

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

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

**EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I)  
AUTHORIZING DEBTORS TO PAY PRE-PETITION EMPLOYEES’ EXPENSES AND  
PAYROLL TAXES; AND (II) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (Central Prevailing Time) on September 23, 2024.**

**If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

**A hearing will be conducted on this matter on Monday, September 23, 2024, at 9:00 a.m. (Prevailing Central Time) in Courtroom 400, 4<sup>th</sup> Floor, 515 Rusk Avenue, Houston, Texas 77002.**

**Participation at the hearing will be either in person or by an audio and video connection.**

**Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez’s conference code number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge’s home page. The meeting code is “JudgePerez.” Click the settings icon in the upper right corner and enter your name under the personal information setting.**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services 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 the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



**Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Perez’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):

**Relief Requested**

1. By this Emergency Motion of Debtors for Entry of an Order (I) Authorizing Debtors to Pay Pre-Petition Employees’ Expenses and Payroll Taxes; and Granting Related Relief (the “Motion”), the Debtors request entry of an order (a) authorizing but not directing them to pay all pre-petition Employee Expenses and Payroll Taxes (collectively, the “Employee Obligations”) and related fees, costs, and expenses incident to the foregoing;<sup>2</sup> and (b) granting related relief. The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests related to such expenses and obligations.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of Texas (the “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). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The basis for the relief requested herein are sections 105(a), 363(b), and 507 of

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<sup>2</sup> “Employee Expenses” and “Payroll Taxes” are terms defined below.

title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 6004, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

### **General Background**

5. On August 24 and August 29, 2024 (the “Petition Dates”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). The cases are jointly administered. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. The Debtors are a technology company. The Debtors’ main activity involves utilizing proprietary technology to self-mine bitcoin, with the goal of increasing sustainability and cost-efficiency.

7. Information regarding the circumstances leading to the commencement of these chapter 11 cases and additional information regarding the Debtors’ businesses and capital structure is set forth in the Declaration of David Dunn in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), (ECF No. 35), which is incorporated by reference herein.<sup>3</sup>

### **Specific Background**

#### **A. Debtors’ Workforce**

8. As of the Petition Dates, the Debtors employ approximately 68 employees (each, a “Employee”). The Employees perform several functions in connection with the Debtors’ cryptocurrency mining operations that are critical to operate the Debtors’ business effectively.

#### **B. Employee Expenses**

9. In the ordinary course of business, certain Employees incur, and are reimbursed by

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<sup>3</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

the Debtors for, business expenses in connection with their employment duties (collectively, the “Employee Expenses”). Employees are entitled to reimbursement of certain reasonable and necessary expenses incurred while performing their employment duties, including expenses relating to transportation, lodging, and dining that are incurred in connection with business travel, miscellaneous office supplies and expenses.

10. In accordance with the Debtors’ policies, Employees submit receipts or other supporting documentation to the Debtors covering the Employee Expenses exceeding \$25.00 that the Employees seek to have reimbursed. The Debtors utilize an expense management system through Expensify, Inc. (“Expensify”) to help track and process claims by Employees for Employee Expenses. Expensify processes the Employees’ reimbursement requests and generates expense reports, which are reviewed by and subject to approval of the Employees’ direct supervisor and the Debtors’ finance department. Upon approval of an expense report, the Debtors, through Expensify, reimburse the applicable Employee for the Employee Expenses by direct deposit to the Employee.

11. As of the date of this Motion, the Debtors owe their Employees approximately \$10,226.11 in pre-petition Employee Expenses. By this Motion, the Debtors seek authorization to pay the foregoing pre-petition Employee Expenses. Further, to the extent there are other Employee Expenses relating to the pre-petition period that become due and owing postpetition, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. If any, the Debtors estimate that those additional pre-petition Employee Expenses should not exceed \$5,000 in total.

**C. Payroll Taxes**

12. Federal and state laws require the Debtors to withhold amounts from each

Employee's gross pay related to federal, state, and local income taxes, including Social Security and Medicare taxes, for remittance to the appropriate federal, state, or local taxing authorities (collectively, the "Withheld Amounts"). The Debtors must then match, from their own funds, amounts for Social Security and Medicare taxes and additional amounts for federal and state unemployment insurance based on a percentage of gross payroll (collectively, the "Employer Payroll Taxes" and, together with the Withheld Amounts, the "Payroll Taxes"). The Debtors then remit the Payroll Taxes to the relevant government authorities. In the aggregate, the Payroll Taxes, including both the employee and employer portions, total approximately \$80,100.00 per pay period (which is biweekly).

13. As of the date of this Motion, the Debtors owe approximately \$36.32 in pre-petition Payroll Taxes. By this Motion, the Debtors seek authorization to pay the foregoing pre-petition Payroll Taxes. Further, to the extent there are other Payroll Taxes relating to the pre-petition period that become due and owing post-petition, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business.

#### **Basis for Relief**

14. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor's request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., In re BNP Petroleum Corp.*, 642 F. App'x 429, 434-35 (5th Cir. 2016); *In re Cont'l Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using,

selling, or leasing the property outside the ordinary course of business.”); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

15. In addition, under section 1107(a) of the Bankruptcy Code, a debtor has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” *See In re CoServ, L.L.C.*, 273 B.R. at 497 (holding that sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay pre-petition claims); *see also In re Tusa-Expo Holdings, Inc.*, Case No. 08-45057-DML-11, 2008 WL 4857954, at \*1 (Bankr. N.D. Tex. Nov. 7, 2008); *In re CEI Roofing, Inc.*, 315 B.R. at 56; *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003). Accordingly, the Bankruptcy Code authorizes the post-petition payment of pre-petition claims where, as here, such payments are important to preserving the going-concern value of a debtor’s estate.

#### **I. Payment of Employee Obligations Is Essential to Debtors’ Successful Reorganization**

16. The Employees are vital to the Debtors’ businesses. Any delay in paying, or failure to pay, the Employee Expenses could impair the morale of the Debtors’ workforce at the time when their dedication, confidence, retention, and cooperation are crucial. Indeed, without this relief, otherwise-loyal Employees may seek other work opportunities, thereby putting at risk the

Debtors' continued operation as a reorganized enterprise. The reimbursement of Employee Expenses is necessary because any other treatment of Employees would be inequitable. Employees who have incurred Employee Expenses should not be forced to bear the cost of the Employee Expenses personally, especially because the Employees incurred the Employee Expenses for the Debtors' benefit, in the course of their employment by the Debtors, and with the understanding that they would be reimbursed.

17. The Debtors seek authority to pay Payroll Taxes to the appropriate federal and state entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Payment of Payroll Taxes would not prejudice other creditors because Payroll Taxes that the Debtors withhold are held in trust for the taxing authorities and the withheld funds are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 66–67 (1990) (concluding that withholding taxes are property held by a debtor in trust for another and are therefore not property of debtor's estate). In any event, Payroll Taxes generally give rise to priority claims under section 507(a)(8) of the Bankruptcy Code and would be entitled to payment in full under any subsequent plan of reorganization.

18. For the foregoing reasons, payment of the Employee Obligations, as requested herein and in accordance with the Debtors' pre-petition business practices, is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the relief requested by the Debtors.

19. Courts in this district and others have frequently approved payment of pre-petition claims similar to those described herein as a routine matter in similar cases. *See, e.g., In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. May 10, 2022) (ECF No. 118);

*In re Basic Energy Services, Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 17, 2021) (ECF No. 44); *In re CBL & Associates Properties, Inc., et al.*, Case No. 20-35226 (DRJ) (Bankr. S.D. Tex. Nov. 2, 2020) (ECF No. 69); *In re Fieldwood Energy LLC*, Case No. 20-33948 (MI) (Bankr. S.D. Tex. Aug. 4, 2020) (ECF No. 51); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. June 26, 2020) (ECF No. 75); *In re Gavilan Res., LLC*, No. 20-32656 (MI) (Bankr. S.D. Tex. May 18, 2020) (ECF No. 53); *In re Speedcast Int'l Ltd.*, No. 20-32243 (MI) (Bankr. S.D. Tex. April 27, 2020) (ECF No. 115); *In re EP Energy Corp.*, No. 19-35654 (MI) (Bankr. S.D. Tex. Oct. 4, 2019) (ECF No. 58); *In re Fieldwood Energy LLC*, No. 18-30648 (DRJ) (Bankr. S.D. Tex. Feb. 16, 2018) (ECF No. 75). Similar relief is also appropriate here.

**Applicable Financial Institutions  
Should Be Authorized to Receive, Process, Honor, and  
Pay Checks Issued and Transfers Requested to Pay Employee Obligations**

20. The Debtors further request that the Court authorize applicable financial institutions (the “Banks”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Employee Obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new post-petition checks or effect new post-petition electronic funds transfers in replacement of any checks or fund transfer requests on account of pre-petition Employee Obligations dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.



**Emergency Consideration**

21. Pursuant to Bankruptcy Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion because relief is necessary to avoid immediate and irreparable harm that a delay in paying pre-petition Employee Obligations could cause to the continuation of the Debtors' operations and the restructuring of the enterprise, particularly in light of the *de minimis* amounts.

**Reservation of Rights**

22. Nothing contained herein is intended to be or shall be deemed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (b) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (c) an agreement or obligation to pay any claims; (d) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (e) an admission as to the validity of any liens satisfied pursuant to this Motion; or (f) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any other party in interest's rights to dispute such claim subsequently.

**Notice**

23. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d).

**No Previous Request**

24. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 17th day of September, 2024.

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

/s/ Patricia B. Tomasco  
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*Proposed Counsel to the Debtors and  
Debtors-In-Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

*/s/ Patricia B. Tomasco* \_\_\_\_\_

Patricia B. Tomasco

**Certificate of Service**

I, Patricia B. Tomasco, hereby certify that on the 17th day of September, 2024, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United State Bankruptcy Court for the Southern District of Texas.

*/s/ Patricia B. Tomasco* \_\_\_\_\_

Patricia B. Tomasco

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

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

**ORDER GRANTING THE EMERGENCY MOTION OF DEBTORS  
FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTORS TO PAY  
PRE-PETITION EMPLOYEES’ EXPENSES AND PAYROLL TAXES;  
AND (II) GRANTING RELATED RELIEF  
(Relates to ECF No. \_\_\_\_)**

Upon the motion, dated September 17, 2024 (the “Motion”)<sup>2</sup> of Rhodium Encore, LLC, and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 authorizing, but not directing, the Debtors to (i) pay all Employee Obligations and related fees, costs, and expenses incident to the foregoing, including amounts owed to third-party service providers and administrators and taxing authorities, and (ii) maintain, and continue to honor and pay amounts with respect to, the Debtors’ business practices, programs, and policies for their employees as such were in effect as of the Petition Date and as such may be modified, amended, or supplemented

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services 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 the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

from time to time in the ordinary course of business; and (b) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code, to pay all pre-petition Employee Expenses and Payroll Taxes and any related fees, costs, and expenses incident to the foregoing.

2. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to such obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or

automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

3. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, and to replace any pre-petition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any pre-petition amounts that are authorized to be paid pursuant to this Order.

4. Nothing contained in the Motion or this order or any payment made pursuant to the authority granted by this Order is intended to be or shall be deemed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) an agreement or obligation to pay any claims; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) an admission as to the validity of any liens satisfied pursuant to this Motion; or (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

5. Notwithstanding anything contained in the Motion or this Order, any payment to be made, and any relief or authorization granted herein, shall be subject to, and must be in compliance with, the terms and conditions in any interim or final order entered by the Court approving the Debtors' entry into any post-petition debtor in possession financing facility and authorizing the Debtors' use of cash collateral, including any approved budget in connection therewith (as may be updated and approved from time to time in accordance with the terms of any

such interim or final order) (each such order, a “DIP Order”). To the extent there is any inconsistency between the terms of a DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

6. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

7. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

8. The 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: \_\_\_\_\_

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ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE