

**IN THE UNITED STATES BANKRUPTCY COURT  
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)
	§	

**LEHOTSKY KELLER COHN LLP’S RESPONSE TO SPECIAL COMMITTEE’S  
MOTION TO QUASH LEHOTSKY KELLER COHN LLP’S FIRST SET OF REQUESTS  
FOR PRODUCTION AND INTERROGATORIES TO DEBTORS PURSUANT TO  
BANKRUPTCY RULE 2004 [ECF NO. 1515] AND RESPONSE TO LEHOTSKY  
KELLER COHN LLP’S MOTION FOR STATUS CONFERENCE ON  
RULE 2004 DISCOVERY [ECF NO. 1529]  
[Relates to ECF Nos. 1515, 1529, and 1530]**

Lehotsky Keller Cohn LLP (“**LKC**”) files this response (the “**Response**”) to *Special Committee’s Motion to Quash Lehotsky Keller Cohn LLP’s First Set of Requests for Production and Interrogatories to Debtors Pursuant to Bankruptcy Rule 2004 [ECF No. 1515] and Response to Lehotsky Keller Cohn LLP’s Motion for Status Conference on Rule 2004 Discovery [ECF No. 1529]* (ECF No. 1530) (the “**Motion to Quash**”) and respectfully states as follows:

**RESPONSE**

1. The Special Committee has shared with third parties, including the SAFE Ad Hoc Group (“**SAFE AHG**”), documents related to the success fee owed Lehotsky Keller Cohn LLP (“**LKC**”). After receiving these documents, the SAFE AHG sought to negotiate down LKC’s

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

success fee. When LKC did not accede to the SAFE AHG's demand, the SAFE AHG challenged LKC's success fee in its entirety. The Court rejected that challenge, entered its *Order Granting Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (ECF No. 1418) (the "**Updated Retention Order**"), and required the Debtors and LKC to "determine in good faith the portion of transaction value ... allocable to energy credits and damages." ECF No. 1418 at 6.

2. LKC still has not seen those documents that the Special Committee shared with third parties. Indeed, LKC has not received *any* documents from the Debtors or the Special Committee, which refused to negotiate in good faith or to provide any materials regarding its view of the proper allocation of the \$185 million settlement. That is why LKC propounded discovery on the Debtors. LKC sought to understand the Debtors' position before filing its final fee application.

3. But the Special Committee refused to produce, contending that LKC's request for documents (including ones already shared with the SAFE AHG) is "wasting both judicial and estate resources," "puts Debtors at audit risk with the IRS," and warrants "sanction[s]." ECF No. 1530 ¶¶ 1, 3, 46. The Special Committee also contends LKC's success fee is dictated by whatever tax allocation "the Debtors *and Whinstone*" come up with, and LKC's fee cannot be "inconsistent" with that determination made by its former adversary. *Id.* ¶¶ 17, 23. The Special Committee says it is "impossible" to determine LKC's fee until Whinstone and the "appropriate professionals" complete their work. *Id.* ¶¶ 31, 39.

4. Needless to say, LKC disagrees with the arguments in the Special Committee's Motion to Quash. That motion is now largely moot because LKC has filed its final fee application based on the materials it already has. Nonetheless, LKC wishes to make three brief points.

5. First, LKC is merely seeking the success fee it is owed under the March 2025 Engagement Letter and this Court's Updated Retention Order. LKC's final fee application (ECF No. 1560) demonstrates that LKC's valuation is neither "arbitrary" nor "enormous," *contra* ECF No. 1530 ¶ 1. The Special Committee knows full well that LKC's valuation is rigorous, based on reliable documents, and modest compared to the tremendous value LKC created for the Debtors' estates. The Debtors' General Counsel has already testified under oath that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. The Special Committee does not dispute that LKC's calculation used the Debtors' own numbers. And the Special Committee fails to explain *why* it believes LKC's calculation is "higher" than "appropriate," (ECF No. 1530 ¶ 19), or *how* the Debtors' "professionals" can even make that determination when it is supposedly "impossible to determine" the allocation at this time (*id.* ¶¶ 18, 31). The Special Committee's criticisms of LKC's success fee (which are based on a declaration from Barnes & Thornburg) are especially rich considering that Barnes & Thornburg has claimed fees in excess of \$5 million (through June) (*see* ECF Nos. 632, 946, 1445, 1490, 1491) and Debtor's counsel, Quinn Emanuel, has claimed fees in excess of \$10.5 million in its interim fee applications and monthly fee statements. *See* ECF Nos. 769, 1112, 1196, 1345, 1373, 1537.

7. The value LKC provided the estates is indisputable. As the Debtors previously told the Court: LKC "work[ed] absolute magic to keep the Debtors' business afloat." Hearing Tr. (June 4, 2025) at 8:8-13. Debtors were "facing potential annihilation from claims by Whinstone," *id.* at

6:18-23, and LKC “went above and beyond and took extraordinary steps to help Rhodium’s business stay alive and get to where it is today.” *Id.* at 8:21-25. LKC “obtained exceptional results” and “provided enormous value to the estate.” ECF No. 1111 at 3, 10-11. The Debtors’ own General Counsel attested: “LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone.” ECF No. 1111-1 ¶ 13. Without LKC, the Debtors would not have \$185 million to allocate.

