

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)
	§	

LEHOTSKY KELLER COHN LLP'S MOTION FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE SEALING OF RESPONSE TO SPECIAL COMMITTEE'S
MOTION TO QUASH AND (II) AUTHORIZING THE FILING OF
A REDACTED VERSION OF THE RESPONSE

[Relates to ECF No. 1530]

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the court may treat the pleading as unopposed and grant the relief requested.

RELIEF REQUESTED

Lehotsky Keller Cohn LLP ("**LKC**") files this motion (the "**Motion**") seeking entry of an order, substantially in the form attached hereto (the "**Order**"), (i) authorizing LKC to file its response (the "**Response**") to the *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*

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



Conference on Rule 2004 Discovery [ECF No. 1529] (ECF No. 1530) (the “***Motion to Quash***”) under seal and (ii) authorizing the filing of a redacted version of the Response. In support of the Motion, LKC respectfully represents as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “***Court***”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). LKC confirms its consent to the entry of a final order by the Court. Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

2. The legal predicates for the requested relief herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “***Bankruptcy Code***”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”), rules 9013-1 and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “***Bankruptcy Local Rules***”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “***Complex Case Procedures***”).

BACKGROUND

3. The Court has entered a protective order (ECF No. 152) (the “***Protective Orders***”), which governs the disclosure and use of confidential discovery materials in these chapter 11 cases.

The Protective Order states:

All pleadings, memoranda supporting motions, briefs, deposition transcripts, discovery requests and responses, exhibits, and other documents that quote information from Confidential Information or Highly Confidential – Professionals’ Eyes Only Information and Confidential Information and Highly Confidential – Professionals’ Eyes Only Information if filed with the Court, shall be redacted from the Court filing (either by redacting the relevant text of the submission or redacting the entirety of any exhibit that has been designated as containing Confidential Information or Highly Confidential – Professionals’ Eyes Only Information) or filed under seal pursuant to the Court’s rules governing sealed documents, unless

the Designating Party consents in writing to such Confidential Information or Highly Confidential – Professionals’ Eyes Only Information being filed publicly.

4. On July 8, 2025, the Court 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**”).

5. The Updated Retention Order approved the March 4, 2025 LKC engagement letter (the “**March 2025 Engagement Letter**”), which requires the Debtors and LKC to “determine in good faith the portion of transaction value ... allocable to energy credits and damages” for purposes of calculating LKC’s success fee (the “**Success Fee**”).

6. As the Court is aware, the Debtors have finally resolved their disputes with Whinstone US Inc., and LKC’s engagement as special litigation counsel has effectively concluded. As such, and in light of the Court’s issuance of the Updated Retention Order, LKC has attempted to engage with the Debtors *in good faith* regarding the allocation of the Whinstone settlement payment for purposes of calculating LKC’s contingency fee.

7. To date, neither the Debtors nor the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the “**Special Committee**”) has engaged in good faith negotiations regarding LKC’s Success Fee. The Debtors claim to disagree with LKC’s calculation of its Success Fee but have not provided any support for that disagreement. As a consequence, on August 7, 2025, LKC issued Rule 2004 requests to the Debtors seeking specific information related to the Whinstone settlement allocation and LKC’s Success Fee calculation. The purpose of the Rule 2004 requests is obvious. LKC is trying to understand the Debtors’ “disagreement” and their position on the settlement allocation to inform LKC’s calculation of the Success Fee.

8. On August 14, 2025, the Special Committee filed its Motion to Quash LKC’s Rule 2004 requests directed to the Debtors. ECF No. 1530. Contemporaneously with this Motion, LKC

has filed its Response to the Motion to Quash, which contains information designated as “Confidential” pursuant to the Protective Order.

CONFIDENTIAL INFORMATION

9. The confidential information (the “*Confidential Information*”) LKC seeks to seal are quotes or information derived from the Deposition of Charles Topping taken on June 2, 2025, which was designated as Confidential by parties other than LKC pursuant to the Protective Order. LKC seeks to submit such information under seal in accordance with the terms of the applicable Protective Order. LKC seeks further authority to redact references to the Confidential Information in the Response. LKC takes no position on whether the Confidential Information must be filed under seal, and LKC is filing this Motion solely because of the designation of the deposition transcript (the “*Deposition Transcript*”) as “Confidential.”

BASIS FOR RELIEF

10. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. 11 U.S.C. § 107(b). This section provides in relevant part: “On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information” 11 U.S.C. § 107(b)(1); *see also In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to

protect a person with regard to a scandalous or defamatory matter.”). Although section 107(b) of the Bankruptcy Code is an exception to the general rule, its application in a bankruptcy proceeding is appropriate. *See In re 50-Off Stores, Inc.*, 213 B.R. 646, 654 (Bankr. W.D. Tex. 1997) (“[T]he very existence of the exception demonstrates Congress’ anticipation that the administration of bankruptcy cases might, by their very nature, require special intervention to protect some kinds of information from dissemination to the world.”).

11. Further, Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides, in relevant part, that on motion “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. Additionally, Bankruptcy Local Rule 9037-1 provides, in relevant part, that “[a] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”

12. LKC submits that the Confidential Information falls within the scope of information that may be protected by the Court pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Wyndham Vacation Resorts, Inc. v. Faucett (In re Faucett)*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is

required to seal ‘documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.’” (quoting *In re Barney’s, Inc.*, 201 B.R. 703, 708–09 (Bankr. S.D.N.Y. 1996)). Rather, section 107(b) of the Bankruptcy Code is “designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *Id.* (quoting *In re Glob. Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003)).

13. The designation of the Deposition Transcript as “Confidential” satisfies at least one of the categories enumerated in section 107(b) of the Bankruptcy Code for which filing under seal and/or redacting documents is appropriate. LKC submits that good cause exists to authorize the relief requested by LKC to ensure the confidentiality of the Confidential Information.

14. Notwithstanding anything contained in this Motion, LKC reserves all of its rights with respect to the use, confidentiality, or privileged designation of the Confidential Information described in this Motion, including whether such information satisfies the requirements for protection under applicable law.

CONCLUSION

WHEREFORE, LKC respectfully requests that the Court enter the Order granting the relief requested herein and such other and further relief as the Court may deem appropriate under the circumstances.

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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

**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)
	§	
	§	

**ORDER (I) AUTHORIZING THE SEALING OF RESPONSE AND (II) AUTHORIZING
THE FILING OF A REDACTED VERSION OF RESPONSE**

(Relates to ECF No. _____)

Upon the motion (the “***Motion***”)² of Lehotsky Keller Cohn LLP (“***LKC***”) authorizing LKC to file confidential information under seal that is included in its *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]* (the “***Response***”) and authorizing the filing of a redacted version of the Response, all as more fully set forth in the Motion, 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

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion

Court having found that LKC's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. LKC is authorized to file an unredacted version of the Response under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9037-1.

2. LKC is authorized to cause a redacted version of the Response to be filed on the public docket in these bankruptcy cases that redacts the Confidential Information; *provided that* the redacted version shall be redacted only to the extent necessary to preserve the confidentiality of the Confidential Information.

3. The Confidential Information contained in the unredacted version of the Response shall remain confidential and under seal and, absent further order of the Court, shall not be made available to anyone, except that copies shall be provided (i) to the Court and the Clerk and (ii) the Debtors and the Special Committee of the Board of Directors of Debtor Rhodium Enterprises, Inc.

4. Any party who receives an unredacted version of the Response, in accordance with this Order, shall be made aware of the terms of this Order, and shall keep the Confidential Information contained therein strictly confidential.

5. LKC is authorized to take all actions necessary to implement the relief granted in this Order in accordance with the Motion.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of the Bankruptcy Rules, the Bankruptcy Local Rules, and the Complex Case Procedures are satisfied by such notice.

7. 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

HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE