

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

In re:
RHODIUM ENCORE, LLC, et al.¹,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**MIDAS GREEN TECHNOLOGIES, LLC'S MOTION FOR MANDATORY
WITHDRAWAL OF REFERENCE PURSUANT TO 28 U.S.C. § 157 AND
RULE 5011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
FOR ABSTENTION**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

Represented parties should act through their attorney.

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).



There will be a hearing on this motion on September 23, 2025, at 1:00 p.m. (Prevailing Central Standard Time) in courtroom 400, 515 Rusk Street, Houston, TX 77002.

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INTRODUCTION

1. Midas Green Technologies, Inc. (“Midas”) moves, pursuant to 28 U.S.C. §157(d) and Rule 5011 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for withdrawal of the references of (I) Debtors’ Summary Judgment in Support of Amended Omnibus Objection to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC, and (II) Debtors’ Motion to Estimate Contingent and Unliquidated Claims of Midas Green Technologies LLC in this adversary proceeding. The issues presented in the Debtors’ motions involve non-bankruptcy federal law and substantial material questions regarding patent infringement liability and damages extending therefrom, matters that are more appropriately determined by the District Court. In addition, pursuant to 28 U.S.C. § 1334(c), Midas seeks abstention on the grounds that the claims at issue are non-core, arise entirely under state and other non-bankruptcy law, and are more appropriately adjudicated outside the Bankruptcy Court.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1334. Under 28 U.S.C. § 1334(b), the district courts have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11. Pursuant to 28 U.S.C. § 157(a), this District has referred such matters to the United States Bankruptcy Court for the Southern District of Texas.

3. Withdrawal of the reference is governed by 28 U.S.C. § 157(d) and Rule 5011 of the Federal Rules of Bankruptcy Procedure. Abstention is governed by 28 U.S.C.

§ 1334(c)(1) and (c)(2). This motion seeks relief under both provisions.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409 because the underlying bankruptcy case is pending in this District, and the adversary proceeding from which this motion arises was referred to the Bankruptcy Court for the Western District of Texas.

5. On January 13, 2022, Midas filed a patent infringement suit against Rhodium and its numerous subsidiaries in the Western District of Texas (the “District Court”), *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., et al*, Case No. 6:22CV-00050-ADA. According to Local Rule 5011-1, this Motion for Withdrawal shall be first filed in this Court, with this Court providing notice to the District Court.

A motion to withdraw the reference and any responses thereto shall be filed under the style and number of the bankruptcy case or adversary proceeding in which reference is sought to be withdrawn and shall be filed with the Clerk of the Bankruptcy Court. The Clerk of the Bankruptcy Court will transmit the motion to withdraw the reference and timely filed responses to the District Court. (L.R. 5011-1(a)).

BACKGROUND

6. On July 29, 2025, Rhodium filed two motions: (I) Debtors’ Summary Judgment in Support of Amended Omnibus Objection to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC (“MSJ”), and (II) Debtors’ Motion to Estimate Contingent and Unliquidated Claims of Midas Green Technologies LLC (“Motion to Estimate”). Withdrawal of the reference is governed by 28 U.S.C. §157(d) and Rule 5011 of the Bankruptcy Rules. Accordingly, Midas respectfully moves this Court to withdraw the references of the pending motions in this adversary proceeding. Mandatory withdrawal is required where resolution of the dispute necessitates substantial and material

consideration of non-bankruptcy federal law. The pending motions raise issues outside the scope of the Bankruptcy Code, implicate rights that exist independently of Title 11, and, in light of the parties' jury trial demand, cannot be finally determined by the Bankruptcy Court without consent.

7. In the MSJ, Rhodium asks this Court to make a determination that the Midas infringement claims are baseless as a matter of law under 35 USC § 271. (MSJ ¶¶48-65). Then, in the Motion to Estimate, Rhodium asks this Court to estimate the Midas claims at zero, asserting that this Court would find no infringement (Motion to Estimate, ¶¶46-47). In this way, both of Rhodium's motions require this Court to do a deep-dive evaluation of patent law, immersion cooling technology, and the facts of the underlying patent case.

8. A court in the Southern District of Texas has determined that a finding of patent infringement liability is subject to mandatory removal under § 157(d.) *In re Mechanical Indus. 2008 Bankr. Lexis 5177 at *10 (SDTX 2008)*. Further, if the assessment of damages relies on a finding of infringement liability, then any Motion to Estimate must be withdrawn as well. (*Id.* at * 10-12).

9. The District Court retains full jurisdiction with regard to substantive patent law issues, including claim construction and determinations of infringement. As a result, this Court does not have the authority to adjudicate whether or not Rhodium infringes Midas' Patent.

10. As this court cannot adjudicate infringement in the District Court matter, it also cannot estimate the value of the monetary claims. To do so would exceed the

authority of this Court and wrongly obstruct the jurisdiction of the District Court. This Court should invoke § 157(d) to mandatorily remove the infringement liability portions of the MSJ and Motion to Estimate in its entirety.

STATEMENT OF FACTS

11. On January 13, 2022, Midas filed a patent infringement suit against Rhodium and its numerous subsidiaries in the Western District of Texas (the “District Court”), *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., et al*, Case No. 6:22CV-00050-ADA. In the Third Amended Complaint (“TAC”), Midas alleged that Rhodium’s immersion cooling systems located in its Temple and Rockdale facilities infringe both U.S. Patent No. 10,405,457 (the “457 Patent”) and U.S. Patent No. 10,820,446 (the “446 Patent”).

12. Discovery in this case closed on February 9, 2024, and the District Court held a pre-trial conference on April 9, 2024. At the pre-trial conference, the District Court excluded the portion of Midas’s expert damages report addressing lost profits, leaving only the reasonable royalty analysis as the basis for damages. In its Opposition to the Motion to Estimate, Midas revised its damages model, accordingly, limiting it to reasonable royalty calculations. Consistent with that revision, Midas will seek leave to amend its Proof of Claims to reflect only reasonable royalty damages, as set forth in the motion filed concurrently herewith.

13. The Court also excluded a portion of Midas’s Expert Report regarding Infringement but granted Midas the opportunity for the expert to revise the report.

14. The District Court also addressed Rhodium’s Motion for Summary Judgment

of Non-Infringement. At the midpoint of arguing summary judgment, the court paused the argument and became skeptical of whether or not there was infringement, and indicated it was leaning toward a dismissal. However, the Court did not go so far as to make that determination but indicated that it would conduct additional investigation. The Court stated the following:

“MR. KOLEGRAFF: Your Honor, would we be able to readdress this—after we get Pokharna's report redone, would we be able to readdress this issue on the motion for summary judgment?”

THE COURT: Well, you know, you've had your chance, but obviously, it's a fairly severe ruling. Let me talk to my clerks and see if they think anything additional that an expert would say might benefit us. And if it is, we'll let you know. As of right now, I don't think it would.” (Dkt. 187 at 54:19-55:3). (See **Exhibit 1** to the Thomas Declaration).

15. Thus, the Court left open the issue as to whether the expert report could be amended, which would in turn require reconsideration of Rhodium’s Motion for Summary Judgment.

16. At the pre-trial conference, the District Court also stated that Dr. Pokharna’s testimony regarding the Prime Control’s- Control System be excluded for failure to identify the system in Midas’ Final Infringement Contentions. (Dkt. 187, at 18:6). (See **Exhibit 1** to the Thomas Declaration). The Court granted leave to amend Dr. Pokharna’s report to address any of the issues that Midas believes would make Dr. Pokharna’s opinion survive a future challenge. (Dkt. 187 at 20:12-23). (See **Exhibit 1** to the Thomas Declaration).

17. During the pre-trial conference, Mr. Smith (counsel for Midas) asked the

District Court about the scope and basis for his indication of dismissal.

“MR. SMITH: Your Honor, if I could ask one more question about the Court's ruling. There's been a fair amount of argument today about how the systems are today versus after how the systems are turned on or wired or whatever. So I think we'd want to confirm the scope of the Court's ruling so we would know whether a claim against the facilities, once they're put into operation, would be affected by the Court's ruling today, or would that be a different set of facts?”

THE COURT: That would be a different set of facts. I don't know –

MR. SMITH: Thank you, Your Honor.

*THE COURT: Yeah. I don't know that it would change the ruling ultimately, but, you know, that clearly is an issue in this case. (Dkt. 187 55:5-20). (See **Exhibit 1** to the Thomas Declaration).*

18. It is very telling that the Court had not firmly considered the scope or basis for any ruling. This further illustrates that the Court intended to put more work and analysis into a ruling prior to issuing a written final opinion.

19. As the judge articulated no basis or scope for his discussion regarding dismissal, Midas is in the dark as to what he was intending to rule on, and whether or not any written dismissal would be with or without prejudice.

20. Immediately after the pre-trial conference, the Court issued a brief Minute Entry as follows:

*Minute Entry for proceedings held before Judge Alan D Albright: ZOOM FINAL Pretrial Conference held on 4/9/2024. PARTIES ANNOUNCE READY. STATEMENTS AND ARGUMENTS OF COUNSEL HEARD. WRITTEN ORDER FORTHCOMING. (Dkt. 186). (See **Exhibit 2** to the Thomas Declaration).*

21. Importantly, the above Minute Entry makes no reference to any ruling made regarding summary judgment or a dismissal and certainly does not indicate that anything the Judge said at the pre-trial conference was made final. Instead, the Minute Entry makes it abundantly clear that the Court has more work to do prior to making a final ruling, as there is a “written order forthcoming.”

22. On January 7, 2025, Rhodium filed with this Bankruptcy Court (the “BK Court”), DEBTORS’ MOTION FOR ENTRY OF AN ORDER GRANTING LIMITED RELIEF FROM AUTOMATIC STAY TO CONTINUE DISTRICT COURT LITIGATION. (Dkt. 611).

23. In paragraph 1 of this motion, Rhodium tells the BK Court:

*By this Motion, the Debtors seek entry of an order (the “Proposed Order”), pursuant to sections 362 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 4001, granting limited relief from the automatic stay **solely to permit the resolution of the patent infringement claim** Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., 6:22-cv-00050 (the “District Court Litigation”) filed in the Western District of Texas (the “District Court”) by Midas Green Technologies, LLC (“Midas”) against the Debtors and certain non-debtor affiliates (collectively, “Rhodium”). Specifically, Debtors ask that the stay be lifted for the limited purpose **of allowing the District Court to enter an order and judgment memorializing its April 9, 2024 bench ruling granting summary judgment to Rhodium.** (emphasis added). (Dkt. 611 at ¶1).*

24. Rhodium already admitted to this BK Court that the oral ruling was not a final ruling, and that Judge Albright needed to take additional steps to make it final in order to permit resolution of the patent infringement claims. Even Rhodium is fully

aware that the District Court needed to “enter an order” for finality. But now Rhodium backtracks and tries to convince this BK Court that the District Court does not need to “enter an order.”

25. On January 30, 2025, the District Court requested the Parties submit detailed proposed orders reflecting the parties understanding of what transpired at the pre-trial conference. Judge Albright’s clerk stated:

*Given the time that has passed, it is necessary that the parties in this case submit a joint proposed order reflecting the parties’ understandings of Judge Albright’s rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter. (See **Exhibit 3** to the Thomas Declaration).*

26. Judge Albright’s oral remarks cannot be treated as a final or binding ruling. The Court itself acknowledged that its comments were ambiguous, such that the parties would have disputes as to interpretation. Further, the Court explained it only had “notes,” which required comparison to the Parties’ written submissions before any order could be entered. Consistent with this, the District Court indicated that it would issue a final order “shortly,” underscoring that no final decision had yet been made.

27. Accordingly, the record makes clear that Judge Albright’s oral statement lacked finality and cannot serve as a binding determination.

28. On February 5, 2025, the BK Court granted the Debtors’ Motion to Lift

Automatic Stay agreeing with Rhodium that a ruling in the District Court was necessary. (Dkt. 189). (See **Exhibit 4** to the Thomas Declaration).

29. The Order is as follows:

The automatic stay is lifted pursuant to Bankruptcy Code section 362(d) and Bankruptcy Rule 4001 for the limited purpose of allowing the District Court presiding over the patent infringement claim Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., 6:22-cv-00050 filed in the Western District of Texas to enter an order and judgment memorializing its April 9, 2024 bench ruling granting summary judgment of noninfringement to Rhodium.

30. On February 7, 2024, the Parties submitted their versions of a Proposed Order with regard to the summary judgment. As could be expected, the Parties widely disagree on how to interpret Judge Albright's ambiguous statements at the pre-trial conference. As indicated above, the District Court stated that it planned to issue its final written ruling "shortly" after getting the Parties' dueling proposed orders. However, those proposed orders were submitted almost 18 months ago, and the District Court has yet to issue its written order. If the District Court had planned to merely memorialize its discussion at the hearing, it would have done so already. Instead, it appears that the District Court is doing a full and careful analysis of the summary judgment and intends to issue a complete and thoughtful written opinion. Only by receiving and understanding the ruling of the District Court can this Court fairly determine what is owed to Midas.

31. On September 18, 2024, and November 21, 2024, Midas filed seven Proofs of Claims. The controlling parent companies, Rhodium Enterprises, Inc. and Rhodium Technologies, LLC, were allocated 100% of the liability, while the five operating

companies were allocated according to use: (1) Rhodium 30MW LLC, (2) Rhodium Encore LLC, (3) Rhodium 10MW LLC, (4) Rhodium 2.0 LLC, and (5) Rhodium Renewables LLC.

32. Midas will file a Motion for Leave to Amend to revise its Proof of Claims seeking only reasonable royalty damages and prejudgment interest. Liability will continue to be allocated with the controlling parent companies, Rhodium Enterprises, Inc. and Rhodium Technologies, LLC being allocated 100% of the liability, while the five operating companies are allocated according to use: (1) Rhodium 30MW LLC, (2) Rhodium Encore LLC, (3) Rhodium 10MW LLC, (4) Rhodium 2.0 LLC, and (5) Rhodium Renewables LLC.

33. In short, Rhodium's MSJ seeks a determination under 35 U.S.C. § 271 that Midas's infringement claims fail as a matter of law, while its Motion to Estimate asks the Court to value those claims at zero on the same basis. Both motions necessarily require a detailed analysis of patent law, immersion cooling technology, and the merits of the underlying infringement dispute. Pursuant to 28 U.S.C. § 157(d) and Rule 5011 of the Federal Rules of Bankruptcy Procedure, withdrawal of the reference is therefore required because the issues presented involve substantial and material questions of non-bankruptcy federal law, which are more appropriately determined by the United States District Court.

34. Mandatory withdrawal is compelled where resolution of a dispute necessitates significant consideration of federal law outside the Bankruptcy Code. Even if mandatory withdrawal were not required, permissive withdrawal is warranted in the interests of judicial economy, fairness, and efficiency. The claims at issue are non-core, involve rights

arising under patent law independent of Title 11, and are subject to a jury trial demand that cannot be conducted in the Bankruptcy Court absent consent.

35. Accordingly, withdrawal of the reference is both required and appropriate. This sets the stage for why § 157(d) mandates that the District Court, rather than the Bankruptcy Court, resolve the pending summary judgment and estimation motions.

36. Rhodium's two motions: (I) the MSJ and (II) the Motion to Estimate are both subject to mandatory withdrawal pursuant to § 157(d). In the MSJ, Rhodium asks this Court to make a determination that the Midas infringement claims are baseless as a matter of law under 35 USC § 271. (MSJ at ¶¶48-65). Then, in the Motion to Estimate, Rhodium asks this Court to estimate the Midas claims at zero, asserting that this Court would find no infringement (Motion to Estimate, p.47). In this way, both of Rhodium's motions require this Court to do a deep-dive evaluation of patent law, immersion cooling technology, and the facts of the underlying patent case.

ARGUMENT

37. In the Southern District of Texas, "a party should move to withdraw the reference within 90 days of the complaint or notice of removal" in an adversary proceeding. *Curtis v. Law Office of Rogelio Solis PLLC (In re Josiahs Trucking, LLC)*, 2021 Bankruptcy LEXIS 3643, *6 (Bankruptcy S.D. Tex. May 13, 2021); citing *In re: Bankruptcy Jurisdiction*, Gen. Order 2011-12 (S.D. Tex. Nov. 29, 2011). However, a party may challenge the bankruptcy judge's authority at any time. *Id.* See also *In re Quality Lease and Rental Holdings, LLC*, No. 14-6005, 2016 Bankruptcy LEXIS 297, 2016 WL 416961, at *4 (Bankruptcy S.D. Tex. Feb.

1, 2016) (reading Gen. Order No. 2011-12 as not "prohibit[ing] a party's ability to request withdrawal after the expiration of 90 days.").

A. This Motion to Withdraw the Rhodium's Motion to Estimate and the MSJ is Timely Made

38. In its Reply to its Motion to Estimate, Rhodium asserts that Midas is time barred from filing this motion for mandatory withdrawal. A quick review of the timeline regarding this matter is enlightening:

July 29, 2025	Rhodium files its Motion to Estimate
July 29, 2025	Rhodium files its MSJ
June 8, 2025	Rhodium files its operative amended objections to the Midas claims
April 14, 2025	Rhodium files its Omnibus Objections to Midas' Proof of Claim

39. The Local Rules of the Southern District of Texas require a Motion to Withdraw a Reference to be filed within 90 days of an issue becoming an adversarial proceeding. See *In re: Bankruptcy Jurisdiction*, Gen. Order 2011-12 (S.D. Tex. Nov. 29, 2011).

40. Filing objections to a proof of claim can establish an adversarial proceeding when the objection to a claim includes a demand for relief of the kind specified in Rule 7001. See Rule 9014.

41. Rhodium's Omnibus Objections did not transform the issues Rhodium raised with Midas' Proofs of Claim into an adversarial proceeding under the Bankruptcy code because the objections did not request relief specified in Rule 7001.

42. In Rhodium's Omnibus Objections the only relief requested was the

expungement of Midas' Claims. This did not create an adversarial proceeding within the Bankruptcy Code.

43. On June 8, 2025, Rhodium filed an Amended Omnibus Objection to Midas's Proofs of Claim. In this amendment, Rhodium requested affirmative relief, by requesting a hearing to establish a briefing schedule for a Motion for Summary Judgment and Motion for Estimation. This Court granted the hearing date and established a briefing schedule. In this, Rhodium's contested matter became an adversarial proceeding.

44. The adversarial proceeding, at the earliest, began on June 8, 2025. Only eighty-one days have passed since the adversarial proceeding began. Thus, pursuant to the Southern District of Texas Bankruptcy Court's local rules, Midas's Motion to Withdrawal Reference is timely.

45. Rhodium first sought relief from this Court on July 29, 2025, which is only about a month before Midas filed this motion for mandatory withdrawal.

46. Even if the Court were to consider Rhodium's amended objections as of June 8, 2025, to be the operative date, Midas files this motion for withdrawal within about 2 months.

**B. The Motion to Estimate and MSJ Present Non-Core Issues
Requiring Withdrawal**

47. On July 29, 2025, Rhodium wrongly asked this Court to make legal and factual findings in the underlying District Court patent case. In the Motion to Estimate and the MSJ, Rhodium requests that this Court evaluate the patent claims,

apply the claims to the complex accused systems, and make a determination on whether or not the accused systems infringe Midas's '457 Patent. This is an unlawful attempt by Rhodium to bypass the expertise and knowledge of the District Court while similarly depriving Midas of its rights.

48. Rhodium's MSJ seeks a determination under 35 U.S.C. § 271 that Midas's infringement claims fail as a matter of law, while its Motion to Estimate asks the Court to value those claims at zero on the same basis. Both motions necessarily require a detailed analysis of patent law, immersion cooling technology, and the merits of the underlying infringement dispute.

49. A party making a motion for mandatory withdrawal must therefore "establish that the proceeding involves a "substantial and material" question of both Title 11 and non-Bankruptcy Code federal law and that the non-Code federal law has more than a de minimis effect on interstate commerce." *Sibarium v. NCNB Texas National Bank*, 107 B.R. 108, 111 (N.D.Tex.1989). *In re Nat'l Gypsum*, 145 B.R. 538, 541 (N.D. Tex 1992).

50. "Once subject matter jurisdiction vests with the district court, bankruptcy judges then have authority by reference under 28 U.S.C. § 157. Section 157 states that each district court may provide that "proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the bankruptcy judges." 28 U.S.C. § 157(a). The statute distinguishes between cases directly under or arising under Title 11 and cases which are only "related to" a case under Title 11. *Id.* at § 157(c); *Wood*, 825 F.2d at 95. A case which is arising under or arising in a

case under Title 11 is a core proceeding. 28 U.S.C. § 157(b); *Wood*, 825 F.2d at 97 (a "proceeding is core under *section 157* if it invokes a substantive right provided by Title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."). The statute provides [*6] a nonexclusive list of sixteen matters considered "core." 28 U.S.C. § 157(b)(2)(A) - (P). A matter is considered non-core if it is "related to" a case under Title 11. *Id.* at § 157(c)(1).” *In re Electro-Mechanical Industries*, 2008 Bankr. LEXIS 5177.

51. *Electro-Mechanical* is very much on point with the facts presented here. Universal had a pending patent infringement case against Electro-Mechanical (“EMI”). EMI filed for Chapter 11 in the Southern District of Texas, Houston Division. Universal filed a proof of claim for over \$5M, and EMI filed a Motion to Estimate. Universal then filed a Motion to Withdraw the reference to the extent it called for a determination of liability under patent law. (*Id.* at *2-4) The court granted the Motion, finding that withdrawal was mandatory of the determination of infringement in a patent case. (*Id.* at *10-11).

52. *Electro-Mechanical* at *7-9 states “*Section 157(d)* states that the "district court *shall*, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d) (emphasis added). The use of "shall" in this provision has been interpreted as mandatory language. *In re National Gypsum Co.*, 145 B.R. 539, 540 (citing *In re Combustion Equip. Assoc., Inc.*, 67 B.R. 709,

711 (S.D.N.Y. 1986), *aff'd*, 838 F.2d 35 (2d Cir. 1988)). The Northern District of Texas has explained mandatory withdrawal as follows:

53. [C]ourts have generally held that a mandatory withdrawal of reference is warranted where "substantial and material consideration" of federal statutes other than the Bankruptcy Code is "necessary" to the resolution of a case or proceeding. *See In re Johns-Manville Corporation*, 63 B.R. 600, 602 (S.D.N.Y.1986); *In re Combustion*, 67 B.R. at 711; *In re White Motor*, 42 B.R. at 703, 705; 1 COLLIER, ¶ 3.01 at 3-69. Before withdrawing the reference, the district court must make an "affirmative determination" that the relevant non-code legal issues will require substantial and material consideration, and the court must be satisfied that consideration of these federal laws requires "significant interpretation" on the part of the court. *In re Johns-Manville Corp.*, 63 B.R. at 602.

54. The Court in *Electro-Mechanical* found that the determination of patent infringement "will necessarily require a 'substantial and material' application and interpretation of Title 35 of the U.S. Code. This is not simply a straightforward application of federal law to the facts." (*Id.* at *10)

55. The Court goes on to say: "infringement analysis will likewise require substantial application of Title 35. Indeed, examining claim construction to determine the invention's scope has been held to be a matter of law reserved to the court. *Markman v. Westview Instruments*, 517 U.S. 370 (1996). As noted by Justice Souter in *Markman*, "the claims of *patents* have become highly technical in many respects as the result of special doctrines relating to the proper form and scope of

claims that have been developed by the courts and the *Patent Office*." (*Id. at *9-10*).

56. The Court found that a finding of infringement was subject to mandatory removal: "The Court, therefore, finds the determination of *patent* validity and infringement falls under the mandatory withdrawal provision of § 157(d) and recommends the reference be withdrawn accordingly." (*Id. at *10*).

57. Further, the interstate commerce element is also established. Just as the court found *In Re Electro- Mechanical Indus.*, "the non-Code federal law will have an effect on interstate commerce." *In re Electro-Mechanical Indus.*, 2008 Bankr. LEXIS 5177, *10 (S.D. Tex. Feb. 20, 2008). In that case, the Court found that the interstate commerce element was met because the non-bankrupt party may choose to place its product within the flow of interstate commerce to the exclusion of would-be competitors. This was a "greater than a de minimus impact on interstate commerce." *Id.*

58. Just as in *Electro-Mechanical*, Rhodium is asking this Court to do an evaluation of the patent case and make a legal and factual determination of infringement liability. This is a highly technical patent case regarding complex immersion cooling system technology, and where the determination of infringement of Midas's '457 Patent will necessarily require a substantial and material application and interpretation of Title 35 of the U.S. Code. This is not simply a straightforward application of federal law to the facts.

59. This Court does not have jurisdiction to make a determination as to infringement of the '457 Patent.

60. This Court should mandatorily withdraw any liability aspects of the Motion to Estimate and the MSJ.

C. This Court Cannot Estimate Without Addressing Infringement Liability, and Therefore Cannot Make an Estimation

61. As discussed above with reference to the *Electro-Mechanical* matter, the bankruptcy court had to mandatorily withdraw all aspects of infringement evaluation for a determination by the District Court. Like Rhodium does here, EMI requested that the Bankruptcy Court make an estimation of damages without addressing liability. The Court refused to do so, finding that “until liability had been determined, to evaluate whether the correct measure of damages until liability had been determined, to evaluate whether the correct measure of damages”. (*Id. at *11-12*)

62. Not only did the Court find that a determination of liability by the District Court was essential, but held that if the District Court found liability for infringement, then the District Court was to determine if damages were to be set by the District Court of the Bankruptcy Court. “As such, the Court recommends that the question of whether the Bankruptcy Court or the District Court should determine damages should be left to the District Court when a determination as to liability has been made. Should liability be established, the District Court could refer the proceeding to this Court for a determination of the proper claim amount or could determine damages at that time.” (*Id. at *11-12*)

63. Ultimately, the Court in *Electro-Mechanical* withdrew the entire motion to estimate reference as a whole. The Court held that: “Without a determination of the

patent infringement issue, this Chapter 11 case cannot proceed in a meaningful fashion. Accordingly, this Court recommends that the District Court withdraw the reference of this bankruptcy case, as a whole.” (*Id. at *11-12*)

64. In a similar manner, this Court should withdraw Rhodium’s entire Motion to Estimate, as there is no meaningful way for the bankruptcy to move forward until the District Court has issued its final written ruling.

D. The Underlying Patent Case in the District Court has not Been Dismissed

65. In its recent motions and arguments to this Court, Rhodium takes the position that certain oral comments by Judge Albright should be interpreted as him having fully disposed of the underlying patent case. As illustrated by the Statement of Facts, and as discussed below, the District Court Case has not been dismissed, and the Parties are awaiting Judge Albright’s written final decision.

66. There is nothing in the docket at the District Court to indicate that the patent case has been dismissed as Rhodium now argues. To the contrary, this case is still actively pending in the District Court and there is no final ruling adjudicating the rights and liabilities of the parties.

67. The Court has not issued a final ruling under Federal Rule of Civil Procedure Rule 58. The Court has not issued a minute order granting Rhodium’s Motion for Summary Judgment under Federal Rule of Civil Procedure Rule 79(a). Without a minute order indicating that the Court has granted the motion, the exception established in FRCP Rule 58(d), which allows from an appeal from a minute order

if the Court has not entered a final order after 150 days from the entry a minute order complying with Rule 79(a) does not apply. With this Midas is left without a remedy. There is no final judgment under Rule 58 or 79(a). Therefore, there is no right to review.

68. A "final decision is one by which a district court disassociates itself from a case" and "terminate[s] an action." *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 329 (5th Cir. 2022); citing *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408-09, 135 S. Ct. 897, 190 L. Ed. 2d 789 (2015). "[A]n order resolving liability without addressing a plaintiff's requests for relief is not final." *Riley v. Kennedy*, 553 U.S. 406, 419, 128 S. Ct. 1970, 170 L. Ed. 2d 837 (2008).

69. "To understand whether an order is final, we look chiefly to the language the district court used. For example, we noted in *Logue* that a district court's memorandum saying that "'[a] preliminary injunction will be issued' . . . did not reflect the district court's intent that the opinion act as an operable judgment."..." *Ueckert v. Guerra*, 38 F.4th 446, 450 (5th Cir. 2022). In *Midas v. Rhodium*, the Court's oral ruling mirrored the wording, "will grant", to the wording "will issue" which is recognized as being nonfinal. Further, "the test for finality is whether the District Court intended that its order be 'effective immediately'. Said another way, a court's ruling is only final if a judge 'intends to have nothing further to do' with the motion or the case. *Id.* (citations removed).

70. Here, the District Court clearly did not intend his comments at the oral hearing to be "effective immediately." Indeed, Judge Albright made those comments

almost 16 months ago and has not acted to end the case. The only action he has taken is to request the Parties submit proposed orders, which again leads to the conclusion that his discussion at the hearing was never intended to be “effective immediately.”

71. Further, the Court’s words and actions shows that the Court intends to do more with the case and clearly did not intent to have “nothing further to do” with the case. As shown by the words and actions of the Court, the underlying patent case is very much alive, and Judge Albright’s discussions at the MSJ hearing were not intended to have any final effect.

a. In the April 9, 2024, discussion at the pre-trial conference, the Court indicated it was going to meet with his law Clerks and determine if Midas could refile expert reports and the MSJ.

b. At the end of the hearing, the Judge indicated to Midas he had not determined the basis or scope of any ruling.

c. In its Minute Entry of April 9, 2024, the Court indicated it was going to have a “written order forthcoming.”

d. On January 10, 2025, the District Court requested the Parties to submit proposed orders regarding the MSJ and indicated the Court would compare the proposed orders to the Court’s own internal notes.

e. On February 7, 2025, the Court received the Parties’ proposed orders for review.

72. The Court’s words and actions show the Court did not intend for the MSJ discussion to be a final ruling. Further, the Court has not entered any ruling or

judgment on its docket and has not complied with the finality mandates of Rule 58 and Rule 79(a).

73. As a result, Judge Albright did not dismiss the patent case, and the Parties are waiting for his final written decision regarding motions pending in his Court.

CONCLUSION

74. For the reasons set forth above, this Court should withdraw Rhodium's Motion for Summary Judgment under § 157(d) as to any aspect that requires this Court to make a determination of patent infringement liability, but at a minimum paragraphs 48-65. Further, this Court should withdraw Rhodium's Motion for Estimation under § 157(d) in its entirety. In addition, pursuant to 28 U.S.C. § 1334(c), Midas seeks abstention on the grounds that the claims at issue are non-core, arise entirely under state and other non-bankruptcy law, and are more appropriately adjudicated outside the Bankruptcy Court.

DATED: August 28, 2025

Respectfully submitted,
/s/ Joseph E. Thomas

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Attorneys for Plaintiff Midas Green
Technologies, LLC

CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on the 28th day of August, 2025, a copy of the foregoing was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola

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

In re:

RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**DECLARATION OF JOSEPH E. THOMAS IN SUPPORT OF MIDAS
GREEN TECHNOLOGIES, LLC'S MOTION FOR MANDATORY
WITHDRAWAL OF REFERENCE PURSUANT TO 28 U.S.C. § 157 AND
RULE 5011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
FOR ABSTENTION**

DECLARATION OF JOSEPH E. THOMAS

I, Joseph E. Thomas, declare:

1. I am an attorney duly admitted to practice law in the State of California and am managing partner, attorneys of record for Midas Green Technologies, LLC. I am one of the attorneys responsible for the handling of the above matter. If called as a witness, I could and would testify competently as to the facts set forth below, as I know each to be true based upon my own personal knowledge or upon my review of the files and records maintained by Thomas Whitelaw & Kolegraff in the regular course of its representation of Midas Green Technologies, LLC. I submit this declaration in support of MIDAS GREEN TECHNOLOGIES, LLC'S MOTION FOR MANDATORY WITHDRAWAL OF REFERENCE PURSUANT TO 28 U.S.C. § 157 AND RULE 5011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ABSTENTION.

2. Attached hereto as **Exhibit 1** is a true and accurate copy of relevant excerpts of the Court Reporter's transcript from the pre-trial conference held on April 9, 2024 in the *Midas Green Technologies, LLC vs. Rhodium Enterprises, Inc., et al*, Case No. 6:22-cv-00050-ADA matter.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of the Docket Sheet specifying the Minute Entry Dkt. 186 in *Midas Green Technologies, LLC vs.*

Rhodium Enterprises, Inc., et al, Case No. 6:22-cv-00050-ADA matter.

4. Attached hereto as **Exhibit 3** is a true and current copy of the correspondence from Judge Albright's clerk in the *Midas Green Technologies, LLC vs. Rhodium Enterprises, Inc., et al*, Case No. 6:22-cv-00050-ADA matter.

5. Attached hereto as **Exhibit 4** is a true and correct copy of Dkt. 189 in *Midas Green Technologies, LLC vs. Rhodium Enterprises, Inc., et al*, Case No. 6:22-cv-00050-ADA matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 28, 2025, at Irvine, California.

/s/ Joseph E. Thomas

Attorney for Midas Green
Technologies, LLC

Joseph E. Thomas (*admitted p.h.v.*)
William J. Kolegraff (*admitted p.h.v.*)
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Attorneys for Plaintiff Midas Green
Technologies, LLC

CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on the 28th day of August, 2025, a copy of the foregoing Response was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIDAS GREEN TECHNOLOGIES,
LLC

*

*

April 9, 2024

*

VS.

*

CIVIL ACTION NO. 6:22-CV-50

RHODIUM ENTERPRISES,
INC., ET AL.

*

BEFORE THE HONORABLE ALAN D ALBRIGHT
PRETRIAL HEARING (via Zoom)

APPEARANCES:

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James Travis Underwood, Esq.
Gillam & Smith
102 N. College, Suite 800
Tyler, TX 75702

Court Reporter: Kristie M. Davis, CRR, RMR
PO Box 20994
Waco, Texas 76702-0994
(254) 340-6114

Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

09:59 1 There's absolutely no surprise whatsoever
09:59 2 to anything in the -- Dr. Pokharna's report.

09:59 3 THE COURT: I'll be back in just a
09:59 4 second.

09:59 5 (Pause in proceedings.)

10:00 6 THE COURT: The Court grants that motion.

10:00 7 The next motion we have up is the motion
10:00 8 the exclude James Lee. I'll hear from defendants on
10:00 9 that.

10:00 10 MS. BRANNEN: Your Honor, on this motion,
10:00 11 we had two aspects of it. Sorry. For a moment, I
10:00 12 wasn't sure if you were calling on us or the other
10:00 13 counsel.

10:00 14 But the first aspect is a correction --
10:00 15 what they call a correction, but it's really an
10:00 16 addition to Dr. Lee's report that he served at the end
10:00 17 of a deposition.

10:00 18 Their position just doesn't make any
10:00 19 sense on this. They argue simultaneously that it is
10:01 20 duplicative of what was already in his report and that
10:01 21 it's necessary.

10:01 22 It can't be both. And all I know is that
10:01 23 it's too late, and we ask Your Honor to exclude it.

10:01 24 The other thing that we are focusing on
10:01 25 in this motion is the fact that Dr. Lee is their

10:02 1 MR. THOMAS: The -- Mr. Thomas. Yes.

10:02 2 THE COURT: Yes.

10:02 3 MR. THOMAS: We're happy to let him be
10:02 4 deposed again if they want to. We don't think they
10:02 5 need to. They had his --

10:02 6 THE COURT: Well, I'm -- stop while
10:02 7 you're ahead. I'm going to allow them -- I'm going to
10:02 8 deny the motion and allow them to depose the witness.

10:02 9 Now, going back to Mr. -- or
10:02 10 Dr. Pokharna. Is he your only infringement expert?

10:03 11 MR. THOMAS: Yes.

10:03 12 THE COURT: So what I'm going to do is --
10:03 13 it will obviously impact the trial setting, but I'm
10:03 14 going to allow you to amend his report, see if you can
10:03 15 fix it. And you all will need to get together with
10:03 16 opposing counsel and figure out how long you think
10:03 17 it'll take for Dr. Pokharna to address any of the
10:03 18 issues that you think would make his opinion survive a
10:03 19 future challenge.

10:03 20 And then y'all can set up a schedule to
10:03 21 figure out how to deal with that in terms of rebuttal
10:03 22 reports and all that. So I'm going to allow him to
10:03 23 amend his report.

10:03 24 Next up I have the motion to exclude -- I
10:03 25 don't know if it's a doctor or not. I don't think it

10:51 1 inside the miner itself, and then that is used to reset
10:51 2 the miner to either increase power if it can be run
10:51 3 warmer or decrease power if you need it to run cooler.

10:51 4 So I think we've shown this in all of it.
10:51 5 Again, there's a -- plenty of genuine issues of fact
10:51 6 here for denying this motion.

10:51 7 THE COURT: I'll be back in a few
10:51 8 seconds.

10:51 9 (Pause in proceedings.)

10:54 10 THE COURT: The Court is going to grant
10:55 11 the motion for summary judgment of noninfringement. I
10:55 12 think that fully takes care of the case for the time
10:55 13 being.

10:55 14 I'm not going to take up the motions in
10:55 15 limine given my ruling on that motion, which I think
10:55 16 obviates the need for a trial at this time.

10:55 17 Is there anything else we need to take up
10:55 18 today?

10:55 19 MR. KOLEGRAFF: Your Honor, would we be
10:55 20 able to readdress this -- after we get Pokharna's
10:55 21 report redone, would we be able to readdress this issue
10:55 22 on the motion for summary judgment?

10:55 23 THE COURT: Well, you know, you have --
10:55 24 you've had your chance, but obviously, it's a fairly
10:55 25 severe ruling. Let me talk to my clerks and see if

10:55 1 they think anything additional that an expert would say
10:56 2 might benefit us. And if it is, we'll let you know.
10:56 3 As of right now, I don't think it would.

10:56 4 So anything besides that?

10:56 5 MR. SMITH: Your Honor, if I could ask
10:56 6 one more question about the Court's ruling.

10:56 7 There's been a fair amount of argument
10:56 8 today about how the systems are today versus after how
10:56 9 the systems are turned on or wired or whatever.

10:56 10 So I think we'd want to confirm the scope
10:56 11 of the Court's ruling so we would know whether a claim
10:56 12 against the facilities, once they're put into
10:56 13 operation, would be affected by the Court's ruling
10:56 14 today, or would that be a different set of facts?

10:56 15 THE COURT: That would be a different set
10:56 16 of facts. I don't know --

10:56 17 MR. SMITH: Thank you, Your Honor.

10:56 18 THE COURT: Yeah. I don't know that it
10:56 19 would change the ruling ultimately, but, you know, that
10:56 20 clearly is an issue in this case.

10:56 21 MR. SMITH: Okay. Thank you, Your Honor.

10:56 22 THE COURT: Okay. Have a good day. Take
10:56 23 care.

10:56 24 (Hearing adjourned.)

25

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
3
4

5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 11th day of April
14 2024.

15
16 /s/ Kristie M. Davis
KRISTIE M. DAVIS
Official Court Reporter
800 Franklin Avenue
Waco, Texas 76701
18 (254) 340-6114
kmdaviscsr@yahoo.com
19
20
21
22
23
24
25

10:56

EXHIBIT 2

U.S. District Court [LIVE]
Western District of Texas (Waco)
CIVIL DOCKET FOR CASE #: 6:22-cv-00050-ADA

Midas Green Technologies, LLC v. Rhodium Enterprises, Inc. et al
Assigned to: Judge Alan D Albright
Related Case: [6:24-cv-00166-ADA](#)
Cause: 35:271 Patent Infringement

Date Filed: 01/13/2022
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Date Filed	#	Docket Text
05/09/2025	190	NOTICE OF FILING OF MIDAS GREEN TECHNOLOGIES, LLCS RESPONSE TO DEBTORS AMENDED OMNIBUS OBJECTION TO CLAIM NUMBERS 004, 062, AND 068-072 FILED IN BANKRUPTCY COURT BY MIDAS GREEN TECHNOLOGIES, LLC by Rhodium 10mw LLC, Rhodium 2.0 LLC, Rhodium 30mw LLC, Rhodium Encore LLC, Rhodium Enterprises, Inc., Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Technologies, LLC (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Smith, Melissa) (Entered: 05/09/2025)
02/03/2025	189	NOTICE OF ORDER MODIFYING STAY by Rhodium Renewables Sub LLC, Rhodium Ready Ventures LLC, Rhodium 10MW Sub LLC, Rhodium Enterprises, Inc., Rhodium Technologies, LLC, Rhodium 2.0 LLC, Rhodium 30mw LLC, Rhodium Encore LLC (Attachments: # 1 Exhibit A)(Smith, Melissa) (Entered: 02/03/2025)
08/30/2024	188	SUGGESTION OF BANKRUPTCY as to Rhodium 10mw LLC, Rhodium 2.0 LLC, Rhodium 30mw LLC, Rhodium Encore LLC, Rhodium Enterprises, Inc., Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Technologies, LLC . (Smith, Melissa) (Entered: 08/30/2024)
04/11/2024	187	Transcript filed of Proceedings held on 4-9-24, Proceedings Transcribed: Pretrial Conference. Court Reporter/Transcriber: Kristie Davis (kmdaviscsr@yahoo.com), Telephone number: 12546660904. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 5/2/2024, Redacted Transcript Deadline set for 5/13/2024, Release of Transcript Restriction set for 7/10/2024, (kd) (Entered: 04/11/2024)
04/09/2024	186	Minute Entry for proceedings held before Judge Alan D Albright: ZOOM FINAL Pretrial Conference held on 4/9/2024. PARTIES ANNOUNCE READY. STATEMENTS AND ARGUMENTS OF COUNSEL HEARD. WRITTEN ORDER FORTHCOMING. (Minute entry documents are not available electronically.). (Court Reporter Kristie Davis.)(cav) (Entered: 04/11/2024)
04/09/2024	185	TRANSCRIPT REQUEST by Midas Green Technologies, LLC for proceedings held on 4/9/2024. Proceedings Transcribed: Pre-trial Conference. Court Reporter: Kristie Davis. (Thomas, Joseph) (Entered: 04/09/2024)

EXHIBIT 3

From: Corey Brown <Corey_Brown@txwd.uscourts.gov>

Sent: Thursday, January 30, 2025 12:25 PM

To: becca.skupin@solidcounsel.com; ebrannen@stris.com; Grant Thomas <gthomas@twtlaw.com>; henry.pogorzelski@klgates.com; travis@gillamsmithlaw.com; Joe Thomas <jthomas@twtlaw.com>; khalpern@stris.com; melissa@gillamsmithlaw.com; michael.smith@solidcounsel.com; pbrody@stris.com; srahimi@stris.com; William Kolegraff <bkolegraff@twtlaw.com>

Subject: Omnibus Order for 6.22.cv.0050

Counsel,

Given the time that has passed, it is necessary that the parties in this case submit a **joint** proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter. Please prepare and submit these orders via response to this email (in Word form) by the end of day on February 7, 2024.

This will help this case begin to progress towards a resolution.

Regards,



Corey W. Brown

Law Clerk for the Honorable Alan D Albright

United States District Court, Western District of Texas

Direct: 254-750-1517

Corey_Brown@txwd.uscourts.gov

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Midas Green Technologies, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:22-CV-00050-ADA
)	
Rhodium Enterprises, Inc.;)	
Rhodium Technologies LLC;)	
Rhodium 10MW LLC;)	JURY TRIAL DEMANDED
Rhodium 2.0 LLC;)	
Rhodium 30MW LLC;)	
Rhodium Encore LLC;)	
Rhodium Renewables LLC;)	
Rhodium Renewables Sub LLC; and)	
Rhodium Ready Ventures LLC,)	
)	
Defendants.)	
_____)	

NOTICE OF ORDER MODIFYING STAY

PLEASE BE ADVISED that on January 30, 2025, the Bankruptcy Court issued the attached order modifying the automatic stay pursuant to Bankruptcy Code section 362(d) and Bankruptcy Rule 4001. See Exhibit A - *In re Rhodium Encore LLC et al.*, Case No. 24-90448, Dkt.737.

DATED: February 3, 2025

Respectfully submitted,

/s/ Melissa R. Smith

Melissa R. Smith

Texas Bar No. 24001351

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Attorneys for Rhodium Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served today, February 3, 2025, with a copy of this document via the Court's CM/ECF system.

/s/ Melissa R. Smith

EXHIBIT A

ENTERED

January 30, 2025

Nathan Ochsner, Clerk

**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> , ¹	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**ORDER GRANTING LIMITED RELIEF FROM AUTOMATIC STAY TO CONTINUE
DISTRICT COURT LITIGATION
(Refers to ECF No. 611)**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order, pursuant to sections 362 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 4001, granting limited relief from the automatic stay solely to permit the resolution of the patent infringement claim *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc.*, 6:22-cv-00050 filed in the Western District of Texas; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.


is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that good and sufficient cause exists for the relief set forth in this Order; and after due deliberation,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The automatic stay is lifted pursuant to Bankruptcy Code section 362(d) and Bankruptcy Rule 4001 for the limited purpose of allowing the District Court presiding over the patent infringement claim Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., 6:22-cv-00050 filed in the Western District of Texas to enter an order and judgment memorializing its April 9, 2024 bench ruling granting summary judgment of noninfringement to Rhodium.
3. Nothing contained herein is intended or shall be construed 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 any claim; (c) an approval or assumption of any agreement under section 365 of the Bankruptcy Code; (d) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (e) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law.
4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.
5. The terms and conditions of this Order are immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Signed: January 30, 2025


Alfredo R Pérez
United States Bankruptcy Judge

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

In re:

RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**ORDER GRANTING MOTION FOR MANDATORY WITHDRAWAL OF
REFERENCE PURSUANT TO 28 U.S.C. § 157 AND RULE 5011 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ABSTENTION**

(Relates to ECF No. _____)

Before the Court is Midas Green Technologies, LLC's Motion to Withdraw the Reference of certain matters currently pending before the United States Bankruptcy Court for the Southern District of Texas. Having considered the motion, the briefing, the applicable law, and the record, the Court finds that good cause exists to grant the requested relief.

Accordingly, it is hereby ORDERED that:

1. Pursuant to 28 U.S.C. § 157(d), the reference is WITHDRAWN in its entirety as to Rhodium's Motion for Summary Judgment.
2. Pursuant to 28 U.S.C. § 157(d), the reference is WITHDRAWN in its entirety as to Rhodium's Motion for Estimation.

3. Pursuant to 28 U.S.C. § 1334(c), this Court ABSTAINS from hearing the claims at issue, which are non-core, arise under state and other non-bankruptcy law, and are more appropriately adjudicated outside the Bankruptcy Court.
4. The Clerk of Court is directed to withdraw the reference of the above-described matters from the Bankruptcy Court and docket them in this Court under the present civil action number.

SO ORDERED.

Dated: _____, 2025

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE