

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

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

**OBJECTION TO NICHOLAS CERASUOLO’S MOTION FOR AN ORDER
ALLOWING LATE FILED CLAIM TO BE TREATED AS TIMELY FILED**
(Relates to ECF No. 881)

Rhodium Encore and its debtor-affiliates (collectively, the “Debtors”) hereby file this objection (“Objection”) to Nicholas Cerasuolo’s (“Cerasuolo”) *Motion for an Order Allowing Late Filed Claim to be Treated as Timely Filed* (“Motion”) and state as follows:

INTRODUCTION

1. Cerasuolo is the former Chief Financial Officer of Rhodium Enterprises, Inc. (“REI”) and is currently a director of Imperium Investment Holdings, Inc., an entity that holds equity interests in both REI and Rhodium Technologies LLC. Cerasuolo has known about these bankruptcy cases from their inception. Specifically, one or more of Debtors’ counsel conferred with Mr. Cerasuolo immediately after its inception, specifically on August 24, 2024, September 6, 2024, September 23, 2024, September 24, 2024, and October 24, 2024, including regarding Mr. Cerasuolo’s claims for indemnity.

¹ 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.



2. Despite knowing about the cases from their inception, knowing about his potential claim for indemnity and participating in them, Cerasuolo did not file a proof of claim by the November 22, 2024 deadline.² Cerasuolo claims that the reason he did not file a timely proof of claim is because he did not receive notice of the bar date. But that is no excuse here. Cerasuolo has been extensively involved in these cases. He certainly should have been aware of the bar date, and even if he was not, he has not explained why he waited nearly seven months after the petition date and four months after the bar date to file his proof of claim.

3. Cerasuolo's lengthy delay will prejudice not just the Debtors, but also other constituencies in the case. The Debtors are on the cusp of consummating a transaction that will pay allowed claims in full and provide a substantial return to equity holders. The various constituencies (the Special Committee, Imperium, SAFEs, common stock holders) have already kicked off plan mediation, and are actively seeking to move up the mediation session with a judge from May 20, 2025 to sometime in April. The Debtors and those constituencies were entitled to rely on the bar date to understand the quantum of claims so that they can constructively discuss the remaining issues. And if the claim is permitted, the Debtors will now need to go through the additional expense of objecting to the claim on the merits, which will reduce recoveries available for equity.

4. For each of these reasons, the Debtors request that the Court deny the Motion.

² The proof of claim asserts an unliquidated and contingent indemnity claim, which cannot be allowed under 11 U.S.C. § 502(e).

BACKGROUND

5. On August 24, 2024 and August 29, 2024 (together, the “Petition Dates”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors did not schedule any claims for Cerasuolo.

6. On October 15, 2024, the Debtors filed an *Emergency Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, (II) Approving the Form of Proofs of Claim and the Manner of Filing, (III) Approving Notice of Bar Dates, and (IV) Granting Related Relief* (“Bar Date Motion”) (ECF No. 269) and on October 18, 2024, the Court entered an order approving the Bar Date Motion (“Bar Date Order”) (ECF No. 284). The Bar Date Order set the bar date, except in the cases of governmental units and certain other exceptions, for November 22, 2024, at 5:00 p.m. (“General Bar Date”).

7. On October 24, 2024, the Debtors’ noticing and claims agent (“Claims Agent”) served a *Notice of Deadlines for the Filing of Proofs of Claim* (“Bar Date Notice”) and *Official Form 410 Proof of Claims* to all parties listed on the Debtors’ matrix. *See* ECF No. 355. Because the Debtors did not schedule a claim for Cerasuolo, he was not listed on the Debtors’ matrix and, consequently, was not served with the Bar Date Notice.

8. Cerasuolo, however, plainly had notice of the bankruptcy.³ Shortly after the bankruptcy cases were filed, Cerasuolo met with the Debtors’ counsel on September 23, 2024, September 24, 2024, and October 24, 2024.

9. On March 22, 2025, Cerasuolo filed a proof of claim against Rhodium Enterprises, Inc. (“Cerasuolo Claim”) with the clerk of the Bankruptcy Court for an unliquidated amount. The

³ Even Cerasuolo admits that he “was aware of the cases generally.” Motion ¶ 5.