8. Second, discovery rules “are calculated to prevent ‘trial by ambush.’” *Bankston v. Kansas City S. Ry. Co.*, No. CIV 03-577-A-M2, 2005 WL 8155221, at \*2 n.1 (M.D. La. Oct. 17, 2005) (quoting *Shelak v. White Motor Co.*, 581 F.2d 1155, 1159 (5th Cir. 1978); *see also Olivarez v. Geo Grp., Inc.*, 844 F.3d 200, 204 (5th Cir. 2016) (noting trial by ambush is a threat to civil litigation). LKC sought to obtain all relevant documents, but the Debtors have refused to produce anything, either informally or through discovery. As noted, the Debtors and the Special Committee even refused to share materials they voluntarily provided to third parties—materials that LKC understands reflect a several-million-dollar success fee that is not all that different from the one LKC calculated.

9. Because the Debtors refused to produce documents and the Special Committee has asserted it is unethical for LKC to seek documents, the Court should not permit the Debtors or the Special Committee to belatedly introduce documents in response to LKC’s final fee application. Courts routinely prevent the introduction of documents that were not produced during discovery. *See Perez v. City of New Orleans*, 173 F. Supp. 3d 337, 347-48 (E.D. La. 2016) (finding that defendants would be prejudiced by introduction of documents that plaintiff did not disclose); *MJC Supply, LLC v. Scottsdale Ins. Co.*, CV 18-1265 RSWL-SK, 2019 WL 2501480, at \*4 (C.D. Cal. June 16, 2019) (precluding introduction of responsive documents that were not timely produced

by introducing party); *Metro Found. Contrs., Inc. v. Arch Ins. Co.*, 09 Civ. 6796 (JGK), 2011 WL 70561, at \*2 (S.D.N.Y. Jan. 6, 2011) (same). At this point, having already filed its final fee application, LKC is willing to forgo discovery. But the Special Committee and the Debtors may not seek to introduce information they failed to produce.

10. Third, the Special Committee’s request for sanctions is frivolous and itself sanctionable. ECF No. 1530 ¶¶ 44-47. Far from creating an “artificial emergency,” *id.* ¶ 46, LKC merely sought documents and information under ordinary notice rules *after* the Debtors refused to produce any documents and refused to negotiate in good faith. Waiting four months after the Court approved the Whinstone settlement is hardly “unreasonable, unethical, constitutes [sic] bad faith, and sanctionable.” *Id.*; *see also Kreit v. Quinn (In re Cleveland Imaging & Surgical Hosp., LLC)*, 26 F.4th 285, 292 (5th Cir. 2022) (permitting sanctions under Bankruptcy Code section 105(a) authority if “(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence”).

11. Further, the Special Committee cites no authority for why LKC, a “party in interest” under Bankruptcy Rule 2004, is unable to obtain documents in a dispute over its fees—especially when the Special Committee itself has shared responsive documents with third parties, including LKC’s former adversaries, the SAFE AHG and Whinstone. Nor does the Special Committee explain how sharing these already-shared documents with LKC “puts Debtors at audit risk with the IRS.” ECF No. 1530 ¶ 3. To be clear, LKC is not seeking to “report a delinquent client to a credit bureau” or the IRS, as the Special Committee appears to suggest. *Id.* ¶ 38. LKC merely asked for documents potentially relevant to the success fee that this Court will determine.

12. By contrast, the Special Committee’s positions are indefensible. According to the Special Committee: (1) the Debtors need not negotiate in good faith with LKC despite this Court’s

order requiring them to “determine in good faith the portion of the transactional value [\$185 million] ... allocable to the energy credits and damages”; (2) the “Debtors and Whinstone” get to dictate the allocation to LKC, and LKC’s fees cannot be “inconsistent” with what the “Debtors and Whinstone agree,” ECF No. 1530 ¶¶ 2, 9, 10, 17, 33;<sup>2</sup> (3) the Special Committee can share documents with parties who have opposed LKC but not with LKC; (4) merely sharing documents with LKC creates an “audit risk with the IRS,” *id.* ¶ 3; and (5) LKC’s request for documents relevant to the fees it is supposed to negotiate in good faith is somehow “bad faith,” “vexatious[.]” and in “violation of its ethical obligation” and a stay that has nothing to do with LKC’s fees, *id.* ¶¶ 44, 46.

13. Notably, the Special Committee’s arguments are not supported by facts, but only by a declaration from the same attorney at Barnes & Thornburg who signed the meritless brief. This attorney continues to harass LKC and its counsel with baseless threats, *see, e.g.*, Exhibit 1, while refusing to produce documents revealing the Debtors’ officers’ actual views and assessments of LKC’s fee and contribution to the estates. *See also* ECF No. 1111 at 3, 10–11; ECF No. 1111-1 ¶¶ 13–16. Even more perplexing, Barnes & Thornburg is now threatening unidentified discovery *on LKC* after opposing all discovery. *See* Exhibit 1.

14. But, worst of all, the Special Committee entirely disregards crucial testimony and the terms of LKC’s March 2025 Engagement Letter when it argues that LKC’s fee depends on what Whinstone and Debtors decide. Debtors’ own General Counsel, Mr. Charles Topping—who negotiated the engagement letter with LKC—made clear that [REDACTED]

[REDACTED]

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<sup>2</sup> The Special Committee’s suggestion that it will negotiate in good faith *after* it decides the proper allocation with Whinstone is difficult to understand, considering that LKC would supposedly be bound by the Debtors’ agreement with Whinstone. And, if the Special Committee were to agree that the Whinstone allocation is not binding on LKC, the Committee should negotiate in good faith with LKC now.

*see also* Hrg. Tr. (June 5, 2025), 47:6-13, 101:18-20. The Whinstone tax allocation is different from the one pertaining to LKC’s success fee, [REDACTED]

15. The Special Committee and Barnes & Thornburg may wish the testimony and facts were different, but their failure to acknowledge Debtors’ General Counsel’s testimony—coupled with their failure to cite any facts at all and instead to rely on their own lawyer declaration—is disingenuous and falls short of the candor that litigants owe this Court.

16. Accordingly, LKC respectfully requests that the Court deny the Special Committee’s Motion to Quash, deny its frivolous request for sanctions, and instead sanction the Special Committee and Barnes & Thornburg. LKC defers entirely to the Court on the appropriate sanction. Ultimately, all LKC seeks is the success fee it earned after years of extraordinary work, saving the Debtors from “annihilation” and paving the way for the \$185 million settlement.

### CONCLUSION

WHEREFORE, LKC respectfully requests that the Court enter an order denying the Motion to Quash and granting the relief requested herein and such other and further relief as the Court may deem appropriate under the circumstances.

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<sup>3</sup> [REDACTED] but since then, the Special Committee has refused to make any offer at all to LKC or to share any documents with LKC, while carrying on negotiations with Whinstone, all but assuring that the allocations will be different. [REDACTED]

Dated: August 29, 2025  
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on August 29, 2025, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

### **CERTIFICATE OF CONFERENCE**

I hereby certify that, on August 29, 2025, I attempted to confer with counsel for the Special Committee regarding the foregoing document but have not received a response as of filing. The dispute detailed in the foregoing document has been discussed by the parties at length, and the parties have been unable to resolve the matter.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl



## **EXHIBIT 1**

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**From:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Sent:** Sunday, August 24, 2025 12:44 PM  
**To:** Wolfshohl, Joshua W.  
**Cc:** Rhodium Bankruptcy Investigation  
**Subject:** Fee Application and Discovery  
**Attachments:** In re Intelogic Trace Inc.pdf

Josh --

I am just putting you on alert that, if LKC continues down its insisted path of filing what you have described, the Special Committee will be forced to bring a motion allowing it (on behalf of the Debtors) to seek discovery and explore potential counterclaims against LKC. Obviously, in light of the Interlogic Trace case, which I have attached, we cannot afford to do otherwise.

Happy to discuss.

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

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**IN THE UNITED STATES BANKRUPTCY COURT  
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 DENYING SPECIAL COMMITTEE’S MOTION TO QUASH LEHOTSKY  
KELLER COHN LLP’S FIRST SET OF REQUESTS FOR PRODUCTION AND  
INTERROGATORIES TO DEBTORS PURSUANT TO BANKRUPTCY RULE 2004 [ECF  
NO. 1515] AND RESPONSE TO LEHOTSKY KELLER COHN LLP’S MOTION FOR  
STATUS CONFERENCE ON RULE 2004 DISCOVERY [ECF NO. 1529]  
(Relates to ECF Nos. 1515, 1529, and 1530)**

Upon the motion (the “***Motion***”) of the Special Committee of Rhodium Enterprises, Inc.’s Board of Directors to quash Lehotsky Keller Cohn LLP’s (“***LKC***”) requests pursuant to Bankruptcy Rule 2004, and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408; and this Court having reviewed the Motion and responses thereto and having considered any statements at the hearing, if any (the “***Hearing***”); and this Court having determined that the legal and factual bases set forth in the Motion do not establish just cause for the relief requested therein; and upon all of

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the proceedings had before this Court; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is DENIED.
2. Pursuant to 11 U.S.C. § 105(a) and the Court's inherent powers, LKC is awarded its actual, reasonable, and necessary fees, costs, and expenses since August 14, 2025 related to the Motion and the response thereto, jointly and severally, against Barnes & Thornburg LLP and the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors in such amounts proven by LKC upon further submission to the Court.
3. A hearing on attorneys' fees and costs is set for \_\_\_\_\_.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas

Dated: \_\_\_\_\_, 2025

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HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE