

**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 RESPONSE TO SPECIAL COMMITTEE’S
EMERGENCY MOTION FOR EXTENSION OF TIME**

[Relates to ECF Nos. 1515, 1529, 1530, and 1626]

Lehotsky Keller Cohn LLP (“**LKC**”) files this response (the “**Response**”) to the *Emergency Motion of the Special Committee for an Extension to File a Response to Lehotsky Keller Cohn LLP’s Final Application for Payment of Compensation and Reimbursement of Expenses for the Period of August 28, 2024 through June 30, 2025 [ECF NOS. 1560-1561]* (ECF No. 1626) (the “**MET**”) and respectfully states as follows:

RESPONSE

1. For months, LKC has been subjected to the Special Committee’s delay tactics, threats, and invectives while the Special Committee has refused to negotiate LKC’s success fee in good faith. LKC simply wants the fees it is owed, nothing more. For that reason, LKC has relied on [REDACTED]

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.



_____. LKC filed its final fee application based on those numbers.

2. The Special Committee admits it has no contrary evidence because the evidence “does not yet exist.” ECF No. 1614 at 10 ¶ 32. Nonetheless, the Special Committee wants more delay, seeking an *indefinite* extension for its response to the fee application, which is due tomorrow. The Special Committee filed an “Emergency Motion,” but the only emergency is that the Special Committee has no basis to oppose the fee application, having already admitted it has no evidence. The Special Committee does not advance any traditional basis for an extension, such as a scheduling problem. Instead, its request for additional delay is premised on two meritless positions.

3. First, the Special Committee alludes to the possibility that resolution of a final fee application can bar later claims against the law firm seeking compensation, ECF No. 1626 at 2 ¶ 2, 4 ¶ 14, but that is irrelevant here. There is no good-faith basis for asserting any claims against LKC. As the Debtors previously told this Court, LKC “work[ed] absolute magic to keep the Debtors’ business afloat.” Hearing Tr. (June 4, 2025) at 8:8-13. The 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. The Special Committee’s incendiary suggestion that it might have claims against LKC—which helped enrich the estate by \$185 million—is frivolous and nothing more than a delay tactic. The Court should reject it outright.

4. Second, the Special Committee erroneously insists LKC must wait for and be bound by the allocation that the Debtors *and Whinstone* eventually come up with for tax purposes. But that position is inconsistent with both the text of LKC’s retention agreement and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Special Committee ignores the testimony from the General Counsel, who negotiated the retention agreement with LKC, and presents no contrary evidence in any of its briefs raising this issue. Moreover, it would make no sense for private negotiations between the Debtors and Whinstone, apparently undertaken for tax purposes, to bind a third party, LKC, which is completely excluded from those negotiations—especially since both the Special Committee and Whinstone might have an interest in reducing LKC’s success fee and are (or have been) adverse to LKC.

5. This Court approved the Whinstone settlement more than five months ago. *See* ECF No. 921. There is no just cause for further delay. LKC has offered the Special Committee a week-long extension as a professional courtesy and respectfully requests that the Court not extend the deadline more than that.

BACKGROUND

6. Before any bankruptcy proceedings, the Debtors hired LKC to litigate bet-the-company issues against Whinstone. As the Debtors put it, “LKC represented Rhodium for two years through multiple periods of time when the survival of Rhodium’s business was on the line.” ECF No. 1111 at 3. The results were “exceptional.” *Id.* LKC, along with Stris & Maher, repeatedly

helped the Debtors secure crucial injunctive relief. According to the Debtors' General Counsel, "without the injunctions, Rhodium would likely have been forced out of business." ECF No. 1111-1 at 2 ¶ 6.

7. When the Debtors entered bankruptcy, LKC continued to represent them in the assumption litigation against Whinstone. The Court knows the history of that litigation and the important victories LKC and Stris won for the Debtors. *See, e.g.*, ECF Nos. 579, 763, 800. LKC also developed affirmative claims against Whinstone and its parent company Riot, allowing the Debtors to file a complaint for more than \$300 million before mediation. ECF No. 770.

8. Now, the estate is \$185 million richer. *See* ECF Nos. 880 at 9, 921 at 11. The Debtors "fully recognize[] the value of [LKC's] services" and acknowledge LKC "paved the way for a settlement with Whinstone." ECF No. 1111-1 at 4 ¶ 13.

9. At no point have the Debtors suggested LKC's work was anything less than exemplary. On the contrary, the Debtors have told this Court that "LKC provided enormous value to the estate." ECF No. 1111 at 10. "LKC's contributions were substantial and critical to the value of the estate." *Id.* at 11. Its services have been "exceptional." *Id.* at 12.

10. In more recent months, "[Debtors] and Lehotsky Keller Cohn LLP" should have been working together to "determine in good faith the portion of transaction value . . . allocable to" different parts of the success-fee calculation. ECF No. 1418 (quoting March 2025 engagement letter). But the Special Committee, which appears now to be handling LKC's success fee on behalf of the Debtors, has not negotiated in good faith. It failed to respond to LKC's proposed calculation and an email "inviting further discussion." ECF No. 1529 at 2 ¶ 4; *see* Wolfshohl Declaration at 2 ¶ 3.

11. Accordingly, LKC sought discovery to understand the Debtors' position. *See* ECF No. 1529 at 3 ¶ 8. Instead of responding to that discovery, the Special Committee baselessly accused LKC of misconduct. *See id.* at 3 ¶ 9.

12. In response to this attack, LKC asked for a status conference to get "the Court's guidance." *Id.* at 3 ¶ 10. The Special Committee responded with yet more baseless attacks, accusing LKC of violating its "ethical and fiduciary obligations by filing a Motion for a Status Conference." ECF No. 1530 at 3 ¶ 1. It also requested sanctions and moved to quash LKC's discovery on the theory that no discovery on LKC's success fee could occur until after the Debtors finalized a tax allocation with Whinstone, apparently theorizing that all other evidence of valuation is categorically irrelevant. *See id.* at 3 ¶ 4; *see* ECF No. 1614 at 10 ¶ 32 (arguing "[t]here is nothing to discover yet"). The Special Committee refused even to provide LKC with the Debtors' previous estimates of LKC's success fee, such as the one underlying a waterfall document that the Debtors shared with other parties, including the SAFE Ad Hoc Group. *See* Wolfshohl Declaration at 2 ¶ 6.

13. Because the Special Committee refused to negotiate and told LKC it had to wait for and be bound by the Whinstone tax allocation, LKC filed its fee application (with details about the success fee under seal at the Debtors' request). *See* ECF No. 1560. But instead of responding on the merits, the Special Committee continued its campaign of threats. Most recently, the Special Committee demanded that LKC consent to further delay or the Special Committee would publicly file a document [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. During previous meet-and-confer phone calls, LKC's counsel asked the Special Committee's counsel to explain the basis for any claims against LKC. The Special Committee's counsel admitted that he could not articulate any claim the Debtors would have against LKC [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARGUMENT

17. The Special Committee identifies two grounds for its MET. Neither has merit.

18. *First*, the Special Committee's claimed need for "due diligence" regarding "claims against LKC" has no basis in fact. The Debtors, LKC's clients, have repeatedly emphasized the high-quality of LKC's work. The Court witnessed much of LKC's work firsthand. Since successfully paving the way for a \$185 million settlement, LKC has not been heavily involved in the Debtors' affairs. Recently, LKC's involvement in this case has been limited to its bankruptcy

counsel's efforts to resolve its success fee using the process laid out in its engagement letter. That cannot possibly be [REDACTED]

19. The Special Committee's baseless accusations should not be given any credence, and they do not justify the indefinite delay the MET seeks. *See* ECF No. 1626 at 7 ¶ 25 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That argument is specious.

Barnes & Thornburgh apparently believes it can hide information from the Court and command LKC not to present the evidence, even under seal.

20. The Special Committee should be ashamed at this suggestion that it is proper to conceal evidence from the Court. Further, LKC's decision to file highly relevant evidence under seal cannot be the basis for an "investigation" or claims. And there is nothing to investigate: No one disputes what happened. LKC's bankruptcy counsel filed highly relevant evidence (under seal) supporting LKC's fee petition, while the Special Committee maintained it had no contrary evidence.² The Special Committee is simply trying to create further delay, malign LKC, and impose additional costs upon the firm. The Court should put a stop to that.

² The Special Committee fails to explain what this investigation would entail. Would it seek to depose LKC's bankruptcy counsel on the reasons for filing evidence with the Court? [REDACTED]

[REDACTED] The only thing this "investigation" would accomplish is running up the burden on the estate and LKC.

21. *Second*, the Special Committee argues that LKC’s “Fee Application itself is premature” until the Debtors and Whinstone complete their tax allocation. *See* ECF No. 1626 at 2 ¶ 3, 6 ¶ 21. But the Special Committee’s premise—that a tax allocation negotiated with Whinstone binds LKC—is patently meritless.

22. The engagement letter this Court approved establishes a clear process for determining the allocation underlying LKC’s success fee, and it has nothing to do with Whinstone. The engagement letter requires “the Client [Debtors] *and Lehotsky Keller Cohn*” to determine the allocation “in good faith” or, if they cannot, the “dispute shall be resolved by the Bankruptcy Court.” ECF No. 1418 at 6 (emphasis added).

23. Confirming the plain language of the agreement, the Debtors’ General Counsel testified, in response to deposition questioning from the SAFE AHG, [REDACTED]

[REDACTED]

[REDACTED] He also testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. The Special Committee has no answer to this clear explanation of the intent behind the engagement letter. LKC previously relied on the deposition testimony from the Debtors’ General Counsel in opposing the Special Committee’s motion to quash, *see* ECF No. 1588 at 6-7 ¶ 14, but the Special Committee’s reply simply ignored it, *cf.* ECF No. 1614 at 11 ¶ 33 (omitting any mention of the deposition testimony but trying to distinguish Mr. Topping’s subsequent

hearing testimony on the theory that “[t]he amount of LKC’s success fee was not” before the Court).

25. The Special Committee has no basis for disagreeing with the Debtors’ General Counsel, much less the plain language of the engagement letter. To date, the Special Committee has cited no evidence to support its argument in any of its briefs. That is because there is no evidence to cite. The parties’ mutual intent is controlling.

26. Despite the General’s Counsel’s testimony, the Special Committee raises unsubstantiated tax concerns, which likewise are no basis to breach the parties’ retention agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Special Committee’s description of tax law—that “the allocations must be accurate and consistent with the record,” ECF No. 1614 at 5, ¶ 15—is no reason to ignore the evidence or the procedures required by the engagement letter or to cut LKC out of the evidentiary process.

27. In the end, the purpose of the Special Committee’s delay is to gain an improper strategic advantage and to prejudice LKC. The Special Committee is attempting to place LKC in a Catch 22: The Special Committee apparently believes that the tax allocation, once finalized by the Debtors and Whinstone, would bind LKC and that any attempt to challenge that allocation

³ [REDACTED]

[REDACTED]

_____ would be unethical and worthy of sanctions. Thus, LKC would be in the impossible situation of accepting a low success fee (determined by the Special Committee and LKC's former adversary, Whinstone) or risking sanctions. The Court should not permit this to happen and therefore should deny the Special Committee's request for more time to set up the Catch-22.

28. Meanwhile, the Special Committee candidly admits it currently has no evidence supporting its opposition to LKC’s fee application. “There is nothing to discovery yet,” according to the Special Committee, because the evidence “does not yet exist.” ECF No. 1614 at 10, ¶ 32. The Special Committee apparently hopes to create evidence through its ongoing negotiations with Whinstone. The Court should look with a jaundiced eye on new evidence created by the Special Committee—with its apparent interest in reducing LKC’s success fee—and Whinstone, which may well be nursing old grudges. The low probative value of such not-yet-existing evidence, created by two parties adverse to LKC, does not justify further delay.

29. Far more reliable evidence already exists. As LKC's fee application demonstrates, the Debtors foresaw the possibility of settling in the range in which Whinstone eventually agreed. And the Debtors already had an allocation dividing the transaction value between the business and the litigation. LKC is content to rely on [REDACTED]

_____, and that

the Debtors and LKC possessed when they agreed to negotiate the success fee in good faith.

30. Moreover, further delay would prejudice LKC. The firm has already waited more than five months since the Court approved the Debtors' Settlement Agreement with Whinstone. *See* ECF No. 921. In that time, LKC has not been paid a penny, not even the portion of its success

fee that is indisputable, *see, e.g.*, ECF No. 1418 (discussing component of success fee tied to the order on the motion to assume), and it has continued to incur significant expenses defending itself.