Cerasuolo Claim is based on: (i) the indemnity provisions contained in the Bylaws of REI; and (ii) a February 10, 2023 indemnification agreement with REI.⁴

10. The same day, Cerasuolo filed the Motion (ECF No. 881). Cerasuolo argues that the Cerasuolo Claim should be allowed because Cerasuolo did not receive the Bar Date Notice, mistakenly believed that Imperium's counsel was representing his direct interests, and there is no prejudice to the Debtors because the plan has not yet been filed.

OBJECTION AND ARGUMENT

11. The Bar Date Order established November 22, 2024, as the deadline for all non-governmental entities holding or wishing to assert a claim against the Debtors. While it is true that Cerasuolo was not served with a copy of the Bar Date Notice, he knew about the bankruptcy cases, extensively participated in the cases by meeting with counsel for the Debtors, and the Bar Date Notice was published in the *New York Times* and the *Houston Chronicle*. His late claim prejudices multiple in-the-money constituencies in these cases, because, if the claim is permitted to proceed, the estate will need to incur additional expenses objecting to the claim itself. Under these facts, Cerasuolo has no viable excuse for filing the Cerasuolo Claim four months after the General Bar Date.

12. Federal Rule of Bankruptcy Procedure 3003(c)(3) requires courts to fix the time within which proofs of claim may be filed in chapter 11 cases. Rule 9006(b) states that where an act was not done within the period ordered by the Court, the Court may “for cause shown ... on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.”

⁴ The Cerasuolo Claim must be disallowed on the merits for multiple reasons, including because it is a contingent reimbursement claim under 11 U.S.C. § 502(e). The Debtors reserve all rights to object to the merits of the claim at the appropriate time.

13. The Supreme Court has set out a four factor test for courts to consider when determining whether the failure to timely act is excusable neglect. Those factors are: (i) the danger of prejudice to the debtor; (ii) the length of the delay and its potential impact on judicial proceedings; (iii) the reason for the delay, including whether it was within the reasonable control of the movant, and (iv) whether the movant acted in good faith. *Pioneer Inv. Serv. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380, 395 (1993). Of the four factors listed above, the courts assign a greater weight to the third factor than the others. *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 120 (Bankr. S.D.N.Y. 2010). Cerasuolo bears the burden of proof to establish excusable neglect, *In re ASARCO, LLC*, 2008 WL 4533733, *1 (Bankr. S.D. Tex. Oct. 3, 2008), and Cerasuolo fails to meet his burden with respect to each of the factors.

I. Granting The Motion Will Prejudice The Debtors And The Other Constituencies In These Cases

14. The first factor is the danger of prejudice to the debtor. *Pioneer*, 507 U.S. at 395. Courts also will consider the danger of prejudice to creditors and other constituencies in the cases. *ASARCO, LLC*, 2008 4533733, at *2

15. Cerasuolo argues that there is no prejudice to the Debtors because the Debtors have yet to file a plan, mediation is scheduled for May 20, 2025, and “[c]onfirmation of any plan would logically need to occur after that date.” Motion ¶ 13. Cerasuolo is wrong. The parties to the mediation order already have begun having mediation sessions amongst themselves, and are actively seeking to move up the mediation session with a judge to sometime in April. The Debtors will not disclose the contents of those communications because they are protected by the mediation privilege, but it should not surprise anyone that the focus of those discussion is to “consensually resolve several issues related to the proposed plan of reorganization.” ECF 896. Prejudice from

a late-filed claim is greater if it extends into the period when the plan is being “*negotiated*,” drafted, filed or confirmed.” *ASARCO, LLC*, 2008 WL 4533733, at *2 (emphasis added).

16. Here, the parties in these cases “negotiat[ing]” and have begun “draft[ing]” a plan—including extensive analysis and discussion of the allocation of funds, heightening the prejudice from the late-filed claim by “increase[ing] the overall burden” to all constituencies. *Id.*; and see *In re Cornerstone Valve LLC*, 2021 WL 1731770, at *3-4 (Bankr. S.D. Tex. Apr. 27, 2021); *ASARCO*, 2008 WL 4533733, at *2 (“MMIC’s untimely proof of claim would prejudice not only the Debtor, but also creditors such as the Subsidiary Fiduciaries who have relied upon the claims register in negotiating a settlement agreement with the Debtor. Plan confirmation will take place soon. The Subsidiary Fiduciaries have engaged in settlement negotiations with the Debtor that involve assessments of how the various creditor constituencies, including the Subsidiary Fiduciaries, might share in assets of the Debtors. A sizeable and untimely proof of claim by MMIC could prejudice the parties to these negotiations and perhaps open the flood gates to other untimely claims.”).

17. Cerasuolo also ignores the fact that his late claim will prejudice the Debtors and the various constituencies in this case because it will result in more litigation. When the Whinstone transaction closes, the Debtors anticipate having enough funds to pay allowed claims in full and having a substantial return to equity. If his tardiness is excused, the Debtors and equity interest holders will be forced to expend additional costs objecting to the claim on the merits. These additional costs will come out of their recoveries. *ASARCO*, 2008 WL 4533733, at *2. Therefore, the first *Pioneer* factor weighs against granting the Motion.⁵

⁵ Cerasuolo also argues that if the Debtors are solvent then “litigation over” whether his asserted indemnity claim is a general unsecured claim or an administrative expense is “unlikely.” Motion ¶ 13. This argument is besides the point. If Cerasuolo believes he has a valid administrative expense, he is free to seek relief. He has not done so. This Motion only concerns his request to have a late proof of claim deemed timely filed.

II. Cerasuolo's Four-Month Delay In Filing The Proof Of Claim Is Inexcusable

18. The second and third *Pioneer* factors, which are often considered in tandem, are the length of the delay, its impact on judicial proceedings, and the reason for the delay. *Pioneer*, 507 U.S. at 395; *ASARCO*, 2008 WL 4533733, at *2.

19. Here, Cerasuolo filed his proof of claim and Motion four months after the Bar Date. This delay would not be “egregious” for a trade creditor or for a different person or entity that had not been involved in the Debtors’ bankruptcy cases. *See Cornerstone Valve*, 2021 WL 1731770, at *4. However, it is inexcusable for an individual such as Cerasuolo, who have been extensively involved in these bankruptcy cases from the outset. *ASARCO*, 2008 WL 4533733, at *3. Cerasuolo admits that he was aware of the bankruptcy cases. Motion ¶ 5; *ASARCO*, 2008 WL 4533733, at * 3 (“Movants admit that they were aware of the Debtor's bankruptcy”). He also has ready access to the bankruptcy docket, which is available free of charge on Veritas’ website. *ASARCO*, 2008 WL 4533733, at * 3. At the outset of these cases, he conferred with one or more of Debtors’ counsel on three separate occasions. Under these facts, Cerasuolo certainly had constructive notice of the Bar Date. *Id.*⁶ Therefore, the second and third *Pioneer* factors weigh against the Motion.

III. The Final *Pioneer* Factor Requires The Court To Deny The Motion

20. The final *Pioneer* factor is whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395. In evaluating this factor, courts will consider the movant’s diligence, “indifference to

⁶ Cerasuolo also argues that the Debtors should have scheduled him as a creditor, and therefore included him in the matrix, because they “could have determined from their records that Cerasuolo had at least a contingent claim,” and “the Debtors had sufficient contact with Cerasuolo to enable the Special Committee him in connection with its investigation and could have provided him with actual notice of the bar date.” Motion ¶ 17. Cerasuolo is wrong yet again. It is “irrelevant” whether a debtor “knows” that potential claims exist. *ASARCO*, 2008 WL 4533733, at *3.

bankruptcy procedures,” and “fail[ure] to monitor the docket.” *ASARCO*, 2008 WL 4533733, at * 4.

21. Here, as explained above, Cerasuolo had notice of the bankruptcy from its inception. Yet, he did not file a proof of claim until March 2025. At a minimum, his conduct demonstrates a lack of diligence, indifference to bankruptcy procedures, and a failure to monitor the docket, which demonstrates that Cerasuolo was not “so careful or vigilant as to overcome the weight of the previous three factors.” *ASARCO*, 2008 WL 4533733, at * 4; *see Cornerstone Valve*, 2021 WL 1731770, at *4 (“Valve Venture’s failure to timely file its Proof of Claim is inexplicable given the parties’ course of performance. Valve Venture was aware of the bankruptcy and its need to file a Proof of Claim well in advance of the general bar date.”).

WHEREFORE, premises considered, the Court should deny the Motion and grant any other appropriate relief.

Respectfully submitted this 9th day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Objection was served on the 9th day of April, 2025, via the Clerk of the Court through the CM/ECF system to all parties who have appeared in this case through counsel or who have submitted a request for service by CM/ECF.

/s/ Patricia B. Tomasco
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