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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

DEBTORS' OPPOSITION TO 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

(Relates to ECF Nos. 954, 1069, 1413, 1483, 1523, 1579)

Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the "Debtors" or "Rhodium") in the above-captioned chapter 11 cases, hereby file *Debtors' Opposition to 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* (the "Opposition")[2] in response to *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* (ECF No. 1579) (the "Motion"). In support, the Debtors respectfully state as follows:

[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 have the meaning ascribed to them in Debtors' motion to estimate Midas's Claims (ECF No. 1485).

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PRELIMINARY STATEMENT

1. Rather than retract its baseless claims, Midas deployed a new tactic to drive up estate costs while investing minimal resources and effort of its own: it now—belatedly—seeks "mandatory" withdrawal of the reference. Even in the context of Midas's persistent refusal to present arguments grounded in law and fact,[3] the Motion displays remarkable hubris. Its stream-of-consciousness ramblings lack logic and coherence, rendering it difficult to discern Midas's legal argument, let alone fashion a constructive response.

2. The Motion spills exorbitant ink reiterating Midas's flawed analysis of the finality of the District Court's summary judgment ruling—a discussion without relevance to the issue of mandatory withdrawal or abstention. It conflates the questions of jurisdiction and adjudicative authority, despite the Debtors previously highlighting this clear defect in Midas's argument. Most egregiously, it fails to acknowledge the well-known principle that, by filing proofs of claim and seeking their share of the bankruptcy estate *res*, claimants submit themselves to the exclusive jurisdiction of the bankruptcy courts.

3. That Midas remains unaware of these basic tenets of procedural law exposes a troubling reality: Midas and its counsel now challenge the Court's adjudicative authority without having conducted even a bare minimum investigation into the merits of its requested relief. The Motion cites scant case law and the cases it does cite lack application to the specific facts of this case. Even an hour of good faith legal research would have saved the Debtors and this Court the significant time and resources now required to address the Motion.

4. Standing alone, the Motion invites sanctions. In the context of this case, where Midas's patent claims have already been considered and found wanting in district court, it

[3] *See* Debtors' motion for sanctions (ECF No. 1602).

represents the latest—and most brazen—move in Midas's campaign to strategically abuse the judicial process in an attempt to extract a settlement grounded in hold-up value rather than merit. The Court should not reward this conduct. The Motion should be denied outright without hearing or further consideration.

OPPOSITION

I. By Filing Its Proofs of Claim, Midas Submitted Itself to the Bankruptcy Court's Jurisdiction

5. The Motion conflates the question of jurisdiction and abstention, concluding that the Midas Claims present "non-core issues" and that by asking this Court to resolve proofs of claim ***that Midas filed in these bankruptcy cases***, the Debtors seek to bypass the District Court's jurisdiction. However, Midas provides no jurisdictional authority for this statement and does not cite a single case connecting abstention to the question of what actions constitute core proceedings.[4]

6. The judicial doctrine of abstention, which requires that bankruptcy courts decline to exercise their jurisdiction over certain issues, does not apply for the reasons explained below; but even if it did, the resolution of the Midas Claims forms a core proceeding that falls squarely in the Bankruptcy Court's exclusive jurisdiction. "Core proceedings include…allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11." 28 U.S.C. § 157(b)(2). By filing its proof of claim, Midas subjected itself to the jurisdiction of this court. *In*

[4] The Debtors' Reply in support of the Motion to Estimate, explains at length the basis for the Court's jurisdictional authority to adjudicate Midas's proofs of claim, citing numerous cases. *See* ECF No. 1535 ¶¶ 4-5. Further, the Count informed Midas of its jurisdiction at the July 8 hearing. *See* **Exhibit A** 12:12-13 (Court: "I have exclusive jurisdiction to address, to deal with the Proofs of Claim."). Midas cannot claim ignorance to the absurdity of its jurisdictional argument, and especially not when its own Motion confirms this Court's authority. *See* Motion ¶ 50 ("Once subject matter jurisdiction vests with the district court, bankruptcy judges then have authority by reference under 28 U.S.C. § 157.").

re Wood, 825 F.2d 90, 97 (5th Cir. 1987) ("The filing of the proof invokes the special rules of bankruptcy concerning objections to the claim estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy."); *WRT Creditors Liquidation Tr. v. C.I.B.C. Oppenheimer Corp.*, 75 F. Supp. 2d 596, 607 (S.D. Tex. 1999) ("If the proceeding is one that would arise only in bankruptcy, it is also a core proceeding; for example, the filing of a proof of claim.").

II. The Motion Is Untimely and Prejudicial

7. Midas waited almost five months after the Debtors objected to its Claim to file its Motion to withdraw the reference; it is now too late. Section 157(d) provides for mandatory abstention "***on timely motion of a party.***" 28 U.S.C. § 157(d) (emphasis added). Though the statute provides no exact measure of timeliness, courts have widely held that "a party acts in a timely fashion when he or she moves as soon as possible after he or she should have learned the grounds for such a motion." *J.T. Thorpe Co. v. Am. Motorists*, 2003 WL 23323005, at *4 (S.D. Tex. June 9, 2003) (quoting *In re NOVAK,* 116 B.R. 626, 628 (N.D.Ill.1990); *Dabney v. Bank of Am., N.A.*, 2020 WL 8618051, at *6 (D.S.C. Dec. 23, 2020) ("Courts have defined timely to mean as soon as possible after the moving party has notice of the grounds for withdrawing the reference.") (internal quotations omitted). This requirement exists to prevent litigation gamesmanship and judicial waste. As one court explained:

> In our jurisprudence generally, the word 'timely' means 'at first reasonable opportunity.' The fair intendment of [28 U.S.C. § 157(d)] is to insure that the request for withdrawal be filed as soon as practicable after it has become clear that 'other laws' of the genre described in 28 U.S.C. § 157(d) are implicated, so as to protect the court and the parties in interest from useless costs and disarrangement of the calendar, and to prevent unnecessary delay and the use of stalling tactics. Once it becomes apparent that such an issue is in the case, a party has a plain duty to act diligently—or else, to forever hold his peace.

In re Giorgio, 50 B.R. 327, 328-29 (D. R.I. 1985) (internal citations omitted).

8. Because of section 157's timeliness requirement, the Motion must fail. Midas seeks to mischaracterize its Motion as running from the time of Debtors' estimation and summary judgment motions, filed pursuant to the briefing schedule this Court set at a hearing in July. In reality, the grounds for the Motion—solely that the Midas Claims involve issues of patent law—have been obvious at least since the Debtors filed their initial objection to the Midas Claims in April and were present when Midas initially submitted itself to the core jurisdiction of this Court by filing its proofs of claim. But rather than promptly move to withdraw the reference then, as section 157(d) requires, Midas has spent the last several months filing multiple briefs in this Court, requiring the Debtors to waste resources defending them.[5] The parties also attended a hearing on the Debtors' objection to the Midas Claims over a month ago. In that time, Midas had ample opportunity to move to withdraw but failed to do so. To explain this failure, Midas presents a bizarrely wrong proposition that when the Debtors objected to Midas's Claims, this contested matter transformed into an adversary proceeding. It did not.[6] Fed. R. Bankr. P. 7001; *In re Simmons*, 765 F.2d 547, 552 (5th Cir. 1985) ("The objection to a claim initiates a contested matter unless the objection is joined with a counterclaim asking for the kind of relief specified in Bankruptcy Rule 7001.").

9. The timing of the Motion reflects the exact kind of forum-shopping and gamesmanship that section 157(d)'s timeliness requirement seeks to avoid. Midas filed its Motion after numerous rounds of briefing, and a week after the originally scheduled hearing date on Debtors' estimation, summary judgment motion, and objection to Midas's proofs of claim. Had

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5 *See* ECF Nos. 1413, 1485, 1486, 1523.

6 Once again, a cursory review of applicable law would have disabused Midas of this errant belief.

Midas moved to withdraw the reference when Debtors filed their objection months ago, the Debtors and the Bankruptcy Court might have saved resources—now, withdrawal of the reference would only grant Midas undue leverage and its much-desired delay, jeopardizing and delaying the resolution of these cases.

10. Under similar circumstances, and after similar periods of delay, courts have uniformly rejected motions for withdrawal as untimely. *See, e.g., In re Drs. Hosp. 1997, L.P.*, 351 B.R. 813, 843 (Bankr. S.D. Tex. 2006) ("the Veldekens did not request this Court to abstain until more than eight months after GE removed the suit…These circumstances underscore the untimeliness of the Veldekens' Motion to Abstain."); *In re Green Field Energy Servs., Inc.*, 2017 WL 2729065, at *2 (Bankr. D. Del. June 23, 2017) ("Defendants waited four months . . . to seek withdrawal of the reference. Certainly, the Withdrawal Motion was not timely filed.*"); In re Allegheny Health Educ. & Rsch. Found.*, 2006 WL 3843572, at *2 (W.D. Pa. Dec. 19, 2006) ("Each of [the government's] arguments has one thing in common-it could have been made the day that the adversary proceeding complaint was filed. Nothing changed over the more than ten months that passed before the United States filed its motion to withdraw, other than the United States's apparent growing dissatisfaction and frustration with the bankruptcy court's handling of the matter."); *In re H & W Motor Express Co.*, 343 B.R. 208, 214 (N.D. Iowa 2006) ("Waldner . . . did not file his Motion [for withdrawal] until April 29, 2005—more than five months after he filed his Answer. Waldner has not offered any reasons to justify this lengthy delay."); *Laine v. Gross*, 128 B.R. 588, 589 (D. Maine 1991) ("The Court, therefore, is faced with a situation in which Defendants failed to seek withdrawal of the reference when, upon service of the complaint [six months prior], it was clear that they had the same grounds to do so that they now assert. Only after the Bankruptcy Court denied their motion to dismiss, having invested a significant amount

of time and energy, did Defendants try another tack and seek withdrawal of the reference."); *In re GTS 900 F, LLC*, 2010 WL 4878839, at *3 (C.D. Cal. Nov. 23, 2010) (finding four-month delay untimely); *Horowitz v. Sulla*, 2016 WL 5799011, at *3 (D. Haw. Sept. 30, 2016) (finding five-month delay untimely). This Court should do the same.

III. The Midas Claims Do Not Trigger Mandatory Abstention

11. Even if Midas had filed a timely motion to withdraw the reference, the Motion still fails. To trigger mandatory abstention under section 157, the proceeding must involve a "substantial and material question of both title 11 and non-Bankruptcy Code federal law." *Lifemark Hosps.,* 161 B.R. at 24 (citing *United States v. Gypsum Co. (In re Nat'l Gypsum Co.),* 145 B.R. 539, 541 (Bankr.N.D.Tex.1992)). The Fifth Circuit interprets the mandatory withdrawal provision "restrictively," *Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008), and abstention should not be granted if resolution of the claim requires only "the mere application of well-settled law." *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 348 (Bankr. S.D. Tex. 2009); see *In re Vicars Ins. Agency, Inc.,* 96 F.3d at 952 (noting that permitting withdrawal whenever any minor non-bankruptcy federal question is implicated would "encourage delaying tactics (perhaps further draining the resources of the debtor), forum shopping, and generally unnecessary litigation."); *In re Kenai Corp.*, 136 B.R. 59, 61 (S.D.N.Y. 1992) (cautioning that withdrawal should be employed "judiciously in order to prevent it from becoming just another litigation tactic for parties eager to find a way out of bankruptcy court.").

12. Withdrawal becomes mandatory only "when the court must undertake analysis of significant ***open and unresolved*** issues regarding the non-title 11 law." *Rodriguez v. Countrywide Home Loans, Inc.,* 421 B.R. 341, 348 (Bankr. S.D. Tex.2009) (quotation omitted). This maxim

applies to patent claims as well as claims implicating other federal statutes. *See In re Quality Lease & Rental Holdings, LLC*, 2016 WL 416961, at *6 (Bankr. S.D. Tex. Feb. 1, 2016), report and recommendation adopted, 2016 WL 11644051 (S.D. Tex. Feb. 29, 2016) ("The Court has serious reservations whether consideration of the federal securities laws claims in this adversary proceeding…rises to the level of 'substantial and material consideration' of non-bankruptcy federal law…The Court sees no novel theory that would require the interpretation of the applicable statutes.").

13. The District Court already determined the question of liability when it granted summary judgment on non-infringement, two weeks before the matters were slated to be tried to a lay jury. Through estimation or disallowance, the Bankruptcy Court is more than capable of the analysis required to reach the same or related conclusions. The patent claims at issue here are (i) barred by multiple preclusion doctrines (including law of the case, which does not require finality); (ii) can command at-best nominal damages because Midas failed to respond to the arguments in Debtors' summary judgment motion showing that Midas cannot, in any event, meet its burden to prove damages and has therefore waived any attempt to prove damages now; and (iii) require only straightforward application of the law to the facts.

14. On the merits, adjudication of a patent infringement claim requires consideration of two key questions: First, the court must construe the asserted patent claims to determine their meaning and scope. *Freedman Seating Co. v. Am. Seating Co*., 420 F.3d 1350, 1357 (Fed. Cir. 2005). This step is commonly known as claim construction or interpretation. Second, the court must determine whether the accused product or process contains each limitation of the properly construed claims, either literally or, if alleged, under the doctrine of equivalents. *Id.* "The first step is a question of law; the second step is a question of fact." *In re Electro-Mechanical Indus.*,

2008 U.S. Dist. LEXIS 111991, at *14 (S.D. Tex. July 8, 2008) (quoting *Freedman Seating Co.* 420 F.3d at 1357).

15. In this case, the first step has already been done: during the District Court Litigation, the District Court construed Midas's Claims. ECF No. 50 (W.D. Tex., July 11, 2022) (order approving stipulated constructions of "plenum" and "weir"). Neither of the terms the District Court construed have been challenged in this proceeding, and the remaining claim terms are given their plain and ordinary meaning to a person of ordinary skill in the field. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). Lay jurors are routinely tasked with applying the plain and ordinary meaning of claim terms, *see, e.g., LePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 520 (Fed. Cir. 2012), and this Court may do the same.

16. What remains are straightforward questions that require routine legal analysis, and certainly do not implicate a "substantial and material consideration of non-bankruptcy federal law." And the Motion points to none, relying instead on false and conclusory statements that adjudication of the Midas Claims will "necessarily require a detailed analysis of patent law, immersion cooling technology, and the merits of the underlying infringement dispute." Motion ¶ 48. Midas does not identify a single characteristic of its claims that would necessitate substantial and material application of nonbankruptcy law, apparently arguing that this Court could never consider *any* claims that implicated patent law. This argument of course fails logically and ignores the myriad cases in which bankruptcy courts considered patent infringement claims. *See, e.g., In re Ridgeway*, 2018 WL 6287983, at *2 (Bankr. E.D. La. Nov. 30, 2018); *In re Benun*, 386 B.R. 59, 117 (Bankr.D.N.J.2008); *In re Innovasystems, Inc.*, 2014 WL 7235527 (Bankr. D.N.J. Dec. 18, 2014).

17. Even a cursory analysis of Midas's citations demonstrates this point. Midas largely relies on one case, *In re Electro-Mechanical Indus.,* in which the court withdrew the reference of a patent claim. *2008 Bankr. LEXIS 5177* (S.D.T.X. 2008); *see* Motion ¶¶ 50-52. But that case *did* involve a material question of non-bankruptcy law because it involved a claim disputing the validity of the patent itself and an infringement claim that required substantive claim construction. *Id.* at *9. There, the bankruptcy court determined that the facts of that case required a substantial application of patent law. *Id.* ("This is not simply a straightforward application of federal law to the facts. The validity of the patent is disputed as a matter of law. *See* 35 U.S.C. 282 ('[a] patent shall be presumed valid'). If the patent survives the allegations of invalidity, the ensuing 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."). The *Electro-Mechanical* case also considered the possibility that the potentially infringing product would be put into interstate commerce and interfere with the sale of competing products. *Id.* at *10. Here, the Debtors' pending motions at issue in the upcoming hearing do not rest on the validity of the patent, claim construction is done, and the Debtors have sold their facilities containing accused systems—making continuing infringement impossible. Indeed, prior to finding noninfringement and cancelling the trial, the questions raised by Debtors' motion were two weeks away from being presented to a jury—and the District Court correctly concluded Midas lacked the evidence of infringement necessary to create a triable issue of fact and canceled the trial setting.

18. Further, because the District Court already determined that there is no infringement and Midas failed to substantiate its alleged damages (or even respond to Debtors' summary judgment motion on this point), case law provides ample support for this Court to estimate Midas's

claims. Although Midas seeks a $12,306,278 windfall, when a claim pending in another court would have been dismissed, courts have held that claim should be estimated to have no value. *In re Innovasystems, Inc.*, 2014 WL 7235527, at *8 (Bankr. D.N.J. Dec. 18, 2014) ("[T]he Proveris Claim is a claim whose contingency may never occur. Moreover, Proveris's ultimately prevailing on its claims, in light of its lack of success at the appellate level, is uncertain at best."); *In re Kaplan*, 186 B.R. 871, 874 (Bankr. D. N.J. 1995) ("[i]t is not inappropriate to value a party's claim at zero where the claim is contingent and where the bankruptcy court finds that the party probably would not succeed on the merits in a state court action"…"the estimation process protects the interests of other creditors in not having their distributions diminished by allowing a claim whose contingency may never occur."); *Matter of Baldwin-United Corp.*, 55 B.R. 885, 902-03 (Bankr. S.D. Ohio 1985).

19. And as explained at length in the Debtor's Summary Judgment Motion, *see* ECF No. 1486, the Midas Claims lack any merit. A court should also estimate a claim at zero if it is found to be without merit as a matter of law. *In re Cont'l Airlines Corp.*, 57 B.R. 845, 854 (Bankr. S.D. Tex. 1985) ("[T]he unions' claims…have no validity and are without merit as a matter of law, and the value is estimated, pursuant to 11 U.S.C. § 502(c), to be zero."). Consistent with this standard, the Court can competently estimate Midas's Claims and determine that they have no value.

IV. Finality Is Not an Element of Withdrawal or Mandatory Abstention

20. The Motion dedicates eleven pages of background and argument to reiterating Midas's claim that the District Court's summary judgment of noninfringement is not a final ruling with preclusive effect, presumably anticipating that the Debtors would feel compelled to spend time on the same. Of course, the Debtors have repeatedly addressed and disproved this

contention,[7] but more importantly, Midas's extensive exposition of the finality about the District Court's Litigation concerns none of the elements of the withdrawal analysis for Midas's present Claims. Midas provides no case law connecting the two issues of withdrawal and finality, and the Debtors have found none. The Debtors therefore will conserve estate resources and decline to address finality here.

CONCLUSION

WHEREFORE, the Debtors respectfully ask that the Court deny the Motion in its entirety.

RESERVATION OF RIGHTS

21. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

[7] *See* ECF Nos. 1413 ¶ 5-7, 1486, ¶ 29-42, 1524 ¶ 5-10.

Respectfully submitted this 18th day of September, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 18th day of September 2025, a copy of the foregoing Opposition was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to Midas Green Technologies, LLC, c/o Joseph Thomas, 18101 Von Karman Avenue, Suite 230, Irvine, CA 92612, email jthomas@twtlaw.com.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 24-90448-11
	§	HOUSTON, TEXAS
RHODIUM ENCORE, LLC	§	TUESDAY,
AND AIR HPC LLC,	§	JULY 8, 2025
DEBTORS.	§	1:00 P.M. TO 1:28 P.M.

OMNIBUS OBJECTION

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

RECORDED VIA COURTSPEAK; NO LOG NOTES

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(Please also see Electronic Appearances.)

HOUSTON, TEXAS; TUESDAY, JULY 8, 2025; 1:00 P.M.

THE COURT: All right, good afternoon.

It is Tuesday, July 8, 2025. We're here for the 1:00 o'clock docket, Case No. 24-90448, Rhodium Enterprises, and in particular to the omnibus objection at Docket No. 953.

So, why don't we get appearances of counsel in the courtroom, and then we'll get appearances of counsel on the phone?

MS. TOMASCO: Good afternoon, Your Honor.

Patty Tomasco. I'm joined by my colleague, Rachel Harrington from Quinn Emanuel, also Elizabeth Brannen from the Stris law firm, and we're here on behalf of the Debtors and Debtors-in-Possession.

THE COURT: Thank you.

All right, anyone else wish to make an appearance?

(No audible response.)

THE COURT: Hello?

(No audible response.)

THE COURT: I think all the lines are unmuted.

Is anyone here representing Midas Green Technologies?

(No audible response.)

THE COURT: Mr. Thomas, are you on the line?

(No audible response.)

THE COURT: Ms. Schultz, can you hear me?

MS. SCHULTZ: I can, Your Honor, yes.

THE COURT: Okay. All right, because you're the only name that I have a name to.

Mr. Thomas, can you hear me?

(No audible response.)

THE COURT: It is Mr. Thomas who represents --

MS. TOMASCO: That's my understanding, Your Honor, the lead counsel. There's one other lawyer I can try to contact, but I don't see him on the screen.

THE COURT: Okay, why don't we take a five-minute recess, see if maybe you can contact him?

All right, we'll be in recess for 5 minutes.

You can sit down.

(Recess taken from 1:04 p.m. to 1:09 p.m.)

THE COURT: All right. So, we're back on the Record in Case No. 24-90448.

So, Ms. Tomasco, why don't we restart again?

MS. TOMASCO: Thank you, Your Honor

Patty Tomasco. I'm joined by my colleague, Rachel Harrington from Quinn Emanuel Urquhart & Sullivan. We're also joined by Elizabeth Brannen from the Stris law firm on behalf of the Debtors and Debtors-in-Possession.

THE COURT: Thank you.

All right, who else wishes to make an appearance?

MR. THOMAS: Your Honor, Joseph Thomas on behalf of Midas Green Technologies, along with partner Bill Kolegraff and associate Grant Thomas, here in my office.

THE COURT: Okay.

All right. Ms. Tomasco, is he taking the lead?

MS. TOMASCO: Your Honor, I had delusions of grandeur that I could handle this hearing, but I cannot. It was the course I didn't take in law school. And so, what I'm going to do is I hope to hand up -- we have a PowerPoint presentation, which if you make Ms. Harrington the presenter -- you need to turn on your camera, Ms. Harrington -- we also have one to hand up to the Court.

So, the presentation will be handled by Ms. Brannen. To the extent that we get to the end about what to do with the procedural posture, I can handle that part.

THE COURT: Yeah, why don't we move to that because I did read your reply this morning, and unfortunately, the objection had not been linked.

MS. TOMASCO: Oh.

THE COURT: So, only after I got your reply was I able to find it. It took me a little bit of digging. So, maybe we should deal with the procedural posture first because I'd like to do this on a full record, as opposed to not on a full record.

So, why don't we go to that, and then I'll let Mr. Thomas speak?

MS. TOMASCO: Your Honor, so, I'm actually really inspired by Ms. Brannen's lament here. A lot of money was spent in the proceedings below, and as you know, we also moved to lift the stay to allow Judge Albright to enter an Order, but we do have is sufficient for estoppel purposes here. I think the cases are uniform on that. I'm not going to expouse on them, but I do think it's sufficient for the Court to disallow the claim basically on preclusion grounds itself.

That being said, as the lawyer who wants to confirm a Plan in this case, I'm mindful that a claim of this size -- $30 to 50 million is putatively what they've asserted here -- is enough to keep us from being able to make meaningful distributions to the other stakeholders in the case.

For that reason, we want for there to be a Motion to Estimate if we're not able to dispose of the claim today, and to the extent that the Court believes that a summary judgment would put in front of the Court more resources. And again, I'm going to parrot Ms. Brannen in our conversation. We believe this claim is sanctionable. We think that under applicable patent law, this sort of in *seriatim* attacks on a technology that doesn't even come

close to what their patents provide for is something that the Debtors' estate should not have to bear the cost of.

That said, my overarching goal in these cases is to confirm a Plan and to make meaningful distribution to deserving stakeholders. This is not one of them, but I understand that we want this to be done right, so we build in the alternative of two things.

One is a summary judgment schedule, and the other is a Motion to Estimate. Obviously, our position is that the estimation should be at zero. And this is particularly important here because they're asserting damages into the future, and of course, there are no longer any operating entities at Rhodium. Although we still own our patents for the technology that we use, there are no longer any potentially infringing activities going on. So, estimation to me does seem to be particularly appropriate. So estimation to me does seem to be particularly appropriate. I hesitate to use estimation because I think it can be overused, but I think it may be appropriate in this case for the reason that they're claiming future damages, which we say is improper based on the Fifth Circuit case in *Peretto*.

That said, we've proposed -- and if you look at the last slide -- that the parties could assert summary judgment and the Court could hear this on summary judgment, but I urge the Court that we've already done a summary

judgment motion and we won. We just don't have an Order, right, but that's sufficient for the reasons that we've stated in our brief.

But if you want a do-over, if you want to make us spend that money again, we certainly can. Don't want to. Don't want to waste the estate's resources on something that's already been decided. That's the whole point of preclusion, but we've proposed the schedule that's on the last slide in the deck.

If the Court is inclined to do this, I would suggest layering into this schedule a Motion to Estimate at zero. This would give us time to have the claim not be a factor in confirmation or in distributions upon the effective date. It would not require us to make reserves for a claim which has no merit.

THE COURT: Okay, all right.

Mr. Thomas?

MR. THOMAS: Your Honor, as the Court will recall, the Debtor applied for relief from stay to go back to Judge Albright, and Judge Albright entered an Order requiring both parties to submit proposed Orders, which was done. There are competing Orders pending in front of Judge Albright since I'm going to say early February of this year. He has not decided anything yet.

It's possible he could rule for the Debtor. It's

possible he could rule for my client. It's possible he could deny the Motion for Summary Judgment without prejudice and allow the case to continue.

We see no reason why we should be eliminating Judge Albright's final ruling. It's important to my client to get that ruling because if it's one that we don't agree with, we'll have a record from which we can appeal.

Currently, there is no reasoning stand for any summary judgment ruling at all, which makes it, you know, something that can't even be appealed except to be remanded back for reasoning.

So, we see no effort by the Debtors' counsel to contact Judge Albright to ask him if there's urgency pending. And I was unaware that there's urgency pending. I don't know that there's a Plan on file, Plan of Reorganization yet on file that timing is critical, but if there is a timing issue, why not let Judge Albright be notified of that and ask him to make his ruling as the parties originally did and as the Bankruptcy Court originally did?

So, I see no reason why to cut Judge Albright out of this exercise when everybody agreed that that's how this proceeding ought to (glitch in the audio) make his final ruling.

And I can't explain why that hasn't happened,

except probably indecisiveness. It's not as clear to Judge Albright as it may be to counsel for the Debtor. It may be that he's got a lot more to consider than people are giving him credit for, but in any case, rather than go through these additional procedural hearings in Bankruptcy Court, why not have the Debtors' counsel or -- we'd be willing to work with a joint request to Judge Albright to ask him to make a ruling.

So, I just see no reason why the Debtor, after asking for permission to go back to Albright and telling the Court that was the proper court, is now saying we now need to skip Judge Albright and have a different ruling made by a different judge. It just doesn't make sense to me, and I don't think it makes sense to Judge Albright. I think that's the court of jurisdiction here, and the way to deal with this is having some further proceedings in front of Albright and not to have the Bankruptcy Court skip a District Court ruling on patent infringement and come to its own conclusion, which, by the way, may well differ from the final ruling.

If the Bankruptcy Court were to conclude, based on the hearing and briefing schedule proposed by the Debtor, that there's no infringement, what happens if Judge Albright later issues a ruling denying that motion and allowing the case to go forward? I mean, it creates a conclave of

procedural nightmares for both parties, and I think the cleanest thing to do is to let Judge Albright continue the exercise he was requested to do, and let the Court defer to him and then proceed accordingly.

So, Your Honor, that's really the extent of what I have to say on this right now.

THE COURT: All right.

Anything further?

MS. TOMASCO: Your Honor knows the exigencies of this case as well as I do. We need to confirm a Plan. Today was supposed to be our Disclosure Statement hearing. We're not here because of other reasons, but we do want to be prepared to confirm a Plan by the end of August.

Lots of things get more expensive as the case goes on, and what we have here is a situation in which the parties going to Judge Albright and asking him to rule; we already filed this Court's Order lifting the stay on Judge Albright's Docket. We've already interacted with the Court Clerk with respect to a ruling to memorialize what the judge ruled on the Record. We don't have the luxury of waiting forever.

This is too much money that they're claiming, and frankly, their argument that this Court doesn't have jurisdiction is invalid on its face. They've submitted to the jurisdiction of this Court under *Couch v. Landing.*

Everything to do with their claim is under this Court's jurisdiction. They are asking for a piece of the bankruptcy rest.

They cannot be heard to escape this Court, nor can they use this happenstance of Judge Albright not ruling to hang up this whole estate, and all of the creditors and interest holders who are waiting for their distribution. That's not fair.

THE COURT: All right.

All right. So, here's what I'm going to do. I do believe that the Proofs of Claim are clearly in front of me. I have exclusive jurisdiction to address, to deal with the Proofs of Claim. I do think that there is significant exigencies in order to get this case confirmed, and the stay was lifted a while back.

I'm not, in any way, shape, or form, trying to usurp Judge Albright's jurisdiction with respect to this. I'm trying to address the Proofs of Claim that are integral to the Plan confirmation process. So, I will go ahead and allow you to file the estimation motion, and we will schedule a hearing on the 26th.

And to the extent you want to file summary judgment motions on the schedule, I'm happy to listen to them. I can enter that Order, but I think you also need to be prepared, you know, for objection on the merits of the

Proof of Claim.

I have a hearing at 9:00 o'clock on the 26th, which should go --

MS. TOMASCO: The 26th of August, Your Honor?

THE COURT: August, yes.

MS. TOMASCO: Okay, all right. So, adopting, essentially, the schedule that we --

THE COURT: Yeah, adopting the schedule, but --

MS. TOMASCO: Okay.

THE COURT: -- but allowing the, you know, the parties -- I want to have a full record on the claim objection.

MS. TOMASCO: Understood, Your Honor.

MR. THOMAS: Yeah, Your Honor --

THE COURT: Yes.

MR. THOMAS: Your Honor, could I -- this is Mr. Thomas.

We just received, as you know, last night, like the Court did, this proposed schedule. I have no difficulty with this schedule. I am out of town on the 26th.

Would it be possible to move the hearing date by one week?

THE COURT: You want to move it up by one week? Yeah, we could do that.

MS. TOMASCO: I would prefer to move it --

MR. THOMAS: Or, actually, is it possible to move it back one week, I guess, is the first question?

THE COURT: The problem is that that's the week of Memorial --

MS. TOMASCO: Labor Day.

THE COURT: -- yeah, Labor Day, Labor Day weekend, and I'm pretty much going to be out from the 29th through the 3rd or 4th.

So, I mean, we can do the 22nd.

MR. THOMAS: Yeah, I could do the 22nd, Your Honor.

THE COURT: Okay, that would be virtual.

MS. TOMASCO: Virtual on the 22nd?

MR. THOMAS: Yes.

THE COURT: Yeah, virtual on the 22nd, but we can do the 22nd. And why don't we just submit a slightly revised form of Order that anybody can file moving papers, anything they want the estimation by the 29th? Responses will be due by --

(Unidentified speakers talking in the background.)

THE COURT: -- responses will be due -- by the 29th, responses will be due by the 12th instead of -- I'm just going to push you up a little bit on the estimation motion.

MS. TOMASCO: Sure. That's fine, Your Honor.

THE COURT: Okay, any responses due by the 12th, and then any replies due by the 19th. And then, that'll be three days before the hearing on the 22nd.

MS. TOMASCO: Very good, Your Honor.

THE COURT: Okay. And so --

MR. THOMAS: Your Honor, just so I'm clear, are you scheduling just an estimation hearing, or are you scheduling a summary judgment and an estimation?

THE COURT: I'm scheduling a full trial. To the extent that people want to file summary judgment, I'll consider that before the trial, and also, I'm going to consider the estimation. I want to address the Proofs of Claim in every respect. That's the focus of it is the five or six Proofs of Claim that you filed.

MR. THOMAS: Okay. So, the briefing -- if there is both a Motion to Estimate and a Motion for Summary Judgment, the briefing schedule is set.

THE COURT: Exactly, yeah. File everything by the 29th, responses due by the 12th, replies due by the 19th, and we'll have, you know, either a hearing on summary judgment or a trial on that date. And we'll start at -- since it's virtual, we can start at 8:30.

MS. TOMASCO: So, this is the first I've heard of a trial.

THE COURT: Yeah, to the extent that there is

additional testimony unrelated to the summary judgment on the claim objection, okay?

MS. TOMASCO: Okay.

THE COURT: I don't know that there is. I'm just saying I'm not going to limit you to either a summary judgment or a claim estimation. If you just want to go and rest on your objection and put on any evidence with respect to your objection, I'll take that as well.

MS. TOMASCO: Okay. So, this is a --

THE COURT: Trial is not the right word.

MS. TOMASCO: Okay. So --

THE COURT: A hearing.

MS. TOMASCO: A hearing, okay.

THE COURT: It can be evidentiary, if you want. That's the only thing I'm saying.

MS. TOMASCO: I got it, okay. I got it, Your Honor.

THE COURT: Okay.

MS. TOMASCO: Okay. And obviously, no discovery?

THE COURT: Is there any discovery needed? You guys have been discovering this forever. I mean, --

MS. TOMASCO: I just want to make it clear on the Record, no discovery.

THE COURT: Yeah, yeah. I think the Record -- I mean, I don't know anything that's happened since this case

has been stayed in that case.

MS. TOMASCO: All right. Thank you, Your Honor.

THE COURT: Okay, we're just doing the claim objection. All right.

MR. THOMAS: Okay.

THE COURT: All right. So, we're in recess till my 3:00 o'clock case.

Thank you.

MR. THOMAS: Thank you, Your Honor.

THE COURT: Thank you.

(Hearing adjourned at 1:28 p.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability due to the condition of the electronic sound recording of the ZOOM/video/telephonic proceedings in the above-entitled matter.

/S/ MARY D. HENRY

*CERTIFIED BY THE AMERICAN ASSOCIATION OF ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337*

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