31. Further delay serves no legitimate purpose, especially in light of the tremendous value LKC created for the estate and the Debtors' agreement that LKC is owed a substantial success fee. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

The Special Committee admittedly has no evidence to contest LKC's success fee. The Committee wants delay to try to *create* evidence and to further burden LKC with spurious claims. Because that is not a proper basis for an extension, LKC respectfully requests that the Court deny the motion for an extension (or grant at most one week, as LKC previously offered) and promptly grant LKC's fee application. The only effect of additional delay and burden would be to discourage firms in the future from taking on special litigation assignments in bankruptcy court.

Dated: September 11, 2025
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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Counsel to Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I hereby certify that, on September 11, 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 I conferred with counsel for the Special Committee regarding the relief requested in the MET, and we were unable resolve the matter.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

Exhibit 1

Wolfshohl Declaration

**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)
	§	
	§	

**DECLARATION OF JOSHUA W. WOLFSHOHL IN SUPPORT OF LEHOTSKY
KELLER COHN LLP’S RESPONSE TO SPECIAL COMMITTEE’S
EMERGENCY MOTION FOR EXTENSION OF TIME**

I, Joshua W. Wolfshohl, declare as follows:

1. I am a partner in the law firm of Porter Hedges LLP. I am admitted in, practicing in, and a member in good standing of the State Bar of Texas. I am bankruptcy counsel for Lehotsky Keller Cohn LLP (“**LKC**”) in this matter. This Declaration is given in support of LKC’s response (the “**Response**”) to *Emergency Motion of the Special Committee for an Extension to File a Response to Lehotsky Keller Cohn LLP’s Final Application for Payment of Compensation and Reimbursement of Expenses for the Period of August 28, 2024 through June 30, 2025 [ECF Nos. 1560-1561]*. ECF No. 1626.

2. As counsel for LKC, I have sought to engage with bankruptcy counsel for the Debtors and counsel for the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the “**Special Committee**”) on the calculation of LKC’s success fee and the allocation of the

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.

\$185 million Whinstone settlement for several months. Neither the Debtors nor the Special Committee have provided a substantive response to LKC's proposed calculation of its success fee beyond stating general disagreement with the allocation, inviting further discussion and the Special Committee threatening LKC to wait for Whinstone and the Debtors to determine a tax allocation for the Whinstone settlement and related transaction.

3. After entry of the *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), on July 11, 2025, I sent email correspondence to Barnes & Thornburg setting forth LKC's proposed allocation and contingency fee calculation and inviting further discussion. Barnes & Thornburg did not respond to the July 11 email correspondence.

4. Thereafter, in late July, I reached out to Ms. Tomasco at Quinn Emanuel inquiring as to whether Barnes & Thornburg was the right Debtor "representative" to engage with on the allocation/contingency fee calculation, given the lack of response.

5. In late July and early August, LKC's counsel had limited discussions with Ms. Tomasco about the Whinstone settlement allocation and LKC fee calculation but, other than stating that the Debtors "disagreed" with LKC's calculation, Ms. Tomasco was unwilling to share the Debtors' proposed allocation/calculation of LKC's contingency fee or otherwise respond to LKC's July 11 proposal. Ms. Tomasco did not provide a counteroffer or explain *why* the Debtors disagreed with LKC's calculation.

6. The Special Committee has not provided LKC with the Debtors' previous estimates of LKC's success fee, including the underlying waterfall document that the Debtors shared with other parties.

7. On August 13, 2025, the Special Committee sent a letter via email to LKC threatening ethical violations and breach of fiduciary duties related to LKC's discovery requests if LKC did not withdraw them. *See* ECF No. 1529-2. The following day, the Special Committee filed the *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. 1530. The discovery requests sought limited information from the Debtors regarding the Whinstone settlement allocation and LKC's success fee calculation. LKC requested these documents, some of which I understand may have been shared with third parties, in an effort to better understand the Debtors' disagreement with LKC on the calculation of the success fee.

8. The Special Committee has asserted that it needs to investigate potential claims against LKC. LKC has sought to understand the basis for the Special Committee's assertion of that need. During several previous meet-and-confer phone calls and correspondence, the Special Committee's counsel has not articulated any claim the Debtors may have against LKC but indicated that the potential claims have to do with the filing of LKC's *Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024 through June 30, 2025* (ECF No. 1560) under seal because the application includes [REDACTED]

[REDACTED] which serve as a basis for LKC's success fee. [REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746, to the best of my knowledge, information and belief, and after reasonable inquiry, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 11, 2025
Houston, Texas

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl
Partner, Porter Hedges LLP

Exhibit 2

[Sealed Document]

Exhibit 3

Draft Motion for Extension of Time

**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)
	§	

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 (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 Debtors in these Chapter 11 Cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

**EMERGENCY MOTION OF THE SPECIAL COMMITTEE FOR AN
EXTENSION TO FILE A RESPONSE TO LEHOTSKY KELLER COHN LLP'S
FINAL APPLICATION FOR PAYMENT OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF AUGUST 28,
2024 THROUGH JUNE 30, 2025 [ECF NOS. 1560-1561]**

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (Prevailing Central Time) on October 2, 2025. If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on October 2, 2025 at 9:00 a.m. (Central Prevailing Time) in Courtroom 400, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

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

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

The Special Committee of the Board of Directors of Debtor Rhodium Enterprises, Inc. (the "Special Committee") respectfully submits this Emergency Motion (the "Motion") for an extension of time in which to file its objection to Lehotsky Keller Cohn LLP's ("LKC") Final Fee Application for Payment of Compensation and

Reimbursement of Expenses for the Period August 28, 2024, Through June 30, 2025 (the “Fee Application”) [ECF Nos. 1560-1561].

PRELIMINARY STATEMENT

1. By this Motion, the Special Committee seeks an extension of time to file a response to the Fee Application. There are two reasons for this request.

2. First, Fifth Circuit precedent—including *Osherow v. Ernst & Young, LLP (In re Intelogic Trace, Inc.)*, 200 F.3d 382 (5th Cir. 2000)—requires that all claims that the estate holds or may hold against LKC are brought as part of an objection to a fee application. If claims against LKC are not asserted and litigated as part of the fee application, the estate will be barred from asserting them at a later time due to the application of *res judicata*.

3. Second, as explained in the Special Committee’s Motion to Quash LKC’s First Set of Requests for Production and Interrogatories to Debtors Pursuant to Bankruptcy Rule 2004 [ECF No. 1530] (the “Motion to Quash”) and related reply, the Fee Application itself is premature, non-emergent, and **cannot** be adjudicated until Debtors and Whinstone first agree on their tax allocation of Property under the Purchase and Sale Agreement. Proceeding with the Fee Application could put the Debtors—LKC’s **current client**—in legal jeopardy. As the Special Committee noted in its Reply in Support of the Motion to Quash, “[t]his unnecessary ‘dispute’ results solely from irrational impatience.” [ECF No. 1614.] There is simply no reason and no justification for proceeding with the Fee Application now.

4. Objections to the Fee Application are currently due Friday, September 13, 2025. Pursuant to discussions held during the Court’s status hearing on

September 8, 2025, the Special Committee requests that the Court hear this Motion at the status conference scheduled for October 2, 2025.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334; this matter is a core proceeding under 28 U.S.C. § 157(b).

6. Pursuant to 28 U.S.C. §§ 1408 and 1409, venue in this district is proper.

7. The bases for the relief are Section 105(a) of the Bankruptcy Code, Rule 9013 of the Federal Rules of Bankruptcy Procedure and Rule and 9013-1 of the Bankruptcy Local Rules for the U.S. Bankruptcy Court for the Southern District of Texas.

BACKGROUND

8. On August 7, 2025, LKC filed its First Set of Requests for Production and Interrogatories to Debtors Pursuant to Bankruptcy Rule 2004. [ECF No. 1515.]

9. On August 14, 2025, LKC filed a Motion for a Status Conference on Rule 2004 Discovery. [ECF No. 1529.] On the same day, the Special Committee Filed its Motion to Quash and Response to LKC's Motion for Status Conference on Rule 2004 Discovery. [ECF No. 1530.]

10. On August 22, 2025, LKC filed its Final Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024, Through June 30, 2025. [ECF Nos. 1560-1561.]

11. On August 29, 2025, LKC filed its Response in Opposition to Special Committee's Motion to Quash. [ECF No. 1588.]

12. On September 5, 2025, the Special Committee filed its Reply in Support of its Motion to Quash (the “Reply”). [ECF No. 1614.]

13. On September 9, 2025, the Special Committee conferred with counsel for LKC on this Motion. LKC’s counsel indicated they opposed the extension request.

BASIS FOR RELIEF

I. The Debtors require time and discovery in order to evaluate potential claims against LKC because any such claims must be adjudicated as part of the Fee Application.

14. *Res judicata* can and does bar a debtor’s claims against a third party seeking fees in a bankruptcy case if those claims are not asserted in connection with the fee application. *See In re Intellogic Trace, Inc.*, 200 F.3d at 386–391.

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

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20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. The Fee Application is premature and cannot be adjudicated now in any event.

21. As detailed in the Special Committee’s Motion to Quash and Reply, the Court should extend the deadline for filing objections to the Fee Application because the Fee Application itself is premature and incapable of resolution until certain prerequisites have been satisfied. [ECF Nos. 1530, 1614.]

22. As the Special Committee notes in its Reply, “the time for Debtors’ negotiation *with LKC* has not yet arrived—because the negotiation of the purchase price allocation to the purchased assets is ongoing with Whinstone.” [ECF No. 1614 at 7.] Adjudication of the Fee Application now is contrary to the agreements LKC is a party to and would put the Debtors in the untenable position of being forced to allocate a multi-million-dollar payment *inconsistently* with the way the payments

must be allocated and reported to the IRS. Not only is there no reason to proceed with the Fee Application now, there is no basis on which to do so.

III. Emergency consideration is warranted.

23. Pursuant to Local Rule 9013-1, the Special Committee respectfully requests emergency consideration of this Motion. Any delay in granting the relief requested would cause irreparable harm to Debtors as it could lead to the unintentional waiver of claims against LKC. Proceeding with the Fee Application briefing prematurely may also lead to inconsistent representations with the IRS, which could create further unnecessary and avoidable liabilities.

RESERVATION OF RIGHTS

24. The Special Committee submits this Motion without prejudice to, and with a full reservation of the Special Committee's rights, claims, defenses and remedies, including the right to amend, modify or supplement this Motion to raise additional objections and to object to and introduce evidence at any hearing relating to the Motion, and without in any way limiting any other rights of the Special Committee, as may be appropriate.

CONCLUSION

25. For the foregoing reasons, the Special Committee respectfully requests that the Court grant this Motion after consideration at the status conference on October 2, 2025, and at that time extend all further objections and briefing relating to the Fee Application until such time as the Special Committee is able to complete its investigation, and grant such other relief as may be just and proper.

Dated this ____ day of September, 2025.

BARNES & THORNBURG LLP

/s/ **Draft

Vincent P. (Trace) Schmeltz III (*pro hac vice*)
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*Counsel for the Special Committee of the
Board of Directors of Rhodium Enterprises,
Inc.*

Certificate of Service

I, Vincent P. (Trace) Schmeltz III, hereby certify that on the __ day of September, 2025, a copy of the foregoing was served via the Clerk of the Court through the ECF system to the parties registered to receive such service.

/s/ Trace Schmeltz
Vincent P. (Trace) Schmeltz III

**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 DENYING EMERGENCY MOTION OF THE SPECIAL COMMITTEE FOR
AN EXTENSION TO FILE A RESPONSE TO LEHOTSKY KELLER COHN LLP’S
FINAL APPLICATION FOR PAYMENT OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF AUGUST 28, 2024
THROUGH JUNE 30, 2025 [ECF NOS. 1560-1561]
(Relates to ECF No. 1626)**

Upon the motion (the “***Motion***”) of the Special Committee of Rhodium Enterprises, Inc.’s Board of Directors for an extension of time to file a response to Lehotsky Keller Cohn LLP’s (“***LKC***”) final application for payment of compensation and reimbursement of expenses for the period of August 28, 2024 through June 30, 2025, 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;

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 (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.

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

1. The Motion is DENIED.

Houston, Texas

Dated: _____, 2025

HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE