues 7:9
127:18 202:2
205:4 207:5
209:4 310:17
411:7
collect 138:22
251:5 254:5
255:3 256:1
257:15 258:10
262:3 264:9
269:21 273:15
274:8
collectability 248:19 249:2
249:17 250:3,9
274:7 277:19
collected 243:17 244:18
245:2,8,19
246:10,16
247:3,9,16
248:8 260:1
269:1 271:1,16
341:5
collecting 252:19 275:3
collection 67:3
265:13 339:11
340:21 342:6
355:1
collections 250:7
collective 146:3
209:8,11
251:17,19
255:14 311:1
318:1 321:19
349:20 352:1
354:12
collectively 206:20 278:10
280:2 379:22
colon 49:13
140:17
color 222:17
coloring 392:8
columbia 417:20
column 307:9
combined 90:15 221:2
come 14:6
128:13 136:12
191:14 192:22
193:4 250:17
261:20 281:18
291:9 292:1
308:22 346:6
349:21 351:8
357:12 359:16
372:21
comes 27:10
75:16 282:15
321:11,16
408:9
comfortable 61:19 62:4
221:12 258:17
259:13
coming 13:14
64:12 193:7
207:15 337:20
343:15 358:17
403:18
commenced 209:10

comment 190:2 364:9 366:13
commentary 304:19 310:19
commented 128:6 138:3
comments 394:19
commission 417:21 419:19 420:25 421:25
commitment 190:12
committee 2:2 7:3,20 12:12 12:21 13:1,3,8 13:9 14:7 15:2 23:9,15,20 31:5 34:19 38:19 39:20 40:1,3,4 43:7 49:11 53:17 58:7,13 59:9 61:20 62:7,12 62:17 67:1,17 72:14 73:4,11 87:5 99:7 103:18 109:3 112:18 113:17 118:5,8 123:5 130:20 138:14 145:17 146:13 146:15 178:12 179:5,9 182:2 182:11,13 189:12,15 191:16 197:8 220:2 221:1 222:12 224:8 233:15,20 235:15 276:17 292:5 301:21 301:22 302:3,8 302:13 304:11 316:3 330:3 331:4 345:22 361:7 375:6 382:3 387:4 394:12 398:10 400:3 401:21 401:22 405:15 405:17 411:13 412:8
committee's 15:3 21:15 50:12 52:8,16 54:2 59:16 119:17 120:13 181:22 182:4 401:5
common 38:20 267:13,20
communicati... 394:22
company 97:17 252:20,22 350:14 355:16 396:13
compare 80:11
compel 69:22
compelling 326:6,7
competent 187:17
complained 406:20
complaint 4:17 4:19 59:10,14 59:21,22 60:1 136:15,22 137:16,19 138:3,6 139:8 143:1,17 146:14 147:3 147:18 148:4 150:22 155:2 164:10 166:1 168:6,21 175:9 177:15 179:9 180:2,9 181:10 182:14 185:21 186:6,7 190:16 190:20 191:3 191:13 208:13 211:20 212:7,9 213:20 214:1,7 214:13,17 215:2,17,18 217:7,18 218:8 218:12,16,21 219:7,8 220:3 221:4 231:10 231:18,22 232:5,14 233:5 233:10 234:10 235:1,5 236:12 237:2,14 238:1 239:7,14,19 240:4 293:12 326:5,6 330:2 330:5,6 335:15 336:11 399:20 400:13,21 402:3,4
complaints 34:1
complete 144:22 172:1 182:17,18 187:10
completed 141:13 418:14
completely 179:20 180:8 181:18 182:21
complicated 53:22 298:4
complied 78:15
complying 78:2
component 77:18,22 78:19 79:3,6 81:7 89:4
components 75:4 77:6,8 80:2,6,19

81:11,17 83:13 195:9 369:20 370:1
comport 107:15
comports 107:10
compound 23:1 115:5 124:10 230:8 295:1 305:16 362:12 403:21
compounding 87:10
compromise 33:10 38:14 40:2 395:8
compromises 350:12
conceivable 61:14
concept 122:13 219:6 268:1 273:5
concern 181:22 248:12 252:20 253:1 274:13 274:17
concerns 13:4 372:12
concierge 3:19 16:13,20 17:4 80:15 104:7 192:6 193:6 210:6,13 211:4 242:6 290:22 291:21
conclude 61:14
concluded 328:21 416:16
conclusion 209:5
concocted 228:6,10
conditions 9:6
conduct 139:9
conducted 225:3 367:6
conference 226:4
conferred 68:17
confidence 310:22
confident 127:17 248:21 249:1,16,17,22 250:2 310:15
confines 374:7
confirm 64:8 201:5 208:9 379:13 397:12
confirmation 31:17
confirmed 111:21
conflict 392:7 403:8
confronted 408:14
confused 174:15 178:20 369:10 372:4
confusing 332:2
confusion 315:4
congress 2:12
conjunction 353:4,15
connection 198:4,15 207:18 413:16 415:3
conservative 22:12 52:7 86:12,15 196:12,18
consider 77:22 195:21 376:18 407:12
considerably 249:1 250:2
consideration 190:6
considered 294:18 311:15 345:8 378:2
considering 213:22 214:12 224:7 231:9
consistency 242:17
consistent 40:13 369:12
constant 193:3
consternations 411:15
constitutes 381:5
construed 249:10
consult 202:2 205:3
consultation 69:18
consulted 322:1
consulting 211:20 322:11
contemporan... 371:17
contemporan... 143:9 255:18
contempt 408:3
contending 330:10
contention 308:21
contentious 59:14 138:20 374:8
contesting 40:15

context 17:8 59:2 101:12 149:13,19,21 150:10 178:8 178:17 232:10 346:19 389:2 414:6,7 415:9
contextualize 163:17
contingency 16:1 57:21 275:18 364:21 372:16 387:20 391:11,13,17
contingent 27:9 27:20,20 28:8 28:9
continual 45:1
continue 6:8 29:1,17 30:5 30:12 51:12 172:21 176:12 274:12 294:14 296:5
continued 5:1 189:8,12 252:21 274:18 319:9
contours 224:20
contract 102:10 109:5 110:2 111:7 116:4,6 122:15 132:6 134:14 191:1 193:14 193:16,22 194:8,12 197:6 197:9 199:18 201:14 204:3 204:16 205:1 206:12 208:2,8 209:14
contracts 77:9 102:8 111:15 111:21 112:6 132:22 140:1 140:14
contractually 190:11
contractural 77:12 115:15
contrary 59:2 151:6 207:17
control 17:1 104:8
convenience 318:5 395:8
conversation 65:16 73:6 105:7,18 180:1 184:10,17 207:1 213:1,12 213:16 219:5 237:7 273:21 275:21 276:8 310:13 343:16 343:18,19 353:22 358:11 367:19 384:22 391:8
conversations 6:6 31:15 52:11 182:10 184:11,15 185:10 223:7 229:1 269:10 274:1 275:6 319:21 326:1 345:7 404:3
convey 355:2
cooperative 391:9 393:1 403:7
copy 71:12 72:1 293:7 313:1 317:1
correct 8:6,8 10:17 11:4,8,8 11:13,20 12:7 13:21 14:4 22:9,11 23:16 29:17 30:6 31:11 50:13,21 51:2,6,9,13,16 53:9 56:3 57:13,17,18 59:11 64:14 65:1 68:2 71:5 71:6 72:21 73:1,2,15 76:8 77:6,7,19,20 78:19 79:2,14 80:21 81:6,19 83:12,16 84:4 84:5 85:13,19 87:17 93:21 96:16 97:11,17 97:18 98:7,22 100:11 101:20 103:10,11 105:12,13 110:16,18,22 111:1 112:6,14 114:1,2,6 115:3,15 116:16 117:13 122:16 123:22 127:7 131:11 131:21,22 132:2,3,8,12 136:10,11 137:15 138:1,5 138:15 140:22 141:1,6,7,11 142:21 143:3 148:14 151:2 171:7 178:4 179:2,7 185:12 185:15 189:21 190:7,9,10,14 190:18,22 198:20 208:7 208:18 213:18 220:5 223:16 225:5,21 229:4

231:19 232:5
232:15 234:4
234:11 238:19
239:16 240:1
248:8,16,20
250:16,19
251:1 258:22
259:7 260:2
262:5 266:17
271:22 278:18
278:22 280:13
281:6 282:13
284:18,19
286:12 287:13
293:9,13
294:11,16
297:15 304:18
304:21 307:7
307:10,14
308:19,20
312:8 317:21
318:2,7 321:1
321:9 322:3,14
322:16,21
324:11,16,17
324:21 329:18
331:9,10
332:14 334:11
335:7 337:4
339:2 342:14
343:1,10,11
345:3 346:2,7
346:8 348:6,7
348:10 351:16
357:22 361:16
362:22 364:13
364:16,17
365:17 366:2
368:6 369:18
369:22 370:6,9
370:10 371:5
372:13 381:8
388:3 392:3,8
393:8 395:9
396:17 397:6,8
397:19 400:15
400:19 403:8
406:10 407:14
corrections
418:11 420:17
correctly 16:3
18:3,17 22:16
23:11 24:9
25:4,14 26:13
28:14,20 29:3
32:20 33:3,11
33:16 50:2,9
56:5,9 58:2,10
58:16 63:19,21
77:17 100:16
100:22 101:14
101:19 102:4
102:12 106:5
109:11 111:9
111:17 112:1
116:8,15,20
117:5 125:4
131:18 136:1,4
139:14,15,20
140:10 141:20
147:16 148:5
167:14 178:5
178:10 198:11
212:14,17,18
214:3,15,22
215:5,14 217:5
217:16,22
233:1,3 237:17
237:20 243:20
244:2,6 246:13
246:14,19,22
249:3 268:19
271:6,7 288:7
290:5,12
298:17 301:8
327:20 328:5
329:9 346:18
346:22 347:6
347:13 365:5
368:12,16,20
370:19 373:8
376:15 379:3,8
383:10,14,22
387:21 388:6
388:14,19
391:22 392:21
395:3 396:10
396:11 397:11
397:12 398:1
399:4,13,17
correlated
325:1
correlates
316:16
corresponden...
4:8,12,14,15,18
4:20,22 5:4,5,7
5:8,11,12,14,15
5:17,18,20
211:20
cost 102:10
109:5
costs 116:14
counsel 6:20
7:19 11:2
34:13 50:12
51:4,11 63:9
100:9 103:9
147:6,8,11
172:14 182:5
189:11 227:18
227:19 318:11
395:6 396:14
397:4 405:14
410:14 413:11
417:10,14
count 190:19
counter 27:6,9
27:10,20 28:7
countering
25:2
counts 232:9
233:12
county 419:10
420:15

couple 55:19 150:10 185:17 211:15 220:8 227:11 241:15 282:7 384:19 384:21 391:2 405:9 411:19 412:15 413:15
course 66:8 68:13 128:10 186:6 297:5 313:2 333:16 337:2 407:22
court 1:1 6:13 6:18 7:14 8:1 8:16 12:3 13:1 13:7 23:22 34:14 40:14 49:2 52:13 63:4 73:20 77:11,21 82:20 83:22 159:6 183:11 187:12 192:20 241:5 252:14 253:14 253:15 254:10 254:12,14 360:14 365:1 367:5,18,21 384:17 386:15 389:20 394:1 399:2,3,14,15 403:16 408:3 411:11 414:20 419:7
court's 23:18 78:16 95:14 251:21 253:6 403:17
courtesy 413:2
courts 414:13
cover 275:14 415:21
covered 57:6 67:15
covering 64:18 318:14
covers 82:7 84:12
crazy 372:16
create 390:11
created 123:8
creating 12:13 392:3 393:7,11 407:13
credit 64:6,22 122:18 169:22 325:10,16
credits 22:15 22:21 23:5 53:20 54:2,9 54:17,21 55:1 55:12,16 56:2 56:13 57:1,11 57:16 58:9 60:10,11,21 61:9,16 64:12 74:12 79:16,18 81:10 82:12 84:18 106:12 112:4,11,19 113:4,7,9,16,21 114:4,8,11 115:2,14 117:11,12 118:7,12,21 119:8,14,19 120:1,3,15 122:2 123:5,17 124:8 127:14 127:22 138:18 138:21 139:13 140:8,9,22 141:6,10 142:2 142:8,14,21 143:3,8 145:8 145:12,15,18 146:4 168:1,10 168:11,22 169:9,10,14,17 170:15,16,17 171:6,7 173:20 173:21,21 174:20,21,22 177:15,19,21 177:22 229:15 229:20 230:12 230:17 282:10 283:4,11 284:15,21 304:20 306:8 307:5 308:5 309:6,12 346:17 347:5 370:2,4 374:20 377:10
critical 247:15 330:1
cross 118:15 412:4
crosstalk 184:1 184:6
ct 394:19 395:6 399:3,16
cuff 256:21 257:7
culminating 393:22
culpa 386:15
current 18:11 68:13 96:16 293:11 369:5 378:22
currently 25:1 94:20
curtailed 141:14
curtailment 304:16 307:12 307:13,17 311:6,17 318:9 318:16 320:7 321:3 324:3,10 328:22
customer 111:5 111:8 198:6,10

cut 21:12 22:7 36:3,18 43:13 44:3 52:3 263:7 270:19 367:16
cutting 36:6 44:12 45:5 222:8 232:19

d

d 2:4 6:1 84:3,6 132:2,5,20 136:12 190:9 190:13,17,19 191:2 193:12 193:14 194:8 195:3 197:9 199:7 206:17 208:2 209:6 280:11 295:22 298:9 319:12 346:17 347:5 347:10 376:7 379:19
d&o 182:19
d.c. 1:15,22 3:16
dallas 3:6
damage 128:12 132:16 206:3,4
damage's 294:15
damages 20:17 21:7 56:1 74:12 82:12 84:18 100:21 118:3 119:6,17 128:14 129:2 131:16,20 138:8,11,21 169:18 194:16 194:20 195:4,9 195:22 196:1,1 196:2,7,20,21 196:21 197:5 198:4 200:4 230:12 243:17 244:17 245:8 245:19 246:10 246:16 247:2,9 247:16 248:7 249:1,2,18 250:1,3,17 251:5 252:4,22 253:2 254:13 268:17,22 269:22 271:1 271:16 272:3 272:16 273:15 274:19 279:14 279:22 280:22 281:12 282:10 284:14 285:13 286:11 287:8 290:4 293:11 294:18 295:17 296:12 303:1 306:2 307:4,6 307:8 309:13 317:2,20 323:17,17 338:22 346:7 350:6 359:15 365:21 370:15 379:1 391:13
date 1:12 15:19 178:7,13,18 179:1 198:22 302:10,18,20 319:7 375:18 418:8 419:3,9 419:19 420:3 420:13,25 421:20,25
dated 4:9,11,22 5:7 24:14 75:22 77:13 83:6 182:20
dates 382:12
david 131:9 184:11 212:8 212:11 231:15 334:22 335:20 336:17,18 356:18,20
david's 234:20
day 25:16 140:8 225:20 225:21 264:3 301:20 309:20 311:13 316:15 339:20 342:20 344:7 345:11 354:21 358:22 359:14 375:11 381:20 382:15 383:16,18 386:19 410:10 411:13 416:3 419:16 420:22 421:22
days 137:10 348:12 349:8 358:18 373:7 384:19 385:17 391:2 418:16
deal 26:10 32:18 33:2 45:11 377:16 386:20
dealings 336:19 337:3
dealt 337:12 406:19
dear 15:20 148:2 266:22 377:19 394:17 418:9
debtor 41:4 63:15 66:15 72:4 73:13
debtors 1:5 3:8 7:12 27:11,21 28:11,22 29:8 29:16 30:4 32:18 33:2

34:20 41:4 51:12 52:15,19 53:1 57:17 63:9 68:2,21 71:22 77:22 78:1 97:22 98:6,17 131:7 131:11 137:1 145:17 147:11 182:5 225:21 226:12 337:12 364:14 413:12
deceitful 360:8
december 111:19
decide 372:19
decided 355:1 363:4 381:6
decision 23:19 59:16 73:21 261:12 353:3 353:13
deck 104:1,4,15 104:16,18,21 104:22 106:2,5 106:8,10 115:1 115:7,11,13,22 117:8 118:9,20 121:9,14 123:3 123:7,13,15 124:16,19 125:19 126:21
declaration 83:20,21 363:8 383:8,21 384:1 384:8,11 387:19 389:9 392:6 393:20 394:4,5,18,20 396:4,14,15,21 397:18 398:8 403:15 404:8
deductions 89:12,15,17 90:8,18
deed 419:14 420:20
deemed 198:9 418:17
defenses 207:3 209:9
defer 251:19
define 54:7 63:10
definite 11:9
definitely 57:4 90:16 133:2 196:6 275:5 337:17 343:18 359:11 391:16 406:18 414:17
definition 64:19
definitively 56:7
degree 310:22 374:10
degrees 104:6
delete 385:11 385:11,18,21 386:11,15
deleted 385:13
deletion 385:14 415:3
delivered 111:20 199:14 228:17
denied 386:17
deny 201:6
denying 385:18
dep 201:15
department 418:20
depend 251:10
depended 297:2
depending 251:20 253:5
depends 69:14 129:6 135:8 149:1 150:8 228:2 252:11 333:18 377:11 380:3,6
deponent 9:14
deposing 137:11
deposition 1:9 6:11 9:10 35:20 65:12,19 65:22 66:13 82:19 83:21 130:12 241:11 242:19 243:6 351:7 363:9 367:5 390:10 404:9 407:19 408:10 411:10 412:4 416:15 417:3,5,9,12 418:8,10 419:1 419:3 420:1,3
depositions 44:1 362:8
deputy 100:8
deregulated 106:13 108:7 108:10,14,20
describe 81:11 212:19,22 213:11,15 237:7 365:7 366:1 371:10 384:2 385:2 409:4,19
described 110:8 363:8 366:4
describing 366:7
description 4:7 5:3
deserve 325:16
deserved 41:5 41:10

despite 41:11 90:4 332:22 386:18
detailed 110:10
details 24:6 224:20 364:21 365:1 385:3,12 385:13 386:12 387:19
determination 84:21
determine 82:9 84:16
determined 53:8,19
dialogue 50:7
diametrically 62:18 224:10
dictate 231:17 231:21 232:4 232:14 233:5 233:10 239:7
difference 145:4 169:17 369:4 378:12 380:15,22
different 74:9 93:1,2,2 95:19 95:19,20 105:1 138:22 196:14 205:20 220:9 233:14 274:11 285:9,11 308:12 319:15 325:12 327:13 328:8,10 330:7 339:19 345:7 353:9 380:7 382:12 394:4 395:20
differently 273:1 299:18 337:9 372:11
difficult 333:20 334:17
dig 135:21
digress 346:12
diligence 62:13 100:13 125:13 127:4 319:10 319:14
diligent 255:13
dinner 276:15
direct 17:9 106:15 108:11 195:22 196:21 197:5 198:3 231:12,14 304:12
directed 17:1 207:14
directing 400:3
direction 401:5 401:22 402:5 417:8
directions 233:17,19
directive 119:18 120:13 358:13
directly 145:22 207:14 353:19 415:5
director 147:10
directors 2:2 7:3 135:1,14 148:3 150:21 151:4 153:9,18 155:1,3 164:9 164:11 165:22 166:2 302:3,13
disagree 70:9 90:19 123:2 201:17 329:5 391:5 399:1,12 404:20 405:6 405:10 407:20 407:20 408:4 414:18
disagreed 59:15 128:8 401:21 403:5 405:1 406:14
disagreeing 29:21 389:3
disagreement 51:19 56:22 386:5 408:14
disagrees 25:11 84:22
disappeared 363:16 369:21
disappears 252:22
disappointed 381:7
disbelief 338:7
disclose 394:21
disclosed 384:17
disconcerting 218:17 385:19 386:22
discount 55:2,9 55:11,13 76:20 90:11 92:12,18 92:19 93:8,9 94:22 95:8,12 95:18 286:8,18 287:3 299:7,13 339:9,18,20 340:5 341:4,14 342:3,12,13,18 342:19,21 343:17,20 344:1,6,7,8 379:15
discounts 76:15 76:17 364:15
discovered 62:5
discovery 196:15 209:10

discuss 24:8 50:6 212:9 279:1 318:5 372:8 395:7
discussed 66:10 69:12 122:3,4 143:9 229:1,6 229:14,19 230:1 251:14 274:2 275:12 275:18 289:14 293:15,19 303:12,21 310:1 343:5 347:20 413:15 413:17
discusses 38:13 115:1
discussing 94:17 95:2 230:18 231:1,5 277:14 344:5
discussion 19:5 73:9 95:14,17 280:16 281:4 289:4,5 415:2
disher 2:10 4:4 7:5,5 11:5,14 11:21 12:8,17 13:22 15:5,11 15:13,15 16:4 17:6,11 19:1,9 19:11,12,15,17 19:20,22 20:1 20:3,7,9,10,19 21:9 22:1,22 23:12 27:13,22 29:10,18 30:7 31:12 32:9 34:21 35:8,11 35:17,20,21 36:2,4,15 37:2 37:5,6,9 41:17 41:22 42:19,21 43:1,4,14,18,20 44:3,5,16,21 45:2,5,8,10,13 45:16,20 46:16 47:12,17,19,22 48:3,7,10,13,18 48:20,22 49:1 49:4 50:14,22 51:7,14 52:1 53:10 54:10 56:15 57:3 60:13 61:1,3 61:11 64:15 65:3,13 66:18 68:4 69:9 72:6 73:16 74:14,17 78:4,20 80:14 82:3 83:17 85:4,14,20 86:8 87:1,21 88:17 90:20 91:21 92:6 95:4 96:3,10 97:3,12 98:10 99:12 102:16 102:22 106:3 107:3,12,16,22 108:3,16 109:18 112:7 112:15 114:13 115:4,16 117:14 119:1,9 120:4 121:1,16 122:21 123:18 124:9 126:1,7 126:16 127:5 128:1,15 129:4 129:17 130:1 132:17 133:11 133:22 134:15 135:2,16 143:4 143:14,18,20 144:6,8,10,12 144:14,17 149:8 150:6 151:13,16,19 152:3,5,6,7,9 152:12,15,17 152:20,22 153:3,5,20 154:11,14,18 155:10,20 156:1,8,15,18 157:7,11,13,14 157:17,21 158:9,19 159:3 159:7,9,16,20 160:2,5,12,14 162:20 163:2,3 163:4 164:2,6 164:14,18 166:5,9,13,21 168:14 169:2 169:12 170:2,4 170:6,8,10,18 170:20 171:1,8 171:16 172:17 172:20,21 173:1,4,6,8,11 173:15,22 174:4,7,10,12 175:1,8,14,18 176:8,12 178:19 179:12 179:14,16 180:6,17,21 181:1,4,7,14,16 182:6 183:7,16 183:18 184:7 184:20,22 185:2,7 186:2 186:11,13,15 186:18,21 187:2,16,21 191:4 192:2,18 194:14,18 195:6 196:3 197:1,13 198:17 199:9 199:20 200:7 200:14 201:2 201:18,20

202:9,11,13,15
202:18,20
203:1,5,7,11,15
203:19 204:5
204:18 205:12
205:17 206:8
206:13 208:4,6
208:19 210:3
213:3 215:6,19
216:5,8,12,14
216:16,18,20
216:21 217:2,8
217:11,20
218:2 219:11
219:14 220:6
221:7,20,22
222:3,6,8,14
223:2,18
224:17 225:22
226:15 227:22
228:8,13 229:2
229:8,16,21
230:7,19
232:16 233:7
234:12 235:9
236:14 237:3
238:2,6,16,18
239:9,15,21
240:6 241:6
243:21 244:3
245:10,13,20
245:22 246:2,5
247:6,18 248:9
249:19 251:7
252:6 253:11
254:6 255:5
256:4,8 257:17
257:20 258:13
259:2,4,8
260:3,5,9,13,16
260:18 261:1
261:20 262:6,9
263:2,5,7
264:11,14,17
264:21 265:14
266:7 268:3,5
268:8,12 270:3
270:9 271:10
272:9,19 273:7
273:17 277:20
278:6 279:4,9
280:7,17
281:10,14
282:18 283:18
285:1,19 286:4
286:19,22
287:9 288:8,14
288:17 293:16
294:3,22 295:6
297:22 299:1
299:10,22
300:8 301:16
302:5,16
303:16,18
305:4,15
306:10,18
307:19 309:15
310:4 311:8,18
312:9 313:1,13
314:2,5,17
315:20 316:4
319:3 320:21
321:6,12,14
323:6,8,20
326:18 327:21
328:12,15,17
329:19 330:17
330:22 331:19
331:22 333:12
334:12 335:2
335:16,18
336:4,12,20
337:5,15 338:9
339:12,15
340:10,16
341:7,20
342:15 347:18
348:15,17
349:12 351:3
351:17 352:14
353:6,17 355:4
355:17 356:8
356:10 358:2,5
359:7,22 360:5
360:21 362:11
367:2,8,12,16
368:13 369:7
371:14 373:18
375:2 376:21
381:16 383:11
384:5 387:8,13
390:1 392:9
393:2,9,16
396:18 397:9
397:20 399:22
400:16 401:1
401:13 402:9
402:16 403:9
403:20 404:16
405:4,18 406:6
406:16 407:15
408:17,21
409:2 410:8
411:16,21
412:3,13,14
413:7,10 414:2
416:4,10 418:5
disher's 241:7
disingenuous 411:9
disjunctive 370:9
disposed 64:3,5
dispute 11:3 12:6,13,15 13:4,11 18:19 20:15 21:4,19 21:20 22:18 23:9 52:14 53:6,14,16,20 68:13 73:5 78:1,8 296:22 395:7 399:19 400:12 415:9
disputing 78:9

disservice 330:4
distinguish 33:19
distributed 111:8
district 1:1 6:14 252:14 254:11,14 417:20
dividend 296:16 297:6 297:13 298:6 299:21 300:3
division 1:2 6:14
docket 75:11 75:12 82:20
document 14:5 27:14 29:11 30:10 41:8 56:9 66:22 68:16 69:16 75:16,19 91:13 91:17,18 92:9 99:3,8,13,17,20 103:16 104:1 108:4 120:9 121:12 136:20 136:21 137:6,8 137:13 146:12 164:18 166:9 168:15 169:3 170:21 175:2 175:19 176:14 176:14 209:19 211:10 213:3 232:7,17 234:12 236:15 239:9,21 240:20 241:12 243:22 245:13 246:6 247:7 266:7 268:22 269:20 270:21 271:11 272:10 273:12 282:3 285:4 289:11 292:4,15 293:17 302:19 304:6,9,10,15 305:9 306:11 306:19 311:5 320:10,11,12 342:16 348:2 348:14,18 349:11,13 361:6 367:2 368:13 375:5 392:19 393:3 393:14 397:21 405:19,21
documents 62:6 66:2,5,10 66:14 67:4,16 67:21 68:7,18 68:20 69:6 71:10,12,15,16 72:2 75:6 91:16 182:12 182:19 289:6 309:5 312:12 320:12 344:13 346:10 379:13 383:7 403:12 403:21 405:5
doing 62:4 123:6 159:21 160:7,11 203:20 221:12 258:17 296:2 319:13,13 330:4 345:15 358:14,16 366:21 411:8
dollar 18:14 41:10 230:11 230:11
dollars 26:15 41:5 42:6 66:16 113:9 141:6 143:8 145:15 177:16 177:18 198:14 250:14
doors 226:22 227:5 231:1
double 217:14
doubled 322:2 322:13,18 325:6 327:16 328:22 329:12 346:10
doubt 313:14 314:6 315:21 351:21
dr 295:19
draft 178:2 186:7,8 215:2 218:8,12,13 290:7 304:4 365:1 383:9 384:11 391:19
drafting 32:13 137:13 186:6
draw 103:22 267:15
drawing 397:13
drill 100:19 126:13
drive 2:5 65:19
driven 116:13
dropped 85:15
due 100:13 125:13 127:4 142:14
dug 331:6
duly 7:17 189:9 417:5
dunn 131:9 212:11 234:2 236:11 237:1 239:6,13 312:5 334:22 335:13 336:9 356:18

dunn's 231:15 335:20
duties 62:12 235:17 330:9
duty 59:1 235:20

e

e 2:1,1 3:1,1 4:1 4:6,8,12,14,15 4:18,20,22 5:1 5:2,4,5,7,8,11 5:12,14,15,17 5:18,20 6:1,1 13:15 14:8,20 14:21 15:20 16:15,16,18 17:14,18,20 19:4 21:15 24:2,13,15,19 24:20 25:17,20 26:1,18,19 27:2,4 28:3 31:4,14,17 32:11 34:6,13 37:1 38:5,13 39:2,6,22 40:3 40:4,6 41:12 42:5,7,7,10,17 43:3,9 44:8,15 45:22 46:4,7 46:15,16,19 47:5,13 50:7 52:10 66:14 67:8,9,10,13 68:1,8,10,12 71:7,9 77:13 99:4 100:1,12 101:2,3 103:8 104:19 105:4,5 105:11,17,20 106:1 114:21 125:1,6,8,12 126:18 127:2,9 127:15 130:18 130:22 131:14 138:19 143:10 145:16,21 146:18 147:2,4 147:5,17 149:13 150:1,9 154:5,9,22 163:20,20 167:22 168:3,4 169:8 178:1 182:9 185:10 189:1,1,16,18 191:15,17,22 193:11 194:5 199:22 200:12 200:18 210:20 210:21 211:13 211:15,17 212:16,17 231:15 233:17 233:18 234:20 234:21 236:18 237:1 239:18 241:14,15 242:2,10,12 248:16 251:15 255:4,9,18 256:3 257:16 258:12 260:2 261:8 262:4 264:10 265:12 266:17,21 267:1 276:20 277:1,13 278:13 285:22 288:10,21,21 289:13,15,18 290:2,16,16 292:6,7,17,19 292:22 293:3 301:3 303:2,10 304:5 307:1 309:8,11 312:16 313:6 313:12,15,17 313:22 314:11 315:14,22 316:15 317:10 326:17,22 327:8 329:1 332:5,11 335:6 335:8,11 336:6 339:3 341:12 341:16 343:22 344:5 345:21 346:2 348:11 349:7 357:10 364:5 367:1 368:3,6 369:12 369:17 371:8 371:16 373:17 375:10,13,20 375:21,22 376:2,5 377:19 378:13 381:21 382:4,5,12,20 385:18,20 386:19,22 387:16,18 388:2,4,10 389:7 392:22 395:11,19 396:7,8,22 397:18 398:9 398:10,11,21 399:10 401:10 403:4 404:2,5 404:22 405:7,8 405:9,12,13 411:4 413:19 414:7 415:3,6
eager 24:8
earlier 128:6 168:5 207:5 214:21 237:19 238:5 260:18 268:21 269:20 270:21 273:20 278:9 289:1 298:19 299:6 301:10,11

312:4,13 319:19 333:8 341:18 344:15 344:16 347:21 354:15 384:20 391:15 414:11
early 399:19 400:6,8,9,12
easier 90:22
easily 386:17
easy 386:14
eating 275:8
eaton 184:11 212:12 213:2 213:10,12,17 213:22 214:11 215:15 217:4,5 217:17 219:5 220:11 221:12 222:2 231:9 312:5 336:17 336:18 356:20 402:8
eaton's 212:8
echo 411:2
economic 95:14
edscott 3:6
effect 40:17 396:5,16 397:5
effort 33:9 38:7 38:14,16 39:15 39:20 40:2 120:17 139:12 371:12
efforts 98:9,15 333:1
eight 377:5 384:11
eighteen 361:5
either 61:5 94:10 192:3 227:6 228:18 247:14 269:6 278:1 369:10
electricity 102:3,7,8,9 106:13 109:4,5 109:9,17 110:1 110:3,20,21 111:4,5,13 116:2,12,14,19 117:3 119:16 121:15 122:1,9 122:12 123:16
element 260:16
elements 62:16 370:10
eliminating 230:16
elizabeth 3:3 7:7 280:5 283:6,9
email 418:15
emails 389:8
emanuel 3:10 3:14 7:12 63:8 363:14,20 371:20 394:6 412:2
embarrassed 303:17
emotions 411:15
emphasizing 370:7
employed 353:19 417:11 417:14
employee 417:14
enclosed 418:10
encore 1:4 6:12 418:6 419:3 420:3
endeavor 89:6
ended 55:13 374:3 393:20
ends 26:18 74:20 130:5 142:19 188:9 265:1 338:14 375:12
endured 33:8
energy 22:15 22:20 23:4 53:19 54:2,9 54:16,21 55:12 55:16 56:2,13 57:1,11 58:8 60:10,11,21 61:9,16 64:6 64:11 74:12 79:16,18 81:9 82:12 84:18 112:3,11,19 113:3,7,9,16,21 114:4,8,11 115:2,14 117:11 118:7 118:12 119:7 119:14 120:1,3 120:15,21 122:2,5,18 123:5,16 124:7 124:8 127:14 127:22 133:1 138:18,21 139:13 140:7,9 140:21 141:10 141:17 142:8 142:14,21 143:2,8 145:8 145:12,15,18 146:4 168:1,9 168:11,22 169:9,9,14,17 169:20 170:15 170:15,16 173:20 174:20 177:14,19,21 177:22 230:12 230:17 282:9 283:4,11 284:15 306:8 307:5 308:5

309:6,12 346:17 347:5 370:2,4 374:20
enforce 77:10
enforceable 113:8 199:5,5
engage 89:5
engaged 23:21
engagement 74:4,7 75:11 75:22 76:2,10 77:4 79:1,3,11 80:8,10,18 81:17,21 82:16 83:6,16 84:4 333:7 363:7 366:11,19 368:9,22 369:5 369:6 371:22 385:4 386:3,7 394:1
enlarge 80:14
enter 113:14
entered 252:17 362:21 420:9
enterprises 2:2 7:4 100:10 302:4,14
entire 34:7 55:4 59:17 79:19 115:7 280:3 325:10 329:5 401:15 408:14 419:5 420:5
entirely 46:11 227:16 335:7 336:22 371:15
entirety 13:4 25:20 39:6 401:8
entities 72:4
entitled 365:19
entity 297:2
eoy 340:21,22 342:5
episodic 109:8
equally 243:12
equation 334:8
equipment 198:10 199:18 200:21
equity 297:5,9 297:11
equivocal 129:17
ercot 111:6 122:13 295:18 304:15 307:11 307:12,17 311:6,17 318:9 318:16 320:7 321:3 324:3,9
erick 1:17 6:18 18:5 65:5 106:21 118:13 133:18 186:22 260:12 306:14 312:17 330:13 335:22 348:22 362:4 417:2,18
errant 214:19
errata 418:12 418:16 420:7 420:10,18 421:1
erroneous 331:7
error 57:11
especially 59:3 294:14 332:9 413:16
esquire 2:3,4,4 2:10,11,16 3:3 3:3,4,9,14
essence 54:22
essentially 120:14 267:5
establish 80:1,5
estate 112:22 331:8
estimate 86:15 86:21 88:13 196:12,18 258:15 259:15 259:21 260:19 261:2,13,15 265:10,11 294:18 295:4 350:9 379:6,11 379:20
estimated 297:13
estimates 122:2 122:6,6 259:12 259:16 294:13 295:4,8 296:3 296:7 298:20
et 1:4 6:12 212:8 280:11 312:6 418:6 419:3 420:3
ethics 34:1
evaluate 96:1,5 96:12 206:2
evaluating 97:1 207:2
evaluation 205:5 209:5 278:20
evening 377:20
event 50:5 82:1 198:8 202:5,7 365:14 368:10 369:1 378:20
events 199:1
eventually 224:9 233:20 235:11 404:6
everybody 411:18 412:12
everybody's 210:12
evidence 99:4 203:22 204:2 204:14 205:1 205:16,21

exact 319:9
exactly 34:8,9 44:2 110:7 269:10 292:21 315:18 379:12 382:18 384:8 403:1 408:13
examination 4:2 7:19 189:8 189:11 314:19 410:14 413:11
examined 7:18 189:9
exceed 138:9
exceeds 102:9 111:6 122:14
except 40:15 41:9 55:1 81:4 96:11 289:3 395:16
exception 227:9 370:18
exceptional 325:11
exceptionally 209:4
excerpt 234:20
exchange 13:15 14:21 130:18 201:13 210:21 212:22 213:6 241:14 255:18 276:20 292:6 304:5 313:8 316:15 364:15 382:20 394:17
exchanged 15:18
exchanges 31:15 68:1
excluding 282:10 283:4 306:8 307:2
exclusion 197:10,18
excuse 321:14
executed 193:13 420:10
execution 419:14 420:19
executives 41:4 89:10 139:4 182:21 183:2 224:10 249:12
exemplaries 322:16,17 324:19 326:11 347:9,17 348:5 349:10,16 350:22 355:2 355:14 356:4
exemplary 138:11 196:1,6 255:11 285:9 323:17 359:15
exhibit 4:8,9,11 4:12,14,15,17 4:18,19,20,22 5:4,5,7,8,9,11 5:12,14,15,17 5:18,20 13:13 13:17 16:12,19 17:4,7 55:18 75:8,9,13 80:15 82:15,15 82:19,21 83:4 99:10 103:15 103:17,19 104:19 105:3,5 105:15 106:1,2 106:6,11,16 125:20 127:21 129:20,21 137:3 138:7 139:8 146:7,9 146:17,21 168:6,21 174:20 189:14 190:21 191:11 191:12,15,19 192:8,9,17 201:15 204:4 204:16 207:9 208:1 209:21 210:1,3,7,18,18 210:19 211:2 241:11,20 242:7 255:4 262:5 276:17 277:2 281:8 282:7,8,9 285:18 286:3 288:4 289:10 290:15,17,20 291:21 292:3 292:10 303:2,6 303:10 304:2 305:1,6 307:11 308:18,22 309:6,12 310:2 310:12 311:10 312:15 313:5,7 313:15,18,19 314:7 315:17 315:22,22 317:5 319:2 320:13,15,19 321:3,8 322:19 323:1 324:2,13 324:22 327:4,7 338:20 339:3 340:1,9,11 341:18,20 342:21 344:19 344:20 345:18 347:16,18 361:4,9,17,20 361:21 362:1 375:7 382:7 387:4,6,11,15 390:12 391:7 394:9,13 398:3 398:4
exhibits 5:22 192:22 193:3 290:15 314:22

403:10
exist 109:8 119:6 315:14
existence 27:10
existing 365:20
exists 143:17 415:6
exit 97:21 98:5 98:16,17,21 100:13 117:9 117:13 118:11 118:22 120:2 120:18 121:10 123:14 124:5,5 124:6,20,21 125:13,21 127:3 243:14 244:12 247:5 247:14 269:12 274:1,3,4,11 275:1,3,4,9,13 275:22 276:7
expand 250:6
expect 148:19 148:21
expected 57:22 67:20 89:14 135:7 280:12 338:22 339:6 339:10 340:21 341:5 342:5,8 342:10,11,14 350:9 379:1
expeditiously 253:21
expenses 13:6 28:18 40:16 78:12
experience 97:10 254:2,22 255:21 256:20 257:12 262:1 264:7 334:22 377:5
experienced 251:3
expert 57:17 96:12 97:1 283:5 290:4 294:15 295:17 295:18 306:2 308:14 319:18
experts 319:13
expiration 419:19 420:25 421:25
expires 417:21
explain 47:1 52:2 68:15 88:17 115:19 171:3 187:15 215:10,11 216:2,6 409:21 409:22 410:17
explained 30:11 69:20 145:15 193:21 365:8 366:12 393:19 404:8
explaining 70:11 122:11
explains 295:14
explanation 32:1 70:13 151:14 170:3 187:17 216:18 216:22
explicit 61:21
explicitly 59:12 84:9 360:12,15 385:20
express 360:19 372:12
expressly 123:6
extent 53:16 77:21 98:8,11 219:15 223:5 223:13 261:5
extreme 111:14
extremely 25:1 59:14
eye 1:21 333:20 333:20
eyeballing 284:11
eyes 100:20 225:8,13,15

f

f 140:17,20 189:1
facility 141:15
fact 40:12 41:7 60:6 62:9 64:8 90:4 110:7 128:10 135:20 140:5 142:6,11 168:10 179:8 209:9 225:19 271:8 327:3 334:4 384:12 386:11 389:3 397:16 405:12 405:13 406:13
factor 92:12
factors 116:11
facts 141:10 257:1 258:19 261:11 392:6 393:14
factual 202:3
fail 141:5
failed 62:12 140:13
fair 8:10,11 9:21 10:3,7,13 49:22 80:6,7 214:16 220:17 220:18 337:11 354:21 355:12 356:3 404:22 406:2,11
fairly 338:1
faith 23:16 40:21 82:9

84:16,20 85:2 86:14,21 87:12 87:15,19 88:13 89:1,6 90:12 90:17 127:12
false 179:13,17 179:20 180:9 181:15,19 182:9
familiar 99:14 127:18 205:1 255:12
family 150:15 150:17
fantastic 325:16,22
far 125:7 139:14 283:4 397:16
fast 93:13 192:22
father 334:3
fault 334:7
favor 274:5 306:15
favorable 269:13
february 26:6 55:5 66:9 89:11 130:18 131:14 136:16 147:4,17 189:16 191:17 193:11 198:13 206:19 210:21 211:18 241:14 251:18 254:4 270:17 276:19 282:1 286:16 287:5 292:6 302:14 303:14 303:15 304:3 305:8 307:1,16 307:16 308:7 309:8,11 311:4 312:3,13 319:17 320:19 321:22 322:11 324:13,19 325:6,21 327:15 328:20 329:11,16 330:21 332:6 341:4 343:4 345:3,10,21 348:4,11 349:7 349:8 350:12 355:9 360:18 361:12 364:4 371:2 375:11 375:14,18 376:2 377:1,14 377:18 379:10 380:11,13 381:12,13 382:5,13,20 383:2 385:17 387:17 388:2 394:16 395:12 396:12 399:19 400:8,12
fee 11:3,22 12:5 12:7,9,11 13:3 13:5 16:1 22:10 23:5,19 26:5 33:10,22 38:15 40:3,15 40:20 41:10 49:22 50:20 51:21 52:5 53:7 54:4,18 55:14 57:21 66:7 68:13 72:9,13 74:4,9 75:4,5,10 76:8 76:11 77:5,19 78:1,19 79:4 79:13,16 80:2 80:20 81:22 83:10,14 86:11 86:14 89:20 361:14 363:3 364:15,20 365:15,20 366:15 368:11 369:2,20 371:5 371:9 372:16 373:4 376:20 384:16 385:3 386:7 387:20 391:12,17 403:6 411:14 413:17,21 414:5,8,9,14 415:9
feel 125:5 194:1 258:16 259:13 333:22 334:1 337:9 338:4
feeling 366:15
fees 11:13 12:16 13:6 28:18 34:20 38:4 39:5,17 53:19 58:6 59:3 66:17 76:3,5 78:12 138:12 295:22 405:17 413:22
feld 3:4
felt 61:19 62:3 221:12 411:15
fiduciary 62:11 235:17 330:9
field 3:5
fight 404:14,19 406:13 407:13
fighting 406:4 406:5
fights 407:18
figure 28:3 196:9,10,11 297:18
file 11:16 34:1 34:14 59:11 69:21 180:2,5

180:9 181:11 185:22 214:1 214:13,17 215:2 217:7,18 218:12,13,16 218:21 221:4 222:13 223:21 231:9 237:14 238:1,15 312:6 384:2 394:19 396:13 397:3,7 397:18 398:8 399:20 400:13 400:21
filed 6:13 11:12 11:19,22 12:11 72:9,14,18 75:11 82:19 116:6 136:15 136:21 138:4,7 168:21 190:20 220:4 223:16 231:18,22 232:5,15 233:6 233:11 239:8 239:19 240:4 363:20 393:20 394:1,4 415:9 415:15
files 67:11
filing 138:15 180:20 191:2 215:18 219:8 240:4 363:14 364:22 383:20 384:3 386:2 393:13 403:15
final 72:9 280:14
finally 398:2
finance 98:22 124:6,6,20,21 128:11,17 129:1 275:22
financers 117:9 117:13 118:11 118:22 120:2 121:10 123:14 247:5
financial 97:17 131:6 132:15 133:3
financially 417:15
financing 97:21 98:5,9,16,18 100:13 120:18 124:5 125:13 125:21 127:4 243:14,18 244:12 246:18 247:4,10,14 248:13 268:18 269:2,5,7,12,15 269:18 270:1 270:12,16 271:2,18 272:4 272:17 274:1,3 274:4,11 275:1 275:4,4,9,13 276:7
find 15:22 58:17 67:14 71:18 98:16 105:7,18 193:13 278:9 302:20 313:20 313:21 314:12 316:12 333:10 334:10 335:1 336:17 337:2 337:14 343:21 347:1 380:5 403:1 418:10
finds 15:21
fine 37:18 43:12 45:7 74:18 91:15 102:21 103:4 105:22 106:7 126:19 130:3 144:16,19,21 273:12 361:3 382:1 412:14 413:7,9 415:18
finish 9:20 15:11 35:8 143:20 144:18 170:2 183:16 183:18 185:1 200:7,14 221:20 368:1
finished 183:12 183:15 188:5
fire 100:18 126:12
firm 6:19 8:6 11:12 34:3 76:13 101:7 103:12 292:20 325:13 412:9
firm's 137:19
firms 12:1 60:7 206:17 243:4 255:12 267:6 325:12,22
first 7:17 9:13 16:2,15,16 17:2,14,17,19 18:2 32:11,16 32:22 49:21 57:22 58:15 59:4 76:19 77:8 78:22 80:10,22 83:13 92:11 93:8,17 98:1 109:1 114:5 130:21 196:8 198:8,21 199:1 204:22 218:19 226:3 231:14,20 232:3 244:11 248:18 254:10 277:8 286:14 294:10,12

299:13 313:22 316:22 317:8 325:9 329:5 345:9,13 354:10 376:2 388:15,20 404:14 405:12 405:13 407:22
fish 129:17
five 258:14 287:16
fix 385:22 386:1,14
fixed 76:8,11 386:16
flagged 190:5
flat 139:12
flesh 261:20
flip 194:1
floated 23:18
floor 2:18 3:11
flow 93:2,10 95:19 96:2
flows 95:10,16 96:8,15,20 97:2
focus 411:13
focused 167:15 167:17 244:5
focuses 106:12
folks 132:15 276:21 345:22
follow 16:19 26:16 31:2 32:7 85:8 88:8 96:6 105:3,6 105:17 119:12 216:17 222:19 276:3 323:22 352:21 366:6 411:19 413:14
followed 34:17 116:4,6 371:18 401:4 402:5 404:11
following 16:22 32:3 54:13 119:3 358:12 391:15
follows 7:18 189:10 233:18 276:21 370:5
forbade 118:5 118:9 123:6 403:14
forego 39:5
foregoing 417:3,5 419:13 420:18
form 40:22 60:13 257:20 286:19,22 402:9
formally 397:17 398:8
former 140:6 141:8 369:6
forth 76:14 312:4,7 371:11
forths 371:3
forward 134:21 135:12 206:3 290:10 313:8 364:5 376:14 385:17 418:14
forwarded 24:21 320:8
forwards 313:9
found 13:7 109:2 227:10 385:19
foundation 11:15 12:18 19:2 20:20 21:10 22:2 23:13 28:1 29:11,19 30:8 34:22 50:15 51:1,8,15 53:11 54:11 56:16 60:14 61:3,12 64:16 66:19 68:5 69:10 72:7 73:17 78:5,21 82:4 83:18 85:5,21 86:9 87:2,22 90:21 95:5 96:4 97:4 97:13 102:16 106:3 107:4 108:17 109:19 112:8,16 114:14 115:5 115:17 117:15 119:2,10 120:5 121:2,17 122:22 123:19 124:10 126:2 127:6 128:2,16 129:5 132:18 134:1,16 135:3 135:17 143:5 149:9 150:6 153:21 164:15 168:15 169:3 170:21 171:9 175:2,19 176:15 179:14 180:7 181:17 182:7 184:22 185:7 186:3 191:5 194:15 195:7 196:4 197:2 198:18 199:10,21 201:3,20 204:6 204:19 206:9 206:14 208:6 208:20 215:20 217:12 218:3 219:15 220:7 221:8 223:3 224:18 226:1 226:16 228:1,9

229:3,9 230:8
230:20 233:8
235:10 236:14
238:3,7,18
240:7 246:3
247:7,19
248:10 249:20
251:8 252:7
253:11 254:7
256:9 257:21
260:6 261:3
262:9 270:3,9
272:10 273:8
273:18 277:21
278:7 279:10
280:17 281:15
282:19 283:19
285:2,20 286:5
287:1,10 294:4
295:1 297:22
299:2,11 300:1
301:17 302:6
302:17 305:5
305:16 306:11
306:19 307:20
308:1 309:16
310:5 311:9
312:10 314:18
320:21 321:6
321:12 323:8
323:20 326:19
329:20 333:13
334:13 335:2
335:18 336:13
336:21 337:6
337:16 339:15
340:16 341:7
342:15 348:18
349:13 355:18
356:10 357:4
358:3 360:22
362:12 369:8
373:19 376:22
381:17 383:12
384:6 392:9
393:2,16
396:19 397:9
397:20 400:1
400:17 401:2
401:13 402:10
402:17 403:9
403:21 404:17
405:5,18 406:7
406:17 407:16
409:2 414:3
foundational 316:14
founded 89:17
founder 140:5
founders 58:22 62:8 183:1 235:16 330:8 401:19
four 122:6
fourteen 315:7 347:19
fourth 115:22 364:18
fraction 78:11
frame 15:18 344:1
frankly 332:12
fraud 58:15 59:4,20 60:2 61:14,17,18,22 62:2,2,15,16 113:5,12 118:6 118:10 119:18 120:14 123:9 139:6 145:19 146:1,5,6 148:4 150:22 151:5 153:10 153:19 155:2,4 164:10,12 166:1,3 178:3 178:7 179:1,6 182:15,22 207:20 208:17 212:12 218:8 218:20 221:10 221:13 223:22 223:22 224:1,2 224:3,4,6,11 225:14,14 229:7 233:22 235:6 301:4,5 310:20 326:13 326:16,21 327:2,18 329:2 329:15,18 330:3 331:11 331:15,18 332:8,9,15,16 332:20,21 333:3 359:5,11 359:16 360:13 360:16,20 377:12 402:5
fraudulent 59:9,13 60:19 138:17 179:11 180:3 181:11 182:1 184:12 185:5,11,15,22 215:1,17 217:6 217:17 219:6 220:2 221:3 237:22 238:14 399:21 400:4 400:14 401:5
fraudulently 113:13
freaking 193:1
free 125:5 194:1 419:14 420:20
frequent 414:12
freudian 370:18
friday 212:7 381:12 382:14 383:2
front 56:10 75:6,17 83:2

91:1 92:10
99:9,17 130:13
211:10 277:5
338:22 345:17
394:9 398:3
full 58:1 168:11
fully 42:18
43:10 193:13
377:7
fulsome 152:13
152:17 153:15
202:21 222:3
funny 235:22
further 24:8
32:1 56:1 70:5
166:22 189:10
213:1 367:19
383:19 409:9
409:15 416:11
417:13
future 95:9
96:1,8,15,20
97:1 117:12
118:21 119:7
230:16 269:8

g

g 6:1
galaxy 243:15
244:13 247:15
270:2,14,18
271:3,21
272:18
games 334:5
gander 173:17
garner 391:14
general 100:9
147:6,7 396:14
397:4
generalities
35:16
generality
36:12,20
121:18 123:21
128:4 400:19
generally
149:14 229:20
getting 109:21
124:12 146:11
245:6 253:19
269:6,12,13
274:2,3 275:10
275:11,13
295:20 319:12
350:12 384:16
399:3,16
give 9:3,7 24:16
31:7 39:6,12
39:16 52:18,22
113:8 120:1
152:12 157:11
157:18 160:2
167:14 171:11
171:21 172:4
175:4 178:8,17
182:3 202:20
212:5 255:10
256:18,21
257:4,6,13
258:2,2,9
259:12,16,21
260:19 261:2
261:13,15
262:1 263:2
264:7 265:9
298:13 325:17
356:6
given 9:10,12
18:15 26:11
106:13 109:3
357:20 367:6
386:18 406:3
417:10
gives 122:6
246:15
giving 113:6
222:3 233:16
259:13
go 6:9 9:16
10:21 14:13
16:7 17:3
20:22 22:3
35:18 39:9
42:2 45:20
46:12,20 49:4
51:18 55:18
58:4 74:17
90:21 92:4
105:2,14 108:5
122:7 131:19
143:16 146:2,5
160:18 174:12
176:4 179:16
188:3,6 207:10
219:18 223:9
223:19 261:6
264:4 287:15
294:20 295:10
296:16 298:7
306:7 307:20
309:9 313:20
314:12,19
316:2,11,18
320:22 321:14
327:1,11,22
333:22 337:8
348:16,19
349:9 363:4,12
367:4,21
383:19 385:16
387:13 395:12
398:16 405:21
408:15 410:1,3
goat 410:21
god 150:5,13
234:8
goes 22:20 25:6
76:21,22 77:2
81:10 82:10,11
102:6 139:17
142:11 178:2
234:9,9 301:6
327:19 329:3
331:16 332:22
334:4 397:16

398:11
going 6:3 8:9 9:16,18 10:1,5 10:15 13:12 14:7,20 20:8 27:1,3 32:7,18 33:1 34:14 35:12 36:1 47:22 58:13 59:19 68:9,14 69:19 73:10 74:6,15 80:9 80:10 81:14 87:4 89:18 93:13 99:3 119:11 120:9 121:9 124:12 124:19 125:20 126:21 144:5 155:10 157:11 157:18,21 160:2 165:16 165:20 183:7 187:19 191:10 191:11 195:18 202:14,16 203:3 220:9 222:16 236:10 240:10 241:10 243:16 244:16 245:7 246:10 247:2,8,22 248:22 249:22 253:1 257:6,8 261:17 263:21 267:3 271:4,15 274:13,17 279:1 287:15 290:14 291:2,3 291:9,16,20 295:15 296:4,5 297:5 312:16 316:9,10 325:17,20 331:9 334:6 335:8,10,19,20 348:12 350:10 367:4,17 369:14 371:16 383:11 390:17 395:17 396:13 397:3 398:2 403:16 408:8 412:11,16 415:11
good 6:2 23:16 26:3,10 40:22 43:20 56:8 79:9 82:9 84:16,20 85:2 86:14,21 87:12 87:15,19 88:13 89:1,6 90:12 90:17 93:15 102:21 103:7 110:6 143:22 144:13,16 145:2,5,7 150:19,19 209:5 212:17 268:11 296:6 334:3,3 350:13 380:14,21
goodness 303:16
goose 173:16
gotten 196:16 253:5,21 274:11
grabbing 139:19
grade 93:22
graduated 148:12
great 108:22 243:3 292:1 416:1
greenlighted 179:9
grid 109:10,17 110:2,4,22 116:13 120:21 139:18 141:17
griffey 283:6,8 295:18 306:2 308:4,14,22 319:22 320:1
gross 207:20 208:16 373:6
ground 199:8 199:12,15
grounds 367:8
group 3:2 7:8 37:16 38:3,8 292:9 354:14
guarantee 159:8
guess 65:18,19 78:7 95:16 98:14 129:6 134:6 153:14 200:3 228:2 232:6 247:21 252:11,16 292:19 320:2 345:4 357:11 380:3
guessing 357:11
guidance 127:18 233:13
gump 3:4 7:8
guys 29:13,22 30:12 68:19 71:1 78:9 280:8 390:19

h

h 4:6 5:2 8:3,4 278:14 354:16
haley 2:4
haley.hinton 2:8
half 298:7,13 367:9

hand 269:16
hand's 318:13
handle 203:9 275:17 371:5 391:10
happen 116:13 381:21
happened 226:22 227:21 289:6 381:9 384:19
happens 242:5
happy 108:11 282:3 289:7 384:9 415:13 416:4
harassment 69:17
hard 17:11 22:6 71:12 72:1 85:7 98:12 278:15 332:10 361:15 407:18 410:21
hardball 369:10 372:3
harris 113:13 140:5 141:4,9 142:1 200:18 200:22
harris's 142:7 235:19
harvard 148:12
hashprices 102:3
hauer 3:4
hays 55:8 89:11 90:19 92:10 99:5 101:17,21 105:4,5,17 128:6,19 147:12 201:12 276:20 278:12 286:17 292:8 298:20 309:8 309:11 311:5 311:14 320:4 339:4 343:17 343:20 344:6
he'll 187:20
head 284:11 300:11 302:19 335:20
headed 33:9 38:6,14,16 39:15,19 40:2
heading 30:19 46:4 76:4 141:4 197:17 212:7 213:20 214:6 248:18
heads 317:14 317:19 326:1
hear 91:19 92:1 107:18 114:21 117:19 260:13 349:2
heard 300:16 300:17,18 383:19 414:16
hearing 10:16 10:22 11:10 363:10
heart 334:2
heavily 160:10 160:12
heavy 100:19
hedges 2:17 68:9,10
held 408:2
hell 337:19
help 48:10,12 128:12 129:1 131:21 132:11 132:15 171:12 171:15 268:17 272:3,16 386:1
helped 416:1
helpful 119:13 125:3 135:22 136:6 172:10 172:13 254:16
hereto 417:15
hey 330:13 412:3
hiccup 60:4
hide 399:2,15
high 283:4 347:11 364:2
higher 86:13 94:12 109:16 339:5,21 344:6 357:15 366:16 378:20,21
highly 109:9 252:2 351:21
hinton 2:4
hired 96:22 97:5
historical 102:2 116:1 119:15 119:22 121:15 122:1,9,12 123:16
historically 111:13 116:3
history 362:16 392:3 393:8,11 407:13
hit 242:5 250:14 252:4
hoc 3:2 7:8 37:16 38:3,8
hockey 334:4
hold 68:4 85:14 96:10 102:22 107:12 164:2 171:8 178:19 180:6 181:16 186:20 200:7 205:12 219:3 219:11 245:22 259:2 260:3 268:3 382:11 412:11

holders 297:5,9 297:12
holdup 72:12
home 71:13
hominem 408:15 409:5 409:19 410:19
honest 40:20
honestly 209:16 244:4 309:1 353:20 357:12 371:15
honorable 333:11 334:11 335:1 336:18 337:3,14 338:4
hope 15:21 24:21 50:8 148:22 163:16 226:18 374:15 381:7 411:12 416:1
hoped 331:2 332:7,13
hopeful 329:21
hoping 14:5
host 147:5 241:17,19 276:21 345:21
hosting 193:17
hot 193:2
hour 102:11 367:9,11
hourlies 40:16
hourly 13:5 76:3 78:12 363:14,20
hours 65:15 126:13 226:5 410:12 416:8
houston 1:2 2:18 6:14
hover 104:9
human 37:21 335:8
hundred 18:14
hurley 39:4,21
hypothesize 267:9
hypothetical 121:15 123:15

i

idea 126:8 215:16 240:3 244:15 282:14 301:13 309:1 372:2
ideas 374:14
identification 13:18 75:14 82:22 99:11 103:20 129:22 137:4 146:10 146:22 191:20 211:3 241:21 277:3 290:21 292:11 303:7 344:21 361:10 375:8 382:8 387:7 394:14 398:5
identified 77:13
identify 70:12
identifying 70:16
ignoring 404:2
ii 77:14 280:22 281:13 284:13 307:5
iii 2:3 141:4
illinois 2:6
imagine 319:4 415:16
immediate 150:15,17
immediately 198:7
immense 127:12
impact 206:6 273:14
impair 9:3,7
impairment 280:10
impediment 8:21
imperfect 195:20
implement 354:13
implicate 223:5
implication 378:8 397:13
implies 98:12
importance 330:1 332:19
important 9:17 149:2 401:11
importantly 90:13 268:14 295:16
impossible 62:15
imprecise 135:6 177:12 195:17
impression 182:3
improperly 235:17
impugn 334:16
impugning 34:3
inaccurate 397:14
inappropriate 402:20
inaudible 184:1 184:6
incentives 372:13

incidental 196:21
include 96:20 177:18,21 180:3,14 181:10 185:11 185:21 286:18 365:18 385:5 401:12,16,17 401:18,20
included 34:15 34:15 60:19 61:15 140:16 267:7,11 365:1 385:12 388:20 400:14 418:12
includes 123:3 398:21 399:10
including 38:22 59:16 64:6,22 77:10 127:12 138:10 147:6 212:10 249:9 249:11,12,13 255:14 275:19 280:4,5 287:6 329:22 383:20 392:7 406:21
inclusion 232:9 233:11
inconsistent 233:16 342:19 369:3 379:21 383:7
incorporated 420:12
incorrect 87:10 87:10 90:10 198:22 246:21 308:3 322:4 331:6 393:17 401:4 406:10 407:3
incorrectly 334:2 386:10
increase 60:10 376:12 413:21
increased 376:11
increases 347:11 349:17 364:6 413:18 414:5,8,9
incredibly 135:22 136:6
independent 148:3 150:21 151:3 153:9,18 155:1,3 164:9 164:11 165:22 166:2
indicate 313:16 346:5 377:21
indicates 282:9 284:13
indicating 418:12
indirect 195:22 196:20
individual 90:14
individually 89:4 185:16
induced 113:13
inducement 59:10,13 60:19 138:17 179:11 180:3 181:11 182:1 184:12 185:6,11,15,22 215:1,17 217:6 217:18 219:7 220:3 221:3 237:22 238:14 399:21 400:4 400:14 401:6
industry 414:1
infirm 385:2
inflate 357:17
influenced 182:4
information 98:13 279:2 319:12 363:22
informed 207:6 364:19
inherent 92:22
inherently 128:22
initial 33:1 296:21
inserted 8:7
inside 300:10
insight 101:18
insights 24:7
insisted 19:20 393:13 400:20
insisting 20:4
insofar 118:7
installed 200:22
instance 39:3 132:13 135:7 295:21 377:10
instruct 157:22 223:4
instructed 385:11 397:17 398:8
instructing 219:3
instruction 386:6,18
integrity 34:3 402:7,15
intend 359:4
intended 372:14 388:16 388:21
intentional 25:21 272:22
intentionally 80:3
interaction 226:5 335:5

interest 38:20 92:16,17 93:12 94:15 95:8,11 95:15 138:11 287:7,12 291:10 331:8
interested 25:1 381:22 382:1 417:16
interesting 46:3
interests 396:6 396:16 397:5
interference 323:4
interpretation 77:12
interrupt 398:13
interrupting 161:14 162:8 163:4
introduce 146:12
introduced 413:19
introducing 7:22
invalid 111:16 112:6
invesco 243:15 244:13 247:15 270:2,14,18 271:3,21 272:17
investment 97:11
invitees 212:10
involved 32:13 98:20 127:13 137:13 206:22 275:6 281:7 337:22 371:4 411:2,5
involves 99:4 210:22 276:20
involving 113:21,22 371:8
irrespective 295:11 361:20
isolation 89:4 90:14
issue 56:12 77:9 97:8 176:1 185:18 205:3 209:12 253:13 269:11 274:15 312:12 325:9 384:14 385:14 413:17 414:5
issued 23:22 182:2 252:10 302:2,8,14
issues 127:19 149:18 190:5 206:21 209:12 250:6 383:17 412:6 414:8
italicized 28:9
items 346:16 347:5

j

j 8:3 278:16
jacob 65:15 67:7
january 99:6 100:4 101:22 105:4,6 124:3 124:14,16
jaquet 3:14
jeopardy 364:20
job 95:22 96:16
john 99:5 100:1 103:9 225:11 241:19 266:5 266:14,18 275:16 280:5 290:3 293:18 303:11,21 310:16 317:2 317:13,16,17 321:17 325:12 354:16 358:9
join 357:10
joined 7:9 65:15 212:9
joiners 38:9
jon 22:5 35:12 100:2 136:10 155:10 156:16 158:19 163:1 183:7 200:8 211:1 231:16 241:18,18 266:5,14,18 278:13,14 280:2 313:9 316:8,22 343:6 343:7 345:21 346:4,4 351:20
jonathan 1:9 4:9,11 6:11 7:16 8:3 189:7 416:15 418:8 419:4,9 420:4 420:13 421:20
josh 13:20 16:16,18 26:3 30:20 31:2,19 39:11 40:6,10 40:18 46:21 47:5,7 49:17 86:20
josh's 25:20
joshua 2:16 15:21
judge 111:20 159:10 251:10 252:9,17 253:13 335:8 335:10

judgment
62:11 138:10
146:3 209:8
235:20 251:17
251:20 252:17
256:2 258:10
260:1 262:3
264:9 265:13
269:13,16
274:4,12 275:2
275:3 311:1
312:1 330:10
349:20,21
354:12 392:8
judgments
255:14
june 13:15
26:20 29:5,6
33:20 34:10,18
41:1 43:7 44:8
49:12 50:11
417:22
justifiable
62:16
justified 183:3
jv 298:7
jwolfshohl 2:19

k

kaila 3:4 7:9
keep 33:12
35:12 155:10
161:12 162:6
183:7 187:19
215:1 217:6,17
221:3 222:13
237:21 238:14
390:20
keeping 215:16
219:6
keller 2:11,15
7:6 8:6,9 73:5
73:14 75:10
84:15
kevin 2:4 7:1
55:8 89:11
90:2,9,19
92:10 93:5
99:5 101:17
105:5,17
121:11 128:6
128:19 146:18
147:11 201:9
201:12 210:14
243:13 276:20
278:12 285:21
285:22 286:17
287:3,6 288:5
288:10,13,22
289:15 292:8
292:20,22
293:1,6 298:20
299:6 300:11
304:4 305:9
309:8,11 311:5
320:3 339:4
343:17,19
344:5 374:21
376:7,13
377:11 380:10
kevin's 120:7
283:1 284:5
285:22 293:7
306:22 308:11
345:13 373:22
374:1,18 377:6
377:15 379:6
379:11,20
380:1
kevin.warren
2:7
key 77:12
116:11
kids 334:4
kind 22:6 64:6
72:18 92:14
93:4 94:7
95:17 104:5
196:1 227:10
227:14 298:3
337:19 343:16
352:1 362:7
366:17 371:17
372:17 403:17
kintz 3:20
knew 222:11
254:15
knock 412:16
knocked 93:20
93:22 94:1,3,4
299:14 379:15
knocking 94:6
knocks 339:10
know 10:18,19
10:20,22 11:7
13:6,9 19:3
21:14 32:12
35:21 40:5
41:20 47:12
52:7,11,17,20
54:1,3 63:20
67:5,16 68:17
68:22 69:11
72:10 73:19,19
73:20 75:16
83:8 86:13
88:22 91:12
93:5,6 94:3,21
95:17 96:9
98:14,14,15
99:8,12 101:5
102:17 104:20
104:20,22
108:19 115:9
120:6 125:11
125:17 126:6,9
127:11 131:1
132:9 136:5
149:1,10,11,15
150:8 161:20
179:8,22 181:9
194:7 195:21
196:9 197:4
198:13,21
199:7,15,17

200:5,19 201:19 205:6 210:9 213:5 214:4,4 223:13 225:11 226:2,3 226:17 227:15 228:22 229:6 229:10,11,14 229:19,22 230:3,10,15,22 248:2 252:8,13 254:12,18 255:8 267:5,19 267:20 269:9 272:21 273:19 274:9 277:5 283:20,22 284:1 286:2 289:2 290:19 293:1,2 297:7 297:17 298:8 300:9 301:20 302:7,9 307:15 307:22 308:6 308:12 310:6 316:8 322:22 328:3 330:20 333:18,19 334:15,16 335:10 337:18 337:20 341:9 341:15 345:7 354:20 356:11 357:17,21 360:14 361:19 363:21 367:7 367:17 372:10 377:8 379:18 381:19 384:21 385:6 386:12 387:22 388:8 394:20 407:6,7 408:3 411:7 412:15 413:16 414:19,22 415:4,5 416:3

knowing 310:16

knowledge 9:1 54:20 94:19 248:1 283:17 343:13

known 296:15

knows 253:14 408:2

kzaharis 3:7

l

labeled 345:22

labels 340:15 340:17

labor 367:19

lacks 11:14 19:1 20:20 21:9 22:1 176:15 355:17

laid 22:10 52:9 54:3,18 281:3 281:22 289:3

landmarking 375:19

language 29:20 64:8 125:16 134:3 381:4 392:11 415:4

large 93:9 370:13,17,20

largely 116:13

larger 315:14

lastly 268:14

late 62:6 99:6 362:2

law 8:16 11:12 60:6 72:11,16 76:13 94:18 101:7 148:9,12 150:4,13 199:4 206:16 223:8 234:8 243:3 255:11,13 267:6 325:12 325:13,22 385:7 412:9

lawsuit 11:12 11:16

lawyer 9:15 13:20 86:20 132:15 148:7 148:15 150:21 187:19 194:13 196:22 257:12 338:10

lawyers 65:21 76:15 182:20 191:7 249:9 325:11,13,22 353:5

lay 52:5 76:2 393:14

laying 392:6

lays 23:5 27:4 77:5

lead 11:2 49:22

leading 362:18

lean 132:14

learned 206:18 278:14

leave 374:11 408:9

leaving 79:22 80:3 240:22

left 26:15 104:7 280:18 359:18 360:13 367:9

legal 1:21 6:17 6:19 256:17,19 256:22 257:3,5 261:10 293:14 294:1,6,8 418:1 421:1

lehotsky 2:11 2:15 7:5 8:6,9 73:4,14 75:10 84:15

lenders 120:19

length 148:2 289:14 293:15 301:10 303:12 303:21 310:1
lengthy 26:18
letter 4:9,11 72:19 73:1 74:4,7 75:11 75:22 76:2,10 77:5 79:1,3,11 80:8,10,18 81:18,21 82:16 83:6,16 84:4 182:19 266:22 333:7 363:7 366:11,19 368:9,22 369:5 369:6 372:1 385:4 386:4,7 394:1 418:17
letting 36:16 45:16 48:14,18 156:4 159:3 173:1 203:7 330:4 367:7
level 9:18 75:7 121:18 123:21 128:3 338:7 400:18
liability 197:11 197:18 198:2 199:4 207:6,18
lie 142:9
lied 139:12 140:6 178:2
lies 235:19
lieu 111:4
life 408:9
lift 100:19
liked 334:5
likelihood 253:19 283:16 284:22 294:20 295:11 309:7 309:14 318:19 320:6 321:4 322:12 324:18 325:1,7 348:1 348:4 355:15
likely 18:15 146:2,4 252:3 253:10,12 254:3 255:2,22 257:14 258:10 259:22 301:6 327:1,19 329:3 331:16,17 332:22 360:19
limitation 197:10,18 206:5
limitations 199:4 207:6
limited 66:11 139:10 187:20 198:5 368:11 369:2
limiting 378:16
limits 207:7
lin 227:20
lindsay 3:9 7:11 314:21 315:13 357:6 390:18 391:1 412:1,2 413:5 414:4
lindsayweber 3:12
line 25:10 106:6 133:14 267:11 280:4 332:10 342:7 346:15 347:3 347:11 349:17 378:22 398:22 399:11 418:12 420:7 421:3
lines 408:1 414:17
link 3:3
linked 92:21
lion's 68:19
list 140:17,20
listed 420:7,17
listen 144:3 241:1 362:6
listened 404:4
listening 80:15 276:11
listing 280:15 420:7
litigating 60:7 254:3
litigation 23:4 33:9 35:6,16 36:8,13 37:1 37:13,15 38:2 38:6,8 41:15 55:4 56:22 58:6 59:17 60:8 63:9,10 63:11 73:15 82:8 89:9,13 90:3,6 92:13 92:21 103:10 135:8 146:3 221:2 247:17 247:21 248:3 251:6,15,17 254:22 255:17 255:21 262:1 264:7 268:15 274:17 275:14 275:17 280:2 296:13,21 305:17 307:17 309:20 310:15 311:15 312:1 322:2,12 328:20 344:11 344:14 348:9 349:20 350:5 374:8,20 379:21 401:15

litigator 251:4 257:13
litigators 127:13 199:3 255:11
little 55:10 60:4 104:8 110:10 225:20 226:5 339:5 386:9,21
live 98:17
liz 306:5 308:4 308:15 319:22
lkc 4:8,13,14,16 4:18,21 5:4,6,8 5:10,11,13,14 5:16,17,19,20 8:10 11:3 14:3 14:7 16:1 18:15,19 20:14 21:4,18,20 22:8,18 23:10 23:16,21 32:2 32:5,17 33:17 34:13,20 36:8 43:7 49:11 51:20 53:6 58:6,18 59:9 60:6,20 61:8 63:7 66:16 67:1,5 68:2 76:15 99:7 103:4,18 105:22 106:6 109:3 112:12 122:19 124:18 124:18,19 126:18 130:20 146:13,15,15 189:16 191:16 197:9 221:2 225:7 236:12 237:2 249:9 276:18 288:4 289:19 292:5 294:1,7 304:11 316:3,6 341:18 343:6,9,12 345:22 348:9 361:7 364:11 364:14 365:19 372:19 373:5 375:6 380:17 382:3 387:4 388:1 394:12 395:7 398:11 405:16
lkc's 25:7 29:6 32:8 53:7,18 85:11,18 405:17
lkcfirm.com 2:13,14
llc 1:4 6:12 418:6 419:3 420:3
llp 1:14 2:5,11 2:15,17 3:4,10 3:14 7:6 84:15
load 291:4,7
loading 291:6 412:21
location 1:14
lodge 16:5 314:15
lodged 45:9
logic 27:3
long 10:12 34:5 38:6 39:2 40:7 210:21 251:4 251:10,12 253:15 265:12 275:7 310:13 333:5 351:7 410:11 412:18 415:11 416:3,6
look 12:10 29:21 31:19 42:12,14 43:6 43:6 44:8 55:17 59:18 64:7 74:13 75:8 80:9 82:14 83:9 89:3 90:13,15 93:5 99:13 102:20 108:11 110:9 115:21 115:22 116:10 117:12 118:22 120:6 121:12 125:17 126:13 126:15 129:19 135:22 136:5 136:19 140:12 141:2 169:5 175:12 191:1 194:7 196:17 197:8,21 202:3 207:9 208:1,7 208:8,13 210:1 210:10 211:16 238:8 257:1 261:10 276:16 277:8,10 282:4 285:3 289:7,10 290:1 292:3 298:3 304:8 305:10,13,18 309:5,9 312:15 317:5,7 318:8 327:6 334:14 337:18 339:18 341:17 358:6 359:17 360:10 361:21 362:1 363:11 364:3 369:11 372:10 374:6 375:12 379:13 382:2 384:9 387:3 389:6,22 402:11,22 405:22 415:10
looked 31:7 39:3 40:8 66:7 66:8,9 104:19

126:14,18
127:21 137:10
190:21 191:8
206:5 209:3
231:8 252:15
304:5 305:1
312:4 313:18
313:19 319:17
323:16 333:7
338:21 339:4
344:3 347:16
354:15 394:17
401:10 405:1,7
405:12
looking 17:7
79:1 80:8
103:1 106:17
125:2,20
126:12 168:6
191:8 194:1,5
194:7 201:14
204:3 209:21
210:12 234:14
234:15,17,19
258:19 261:8
272:6 285:17
288:4 290:10
292:15,21
298:8 313:16
319:7 341:18
361:22 373:17
374:2 380:4,11
382:11 404:1
looks 103:7
lopped 93:18
lost 46:11
174:15 387:8
414:6
lot 34:11 52:12
56:18 59:15
74:6 81:13
97:6 166:20
168:17 206:20
239:11 240:10
319:9 325:11
326:2 328:2
332:3 334:5,17
335:9 337:9
366:18 371:16
381:21
lots 236:1
love 289:7
325:10 349:2
low 25:2 26:8
29:22 30:14
38:21 50:21
109:5,15 372:2
lower 28:17
52:12 67:20
94:11 297:13
297:16,21
340:5 379:7,11
lowering 378:3
378:6
lowest 25:12
94:13
lump 250:18
luncheon
188:12
lying 140:21

m

m 1:17 3:9
417:2,18
madam 418:9
made 29:8
33:20,21 34:6
34:8 35:4
40:10 41:19
50:12 64:18
69:17 73:4
90:19 92:11
93:7 94:5
128:7 138:19
142:1 169:15
209:5 221:11
226:21 255:13
274:9 316:14
326:21 346:6
371:20 386:19
391:9 392:14
394:3 410:9
419:7
maher 103:12
249:9
mail 4:8,12,14
4:15,18,20,22
5:4,5,7,8,11,12
5:14,15,17,18
5:20 13:15
14:8,20,21
15:20 16:15,16
16:18 17:14,18
17:20 19:4
21:15 24:2,13
24:15,19,20
25:17,20 26:1
26:18,19 27:2
27:4 28:3 31:4
31:14,17 32:11
34:6,13 37:1
38:5,13 39:6
41:12 42:5,7,7
42:10,17 43:3
43:9 44:8,15
45:22 46:7,15
46:16,19 47:5
47:13 50:7
52:10 68:1
71:7,9 77:13
99:4 100:1,12
101:2,3 103:8
104:19 105:4,5
105:11,17,20
106:1 114:21
125:1,6,8,12
126:18 127:2,9
127:15 130:18
130:22 131:14
146:18 147:2,4
147:5,17 150:1
154:5,9,22
163:20 167:22
168:3,4 169:8

178:1 189:16
189:18 191:15
191:17,22
193:11 194:5
199:22 200:12
200:18 210:20
210:21 211:13
211:17 212:16
231:15 233:17
233:18 234:20
234:21 236:18
237:1 239:18
241:14 242:2
242:10,12
248:16 251:15
255:4,18 256:3
257:16 258:12
260:2 261:8
262:4 264:10
265:12 266:5
266:17,21
267:1 276:20
277:1,13
278:13 285:22
288:21,21
289:13,15,18
290:2,16,16
292:6,17,19
293:3 301:3
303:2,10 304:5
307:1 309:8,11
312:16 313:6
313:12,15,17
316:15 317:10
327:8 329:1
332:5 335:6,8
335:11 336:6
339:3 341:12
341:16 343:22
344:5 345:21
346:2 348:11
349:7 357:10
364:5 367:1
368:3,6 369:12
369:17 373:17
375:10,13,20
376:2,5 377:19
378:13 382:4,5
382:12,20
385:20 386:19
387:16 388:2,4
388:10 389:7
392:22 395:11
395:19 396:7,8
396:22 397:18
398:9,10,11,21
399:10 404:2
404:22 405:13
413:19 414:7
415:3,6
mail's 288:10
292:22 386:22
mails 39:2,22
40:3,4,6 46:4
66:14 67:8,9
67:10,13 68:8
68:10,12
138:19 143:10
145:16,21
149:13 150:9
163:20 182:9
185:10 211:15
212:17 241:15
255:9 292:7
313:22 314:11
315:14,22
326:17,22
332:11 371:8
371:16 375:21
375:22 381:21
385:18 387:18
401:10 403:4
404:5 405:7,8
405:9,12 411:4
main 2:17
maintaining
58:22
make 28:7 29:1
29:13 30:2,13
30:14 34:20
42:8 50:5
51:13 58:15
59:4,9 75:6
92:10 93:16
105:16 113:15
113:18 121:3
121:13 125:1,3
128:12 135:9
156:15 160:11
167:13 202:4
205:3,4 215:21
218:19 221:10
236:3 239:2
241:8 265:13
282:8 296:5,6
300:18 309:22
332:18 344:16
349:19 350:11
353:3,13
362:15 363:5
373:11,13
378:12 380:15
381:1 404:7
makes 27:9
132:10 234:7
372:22
making 39:17
93:7 138:16
160:14 182:22
224:11 297:7
347:22 371:22
malicious
139:9
man 173:14
333:11 334:3
334:11 335:1
management
349:19 350:18
350:21 351:8
354:2
manuel 227:20
marathon
280:11
march 82:16
83:7 86:1
350:13 363:7

394:2
mark 129:19 146:18 156:13 303:1 344:18 375:3
marked 13:18 75:14 82:18,22 99:11 103:20 129:22 137:4 146:10,16,22 191:11,20 210:19 211:3 241:21 277:3 290:21 292:11 303:7 344:21 361:10 375:8 382:8 387:7 394:14 398:5
market 106:13 108:8,10,15,19 111:6 122:13 132:22 133:1
massive 139:19
match 314:7
matched 323:18,19
material 83:15 391:1 396:5,15 397:5 399:2,15
materialized 363:6
materially 273:14
math 93:21 284:10 298:15 298:16
matter 6:12 33:1 56:14 77:10 183:10 183:14 220:1 270:6 373:3 397:2
matters 326:12
maxed 54:20
maximize 112:21
maximum 58:1 365:15
mbas 93:6
mea 386:15
meal 275:19
mean 10:8 13:7 19:3 26:14 27:15 35:1 36:20 40:5 54:18 56:17 73:19 78:6 81:13 86:1 89:9,10 95:6 96:11 126:4 150:3 163:3 170:15 197:3 199:12,15 201:22 209:13 227:4 228:3 249:13 253:1 254:9,15 259:12,16 266:16 267:17 267:19 269:3,9 273:10 280:18 281:16 283:15 296:8,19 300:10 312:11 313:9 314:8 333:18 334:14 338:4 342:17 343:6 352:3 357:9 358:4 366:17 375:21 405:20
meaning 29:12 58:18 124:18 204:7 317:18 340:22
means 108:20 136:6 279:15 284:1,3,5 341:2 347:22
meant 86:14 171:5,5 200:1 267:12 279:18 295:3,7 331:16
media 6:10
mediate 60:9 223:16,20,21
mediation 60:21 62:1,3,7 180:5 181:13 214:2,14,18 215:3 218:22 219:9 221:5 222:21 224:2,3 224:5,14,16,21 225:2,4,6,18 226:14,18 227:10 231:5 231:11 275:7 279:3 345:2,8 345:11 350:10 354:22 358:22 359:3,12,14 361:12 376:9
mediations 350:11
mediator 225:19 226:6 226:10,19 227:19 228:18
mediator's 225:8,12,15
medical 9:6
medication 9:2
meeting 89:11 131:4 226:6 281:22 332:7 333:1 343:15
megawatt 102:11 134:14
megawatts 133:9
members 150:16,18
memorable 242:22 243:5,9

243:12
memory 9:3
ment 201:10
mention 212:21 267:21
mentioned 25:6 73:3 108:7 120:11 147:15 207:5 267:10 273:20 276:6 298:19 299:6 387:1
merits 248:22 250:1 411:14
mess 291:15
message 15:21
messages 70:20
messing 291:11
met 65:13 68:16 309:21 391:12
mexican 275:8 275:20,22 276:8
mic 85:15
michael 131:9 131:15,20 196:12 227:13 275:5 276:12 356:16 376:10 376:13 383:3 385:1
microphones 6:5
microspect 149:21
mid 400:9
middle 21:13 33:7 231:15 232:20 270:20 387:5,15 388:1
midnight 31:6
midpoint 380:1
midway 244:4
midwest 418:15 421:1
miljkovic 295:19
million 18:12 18:14,20 19:6 20:16 21:5,20 22:9,12,15,18 22:19,20 23:3 24:4,4 25:8,10 25:13 26:5,6,7 26:8,10,10 28:12,12,13,17 29:2,9,14 30:2 30:6,15 40:20 41:5,7,10 50:1 50:13,18,21 51:6,6,13,21,22 52:6 53:5,8,8 53:18 55:14 57:11,16,22 58:1,8 63:2 79:17 85:13,19 86:11,16,19 87:6,14,18 88:13,16,22 89:14,18,22 90:1,5,7 92:13 93:19,19,20,21 94:2,3,4,6,10 94:11,13 116:18 117:2 133:9 134:13 138:9 141:18 142:14 194:10 195:2,15,22 196:9,14 206:4 282:11 284:8,9 284:14 285:14 290:8,9 297:14 297:20 298:12 298:14,21 299:8,14,15 300:12,13,14 304:17,22 305:14,19,20 306:1 307:12 307:13,18 318:17 319:1 324:4,11,16 339:1,6,10 340:14 342:9 342:12,14,22 343:1 346:7 347:12 349:18 350:7 365:16 376:8,11 378:17,22 379:2,16 405:15
millions 141:5 143:7 145:14 177:16,18
mind 7:22 18:6 106:21 118:13 124:14 204:8 267:3 391:21
mine 10:2 14:11 192:16 192:18 195:19 293:3 309:22 363:16 369:21
mine's 192:2
minimal 62:13
mining 93:1 109:10 141:16
minor 83:22 84:8 362:15 363:6 394:3 404:7
minus 298:20 299:8,15,19 300:12 379:17
minute 136:13 210:9 287:15 287:16 303:3 305:1 395:22
minutes 165:19 410:13 416:9
miranda 227:20

mischaracteri... 327:22
mischaracteri... 243:22 245:11 246:5 255:6 259:5,9 265:15 271:11 272:20 332:1 337:16 406:7,8,17
mischaracteri... 328:13
misconduct 207:21 208:17 208:21 209:2
misheard 292:14
mislead 80:4
misleading 153:14 157:12 157:18,22 390:11 404:17
misphrasing 349:15
mispronounced 101:6
misrepresent 141:5
misrepresent... 141:22
misrepresented 141:9 411:10
misrepresenti... 240:18
missed 392:10
missing 108:8 125:11 366:18 388:22
misstated 16:6
misstates 12:18 15:5 68:5 168:15 176:13 205:17 215:6 238:7 288:8,14 288:17 351:3 358:5 359:8 401:14 402:10 402:16 403:10 408:22
mistake 90:14 92:11 93:6,7,8 93:10 94:5 330:12 371:20
mistakes 90:15 91:13 92:10
misunderstood 17:22 266:1
mitch 39:3,21 384:22 385:15
mixing 395:11
mo 201:8 408:19
modeled 57:21
modeling 318:3
modified 345:12
moment 27:4 31:8 63:14 86:6 106:17 119:7 148:1 194:6 212:5 288:2 369:11
money 40:12 92:15 142:2 201:13 204:15 230:4 253:20 254:5 256:1 350:12 374:11
month 77:1 142:12
monthly 76:8 76:11 250:18
months 33:8 40:19 198:7 204:21 205:6 261:11 281:3 282:1 289:4 319:11 326:8 333:19 334:6 334:20 337:20 353:21 354:11 374:9 377:5 384:11
morgan 3:20 100:1,6 126:12 147:7 289:16
morgan's 125:12
morning 6:2 212:7 383:3
motion 69:21 74:8 383:9 384:2
mouth 318:14
move 36:13 45:17 55:20 172:9 175:5 187:7 210:9 241:9 252:9 284:21 350:21 376:14 382:19
moved 320:11
moving 145:11 296:1
multi 33:9 38:6 38:14,16 39:15 39:19 40:2
multiple 184:11 185:9 393:18
mute 6:7
mutual 112:20

n

n 2:1 3:1 4:1,1 5:1,1 6:1 8:3,3 8:4 189:1,1,1 278:16
n.w. 1:14
name 6:16 8:1 101:7,8 267:14 283:6 418:6 419:3,4,15 420:3,4,21
named 8:5

names 267:11 267:21
nasty 411:4
nathan 289:15
near 17:5 272:7
nearly 141:15
necessarily 78:6 334:18 414:12
necessary 118:6
need 10:10 16:14,21 17:5 28:2 29:1,13 30:1 48:12 51:13 91:9,19 92:1 125:7 143:11,20 149:16 151:12 187:6,19 240:12 243:16 244:9,16,17 245:8 246:10 247:2,8 248:7 253:15 268:22 270:22 271:15 280:14 307:21 333:22 338:5 376:14 409:22 413:5
needed 30:13 30:14 113:10 123:11 234:10 235:2 239:14 246:8 335:15 336:11
needing 269:21
negative 217:14
negligence 207:20 208:16
negotiate 23:10 23:15 29:7 30:13 405:16
negotiated 226:13 228:12 228:19 374:13
negotiating 219:9 361:15 373:15
negotiation 362:21 363:1,3 374:7
negotiations 23:21 29:1,17 30:1,5 39:8,10 51:5,12 97:20 98:4 393:22
neither 192:18 202:1 341:22 417:10
net 133:8 134:3 134:13 194:11
never 17:19 52:9 59:21 60:1 61:17,18 62:2 96:17 146:6 151:4 163:15 167:8 180:10 199:8 199:14 207:14 221:9 223:16 235:2,5 242:15 267:17 268:7 330:5 331:10 365:3 372:14 393:20 402:3,4
new 3:11,11 241:9 260:7,11 260:16 275:4 319:12 346:7 363:14,20 365:7 372:18
newfangled 266:21
nice 383:6
night 62:6
ninth 3:11
nodding 65:6
non 57:16 65:21 114:11 132:15 168:12 171:6 173:21 174:21 224:6
noon 394:19 399:3,16 403:18
normal 37:21 37:21
north 2:5 3:5
northwest 3:15
notarized 418:13
notary 1:17 417:1,19 418:22 419:10 419:18 420:15 420:23 421:23
notation 296:4
note 6:4 22:14 23:17 25:18 32:17 57:10,19 79:21 116:3 117:22 238:9 278:13 293:14 296:11 303:9 318:3 364:11 364:14 365:13 369:19 370:1 418:11
noted 28:19 51:11
notes 32:17,17 72:2
notice 412:4
noticing 6:22
notwithstandi... 207:16
november 10:16 289:16 296:22 313:8 316:9 317:1 319:5 320:7 321:5,17 322:3 322:14,20

325:5,21 327:16 329:1 329:13 347:15 371:1
number 4:7 5:3 13:17 17:11 18:14,16 24:3 25:10,13 26:9 28:17 29:22 30:14 41:7 50:18 51:20 52:7,8,9,18,20 52:21,22 53:4 53:7,12,13,13 55:19 61:16,18 67:20,21 75:13 82:21 86:12 87:4,8,8,11,12 87:14,15 89:6 89:20 90:16,17 93:11,19 94:10 99:10 101:21 103:19 117:20 117:22 118:4 129:21 132:16 134:4,4,8,11,17 134:20 135:12 137:3 146:9,13 146:21 191:19 193:17 195:2 196:14 206:3 210:6 211:2 241:13,20 251:22 256:20 277:2 282:12 282:14,17 283:3,7 290:8 290:20 292:10 298:21 303:6 305:2 307:1 308:18 309:17 310:19,21 319:6,16,19 320:18 321:8 339:5,21 340:5 340:9,12 344:16,20 346:10 351:11 356:13 361:9 361:15,15 366:14,20 372:1,2 375:7 376:9 377:4 382:7 387:6 390:15 394:13 398:4 418:7,12
numbers 12:22 15:1,18 23:17 55:6,9,12 89:12,13 97:7 99:7 101:12,18 102:1 103:18 128:7,13,18,20 129:2,7 191:16 281:17 282:2 282:21 285:9 285:10,17 288:5,12,20,21 289:2 290:9 292:5 295:19 295:21 296:2 298:17,17 305:10 306:1 308:5,7,11,13 308:17,18,21 309:2 310:12 319:11,15 320:1,2 322:4 322:7 323:16 324:7 343:4 356:13 357:15 357:16 373:15 373:22 374:1,2 374:3,14,19,21 376:7,13 377:6 377:7,15 380:10 420:7
numerous 138:19 143:9 143:10 145:16 145:20
nussbaum 192:20 193:5
nw 1:21

o

o 4:1 5:1 6:1 8:3,4 189:1,1,1 278:16
o'connell 280:6
oath 8:12,15,18 149:2 404:9
object 15:14 20:19 41:22 42:1 44:20 106:3 133:22 171:8 173:5,8 176:12 261:3 262:6 314:18 327:21 328:12 348:15 381:16 383:11
objecting 357:3
objection 11:5 11:14,21 12:8 12:17 13:22 15:5 16:5 19:1 21:9 22:1,22 23:12 27:13,22 29:10,18 30:7 31:12 32:9 34:21 41:17 44:20 45:2 50:14,22 51:7 51:14 52:1 53:10 54:10 56:15 57:3 60:13 61:1,11 64:15 66:18 68:4 69:9 72:6 73:16 78:4,20 82:3 83:17 85:4,20 86:8 87:1,21 90:20 92:6 95:4 96:3 97:3,12 98:10

102:16 107:3
108:3,16
109:18 112:7
112:15 114:13
115:4,16
117:14 119:1,9
120:4 121:1,16
122:21 123:18
124:9 126:1
127:5 128:1,15
129:4 132:17
134:15 135:2
135:16 143:4
149:8 150:6
153:20 164:2,6
164:14 166:5
168:14 169:2
169:12 170:18
170:20 171:9
175:1,18
178:20 179:12
180:6 181:14
181:17 182:6
184:20 185:7
186:2 191:4
194:14 195:6
196:3 197:1
198:17 199:9
199:20 201:2
201:18 204:5
204:18 205:12
205:13,17,18
206:8,13 208:4
208:19 213:3
215:6,19 217:8
217:11,12,20
218:2 219:14
219:15,15,17
220:6 221:7,8
223:2,18
224:17 225:22
226:15 227:22
228:8 229:2,8
230:7,19
232:16,17
233:7 234:12
235:9 236:14
238:2,6,16
239:9,15,21
240:6 243:21
244:3 245:10
245:20 246:2
247:6,18 248:9
249:19 251:7
252:6 253:11
254:6 255:5
256:4,8 257:17
257:20,21
258:13 259:4,8
260:5 262:9,10
262:10 264:11
264:17 265:14
266:7 268:6,9
270:3,9 271:10
272:9,19,20
273:7,17
277:20 278:6
279:9 280:17
281:10,14
282:18 283:18
285:1,19 286:4
286:4,19,22
287:9 288:8,14
288:17 293:16
294:3,22
297:22 299:1
299:10,22
301:16 302:5
302:16 305:4
305:15 306:10
306:18,19
307:19 308:1
309:15 310:4
311:8 312:9
314:15 319:3
320:21 321:6
321:12 323:6
323:20 326:18
329:19 330:18
330:22 331:19
331:22 333:12
334:12 335:2
335:16 336:12
336:20 337:5
337:15 338:9
339:12,15
340:10,16
341:7 342:15
348:17 349:12
351:3,17
352:14 353:6
353:17 355:4
355:17 356:8
358:2 359:7
360:21 362:11
367:2 368:13
369:7 371:14
373:18 376:21
384:5,15,18
392:9 393:2,9
393:16 396:18
397:9,20
399:22 400:16
401:1,13,14
402:9,16 403:9
403:20 404:16
405:4,18 406:6
406:16 407:15
408:17,21
414:2
objections 48:6
48:17 65:3
72:14 126:7
166:13 167:2
171:1 175:8
194:18 228:13
229:16,21
237:3 241:8
262:12 263:14
264:19 295:6
300:8 336:4
390:17
obligation
112:21 230:16
obliged 351:12

observations 116:11
obtain 262:3 264:9 275:1,4
obtained 142:2 252:12 259:22
obviously 374:6
occurred 213:16 312:7 345:2
october 1:12 6:4 418:4
odd 55:10 227:11
odds 55:3 135:9 145:22 146:2,4 195:12 209:7 293:15 293:19 303:12 303:21 310:1,2 311:15 325:19 326:9,13,15,22 327:15 328:21 329:11 347:9 347:10,16 348:12 349:9 349:16 351:12 351:13,15 352:2,12 353:4 353:14 354:7,9 355:1 356:5 357:18,19,19 358:14,15,21 359:15 379:19 379:22
offensive 391:16
offer 25:3 28:16 29:2,8 29:13 30:2,13 30:15 50:6,12 50:17 51:13 88:11,15 255:1 255:22 378:2
offered 71:2 119:16 268:18 270:1,16 271:3 272:4,17
offhand 297:17 298:8
office 71:13
officer 97:17 147:10 234:3,3 399:2,14 403:16 417:2
officers 131:11 131:13 234:6
official 419:15 420:21
oh 38:1 46:12 66:6 85:14 100:9 147:14 209:20 213:9 234:22 266:16 268:4,5 275:12 281:5 286:10 303:16 327:6 344:17 354:20 369:21 387:9 398:15 400:2 415:14
ohio 418:2
ok 376:12 383:5
okay 11:1 17:13,17 31:9 32:16 33:13 35:3 37:20 38:11 46:3 47:9 59:7 70:15 74:6 79:5,9 80:4,6 80:11 92:4 93:15 94:22 99:22 105:2,21 106:10 107:11 107:12 108:22 110:13 114:17 116:2 117:19 123:10 126:10 127:2 129:14 136:17,17 147:2 160:7,11 160:21 161:22 170:12 181:21 191:10 192:4 192:13 194:4,9 197:8,15 199:7 199:17 200:5 200:21 201:7 209:18 210:12 211:6 213:19 215:13 216:1 217:2,13 218:11 219:2 220:22 229:14 231:3 235:13 238:21 240:9 245:17 246:4 268:12 272:14 285:6 290:14 298:12 300:15 304:2,14 306:3 306:7 307:4,8 307:11 309:3 311:3 314:2 316:4,18 317:9 320:18 323:11 336:17 341:12 343:21 344:17 352:17 353:1 363:16 372:8 373:16 380:12 380:20 381:15 382:13,17 384:14 389:1 400:9 409:7 410:16 412:22 414:11,19 415:19
old 266:21
olympics 229:11
once 224:3,5 269:12 274:4

291:12 332:18 342:17 392:8
onerous 269:14
ones 33:21 67:14 68:21 79:4 259:13,13 259:18 282:22 308:8,10 320:2 357:14
ongoing 248:12 252:20
operative 261:12
opinion 255:1 255:22 257:13 258:2,3,9,16
opportunities 109:8 116:12
opportunity 60:1 109:14 124:7 203:12 226:11 261:9 395:1 410:9
opposed 12:13 76:12 109:10 135:7 247:21 275:14 278:15 281:17 322:15
opposing 69:6 69:7
opposite 62:18 224:10
opposition 391:12,14
optimistic 332:9 346:11 349:22 351:9 351:12,13 354:3 358:18
option 355:3
options 372:9
orally 318:5
order 15:8 78:2 78:16 355:15 356:5 377:2 383:9
ordered 77:21
original 80:18 83:15 314:11 314:13 365:1 376:9 384:4
originally 76:7 82:18 289:2 388:9
orson 3:19 6:16
outcome 404:10 417:16
outdated 79:1
outlook 355:3
outside 224:16 249:8,11 293:22 330:20 353:4
overage 90:5,8
overcome 113:10 139:5
overcoming 139:4
owed 12:7 140:22 141:6 282:9 283:11
own 85:2,3 255:10 386:10 386:13 393:14 394:2 396:13

p

p 2:1,1,3 3:1,1 6:1
p.m. 24:14,17 25:16,22 43:8 44:9,18 45:22 46:8,19 47:6 49:12 100:4 101:22 188:9 188:11 189:2,4 189:20 211:18 265:1,3,3,5 287:18,19,19 287:21 338:13 338:15,15,17 381:12 395:6 416:13,14
packed 56:18
page 4:2,7 5:3 24:11,12,13 56:6 79:12 83:9 84:4 99:22 100:3 106:11,15,16 106:22 111:12 115:21 116:11 118:1 121:22 122:8 123:3 133:13 134:9 134:18 136:2,3 136:8 137:22 189:19 193:16 197:13 211:17 214:7 231:13 231:16 237:7 246:21 277:9 289:11 293:5 294:9 304:8,10 309:17 316:22 317:8 329:8 361:17 364:4 365:7,10,10,11 368:8 369:16 377:18 382:4 388:1 389:17 391:7 398:19 418:12,14 420:7 421:3
pager 338:20
pages 210:21
paid 73:13 78:11 80:1,4 81:5 140:9 142:21 198:6 198:14 204:2 204:15 336:5 361:16 372:20 373:6
paper 338:21

papers 34:14
paragraph 24:2 31:22 44:11 48:2,5 49:16,21 50:4 56:19 102:15 138:6 139:7,17 140:12,13 141:8,12 142:6 178:14 190:1 207:15 212:6 213:20 214:6 231:13 237:6 237:10,12 239:5 301:2 346:13
paragraphs 141:3,21 142:5 378:14
paralegals 76:13
pardon 24:12 109:2 116:6 210:22 241:17 241:18 284:8 371:1
parenthetical 109:6,8 379:5
parlance 266:21
part 31:5 39:5 40:1 57:2 60:12 61:10 63:16 64:13 98:1 100:12 125:12 127:3 226:3 244:21 245:18 267:8 279:13 283:1 294:8 310:14 314:10 316:20 320:3 329:6,6 345:8 354:4,4 364:20 365:13 366:17 392:4 404:2 405:9 420:9
participated 343:3,9 358:10
participating 276:10
particular 153:22 154:4,8 154:9 155:6,8 155:14 161:16 162:10 163:11 163:17 165:1 167:7 230:4 270:15 392:20
particularly 166:14
parties 3:2 6:9 64:1 82:9 84:10,14,14 139:22 199:12 417:12,15
partner 8:5 101:7 103:12
partners 67:19 124:6,20,21 125:22
parts 237:7
party 69:6,7
passed 112:5
password 412:20
past 52:22 165:8,17 223:7 333:19 374:9 377:5
path 330:7
patience 24:5
patient 291:6
patty 38:19 39:4,21 147:10 178:8,17 185:14 227:13 231:8 276:13 357:2,8 364:19 365:3 371:20 382:5,20 383:3 383:6,18 385:10,17 386:5 387:16 388:2 389:4 392:2 393:10 395:13 413:16
pause 195:18
pay 13:2,3 33:22 52:13 78:14 140:21 141:5 230:4,16
paying 77:22 78:2
payment 73:3 75:5 78:18 250:18
payments 414:14
pays 109:15
pending 10:12 44:14 133:17 209:16 211:8 240:19 252:12 254:13 274:14
people 37:21 59:15 133:4 147:5 148:19 148:22 212:3 233:15 241:17 241:19 249:16 266:10 267:6 267:19 292:18 329:22 337:21 338:7 354:15 356:4 358:7 406:21,22 407:1,5,9 411:2,5
people's 120:10
percent 13:5 26:5 40:16 55:11 76:20,22 77:2 79:16,17 81:8,12,15 90:11 92:12,20

94:1 102:9,10 111:7,8 113:2 122:14 162:9 209:7 257:10 283:14,15 284:9,17,21 286:9 287:3 298:7,13 309:7 309:13,18 310:3,3,7,9,12 310:18 311:5 311:16,22 318:19 320:9 320:17,20 321:4,9 322:20 324:19 325:1 326:10,10 339:18 340:5 341:3 342:3,18 347:9,10,17 348:2,6,13 349:9,10,16 351:1,1,11 355:2 370:3 373:5,16 374:4 374:5,19 376:12,18 377:15 378:4,7 378:12,16 379:15,16 380:15 381:1 394:20
percentage 56:4 81:15 94:20 283:12 283:12 284:1 294:19 295:11 320:6 324:18 355:14 378:3,6 405:8
percentages 56:2 286:3 373:11,13
perez 111:20 251:11 252:9 252:17 253:13
perfect 195:19
perfectly 242:16
period 138:20 227:13 333:20 361:13 412:11
periods 111:13
permit 112:18
permitted 61:21 123:8 301:4 327:17 329:2,17 331:15 332:16 332:21
person 32:13 193:1 337:12 358:10
personal 71:7,9
personally 14:1 39:21 76:12 126:14 191:6,9 206:22 334:5 411:6 419:11 420:15
perspective 9:17 53:5 84:7 84:20 196:22 384:3
pertaining 371:9 401:7
pertains 93:1 127:21
peter 325:13
ph 149:22
phase 362:21 363:1
phone 40:9,9 40:10 138:19 145:16,21 149:13 163:21 326:22 332:11 365:9 366:12 369:13 371:18 393:18 404:6 407:20 418:3
phones 6:7
phrase 31:2 57:5 167:9 174:17 232:22 242:13,22 244:21 246:9 246:12,14 280:19 281:5 373:12
phrased 166:15 272:22 386:9
phraseology 363:2
phrasing 175:3 353:8 362:14 362:19
pick 6:5 43:16 43:20 134:2 407:18
picked 404:14 404:19 406:13
picking 407:13
picks 375:10
piece 117:10 370:12
place 6:8 58:15 59:4
placed 230:15 334:16
places 239:18
plain 386:19
plan 18:12,16 395:6
planning 58:21
platforms 137:2
playing 369:10 372:3
plead 59:20 60:2 61:17,21 113:5 119:18 120:13 123:4,4 123:8 139:6 145:19 146:1,5 146:6 148:4

150:22 155:2 164:10 166:1 182:14 184:12 185:5,15 221:13 224:1 233:21 235:5 301:14 310:20 312:6 326:4,13 326:16,21 327:2 329:14 330:2 331:10 332:8,15,19 333:2 360:12 360:16,20 402:4
pleaded 122:19 136:14
pleading 60:19 113:12 118:6,9 166:3 182:1 377:12
please 6:4,6 7:14 13:14 19:9 22:5 30:20 31:2,19 50:6 55:18 99:3 100:14 105:7,18 107:10 143:21 146:8 156:13 158:10,19 160:5 163:2 175:15 176:9 188:7 193:13 241:10 250:5 261:6 264:2,4 311:19 344:19 382:19 383:8 396:6 410:17 418:10,10
pleasure 131:3
pled 401:22
plug 366:20 372:1
plus 13:5 26:7 28:18 78:11 102:10 168:12 298:20 299:8 299:15 300:11 370:2,2,8 379:16
point 10:11 13:10 27:6 32:16,22 34:7 39:13 41:14 56:11,21 57:10 58:12 62:2 77:17 85:12,19 86:1,18 109:1 110:7,14 118:4 125:2 134:5 174:16 178:11 219:9 220:17 220:18 225:19 230:6 246:12 252:19 253:2 255:9 267:6 269:15 274:18 301:9 308:6 310:9 315:20 323:3 333:14 346:13,14 359:6 363:2 371:11 373:14 373:15 377:3 379:17 384:19 406:13
pointing 370:16
points 31:2
politely 408:8
poor 193:1
poorly 407:1
popescu 130:19 131:1 133:6 194:10 195:3 342:21
popped 361:18
porter 2:17 68:8,10
porterhedges.... 2:19
portion 74:11 82:10,11 84:16 140:1 233:2 237:16 297:1 391:18
position 13:7 13:10 21:15 23:8 25:7 29:7 30:11 32:2,8 37:10 40:13,18 41:3,12 52:5 52:16 54:2,3 54:16,19 59:2 59:8 60:18 61:4,7 62:8,17 62:20 68:18 69:18 86:10 87:5 183:1 224:9 235:16 331:7,7 398:20 399:9
positive 335:9
possession 69:8
possibility 182:22 186:5 269:6 275:10 275:13
possible 25:12 69:6 80:14 94:13 119:13 209:9 253:4,10 274:10,22 373:15
possibly 269:13 296:6
post 138:10
posted 192:14
potential 74:4 77:5 79:13,15 80:19 83:10,14 117:9,13 118:21 119:7 120:19 124:6 124:21 131:16

226:11 281:12 286:11 287:7 307:4
potentially 361:15
pounded 171:21
power 106:12 108:7,10,15,19 109:15 139:11 139:18 141:14 141:17 142:3 190:12 229:15 229:20 304:20
powerpoint 5:9 66:9 91:1 127:20 145:20 283:1 320:4 324:14
practice 222:20 223:8 258:18
practicing 148:9 150:20
pre 138:10 365:20
preceding 198:7
precise 17:12 26:14 103:3 149:16,17 150:3 211:14 269:4 316:11 316:12 402:13
precisely 284:10 359:10
precision 148:19,20,22 149:3,6 150:9 234:7
predated 312:13
predates 119:17 120:12 186:8
prediction 331:10 349:11 349:18 355:8 355:16 356:7
predictions 346:16 347:4 348:13 349:22 350:17 354:3 355:7 356:12 357:14
preface 328:3
prefer 91:2,17
prejudgment 92:16,17 93:12 94:15 95:8,11 95:15 287:6,12
premise 308:2
preparation 65:22 66:13
prepare 65:11 357:13 383:20
prepared 30:18 50:5 100:14 125:14 286:3 345:12
preparing 98:21 281:7 286:18
present 3:18 12:21 18:16 96:1,8,15,20 97:1 124:5 133:8 134:3,13 194:11 220:15 355:15 368:9 368:22
presentation 5:9 55:5 66:9 91:1 283:2 304:3 320:4 324:14 349:8
presentations 98:21 134:22 145:21
presented 121:10 124:20 125:21 135:13 228:6,20 282:22
presenting 120:18 123:13 123:15
president 131:5
pressure 33:9 38:14
pressuring 38:21
presume 9:11
pretty 56:8 127:17 191:6 212:17 253:21 310:15 386:13 406:19
prevailing 74:8 113:2 195:12
prevented 141:16
preventing 159:20 203:19
previous 24:11 315:16 365:10
previously 189:9 210:19
price 102:9 109:15,16 110:21 111:7 122:15
prices 102:3 109:4 111:14 378:21
principal 85:1
principles 391:21
printout 209:19
prior 23:18 34:18 36:10,11 36:16 37:3 66:2 119:14 121:12 143:12 181:12 186:7

215:4,7 219:16 238:7 277:1 350:4 396:22 406:8
private 6:6
privilege 224:14,15,21 225:4 415:12
privileged 67:14 68:1 223:6 224:6 391:3
privileges 223:9
probably 26:15 31:4 38:7,10 39:10 66:11 86:13 91:16 126:15 142:5 198:22 252:15 291:11 302:20 310:16 334:16 344:12 352:1 352:20 356:17 357:9 358:7,8 362:17 364:1 379:20 380:4 402:13 407:4 415:1
problem 113:5 365:3 368:19 371:13 416:4
problems 413:1 413:4
procedure 419:5 420:5
proceed 22:5 82:9 396:8 403:6
proceeded 199:13
proceeding 136:22
proceeds 373:6
process 34:7 393:21
produce 67:17 68:1,9,11,14,18 68:22 69:5,20 180:4 290:18 314:4
produced 62:6 99:13 182:18 290:18 344:10 344:13 346:10 346:11
product 67:15 68:12
production 31:6 67:4 418:14,15,20
productive 50:7 391:16
professing 233:9
professional 407:10
professionali... 411:4
professionals 128:12,17 129:1 249:8,12
profit 111:7
profitability 111:6 122:14
profitable 109:9,16
profits 111:14 120:21 124:7 140:1 297:1
prohibit 178:12 179:5
prohibited 138:14,16 153:9,18 155:3 164:12 166:2
project 199:8
projecting 117:11
projection 120:1
projections 355:12
projects 118:21
promptly 381:7
pronounce 101:8
proper 23:6 51:5 94:22 205:5 393:19
properly 121:5 384:17
proposal 226:12,21 228:6,17,20 230:12 365:8 365:14,22 366:3,7,8,11 380:12,14,22
proposed 76:15 86:19 87:15 89:19 247:14 366:19,21 371:21 374:5 378:5,16 380:7 383:9 391:17 396:4
proposing 384:1
proposition 394:10 395:18 395:21
prospective 391:13
prove 59:20 60:2 61:17,22 113:5 119:18 120:14 123:9 139:6 146:1,5 146:6 182:15 221:13 224:1 233:22 235:6 301:15 310:20 326:13,16,21

327:2 329:14 330:2 331:11 332:8,15,19 333:3 360:13 360:16,20 402:4
proved 145:19
provide 94:9 101:11 132:22 181:12 216:16 280:9 364:21 383:8 395:1
provided 94:18 111:3 125:21 133:6 134:22 277:17 285:17 285:21 364:14
provider 198:3 198:6,9
provider's 207:18,19
provides 110:14 111:19 121:14 138:7 139:8 140:13 285:22
providing 111:5 121:21 351:13
province 97:21 98:5,21 128:18 130:19 131:5,6 131:10 295:21 344:9 376:9
province's 98:9
proving 113:12 118:6,10 377:12
provision 74:3 83:10 122:17 122:18 197:10 373:1
provisions 77:12
public 417:1,19 419:10,18 420:15,23 421:23
publicly 102:2 415:15
published 315:9
pull 46:11 172:14 278:19
pulled 398:15
pulling 192:2 380:5
punish 140:15
punitive 285:13 307:8
punitives 285:10 322:19 322:22 323:2 324:3,9,14,22 325:8 347:22
purchase 141:13
purport 212:2
purportedly 384:16
purporting 212:4
purpose 84:6 120:7,7
purposes 53:2 69:17 118:15 120:10
pursue 112:19 124:5 248:4
pursued 114:10
pursuing 85:3 112:13,13
push 347:8 349:15 352:2 354:6,9 355:1
put 13:13 75:6 83:20 84:8 99:3 140:15 146:7 194:10 195:3 199:19 210:8,11,14 224:2 241:10 269:5 281:20 282:2 283:21 283:22 284:4 290:15 291:14 291:16 298:16 315:9 317:14 317:19 319:16 320:2 325:22 326:5 332:17 337:19 355:8 372:17 391:17 394:8 398:3 405:15 411:19
putting 120:7 206:3 387:19 389:8 390:16 390:21

q

question 10:2 10:12 15:11 16:5,8 19:8,15 19:18 20:1,10 20:12,14,21 21:2,12,18 22:3,4,7 30:10 32:6,7 35:12 36:2,5,10,12,13 36:17,22 37:3 37:12 42:2,9 42:20 43:4,11 44:3,14 45:17 45:20 46:8,13 46:14 47:2,11 47:14 48:1,4 48:14,15,22 54:13 56:12 57:8 60:9 69:2 70:2,8 71:4 72:16 78:7 79:7 85:7,16 87:18 88:2,7,7 91:4,8,14,20,20

91:22 92:2
96:6 98:2
106:22 107:20
118:14,19,20
119:12 121:4
125:15 129:11
129:13 133:17
133:19 135:11
136:13 137:17
143:15 144:4,9
144:15,18
148:1 151:9,19
151:21 152:2,9
152:22 153:2,6
153:12 154:3
154:10,18
155:11,21
156:19,22
157:8 158:10
158:20 159:4,6
159:17 160:1
161:6 162:21
163:9,16 164:1
165:2,21 167:9
167:11,15
169:7 170:6,10
170:11,12
171:14,17,19
172:14 173:6
173:12 174:10
174:14 175:7
175:11,13,14
175:22 176:3,5
176:8,13,19
177:1,5,12,13
177:20 180:18
181:3,6,7
183:20 184:4,8
185:5 186:12
186:21 187:1,2
187:6 190:9
194:9 195:19
197:4 200:3,15
202:8,11,22
203:2,6,16
205:10,20
207:22 209:16
211:8 213:14
216:10 218:15
220:10,21
222:15,19
223:12 226:3
232:6 235:22
236:10,20
240:5,13,17
250:8 253:3
255:8 257:5,8
258:5 259:11
259:15 260:7
260:12,22
261:17,18,19
262:2 263:22
264:1,5,8
265:9,18 266:3
270:7 272:7
273:1 276:4,5
278:16 279:17
298:4 300:13
306:13 307:22
308:3 309:10
313:14 323:22
325:19 328:1
329:6,7 330:14
331:3 334:10
335:22 336:1
337:13 348:21
349:1,6 352:6
352:13,16
353:10,15
359:21 360:1,4
361:2,20 362:5
362:7 366:22
366:22 368:4
374:15 375:19
388:19 389:18
390:14 397:2
400:11 402:12
402:19 403:1
407:2
question's 195:17
questioned 402:7,15 403:7
questioning 173:9 344:1
questions 9:20 10:5 42:15 55:20 177:3,7 207:13 248:15 256:21 276:22 277:18 316:18 354:6 357:4
362:18 367:13
402:20 409:11
409:16 410:9
411:19 412:15
413:8
queue 210:11 242:4,6
quick 135:22 136:5 412:17 412:20
quickly 252:10 386:16
quinn 3:10,14 7:11 63:8 314:21 357:6 363:14,19 371:20 390:19 394:6 412:1
quinn's 364:9 414:5
quinnemanue... 3:12,16
quite 31:5 40:20 50:16 138:22 151:6 197:4 371:19
quote 58:13 84:15 111:3 227:20 373:1 386:11
quoting 214:12

r

r 2:1 3:1 6:1 189:1 249:2
raise 190:9 351:10,11,15 352:12 353:14 355:14 356:5 359:5,11 364:12
raised 202:1 358:22
raising 359:15
rambled 330:19
range 14:6 94:9 251:20 299:15 299:17,19 300:2 304:11 350:9,14 380:6
ranges 89:7 94:11 380:7
rate 55:2,9,11 76:18 92:18,19 93:8,9 95:1,15 95:18 102:10 133:1 286:8,18 287:3 299:7,14 339:9,18,20 340:5 341:4,14 342:3,12,13,18 342:19,21 343:17,20 344:1,6,7,8 364:6
rates 76:3,14 76:16 363:15 363:20 364:2,9 364:12
rather 208:14
reach 26:11 52:19
reached 53:1 366:14
reactions 255:10
read 16:2 18:2 18:4,7,17 22:16 24:9 25:4,14,20 26:13 28:2,5 28:14,20 29:3 32:20 33:3,11 33:15 50:2,9 56:5,9,19 58:2 58:10,16 79:12 79:19 81:1,2,4 81:13 91:5,9 100:16,22 101:14,19 102:4,12 105:4 107:1,6,9,11,16 107:17 108:1 109:11 110:11 111:9,17 112:1 116:8,15,20 117:4 118:2,16 124:22 125:5,9 127:9,15 131:18 133:15 133:19,20 134:10 136:1,4 139:14,15,20 140:10 141:19 142:4 147:15 148:5 158:9,11 162:14 175:14 175:16 176:8 176:10 178:5,9 178:10,16 186:22 187:3 198:11 212:14 212:18 213:13 214:3,15,17 232:22 233:2 237:10,11,16 238:10 243:20 244:2,6 245:12 245:15 246:12 246:14,19,21 249:3,13,21 260:12,14 263:22 265:18 265:20 268:19 271:5,7 279:7 288:20 290:5 290:12 300:15 300:19 301:8 306:15,16 311:20 327:20 328:5,6 329:8 330:14,15 336:2 340:20 346:18,21 347:6,13 348:22 349:3 362:9 365:5 368:12,15 370:19 373:8 376:15 379:3,8 383:10,13,22 387:21 388:6,8 388:14,15,19 391:22 392:16 392:17,20 395:3 396:10 396:11 397:11 397:12,22 399:4,13,17 419:5,6,12 420:5,6,17
reading 16:10 56:8 58:20 67:13 77:17 108:6 212:15 212:16,17 325:4 341:10 346:19 354:11 368:8,20,22 375:20 418:17
ready 31:9
real 94:10 256:18 412:19
realize 25:9
really 38:21 39:2 40:7 57:7

112:20 118:10 172:10 186:5 192:6 193:6 209:13 253:17 255:9 326:12 335:5 372:2 374:7 377:4 386:16 406:9 407:6 410:21 411:12
reap 120:21 124:7
reaping 141:18
reason 201:5 246:8 247:1 313:13 314:6 315:21 374:11 407:8 415:16 418:13 420:8 421:3
reasonable 86:15 310:22 350:8
reasons 62:14 97:6 117:17
recall 35:2,14 39:14 54:6 64:5 67:18,21 73:10 113:1 125:5 126:14 128:19 194:6 209:3 215:9 269:10 273:20 276:14 285:16 289:5 309:4 319:8,20 343:19 345:15 353:21 354:8 354:10 356:12 358:9 381:20 384:14
receipt 418:16
receive 76:7 115:15 296:13 297:9,10,12 373:5
received 73:18 105:11 112:4 140:7 142:8 243:14 311:4
recent 211:20
recently 40:14 62:5 143:10 182:16 354:2
recess 14:16 49:7 74:21 130:7 188:12 265:3 287:19 338:15
reciprocal 71:2
recklessness 207:20 208:16
recognize 75:19,21 83:4 95:9 99:20 137:6,8 211:13 242:2,9 304:6
recognized 377:11
recollection 23:20 35:18 38:12 39:1 63:22 125:8 206:16 207:4 274:22 289:8 297:20 318:22 354:19 380:2
recommendat... 396:7,9
record 6:3,9,21 13:14 14:15,18 18:8 25:19 28:6 43:19 45:13 47:20 48:11,19 49:6 49:9 74:17,20 75:2,9 82:16 91:6 107:2 108:2 118:17 129:8 130:6,10 130:17 133:21 136:20 146:8 146:12 149:1 156:16 157:5 158:2,7,12 159:15 160:5 160:18,22 163:6 167:20 172:22 173:13 173:22 174:11 175:17 176:6 176:11 187:4 187:10 188:3,7 188:10 189:5 202:3 203:8 205:4 210:18 228:15 241:8 241:12 260:15 265:2,6,21 276:19 279:8 282:6 287:15 287:18,21 292:4 300:20 304:10 306:17 311:21 313:5 314:14,18 328:15 330:16 334:1 336:3 337:8 338:2,5 338:6,14,18 343:21 345:20 346:9 349:4 362:10 367:10 367:19 389:18 390:11,19 392:18 394:11 401:14 402:21 406:7 410:1,2 410:4,5,6,11,20 411:11 416:6 416:13 417:9 420:9
recorded 1:9 6:11

recording 6:8
recover 11:13 59:19 81:10 113:3 115:3 118:7,12 120:15 138:18 139:1 206:6 378:19
recovered 60:11,20 61:8 79:16,18
recovering 145:10,18 146:1,4 169:18
recovery 168:21
rectify 381:7
redirect 152:10 203:10
redline 191:13
redlined 4:19 146:14 147:3
redo 219:3
reduce 342:22
reduced 379:18 379:19 417:7
reevaluated 13:10
refer 8:9 62:22 106:7 150:4 296:15 396:6
reference 73:7 108:9 118:1 363:13 415:7 418:7 419:2 420:2
referenced 39:20 70:4 419:11 420:15
references 110:7 267:22 269:21
referencing 70:5,7,10 112:3
referred 41:6 150:7 282:6 312:13 396:21
referring 27:17 33:18 36:8,14 37:1,13 38:4,7 38:10,17 63:2 102:15 109:13 129:7 176:2 197:17 213:6 249:8 281:21 288:20 302:1 308:17 317:15 357:22 378:10 395:19 400:2
refers 115:13 116:22 119:14 169:9 173:20 174:20 177:14 213:21 244:12 244:15 250:10 280:3
refind 326:3
refine 296:5
refined 308:6 376:10
refining 319:11
reflect 45:14 158:2,7 159:15 160:22 167:20 174:1 176:6 203:8 283:5 296:12 346:9
reflected 55:14 281:8 315:22 322:3
reflecting 293:11
reflects 93:9 95:15 350:4
refresh 125:8 192:14 210:5 242:5 318:22
refreshed 289:8
refused 23:10 23:15 167:14
refusing 140:21 144:17 156:18 156:21 202:13
regarding 15:22 54:16 193:12 250:6 274:7 377:10 395:13
regardless 260:20
regularly 95:22
relate 323:1
related 56:13 57:1,16 60:21 61:9 64:11 73:14 74:3 114:11,12 118:20 122:2 123:16 168:22 170:16,17 195:3 284:14 417:11
relates 53:19 74:10,12 100:20 114:3 117:10 132:1 347:22
relating 114:4 169:10,11
relative 26:9 73:5 417:13
release 57:7 64:4,7,18 113:6,7,11,14 139:4,6
released 63:16 64:9,13,20
releases 64:2
relevance 190:16
relevancy 69:15

relevant 70:21 81:15 87:7 88:2,6,10 195:9 243:10 258:20 261:11
reliability 260:20 268:1 277:19
reliable 258:15 258:16 259:14 259:15,21 260:17,21 261:2,13,15 262:2 264:8 265:10,11 296:3
reliance 62:16 401:7
relied 127:17 128:11,18,19 196:11 235:18 351:22 358:8
rely 149:20 268:15,16 272:2,2,15 273:2,4,9
relying 129:1
remain 350:5
remained 355:7
remember 32:12 42:11 66:6,7 73:6,9 128:8 193:22 225:10 255:15 275:6 277:22 278:5 285:6 299:9 335:5 353:20 357:12 379:12 384:8 384:10
reminder 193:3
remotely 273:5
removal 232:9 233:12
remove 59:12 212:12 218:9 400:3
removed 204:21 205:6 261:11 365:2 384:21 401:7
removing 401:5
renegotiate 275:3
renegotiating 361:14
repeat 85:16 98:1 125:15 143:12 164:1 279:4,20 306:13 309:9 311:18 348:21
repeatedly 367:16
rephrase 21:19 322:9
rephrased 22:8
report 182:2,4 301:21 302:1,2 302:10,14
reported 1:17 226:11
reporter 1:17 6:18 7:14 8:2 18:7 65:6 91:5 107:1,19 108:1 118:16 133:20 158:11 162:19 165:10 175:16 176:10 187:3 260:14 265:20 279:7 300:19 306:16 311:20 312:20 330:15 336:2 349:3 357:5 362:9 419:7
reports 302:8,9
represent 118:3 395:6
representation 128:11 142:7
representatives 66:15
represented 327:16 329:1 329:13
representing 6:17
represents 13:21
repudiation 200:3
request 69:16 71:16 212:8 311:14 350:17 358:12,16 359:2 420:9,11
requested 18:8 91:6 107:2 108:2 118:17 133:21 148:3 150:21 151:4 155:1 158:12 164:9 165:22 175:17 176:11 187:4 212:12 260:15 265:21 279:8 300:20 306:17 311:21 330:16 336:3 346:14 349:4 362:10 365:2
requests 66:22 71:10
required 418:22
requirement 110:20
reread 91:3 335:22 362:4
rereading 106:22 118:14

rescinded 199:17 200:1
research 256:17,19,22 257:3,5 258:20 261:10 317:20 319:13 326:2
resended 200:2
reserve 411:16 412:10
resolution 371:21
resolves 373:3
respect 129:15 198:10 207:12 231:16 232:8 233:11 249:17 250:2 334:3 372:15
respectfully 70:9 88:19 195:18
respects 83:15
respond 25:16 25:22 35:18 102:20 105:20 369:16 381:4 388:4
responded 104:18 127:10 398:9 405:2
responds 26:17 101:2,16,21 102:19 103:6 368:3,6 380:12 396:4
response 26:19 105:15,16,21 105:22 277:13 277:17,18 278:1,5 311:13 341:13 352:13 353:14 392:2,4 392:13,15,18 403:2
responses 68:16
responsible 67:3,13
responsive 67:14 70:8 71:10,16,19,20 71:21 72:3 226:18 357:20 358:16
rest 186:13 232:8 239:5 251:15 271:5 295:14 346:19 369:11 404:3
restaurant 275:8,20,22 276:8
restructuring 131:11,12 234:2,3,5
result 87:8 310:13
resulted 89:14 116:5
retaining 111:14
retention 364:22 383:4 384:4 391:20
retroactive 391:11
return 32:18 33:1 143:2 189:14 378:16
returned 418:16
revenue 116:19
review 66:2,14 67:4 100:14 206:17 391:21 395:2 396:8 414:15 418:11 419:1 420:1
reviewed 66:8 66:22 67:8 104:18,21,21 115:6,10 124:16,19 138:3 202:6 394:6 414:20
reviewing 243:13 244:12 317:19
revise 392:5
revised 103:6 147:18,20 279:14 280:9 280:15 281:17 289:20 290:4 293:10 316:6
rhodium 1:4 2:2 3:8 6:12 7:4,12 11:13 12:16 18:20,22 20:15,18 21:5 21:7,22 51:20 53:6 60:7 63:3 64:10 67:11,11 82:1,6,17 84:22 85:2 100:10 109:5 109:14,22 110:15,17 111:15 112:5 113:6,13 115:2 115:14 120:18 124:4 127:2 128:11 135:1 135:14 139:12 140:2,6,15,22 141:6,10,16 142:1,12,21 143:2 147:7,8 147:9,10,11,12 198:14 201:13 204:2,15 211:19 212:9 225:3,8 230:5 230:17 234:4 244:16 245:7

246:17 247:2
247:13,16
248:6 251:5
255:2 256:1
257:14 258:10
259:22 262:3
264:9 265:12
270:22 272:15
273:14 274:16
275:1 296:12
297:4,9 298:7
302:3,13
343:22 350:17
350:20 351:7
353:16,19
354:2 384:22
396:6,16 397:6
413:11 418:6
419:3 420:3
rhodium's
52:15 53:4
111:21 117:10
120:3 139:11
139:18 206:6
249:8 252:4
richards 65:15
67:7
right 8:16,19
16:13,20 17:4
27:21 28:9
29:9 30:17
35:5 37:14
47:11 51:22
53:21 54:5,15
55:17 56:11,14
57:2,12 58:20
60:3,12,16,22
70:16 72:20
76:16 77:1,4
77:15 78:3,7
78:18 79:13,18
79:20 80:20
81:1,5,7,12,16
81:18 83:11
87:6 97:22
98:6 99:1
100:10 102:21
103:7,13 104:4
104:10,13
105:19 106:2
106:14 109:17
110:8 114:5,8
114:12 115:10
115:15 117:3,6
118:22 119:8
119:22 120:3
121:7,10,15
122:3,9,15,20
123:17 124:8
124:17,21
125:1 127:4,10
127:22 128:14
130:17 131:2,7
131:17 132:7
132:11,16
133:6,9 135:1
135:15 136:7
137:14,19
138:4,9 139:7
140:2,18
141:10,18
142:3,9,15
147:12,19
148:7,10,11,13
148:16,20
149:11 150:5
151:1 162:20
165:20 168:2
168:10,13,20
170:17 173:21
174:3,14,22
175:4 178:9
180:5 181:13
182:5 183:11
183:14 184:13
184:16 185:6
186:1 187:5
190:6,13,17,21
192:6,11 193:7
193:8 196:9
197:19 198:16
199:8,19
200:13,18
201:1,17,22
204:8,13 205:9
205:16,21
208:3,12 212:3
212:20 213:2,9
213:12,17
214:14 220:14
224:16 225:4,9
225:16 226:14
227:2,3,21
231:18,22
233:1,6 237:10
238:1 239:8,14
239:20 242:14
242:19,22
243:7 244:13
244:18,21
245:3,9 247:17
248:19 250:7
250:15,18,22
251:19 252:5,9
254:19 255:20
265:8,22 266:6
266:15 267:2
268:1 269:2
270:2,14,18
271:3,9,21
272:4,8 276:9
277:14 278:15
278:21 279:3
279:16 280:12
280:16,22
281:4 282:8,11
283:13 284:9
284:12,22
285:18 286:9
286:21 287:8
288:16 289:16
289:21 291:20
293:5,8,12,15
294:1,6,9,10,15
294:21 295:12
296:9,11,13

297:11,14
298:14,18,22
299:21 301:7
301:10,15
303:13,22
304:17 305:3
305:11,14,21
306:9 307:6,9
307:13 309:8
309:14 310:3
311:7,17 316:7
316:11,13,13
317:11,20
318:1,6,20
320:9,20 321:5
321:11,20,21
322:18 323:5,7
323:10,19
324:2,4,10,20
325:2,3,8
327:8 329:4,13
337:14,18
338:21 339:1,7
339:11 341:1,6
341:14 342:3,6
342:9 343:5
344:4,11,12,14
347:17 348:9
348:14 349:11
355:6 358:15
359:1,6,16
361:22 364:9
364:12 365:9
365:16,21
366:5,16 367:1
367:7 368:3,19
369:17,20
370:4,15 372:9
373:11,17
374:2,20
375:15,19
376:3,5 378:1
378:12,17
379:22 380:7
380:15 383:21
384:4,17 386:8
388:22 389:5
393:1,15
399:21 400:10
400:22 401:12
402:8,15
403:18,19
404:15 405:3
405:17 406:5
406:15 408:15
415:1
riot 18:22 60:8
61:10 62:22
63:3,11,15,17
64:11 73:15
97:20 98:4
103:10 112:14
122:19 131:17
137:2 138:8
140:8,14
141:12 142:20
181:12 183:9
183:13 198:14
225:3,18
247:17 248:4
250:20 251:5
251:12 256:2
257:16 258:11
262:4 279:3
345:2 354:22
358:22 359:3
368:10 369:2
372:14,18
376:19
riot's 372:12
rise 198:8
199:1 385:14
risk 92:21,22
93:2,10 95:16
95:19 283:12
284:1,17 286:3
391:10
risked 280:12
robinson 131:9
196:13 275:5
276:12 356:16
383:4 385:1
rockdale
141:15
roll 407:6
room 226:4
227:6,12,17,21
228:5,14,16,18
rosier 346:16
347:4 348:13
349:10,18,22
350:16 355:3
355:16,21
356:7,12,14
357:14
roughly 26:14
195:15 243:17
244:18 245:8
246:11,17
247:9 248:8
269:1,22 271:1
271:16 284:11
rounded 374:4
rule 19:4 62:11
69:4 70:2,4,5,7
70:10,11,14,14
70:17 235:20
330:10
rules 9:16
419:5 420:5
ruling 23:22
111:20 251:12
251:21 252:10
253:6,13
run 51:18

s

s 2:1 3:1 4:1,6
5:1,2 6:1 189:1
189:1,1 198:8
418:14 420:8,8
421:3
safe 3:2 7:8
37:16 38:2,8
225:20 226:13
226:21 227:7

227:12,15,17
sale 26:5,6 84:12 127:21 280:10 290:8 323:13 365:14 370:12 378:17
sales 102:8 110:3 116:2,12 116:19 117:3 119:16 121:15 122:1,1,5,9,12 123:16 378:21
sandwiches 65:14
sarah 3:3 7:9
saturday 65:17
sauce 173:16 173:16
savings 133:8 194:11
saw 34:5 387:9 387:10 393:14 405:13
saying 26:16 29:22 105:6,17 114:21 126:18 165:4 202:5,8 216:14,22 232:3 234:15 239:4 245:18 249:5,21 271:8 297:2 314:9 315:6 327:13 365:22 366:10
380:13,16 383:18 397:3 407:3 410:19
says 24:19 28:16 32:5 33:8 47:5 49:11,21 58:5 100:9,12,18 101:11,22 103:8 104:8 107:5 109:3 111:12 116:3 116:17 117:1,6 118:2 121:22 122:5 125:12 138:12 139:22 140:4 142:6,10 142:16,18,22 148:2 162:18 167:7,8,22 168:3,4 178:2 178:6,22 179:3 190:5,8 193:12 193:17 198:2 207:16 212:7 213:6,22 231:16,20 232:3,11,13 239:6,13 243:13 246:9 248:21 250:13 268:14 271:4 272:1,5 277:9 278:19 279:13
279:17 280:8 280:14 289:3 289:19 290:7 293:1,18 296:14 301:3 320:17 323:1 329:2,8 341:13 342:7 346:3 367:1 368:8,18 378:13,18 387:18 388:5 388:11,11 389:7 391:8
scenario 94:12 94:12,13 224:7 351:9
scenarios 57:21
schmeltz 2:3 4:3 7:1,1,21 11:11,18 12:4 12:14 13:12,19 14:2,19 15:7 15:10,14,16 16:11 17:10,15 17:19 18:1,5 18:10 19:7,11 19:13,16,19,22 20:2,5,8,11 21:3,17 22:13 23:7 24:1 27:18 28:4 29:15 30:3,16 31:18 32:15 35:3,5,10,13,19
36:1,3,6,7,21 37:4,8,11 41:18 42:4,22 43:2,5 44:4,6,7 44:17,19,22 45:4,7,9,11,15 45:18,21 46:18 47:15,18,21 48:2,5,9,12,16 48:19,21 49:1 49:10,12 50:19 51:3,10,17 53:3,15 54:14 56:20 57:9 60:17 61:6 62:19 64:21 65:4,7,10 66:21 69:3 70:1 72:17 74:1,16,18 75:3,15 78:17 79:5,8,10 80:17 82:14 83:1 84:2 85:9 85:17 86:3,5 86:17 87:13 88:3,19,21 91:3,9,19 92:3 93:14 94:14 95:21 96:7,13 97:9,15 98:19 99:2,15,16 102:18 103:2,5 103:15,21

104:12 106:9	154:19 155:12	186:9,12,14,16	223:14 224:12
106:21 107:8	155:22 156:2	186:20,22	225:1 226:9
107:14,21	156:10,11,13	187:5,9,11,14	227:1 228:4,12
108:13,21	156:17,20	187:16 188:1,3	228:21 229:5
110:5 112:10	157:1,9,13,15	188:6 189:13	229:13,18
113:19 114:17	157:19 158:1,7	191:10,21	230:2,14 231:3
114:19 115:8	158:15 159:1,5	192:4,10,13,19	231:6 232:21
115:12,20	159:8,10,13,18	193:9,10	234:1,18
117:18 118:13	159:22 160:4,6	194:16 195:1	235:13,21
118:18 119:5	160:13,15,16	195:16 196:19	236:17,19
119:21 120:16	163:1,3,5,7	197:7,14,16	237:5,13 238:4
121:6,20	164:4,8,16,20	199:6,16 200:5	238:11,21
123:10,12	165:11,12	200:9,16 201:7	239:1,3,12,17
124:1,15 126:5	166:7,11,16	201:9,11 202:7	240:2,9,11
126:10 127:1,8	168:8,19 169:6	202:10,12,14	242:1,8 244:1
128:5,21	169:19,21	202:16,19,22	244:8 245:16
129:10 130:3	170:1,3,5,7,9	203:3,6,9,13,17	246:4,7 247:12
130:11 133:5	170:11,13,19	203:21 204:10	248:5,14 250:4
133:13,18	170:22 171:4	205:8,14 206:1	252:1 253:9
134:7,19	171:13,18,22	206:10 207:8	254:1,17,20
135:10,19	172:3,6,8,11,19	208:10,12,15	255:19 256:6
136:19 137:5	172:21 173:3,5	209:15 210:8	256:11 257:18
143:11,16,19	173:7,10,13,16	210:14 211:6,9	258:4,21 259:6
143:22 144:3,6	173:18 174:2,6	212:11 213:8	259:19 260:7
144:10,13,16	174:8,11,13	215:12 216:1,3	260:11,17,21
144:19 145:2,5	175:6,10,21	216:7,9,13,15	261:16 262:7
145:7,9,11,13	176:18 178:21	216:17,19	262:14 263:4,6
146:7 147:1	179:19,21	217:1,3,9,15,21	263:8 264:12
150:2,12	180:11,13,15	218:6,10 219:1	264:15 265:7
151:18,20	180:19,22	219:21 220:14	265:22 266:2
152:1,4,6,8,10	181:2,5,8,20	220:17,20	266:11 268:7,9
152:14,16,19	183:4,6,8,17,19	221:15,17,19	268:13 270:5
152:21 153:1,7	184:2,5,9,21	221:21 222:1,5	270:13 271:20
154:2,6,12,16	185:1,3,13	222:7,10,16,18	272:13 273:3

273:11 274:20
276:16 277:4
278:3,11
279:12 280:20
281:11,19
282:5 283:10
284:6 285:5
286:1,7,20
287:4,14 288:1
288:11,15
289:9 290:14
291:1,5,9,14,18
292:1,12
293:21 294:5
295:2,9 298:11
299:4,16 300:4
300:6,15,21
301:1,19
302:11,21
303:5,8,19
305:7,21 306:3
306:6,14 307:3
307:21 308:16
309:19 311:2
311:12 312:2
312:14,21
313:2,4,18
314:3,9 315:1
315:3,5,8,12,18
316:2,5,21
318:12,15
320:5 321:2,10
321:18 323:11
323:14 324:1
327:3,10 328:4
328:14,16,18
330:13,19
331:5,12,20
332:4 333:4,15
334:21 335:12
335:21 336:8
336:16 337:1
337:10 338:6
338:12,19
339:13,22
340:3,7,13,19
341:11 342:1
343:2 344:18
345:1 347:19
348:3,22 349:5
350:19 351:14
351:19 352:17
352:19,21
353:2,9,12,18
355:10 356:1
356:15 357:7
358:20 359:13
360:3,7,17
361:3,6,11
362:4,20 367:4
367:11,15,17
367:22 368:2
368:17 369:15
372:7 374:17
375:1,3,5,9
377:17 382:2,9
383:15 384:13
387:3,12,14
391:5,6 392:12
393:6,12 394:8
394:15 397:1
397:15 398:2,6
400:5,7,20
401:9 402:6,14
403:3,13
404:13,21
405:11 406:1
406:12 407:11
408:11,18
409:3,7,9,11,13
409:15,18,22
410:3,6,15
411:3,15 412:7
413:1
school 177:6
schooled 177:2
schultz 3:3 7:9
scott 3:3,20 7:7 7:7
screen 13:13 14:10 16:12 17:3,7 46:10 133:12 242:3
seal 391:18 415:15 419:15 420:21
search 70:20 71:9,15
seat 193:2
sec 192:5
second 14:14 40:7 49:20
58:1 80:11
81:3 85:15
87:7 89:5
93:18 114:4
132:1,4 190:1
195:12 199:2
212:6 245:5
294:10 304:9
376:5 382:11
412:21
seconds 24:18 125:7
section 79:11 79:12,15 80:22 81:3,8 84:3,6 197:9 207:16 304:20
sections 84:18
secure 97:21 98:5,9
see 17:8 18:12 19:5 22:14 24:15 25:17,22 26:21 27:7,12 27:16 29:20 30:21 32:4,21 43:9 44:9,13 44:14 45:19 46:5,7,9,14,19 46:22 47:2,3,4 47:7 49:14,18 50:17 55:6,21 56:10 58:7 76:4 100:3,5

101:3 104:3,13 104:14,16 105:9,15 106:1 106:2,19,20 107:10 108:7 123:1 124:11 125:14 126:17 133:7,11 143:6 189:18 190:3 191:22 192:8 193:11,19 197:12,17,22 211:22 214:9 214:10 233:17 237:9 242:4 244:5 250:11 266:14 277:9 277:11 281:5 284:15 285:4 285:13 287:2 287:14 289:17 289:18 292:13 292:16 296:17 305:12 313:20 315:12,21 316:5,18 317:3 318:17,21 327:12 333:20 334:4 339:7,14 339:17 340:8 340:14,17 350:15 360:13 363:15 364:7 365:12 375:13 375:17 379:14 380:16 381:2 382:10,22 412:19

seeing 16:10 31:16 108:9 125:10 192:9 341:16

seek 77:10 131:16 133:3 138:21 143:1,7 145:14 167:12 167:22 169:8 169:14 170:14 173:19 174:19 187:16 395:6

seeking 68:7 115:2 145:6 169:17 170:15 177:18,20 233:13

seeks 168:11,21

seem 160:7 252:9

seemed 55:10 93:4 386:13

seems 284:11 378:8

seen 12:20 15:1 31:4 104:17 191:13 242:16 267:17,19 403:4 413:18

sees 25:11 47:18

sell 109:9,14 110:20 111:4 120:20 124:7

selling 110:1

send 32:2 73:21 149:22 391:21 415:13

sending 363:21

sends 105:5

sense 75:6 132:10 215:22 221:11 251:3 273:13 326:3 372:22 373:11 373:13

sensitive 6:5

sent 31:6 34:12 67:9,12 72:19 72:22 126:18 199:22 200:12 200:18,22 411:4

sentence 22:14 27:15,16 28:5 32:1 33:5,6,7 33:13,14,15,16 33:18 49:20 54:1 58:14,18 58:20 77:16 79:20 109:21 124:13 142:19 153:17 154:1,8 154:22 155:6 158:13,17 161:18 162:12 163:11,18,19 164:5 165:5,6 165:21 167:7 167:16,17 172:2 178:1,15 178:22 213:19 214:7,10 231:8 232:2,20 233:2 234:22 237:17 238:9 241:2 243:11,12 245:14,15 270:20 271:5 271:14 295:14 329:8,9 336:6 346:18,21 347:1,6,13 368:21 370:19 379:3 392:16 397:22

sentences 16:2 18:2 163:20 383:14,22 392:21 397:11 397:12

separate 227:6 299:7 334:6

separately 274:15

september 391:17

series 76:3 128:18 319:21 371:2
serve 131:10
served 67:1
services 198:6 201:14 204:3 204:16
session 345:9
set 75:7 76:14 95:20 233:19 276:22 355:21 379:22 380:10
sets 280:21
settle 24:5 179:10 235:12 350:6
settled 56:14 57:1 63:16 64:13 183:10 183:14 235:7 236:1,2
settlement 18:13,21 19:6 20:17 21:7,22 22:19,20 57:2 57:5 60:12 61:10,15 63:1 63:3,12,17 64:1,14 74:11 84:12,22 85:12 85:18 86:22 87:19 88:14 89:21 97:19 98:3 183:10 226:11 370:14
seven 168:7 346:11
several 138:13 147:21 292:7 318:4 334:19 337:19 353:21 354:11 387:18 389:8 401:10 404:5
share 30:20 31:3,20 68:20
shared 25:8 41:8
shares 30:18
sharing 317:22
sharply 405:2
sheet 418:12 420:7,10,18 421:1
sheets 243:14 244:12
short 90:7
shortly 141:12 193:7 277:10 319:7
show 12:9 47:22 157:5 234:16 282:3 302:9,19 309:4
showing 192:16
shown 148:18 309:7,13 418:14
shows 283:11 284:17 304:15 311:11
shutdown 295:20
sic 201:1 281:8
side 103:7 180:4 192:21 299:19 367:6
sigh 160:12
sighed 160:10
sighing 37:16
sign 136:9
signatory 138:2
signature 137:18,20 398:22 399:11 417:17 418:13
signed 113:6 139:5 225:11 419:13 420:18
significant 124:4 140:1 319:10
signing 418:17
similar 55:6 83:15 273:6
simpatico 227:16
simple 47:2 135:11 336:1
simply 151:16 154:11 162:21 167:18 180:5 215:2,18 219:7 220:4 221:4 222:13 233:18 237:22 240:5 329:7 358:16
sincerely 418:18
single 42:5 149:22 337:12 382:4
sir 7:22 8:13 9:5 13:21 19:8 21:18 22:17 33:4 44:14 65:12 83:2 99:18 112:2 130:13 135:15 137:6,9,14 142:17 145:5,9 154:3,10 155:5 155:9,13,15,17 155:19 156:3,5 156:5,7,12 157:2,4,6,10,20 158:2,4,6,16,18 159:2,11,14,19 160:8,17 161:1 161:3,7,9,13,15 161:19 162:3,5 162:9,13,17 163:12 164:13 166:4,17,19,21 167:1,3,6,11

169:21 171:14 175:13,22 176:3,5 177:1 177:8,11 189:19 242:2 263:11,17 264:10 320:14 331:21 336:1 395:22 408:16 408:20 418:9
sit 54:5,15 163:9 165:16 204:1,13 251:2 254:21 255:20 257:11 258:8 259:20 261:22 264:6 277:16 278:4 285:6,16 286:2 297:19 307:15 331:13
sitting 40:5 86:7 204:21 205:5 261:8 344:3 380:9
situation 334:17
six 198:7 210:20 260:9 344:15 348:12 349:8 410:12 416:8
sixth 93:22
sketch 373:21
skip 99:2
skipped 33:13 33:14 370:21 392:16
skipping 33:5 56:4 109:6,7
skirted 408:1
slide 104:1,15 104:16,18,21 104:22 106:2,5 106:7,10 107:6 109:1 112:3 115:1,7,11,13 115:22 117:8 118:8,20 120:12 121:9 121:14 123:2 125:19 126:20
slides 100:13 101:13 102:1 102:20 105:8 105:19 125:13
slightly 376:12 379:6
slip 370:18
slow 192:6 193:6
small 405:8
sold 111:13 120:21 139:18 141:17
solely 337:20
solution 15:22 387:2 393:19
solutions 1:21 6:17,19 418:1 421:1
solve 368:19 371:12
someone's 267:14
soon 14:6
sorry 16:9,22 32:21 46:5 54:12 55:3 76:19 85:14,15 91:7 99:12 133:11,16 134:11 194:19 208:8 211:5,7 213:14 219:12 234:16 245:15 246:1 259:3 260:4 268:4,5 270:19 273:4 276:2 279:4,20 306:12 313:16 314:20 320:10 321:16 324:7 328:6 347:18 348:16,20 357:6 361:17 368:4 387:10 400:11 411:21 416:2
sort 56:17 76:18 133:2 174:15 194:11 266:20 371:2 408:12
sorts 259:17
sought 167:5 168:9 169:15 177:15
soule 3:20 100:1,6 101:16 147:7
sounds 8:11 148:11 378:1
source 101:12 102:1
southern 1:1 6:14 254:11
space 190:12
speak 24:21 27:16 142:5 148:20,22 149:3,5,12,12 166:20 172:22 213:10 392:19 403:12 405:5 410:20
speaking 44:22 48:6,17 56:7 156:20 241:8 258:3 411:22
speaks 27:14 29:11 30:10 108:4 162:16 163:13,19 164:18 166:9 168:16 169:3

170:21 175:2 175:19 176:14 213:4 232:7,17 234:13 236:15 239:10,22 247:7 266:8 272:10 293:17 306:11,19 328:15 342:16 348:18 349:13 367:3 368:14 393:3 397:21 403:21 405:19 405:21
special 2:2 7:3 7:19 12:12,21 13:1,2,8,9 14:6 15:2,3 21:14 23:9,15,20 31:5 34:19 38:19 39:20 40:1,3,4 43:7 49:11 50:11 52:8,16 53:17 54:1 58:7,13 59:8,16 61:20 62:7,12,17 67:1,17 72:13 73:4,11 87:4 99:7 103:18 109:2 112:18 113:17 118:5,8 119:17 120:12 123:5 130:19 138:14 145:17 146:13,15 178:12 179:4,8 181:21 182:2,3 182:10,13 189:11,15 191:16 197:8 220:1 221:1 222:11,12 224:8 232:12 233:15,20 235:15 276:17 292:5 301:20 301:22 302:2 302:12 304:11 316:2 330:3 331:4 345:22 361:7 375:6 382:3 387:4 394:12 398:10 400:3 401:4,20 401:22 405:15 405:16 411:13 412:7
specialcomm... 4:8,13,14,16,18 4:21 5:4,6,8,10 5:11,13,14,16 5:17,19,20
specific 202:10 267:1 269:19
specifically 35:2,14 68:8 111:3 121:21 122:2 194:6 267:15 270:11 350:21 351:10 375:12
specifics 35:15 353:22
specified 84:18
speculate 120:9 126:4 335:19
speculation 271:12
speed 251:21 253:6
spelling 8:1
spencer 212:10 356:22
spend 96:14
spent 65:18 97:16 201:13 225:19
spikes 116:13
split 69:13 378:11 380:14 380:22
spoke 131:16 148:18 185:18 215:15 289:19 310:16 316:6 329:22 358:7 387:1
spot 143:16
spreadsheet 28:18 57:20 102:6 282:22 306:22 308:12 317:22 319:17 320:3 345:13 346:6 355:9 380:4
spreadsheets 359:17 360:11 360:14,15,18
sschultz 3:7
staked 87:5
stakeholders 25:9 297:7 298:5
stamped 210:20
standard 76:14
standards 414:1
start 9:20 14:8 14:20 15:4,8 15:17 27:1 73:12 99:22 130:21 137:17 187:1 193:1 200:4 249:6 290:1 293:4 313:11 363:12 376:1 377:19 399:7
started 56:6 212:16 268:9 345:5 347:2 372:2

starting 33:6 75:3 213:21
starts 26:18 27:6 46:21 49:17 55:21 104:2 106:11 193:16
state 6:20 124:14 419:10 420:15
stated 29:6 237:13
statement 30:19 225:7 405:10 408:5,6 419:13,14 420:19,19
statements 316:14
states 1:1 6:13
stating 346:14
stay 220:3 252:12,13,16 253:7,18,20 254:13
steep 364:15
stenotype 417:7
step 276:1,2,3,6 299:13 406:2
sticker 312:17
sticking 376:13
stirs 316:6
stokes 99:5 100:1 102:19 103:6,9 105:16 225:11 241:19 266:6,14,19 267:5 275:16 278:15 280:5 290:3 303:21 310:16 317:2 317:17 325:12 358:9
stop 70:19,19 157:15 160:5 163:2,5
stopped 252:22
storm 55:2 60:9 60:21 61:9 64:12,22 113:22,22 116:22 117:1 119:19 136:16 138:15 139:16 141:13 142:15 168:12,12,22 169:10,11 170:16,17 171:6,6 173:20 173:21 174:21 174:21 177:19 177:22 179:10 181:22 207:10 229:15 311:7 311:16 322:8,8 322:13 323:18 324:10,15 325:7 328:22 329:12 337:13 355:14
story 182:17,18
stow 308:1
straight 411:12
strange 227:15
strauss 3:4
street 1:14,21 2:17 3:5,15
stressed 245:7
stretch 247:22
strict 224:14
stris 60:6 61:8 63:8 101:7 103:7,12 112:13 122:19 136:15 221:2 225:7 236:12 237:2 249:9 289:19 294:1,7 325:13 348:9
strong 112:22 209:6
strongly 25:11
struck 141:14
structure 372:18
stuck 350:14
study 209:13
stuff 68:12 81:14 231:19 233:18 298:10 346:20 363:4 366:18 370:5 371:6 381:9 395:20
sub 57:14,20 58:5,5
subject 54:8 63:12 109:21 211:19 290:3 294:13 295:4,8 296:8,20 310:19 317:2 383:4 414:15
submitted 225:7,8,11
subscribed 419:10 420:14 421:21
subsequent 79:4 403:4
subset 354:14 354:18
substantially 366:16
substantive 301:2 304:9
succeed 248:22 250:1
success 13:3,5 49:22 50:20 51:21 53:7 55:3 74:4,9 75:4,5 77:5,19 78:1,19 79:3

79:13,15 80:2 80:20 81:22 83:10,14 135:9 249:16 283:16 284:22 295:12 309:14 311:6 318:19 320:6 321:5 322:1,12 322:15,20 325:2,7 326:10 328:21 329:11 348:1,5 350:22 355:15 361:14 363:3 364:15 364:20 365:15 365:20 366:15 368:11 369:2 369:20 371:5,9 373:4 376:19 385:3
successful 251:6
suggest 42:6 52:10 345:5 373:16 374:18 376:17 389:8 408:8
suggested 50:20 51:4 52:12 66:16 181:9 186:4 214:22 288:3 354:10 356:12 371:22 387:19 394:10 403:8 404:7 405:14
suggesting 78:13 204:1,15 218:21 271:9 271:14 281:2 370:12
suggestion 180:1 239:19
suggestions 391:9
suggests 30:18 270:22
suitable 243:9
suite 1:14,21 2:6,12 3:5,15 418:2
sullivan 3:10 3:14
sum 195:5 305:22
summarize 107:7 212:2
summarizing 371:6
summary 107:10,15,16 107:18 117:17
sump 250:18
sunday 26:20
super 187:17 193:9
superior 418:1
superseded 111:22
supplement 305:10
suppose 39:9 205:3
sure 10:9 12:19 13:6 25:21 29:21 30:9 32:14 34:4 46:20 50:16 63:6 65:2,8 72:8 93:16 96:6 100:8 104:11 108:18 121:3,8,13 125:1,4 127:16 131:3 136:18 143:6 148:21 149:11 159:12 160:11 167:13 191:7 194:3 196:5 198:19 199:11 212:4 212:15 218:6 223:12,20 228:10 243:8 257:10 276:5 276:11 282:1,8 287:2 296:10 300:18 301:22 309:22 315:11 335:9 336:5 337:7 353:11 363:1 366:6 372:5 373:12 374:22 400:19 412:18 415:14
surprising 13:8 385:19
survive 98:18 243:18 246:17 247:4,10,20 248:6,11,12 268:17 269:1,4 269:22 271:2 271:17 272:3 272:16
suspect 127:15
swartz 67:8 280:7 303:18 303:20
swear 7:14
sworn 7:18 189:9 417:5 419:10,13 420:14,18 421:21
synthetic 296:16 297:6 297:12 298:6 299:21 300:3

t

t 4:1,1,6 5:1,1,2 8:3 189:1 249:2

tab 99:2 103:16 103:16 210:6 241:10 276:17 290:22 327:9 344:18 361:7 387:10,12 394:11
table 91:8 113:17 119:20 167:2 276:10 288:3 294:17 368:5 374:12 384:15
tactics 140:16 407:21
take 6:8 8:16 10:10 12:10 55:17 56:12 62:13 64:7 74:13,14 75:8 82:14 83:9 92:17 93:11 95:11,18 108:11 110:9 115:21,22 116:10 118:22 121:12 125:6,7 129:19 130:1,2 136:19 140:12 141:2 176:1 183:1 188:1 197:8,21 207:9 208:1 211:16 224:9 241:10 251:11,13 252:3 255:15 264:21 265:12 276:16 277:8 277:10 282:3 286:15 287:16 289:7 292:3 298:13 304:8 305:10 309:5 312:14 325:9 325:10 334:7 338:8 341:17 363:11 364:3 375:12 382:2 387:3 402:22
taken 23:8 62:8 125:6 188:12 251:4 332:10 332:11 379:14 407:21 417:3,6 417:13
takes 69:14
talk 9:19 27:3 39:18 65:21 75:3 136:13,17 143:19 215:16 216:3 239:5 257:1 261:9 295:15 301:11 314:14 373:10 377:9 384:10 390:2,18
talked 65:14 69:1 71:1 184:18 185:4 185:14 242:18 274:16 278:1 301:9,13 303:11 305:2 373:13 377:9
talking 34:16 34:18 39:9 46:17 54:8 57:8 58:19 59:5 70:6,19 70:19 74:10 87:16 89:8 149:15 157:16 160:5 163:5 174:6,8,11 180:16,19 229:11,12 236:16 258:18 266:12 270:15 281:6 288:2 297:3,8 298:3 347:2 350:3 358:6 363:5 390:20
talks 251:16
task 352:3 354:13 357:20
taught 256:20
tax 18:11 34:15 53:2
taxes 18:16
team 55:4 59:17 89:10,13 92:13 126:16 136:15,15 138:14 146:3 206:20 221:2 242:13,16 243:2 251:15 251:17 255:11 255:17 257:2 258:3,18 261:9 267:8 268:15 278:10,13 279:15,16 280:2,3,4 293:14 294:1,6 294:8 305:9,13 305:17 307:17 309:21 310:15 311:4,14,15 313:10 321:4 321:11 322:2 322:12 325:5 325:10,11,14 325:15 328:20 337:12 348:9 349:20 350:5 351:22 379:21 401:16 405:16
team's 312:1 317:20
teams 100:14 127:12 191:8 267:8
teasing 268:10

tech 3:19 104:7 192:6 193:6 210:6,13 211:4 242:6 290:22 291:21
technically 72:10,15
technician 3:19 6:2 7:13 14:13 14:17 49:3,5,8 74:19,22 130:4 130:8 188:8 189:3 210:4 264:22 265:4 287:17,20 318:11,13 338:11,13,16 410:12 416:8 416:12
tell 8:18 11:8 13:11 14:11 23:2 24:22 34:8 58:19 120:8,11 125:10 126:19 165:15 196:8 200:19 204:9 204:20 207:2 210:16 217:6 225:13,17 226:7,19 228:14 230:9 256:10 276:9 284:3 291:16 302:10 306:22 308:13 310:11 310:18 319:20 336:7 344:4 359:10 366:20 380:10 381:22 387:20
telling 8:21 52:20 117:9 127:3 142:12 144:14 157:17 201:5 303:14 341:15 396:12 396:14 397:4 407:12
tells 363:19
template 293:11
temple 280:10 290:8 323:12
ten 165:19 194:11 226:4 374:9
tens 141:5 143:7 145:14 177:15,17
term 100:8 132:7 243:14 244:12
terminated 73:1 77:11 111:22 373:3
terms 27:6 28:7 63:21 135:6 195:4,8 243:19 246:18 247:4 247:11,14 248:13 268:18 269:2,5,7,15,18 270:1,12,16 271:2,18 272:4 272:17 373:4
terrific 325:18
test 394:9 395:18,22
testified 7:18 96:17 189:10 214:22 354:1 358:18 359:4 363:9
testifies 219:22
testify 10:20 96:19 201:13
testifying 10:16 10:22 11:9 96:14
testimony 9:4,8 12:18 15:1,6 16:6 41:22 45:6 63:18 66:3 68:5 73:7 73:9 83:21 128:8 157:14 157:18 160:3 168:15 172:5 175:4 201:6 205:18 214:21 215:4,7,14 219:2,16 230:22 237:20 237:20 238:5,7 238:13 247:1 254:21 255:6 259:5,9 265:15 272:20 288:6,9 288:18,19 327:22 328:13 331:13,21 332:1 337:16 338:9 350:20 351:2,4 359:8 369:4 402:10 402:17 406:8 408:22 417:4,6 417:9 419:6,7 420:6,9,12
tests 116:5
texas 1:1 2:13 2:18 3:6 6:14 94:18 106:14 108:14 109:4 199:3 207:5 209:4 224:13 224:20 254:11 255:12
text 70:20 212:22 213:6,9 266:13,17
texts 70:21
thacker 1:17 6:19 417:2,18

thank 7:13
24:20 37:8
42:10 43:16
60:5 65:7
80:15,16
107:12 135:20
135:21 173:17
187:20 210:16
240:13 242:9
266:1 300:21
313:2 352:19
352:21 370:16
370:22 375:2
381:3 391:1
396:9 411:16
413:2 416:2,10
thankfully
97:14
thanks 46:21
47:5,7 49:17
293:1 377:19
390:21
theoretical
102:8 116:1,18
117:2,21
119:15 121:22
122:9,12
theoretically
295:13
theory 139:3
thing 17:8
19:13 40:5
92:14 93:17
133:2 138:21
173:14 231:20
232:3,7 234:19
273:10 274:2
292:22 294:12
350:13 352:1
362:7
things 38:10
68:12 69:15
73:10 87:4
88:10 124:12
168:18 171:20
212:21 213:11
213:15 215:9
220:9 227:14
242:13 259:17
261:14 291:12
332:3 334:1,17
337:9 349:2
391:18 411:10
413:15 415:22
think 24:3 26:8
26:9,15 31:13
37:14 50:7
58:18 59:1,16
63:14 64:3
67:22 68:17
69:12 70:3
72:15 80:7
83:19 88:20
89:3,16 90:9
90:11 93:5,20
94:15 95:6
96:18 97:5,6
99:1 101:6
109:20 113:11
113:12 123:2
123:20 124:11
125:1 127:11
129:12,16
131:12 149:2
149:11 176:1
185:16 186:7,9
186:16 187:9
195:11 196:11
196:18 197:5
198:22 200:1
205:11,15,21
211:14 224:4
225:12 230:21
242:15 244:9
249:10 250:13
251:9,15 253:3
253:12,20
254:8,18 255:7
261:3 265:16
267:4 268:21
269:18 271:19
272:14 273:9
275:18 276:13
280:1,3 281:20
282:6,20 283:3
283:7,22 285:8
285:10 288:2
289:1 291:5,6
293:9,9 295:13
298:2,19 300:2
300:16 305:18
308:2 309:21
314:21 321:13
325:12 329:10
334:2,3 335:13
336:9,14
337:18,22
338:3,6 345:12
347:10 349:14
350:8 351:10
352:5,16,18
354:12 355:6
356:16,18,20
356:21,22
357:2,8 358:15
360:14 368:15
370:17,20
373:9 379:17
380:8 381:19
385:1,8,9
386:9,14
387:10 388:5
388:11 391:9
392:18 393:17
395:10 396:20
401:3,19
402:13,18
403:11 407:3
407:17 408:2,6
408:12 410:18
410:19,22
411:1,9 414:11
414:16,22
415:1,4,8,10,20
thinking 65:18
204:22 224:8

373:21
thinks 87:6 210:14
third 24:2 33:14,15 81:7 94:5 111:11 213:20 214:6 294:10 299:12 301:3 304:8 346:14
thirteen 305:8
thirty 418:16
thompson 2:11 4:22 65:15 67:7 100:2 126:15 211:1 211:19 237:8 237:13 276:12 280:6 290:3 303:16 317:2 317:18 343:14 343:16 363:13 363:19 378:11
thornburg 1:14 2:5 7:2
thorough 207:2 338:7
thought 15:13 40:11,21,21 41:2,4 65:20 75:5 87:9 112:20,22 113:1 126:20 131:20 132:14 133:2 185:2 206:19 218:17 227:14 255:15 255:17 268:10 278:10 319:5 326:6,7,9 330:3,11,21 331:4,8 335:6 336:6,14 344:15 349:1 355:11,19 357:18,19 364:1 372:3 379:22 386:21 387:9 393:19 401:16,17,18 401:19 402:19 402:21
thoughts 280:9 318:1 321:19 376:6
threatened 39:4,11
threats 33:8,17 33:20,22 34:1 34:2,3,4,6,8,9 34:10,11,19 35:2 37:3 38:6 39:17,17
three 17:10 38:20 77:6 80:5,19 81:16 83:13 89:12,15 89:17 90:8,18 92:10 117:17 118:4 210:2 326:8 342:20 344:8 369:19 370:1,10
throws 306:21
thursday 381:11 382:13
tick 403:18
ticket 346:16 347:4
tickets 10:21
tier 280:22,22 281:12,13 284:13 307:5
time 1:13 6:7 14:14,17 22:8 24:16 31:5 34:5 38:6 39:2 40:7 49:3,8 65:18 69:17 74:19,22 76:9 76:20,21 81:17 81:20 85:12,19 86:1 92:15 96:14 97:16,19 98:3 118:4 125:6,7 130:4 130:8 153:10 156:13 165:21 176:9 187:20 188:8 189:3 194:1 200:12 200:17,22 206:2 227:13 238:1 261:18 264:22 265:4 269:7,11 270:16 273:1 275:15,19 286:14 287:17 287:20 291:10 310:9 319:5 323:3 333:14 338:11,16 343:22 359:6 367:5 377:3,20 381:19 388:20 399:13 412:10 416:11,12
timeline 37:15
timely 193:4
times 17:10 21:12 52:3,18 138:13 143:9 149:6 210:2 243:1,6 258:14 260:10 282:7 342:20 344:8
timestamp 381:17 383:12 383:17
timing 236:4 240:5 250:10 250:21 253:4 277:19
title 106:17,20 107:5

titled 197:10
to's 292:19
tock 403:18
today 8:10,13 8:22 9:8,19 10:11 24:22 66:3 73:7 86:4 96:18 148:18 204:1,21 205:5 230:18 251:2 254:22 257:11 258:8 259:20 261:8,22 264:6 277:16 278:4 290:18 297:19 300:17 301:10 301:12 307:15 314:4 331:14 331:21 380:9 405:7,13 412:4 413:19
todd 2:10,13 7:5 67:6 126:16 208:8 219:13 245:15 280:7 293:19 303:11,16 354:16 358:8 412:14 418:5
together 120:8 194:10 195:3 206:17 228:19 228:19 267:7 275:8 278:20 281:21 282:2 283:21,22 284:4 303:22 317:14,19 326:1,5
told 52:17 59:12 118:10 196:13 218:12 220:11 274:22 331:2 384:22 385:18 386:11 386:15 401:11 403:15
tolerable 269:6 269:14
tomasco 147:11 185:14 212:20 213:22 214:11 357:2,8 391:8 393:1
tomasco's 403:5
tomorrow 278:21
ton 351:22 405:7
tone 188:4 332:11,12
tons 34:6
took 40:13,18 55:11 62:17 89:12,15 90:10 235:15 299:13 305:13,18 307:17 330:7 401:21
top 25:10 26:19 27:5 104:7 133:13 136:3 277:8 278:12 292:22 392:14 398:19
topic 184:16 207:10 241:9 275:9
topping 3:21 4:22 83:20 147:6 184:18 185:4,10 191:18 201:12 210:22 211:1 211:18 219:22 233:15 241:16 241:16 289:14 292:8 303:15 316:6 317:1,10 320:8 328:19 332:18 333:6 333:10,21 363:8 382:21 383:4 396:1 397:16 398:7 401:11,17 403:14
topping's 100:7 362:15 369:3 394:2
tort 208:17,22
tortious 323:4
total 89:22 90:1 132:6 138:8 198:2,5 286:10 346:7
totally 37:18 144:20
tough 407:7
trace 2:3 7:1 16:10 24:20 30:20 31:3 40:9 42:13 49:12 57:15 143:15 150:17 156:6 158:5 160:19 166:18 169:5 171:2,11 172:10 174:18 187:21 211:5 212:11 221:22 232:19 234:16 263:10 332:3 332:13 337:8 337:18 360:9 367:21 383:13 390:7 391:2 398:18 405:7 407:6 409:10 410:21 412:22 415:11
trace's 55:22 414:7

tracking 147:14
transaction 63:2 74:11 82:7 84:11,17 89:22 373:2 376:19
transcribed 419:7
transcript 5:22 403:1 418:10 418:11 419:5 419:12 420:5 420:11,17
treated 338:1 407:1
trial 251:10 257:12 296:21 319:8 404:10 411:17
tried 21:11 52:2 171:2 192:19 255:10 262:18 354:12 367:13 383:5 407:18 411:6
trouble 385:16
true 201:21 417:9
trust 127:12 247:22 251:16
trustee 414:15
truth 8:18,22
truthful 9:4,7 333:11 334:11 335:1,14 336:10,18 337:3,14 338:3
try 46:11 120:9 149:3,5 244:6 244:9 263:10 267:3 297:18 334:6 371:12 407:5 415:10
trying 20:20 33:12,19 37:14 39:16 46:12 47:1 48:7,8 58:17 61:20 80:1,5,12 88:17 94:8 97:21 98:5 119:13 124:4 132:5 143:14 144:8 151:16 154:14 155:20 157:3,7 159:16 162:21 165:8 165:15 167:12 167:18 171:15 172:10,12 177:4,9 200:14 202:9,20 215:10 263:2 291:12 295:3 296:3 317:4 334:15 347:1 352:15 354:5 390:9,13 407:9 408:4 410:21
tschmeltz 2:7
tuesday 1:12
tune 318:16
turkey 65:14
turn 104:5 189:15 298:9
turned 139:17
turning 304:2
turns 253:21
twice 314:22
two 16:2 18:2 38:10 57:21 58:4 60:6 61:18 69:12,21 71:1 87:9,10 88:10 113:20 117:22 131:19 134:6 141:15 150:14 195:9 195:10 206:16 233:14 239:18 243:3,3 251:11 255:11 267:6 267:10 275:22 276:2,3,6 285:9,11 291:12 313:22 314:11,13 315:13 324:7 325:11,22 338:20 376:6 380:7 381:21 392:17 395:11
txu 142:8,13
type 73:1 230:17 284:20
typewriting 417:8
typically 95:3,7
typo 214:20 370:17

u

u.s. 414:15
ultimate 87:14 88:15
ultimately 67:17 190:19 362:14 367:22 393:22 401:21 404:4
un 210:20
unable 61:13 98:16 312:18
unambiguous 381:5
uncontested 13:2
uncooperative 389:5 393:5
under 8:12 30:19 72:10 74:7 76:4,10 80:22 81:3,8 83:14 94:18

110:2,14 111:2
116:1 132:4
133:8 139:22
141:3 149:2
198:4 201:14
201:15 204:3
204:16 212:6
213:20 214:6
225:4 248:18
298:14 307:4
346:13 365:19
391:18 404:9,9
415:15 417:8
undercut
182:21
underneath
289:12
underpay
139:12
underscore
266:13,14
understand
8:12,15 9:15
10:2,10 12:2
12:11,15 14:22
15:2 19:8
20:12 23:11
30:9 32:6 37:9
54:16 63:18
72:12 80:9
94:8 102:14
108:14 109:13
118:19 120:17
121:4 131:4
137:12 167:15
199:3 215:4,8
215:14 217:5
217:16,22
220:22 223:12
224:13,20
225:2,6 237:19
249:5,7,15
267:16 270:6
276:5 279:19
279:21 288:6
295:3 300:4
340:22 345:6
350:11 354:4,5
361:1 379:6,11
389:4 393:5
understanding
11:1,7,7 18:13
24:6 28:11
97:7 120:2
125:18 126:4
131:8 149:21
196:6 209:11
220:1,12
267:13 384:20
413:21
understood
10:6 32:11
63:20 78:9
84:10 124:2
127:14 165:11
165:11 181:21
185:20 214:21
240:3 266:20
267:4 315:11
315:19 326:2
352:3 369:13
undisputed
78:15
unfair 335:7
408:7
unfortunately
233:14
unhappy 25:1
67:19 161:8
unilateral
73:21
unit 6:10 74:20
75:1 130:5,9
188:9 189:4
265:1,5 338:14
338:17
united 1:1 6:13
universe 86:7
unjustifiably
62:9 235:18
330:11
unlawful 138:9
140:15
unlimited
207:21
unpaid 143:2
unprofessional
408:7
unreasonable
183:2
unreasonably
62:9,10 235:18
330:11
untruthful
160:3
upcoming
279:2
update 279:22
updated 105:7
105:18 134:4
289:16
upheld 77:14
upset 160:7,9
371:19
uri 55:2 56:13
57:1,16 60:9
60:22 61:9,16
64:12,22
112:19 113:9
113:22,22
114:4,11,11
116:22 117:1
118:7,12
119:19 120:15
123:3,5 136:16
138:15 139:16
141:14 142:15
145:19 148:4
150:22 151:4
153:10,19
155:2,4 164:10
164:12 166:1,3
168:12,12,22
169:10,11
170:16,17
171:6,6 173:20

173:21 174:21
174:21 177:19
177:22 179:11
181:22 207:11
229:15 282:10
283:4 284:14
284:21 301:3
301:11 304:16
305:19,20
306:8 307:2,5
307:12,13,17
309:12 310:3
311:7,16
318:10,16
320:7,15,16
321:3 322:8,8
322:13 323:1
323:18 324:3
324:10,15
325:7 328:22
329:12 337:13
347:9,16,22
348:5 349:9,16
350:22 351:11
355:2,14 356:4
377:10
urquhart 3:10
3:14
usage 267:14
use 18:15 52:7
89:19,19 95:7
163:15 167:8
172:9 221:4
225:14 267:14
269:3 273:1
280:15 343:17
343:20 344:1,6
350:2 353:8
354:8 372:6
374:1,3 377:14
377:15 414:7
used 55:2,5,6
89:20 93:8,21
94:12 126:21
135:5 150:9,10
243:1 342:21
344:7,9 363:2
uses 117:20
242:13 244:16
using 55:10
57:22 58:1
89:19 90:2
118:8 198:22
219:8 373:22
374:2 377:6
379:20 381:19
utter 224:3
uttered 224:4

v

v 418:6 419:3
420:3
vague 11:5,14
11:21 12:8,17
13:22 19:1
20:20 21:9
22:1,22 23:12
27:13,22 29:10
29:18 30:7
31:12 32:9
34:21 41:17
42:1 50:14,22
51:7,14 52:1
53:10 54:10
56:15 57:3
60:13 61:1,11
64:15 66:18
68:5 69:9 72:6
73:16 78:4,20
82:3 83:17
85:4,20 86:8
87:1,21 90:20
95:4 96:3 97:3
97:12 98:10
107:3 108:3,16
109:18 112:7
112:15 114:13
115:4,16
117:14 119:1,9
120:4 121:1,16
122:21 123:18
124:9 126:1
127:5 128:1,15
129:4 132:17
133:22 134:15
135:2,16 143:4
149:8 153:20
168:14 169:2
169:12 170:18
170:20 171:9
175:1,18
176:13 178:20
179:12 180:7
181:16,17
182:6 185:8
186:2 191:4
194:14 195:6
196:3 197:1
198:17 199:9
199:20 201:2
201:18 204:5
204:18 206:8
206:13 208:4
208:19 215:19
217:8,11,20
218:2 219:14
220:6 221:7
223:2,18
224:17 225:22
226:15 227:22
228:8 229:2,8
230:7,19 233:7
235:9 238:2,6
238:18 240:6
245:22 246:2
247:6,18 248:9
249:19 251:7
252:6 254:6
256:5,9 257:21
260:6 261:3
262:10 271:10
272:9,19 273:7
273:17 277:20
278:6 279:9
281:10,14
282:18 283:18

285:1,19 286:5 287:1,9 293:16 294:3,22 299:1 299:10,22 301:16 302:5 302:16 305:4 305:15 306:10 306:19 307:19 309:15 310:4 311:8 312:9 319:3 321:7,14 323:6 326:18 329:19 333:12 335:3,18 336:12,20 337:5,16 339:16 340:10 341:8 348:17 349:12 351:17 352:14 353:6 355:4,17 356:8 358:2 359:7 360:21 362:11 369:7 371:14 373:18 376:21 384:5 396:18 399:22 400:16 401:1 402:10 402:17 403:20 404:16 405:4 406:6,16 407:15 414:2

vagueness 121:19 123:21

valuable 24:7 117:10 120:2 120:19

valuation 279:2 279:13

value 23:4 57:15,22 58:1 74:11 82:8,8 84:17 89:14,21 89:22 90:2,3,3 90:6 92:15 96:1,8,15,20 97:1 112:21 115:1,13 132:6 132:22 133:8 134:3,14 135:7 194:11 206:20 229:20 230:16 280:12 301:5 301:14 327:18 329:3 331:15 332:21 338:22 342:8,11,11,14 345:14 350:9 374:19 376:11 376:18 379:1

vantage 252:19

varies 253:4

various 81:11 212:3

vehemently 59:15

verdict 254:4,5 255:2,3 257:15

veritext 1:21 6:17,19 418:1 418:7 421:1

veritext.com. 418:15

version 103:7 147:18,20 345:12

versions 284:20

versus 298:10 356:13 357:17

vetted 206:21

viable 139:2,3 218:18

vice 131:4

victor 280:6

video 1:9 3:19 6:2,7,11 7:13 14:13,17 49:3 49:5,8 74:19 74:22 130:4,8 188:8 189:3 210:4 264:22 265:4 287:17 287:20 318:11 318:13 338:11 338:13,16 410:12,20 413:10 416:8 416:12

videographer 6:18

view 71:21 81:20 82:5,13 86:18 87:11 88:6 104:8 237:14 279:14 279:22 280:1 350:5,16 355:7 360:19 385:1 403:6

viewed 87:7

viewpoints 310:17

views 25:2 293:11 325:6 405:3

vincent 2:3

violated 62:10 235:16,19

violating 223:9 330:8

volatility 109:3

w

w 249:2

wacker 2:5

wait 163:9 165:16 387:8

waiting 209:17 210:17 291:15

waived 418:17

walk 91:13,18

walked 226:19 227:18

wandering 352:4

want 10:8 15:3 15:8,17 17:13 17:15 25:18 28:22 29:16 30:4 35:15 36:11,12,21,22 37:2,12 39:18 43:10,17,19 44:10 46:5 51:12,18 55:19 59:1 64:7 70:18 79:20 88:22 91:3 93:15 95:13 100:20 121:3 121:13 124:22 125:3 129:18 133:18 134:2 135:5,9 136:13 146:18 160:1,4 160:10,18 161:17,19,20 161:21 163:8 165:2,3 167:9 167:10 172:15 176:16 178:7 179:1 180:9 189:14 190:8 195:21 205:2 207:10 209:13 216:6,15,22 228:15,15 231:12,14 240:14 241:3 244:6 251:19 252:18 254:16 255:16 256:22 256:22 257:1 261:18,19 267:9 293:4 300:17 303:9 309:4,21 311:3 312:18,21 313:11 314:15 330:20 337:7 338:2 360:6,10 362:6,18 367:18 372:17 386:1,10,13,17 388:8 389:18 390:22 391:14 394:8,9 395:1 395:21 398:13 402:19

wanted 30:1,12 59:11,20 91:12 91:12 94:8 112:20 153:14 163:17 186:5 233:19 236:3,7 236:9 247:20 278:9 279:21 280:1 332:8,17 351:12 356:11 356:14 358:17 373:22 374:3,7 374:9 377:4 385:22 402:2 404:11,12 411:11 413:14 413:20 415:21 415:21

warren 2:4 7:2 13:13 146:20 168:7 192:12 291:3,8,13,17 303:4 327:9 361:5 375:4

washington 1:15,22 3:16

water 295:20

waterfall 41:8

waves 250:18

way 12:2 20:6 57:5 61:7,14 83:9 108:22 113:3,4 125:18 138:18 139:5 157:22 176:17 176:20,20 177:9 200:19 203:5 205:2,6 205:21 220:22 221:5 222:11 229:7 245:14 245:15 251:3 257:13 263:10 266:21 267:15 273:13 278:15 319:1 336:15 344:4 366:1 367:6 383:6 388:15 391:10 391:18 393:14 406:3 407:6,8 408:13

ways 124:4

we've 23:14 68:16 74:15 86:11 94:17 95:2 107:17 122:3,4 125:19 127:20 134:9 143:8 176:6 191:12 196:14 196:15 206:5 230:17 234:19 289:13 312:15 363:5 374:8 394:17 403:4 405:1,6

weather 116:13

weber 3:9 4:5 7:11,11 314:20 315:2,4,7,11,16 315:19 357:3,6 390:16 411:18 412:1,2,3,5,9 412:18 413:4,9 413:13 414:10 415:20 416:2

week 308:8 364:19 365:4 395:19

weeks 69:13,21 71:1 134:6

141:15 404:5
weird 92:14 93:4
welcome 314:16 413:3
wells 212:10 356:22
went 310:2 316:11 322:4 326:13 348:5 361:13 384:3 392:17
whinstone 18:22 20:18 21:8,22 52:19 53:1 56:14 57:2 60:8 61:10,15,19 62:22 63:3,11 63:16,17 64:11 73:15 77:15 82:1,6 84:13 97:20 98:4 103:10 110:15 110:18,20 111:4,12,22 112:4,14 116:4 122:20 131:17 137:1 139:11 139:17 140:5,7 140:8,14 141:4 141:8,13,14,16 142:2,7,13,20 181:12 183:9 183:13 198:15 199:14,17 225:3,19 226:20 230:3 247:17 248:4 250:20 251:5 251:11 256:2 257:15 258:11 262:4 273:15 275:2 279:3 282:10 296:16 297:1 298:8 307:5 309:7,13 345:2 354:22 359:1,3 365:15 368:10 369:1 370:14 372:15 372:18 373:2 376:19
whinstone's 138:8 139:9 140:6 227:7,19
whispering 6:6
willful 207:20 208:17,21 209:1,2,2
willfully 139:10
willing 26:4 78:14 220:2 221:1 275:17 374:11 376:17 377:3,14 378:15
win 195:11 242:14,16
windfall 139:19
winners 242:14 242:16
winter 55:1 60:9,21 61:9 64:12,22 113:21,22 116:22 117:1 119:19 136:16 138:15 139:16 141:13 142:14 168:12,12,22 169:10,11 170:16,17 171:6,6 173:20 173:21 174:21 174:21 177:19 177:22 179:10 181:22 207:10 229:15 311:6 311:16 322:6,8 322:13 323:17 324:10,15 325:7 328:21 329:12 337:13 355:13
wire 73:18,22
wish 254:15 407:6
withdraw 73:12 220:21 316:13
withdrawal 72:18,19
witness 2:9 7:14,17 11:2,6 11:16,22 12:9 12:19 14:1 16:9 17:13,17 17:21 18:9 19:3 21:1,11 22:6 23:2,14 27:15 28:2 29:12,20 30:9 31:13 32:10 35:1,4,7 36:19 42:20 50:16 51:2,9,16 52:2 53:12 54:12 56:17 57:4 60:15 61:2,4 61:13 64:17 65:8 66:20 68:3,6 69:11 72:8 73:18 78:6,22 79:6,9 82:5 83:19 85:6,22 86:4 86:10 87:3 88:1 90:22 91:7,11 92:1,8 93:15 95:6 96:5,11 97:5 97:14 98:11 102:17 103:3 104:10 106:4

107:5 108:6,18	182:8 183:5,21	240:1,8,10	311:22 312:11
109:20 112:9	184:3 185:9	242:7 244:4	319:4 321:1,8
112:17 114:15	186:4 187:8,10	245:12,14,21	321:13,16
114:18 115:6	187:12,15	246:1 247:8,20	323:7,9,12,21
115:10,18	188:2,4 191:6	248:11 249:21	326:20 328:2
117:16 119:3	192:8,16	251:9 252:8	329:21 331:2,6
119:11 120:6	194:19 195:8	253:12 254:8	332:2,5 333:14
121:3,18 123:1	196:5 197:3,15	254:18 255:7	334:14 335:4
123:11,20	198:19 199:11	256:10 258:1	335:17,19
124:11 126:3,8	199:22 201:4,8	258:15 259:3	336:5,14,22
126:11 127:7	201:10,19,21	259:10 260:4	337:7,17
128:3,17 129:6	204:7,20	261:7 262:12	339:17 340:1,4
132:19 133:16	205:19 206:15	264:19 265:16	340:11,17
134:2,17 135:4	208:5,7,11,13	266:9 268:4	341:9,22
135:18 143:6	208:21 211:7	270:4,10	342:17 347:20
143:13 144:1,4	213:5 215:8,21	271:13 272:11	348:16,20
144:7,22 145:3	216:2,11	272:21 273:9	349:14 351:5
145:6,8,10,12	217:13 218:4,7	273:19 277:22	351:18 352:15
145:14 149:10	218:11 219:12	278:8 279:6,11	352:18,20
150:7 151:22	219:19 220:8	280:18 281:16	353:1,7,11
152:2 153:4,6	220:15,19	281:20 282:20	355:5,19 356:9
153:22 154:4	221:9,16,18	283:20 285:3	356:11 358:4,6
156:21 158:13	223:4,11,20	285:21 286:6	359:9 360:2,4
158:21 159:12	224:19 226:2	287:2,11	360:6,8 361:1
166:14 168:17	226:17 228:2	288:10,19	362:13 367:20
169:5,13,20,22	228:10,14	293:18 295:7	368:15 369:9
171:2,11,15,20	229:4,10,17,22	298:1 299:3,12	371:15 373:20
172:1,4,7,9	230:9,21 231:4	300:2,5,9	377:1 381:18
173:2 174:5	232:19 233:9	301:18 302:7	383:13 384:7
175:3,9 176:16	234:14 235:11	302:18 305:6	390:22 392:10
179:13,15,17	235:14 236:16	305:17,22	393:4,10,17
179:20 180:8	236:18 237:4	306:4,12,21	396:20 397:10
180:12,14	238:8,17,19,22	308:2 309:17	397:22 400:2,6
181:15,18	239:2,11,16	310:6 311:10	400:18 401:3

401:15 402:11 402:18 403:11 404:1,18 405:6 405:20 406:9 406:18 407:17 409:1,8,10,12 409:14,17,21 410:2,5,14 412:22 413:3,5 414:4 416:1 417:4,6,10 418:8,10 419:1 419:4,11 420:1 420:4,15
witnesses 173:14
witness' 418:13
wolfshohl 2:16 13:16,20 14:9 14:22 16:17,19 24:13,19 26:17 30:17 86:20
wonderful 325:15
wondering 366:14 378:10 378:11
word 28:9 67:11 108:19 117:20 143:7 149:22 163:15 167:8 176:1 224:3,4 225:14 232:6 244:17 249:10 260:21 269:3 270:4,11 273:2,4 306:21 350:2 354:8 359:5 372:6 388:22 399:8
words 27:10 31:1,10,16 47:7 96:11 105:21 114:20 117:8 136:8 148:15 244:5 246:21 247:13 272:6 309:21 309:22 331:14 362:15 368:20 394:3
work 24:6 67:15 68:11 72:22 73:14 76:11 294:14 325:16 333:5 361:16 412:20
worked 283:7
working 206:17 267:7 295:16,17,18 306:4 308:5,9 308:15 333:16 353:15 355:13 356:4
works 44:2 390:7
world 256:19
worries 291:13
worth 259:18 376:8
write 93:16 293:6 312:19 341:12 364:5 376:6
writing 41:14 398:21 399:10
written 277:17 278:1 332:6 388:16
wrong 37:17 80:8 93:10 109:21 128:22 220:4 265:17 384:3
wrote 32:8 38:5 49:13 211:17 293:4 331:14 346:2 375:18 383:3,18
wus 268:16 272:15

x

x 4:6 5:2 250:14

y

y'all 250:13
yada 349:16,17 349:17
yeah 22:6 23:2 31:21 35:1 38:7 44:5 60:4 72:2 74:16 81:2 83:19 96:18 104:11 119:11 123:20 136:4 142:18 162:11 169:5 192:2,12 193:6 195:17 196:5 197:3 198:19 208:10 214:20 218:11 223:17 230:9,21 231:20 235:7 236:5 238:17 254:8 264:2,4 265:16 271:13 271:22 272:5 272:11,21 279:6 281:20 285:12 300:9 302:7 303:5 305:12 312:21 314:5,17 318:12 321:21 322:10 323:9 325:20 327:6 327:11 332:2 334:14 339:21 339:22 340:3 342:17 345:19 351:5 352:3

353:7 355:5,19
356:9 358:4
359:9 361:19
362:13 363:19
366:6 372:14
373:20 377:1
381:3,9,14,18
384:7 402:11
403:11 404:18
405:6,20
406:18 409:1
410:18 412:13
412:18 413:7
416:2
year 23:18
119:16 122:1
132:6 150:20
194:11 243:17
244:18 245:3,9
245:19 246:11
246:17 247:3,9
247:17 248:8
252:3 253:5,14
254:4 255:3,16
256:2 257:16
258:11 260:1
262:4 264:10
269:1,22 271:1
271:17 273:16
340:22 407:7
yearly 122:5
years 119:15
122:6 148:10
192:20 221:19
222:20 223:8
254:3,22
255:21 256:20
257:12 261:22
264:6 405:10
yesterday
65:13 293:20
303:12
yielded 90:16
york 3:11,11

z

zaharis 3:4
7:10
zero 38:3,22
39:4,12,13
41:3,13,16
42:6 52:14
66:16 113:8,8
146:2,5 198:14
230:11,12
301:6 326:14
326:15 327:1
327:19 329:4
331:16 332:22
zone 381:19
zoom 2:4,11,16
3:3,3,4,9,14,19
3:20,20,21

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.