Docket #2392 Date Filed: 6/2/2026

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

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

WITNESS AND EXHIBIT LIST FOR THE
JUNE 4, 2026 HEARING

David Eaton and Spencer Wells, in their capacities as former members of the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the "Special Committee"), one of the debtors in the above-captioned chapter 11 cases (collectively, the "Debtors" or "Rhodium"), by and through their undersigned counsel, submit the following witnesses and exhibits list (the "Witness and Exhibit List") in respect of the hearing scheduled for **Thursday, June, 2026, at 11:00 a.m. (CDT)** before the Honorable Judge Alfredo R. Perez, at the United States Bankruptcy Court for the Southern District of Texas, in Courtroom 400, 515 Rusk Street, Houston, Texas 77002.

A. WITNESSES

1. Any witness called or designated by any other party;
2. All persons listed on the witness list of any other party; and
3. Any rebuttal and/or impeachment witnesses.[2]

[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.

[2] The Special Committee reserves the right to cross-examine any witness called by any other party. Nothing herein constitutes a waiver of the Special Committee's rights, remedies, claims or objections, all of which are reserved.

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B. EXHIBITS

Ex. No.	Description[3]	Offered	Objection	Admitted / Not Admitted	Disposition
1.	*Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [ECF No. 835] as granted by [ECF No.1418]				
2.	*Lehotsky Keller Cohn LLP's Motion for Sanctions Against the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors and Its Counsel, Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses Under Section 328* [ECF No. 2303]				
3.	*Barnes & Thornburg LLP's Response to Lehotsky Keller Cohn LLP's Motion for Sanctions* [ECF No. 2337]				
4.	*David Eaton and Spencer Wells's Response to Lehotsky Keller Cohn LLP's Motion for Sanctions Against the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors and Its Counsel, Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses Under Section 328* [ECF No. 2338]				
5.	*Lehotsky Keller Cohn LLP's Reply in Support of its Motion for Sanctions Against the Special Committee and Barnes & Thornburg LLP* [ECF No. 2374]				
6.	*Lehotsky Keller Cohn LLP's Supplemental Brief in Support of its Motion for Sanctions Against the*				

[3] Each exhibit to be offered includes without limitation each schedule or other exhibit attached thereto.

	Special Committee and Barnes & Thornburg LLP [ECF No. 2389]				
7.	*David Eaton and Spencer Wells's Response to Lehotsky Keller Cohn LLP's Supplemental Brief in Support of its Motion for Sanctions Against the Special Committee and Barnes & Thornburg LLP* [ECF No. 2391]				
8.	Any exhibit identified or admitted by any other party				
9.	Any rebuttal or impeachment exhibits				
10.	Any document or pleading filed in the above-captioned main cases				

The Special Committee reserves its rights to amend and/or supplement this Witness and Exhibit List at any time prior to the hearing and to use additional exhibits for purposes of rebuttal or impeachment and to further supplement the foregoing lists of witnesses and exhibits as appropriate. The Special Committee also reserves its rights to rely upon and use as evidence (i) exhibits included on the exhibit lists of any other parties in interest, and (ii) any pleading, hearing transcript, or other document filed with the Court in the above-captioned matter.

Dated: June 2, 2026

Respectfully Submitted,

BAKER BOTTS L.L.P.

/s/ Travis A. McRoberts

Thomas E. O'Brien (TX 24046543)
Travis A. McRoberts (TX 24088040)
Kevin Chiu (TX 24019723)
2001 Ross Avenue, Suite 900
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
Email: tom.obrien@bakerbotts.com
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kevin.chiu@bakerbotts.com

-and-

Matthew G. Sheridan (TX 24088404)
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: (713) 229-1568
Email: matthew.sheridan@bakerbotts.com

Counsel for David L. Eaton and Spencer Wells

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 2, 2026, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ Travis A. McRoberts
Travis A. McRoberts

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)
	§	

APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

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 YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE UNITED STATES BAKRUPTCY JUDGE:

Rhodium Encore LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, "Debtors" or "Rhodium") respectfully submit this

[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.

Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation counsel (the "Application") pursuant to sections 327(e), 328(a), 330, and 1107 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and paragraph 47 of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "Complex Case Procedures"). In support of this Application, Debtors submit the Amended Declaration of Jonathan F. Cohn ("Amended Declaration").

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of Debtors' chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Application is sought pursuant to 11 U.S.C. §§ 105, 327(e), 328(a), 330, 503, 507, and 1107(a).

BACKGROUND

3. On August 24, 2024, Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The factual background regarding Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of Debtors' chapter 11 cases, is set forth in the Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (ECF No. 35).

4. On August 24, 2024, the Court entered an order jointly administering the bankruptcy cases under case number 24-90448 (ARP). *See* Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief (ECF No. 8).

5. On August 24, 2024, Debtors filed a Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7). On August 29, 2024, Debtors filed a Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32).

6. On September 22, 2024, Debtors filed an Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Initial Application") (ECF No. 173).

7. Debtors hereby incorporate by reference Paragraphs 6 through 48 of their Initial Application, ECF No. 173.

8. No parties objected to the Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP (ECF No. 263).

9. As set forth in the Amended Declaration, Debtors' Initial Application disclosed that Debtors' agreement with Lehotsky Keller Cohn LLP included discounted hourly rates in exchange for a partial contingency fee based upon the outcome of the litigation. The details of this arrangement are specified in Debtors' Engagement Letter with Lehotsky Keller Cohn LLP, dated May 16, 2023, attached to the Amended Declaration as Exhibit A.

10. No parties objected to the Debtor's Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

11. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

12. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, attached to the Amended Declaration as Exhibit B.

13. Debtors have requested that the Court enter the attached Proposed Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel, under the terms of the updated Engagement Letter attached to the Amended Declaration as Exhibit B.

RELIEF REQUESTED

Debtors respectfully request that this Court enter an updated order allowing the retention and employment of Lehotsky Keller Cohn LLP as special litigation as upon the terms described in this Application and in the accompanying Exhibit B and for such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 6th day of March, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Patricia B. Tomasco
Patricia B. Tomasco (SBN 01797600)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice)*
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
cameronkelly@quinnemanuel.com
alainjaquet@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*) Razmig Izakelian (*pro hac vice)* 865 S. Figueroa Street, 10th Floor Los Angeles, California 90017 Telephone: 213-443-3000
Facsimile: 213-443-3100
Email:
ericwinston@quinnemanuel.com
razmigizakelian@quinnemanuel.com

Counsel to the Debtors and Debtors-In-Possession

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Application was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

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)
	§	

AMENDED DECLARATION OF JONATHAN F. COHN IN SUPPORT OF THE APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

Pursuant to 28 U.S.C. § 1746, I, Jonathan F. Cohn, hereby declare as follows:

1. My name is Jonathan F. Cohn. I am over the age of 18 years. I am competent to make this amended declaration and I have personal knowledge of the facts stated herein. Each and every statement contained herein is true and correct.

2. I am a partner in the law firm of Lehotsky Keller Cohn LLP (the "LKC"). LKC maintains its primary office at 408 W. 11th Street, 5th Floor, Austin, Texas 78701. LKC's main telephone number is (512) 693-8350, and its main facsimile number is (512) 693-4755. I submit this declaration (the "Second Amended Declaration") as an amendment to my declaration dated September 22, 2024 (the "Declaration") (ECF No. 173) that was filed in support of the Application

[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.

for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (ECF No. 173).

3. On September 22, 2024, Debtors filed their Application for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Application") (ECF No. 173). That Application disclosed that LKC was providing discounted rates and would receive a potential contingency payment. *See id.* ¶ 26 ("There is also a contingent fee depending on the outcome of the litigation that has not changed."); *id.* ¶ 40 ("Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on the above-described matter based on a combination of hourly billing and a contingent fee."); *id.* ¶ 41 ("Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of the litigation."); *id.* ("Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee."); *see also id.* ¶ 44; ECF 173, Cohn Decl. ¶ 6; *id.* ¶ 25; ECF 173, Topping Decl. ¶ 9; *id.* ¶ 10.

4. No parties objected to the Application,.

5. On October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

6. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

7. In an abundance of caution, and to avoid any confusion, LKC attaches its engagement letter with Debtors, dated May 16, 2023, providing the details of the discounts and contingency arrangement (Exhibit A).

8. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, a copy of which is attached (Exhibit B).

9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 6, 2025

/s/ Jonathan F. Cohn
Jonathan F. Cohn
Partner, Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Amended Declaration was served via the Clerk of the Court through the ECF filing system to the parties registered to receive notice through ECF.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

May 16, 2023

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX 76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC* ("this Matter").

Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.

Fees: The fee for this Matter will be comprised of: (1) a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for all other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: $1,300
- Other partners, including Will Thompson: $1,200
- Counsels: $900
- Associates: $750

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all

EXHIBIT
A
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additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional amounts not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay monthly invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky

Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

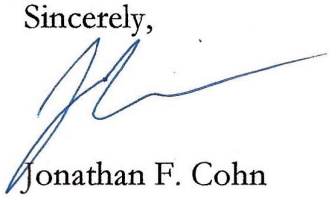
Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,



Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

By: 
Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

EXHIBIT
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- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

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)
	§	

ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to ECF No. _____)

This matter comes before the Court upon the application, dated __ (the "Application"),[2] of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, "Debtors"), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in connection with two separate matters.

The Court has considered the Application and the Cohn Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

[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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of 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 meanings ascribed to such terms in the Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which Lehotsky Keller Cohn LLP is to be employed," as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors' reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to modify the retention of Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, pursuant to the engagement letter attached as **Exhibit A**.

2. Lehotsky Keller Cohn LLP shall be compensated in accordance with **Exhibit A**, and will file interim and final fee applications for allowance of its compensation and expenses, and any hourly fees and expenses shall be subject to sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. With respect to its hourly fees, for

billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

3. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

4. With respect to non-hourly fee compensation set forth in **Exhibit A**, such compensation is hereby approved, provided that the amount of such compensation shall be subject to Bankruptcy Court approval as set forth in **Exhibit A**.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

8. Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

9. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2025

_____
ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.



- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

EXHIBIT 2

ECF NO. 2303 – FILED UNDER SEAL

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)
	§	

BARNES & THORNBURG LLP'S RESPONSE TO LEHOTSKY KELLER COHN LLP'S MOTION FOR SANCTIONS
[Relates to ECF No. 2303]

Barnes & Thornburg LLP ("B&T") files this response ("Response") to Lehotsky Keller Cohn LLP's ("LKC") Motion for Sanctions against Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses under Section 328 (ECF No. 2303). In support, B&T respectfully states as follows:

INTRODUCTION

1. LKC signed an engagement letter with Debtors that contemplated that the parties might not agree on LKC's success fee. In that event, the parties agreed that "**such dispute shall be resolved by the Bankruptcy Court**." ECF No. 835 at 15 (emphasis added). There was such a dispute, and this Court resolved it. But despite agreeing to submit fee disputes to this Court, LKC now cries foul, seeking sanctions against the Special Committee, and its counsel B&T, for

[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.

their reasonable, good-faith dispute of LKC's success fee.[2] If LKC wanted an engagement letter that required Debtors and the Special Committee to accept whatever success fee LKC desired, with no chance to dispute it or seek this Court's intervention, LKC could have bargained for one. It did not. Instead, LKC agreed to resolve fee disputes with this Court but would now sanction a party and its counsel for doing exactly that—resolving a reasonable fee dispute with this Court.

2. And this fee dispute *was* reasonable. The Special Committee and LKC disagreed on the initial value to use to calculate the success fee. LKC argued for $100 million as the starting point, whereas the Special Committee believed $75 million was appropriate. B&T advanced the Special Committee's position in good faith and with evidence in support. *See, e.g.*, Ex. 1, Hearing Ex. 245.002 (showing midpoint of damages valuation at $75 million); *see also* ECF No. 1881 at 3 (Debtors valuing settlement of their claims at $75 million). B&T did not file a frivolous claim against LKC, it did not make knowing misrepresentations to the Court, and it did not vexatiously multiply proceedings. LKC's allegations are demonstrably false, and this Response shows as much.

3. LKC's Motion is a clear attempt to circumvent the rule that costs incurred defending a fee application are not recoverable under 11 U.S.C. § 330(a)(1). The U.S. Supreme Court established this rule in *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 124 (2015). Rather than accept the rule from *ASARCO*, LKC seeks sanctions instead. But sanctions are not warranted because B&T did not engage in bad faith or abuse the judicial process. LKC's Motion should be denied.

[2] LKC has effectively conceded that the Debtors and the Special Committee are not different for purposes of the engagement letter because LKC argues that the Special Committee refused to negotiate the success fee in good faith, as the engagement letter requires. *See* ECF No. 2303 at 5 ("The Special Committee Refuses to Negotiate LKC's Success Fee in Good Faith.").

BACKGROUND

4. For LKC to be entitled to sanctions, it must show that B&T engaged in "bad faith or willful abuse of the judicial process." *In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). Additionally, "the finding of bad faith must be supported by clear and convincing proof." *Id.* at 730 (cleaned up) (quoting *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001)). This is a "high threshold," *id.*, and the U.S. Supreme Court has advised that a district court's inherent power to sanction "must be exercised with restraint and discretion." *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980). The Fifth Circuit has explained that this inherent authority "is not a broad reservoir of power, ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function." *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir. 1990).

5. LKC's Motion does not clear the high threshold required for sanctions. Far from presenting clear and convincing proof of B&T's bad faith or abuse of the judicial process, LKC simply disagrees with B&T's zealous advocacy on behalf of its client. The evidence reveals that with the client's full approval and backing, B&T advanced reasonable, good-faith arguments that LKC's fee application was premature and that LKC breached its fiduciary duty to the Debtors. LKC's Motion should be denied.

A. The Debtors Retain LKC

6. In May 2023, the Debtors and LKC executed an engagement letter so that LKC could represent Debtors in litigation against Whinstone US, Inc. ("Whinstone"). ECF No. 835 at 9–12. Debtors are a bitcoin mining company that operated at Whinstone's facility in Rockdale, Texas. ECF No. 770 at ¶ 3. Whinstone contracted with Debtors to provide them power at a fixed, below-market price, but Riot, a competitor to the Debtors, purchased Whinstone shortly

afterwards. *Id.* at ¶ 4. When Debtors refused to renegotiate the power contracts, Riot and Whinstone withheld millions of dollars in energy credits. *Id.* at ¶ 7.

7. The engagement letter between Debtors and LKC provided for a variety of fees, including fixed, hourly, and a "potential success fee." ECF No. 835 at 9–10. In September 2024, as part of this bankruptcy proceeding, Debtors applied to retain LKC as special litigation counsel in connection with the ongoing Whinstone litigation. *See* ECF No. 173. The Court granted this application, but its order did not address the success fee. *See* ECF Nos. 263, 264.

B. The Debtors Sue Whinstone and Revise LKC's Engagement Letter

8. In February 2025, the Debtors filed an adversary complaint against Whinstone and its parent company Riot Platforms, Inc. ("Riot"), seeking more than $300 million in damages. *See* ECF No. 770.

9. In February and March of 2025, the Debtors and Whinstone mediated their dispute before Judge Mark X. Mullin, United States Bankruptcy Judge for the Northern District of Texas. *See* ECF No. 1732 at ¶ 13. During this mediation, it became clear that Debtors and Whinstone were likely to reach a settlement *both* resolving Debtors' claims against Whinstone *and* consummating the sale to Whinstone of Debtors' assets in Rockdale (as well as its intangible assets like the power contracts). ECF No. 1111-1 at ¶ 11. However, the terms of the success fee outlined in the engagement letter between Debtors and LKC did not address this scenario. *Id.* The terms of the success fee outlined in the initial engagement letter contemplated a judgment on or settlement of Debtors' claims alone, not an additional amount for the sale of the Rockdale assets and power contracts. *See* ECF No. 835 at 10. Nevertheless, the parties believed LKC should still receive a success fee in the event of a global settlement. ECF No. 1111-1 at ¶ 11.

10. Accordingly, in March 2025, Debtors and LKC signed a revised engagement letter ("Revised Engagement Letter") that superseded the one from May 2023. ECF No. 835 at 13–16. The Revised Engagement Letter outlined the terms of the success fee as follows:

> The potential success fee is calculated as follows:
>
> (a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;
>
> (b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and
>
> (c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;
>
> (d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Id. at 14–15. Compared to the initial engagement letter, the Revised Engagement Letter made any payments under subsections (b) and (c) "subject to Bankruptcy Court approval." And the revised letter added subsection (d) entirely.

11. In the event Whinstone acquired "all or substantially all of the Rockdale assets" (as appeared likely during the mediation), subsection (d) required Debtors and LKC to determine in good faith the portion of any settlement with Whinstone that was allocable to energy credits and damages under subsections (b) and (c), respectively. This allocation necessarily required Debtors and LKC to determine the portion of the $185 million global settlement that corresponded to the Debtors' claims against Whinstone. This is because the amounts allocable to the energy credits and damages under subsections (b) and (c) had to stem from the amount for Debtors' claims, not

the amounts for the Rockdale assets or power contracts. In other words, the Debtors and LKC had to agree on (1) how much of the settlement value was attributable to Debtors' claims as opposed to the tangible assets and (2) how much of the claims-value was allocable to energy credits versus other damages.

12. Testimony from Charles Topping, the secretary and general counsel for Rhodium Enterprises, Inc. ("REI"), supported this two-step process. He testified that in the event of a global settlement, "[i]t would be necessary to come up with an allocation as to what portion of that number is attributable to the assets and then what portion of that number would be attributable to the settlement of the -- the -- the claims." ECF No. 1258 at 47. "And with regard to the -- the number attributable to the settlement of the claims, it would then be necessary to come up with an allocation between Subparagraph (b), which deals with energy credits, and then Subparagraph (c), which deals with damages and other amounts." *Id.*

13. Per the last sentence of subsection (d), LKC also agreed that "[i]f [Debtors] and [LKC] are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court." ECF No. 835 at 14–15. Crucially, then, LKC agreed that it may not be able to agree with Debtors on the allocation of the global settlement and *would have to resolve the dispute with this Court*.

14. Around the same time that the parties executed the Revised Engagement Letter, Debtors applied for an updated order authorizing them to continue to retain LKC as special litigation counsel under the terms of the Revised Engagement Letter. *See* ECF No. 835 at ¶ 13. The Court later approved this application, though it made no determination as to the calculation of

LKC's success fee. *See* ECF No. 1418. In fact, the Court stated that "[t]he Ad Hoc Group and any other parties are always free to object to any future fee applications." *Id.* at 18.

C. The Settlement

15. The mediation between Debtors and Whinstone was ultimately successful. Debtors and Whinstone entered into a Compromise, Settlement and Release Agreement ("Settlement") and a Purchase and Sale Agreement ("PSA"), the material terms of which the Court approved on April 8, 2025. ECF Nos. 921, 1530-2, 1530-3. The PSA provided that Whinstone would pay Debtors $185 million in total. ECF No. 1530-3 at 7.

16. However, the parties did not determine which portion of the $185 million covered the claims versus the Rockdale assets or power contracts. Under the PSA, the "Purchase Price" of $185 million was for "the Property," defined as "all tangible and certain intangible property" of Debtors. *Id.* at 6–7. The parties did not specify an amount corresponding to the Rockdale assets (tangible property) versus Debtors' claims (part of intangible property).

17. Rather, the PSA provided that Debtors would prepare and deliver to Whinstone a copy of IRS Form 8594 allocating the $185 million among the tangible and intangible assets in accordance with § 1060 of the Internal Revenue Code. *Id.* at 7–8. This Form was deemed the "Allocation Statement." *Id.* at 7. The Allocation Statement required Debtors to distribute the $185 million among seven classes of assets.[3] In the case of an asset acquisition, the Internal Revenue Code requires an allocation in order to properly reflect the fair market value of the assets and to properly calculate the seller's gain or loss and the buyer's basis in the purchased assets. *See* 26 U.S.C. § 1060(a). Courts will make a similar allocation for settlement agreements if the parties to the agreement do not do so, in order to calculate the federal income tax liability on the settlement.

[3] Form 8594, Form 8594 (Rev. November 2021).

See Bagley v. Commissioner of Internal Revenue, 105 T.C. 396, 410 (1995) (U.S. Tax Court allocating $500,000 out of $1.5 million settlement to punitive damages for tax purposes), *aff'd*, 121 F.3d 393 (8th Cir. 1997).

18. Notably, § III(2) of the Settlement specified that "[a]s a *condition* to entering into this Agreement, Debtors and Whinstone shall close the transactions contemplated by that [PSA] between Debtors (or their designees), as sellers, and Whinstone (or its designee), as purchaser, and approved by the Bankruptcy Court." ECF No. 1530-2 at 8 (emphasis added). One such transaction was the Allocation Statement.[4]

19. Under the PSA, Whinstone had 15 days upon receipt of the Allocation Statement to inform Debtors of any objections. ECF No. 1530-3 at 7. In the event Whinstone objected, the parties were obligated to "attempt in good faith to resolve any dispute." ECF No. 1530-3 at 7. If the parties couldn't, this Court would do so. *Id.* at 7–8. The parties agreed that "[t]he allocation as determined by such Allocation Statement . . . shall be binding on [Whinstone] and [the Debtors]." *Id.* at 8.[5] Additionally, the PSA commanded that the Debtors and Whinstone "shall take no reporting position inconsistent with such Allocation Statement on any tax return or in the course of any tax audit, tax review or tax litigation relating thereto or otherwise." *Id.*

20. B&T reasonably argued that the Allocation Statement had ramifications for the calculation of LKC's success fee. The Revised Engagement Letter required the Debtors and LKC to allocate the portion of the $185 million attributable to the claims against Whinstone, and then again among energy credits and other damages. Additionally, B&T reasonably believed that the

[4] Additionally, the Settlement clarified that its provisions encompassed "the documents required by the PSA," including the Allocation Statement. ECF No. 1530-2 at 10.

[5] Under the applicable provision of the Internal Revenue Code, "[i]f in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor." 26 U.S.C. § 1060(a).

Debtors could have subjected themselves to audit risk by taking one position in the tax allocation and a different one as to LKC's success fee. *See id.* at 8; Ex. 2, Dec. 11, 2025 Hearing Tr. at 8:4–7 ("I'm also satisfied that using $75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit.").

21. Additionally, the Debtors and the Special Committee were concerned about paying overlapping success fees. The Debtors received assistance from the investment bank B. Riley Financial in connection with the sale of the Debtors' business. ECF No. 1530 at 7. B. Riley was also entitled to a success fee from the Debtors, but B. Riley agreed to wait to negotiate its success fee until the parties finalized the Allocation Statement. *Id.* at 8.

D. B&T Negotiates With LKC Over Its Success Fee, But LKC Does Not Entertain B&T's Range of Offers

22. After this Court approved the Settlement and PSA at the end of April, the parties began negotiating LKC's success fee. LKC alleges that B&T, on behalf of the Special Committee, did not negotiate in good faith. ECF No. 2303 at 5–6. In reality, the evidence shows that B&T engaged in good faith, but LKC would not entertain the settlement offers presented by B&T.

23. For example, at the end of May 2025, counsel for LKC reached out to Mr. Trace Schmeltz, counsel for the Special Committee and a partner at B&T, with an offer to settle LKC's success fee for $8.1 million. Ex. 3, Hearing Ex. 201.007–08. This offer used $100 million as its calculation starting point. *Id.* at 201.008. In response, Mr. Schmeltz countered with an offer of $3.8 million. *Id.* at 201.007. Mr. Schmeltz explained that "based on the current tax plan," meaning the Allocation Statement required under the PSA, the Debtors had allocated $75 million, not $100 million, to the value of their claims against Whinstone. *Id.* Of the $75 million, the Debtors and the Special Committee calculated $50 million in energy credits and the rest to other damages (as the Revised Engagement Letter required). Adding the sums from subsections (a), (b), and (c), Mr.

Schmeltz arrived at $3.8 million as a counter. *Id.* Mr. Schmeltz even added, "**I think there is a number between our $3.8 million and your $8.1 million at which we can settle**." *Id.* (emphasis added).

24. In response, counsel for LKC called the number "another low-ball offer" and indicated that LKC "[was] not countering at this time." *Id.* at 201.006–07. Mr. Schmeltz replied that LKC was at one point willing to accept $5.2 million, a figure that is closer to $3.8 than $8.1. *Id.* at 201.006. Counsel for LKC responded with an ultimatum: "If the Debtors want the negotiations to continue, they need to make an offer above $5.2 million." *Id.*

25. Mr. Schmeltz responded that the $75 and $50 million figures came straight from the Debtors and their CFO, Kevin Hays. *Id.* at 201.005. By rejecting these figures, LKC was doubting its own client's valuations. *Id.* Mr. Schmeltz proposed making one more settlement offer over the phone, but negotiations broke down.

26. This evidence shows that LKC's allegations about B&T failing to negotiate in good faith are simply untrue.

27. Between May and July 2025, B&T continued to communicate with counsel for LKC regarding negotiations over the success fee. ECF No. 1530 at ¶ 20. Mr. Schmeltz explained that the Debtors were preparing an Allocation Statement that valued the settlement of Debtors' claim lower than LKC did. *Id.* LKC insisted that its allocation was proper, at which point B&T decided that fee discussions were no longer productive and should wait until the Allocation Statement was completed. *Id.* at ¶ 21. Additionally, when Debtors' counsel Patricia Tomasco reached out to counsel for LKC, the latter declined to negotiate the success fee without a draft of the Allocation Statement. *Id.* at ¶ 22; ECF No. 1530-1 at ¶ 13. In other words, counsel for LKC

admitted that the Allocation Statement was crucial to move forward with negotiations. ECF No. 1530 at ¶ 34.

E. LKC Propounds Discovery on Its Own Client, and LKC Publicly Files B&T's Private Response

28. On August 7, 2025, LKC served its First Set of Requests for Production and Interrogatories to Debtors pursuant to Bankruptcy Rule 2004. ECF No. 1515. Despite its continued representation of the Debtors, LKC signed these discovery requests itself, rather than have its own counsel sign the requests. *Id.* at 2.

29. Tellingly, LKC's discovery requests were broad, seeking a wide array of information related to the tax allocation. *Id.* at 7. LKC now calls the connection between the tax allocation and the success fee "a fiction" that was "invented by the Special Committee," yet LKC sought discovery on this very issue. ECF No. 2303 at ¶ 6. If the tax allocation was truly irrelevant and unconnected to the success fee, then there was no need to obtain discovery on the issue. LKC's actions in this case belie its arguments for sanctions.

30. On August 13, 2025, B&T, on behalf of the Special Committee, emailed a *private* letter to LKC and its counsel outlining the Special Committee's position that LKC's discovery requests were adverse to the interests of LKC's own clients, the Debtors, and that the requests constituted a breach of LKC's fiduciary duties to the Debtors. *See* ECF No. 1529-2. The letter demanded that LKC withdraw its discovery requests before 1:30 pm CT on August 14 or the Special Committee would move to quash the requests. *Id.* at 4.

31. The next day, LKC moved for a status conference on the discovery requests. ECF No. 1529. But as an exhibit to its motion, LKC attached and *publicly filed* LKC's letter from the previous day. *See* ECF No. 1529-2. LKC did not move to seal this filing. LKC complains of the public filing of allegations of misconduct, but it only has itself to blame.

32. Following LKC's lead of not sealing its filings, B&T, on behalf of the Special Committee, filed a motion to quash the discovery requests. *See* ECF No. 1530. B&T argued that the discovery requests were premature because the Debtors and Whinstone had not completed the Allocation Statement. *Id.* at ¶ 31. The Debtors and Whinstone had not agreed on the portion of the global settlement allocable to the claims. Without this number, the Debtors and LKC could not determine how much of the claims were for energy credits versus other damages, per subsection (d) of the Revised Engagement Letter. ECF No. 835 at 14–15; *see also* ECF No. 1258 at 47; ECF No. 1530 at ¶ 33.

F. LKC Files Its Final Fee Application, and the Special Committee Objects

33. On August 22, 2025, LKC filed its final fee application. *See* ECF No. 1560.

34. On September 10, 2025, the Special Committee moved to extend its time to file a response to LKC's fee application. *See* ECF No. 1626. B&T sought additional time for the Special Committee because under Fifth Circuit precedent, all claims that the estate held against LKC had to be included in the objection to the fee application or else they were waived. *See In re Intelogic Trace, Inc.*, 200 F.3d 382, 391 (5th Cir. 2000). Additionally, B&T re-urged the argument that the fee application was premature.

35. The Ad Hoc Group of SAFE Parties (set forth in ECF No. 1346) joined in on the Special Committee's request for an extension of time to file a response to LKC's fee application. *See* ECF No. 1638. The Ad Hoc Group of SAFE Parties represented that it intended to "carefully assess LKC's fee request, including its request for an extraordinarily large success fee."[6] ECF No. 1638 at 3.

[6] This Court later overruled Debtors' omnibus objection to the SAFE Proofs of Claim, effectively making the SAFE Claimants the largest creditor of the bankruptcy estate. *See* ECF No. 1592.

36. On September 24, 2025, the Court instructed the Special Committee to file its objection to LKC's fee application before the status conference on October 2. On October 1, the Special Committee did so, again raising the prematurity argument because the tax allocation was not yet complete. ECF No. 1732 at ¶ 1. LKC alleges that this argument was "meritless," ECF No. 2303 at ¶ 7, but B&T presented the declaration of Mark "Christopher" Wheeler in support of it, *see* ECF No. 1732-1. Mr. Wheeler is a certified public accountant and managing director of a consulting firm that *counsel for Debtors* retained (not the Special Committee or B&T) to "assist[] with an analysis of the tax impact on the Debtors as a result of the [Whinstone] asset sale and other tax matters associated with the disposition of the Debtors assets." ECF No. 1732-1 at ¶ 2.

37. Mr. Wheeler stated that the PSA between Debtors and Whinstone "requires attribution of revenue to each [Rhodium] entity based on (i) the specific assets sold by each entity, (ii) the specific Hosting Agreements held by each entity, providing for each entity to receive quantities of electricity from Whinstone at a fixed price of at least ten years, and (iii) the settlement of certain claims as asserted by each entity in the Debtors litigation with Whinstone." *Id.* at ¶ 7. Mr. Wheeler then analyzed the Allocation Statement provision of the PSA and its consequences for the Debtors and Whinstone. *See id.* at ¶¶ 8–19.

38. Mr. Wheeler stated that in his professional opinion, "there should be one set of operative facts governing the value allocated, and the facts must be accurate." *Id.* at ¶ 25. "Under the PSA, if the parties cannot reach agreement as to the allocation of purchase price, the ultimate provision for relief is for the parties to litigate the matter." *Id.* at ¶ 26. Ultimately, then, "in order to ensure a single set of operative facts regarding the allocation of purchase price, **that agreement or conclusion from any litigation must occur first before Debtors negotiate with LKC**." *Id.* (emphasis added). Mr. Wheeler stated that, as a tax professional, he would be concerned "if there

were multiple sets of operative facts that such a circumstance could trigger an IRS or State income tax audit for the Debtors." *Id.* at ¶ 27.

39. Mr. Wheeler's informed, expert opinion on this topic squarely placed in issue LKC's argument that B&T "invented a fiction" on behalf of the Special Committee. While the Court ultimately granted LKC's fee application, ECF No. 2198, B&T presented a meritorious argument, in good faith, that was supported by expert testimony.

40. As another part of its objection to LKC's fee application, the Special Committee argued that LKC based its success fee calculation on internal, privileged, and outdated information. ECF No. 1732 at ¶ 3. Again, B&T advanced this argument on behalf of the Special Committee with a declaration of Mr. Topping, general counsel and secretary of REI, in support. ECF No. 1732-2.

41. Mr. Topping explained that LKC calculated its success fee using numbers from a spreadsheet that was originally prepared by LKC to facilitate discussions by the Board of Directors of REI at the mediation with Whinstone. *Id.* at ¶ 6. In other words, the numbers were outdated, and the Debtors had changed their position on many of the valuations that LKC relied on in its fee application. Again, while the Court granted LKC's success fee, B&T took a reasonable, good-faith position at the instruction of its client. That is not sanctionable conduct.

42. Finally, B&T, on behalf of the Special Committee, asserted a claim for breach of fiduciary duty against LKC. ECF No. 1732 at ¶¶ 50–59. B&T argued that LKC's premature fee application could cause the Debtors "to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder." *Id.* at ¶ 55. Once LKC filed its fee application, the Debtors and the Special Committee were faced with a difficult choice. They reasonably believed that the fee was premature and could subject the Debtors to tax liability in the future. And

they also understood that *res judicata* bars a debtor's claims against a third party when those claims are not asserted in objection to the third party's fee application. *See In re Intelogic Trace, Inc. (Osherow v. Ernst & Young, LLP)*, 200 F.3d 382, 386–91 (5th Cir. 2000). In fact, once it became clear that LKC intended to file its fee application, counsel for Debtors emailed B&T that "**We have to bring all counterclaims to preserve them.**" Ex. 4, 8/22/25 Emails from Counsel for Debtors (citing *Osherow v. Ernst & Young*) (emphasis added). B&T wanted to avoid the risk of waiving a claim that the Special Committee, Debtors, and counsel for Debtors endorsed and had evidence to support in the form of Mr. Wheeler's expert opinions.

43. What's more, on September 4, 2025, weeks before B&T filed the Special Committee's claim against LKC, B&T communicated to counsel for LKC that they had to assert any claims in connection with the fee application. *See Intelogic*, 200 F.3d at 386–91. B&T and counsel for LKC spoke again on September 9, this time to try and extend the Special Committee's deadline to respond to the fee application, which may have avoided the need to file a counterclaim altogether. If the Debtors and Whinstone had reached an agreement on the tax allocation, or if the Court resolved any dispute between them, then LKC's fee application would no longer be premature. But counsel for LKC did not agree to this extension. Lastly, the day before filing the counterclaim, B&T again reached out to counsel for LKC to inform them of the claim. Ex. 5, Sept. 2025 Emails from Trace Schmeltz. At no point during any of these communications did counsel for LKC convey that B&T was engaging in sanctionable behavior.

44. Not long after the Special Committee filed its objection, counsel for Debtors filed a Motion to Enforce the Purchase and Sale Agreement with Whinstone US, Inc. ECF No. 1881. The motion explained that under § 2.3 of the PSA, if the parties could not resolve their dispute over the Allocation Statement, this Court had to step in. *Id.* at ¶¶ 6–7. The Debtors and Whinstone

had been negotiating in good faith but had been unable to reach an agreement. *Id.* at ¶¶ 8–9. The Debtors therefore submitted their proposed allocations under the Allocation Statement to the Court. *Id.* at ¶ 11.

45. The Debtors' proposed allocation aligned with the Special Committee's position that LKC was using outdated, inflated numbers for its success fee. More specifically, the Debtors allocated $75 million of the $185 million Purchase Price to the settlement of claims. *Id.* This was consistent with the Special Committee's argument, advanced by B&T, that LKC's $100 million figure was too high of a starting point. *See* Ex. 3, Hearing Ex. 201.007. In short, LKC seeks to sanction B&T for taking a position that counsel for other parties also endorsed and presented to this Court.

G. The Special Committee, By Agreement, Withdraws Its Breach-of-Fiduciary-Duty Claim, and the Court Hears Evidence on the Fee Dispute Over Four Days

46. On October 29, 2025, during the deposition of Mr. Topping, Mr. Schmeltz and counsel for LKC reached an agreement to withdraw the Special Committee's breach-of-fiduciary-duty claim. Ex. 6, 10/29/25 Topping Dep. Tr. at 52–53. This agreement addressed the dispute at LKC's first and only attempt to elicit deposition testimony on this topic. B&T filed a formal withdrawal with the Court a couple of days later. *See* ECF No. 1930. The Special Committee decided to withdraw its claim for trial purposes. LKC agreed to forgo discovery in exchange for the withdrawal, so the parties essentially narrowed the issues for trial. Ex. 7, Withdrawal Email ("As a result, I will forgo discovery into these issues, including deposing Mr. Topping.").

47. The Court then held hearings on the fee dispute over four days: November 3, December 3, December 11, and December 17, 2025.

48. At these hearings, B&T presented evidence that the Debtors' and the Special Committee's valuation of the claims settlement at $75 million was appropriate, as opposed to

LKC's $100 million figure. Ex. 1, Hearing Ex. 245.001–08; Ex. 8, Nov. 3, 2025 Hearing Tr. at 122:3–124:22, 201:20–202:14; Ex. 9, Dec. 3, 2025 Hearing Tr. at 175:17–177:8, 178:2–180:4, 202:1–206:25; Ex. 2, Dec. 11, 2025 Hearing Tr. at 14:11–15:3.

49. For example, Kevin Hays, the Debtors' Chief Financial Officer, testified that the starting point of $75 million for calculating LKC's success fee was in line with the presentation made to the Debtors' Board in March 2025, which occurred before any dispute arose over the success fee. Ex. 9, Dec. 3, 2025 Hearing Tr. at 202:1–206:25. And one of the Special Committee members, David Eaton, testified that $75 million was at the high end of a reasonable range to calculate the success fee but that the Special Committee nevertheless accepted it. Ex. 2, Dec. 11, 2025 Hearing Tr. at 14:14–15:3.

50. As to the prematurity argument, B&T elicited testimony from David Eaton, one of the members of the Special Committee, that for tax purposes, it was appropriate to use the same allocation in the Allocation Statement between the Debtors and Whinstone as in the calculation of the success fee. *Id.* at 7:9–24. Mr. Eaton stated, "I'm also satisfied that using $75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit." *Id.* at 8:4–7.

51. Additionally, Mr. Wheeler's testimony was consistent with his declaration that the tax allocation should happen before any calculation of LKC's success fee in order to avoid any audit risk to the Debtors. *See* 1732-1 at 7. Mr. Wheeler testified that it would not violate *the PSA* if the Debtors and Whinstone reached a different allocation in the Allocation Statement than the Debtors and LKC did for purposes of the success fee calculation. Ex. 9, Dec. 3, 2025 Hearing Tr. at 119:24–120:2. But Mr. Wheeler clarified that he was asked to advise only on "matters related to the *tax filings*," not on what constitutes a breach of the PSA. *Id.* (emphasis added). Moreover,

Mr. Wheeler never denied, retracted, or contradicted his earlier declaration that for tax purposes, the Allocation Statement should accord with the allocation made for LKC's success fee.

52. After the four-day fee dispute hearing, the Court granted LKC's fee application. *See* ECF No. 2198. The Special Committee, the Ad Hoc Group of SAFE Parties, and GXD Labs, as Plan Administrator for the Wind-Down Debtor, appealed the Court's order. ECF Nos. 2213, 2214, 2275, 2276.

LEGAL STANDARD

53. The Fifth Circuit has "confined sanctions under the district court's inherent power to instances of bad faith or willful abuse of the judicial process." *Pressey v. Patterson*, 898 F.2d 1018, 1021 (5th Cir. 1990); *see also In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). "Because of the potency of inherent powers and the limited control of their exercise, . . . they must be used with great restraint and caution." *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 86 F.3d 464, 467 (5th Cir. 1996).

54. "[B]efore imposing sanctions under its inherent power, a court must make a *specific* finding that the sanctioned party acted in 'bad faith.'" *Maguire Oil Co. v. City of Houston*, 143 F.3d 205, 209 (5th Cir. 1998). "Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; … it contemplates a state of mind affirmatively operating with furtive design or ill will." *Miller v. Dunn*, 774 F. Supp. 3d 806, 818 (N.D. Tex. 2024) (quotations omitted). "And bad faith requires more than just meritless claims." *Id.* at 819. "[T]he finding of bad faith must be supported by clear and convincing proof." *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001).

55. Additionally, under § 105(a) of the Bankruptcy Code, "a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of

the bankruptcy code." *Matter of Terrebonne Fuel & Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997). Under § 105(a), however, the court "still must make a specific finding of bad faith." *In re Pastran*, 462 B.R. 201, 210 (Bankr. N.D. Tex. 2011) (quotations omitted).

56. Lastly, LKC invokes 28 U.S.C. § 1927. The Fifth Circuit has held that the terms "unreasonably" and "vexatiously" from § 1927 "require[] that there be evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court" to satisfy § 1927. *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998).

ARGUMENT

A. B&T did not file baseless claims or allegations against LKC

57. The breach-of-fiduciary-duty claim that B&T brought on behalf of the Special Committee against LKC was neither baseless nor brought in bad faith. Rather, as explained above, it was supported by expert testimony from Mr. Wheeler, who stated that an inconsistency between the Allocation Statement and the calculation of LKC's success fee could subject the Debtors to audit risk or tax liability. ECF No. 1732-1 at 7. And under binding Fifth Circuit precedent, B&T had to assert this claim in connection with the Special Committee's objection to LKC's fee dispute or waive it. *See In re Intelogic Trace, Inc.*, 200 F.3d 382, 386–91 (5th Cir. 2000). The Debtors, the Special Committee, and counsel for the Debtors all endorsed the claim and provided B&T with legal and factual evidence in support.

58. LKC's allegation that B&T could not articulate any factual basis for this claim is simply inaccurate. ECF No. 2303 at ¶ 65. The claim itself outlines its factual basis: "LKC breached its fiduciary duty by demanding fees . . . in such a manner that, if Rhodium acquiesced, would create substantial liability." ECF No. 1732 at ¶ 55. During telephone conversations before the claim was filed, Mr. Schmeltz explained to counsel for LKC that he was *investigating* claims

against LKC based on its fee application. Even the declaration from LKC's counsel bears this out: "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)." ECF No. 1633-1 at 4, ¶ 8 (emphasis added).

59. LKC's allegation that B&T filed the breach claim "publicly to defame LKC" is, again, inaccurate. ECF No. 2303 at ¶ 65. In fact, *LKC* was the first to file any allegation of misconduct into the public record. As explained above, B&T sent LKC a *private* letter outlining the Special Committee's concerns of misconduct, and LKC turned around and filed that letter into the record. *See* ECF No. 1529-2. LKC complains of a problem of its own making.

60. The cases that LKC cites to support its argument are easily distinguishable. First, in *Deutsch v. Henry*, No. A-15-CV-1238-LY-ML, 2016 WL 7165993 (W.D. Tex. Dec. 7, 2016), *aff'd*, No. 1:15-CV-490-LY, 2017 WL 5652384 (W.D. Tex. Mar. 28, 2017), the plaintiff's lawyer called defense counsel racist, anti-Semitic, or schizophrenic in over 113 court filings, and that same lawyer filed fabricated evidence with the court. *Id.* at *17–18. B&T has done nothing of the sort.

61. Second, in *Redd v. Fisher Controls*, 147 F.R.D. 128 (W.D. Tex. 1993), the court applied Rule 11, not its inherent authority, and the plaintiff's lawyer accused defense counsel of "hav[ing] resorted to Hitlerian rhetorical ploy called the 'Big Lie'" and of running up large fees and refusing to settle when it was in the client's best interest to do so. *Id.* at 131–32. The court found that "there is no question [the lawyer] performed no reasonable inquiry to ascertain the truth before signing his name to the document," *id.* at 132, but the same cannot be said of B&T. B&T

supported its allegations with an expert declaration, *see* ECF No. 1732-1, and it did not act in bad faith.

62. Third, the case of *Olmstead v. Hoppe*, No. 5:19-CV-203, 2020 WL 1482324 (N.D. Tex. 2020) involved a pro se litigant who accused various attorneys and judges of criminal conspiracy. *Id.* at *1, *4–5. The litigant had done so in multiple cases, and the court issued a pre-filing injunction. The facts of *Olmstead* are nothing like this case.

63. Lastly, the case of *Matter of Carroll*, 850 F.3d 811 (5th Cir. 2017) involved repeated violations of court orders and does not apply here. The vexatious litigants in that case "spent *nearly fifteen years* scheming to retain assets and rebuff creditors through several bankruptcy cases they filed for themselves and entities they controlled." *In re Carroll*, No. 08-10756, 2016 WL 1084287, at *1 (Bankr. M.D. La. Mar. 17, 2016) (emphasis added), *aff'd sub nom. Carroll v. Abide*, No. 316CV00218JWDRLB, 2016 WL 4127768 (M.D. La. Aug. 2, 2016), *aff'd sub nom. Matter of Carroll,* 850 F.3d 811 (5th Cir. 2017). The litigants had been held in contempt on multiple occasions for failing to abide by the bankruptcy court's orders. *Id.* at *3–4. Ultimately, the court enjoined the litigants from filing further pleadings absent court approval, and it sanctioned them $49,432. *Id.* at *10.

64. As for LKC's allegations of "verbal abuse" during a deposition, the record reflects that LKC attorney Jonathan Cohn was not without blame. When asked about his history with multiple lawyers and witnesses in this case, Mr. Cohn launched into an *ad hominem* attack on Mr. Schmeltz. Ex. 10, Cohn Dep. Tr. at 406:13–408:10. The exchange between Mr. Schmeltz and Mr. Cohn serves as an example of two lawyers getting caught up in the heat of litigation, but it is not a proper basis for sanctions here. *See Tajonera v. Black Elk Energy Offshore Operations, LLC*,

No. CV 13-0366, 2015 WL 13533520, at *7 (E.D. La. Sept. 30, 2015) ("The question was improper, but not so much as to be sanctionable standing alone.").

65. LKC has no evidence of B&T's bad faith, much less "clear and convincing proof" of the same. *Crowe*, 261 F.3d at 563. The "dishonest purpose or moral obliquity" that LKC attributes to B&T is unfounded. B&T had no reason to harass LKC or delay its success fee. LKC's complaint of "eight months of delay" is also off-base, as the Court did not even grant the updated retention order until July 8, 2025. ECF No. 1418. B&T owed a fiduciary duty to its own client to ensure it was not paying an unreasonably high fee, and B&T discharged that duty by presenting reasonable, good-faith arguments to the Court.

B. B&T Did Not Make Knowing Misrepresentations to the Court

66. LKC contends that B&T somehow knew that the tax allocation between the Debtors and Whinstone was unrelated to the success fee calculation yet represented otherwise to the Court. This is incorrect for a number of reasons. First, LKC argues that Mr. Topping undercut B&T's position on this issue, but LKC mischaracterizes Mr. Topping's deposition testimony on this point. Mr. Topping testified that it was *possible* that Debtors and Whinstone reach one allocation and Debtors and LKC reach another, but that it was unlikely given the connection between the two. Ex. 11, 6/2/25 Topping Dep. Tr. at 80:14–20. This is consistent with the Special Committee's position and the arguments advanced by B&T. B&T contended that the calculation of LKC's success fee should happen after the completion of the Allocation Statement because of the tax implications of the latter. *See* ECF No. 1732-1 at 7. It was of course possible that the two allocations might diverge, but that divergence would open the Debtors up to audit risk. *See id.*; Ex. 2, Dec. 11, 2025 Hearing Tr. at 8:4–7.

67. Second, LKC cites to a statement from *Debtors' counsel* in support of the argument that *B&T* made knowing misrepresentations to the Court. ECF No. 2303 at ¶ 74. B&T cannot be responsible for the statements of counsel for other parties. No lawyer from B&T represented to the Court that the tax allocation was unconnected to LKC's success fee. Counsel for the Debtors did not speak for B&T or the Special Committee on this issue, and in any event counsel for Debtors had already aligned with the Special Committee's position that the value of Debtors' claims was $75 million. *See* ECF No. 1881 at ¶ 11.

68. Lastly, LKC cites an amended declaration from Mr. Wheeler in which he explains that after discussions with Whinstone's tax advisors, the parties "agreed that the only item to be reported on Form 8594, Asset Acquisition Statement Under Section 1060, was the tangible assets." ECF No. 2303 at ¶ 74 (citing ECF No. 2140 at ¶ 10). But, again, this is not inconsistent with B&T's representations. As explained above, B&T reasonably believed that the valuation of the tangible assets had downstream effects on LKC's success fee. *See supra* ¶¶ 11–12. If, for example, the tangible assets were valued at $100 million, then LKC's $100 million valuation of the claims would be a non-starter (because only $85 million of the global settlement would remain). B&T reasonably argued that the calculation of LKC's success fee was connected to the valuation of the tangible assets—as Mr. Wheeler's uncontradicted, unwithdrawn declaration made plain. *See* ECF No. 1732-1 at ¶ 27; ECF No. 1258 at 47.

C. B&T Did Not Unreasonably and Vexatiously Multiply the Proceedings

69. LKC charges B&T with refusing to negotiate LKC's success fee in good faith. But as explained above, the evidence presented at trial shows otherwise.

70. Between May 29, 2025 and July 31, 2025, B&T communicated with counsel for LKC, attempting to negotiate the success fee. ECF 1530 at ¶ 20. On May 31, 2025, in response

to a settlement offer from LKC, Mr. Schmeltz made a counteroffer. Ex. 3, Hearing Ex. 201.007. Mr. Schmeltz explained the logic behind this counteroffer and even represented, "**I think there is a number between our $3.8 million and your $8.1 million at which we can settle**." *Id.* (emphasis added). After some back and forth, counsel for LKC conveyed an ultimatum that "[i]f the Debtors want the negotiations to continue, they need to make an offer above $5.2 million." *Id.* at 201.006. Mr. Schmeltz responded that he was prepared to make one additional offer, but negotiations broke down thereafter. LKC's accusation that through these negotiations B&T "abdicated its fiduciary duties to the Debtors and the estate" is false. Negotiating in good faith to reach a reasonable settlement value with the client's approval is entirely appropriate.

71. LKC makes much of an alleged comment from Mr. Schmeltz as to a "new master," referring to the SAFE Ad Hoc Group. ECF No. 2303 at ¶ 26. But in reality, Mr. Schmeltz was simply acknowledging the fact that the Debtors had to discharge their duties to all their stakeholders, including to the estate's largest creditor. Indeed, as the subsequent Plan Support Agreement would reflect, the Debtors agreed to "not settle the dispute regarding Lehotsky Keller Cohn's accrued and unpaid fees and expenses without the consent of the SAFE AHG." ECF No. 1747 at 6.

72. Further, LKC's accusation of "scorched-earth litigation strategy" rings hollow when it is the one moving for sanctions. And when LKC demanded over seven depositions and argued that the production of over 5,000 documents was not enough. The evidence shows that B&T communicated regularly with counsel for LKC regarding the Special Committee's objection to the fee application. Ex. 5, Sept. 2025 Emails from Trace Schmeltz (sending counsel for LKC draft of motion for extension of time to file objection); *see* also ECF No. 1529-2. B&T told counsel for LKC of the risk of waiving counterclaims if they were not asserted in objection to the fee

application. And B&T tried to extend the deadline to respond to the fee application and potentially obviate any claim of misconduct, but LKC refused. B&T informed LKC of the Special Committee's incoming claim for breach of fiduciary duty before filing it. Ex. 5, Sept. 2025 Emails from Trace Schmeltz. This behavior does not constitute unreasonable and vexatious multiplication of proceedings.

D. The Court Should Not Award LKC Attorneys' Fees

73. LKC has not shown that it is entitled to sanctions against B&T. LKC has failed to offer "clear and convincing proof" of bad faith or willful abuse of the judicial process on B&T's part. *See Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001). "The standards for bad faith are necessarily stringent." *Batson v. Neal Spelce Assocs.*, Inc., 805 F.2d 546, 550 (5th Cir. 1986). "A party should not be penalized for maintaining an aggressive litigation posture." *Id.* That is precisely what LKC seeks to do here.

E. Section 328 Does Not Apply and Even If It Did, LKC Does Not Satisfy It

74. In the alternative, LKC asks for additional compensation under 11 U.S.C. § 328(a). LKC argues that the terms and conditions of its retention were "prove[n] to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a).

75. First, § 328(a) does not even apply in this setting. The plain language of the statute contemplates that the trustee or committee would engage a professional to render services *to the trustee or committee*, and not for themselves. *See In re Boomerang Tube, Inc.*, 548 B.R. 69, 78 (Bankr. D. Del. 2016) ("[S]ection 328(a) permits only approval of fees or expenses for performing services for the Committee."). LKC seeks fees solely for itself, not for any services performed for the Debtors.

76. But even if § 328(a) applied, LKC could not satisfy its requirements. The Fifth Circuit has explained that § 328(a) "creates a 'high hurdle' for a movant seeking to revise the terms governing a professional's compensation *ex post facto*." *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012). "[T]he movant is tasked with the weightier burden of proving that the subsequent developments were *incapable* of being anticipated at the time the engagement was approved." *Id.* (emphasis added). "Likewise, before a court may revise a compensation agreement, it must explain with specificity why the subsequent developments were 'incapable of being foreseen.'" *Id.* (quoting *In re Barron*, 325 F.3d 690, 693 (5th Cir. 2003)).

77. LKC's Motion does not explain why it was *incapable* of foreseeing a fee dispute from the Special Committee. LKC's position is ironic given that it signed an engagement letter that *explicitly stated* that fee disputes would be submitted to this Court for resolution. *See* ECF No. 835 at 14–15. LKC cannot claim to be surprised when such a dispute arises and is submitted to the Court, and the dispute certainly was not incapable of being foreseen. LKC argues that the Special Committee "disregard[ed] . . . the terms approved in the Court's updated retention order," ECF No. 2303 at ¶ 83, but that is untrue. As explained above, the Court's updated retention order expressly contemplated that fee disputes may arise in the future. *See* ECF No. 1418 at 18.

CONCLUSION

78. For these reasons, B&T respectfully requests that the Court deny Lehotsky Keller Cohn LLP's Motion for Sanctions against Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses under Section 328 (ECF No. 2303).

BECK REDDEN LLP

By: */s/ David J. Beck*
David J. Beck
State Bar No. 00000070
dbeck@beckredden.com
David T. Judd
State Bar No. 24149115
djudd@beckredden.com
1221 McKinney St., Suite 4500
Houston, Texas 77010-2010
(713) 951–3700
(713) 951–3720 – Fax

ATTORNEYS FOR BARNES &
THORNBURG LLP

CERTIFICATE OF SERVICE

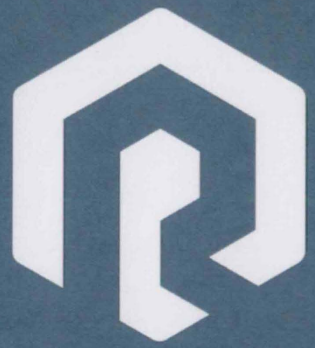
I certify that a true and correct copy of the foregoing instrument was served upon counsel of record on March 6, 2026, in accordance with the Federal Rules of Civil Procedure.

/s/ David J. Beck

Exhibit

1

Internal Distribution Only



RHODIUM

March 2025 -

PROPRIETARY & CONFIDENTIAL

EXHIBIT 21
Deponent Blackmon
Date 10.22.25

HEARING EX 245.001

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Update – Since pre Mediation (2/16/25)

Key recent developments:

- Operational performance – Rockdale hashrate of ~2.7-2.8 EHs/ day *(in line with expectations)*
- Hashprice volatility – hashprice trading near ~ $.05 $per TH/s currently *(vs ~$.06 in late January)*
- Exit Financing less certain due to:
  - Galaxy - Less robust view on damages potential, longer timeline to recover (from partner Fortress); Hashprice volatility
  - Invesco – cost prohibitive

Impact on Valuation:

- Hashprice – +/- $.01 TH/s =~ $30 million in DCF; recent volatility impacts exit financing more than long term valuation
- Damages – view from financing partners suggests risked value < $100 million
- Higher risk of exit financing → increased discount rate (+/- 5% rate → +/- $15 million in DCF)

As a result, revised Settlement Valuation range of ~$110 - $250 million (previously $150 - $300 million), from a combination of reduced potential damages, risk to exit financing and (to a lesser extent) hashprice volatility

3/5/2025

	Low	High	Commentary
Ongoing Business Value (DCF)	$ 58,630,352	$ 148,683,982	DCF (at 30%), sensitizing hashprice and Energy Sales
Risked Damages	$ 50,000,000	$ 100,000,000	Reduced Estimates by $25 million
Total Asset Value	$ 108,630,352	$ 248,683,982	Equivalent to Settlement Value

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Comparing Riot's Offer to our pre-Mediation Valuation

Riot Offer	**$**	**171.0**											
SAFE Discount	$	12.2	14% Discount offered by SAFE										
Returned Deposits	$	7.1	TXU Deposits ($6.1 million) and Milam County ($1 million)										
IP/Other	$	5.0											
Value to Rhodium	$	195.3	Apples to apples with authorized $225 million premediation										
Incremental from Riot	$	5.0	$	10.0	$	15.0	$	20.0	$	25.0	$	30.0	$ 35.0
Revised Riot Offer	**$**	**176.0**	**$**	**181.0**	**$**	**186.0**	**$**	**191.0**	**$**	**196.0**	**$**	**201.0**	**$ 206.0**
Value to Rhodium	**$**	**200.3**	**$**	**205.3**	**$**	**210.3**	**$**	**215.3**	**$**	**220.3**	**$**	**225.3**	**$ 230.3**

Value Drivers:

- Riot – incremental cash/stock consideration
- SAFE – negotiate additional discounts
- Retained assets – derive incremental value from monetizing remaining assets

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Impact on Equity Value

Cash Balance	$	33.5	as of 2/19/2025
DIP Loan		-	
Secured + Unsecured Debt		(64.9)	Adjusted to include potentially accrued interest
General Unsecured Claims		(5.3)	Detail on next tab
Accrued Expenses		(16.2)	Detail on next tab
Unwind Costs (People, etc)		(3.0)	Depending on closing date (further out, more time to plan for) - Increase by $1MM for conservatism
Severance Costs and Mi sc.		(3.0)	
Cushion for Time to Confirm a Plan		(2.0)	
Claims (Net of Cash)	**$**	**(60.9)**	
Additional Fees		3.50%	Reserved for LKC and B Riley fees
Residual Remaining Asset Value		-	What Value can we extract from sales, etc?
IP		-	TBD
Returned Deposits		7.1	TXU and Milam County Deposits
Total Remaining Asset Value	**$**	**7.1**	
SAFE Outstanding Principle		87.0	
SAFE Discount		14%	Negotiable, could vary depending on total value
Amount Owed to SAFE After Discount	**$**	**74.8**	
Pre Money S/O			
Class A Shares		117,984,464	Includes the Proof Capital Shares
Imperium Shares		177,357,448	
Exercisable LTIP		35,116,315	To be slightly revised
Debt Penny Warrants		7,115,649	
Shares Outstanding		**337,573,876**	
Fairbarn Warrants		7,500,011	Appear to be out of money, uneconomic to exercise
Imperium %		**52.5%**	
Intercompany From Technologies to Enterprises	**$**	**45,125,379**	

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Impact on Equity Value

Total Asset Value	**$ 171**	**$ 176**	**$ 181**	**$ 186**	**$ 191**	**$ 196**	**$ 201**	**$ 206**	**$ 211**	**$ 216**	**$ 221**	**$ 226**
Claims	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)
Other Fees	(6.0)	(6.2)	(6.3)	(6.5)	(6.7)	(6.9)	(7.0)	(7.2)	(7.4)	(7.6)	(7.7)	(7.9)
Total Remaining Asset Value	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1
Cash Value at Rhodium Technologies	**$ 111.2**	**$ 116.0**	**$ 120.9**	**$ 125.7**	**$ 130.5**	**$ 135.3**	**$ 140.2**	**$ 145.0**	**$ 149.8**	**$ 154.6**	**$ 159.5**	**$ 164.3**
Interco - Technologies to Enterprises	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1
Value to Imperium After Interco	*34.7*	*37.3*	*39.8*	*42.3*	*44.9*	*47.4*	*49.9*	*52.5*	*55.0*	*57.5*	*60.1*	*62.6*
Value to Enterprises NOT Including Interco	31.4	33.7	35.9	38.2	40.5	42.8	45.1	47.4	49.7	52.0	54.3	56.6
Cash Value at Rhodium Enterprises	**$ 76.5**	**$ 78.8**	**$ 81.1**	**$ 83.4**	**$ 85.7**	**$ 87.9**	**$ 90.2**	**$ 92.5**	**$ 94.8**	**$ 97.1**	**$ 99.4**	**$ 101.7**
Outstanding SAFE Amount After Discount	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8
Value to Remaining Equity NOT Including Imperium	**$ 1.7**	**$ 4.0**	**$ 6.3**	**$ 8.5**	**$ 10.8**	**$ 13.1**	**$ 15.4**	**$ 17.7**	**$ 20.0**	**$ 22.3**	**$ 24.6**	**$ 26.9**

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Appendix

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Value Considerations – 2/16/25

Valuation considerations ahead of next week's mediation:

- Rhodium's standalone valuation = Discounted Cash flow of business + Risked Damages
- Additional upside Riot derives from a settlement:
  - Value of contracts – removal of these contracts creates value to Riot at a lower discount rate (no execution risk)
  - Optics – Riot's public trading metrics allow enable it to pay more for Rhodium, accretive acquisition vs continuing a costly distraction

- Implications for Rhodium Equity holders in a Settlement offer
  - Equity Value comes after Secured & Unsecured Debt, General Unsecured Claims, and Accrued Expenses (collectively, net of cash, "Net Claims" in table below), and the SAFE (generally $87 million in most scenarios)
  - ~$140 million of Settlement Value until equity gets paid (net of SAFE)

	Low	High	Commentary
Ongoing Business Value (DCF)	$ 74,450,843	$ 176,306,256	DCF, sensitizing hashprice and Energy Sales
Risked Damages	$ 75,000,000	$ 125,000,000	Risked estimates from LCK/Stris +/- $25 MM
Total Asset Value	$ 149,450,843	$ 301,306,256	Equivalent to Settlement Value
Net Claims	$ 51,100,000	$ 51,100,000	Cash less Debt and Claims
Value Net of Claims	$ 98,350,843	$ 250,206,256	
SAFE Claim	$ 87,000,000	$ 87,000,000	
Equity	$ 11,350,843	$ 163,206,256	

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Litigation Value – 2/16/25

Issue	Base Amount	Base Success %	Exemplary Damages	Exemp Success %	Expected Value	Comments
Shutdowns	$ 8	80%	$ -		$ 6.4	
Water	$ 18	30%	$ -		$ 5.4	
ERCOT Curtailment (no URI)	$ 36	70%	$ -		$ 25.2	
ERCOT Curtailment (URI)	$ 29	60%	$ 29	40%	$ 29.0	This assumes we are allowed to plead and prove fraud
ERCOT 4CP	$ 10	10%	$ -		$ 1.0	
Block of Temple Sale	$ 50	5%	$ -		$ 2.5	
Non-Litigation Professional Fees in Bankruptcy	$ 29	30%			$ 8.7	This is $15.2 +$13.9 from Andrew's email, which includes his estimate through EOM April 2025.
Attorneys Fees Bankruptcy Case (Assumption)	$ 7	60%	$ -		$ 4.2	
Attorneys Fees Pre-Bankruptcy Case (Breach of Contract/State Court/Arbitration/Damages Phase)	$ 12	80%	$ -		$ 9.6	
Building D	$ 165	20%	$ -		$ 33.0	This is a claim that was not previously at issue. We have not yet had discovery on it and do not have all the facts.
RIOT's Tortuious Interference with RHDM contracts	$ -		$ -		$ -	Pending discovery, we do not think this necessarily gets us more damages but just increases the odds of collection.
Total	**$ 364.0**				**$ 125.0**	
Discount Rate					25%	
EOY 2025 Expected Collection					**$ 100.0**	

8

HEARING EX 245.008

Exhibit

2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RHODIUM ENCORE LLC and AIR HPC LLC,	CASE NO: 24-90448
	Houston, Texas
Debtor.	Thursday, December 11, 2025
	1:00 to 1:54 p.m.

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:	CAMERON KELLY PATRICIA B. TOMASCO Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
For Special Committee:	TRACE SCHMELTZ CATHERINE PAIGE LOHSE Barnes & Thornburg LLP One N. Wacker Drive, Suite 4400 Chicago, IL 60606
For Lehotsky Keller Cohn:	WILLIAM THOMAS THOMPSON Lehotsky Keller Cohn 7500 Rialto Boulevard, Suite 1-250 Austin, TX 78735
For Official Committee:	NATHANIEL ALLARD McDermott Will & Schulte One Vanderbilt Avenue New York, NY 10017
Court Reporter:	AKEITA HOUSE
Courtroom Deputy:	AKEITA HOUSE

Transcribed by: Veritext Legal Solutions
330 Old Country Road, Suite 300
Mineola, NY 11501
Tel: 800-727-6396

Proceedings recorded by electronic sound recording; Transcript produced by transcription service.

was arguable that others may have had some sort of potential conflict. We hoped to be able to resolve this in an agreement, but we've been unable to do so, and that's why we're here.

Q I want to start your testimony by talking about the allocation of proceeds from the Riot-Whinstone sale to the settlement of claims as opposed to value for the sale of assets or the termination of contracts.

Are you aware that the company has allocated $75 million from the Riot-Whinstone transaction to the settlement of claims for tax purposes and for purposes of this LKC fee?

A Yes, I'm aware of that.

Q Do you know who at the company made that allocation?

A Yes. Kevin Hayes, our CFO, did that in conjunction with Chris Wheeler, who was a tax expert that had been retained by counsel.

Q Did you review that allocation in your role as a member of the Special Committee?

A I did.

Q From your perspective, is it appropriate to use the same amount for purposes of the tax allocation and the LKC fee?

A I would give that a qualified yes.

Q Would you explain your qualification, sir?

A Yes. I'm satisfied that the source of that number had been prepared by Kevin and others and that the numbers were accurate and sound, and I've seen it presented to the full board of directors. I'm also satisfied that using $75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit.

But the data that was used -- my qualification is that the data that was used was created for much different purposes before it was transferred over to apply to the settlement of success fees, and I think it substantially overweights the value of litigation claims; and so I would say it is at the absolute top of any number that should be used for a gross settlement recovery for a couple of reasons.

Q Why don't we get into those couple of reasons? What are they, sir?

A The first one is that in the final settlement discussions with Rhodium, all we ever talked about was the value of the assets in their hands and that the enterprise value was much more valuable to them and accretive to them immediately than where we were at and the -- than the numbers that were being bounced around in that negotiation.

And in fact, in that negotiation, we never even discussed the litigation claims because they had told us in

looking at with our risk factors and discount.

And then we -- for tax purposes, we also had an independent third-party valuation of the business that we had sold. And that came out with a minimum of $173 million, and the high range of that was $207 million, the midpoint of that being $190 million, which was in fact very close to what we had achieved in the final settlement. So those were checks on a market value and a DCF value.

Q In a context in which --

A I -- go ahead, I'm sorry.

Q In the context in which you have enterprise values as high as almost $500 million, an independent valuation with a midpoint of $190 million, is there any reason that the Special Committee hasn't pushed for a lower allocation to settlement than the $75 million that's been allocated?

A I -- personally, I felt that the 75 was, for lack of a better word, over generous. It was at the very end, very top end of a range of numbers. But it would comply with the contract, surely; was consistent with the allocation, which was a benefit for the reason I mentioned; and it recognized the good work that LKC had done.

So we stuck with the number that Kevin had proposed and testified was the midpoint of the last numbers he presented to the board even before the Riot deal was struck. And I'll say, I think it's at the top end of what should have been

done, but it creates a windfall for LKC. That is my view.
Q But you're not walking away from that number, right?
A No, no.
Q Let's shift gears a little bit and talk a little bit about the calculation of the success fee. I want to start by talking about the LKC success fee for energy credits. Do you understand how the energy credits work under the March -- sorry. Do you understand how success fee for energy credit claims works under the March 2025 engagement letter?
A Yes. The success fee for energy credit claims is 5 percent on the first $5 million and 1 percent for everything after $5 million.
Q How would that compare to the success fee for non-energy credit claims?
A For non-energy credit claims, the success fee is 10 percent of those claims.
Q From your perspective, is it appropriate for LKC to eliminate the energy credit claim related to Winter Storm Uri from the calculation of the success fee?
MR. THOMPSON: Objection, Your Honor. I have to object to asking this witness about what percentage of total damages ought to be allocated to energy credit. The debtors put up a 30(b)(6) witness on the topic of the LKC success fee. As Your Honor may recall from a hearing in October, that witness was unable to share any position of the debtors

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: December 15, 2025

Exhibit

3

From: "Schmeltz, Trace" <TSchmeltz@btlaw.com>
To: "Lohse, Paige" <Paige.Lohse@btlaw.com>
Subject: FW: LKC Contingency Fee Calculation
Date: Thu, 14 Aug 2025 21:40:42 +0000
Inline-Images: image001.png; image002.png

[redacted]

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 9:59 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Yes. Am on a 5 a.m. flight. Should be in the office by 7:00 a.m.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 8:37:30 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I know you were tied up today. Are you available to talk in the morning?

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • Web • V-Card

Exhibit 01
10/28/2025
Jonathan Cohn

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:14 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

I am helping with a last minute witness prep. I won't be on the Chuck dep today. If anything comes up and you think I could be helpful, text me. We can talk later this afternoon.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 8:11:10 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

I'm in the Topping depo then. I don't think that will take more than 2 hours.

I'm also free now if you can talk.

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:10 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

My apologies. Between 2:30 a.m. and now, I have been asked to convene a call of folks for the larger bankruptcy resolution. Let's talk at the lunch hour. Can we say 12:30?

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 7:57:34 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I'll call you then. I cell the best number?

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 2:55 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Actually, I can make 10 minutes at 8:30.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Sunday, June 1, 2025 5:23:37 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

I am in trial tomorrow. I will reach out on a break.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Sunday, June 1, 2025 5:10:13 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] Re: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, can you speak in the morning? I am free starting at 8:30.
Joshua W. Wolfshohl
Porter Hedges LLP
1000 Main St., 36th Floor
Houston, Texas 77002

On Jun 1, 2025, at 3:26 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:

Josh —

Thanks for this. Obviously, your client does not get to make the allocation for Rhodium. Our numbers reflect our work with Kevin and the Debtors. I am not sure how LKC can question their work. Likewise, our assessment of the degree to which energy credits make up any portion of the settlement amount is based on data we obtained from the Debtors—and the Debtors' views of the strength of its claims. We actually believe a fair assessment would lead to a success fee much closer to $2 million. It is unclear to us how your client intends to question its client's analysis on these issues.

In any event, we are prepared to make one more offer. Please call me to discuss, as we do not think the email dialogue is as productive as one might hope.

Kind regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Sunday, June 1, 2025 9:02:39 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I appreciate the explanation. It is my understanding that these discussions predated my retention. While I now understand that back in February LKC was willing to compromise its fee to obtain certainty and to avoid litigation, expense, and distractions of the past 3.5 months, the Debtors did not honor that deal and should not now claim the benefit of a bargain they rejected. For a further explanation of its position, LKC asked me to send you the following:

Josh, please share this analysis with Trace:

- As an initial matter, no, we are not going to return to the deal the Debtors breached. Clarity and certainty would have been great back in February, and for that reason, we left a lot on the table. But, after the Debtors reneged, we endured months of threats, litigation, and a multi-headed effort to pressure us to compromise our fee. We needed to retain top legal counsel—at great expense—and I personally had to spend an enormous amount of time on this distraction while running a law firm. Trace must understand that under no circumstance will we accept $5.2 million.
- We have also looked at Trace's calculation. The $75 million allocation is a non-starter and inconsistent with Rhodium's own internal documents. During the mediation, Rhodium had a range of potential settlement values, and the lowest end of that range was approximately $174 million—with $100 million attributable to the affirmative case against Whinstone and roughly $74 million for the going concern value of the business. As it turns out, Rhodium ended up better than the low-end scenario, as the Debtors settled for $185 million, $11 million north of $174 million. Nonetheless, we are willing to use the $100 million allocation to be conservative. (Contrary to Trace's suggestion, $100 million was not *our* number; we expressed an expected value range to $150-215 million.) But we will not accept a lower number that Trace now claims might be relevant for tax purposes, which presents a completely different analysis. We are not doing tax accounting here.
- We appreciate Trace's attempt to further allocate between damages and energy credits, and his percentages (10%, 5%, 1%) are correct. Where he errs is allocating $50 million to energy credits. To be blunt, his allocation is utterly inconsistent with the Special Committee's approach to the affirmative case against Whinstone. Trace should remember that the Special Committee forbade us from making a fraud claim to recover the *Uri-related* energy credits. Against my strong recommendation, the Special Committee wanted to maintain the position that the founders signed away any rights to the Uri-related energy credits, that the sign-away was not procured by fraud, and that the founders might be liable for breach of their duty of care.
    - Therefore, Trace can claim only the value of the *non*-Uri-related credits, which is $36 million, according to the Debtors' expert. But, of course, there was no guarantee we would recover even that amount. Thus, the expected value of the *non*-Uri-related credits is roughly $25 million, as shown on the spreadsheet that Rhodium's own CFO put together.
    - In the attached spreadsheet, I modeled our contingency fee in two scenarios: first, using the $25 million expected value; second, using the full $36 million maximum value. The numbers are $8.532 million and $7.560 million, respectively.
    - Note the midpoint of those numbers is roughly $8.1 million, the number we previously proposed. But, for the sake of closure, I'm willing to use $7.560 million, provided that the Debtors pay our fees and expenses (including attorneys' fees) for having to deal with this dispute since mid-February.
    - If there is litigation over our LKC fees, I do not see how the Special Committee can argue for more than $36 million being allocated to energy credits. I have no idea whether the Special Committee still plans on pursuing a D&O. claim, but either way, an argument from the Debtors for an allocation to Uri-related energy credits would lack credibility and be inconsistent with the prior position they took. Discovery could be interesting. And if they are planning on maintaining their argument about the founders' duty of care, then I do not think they will want to argue a contrary position in the context of our fees—especially when they would not let us make the fraud argument in the first place.

- In terms of a counter, we will make one *contingent* on the Debtors understanding that the "brackets" are $8.1 million and *$5.2* million, not $3.8 million. With that, we can offer $7.56 million, which is the lower number on the attached spreadsheet (plus our fees and expenses as noted above). If the Debtors want the negotiations to continue, they need to make an offer above $5.2 million.

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Saturday, May 31, 2025 4:28 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Josh —

I have it on good authority that your client was willing to cap his fee at 2.5% of a sale up to $200 million back in February. On a $185 million sale, that would be $4.6 million plus $600,000, or $5.2 million. I don't think $3.8 is low-ball relative to that number, but I do think $8.1 million is a good deal above $5.2 million. Given those brackets, we should be able to reach an agreement.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Saturday, May 31, 2025 3:46:19 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, thank you for your email. I have forwarded it to my client and hope to speak with him again later today. I'll tell you that he is extremely unhappy and not currently interested in countering what he views as another low-ball offer.

As I've mentioned to you before, LKC's position is that it should get more than the $6.25M you shared with other stakeholders. I realize you've characterized $6.25M as a "top line" number, but my client strongly disagrees and sees it as *below* the lowest possible calculation. Your $3.8mm number is well below even that.

In summary, my client is not countering at this time, but I will work on him, as I do see benefit in getting this resolved.

I will get back to you later if I can get LKC to make a counter.

Josh

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Saturday, May 31, 2025 9:51 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Rule 408 Discussion

Dear Joshua,

I hope this message finds you well. Let's collaborate to find a solution regarding the LKC contingency fee calculation. Based on the current tax plan, we see $75 million attributed to the settlement. It is my understanding that the hundred million dollar number came from advice given by LKC. We are not likely to use that number. That is the present plan for our taxes.

We see $50 million of that to energy credits. So, baseline is $600,000. Then, .05 * 5,000,000 is another $250,000. Plus .01 * 45,000,000 is another $450,000. And .1 * 25,000,000 is $2.5 million. For a total of $3.8 million.

I think there is a number between our $3.8 million and your $8.1 million at which we can settle. I appreciate your patience and understanding as we work through these details. Your insights have been very valuable to us. I am eager to discuss this further.

Thank you for your cooperation.

Best regards,
Trace

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Thursday, May 29, 2025 4:33 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, thank you for the productive call this morning. I agree it is better for the Debtors and LKC to reach an agreement, if possible, because that would spare the estate litigation expenses and potentially avoid a deposition of Mr. Topping.

Along those lines, I wanted to respond to your question of how we calculate the $8.1 million contingency fee. In short, we used Rhodium's own projections of (a) the value of the damages cases and (b) the contingency fee percentage.

- Value of the damages case: In the attached documents, Kevin Hayes provided a range of estimates of the value of the damages case: $100 million is his low point, and $150,000,000 is the high point. To be Debtor-friendly, we took **his low point, $100,000,000**.
  - Please note that, in our view, Kevin's range was conservative. We were more optimistic about the damages case.
  - Kevin's estimate also did not reflect the fraud claim that LKC wanted to bring.
  - Even using Kevin's conservative range, the damages allocation should be higher than $100,000,000. Kevin estimated the range for the ongoing business value as $74,450,842 to $176,306,256 million. Rhodium's settlement of $185,000,000 exceeds the combined low points of the damages case ($100 million) plus ongoing business value $74,450,842) by over $10 million. Thus, we should not be using the low point of $100 million.
- Contingency fee percentage: We used **7.5%,** which appears to be the contingency percentage the Debtors themselves used in calculating the contingency fee. We understand that Debtors used an allocation of $75 million and calculated a contingency fee of $5.625 million (excluding the $600,000). 5.625/75 = 7.5%

We then multiplied the $100,000,000 allocation by the 7.5%, and that gets you $7.5 million. Adding the $600,000, you get $8.1 million.

I hope this helps. Just let me know if you have any questions.

Best,
Josh

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • Web • V-Card

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Exhibit

4

From:	Schmeltz, Trace
To:	Patty Tomasco
Cc:	Charles Topping; David Eaton; Spencer Wells; David Dunn; Michael Robinson; Rhodium Bankruptcy Investigation
Subject:	Re: Message from WOLFSHOHL,JOSHU (8329695660)
Date:	Sunday, August 24, 2025 5:04:20 AM
Attachments:	Image.png

Will do.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL



From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Friday, August 22, 2025 6:22:59 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Charles Topping <chucktopping@rhdm.com>; David Eaton <deatondirector@gmail.com>; Spencer Wells <swells4802@me.com>; David Dunn <ddunn@provincefirm.com>; Michael Robinson <mrobinson@provincefirm.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] Re: Message from WOLFSHOHL,JOSHU (8329695660)



We should bring a motion to invoke the adversary rules and allow for discovery.
Unfortunately if we don't we will lose the ability to assert counterclaims for damages.

Trace please ask Josh what he wants to do in light of Osherow.

Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, Suite 3900 | Houston, TX 77002
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010
T +1 212 849 7000 | F +1 212 849 7100

> On Aug 22, 2025, at 6:19 PM, Patty Tomasco <pattytomasco@quinnemanuel.com> wrote:
>
> Osherow v Ernst & Young. We have to bring all counterclaims to preserve them.

Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, Suite 3900 | Houston, TX 77002
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010
T +1 212 849 7000 | F +1 212 849 7100

On Aug 22, 2025, at 3:35 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:

[EXTERNAL EMAIL from tschmeltz@btlaw.com]

As you will see from the transcript below, I underestimated Jon Cohn sheer paranoia. They are going to file.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Cisco Unity Connection Messaging System <unityconnection@cucn1.btlaw.com>
Sent: Friday, August 22, 2025 3:21:16 PM
To: Vincent Schmeltz <vschmeltz@cucn1.btlaw.com>
Subject: Message from WOLFSHOHL,JOSHU (8329695660)

Hey Trace it's Josh Wilshaw. I spoke to my client and they're basically looked they don't trust that this that this isn't gonna get used against them in terms of the, of the, whatever the allocation that you guys are, are going through. They also don't really think that this is hurting anything because they're just gonna, you know, it's just a fee application and we're not, you know, we're redacting things, we're not gonna, we're not gonna disclose things that are confidential. So, we're we're gonna file the the fee application. I think we're four months past the, you know, basically the end of their representation. Doesn't mean we can't continue to talk, but that's, that's kind of where they're at. If you want to talk about it, let me know. I'm on my cell phone 832-969-5660.

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exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

<VoiceMessage.wav>

<Image.png>

Exhibit

5

From: Wolfshohl, Joshua W.
To: Schmeltz, Trace
Cc: Lohse, Paige; Matsoukas, Katie
Subject: [EXTERNAL] Re: 2025-09-09 DRAFT Special Committee"s Motion for Extension(48910439.2).docx
Date: Tuesday, September 30, 2025 3:12:57 PM
Attachments: image001.png
Image.png

Caution: This email originated from outside the Firm.

Trace, are you available to discuss in the morning?
Joshua W. Wolfshohl
Porter Hedges LLP
1000 Main St., 36th Floor
Houston, Texas 77002

> On Sep 30, 2025, at 2:00 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:
>
> Tomorrow, we will be filing our objection to your client's application and our affirmative claim for breach of fiduciary duty. We do not intend to file this document under seal. We are asking to strike paragraphs 29 through 32 of your fee application, as well, as filing under seal does not protect the privilege.
>
> **Trace Schmeltz**
> Partner
> Direct: (312) 214-4830 | Mobile: (312) 731-1980
> Chicago, IL
>
> ---
>
> **From:** Schmeltz, Trace
> **Sent:** Tuesday, September 9, 2025 4:20:55 PM
> **To:** Wolfshohl, Joshua W. <jwolfshohl@porterhedges.com>
> **Subject:** 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx
>
> **Trace Schmeltz**
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>
> <image001.png>
>
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Exhibit

6

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

IN RE:	)	
	)	
RHODIUM ENCORE LLC, ET AL,	)	CASE NO.: 24-90448(ARP)
	)	
Debtors.	)	

****

ORAL AND VIDEOTAPED DEPOSITION OF

CHARLES TOPPING

OCTOBER 29, 2025

****

ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING, produced as a witness at the instance of LEHOTSKY KELLER COHN LLP, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 29, 2025, from 3:20 p.m. to 5:25 p.m., before SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand, at 901 South Mopac Expressway, Suite 300, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

CHARLES TOPPING - October 29, 2025

APPEARANCES

FOR LEHOTSKY KELLER COHN, LLP:
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LEHOTSKY KELLER COHN LLP
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will@lkcfirm.com

FOR THE SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS OF RHODIUM ENTERPRISES, INC.:
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haley.casper@btlaw.com

FOR IMPERIUM INVESTMENT HOLDINGS, LLC, AND CHASE BLACKMON, CAMERON BLACKMON, AND NATHAN NICHOLS:
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1300 I Street NW
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Washington, D.C. 20005
202-538-8000
alainjaquet@quinnemanuel.com
lindsayweber@quinnemanuel.com

ALSO PRESENT:
Morgan Soule (Via Zoom)
Scott Kintz (Via Zoom)
Nina Fairbairn (Via Zoom)
Tim Bishop, Videographer

INDEX

	PAGE
Appearances	2
Examination by Mr. Thompson 3:20 p.m. - 4:42 p.m. 5:11 p.m. - 5:21 p.m.	6
Changes and Corrections	62
Signature	63
Reporter's Certification	64

EXHIBIT INDEX

NO.	DESCRIPTION	PAGE
10	Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	9
11	Emergency Motion for Authority to Pay Fees to Lehotsky Keller & Cohn LLP	11
12	Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel	15
13	Email Dated February 11, 2025	53

Q. It's unlikely because Rhodium should try to find the right answer in both contexts, right?

A. We would not want to have a situation where there were two sets of operative facts that could result in liability exposure and could result in tax exposure, tax liability exposure. So, yes, the right answer being one set of operative facts that governs what we file with the IRS that also governs everything else.

Q. But it's a possibility because the law doesn't actually prohibit having different allocations, correct?

A. I'm not able to provide an opinion on that.

Q. You don't know one way or the other?

A. I don't.

Q. I apologize, Mr. Topping. I think we've been talking for a bit over an hour and I have not offered you a break. Would you care for a break?

A. That would be great.

MR. THOMPSON: Let's go off the record.

VIDEOGRAPHER: 4:41, off.

(Recess from 4:42 p.m. to 5:11 p.m.)

VIDEOGRAPHER: Okay. The time is 5:10. On the record.

Q. (BY MR. THOMPSON) Welcome back from the break, Mr. Topping.

Mr. Schmeltz and I have just conferred off

the record and reached an agreement about -- that should save us some time or not require me to depose you on various topics.

MR. THOMPSON: I say that because I don't actually think I've gotten your response yet if you just sent it. Maybe it's just my wi-fi.

MR. SCHMELTZ: Well, let's make sure you have it. My response was agreed -- just so the record is clear, I said "Agreed. We will file something with the Court by Monday morning."

That went out at 5:11 p.m. to you and our team. I'll show it to you on my phone.

MR. THOMPSON: I just got it. Thank you.

MR. SCHMELTZ: All right. All right.

MR. THOMPSON: Okay. That resolves that.

Q. (BY MR. THOMPSON) Mr. Topping, I'm going to hand you what will be marked as Exhibit 13.

(Exhibit No. 13 marked)

Q. (BY MR. THOMPSON) Do you recognize Exhibit 13 in front of you?

A. I do.

Q. Is it an email that you sent to Mr. Cohn?

A. Yes.

Q. And in that email, you said "Jon, We would like to get the version of the complaint against Whinstone

CHARLES TOPPING - October 29, 2025

CHANGES AND CORRECTIONS

WITNESS NAME: CHARLES TOPPING

DATE OF DEPOSITION: OCTOBER 29, 2025

PAGE	LINE	CHANGE	REASON

I, CHARLES TOPPING, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

CHARLES TOPPING

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared CHARLES TOPPING, known to me (or proved to me under oath or through _____) (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR
THE STATE OF_____
COMMISSION EXPIRES:_____

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

IN RE:)
)
RHODIUM ENCORE LLC, ET AL,)CASE NO.: 24-90448(ARP)
)
Debtors.)

****

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING
OCTOBER 29, 2025

****

I, SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CHARLES TOPPING, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

__x__ was requested by the deponent or a party before the completion of the deposition and returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

_____ was not requested by the deponent or a party before the completion of the deposition.

That the amount of time used by each party at the deposition is as follows:

MR. WILL THOMPSON.... 1 Hour, 32 Minutes
MR. VINCENT P. TRACE SCHMELTZ III.... 0 Hours, 0 Minutes
MS. ELIZABETH D. SCOTT.... 0 Hours, 0 Minutes
MR. NATHANIEL ALLARD.... 0 Hours, 0 Minutes
MS. ANNA OLIN RICHARDSON.... 0 Hours, 0 Minutes
MR. ALAIN JAQUET.... 0 Hours, 0 Minutes

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 31st day of October, 2025.

_____

SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 5/31/26
COURT REPORTERS CLEARINGHOUSE
Firm Registration No. 556
13809 Research Boulevard, Suite 500
Austin, Texas 78750
(512) 732-1805

Exhibit

7

From: Schmeltz, Trace
To: Will Thompson
Cc: Rhodium Bankruptcy Investigation
Subject: Re: Withdraw
Date: Wednesday, October 29, 2025 5:11:31 PM
Attachments: Image.png

Agreed. We will file something with the court by Monday morning.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Will Thompson <will@lkcfirm.com>
Sent: Wednesday, October 29, 2025 5:08:32 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Subject: [EXTERNAL] RE: Withdraw

Caution: This email originated from outside the Firm.

Trace,

Thanks for the email. Based on our conversations, I think we're in agreement. You aren't bringing claims against LKC and are not arguing LKC violated any rules of ethics, fiduciary duties, etc. As a result, I will forgo discovery into these issues, including deposing Mr. Topping.

If you could confirm in writing, I'll treat this as resolved.

Thanks,
Will

Will Thompson | Lehotsky Keller Cohn | 210.286.0806

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Wednesday, October 29, 2025 4:57 PM
To: Will Thompson <will@lkcfirm.com>
Subject: Withdraw

We agree to withdraw arguments about misuse of privilege for the hearing on LKC's fee application.

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Exhibit

8

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Rhodium Encore LLC and Air HPC LLC Debtor.	)	CASE NO: 24-90448 Houston, Texas
	)	Monday,
	)	November 3, 2025

FEE APPLICATION HEARING
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording;
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We can argue it later.

BY MR. SCHMELTZ:

Q Would you take a look for me please at Exhibit 245? Exhibit 245 is a March PowerPoint. I think you first used this in Mr. Blackmon's deposition. Do you recognize this document, sir?

A I do.

Q And if you take a look at Hearing Exhibit 245.007, there are value considerations there. Right?

A I'm with you.

Q And it indicates additional upside Riot derives from a settlement. Do you see that?

A I see that line.

Q "Value of contracts, removal of these contracts creates value to Riot at a lower discount rate, no execution risk." Do you see that?

A I do.

Q And you understood that one of the things that was at issue between Rhodium on the one hand, and Riot-Whinstone on the other hand were these low-cost power contracts. Right?

A Initially in the litigation?

Q Yes.

A Yeah, yeah, those contracts were at issue in the litigation.

Q And you would understand from this type of statement

that the Debtor is indicating that there's value in the settlement for removing those contracts. Right?

A Yeah.

Q If you take a look at the ongoing business value, and the risk to damages low and high case on this page, 245.007, right -- You see that?

A I do.

Q It shows 75 million in the low case. Right?

A For risk damages? Yeah.

Q And the commentary is, "Risk estimates from LCK stress plus or minus $25 million." Right?

A Yes.

Q Do you have any reason to believe, as you sit here today, that this slide, which was presented to the Board of Rhodium, was prepared in bad faith?

A I don't have a reason to believe it was prepared in bad faith.

Q Take a look at the next page, 245.008. Building D at $165 million base amount has a base success of 20% here. Right?

A Yes, sir.

Q And this was presented to the Rhodium Board of Directors. Right?

A It was, at least in March, and then this slide says February 16th, 2025. But it was at least presented in

March.

Q It May have also been presented in February, on the 16th, possibly?

A Correct.

Q Do you have any reason to believe that this slide was prepared and presented to the Board of Directors of Rhodium in bad faith?

A Bad faith? No.

Q Any reason to believe that the allocation of 20% as the likelihood of success for Building D was done in bad faith?

A I don't think it was bad faith.

Q Do you have any reason to believe that that allocation was made somehow to skew a success fee claim by LKC months later?

A No, I don't have reason to believe that.

Q In fact, that claim wasn't even a gleam in anyone's eye in February or March 2025, was it?

A I'm not sure I follow that.

MR. SCHMELTZ: I would move to admit 245 into evidence, Your Honor.

MR. DISHER: No objection.

THE COURT: 245 is admitted.

BY MR. SCHMELTZ:

Q I'd like to draw your attention to 245.002, please. In the header on 245.002, Impact on Valuation, do you see that?

I would say early February, continuing with the February 12th Board meeting, continuing with several Board meetings thereafter, in which the Board, as well as members of the management team, and working collaboratively with our advisors, our professional advisors, our attorneys, took a very deep dive into the value of the claims, and refined its analysis during that period.

Q And did the value of the claims from Rhodium's perspective go up or go down based on that refined analysis?

A The value of the claims did reduce as part of that process.

Q And do you know what it reduced from and to?

A There were refinements made to, I think, management's understanding of how long it would take to recover. There were refinements made to management's understanding of probability of success at least on one claim, which was building D. And there were -- As a result, the total value of the claims reduced, and the risk-adjusted value of at least one of the claims also changed.

Q We're going to talk about the risk-adjusted value of one of the claims in just a minute. Do you -- have you -- Well, why don't you take a look at Exhibit 245 in our binder?

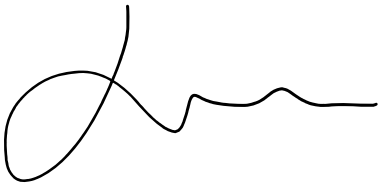
A Okay.

Q Do you recognize this document, sir?

A Yes. This appears to be a Board -- a presentation that was given to the Board in March, I believe.
Q And on the first page, 245.002, does that reflect the evolution of the risked damages that you've described?
A It does reflect some of the thinking, I think, at the time. I'm looking at 245.002.
Q And you see risked damages, with a low range of $50 million and a high range of $100 million. You see that?
A Yes.
Q Do you have an understanding as to whether that is reflective of how the company valued its litigation claims at that time?
A That is reflective of how the company valued damages at that time, it does say reduced estimates by $25 million.
THE COURT: Let me ask you a question. Where it says exit financing less certain due to -- and it goes on and says, "Galaxy less robust view on damage potential, longer timeline to recover from partner Fortress." Was that Galaxy's view? Is that what this is saying?
MR. TOPPING: Yes. Correct.
THE COURT: Okay.
BY MR. SCHMELTZ:
Q And Galaxy, was Galaxy brought in to potentially provide exit financing?
A Yes.

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Lindsay Peacock

Veritext Legal Solutions
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Date: November 6, 2025

Exhibit

9

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RHODIUM ENCORE LLC and AIR HPC LLC, Debtors,	)	CASE NO: 4:24-bk-90448
	)	Houston, Texas
	)	Wednesday, December 3, 2025
	)	9:30 a.m. to 11:52 a.m.

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

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INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL ROBINSON	100	105		
CHRIS WHEELER	115	116	127	132
KEVIN HAYES	134	180	217	227

EXHIBITS	RECEIVED
Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110, 111	21
Exhibit 9	24
Exhibit 10	24
Exhibit 11	25
Exhibit 108	26
Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, 100-107	107
Exhibit 216	149
Exhibit 244	150
Exhibit 259	220

Q We'll try it this way while we see if we can figure out the technical issues, Mr. Wheeler. Do you remember my asking you, "LKC is a Rhodium stakeholder, correct?"
A I remember you asking the question.
Q And do you remember that your answer began, "I think that you could view them as that, although I don't know that this is how that was intended"?
A It sounds consistent with what I said.
Q All right.
MR. SCHMELTZ: I would just note, Your Honor, my objection that it's improper impeachment. It's (indiscernible).
MR. THOMPSON: I'll get to it.
BY MR. THOMPSON:
Q And as Rhodium's corporate representative, you could not testify about the intent behind that last sentence in Section 2.3, right?
A That's correct.
Q But based on the language in the document, if Rhodium and Whinstone reach one allocation for the purposes of the PSA and then Rhodium and LKC reach a different allocation for purposes of the fee dispute, that wouldn't violate the PSA in Rhodium's understanding, correct?
A My personal view is it wouldn't violate the PSA, but I've also been advising on matters related to the tax

filings. And I think that those would have to be considered as well.

MR. THOMPSON: Objection. Nonresponsive to everything after, "It wouldn't violate the PSA."

THE COURT: Okay.

BY MR. THOMPSON:

Q Now, your declaration says that $75 million should be allocated to Rhodium's claims against Whinstone, right?

A Correct.

Q You didn't perform your own independent analysis of how much the damages claims were worth, right?

A I did not.

Q You used a number from a board presentation, fair?

A That's correct.

Q In your view, a board presentation was a reliable source of information for valuing the damages, right?

A Yes.

Q That the board presentation was based in part on input from the company's attorneys you thought made it more reliable, right?

A I thought that certainly lent to its credence, yes.

Q But you don't know who presented the $75 million number to the board, correct?

A I do not.

Q You don't know whether there was disagreement about the

yes.
Q Let's take a look at Exhibit 245 again. And 245.002 shows an ongoing business valuation and risked damages at the bottom of the page. Do you see that?
A Hang on a second. Okay. We're on...
Q 245.002, bottom of the page where it says 3/5/2025. Do you see that?
A Sure, yeah.
Q And this is after the mediation that took place, Riot Whinstone on February 19th, correct?
A Correct. It's a few weeks after that. So this is on March 5th. So it's a few weeks after that mediation.
Q And at this point in time you note on 245.002 some exit financing less certain -- due to certain things. Do you see that?
A Yes.
Q How did that impact if at all your views of damages?
A Yeah. So between February 16th and February -- and March 5th, we -- it became clear to us that a few of the financing -- potential financing partners that we were hoping that would be able to provide exit financing, one of which we had a lot of comfort with, they were not going to get there. They -- much to all of our efforts, and that would include LKC and Stris as well, trying to get them comfortable within the value of the litigation in addition

to the business. They couldn't get there.

So as of March 5th, we had one term sheet that would have met our needs, which we needed $75 million. The other ones couldn't get anywhere close to that. And that term sheet, if you looked at the term sheet, you can see the interest rates and the fees. But I think what kind of tells it all is there are exit fees that we needed to pay depending on when we repaid the loan. And if you looked at that, any one of those scenarios, there was no scenario where the cost of that capital was going to be less than 30 percent.

So as a result, we adjusted our discount rate from 25 percent to 30 percent and we applied that change to our ongoing business value which affected the DCF. We also applied that increased discount rate to the claims.

The other thing that we changed was it became apparent to me and others that were looking at this from a valuation perspective that we were not going to collect these damages in a year. In fact, we were probably going to be lucky to collect them in two years. Another year of discounting at a high discount rate for a company that's in a very tenuous state, that has an impact on value as well.

So from the damages perspective, we had to look at it and say, well, discount rate can't be 25 percent; it's 30 percent now. Look at the term sheet we have here. That's

the only term sheet we have. And we're not going to get this in one year, we're going to get this in two years. So instead of taking that $125 million that's not discounted and dividing it by 1.25, which is one year at 25 percent, we've got to divide it by 1.3 squared, which is 1.69. So 125 divided by 1.69, it's about $74 million. So the updated middle of the range for the damages discounted back to present was $75 million based on that.

Q During the course of your efforts to get exit financing, did financing partners also weigh in on the value of claims that were potential collateral for financing?

MR. THOMPSON: Your Honor, yes or no is fine. Collaboration hearsay.

THE COURT: Go ahead, you can answer.

THE WITNESS: Okay. So the feedback we got -- and there was one group in particular that needed a litigation partner, and the litigation partner didn't see the value int eh claims --

MR. THOMPSON: Your Honor, I'm going to have to object to hearsay.

THE COURT: I think the question was did people weigh in.

THE WITNESS: Yes, they did.

BY MR. SCHMELTZ:

Q And did you report that information to the board?

A Yes.
Q And did you take that information into account in risking the damages in this presentation to the board?
A I used that to increase the discount rate, but I did not change the $125 million.
Q Do you see where it says impact on valuation on 245.002?
A Correct, yes.
Q Do you see the second bullet?
A Yes.
Q Can you please read that to the Court?
A "Damages. View from financing partners suggests risked value less than $100 million."
Q And the next bullet?
A "Higher risk of exit financing, increased discount rate." And then is say -- and this has to do with the ongoing business. If you toggle the interest rate -- the discount rate five percent, that has a $15 million impact on discounted cashflow. That applies to the business, not the damages.
Q And at the time you prepared this presentation and presented it to the board, did you have any idea that it might come up in a later conversation around the success fee with LKC?
A No.

Q And is that risked damages number of $75 million what you discussed with Chris Wheeler?
A Yes.
Q And was that based on this presentation to the board?
A Yeah, that was based on this presentation.
Q Did anyone at the board object to or oppose the idea of valuing damages at $75 million at or about this time?
A My recollection, you know, the board always has healthy opinions on the value of the business. And I think at this point we were -- the board was -- and the management team were agreeing on these ranges. You know, we had a lot of robust discussions on the 12th and the 16th.
Q The total asset value, business plus risk damages, has a low of $108 million, right?
A Mm-hmm.
Q And a high of just about $249 million, correct?
A Correct.
Q Just as a math guy, can you give me a midpoint on that?
A About $180 million. Yeah. 180, $185 million, something like that.
Q About where you came out in the transaction?
A Correct. We of course didn't negotiate that transaction until I think the end of March.
Q So that $75 million is the midpoint of risked damages, right?

A Correct.
Q And 180, 185 is the midpoint of the total asset value, right?
A Correct.
MR. SCHMELTZ: I don't have any further questions for this witness. Thank you, Your Honor.
THE COURT: Thank you. So it's 4:00. Why don't we take a ten-minute break. It's 4:08. Why don't we come back at 4:20. And then I'll talk to my staff to see how late they can stay tonight.
MR. THOMPSON: Thank you.
(Recess)
THE COURT: All right. We're back -- okay, we're back on the record in Case Number 24-90448. And you are still under oath. Go ahead.
MR. DISHER: May I proceed, Your Honor?

CROSS-EXAMINATION OF KEVIN HAYES

BY MR. DISHER:
Q Good afternoon, Mr. Hayes. How are you?
A Good to see you again.
Q You too. So I want to start just by clearing up one thing. You were asked questions about Special Committee Exhibit 244. If you could go ahead and turn to that in your white binder, please.
A Yes.

estimates by another $25 million, the high range of your risk damages estimate is still $100 million?

A Correct.

Q And that, of course, is the amount that we are using in our fee application pending in front of the Court, correct?

A Correct.

Q Okay. Just to be clear about one last thing in the March meeting, on Slide 2 there's the third bullet that says, "exit financing less certain due to" -- do you see that?

A Yes.

Q Galaxy ultimately refused to provide exit financing? Is that right?

A Yeah. I don't know if we can share the name here, but yes.

Q Okay. And Invesco here, it says cost prohibitive?

A Correct.

Q Okay. Now, I want to shift gears slightly to the tax allocation. You've been involved in discussions with Whinstone related to the allocation of taxes for -- excuse me -- the allocation of the sales price for tax purposes, right?

A I've been involved with Whinstone. I would characterize that as the purchase price allocation, yes. Those -- I've been involved in those discussions

predominantly with Chris and Wheeler at Whinstone -- or at Riveron, and then on a few calls with Whinstone as well.

Q Okay. Because the $185 million sales price, that has to be split between different buckets? Right?

A Correct.

Q Okay. Rhodium, in its initial proposal for the tax allocation, proposed to allocate $75 million of the 185 to the settlement of damages under the tax allocation?

A Correct.

Q Meaning the remainder of the 185 would have to go to the value of the business?

A Yeah. And this may be like a detail on the process, but I think we only had to allocate for the non-damages portion among the entities. So, what we actually allocated on the forms did not include the $75 million, but it left $75 million.

Q Great. So $75 million of damages, the rest to the value of the business?

A Right.

Q Okay. Whinstone, of course, initially objected to Rhodium's proposed allocation?

A They rejected -- they objected to the -- to a component of it, the fixed asset component of it, the equipment and the miners' portion of it.

Q Let's turn to Tab 17 in the black binder, please? You

with me?
A Yeah, I'm with you.
Q Okay. So the first email in LKC Exhibit 17 is an email from you to Mr. Topping and some other folks at Rhodium?
A Yes.
Q And if we skip down to the next email, it looks like you were forwarded an email from Mr. Topping, right?
A Yes.
Q Mr. Topping was forwarding you an email from Mr. Lockhart?
A Yes.
Q Mr. Lockhart, of course, is one of the lawyers for Whinstone?
A Yes.
Q And here he says, "Patty: Below, please find Whinstone's objections to Rhodium's purchase price allocation." And there's a bullet. That's $33.42 million in tangible assets, right?
A Mm hmm.
Q So that was Rhodium's initial proposed allocation to tangible assets was $33.42 million?
A Yes.
Q And if we look at the next page, there's a sub-bullet that says, "Based on our third-party valuation, the amount is approximately $7.2 million." That's Whinstone's

objection to the $33.42 million in tangible assets, right?
A Correct.
Q So Whinstone is saying, we think the tangible assets should only be allocated $7.2 million, right?
A For the fixed assets, correct.
Q Then, if we look at the next bullet point, $70.46 million in intangible assets. Do you see that?
A I do.
Q Whinstone, in responding to that proposed allocation, says it assigns zero value to any tangible asset, right?
A Yeah. I mean, we talked about this email at the deposition. I think this email was -- I think he was confused.
Q But my question was simply yes or no. The lawyer for Whinstone is saying, in response to Rhodium's initial allocation, that Whinstone assigns zero value to any intangible asset, right?
A Yeah, but that doesn't mean he doesn't put value on the energy contracts.
Q What he's saying here is zero value to any intangible assets. That's all he's saying. I'm just -- it's a yes or no question.
A That's what he's saying, but --
Q Right.
A -- this is a confusing email.

Q Now, after Whinstone objected, you were part of discussions about how Whinstone's proposed allocation would affect Rhodium's tax liability?

A Yeah, I was. I was on some of those discussions, yes.

MR. DISHER: Now, Your Honor, I have to pause here. We flagged an issue -- I know it was a month ago -- before we started this hearing, that there was one document that the Special Committee clawed back. Under the protective order, I was allowed to keep one copy in this manila envelope for the Court to review, should it so desire.

We are challenging that claw back. We don't believe that this document is privileged. It is, in fact, a provision of business advice, not legal advice, and any privilege that might have attached to it has been waived.

I asked Mr. Hayes about this document extensively during his deposition. No objection was raised at that point. No attempt to claw it back was raised at that point. Mr. Thompson then asked their 30(b)(6) witness about this same document four days later. Still no objection, no attempt to claw it back. It wasn't until after Mr. Thompson used it for a second time in the deposition that Whinstone attempted to claw -- or, excuse me -- that the Special Committee attempted to claw it back.

We don't think it's an appropriate use of the claw

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

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Date: December 10, 2025

Exhibit

10

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

In re:	
RHODIUM ENCORE LLC, et al.,	Chapter 11
Debtors.	Case No. 24-90448 (ARP)

VIDEO-RECORDED DEPOSITION OF JONATHAN COHN

DATE: Tuesday, October 28, 2025
TIME: 8:43 a.m.
LOCATION: Barnes & Thornburg, LLP
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REPORTED BY: Erick M. Thacker
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Scott Kintz (Via Zoom)
Charles Topping (Via Zoom)

C O N T E N T S

EXAMINATION BY: PAGE
Mr. Schmeltz 7
Mr. Disher 410
Ms. Weber 413

E X H I B I T S

NUMBER DESCRIPTION PAGE
Cohn Exhibit 1 E-mail correspondence 14
SpecialCommittee_LKC_00004845 - 853
Cohn Exhibit 2 Letter dated 5/16/2023 from Jonathan Cohn to Cameron Blackmon 75
Cohn Exhibit 3 Letter dated 3/4/2025 from Jonathan Cohn to Cameron Blackmon 82
Cohn Exhibit 4 E-mail correspondence 99
SpecialCommittee_LKC_00004813 - 816
Cohn Exhibit 5 E-mail correspondence 103
SpecialCommittee_LKC_00004838 - 844
Cohn Exhibit 6 E-mail correspondence 130
SpecialCommittee_LKC_00004819 - 821
Cohn Exhibit 7 Complaint 137
Cohn Exhibit 8 E-mail correspondence 149
SpecialCommittee_LKC_00000037 - 038
Cohn Exhibit 9 Redlined Complaint 146
Cohn Exhibit 10 E-mail correspondence 191
SpecialCommittee_LKC_00003477 - 505
Cohn Exhibit 11 E-mail correspondence dated 2/11/2025 from Will Thompson to Charles Topping 211

C O N T E N T S (Continued)

E X H I B I T S

NUMBER DESCRIPTION PAGE
Cohn Exhibit 12 E-mail correspondence 241
SpecialCommittee_LKC_00003534 - 535
Cohn Exhibit 13 E-mail correspondence 277
SpecialCommittee_LKC_00003460 - 462
Cohn Exhibit 14 E-mail correspondence dated 11/20/2024 290
Cohn Exhibit 15 E-mail correspondence 292
SpecialCommittee_LKC_00002426 - 427
Cohn Exhibit 16 PowerPoint Presentation 303
SpecialCommittee_LKC_00002428 - 434
Cohn Exhibit 17 E-mail correspondence 344
SpecialCommittee_LKC_00000073 - 074
Cohn Exhibit 18 E-mail correspondence 361
SpecialCommittee_LKC_00001445 - 451
Cohn Exhibit 19 E-mail correspondence 375
SpecialCommittee_LKC_00000923 - 926
Cohn Exhibit 20 E-mail correspondence 382
SpecialCommittee_LKC_00002143
Cohn Exhibit 21 E-mail correspondence 387
SpecialCommittee_LKC_00002150 - 154
Cohn Exhibit 22 E-mail correspondence 394
SpecialCommittee_LKC_00000759 - 761
Cohn Exhibit 23 E-mail correspondence 398
SpecialCommittee_LKC_00001272 - 274

(*Exhibits attached to transcript.)

Page 406

BY MR. SCHMELTZ
Q It's fair to say that at every step along the way, when given a choice between fighting or being collaborative, you've chose fighting; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes the record. Mischaracterizes prior testimony.
THE WITNESS: And also really incorrect. So, no, it's not correct. That would not be fair to say.
BY MR. SCHMELTZ
Q In point of fact, you've picked a fight with everyone who's disagreed with you; isn't that right?
MR. DISHER: Objection. Vague. Foundation. Mischaracterizes.
THE WITNESS: Yeah, definitely not. I would say that pretty much everyone I've dealt with in this case has complained to me about your behavior, including people who are on this call, people who are not on this call, and you've

Page 407

treated many people very poorly.
But the answer to your question is no. I think what you're saying is incorrect. And this is probably just another attempt by you to try to get people aggravated at you, and I don't know why you roll that way, Trace. I really wish you didn't. I know you've had a tough year, but that's no reason to be the way you are to other people who are trying their best to be professional.
BY MR. SCHMELTZ
Q You don't consider telling someone that they're re-creating history picking a fight with them; is that correct?
MR. DISHER: Objection. Vague. Foundation.
THE WITNESS: I don't. I do think that you have tried very hard to pick fights, both during this deposition and on very -- many other phone calls. I disagree. We all disagree with the tactics you've taken. And this is, of course, not the first case in which you have

Page 408

skirted the lines on appropriate behavior. I think everyone knows how you were held in contempt of court before, and I don't know if you're trying to do it again, but I do disagree with your statement.
I think what your statement is, it's unfair, it's unprofessional, and I would just politely suggest that whatever is going on in your life, you leave it aside when it comes to a deposition.
BY MR. SCHMELTZ
Q I think that sort of characterizes exactly the way your behavior has been this entire case. When confronted with disagreement, you go on an ad hominem attack; isn't that right, sir, as you just have now?
MR. DISHER: Objection.
BY MR. SCHMELTZ
Q That's your -- that's your MO, isn't it, sir?
MR. DISHER: Objection. Argumentative. Misstates testimony.

Page 409

THE WITNESS: Yeah.
MR. DISHER: Foundation.
BY MR. SCHMELTZ
Q You wouldn't describe what you just did as an ad hominem attack; is that --
A No, not at all.
MR. SCHMELTZ: Okay.
THE WITNESS: I would say --
MR. SCHMELTZ: I have no further --
THE WITNESS: -- Trace --
MR. SCHMELTZ: -- questions.
THE WITNESS: I'm not done answering.
MR. SCHMELTZ: You are.
THE WITNESS: No, I'm not.
MR. SCHMELTZ: I have no further questions.
THE WITNESS: No, so I --
MR. SCHMELTZ: I said, would you describe it as an ad hominem attack, and you said no. We're done.
THE WITNESS: So let me explain.
MR. SCHMELTZ: No, no need to explain.

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

October 31, 2025
To: Todd Disher
Case Name: In Re Rhodium Encore LLC, Et. Al., v.
Veritext Reference Number: 7680676
Witness: Jonathan Cohn Deposition Date: 10/28/2025
Dear Sir/Madam:
Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Jonathan Cohn
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7680676
CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.
DATE OF DEPOSITION: 10/28/2025
WITNESS' NAME: Jonathan Cohn
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Jonathan Cohn

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal
this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 7680676
PAGE/LINE(S) / CHANGE /REASON
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Date Jonathan Cohn
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

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Notary Public

_____
Commission Expiration Date

Exhibit

11

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

In Re:	§
	§
RHODIUM ENCORE LLC, et al.,	§
	§
Debtors,	§
	§
	§
	§

****

CONFIDENTIAL

ORAL AND ZOOM DEPOSITION OF

CHARLES TOPPING

JUNE 2, 2025

****

The Oral and Zoom Deposition of CHARLES TOPPING, produced as a witness at the instance of the SAFE AD HOC GROUP, and duly sworn, was taken in the above-styled and numbered cause on JUNE 2, 2025, from 12:06 p.m. to 2:59 p.m., before Nicole A. Hatler, CSR No. 11275 in and for the State of Texas, reported by machine shorthand, in their respective locations via Zoom, pursuant to the Texas Rules of Civil Procedure.

---oOo---

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INDEX

PAGE
Appearances.....2

WITNESS:

CHARLES TOPPING

Examination by MS. PORTER.....6

Reporter's Certificate.....109

E X H I B I T S

PAGE
SAFE AD HOC GROUP'S
Exhibit 1 Declaration of Mr. Topping dated.....13
May 14, 2025
Exhibit 2 Transcript excerpt of March 19, 2025.....39
hearing
Exhibit 3 Redline of Letters - SAFE AHG Exhibit....61
Exhibit 4 August 2024 engagement letter.....65
Exhibit 5 September 2024 engagement letter.....65
Exhibit 6 July invoice.....65
Exhibit 7 LKC's reply brief.....89

would be involved in -- that -- that may or may not have a bearing on -- on the process here.

Q. So the allocation reached to Whinstone may be different from the allocation reached at LKC; is that right?

A. I think there might be overlap.

Q. But there's nothing here that requires it to be the same?

MS. BRANNEN: Objection to form.

THE WITNESS: There -- there is no express language in this letter that requires that the allocation be identical to the allocation agreed upon between Rhodium and Whinstone in the PSA.

Q. BY MS. PORTER: Right. So Rhodium and Whinstone in the PSA may reach one allocation, and then Rhodium and LKC, pursuant to this engagement letter, may reach a different allocation; is that right?

MS. BRANNEN: Objection to form.

THE WITNESS: I think it's unlikely, but I suppose it's a possibility.

Q. BY MS. PORTER: And there's no creditor involvement in reaching the allocation contemplated by this subsection D; is that right?

A. No. This did not expressly require creditors -- creditor involvement.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a part before the completion of the deposition and that the signature is to be before any notary public and returned within 30 days from the date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefore:

__X__ was not requested by the deponent or a part before the completion of the deposition.

I further certify I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 3rd day of June, 2025.

_____

Nicole A. Hatler, Texas CSR 11275
Expiration Date: 11/30/22
NHatler@Ymail.com

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

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

DAVID EATON AND SPENCER WELLS'S RESPONSE TO LEHOTSKY KELLER COHN LLP'S MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE OF RHODIUM ENTERPRISES, INC.'S BOARD OF DIRECTORS AND ITS COUNSEL BARNES & THORNBURG LLP, OR, IN THE ALTERNATIVE, FOR PAYMENT OF FEES AND EXPENSES UNDER SECTION 328

[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.

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 4

A. The Debtors and LKC entered into a revised engagement letter that expressly contemplated the Debtors resolving their dispute with Whinstone through a sale of assets. 4

B. The Debtors entered into a settlement agreement with Whinstone that included a sale and purchase of assets. 5

C. The Debtors attempted to negotiate in good faith the amount of LKC's success fee. 6

D. LKC filed its Fee Application. 7

E. The Special Committee, on the Debtors' behalf, raised reasonable objections to LKC's Fee Application. 8

F. After certain payments to LKC, additional settlement negotiations, and a hearing, the Court approved LKC's Fee Application. 9

G. LKC moved for sanctions and filed claims against the Special Committee. 10

III. ARGUMENT 10

A. The Court cannot sanction the Special Committee under 28 U.S.C. § 1927 because the Special Committee is a represented party. 10

B. LKC cannot meet the high bar for inherent-authority sanctions in the face of the Special Committee's good-faith conduct. 11

i. The Court exercises its inherent power to sanction litigants with restraint and discretion. 12

ii. The Special Committee's objections to LKC's Fee Application were reasonable and made pursuant to the Debtors' statutory and contractual rights. 14

a. Objections to final fee applications are authorized under 11 U.S.C. § 330(a)(2) and routine. 15

b. LKC's revised engagement letter expressly contemplated judicial resolution of the amount of LKC's success fee. 16

c. The Special Committee reasonably argued that LKC's success fee calculation was overstated because the Whinstone settlement was primarily an asset sale. 17

d. The Special Committee reasonably argued that LKC's Fee Application included unrecoverable fees for work performed by Porter Hedges. 20

e. The Special Committee reasonably argued that LKC's Fee Application was premature. 21

iii. The Special Committee asserted a breach of fiduciary duty claim against LKC on the Debtors' behalf in good faith. 22

a. The Special Committee asserted the breach of fiduciary duty claim to avoid waiver after LKC refused to extend the Special Committee's time to object to LKC's Fee Application. 22

b. The breach of fiduciary duty claim was colorable. 23

c. Federal and bankruptcy laws required the Special Committee to file the breach of fiduciary claim publicly. 25

iv. The Special Committee's litigation conduct was routine and reasonable. 26

C. *ASARCO* bars LKC's attempt to collect attorneys' fees and expenses for defending its Fee Application under 11 U.S.C. § 328. 29

IV. CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

CASES

Anglo-Dutch Petroleum Int'l, Inc. v. Greenberg Peden, P.C.,
352 S.W.3d 445 (Tex. 2011).....15

Baker Botts L.L.P. v. ASARCO LLC,
576 U.S. 121 (2015).....14, 28, 29, 30, 31

Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner),
783 F.3d 266 (5th Cir. 2015).....14

Chambers v. NASCO, Inc.,
501 U.S. 32 (1991).....11, 12, 28

Day v. Amoco Chemicals Corp.,
595 F. Supp. 1120 (S.D. Tex. 1984).....28

Dean v. Riser,
240 F.3d 505 (5th Cir. 2001).....23

Elliott v. Tilton,
64 F.3d 213 (5th Cir. 1995).....12

First United Pentecostal Church of Beaumont v. Parker,
514 S.W.3d 214 (Tex. 2017).....3, 22, 26

Goodyear Tire & Rubber Co. v. Haeger,
581 U.S. 101 (2017).....10

Hardt v. Reliance Std. Life Ins. Co.,
560 U.S. 242 (2010).....29

In re ASARCO, L.L.C.,
702 F.3d 250 (5th Cir. 2012).....16, 30

In re Boomerang Tube, Inc.,
548 B.R. 69 (Bankr. D. Del. 2016).....29, 30

In re Cano,
410 B.R. 506 (Bankr. S.D. Tex. 2009).....28

In re Cleveland Imaging & Surgical Hosp.,
L.L.C., 26 F.4th 285 (5th Cir. 2022).....13

In re Danner,
2012 WL 3205242 (B.A.P. 9th Cir. July 31, 2012) 29

In re Digerati Technologies, Inc.,
537 B.R. 317 (Bankr. S.D. Tex. 2015) 14

In re Feldman,
597 B.R. 448 (Bankr. E.D.N.Y. 2019) 10

In re Gen. Homes Corp.,
181 B.R. 898 (Bankr. S.D. Tex. 1995) 24

In re Haney,
2022 WL 412809 (Bankr. N.D. Ala. Feb. 10, 2022) 13

In re High Sulfur Content Gasoline Prods. Liab. Litig.,
517 F.3d 220 (5th Cir. 2008) 15

In re Huepenbecker,
546 B.R. 381 (Bankr. W.D. Mich. 2015) 28

In re Intelogic Trace, Inc.,
200 F.3d 382 (5th Cir. 2000) 22

In re King,
546 B.R. 682 (Bankr. S.D. Tex. 2016) 26

In re Moore,
739 F.3d 724 (5th Cir. 2014) 11, 12

In re N. Bay Gen. Hosp., Inc.,
404 B.R. 429 (Bankr. S.D. Tex. 2009) 25

In re Parsley,
384 B.R. 138 (Bankr. S.D. Tex. 2008) 12, 24

In re Prof'l Fee Matters Concerning Jackson Walker Law Firm,
663 B.R. 335 (Bankr. S.D. Tex. 2024) 11

In re Raocore Tech., LLC,
2025 WL 828880 (Bankr. D.D.C. Feb. 20, 2025) 29

In re Rodriguez,
652 B.R. 750 (Bankr. S.D. Tex. 2023) 12, 14, 24

In re Ruth,
473 B.R. 152 (Bankr. S.D. Tex. 2012) 26

In re SkyPort Global Commc'ns, Inc.,
528 B.R. 297 (S.D. Tex. 2015) 11

In re Vaughn,
660 B.R. 827 (Bankr. S.D. Ohio 2024).....28

In re Yorkshire, LLC,
540 F.3d 328 (5th Cir. 2008) 13

Matta v. May,
118 F.3d 410 (5th Cir. 1997) 10

McCollum v. Jacobs Eng'g Grp., Inc.,
992 F. Supp. 2d 680 (S.D. Miss. 2014).....23

Michael v. Boutwell,
138 F. Supp. 3d 761 (N.D. Miss. 2015).....12

Miller v. Dunn,
774 F. Supp. 3d 806 (N.D. Tex. 2024), *aff'd sub nom.*, 2025 WL 3231718 (5th Cir. Nov. 19, 2025) 11, 12, 14, 21

Pressey v. Patterson,
898 F.2d 1018 (5th Cir. 1990) 12

Smith Int'l, Inc. v. Tex. Commerce Bank,
844 F.2d 1193 (5th Cir. 1988) 10

United States v. Sutton,
786 F.2d 1305 (5th Cir. 1986) 12

Walters v. Tenant Background Search,
849 F. App'x 476 (5th Cir. Mar. 12, 2021).....26

STATUTES

11 U.S.C. § 328(a) 30

11 U.S.C. § 107(a) 24

11 U.S.C. § 327(a) 14

11 U.S.C. § 330(a)(1)(B) 20

11 U.S.C. § 330(a)(2).....13, 14, 15

28 U.S.C. § 1927.....10

David Eaton and Spencer Wells, in their capacities as former members of the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the "Special Committee"), one of the debtors in the above-captioned chapter 11 cases (collectively, the "Debtors" or "Rhodium"), file this response to the Motion for Sanctions [ECF No. 2303] (the "Motion") filed by Lehotsky Keller Cohn LLP ("LKC").

I. INTRODUCTION

1. The Court should deny the Motion. The Special Committee at all times acted reasonably and in good faith in objecting to LKC's final fee application (the "Fee Application"), and did so in a manner consistent with its fiduciary duties.

2. This dispute arises out of the resolution of the Debtors' chapter 11 cases, which were funded primarily through a settlement between the Debtors and Whinstone U.S., Inc. ("Whinstone"), pursuant to which Whinstone acquired certain of the Debtors' assets and the Debtors and Whinstone settled their claims against one another. Mr. Eaton and Mr. Wells, in their capacities as former members of the Board of Directors of Rhodium, helped guide the Debtors through these chapter 11 cases, including overseeing negotiations of, and approving, the Debtors' settlement with Whinstone. Notably, all creditors were paid in full on their allowed secured and general unsecured claims, including post-petition interest—a rare outcome in bankruptcy proceedings. LKC served as special litigation counsel to the Debtors in their dispute with Whinstone.

3. Following the Whinstone settlement, LKC filed its Fee Application seeking approximately $11.5 million in total fees and expenses based on its interpretation of its revised engagement letter with the Debtors. That agreement—which this Court approved—includes a possible success fee turning on whether Rhodium was ultimately sold in a settlement, and on the amount of (i) any energy credits recovered by the Debtors from Whinstone, and (ii) any additional

damages recovered by the Debtors from Whinstone not attributable to energy credits. The Debtors and LKC agreed that if Whinstone acquired the Debtors in a transaction that resolved the Debtors' dispute with Whinstone, the Debtors and LKC would negotiate in good faith the portion of the transaction value to the Debtors allocable to (i) the energy credits and (ii) the additional damages. The Debtors and LKC further agreed that if they were unable to agree on an allocation, this Court would resolve the dispute. In its Fee Application, LKC asserted it was owed a success fee of approximately $8.9 million.

4. The Debtors reached a different, reasonable calculation of LKC's success fee, and the Special Committee, acting on the Debtors' behalf solely due to a perceived conflict of the Debtors' bankruptcy counsel, filed an objection to LKC's Fee Application (the "Objection"). The Special Committee, in coordination with the Debtors' counsel and their officers and other directors, filed its Objection in the ordinary course of these chapter 11 cases, in an exercise of its fiduciary duties, pursuant to the Debtors' statutory authority to scrutinize and object to fee applications under 11 U.S.C. § 330, and in accordance with the dispute-resolution mechanism set forth in LKC's revised engagement letter.

5. Following a four-day evidentiary hearing, the Court approved LKC's Fee Application and awarded LKC $11,671,994.33 for compensation and reimbursement of expenses. That order has been appealed. ECF Nos. 2213 and 2214. LKC now seeks an additional award of more than $1.5 million in attorneys' fees and expenses through its Motion.[2]

[2] LKC has also filed an adversary complaint and administrative expense claim seeking recovery of the same fees and expenses. *See* ECF No. 2299, Adv. Proc. No. 26-3051.

6. LKC's request for additional compensation is meritless under all three avenues LKC pursues: (i) sanctions under 28 U.S.C. § 1927; (ii) sanctions under the Court's inherent authority; and (iii) attorneys' fees and expenses under 11 U.S.C. § 328.

7. ***First***, LKC's request for sanctions against the Special Committee under Section 1927 fails at the start because that statute provides courts authority to sanction attorneys, not represented parties. Because the Special Committee unquestionably is a represented party, the Court cannot sanction it under Section 1927.

8. ***Second***, LKC's request for sanctions under the Court's inherent authority is equally unmeritorious because the Special Committee acted in good faith throughout these chapter 11 cases, and LKC does not satisfy the demanding standard required to impose inherent-authority sanctions. The Special Committee's objections to LKC's Fee Application were grounded in the Debtors' reasonable interpretation of LKC's revised engagement letter and a legitimate dispute over the calculation of LKC's success fee. The Special Committee asserted a colorable breach of fiduciary duty claim against LKC on the Debtors' behalf in an abundance of caution to preserve it under Fifth Circuit precedent that requires parties to raise such claims in connection with fee applications. And the Special Committee properly filed its objection publicly in compliance with federal law and 11 U.S.C. § 107, which establishes a strong presumption in favor of public access to court records.

9. ***Third***, LKC's request for additional compensation under 11 U.S.C. § 328 is barred by Supreme Court precedent that prohibits counsel retained by the bankruptcy estates from collecting attorneys' fees and expenses for defending their own fee applications. The request under Section 328 also fails because LKC seeks compensation for anticipated services performed for itself.

10. The Special Committee exercised the Debtors' statutory and contractual rights—and fulfilled its fiduciary duties—by objecting to LKC's sizeable Fee Application and presenting the dispute to this Court for resolution, precisely as LKC's revised engagement letter contemplated and LKC agreed. The Court's ultimate approval of LKC's Fee Application, which the Special Committee does not seek to relitigate here, does not retroactively transform the Special Committee's good-faith conduct in connection with the success fee dispute into sanctionable behavior, and LKC cannot circumvent the Supreme Court's prohibition on counsel retained by the bankruptcy estates recovering "fees on fees" through its Motion. The Court should deny the Motion in its entirety.

II. FACTUAL BACKGROUND

A. The Debtors and LKC entered into a revised engagement letter that expressly contemplated the Debtors resolving their dispute with Whinstone through a sale of assets.

11. Between February 19 and March 18, 2025, the Debtors and Whinstone engaged in mediation to resolve their dispute, including the claims that LKC had been retained to pursue on the Debtors' behalf. ECF No. 1732-2 ¶ 4. LKC participated in preparing information for the Debtors relating to settlement strategy and rough numbers estimating potential settlement amounts. *Id.* ¶ 6. However, while LKC attended initial mediation meetings, it was not present or actively involved in later settlement discussions between the Debtors and Whinstone, including the final settlement meetings where the parties ultimately achieved a resolution or discussed potential allocation of settlement funds. Ex. A, Nov. 3, 2025 Hr'g Tr. at 128:10–11, 129:20–130:2.

12. On March 4, the Debtors and LKC entered into a revised engagement letter, which this Court approved, describing a possible success fee turning on whether Rhodium was ultimately sold in a settlement, and on the amount of (i) any energy credits recovered by the Debtors from Whinstone, and (ii) any additional damages recovered by the Debtors from Whinstone not

attributable to energy credits. ECF No. 835 at 15. This agreement provided that if Whinstone acquired the Debtors in a transaction that resolved the Debtors' dispute with Whinstone, the Debtors and LKC would determine in good faith the portion of the transaction value allocable to the energy credits and damages. *Id*. Further, the agreement expressly provided that if the Debtors and LKC were unable to agree on an allocation, this Court would resolve the dispute:

> [I]f you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of the transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are ***unable to reach a resolution*** regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, ***such dispute shall be resolved by the bankruptcy court.***

Id. at 15 (emphasis added).

B. The Debtors entered into a settlement agreement with Whinstone that included a sale and purchase of assets.

13. As the mediation process progressed, it became apparent that the best way to "provide a return" for both stakeholders and creditors was through an asset sale. Ex. A, Nov. 3, 2025 Hr'g Tr. at 206:8–14. The Debtors worked with the Ad Hoc Group of SAFE Parties (the "SAFE AHG") to negotiate a settlement agreement with Whinstone (the "Settlement Agreement"), which included a deal with Whinstone that was ultimately memorialized in a Purchase and Sale Agreement (the "PSA"). ECF Nos. 1530-2, 1732 ¶ 15. LKC did not actively participate in this negotiation. Ex. A Nov. 3, 2025 Hr'g Tr. at 128:10–11, 129:20–130:2. Pursuant to the PSA, Whinstone acquired certain of the Debtors' assets, and the Debtors and Whinstone also settled their claims against one another. *Id*. ¶ 17.

14. Under the PSA, Whinstone agreed to pay the Debtors a "Purchase Price" of $185 million to buy the assets and resolve all claims. ECF No. 1530-3 at 11–12. However, the PSA did

not specify what portion of the Purchase Price was for the purchase of the assets (tangible assets) versus resolution of claims (intangible assets). *Id.* Instead, the PSA required the Debtors to prepare and deliver to Whinstone an IRS Form 8594 (an "Allocation Statement") allocating the $185 million among the tangible and intangible assets in accordance with Section 1060 of the Internal Revenue Code. *Id.* at 7–8.

15. Pursuant to Section III(2) of the Settlement Agreement, "clos[ing] the transactions contemplated by that [PSA] between [the] Debtors . . . and Whinstone" was "a condition to entering into this Agreement." ECF No. 1530–2 at 8. This included the Allocation Statement. ECF No. 1530-3 at 6–7. The PSA anticipated this transaction taking weeks as it provided Whinstone 15 days to object to the Debtors' Allocation Statement. ECF No. 1530–3 at 7. In the event Whinstone were to object to the Allocation Statement, the parties were then required to "attempt in good faith to resolve any dispute." *Id.*

C. The Debtors attempted to negotiate in good faith the amount of LKC's success fee.

16. Following the Whinstone settlement, the Debtors engaged with LKC and attempted to agree on the amount of its success fee. Ex. A, Nov. 3, 2025 Hr'g Tr. at 24:7–10. However, while LKC's revised engagement letter required the parties to determine payment allocations in good faith, it did not provide "a real playbook" for doing so, which resulted in different, but reasonable, interpretations of the success fee. *Id.* at 23:8–13.

17. In May 2025, LKC reached out to the Special Committee offering to settle the success fee for $8.1 million, using a $100 million starting point as the estimated gross amount attributed to settled claims against Whinstone under the Settlement Agreement before further allocation under LKC's revised engagement letter. Ex. B, Nov. 3, 2025 Hr'g Ex. 201.007–08. The Special Committee countered with $3.8 million, using a $75 million starting point as the

estimated value of the settled claims against Whinstone. *Id.* The Special Committee calculated $50 million for energy credits and allocated the rest as damages. *Id.*

18. Between May and July 2025, the Special Committee continued to try to negotiate the success fee with LKC, informing it that the Debtors were still preparing an Allocation Statement that would value the Debtors' claims lower than LKC's $100 million estimate. ECF No. 1530 ¶ 20. The parties also disputed the amounts attributable to the components of the gross estimated amount attributable to claims, including the value attributable to Winter Storm Uri and Building D claims, which LKC acknowledged were uncertain. Ex. A, Nov. 3, 2025 Hr'g Tr. at 21:1–25; 116:19–117:3.

19. Not content to wait until the Debtors harmonized the tax allocation with Whinstone, LKC propounded discovery against the Debtors, its own clients, under Rule 2004 of the Federal Rules of Bankruptcy Procedure on August 7. ECF No. 1515. LKC's discovery sought extensive information related to the tax allocation. *Id.* at 7.

20. On August 13, the Special Committee, on the Debtors' behalf, requested that LKC withdraw its discovery requests. ECF No. 1529-2. The next day, LKC moved for a status conference on its Rule 2004 discovery requests, ECF No. 1529, and the Special Committee moved to quash LKC's discovery requests.

D. LKC filed its Fee Application.

21. Approximately one week later, on August 22, LKC filed its Fee Application. ECF No. 1560. Based on its calculation of the success fee, LKC sought approximately $11.5 million

in fees and expenses—$8,913,600 for the success fee and $2,505,848.50 for discounted hourly fees. *Id*. at 17.[3]

22. The Debtors asked LKC to consent to an extension of their deadline to file objections to LKC's Fee Application because they had not yet finalized the Whinstone Purchase Price allocation. ECF No. 1633-3 ¶ 22. The Debtors informed LKC that the Debtors would be required to include a claim for breach of fiduciary duty in any objection to the Fee Application. ECF No. 1529-2 at 3.

23. Because LKC refused the request, the Debtors filed an emergency motion for an extension of time on September 10. ECF No. 1626.

E. The Special Committee, on the Debtors' behalf, raised reasonable objections to LKC's Fee Application.

24. After careful review of LKC's Fee Application, the Special Committee, acting on the Debtors' behalf solely due to a perceived conflict of the Debtors' counsel, filed its Objection to the Fee Application. ECF No. 1732. The Special Committee raised several objections to LKC's Fee Application, including: (i) LKC's success fee calculation was overstated because the Whinstone settlement was primarily an asset sale; (ii) the Fee Application included unrecoverable fees for work performed by Porter Hedges; and (iii) the Fee Application was premature. *Id*. ¶¶ 35–49. The Special Committee also asserted a claim against LKC on the Debtors' behalf for breach of fiduciary duty, noting that it did so in an abundance of caution so as not to waive it. *Id*. ¶¶ 50–59.

[3] Altogether, the total amount represents a blended rate of almost $4,000 per hour, which is four times the average hourly rate of LKC professionals who worked on this matter.

F. After certain payments to LKC, additional settlement negotiations, and a hearing, the Court approved LKC's Fee Application.

25. While litigating the Fee Application, the Special Committee caused the Debtors to pay LKC $765,000 after determining what was "unequivocally due." Ex. C, Oct. 15, 2025 Hr'g Tr. at 16:10–15. After the Court suggested the Debtors could pay more, the Special Committee promptly caused the Debtors to pay LKC an additional $950,000 based on what the Special Committee could determine was a power credit. Ex. A, Nov. 3, 2025 Hr'g Tr. at 18:12–16.

26. The Special Committee also continued negotiating with LKC in good faith to resolve its Fee Application in full. In November, the Special Committee offered to cause the Debtors to pay $7.1 million to LKC for the success fee to settle the dispute. Ex. D, Nov. 26, 2025 Email from Jon Cohn. LKC rejected this offer, and the Special Committee then offered $7.4 million for the success fee ***and*** agreed to pay the hourly fees and expenses of LKC and its counsel, Porter Hedges, to end the dispute. *Id.* However, LKC again rejected this offer and refused to continue with settlement negotiation. *Id.*

27. With the hearing on LKC's Fee Application approaching, the Special Committee decided to withdraw the Debtors' breach of fiduciary duty claim against LKC to streamline discovery and limit the scope of the issues in dispute. Ex. E, Withdrawal Email.

28. Ultimately, the parties could not agree on a success fee, so the issue was tried at a four-day evidentiary hearing. At the conclusion of the hearing, the Court approved LKC's Fee Application and awarded LKC $11,671,994.33 for compensation and reimbursement of expenses. ECF No. 2198. The Court directed the Debtors to disburse the unpaid amount of $7,630,460.98, which they did on January 14, 2026. ECF Nos. 2198 and 2268. The order was appealed. ECF Nos. 2213 and 2214.

G. LKC moved for sanctions and filed claims against the Special Committee.

29. Despite the Court's order approving LKC's Fee Application, the Debtors' payment to LKC of all unpaid amounts, and the Debtors' payment in full to all unsecured creditors, with post-petition interest, on February 13, 2026, LKC filed its Motion for Sanctions seeking an additional $1.5 million in fees and expenses in the form of sanctions against the Special Committee and its counsel. Mot. ¶ 87. In the alternative, LKC seeks additional attorneys' fees and expenses for defending its Fee Application. *Id*. ¶¶ 82–86.[4]

III. ARGUMENT

A. The Court cannot sanction the Special Committee under 28 U.S.C. § 1927 because the Special Committee is a represented party.

30. Putting aside the fact that LKC has not identified any conduct warranting sanctions, LKC's request for sanctions against the Special Committee under 28 U.S.C. § 1927 fails at the outset because such sanctions are not available against a represented party like the Special Committee. The Court should deny LKC's request under Section 1927 for this reason alone.

31. By its terms, Section 1927 empowers courts to sanction only attorneys, not represented parties:

> Any ***attorney or other person admitted to conduct cases*** in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. 1927 (emphasis added).

[4] LKC has also filed an adversary proceeding and administrative claim. *See* ECF No. 2305. LKC is effectively seeking to recover the costs of defending its own Fee Application through three different mechanisms.

32. Confirming this plain text, the Supreme Court has held that "sanctions under 28 U.S.C. § 1927 [may] address the wrongdoing of only [a party's] attorneys, rather than of [the party] itself." *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, n.2 (2017). Likewise, the Fifth Circuit has acknowledged that Section 1927 "does not apply to represented parties, but only to 'any attorney or other person admitted to conduct cases.'" *Smith Int'l, Inc. v. Tex. Commerce Bank*, 844 F.2d 1193, 1197 (5th Cir. 1988); *see also Matta v. May*, 118 F.3d 410, 413–14 (5th Cir. 1997) ("§ 1927 sanctions are, by the section's plain terms, imposed only on offending attorneys; clients may not be ordered to pay such awards."). And bankruptcy courts routinely refuse to sanction parties under Section 1927. *See, e.g.*, *In re Feldman*, 597 B.R. 448, 466 (Bankr. E.D.N.Y. 2019) (denying sanctions motion against debtor in part because "a party represented by counsel, even if the party is an attorney, is not subject to sanctions under 28 U.S.C. § 1927").

33. As it must, LKC acknowledges that the Special Committee is a represented party. Indeed, the first sentence of LKC's Motion states that LKC moves for sanctions against the Special Committee "and its counsel" (Mot. at 1), and LKC refers to "counsel for the Special Committee" throughout the remainder of its Motion (*id.* ¶¶ 30, 39, 50, 65, 76).

34. Because sanctions against a represented party are unavailable under Section 1927, the Court should deny LKC's request for such sanctions against the Special Committee even before it reaches the merits of LKC's allegations.

B. LKC cannot meet the high bar for inherent-authority sanctions in the face of the Special Committee's good-faith conduct.

35. The Court should also deny LKC's request for sanctions under the Court's inherent authority because the Special Committee acted reasonably and in good faith in challenging LKC's Fee Application. To meet its burden to show that inherent-authority sanctions are warranted, LKC must prove, by clear and convincing evidence, that the Special Committee either (i) acted in bad-

faith or (ii) willfully abused the judicial process. *In re Prof'l Fee Matters Concerning Jackson Walker Law Firm*, 663 B.R. 335, 346 (Bankr. S.D. Tex. 2024). LKC cannot make either showing because neither occurred.

i. The Court exercises its inherent power to sanction litigants with restraint and discretion.

36. Federal courts have the inherent power "to sanction a litigant for bad-faith conduct." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 35 (1991). In particular, Section 105(a) of the Bankruptcy Code gives bankruptcy courts the ability to sanction "in conjunction with their inherent power to implement the Bankruptcy Code and prevent abuses of bankruptcy process." *In re SkyPort Global Commc'ns, Inc.*, 528 B.R. 297, 322 (S.D. Tex. 2015) (quotations omitted).

37. Courts must, however, exercise their inherent power to sanction circumspectly. In this Circuit, a court may impose sanctions under its inherent authority only when it makes a specific finding of bad faith or willful abuse of judicial process supported by clear and convincing evidence. *In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). "Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity." *Miller v. Dunn*, 774 F. Supp. 3d 806, 818 (N.D. Tex. 2024), *aff'd sub nom.*, 2025 WL 3231718, at *1 (5th Cir. Nov. 19, 2025) (citations and quotations omitted). Abuse of judicial process includes "maneuvers or schemes which would have the effect of undermining the integrity of the bankruptcy system." *In re Rodriguez*, 652 B.R. 750, 760 (Bankr. S.D. Tex. 2023). LKC, as the movant, "bears the burden to justify the exercise of the Court's inherent power to sanction." *Michael v. Boutwell*, 138 F. Supp. 3d 761, 784 (N.D. Miss. 2015).

38. The Supreme Court "has cautioned that 'because of their very potency, inherent powers must be exercised with restraint and discretion.'" *Elliott v. Tilton*, 64 F.3d 213, 217 (5th Cir. 1995) (quoting *Chambers*, 501 U.S. at 44). Specifically, inherent powers granted by

Section 105 must "be exercised only in a manner consistent with the provisions of the Bankruptcy Code." *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986). Inherent powers do "not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *Id.*

39. Because a bankruptcy court's "discretion to impose sanctions under its inherent authority is limited," bad faith is judged by "necessarily stringent" standards. *Pressey v. Patterson*, 898 F.2d 1018, 1021 (5th Cir. 1990). Bad faith "requires more than just meritless claims." *Miller v. Dunn*, 774 F. Supp. 3d 806, 819 (N.D. Tex. 2024), *aff'd*, 2025 WL 3231718 (5th Cir. Nov. 19, 2025). It requires (i) "a finding that the plaintiff filed [a] suit for purposes of harassment or delay, or for other improper reasons;" (ii) a "finding that the plaintiff filed a meritless lawsuit and withheld material evidence in support of a claim;" or (iii) "a finding that a party was delaying or disrupting the litigation or hampering enforcement of a court order." Miller,774 F. Supp. 3d at (quotations omitted). A "court's mere suspicions do not add up to clear and convincing evidence of . . . bad faith." *In re Moore*, 739 F.3d at 731; *see also In re Parsley*, 384 B.R. 138, 183 (Bankr. S.D. Tex. 2008) (refusing to impose sanctions because court could not find "clear and convincing evidence that the conduct . . . transcended from merely negligent bungling to full-blown bad faith").

40. Examples of bad-faith conduct that has warranted the rare imposition of inherent-authority sanctions on parties in bankruptcy cases include (i) surreptitiously filing bankruptcy petitions with the intent to harm interested parties, *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008); (ii) misusing the bankruptcy court's filing system to file documents that attack others or vent personal grievances instead of presenting proper facts and legal arguments, *In re Haney*, 2022 WL 412809, at *24 (Bankr. N.D. Ala. Feb. 10, 2022); and (iii) knowingly violating a

bankruptcy court's confirmation order, *In re Cleveland Imaging & Surgical Hosp.*, L.L.C., 26 F.4th 285, 297 (5th Cir. 2022). Nothing close to such circumstances occurred here.

ii. The Special Committee's objections to LKC's Fee Application were reasonable and made pursuant to the Debtors' statutory and contractual rights.

41. LKC portrays the Special Committee's Objection as a "malicious" "smear campaign" consisting of "baseless accusations," "frivolous" claims, "spurious attacks," "abusive tactics," and "vexatious litigation conduct." Mot. at 1–4. These characterizations ignore reality.

42. The Special Committee, acting on the Debtors' behalf, raised substantive, good-faith arguments pursuant to the rights afforded to a debtor under Section 330 of the Bankruptcy Code and LKC's revised engagement letter. Section 330 authorizes a bankruptcy court, "on its own motion or ***on the motion of . . . any other party in interest***," to "award compensation that is less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2) (emphasis added). Similarly, LKC's revised engagement letter provided that if the Debtors and LKC were unable to agree on the amount of LKC's success fee, this Court would resolve the dispute. ECF No. 835 at 15.

43. The Special Committee exercised the Debtors' statutory and contractual right—and its own fiduciary obligation—to scrutinize LKC's Fee Application. It did not argue that LKC deserved nothing. *See* ECF No. 1732 ¶ 1 (acknowledging that LKC was "unquestionably" entitled to fees for its services and offering to pay the undisputed $600,000 component of the success fee immediately). Instead, it reasonably contended that LKC's calculation of its success fee was unsupported and premature based on the Special Committee's interpretation of LKC's revised engagement letter and the facts. *See generally id.* at 14–22. The Special Committee neither "conscious[ly]" committed "a wrong because of dishonest purpose or moral obliquity," *Miller*,

774 F. Supp. 3d at 818, nor did anything that might "undermin[e] the integrity of the bankruptcy system," *In re Rodriguez*, 652 B.R. at 760.

a. Objections to final fee applications are authorized under 11 U.S.C. § 330(a)(2) and routine.

44. The Bankruptcy Code provides a uniform scheme for retaining and compensating attorneys under 11 U.S.C. §§ 327–330. First, under Section 327(a), a debtor must obtain the bankruptcy court's approval to employ counsel. 11 U.S.C. § 327(a). Then, under Section 330(a)(1)(A), an attorney who has been retained and employed may request "reasonable compensation for actual, necessary services rendered." *Id.* § 330(a)(1)(A). Next, as noted above, the bankruptcy court may exercise its discretion, upon motion or *sua sponte*, to "award compensation that is less than the amount of compensation that is requested." *Id.* § 330(a)(2).

45. Objections challenging the amount of compensation requested are not only expressly authorized under Section 330(a)(2) but common. *See, e.g.*, *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015) (debtors' parent company objected to fee application filed by debtors' counsel); *Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner)*, 783 F.3d 266 (5th Cir. 2015) (secured creditor objected to fees sought by debtor's counsel); *In re Digerati Technologies, Inc.*, 537 B.R. 317 (Bankr. S.D. Tex. 2015) (U.S. Trustee and creditors objected to debtor's counsel's fee application, resulting in reduction of fees requested by counsel). In addition, lump-sum settlements—as here—often give rise to disputes over contingency fees because such settlements often do not align neatly with the fee arrangements. *See, e.g.*, *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 233–35 (5th Cir. 2008) (dispute arose over allocation of a lump-sum settlement among individual attorneys representing clients on contingency fee basis in mass tort litigation); *Anglo-Dutch Petroleum Int'l, Inc. v. Greenberg Peden, P.C.*, 352 S.W.3d

445, 449–52 (Tex. 2011) (dispute arose between client and attorney over scope of contingency fee arrangement following lump-sum settlement payment from complex oil and gas lawsuit).

46. LKC's Motion proceeds from the false premise that the Special Committee's refusal to accept LKC's success fee calculation was an act of bad faith. In reality, the Special Committee's Objection to LKC's Fee Application is the sort of motion expressly authorized by Section 330. It was the ***only*** way—indeed, the mandated way—for the Special Committee to proceed given the inability to resolve the success fee dispute consensually.

47. Granting LKC's request for sanctions would have material, process-chilling consequences beyond these cases. If parties in interest face the prospect of being sanctioned for exercising their statutory right to challenge fee applications in good faith under Section 330(a)(2), debtors, fiduciaries, and other stakeholders may be deterred from raising objections to fee applications in future bankruptcy proceedings. Independent directors who serve on special committees and bring decades of restructuring experience to bear in advising distressed companies would be particularly chilled, forced to weigh the risk of retaliatory sanctions against their fiduciary obligation to scrutinize professional fees on behalf of the estate. Such a result would undermine the fee-review process that Congress established and that bankruptcy courts depend upon to protect the interests of debtors and their stakeholders. The Court should decline LKC's invitation to employ the Court's inherent sanctions power in a manner that would discourage the very oversight that the Bankruptcy Code requires.

b. LKC's revised engagement letter expressly contemplated judicial resolution of the amount of LKC's success fee.

48. On top of Section 330, LKC's own revised engagement letter expressly anticipated the possibility that the parties would be unable to agree on the amount of LKC's success fee, and provided that such a dispute would be resolved by this Court. Section (d) of the letter provides in

relevant part: "If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, ***such dispute shall be resolved by the bankruptcy court***." ECF No. 835 at 15 (emphasis added). Rhodium's General Counsel, Charles Topping, testified that Section (d) was included "to make explicit the way in which the success fee would be determined in the event . . . there was a transaction that resulted in a sale of Rhodium's assets." Ex. A, Nov. 3, 2025 Hr'g Tr. at 193:6–12. Given that such language exists in LKC's approved retention and revised engagement letter, LKC has no basis to argue that a fee dispute was unforeseeable or the type of "subsequent developments [] *incapable* of being anticipated at the time the engagement was approved." *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012).

49. The Special Committee's decision to object to LKC's Fee Application and present the parties' dispute regarding the amount of LKC's success fee to the Court was not unexpected or made in bad faith; it was contemplated by the parties and was the very dispute-resolution mechanism that their agreement established. In accordance with LKC's revised engagement letter and in good faith, the Special Committee objected to only certain components of LKC's Fee Application and presented the Debtors' position to the Court for adjudication. *See generally* ECF 1732 at 14–20. LKC's revised engagement letter required good-faith negotiation followed by judicial resolution—precisely what occurred.

c. The Special Committee reasonably argued that LKC's success fee calculation was overstated because the Whinstone settlement was primarily an asset sale.

50. The Special Committee substantively objected to LKC's Fee Application primarily on the ground that LKC's success fee calculation was inflated because it failed to account for the reality of the Whinstone settlement: the settlement was primarily a sale of assets, not a recovery

on the Debtors' litigation claims. ECF No. 1732 ¶¶ 3, 15, 39, 42–45. This position was reasonably based in fact.

51. As these chapter 11 cases proceeded, it became clear that the best resolution for all stakeholders would involve an asset sale. Rhodium's General Counsel testified that as the mediation between the Debtors and Whinstone progressed, "it started to become apparent to us that it would be very difficult to get exit financing on our terms. At that point . . . what we saw as the best way to provide a return to our Stakeholders, provide a return to our Creditors was starting to emerge as the solution of an asset sale." Ex. A, Nov. 3, 2025 Hr'g Tr. at 206:7–17. The Debtors' restructuring advisors worked with Rhodium, the SAFE AHG, and Whinstone to come to an agreement on an asset sale that brought concrete value into the estates. *See* ECF No. 1732 at 15–16.

52. The Special Committee's contention that LKC's success fee calculation was exaggerated because the Whinstone settlement was primarily an asset sale was not manufactured. The Debtors' Settlement Agreement with Whinstone did not specify what part of the lump-sum payment corresponded with the sale of assets or recoveries on the Debtors' claims. And LKC's revised engagement letter itself recognized the possibility that the Debtors' dispute with Whinstone would be resolved through a transaction in which Whinstone acquired all or substantially all of the Debtors' Rockdale assets, and that the Debtors and LKC would not be able to agree on LKC's resulting success fee. ECF No. 835 at 15–16.

53. The Special Committee's position also was supported by evidence. The testimony of Rhodium's General Counsel quoted above supported the Special Committee's position that the nature of the transaction with Whinstone evolved from a litigation settlement into primarily an asset sale driven by the Debtors' restructuring circumstances (particularly, their inability to obtain

exit financing on acceptable terms)—a fact with direct implications for the allocation of the $185 million in transaction value and, in turn, the success fee calculation. The Debtors' Chief Financial Officer, Kevin Hays, also testified that the $75 million damages figure proposed by the Special Committee for calculating LKC's success fee was consistent with the presentation made to Rhodium's Board in March 2025—a presentation made well before any controversy arose over LKC's success fee—and that the same figure was used in the Debtors' proposed tax allocation to Whinstone. Ex. F, Dec. 3, 2025 Hr'g Tr. at 203:6–206:25.

54. Mr. Eaton, one of the Special Committee members, explained that the $75 million allocation was, in his view, "at the very top end" of a reasonable range, but that the Special Committee accepted it because it served two important purposes: it "recognized the good work that LKC had done" by providing adequate compensation, and it "would comply with the contract" by producing a fee allocation consistent with the Debtors' proposed tax allocation to Whinstone. Ex. G, Dec. 11, 2025 Hr'g Tr. at 14:14–15:3. Mr. Eaton further noted that an "independent third-party valuation" had been conducted of the business assets sold to Whinstone, which came out at a range between $173 million and $207 million with a midpoint of $190 million, "which was in fact very close to what [the Debtors] had achieved in the final settlement." *Id*. at 14:2–7.

55. In arguing that the Whinstone settlement was not driven primarily by the Debtors' litigation claims, the Special Committee legitimately contended that the preliminary settlement projections relied on by LKC to support its success fee calculation were just estimates, not final and binding settlement figures. ECF No. 1732 ¶¶ 37–41. Those pre-mediation projections were prepared by LKC itself, in coordination with the Debtors' CFO, to facilitate discussions by Rhodium's Board concerning strategy and settlement authority for conducting settlement negotiations. ECF No. 1732-2 ¶¶ 5–7. The projections were rough, risk-weighted estimates of

potential claim values. *Id*. They were used for settlement discussions "solely centered around the value of the business" and were never presented to or agreed upon by Whinstone or intended to serve as a binding allocation of settlement proceeds. *Id.* at 9:4–5; ECF No. 1732 ¶ 40. Mr. Eaton testified that "the data that was used [for settlement discussions] was created for much different purposes before it was transferred over to apply to the settlement of success fees, and I think it substantially overweigh[ed] the value of litigation claims." Ex. G, Dec. 11, 2025 Hr'g Tr. at 8:8–15. Indeed, Rhodium's General Counsel testified that the Board's estimate of damages moved from $100 million to $75 million as circumstances evolved, demonstrating the projection's preliminary nature. Ex. A, Nov. 3, 2025 Hr'g Tr. at 21:4–8.

56. The Special Committee's argument that the Whinstone settlement was primarily an asset sale—and that the Debtors' preliminary, one-sided estimate of litigation damages was not a proper basis for calculating LKC's success fee—was a reasonable, good-faith position well within the bounds of legitimate advocacy. Because LKC was not present at or actively involved in the later settlement negotiations with Whinstone that ultimately resulted in a resolution, it had no way of knowing what allocations were discussed regarding potential litigation damages.

d. The Special Committee reasonably argued that LKC's Fee Application included unrecoverable fees for work performed by Porter Hedges.

57. The Special Committee also objected to LKC's Fee Application on the ground that it included unrecoverable fees for work by LKC's counsel, Porter Hedges. ECF No. 1732 ¶¶ 46–49. This, too, was a reasonable objection.

58. LKC's Fee Application presented $200,100.98 in Porter Hedges charges as lump-sum expense line items with no details regarding time, rates, qualifications, or the nature of the work performed. ECF No. 1560 at Ex. F. Because LKC never provided the underlying Porter Hedges invoices to the Debtors until the eve of trial, the Debtors could not assess whether the

expense was actual and necessary as dictated by Section 330. As the Debtors' General Counsel testified: "[W]e had never received invoices . . . for the Porter Hedges amounts, so there was no way to determine if those amounts were reasonable." Ex. A, Nov. 3, 2025 Hr'g Tr. at 190:18–21.

59. Section 330 allows the bankruptcy court to award a professional retained under Section 327 "reimbursement for ***actual, necessary*** expenses." 11 U.S.C. § 330(a)(1)(B) (emphasis added). LKC's bare-bones presentation of the Porter Hedges charges made it impossible for the Debtors to conduct this analysis, let alone determine whether such charges by Porter Hedges were necessary for the administration of the estate, and the Special Committee justifiably objected to the inclusion of these charges in LKC's Fee Application.

e. The Special Committee reasonably argued that LKC's Fee Application was premature.

60. In addition to the substantive arguments discussed above, the Special Committee argued that LKC's Fee Application was premature. ECF No. 1732 ¶¶ 42–45. This position also was reasonable and supported by evidence.

61. In support of this position, the Special Committee submitted a sworn declaration from the Debtors' tax advisor, Mark Wheeler, stating that the Whinstone transaction implicated six separate taxpayers and required attribution of revenue to each entity based on the specific assets sold, the hosting agreements held, and the settlement of claims asserted. ECF No. 1732-1 ¶¶ 6–7. Mr. Wheeler also testified that under the Internal Revenue Code and the PSA, the Debtors and Whinstone were required to allocate the Purchase Price using the residual method prescribed by 26 U.S.C. § 1060 and Treasury Regulations thereunder. *Id.* ¶ 8. He further testified that the allocation should ideally be resolved before negotiating with LKC to "ensure a single set of operative facts regarding the allocation of [the] purchase price." *Id.* ¶¶ 26–27. He also acknowledged that while reaching a different allocation for purposes of the LKC dispute would

not "violate the PSA," the tax filings "would have to be considered as well." Ex. F, Dec. 3, 2025 Hr'g Tr. at 119:19–120:5.

62. Supported by Mr. Wheeler's testimony, the Special Committee's position was straightforward: Because the PSA required the allocations be "accurate and consistent with the record," it was reasonable to seek consistency between that allocation and the fee calculation before finalizing LKC's success fee. ECF No. 1732 ¶ 44. The Special Committee did not argue that the Court should never determine the amount of LKC's success fee or award LKC a success fee—only that the Court should wait to do so until the Debtors and Whinstone agreed on or otherwise resolved the tax allocation to achieve such objectives.

iii. The Special Committee asserted a breach of fiduciary duty claim against LKC on the Debtors' behalf in good faith.

63. The record establishes that the breach of fiduciary claim asserted against LKC by the Special Committee on the Debtors' behalf was colorable and asserted to avoid waiver, not as a "malicious campaign of publicly attacking and defaming LKC." Mot. at 1. The Special Committee did not assert the claim "for purposes of harassment or delay, or for other improper reasons," and LKC does not even argue that the Special Committee "withheld material evidence" regarding the claim. *Miller*, 774 F. Supp. 3d at 819.

a. The Special Committee asserted the breach of fiduciary duty claim to avoid waiver after LKC refused to extend the Special Committee's time to object to LKC's Fee Application.

64. The Special Committee's good faith in asserting a breach of fiduciary duty claim against LKC on the Debtors' behalf is demonstrated by its candor regarding the reason it asserted the claim. In its Objection, the Special Committee stated: "*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. Accordingly, as part of this Objection, the Special Committee

was required to assert, at a minimum, any affirmative claims against LKC related to the Fee Application and LKC's representation of the Debtors in this case." ECF No. 1732 ¶¶ 50–51 (citations omitted).

65. Before asserting the breach of fiduciary duty claim, the Special Committee sought to extend the Debtors' time to object to LKC's Fee Application to allow for further investigation and potential negotiations. *Id.* ¶ 5. LKC, however, refused this request, leaving the Special Committee with no option but to assert the claim as part of its Objection to avoid waiver under Fifth Circuit precedent. Obj. ¶ 5; *see In re Intelogic Trace, Inc.*, 200 F.3d 382, 386–391 (5th Cir. 2000) (holding that *res judicata* barred trustee's malpractice claims where they were not asserted in an objection to a fee application but they had arose from the same nucleus of operative facts).

66. As the Special Committee's Objection made clear, it raised the breach of fiduciary duty claim out of an abundance of caution to preserve it—not for purposes of harassment or delay.

b. The breach of fiduciary duty claim was colorable.

67. The breach of fiduciary duty claim asserted by the Special Committee against LKC was reasonably based in law and fact. The elements of such a claim under Texas law are (i) the existence of a fiduciary duty; (ii) breach of the duty; (iii) causation; and (iv) damages. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017). The Special Committee alleged in good faith that (1) a "fiduciary duty exists between a lawyer and . . . client," and "Rhodium engaged LKC and LKC's attorneys represented . . . the Debtors;" (2) LKC breached its fiduciary duty to Rhodium by demanding fees "in such a manner that, if Rhodium acquiesced, would create substantial liability;" (3) "[m]aking the payment that LKC demand[ed] would cause Rhodium to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder;" and (4) "LKC caused damage to the Debtors" by "shar[ing] the Debtors'

privileged information without [their] consent," "forc[ing] the Debtors to incur legal fees," and "subject[ing] the Debtors to heightened scrutiny by the Internal Revenue Service or other parties." ECF No. 1732 ¶¶ 54–58. These allegations were supported by the sworn declaration of Rhodium's General Counsel. ECF No. 1732-2.

68. LKC does not and cannot offer clear and convincing evidence that the Special Committee asserted the breach of fiduciary claim for an improper reason. LKC claims that the Special Committee's counsel "admitted he could not articulate any factual basis" for the claim. Mot. ¶ 65 (citing ECF No. 1633 at 6). Yet, in the very filing that LKC cites to support this statement, LKC conceded that the Special Committee's counsel explained that LKC's actions created "audit risk with the IRS." ECF No. 1633 ¶ 14.

69. LKC also asserts, without support, that the Special Committee later withdrew the claim "because it knew" the claim was "baseless." Mot. ¶ 66. But dismissal—let alone voluntary withdrawal—of a claim does "not establish that the . . . claim was frivolous, unreasonable, or groundless." *Dean v. Riser*, 240 F.3d 505, 512 (5th Cir. 2001). A party may decide to withdraw a claim "for reasons other than lack of merit." *McCollum v. Jacobs Eng'g Grp., Inc.*, 992 F. Supp. 2d 680, 686 (S.D. Miss. 2014). Here, the Special Committee withdrew the breach of fiduciary duty claim to streamline discovery and narrow the issues for the Court to resolve. *Cf. In re Rodriguez*, 652 B.R. 750, 762 (Bankr. S.D. Tex. 2023) (sanctioning attorney where she "openly conceded that she had no basis asserting her numerous maritime law theories"); *In re Parsley*, 384 B.R. 138, 180 (Bankr. S.D. Tex. 2008) (finding attorney acted in bad faith because he misrepresented to the court that a motion "was a good motion" despite "clear and convincing evidence that [he] had actual knowledge of the inaccurate factual allegations" in the motion).

70. The Special Committee filed a colorable claim for breach of fiduciary duty against LKC and later withdrew it for efficiency. Relying solely on mischaracterized quotations and conclusory allegations, LKC offers no evidence that the Special Committee asserted the claim to harass LKC or for any other improper purpose.

c. Federal and bankruptcy laws required the Special Committee to file the breach of fiduciary claim publicly.

71. LKC complains that "the Special Committee publicly filed [the] breach of fiduciary claim and refused to file it under seal." Mot. ¶ 65. But the Special Committee properly filed the claim publicly because nothing about it warranted sealing.

72. "[F]ederal courts have long recognized the strong common law presumption in favor of public access to court proceedings and records." *In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This presumption is codified in Section 107 of the Bankruptcy Code, which provides that a paper filed in a bankruptcy case and the dockets of a bankruptcy court are public records. 11 U.S.C. § 107(a). Section 107 permits the sealing of bankruptcy filings only in limited circumstances "to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter." *In re Gen. Homes Corp.*, 181 B.R. at 903. "For a bankruptcy court to seal court records pursuant to its discretionary authority to limit public access to papers, the court must specifically find that the interest of secrecy outweighs the presumption in favor of access." *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. 429, 440 (Bankr. S.D. Tex. 2009). In these very cases, the Court expressed concern about unnecessary sealing when addressing the Special Committee's motion for a protective order. Ex. H, Oct. 30, 2025 Hr'g Tr. at 4:19–25 ("I'm not going to seal the entire hearing . . . . I'm going to only seal those portions of the hearing that need to be sealed.").

73. Nothing in the Special Committee's Objection warranted sealing under Section 107(b). The Objection merely laid out the nonconfidential, factual allegations necessary to assert a breach of fiduciary duty claim against LKC. ECF No. 1732 ¶¶ 50–59. LKC may have preferred that the Special Committee file the claim under seal, but that preference did not allow the Special Committee to do so. "[A]greement of the parties, by itself, is not sufficient to trump the public's presumptive right of access." *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. at 441 (quotations omitted).

74. If LKC believed the breach of fiduciary duty claim warranted sealing, it could have and should have moved the Court to place the claim under seal. Likely recognizing that it could not meet its "burden of establishing [the] scandalous and defamatory character" of the claim, LKC never filed a motion to seal. *Id.* at 440. Even now, LKC offers no evidence to "demonstrate extraordinary circumstances and a compelling need to [have] obtain[ed] protection." *Id.*

75. Further, LKC was the first party to place materials regarding its conduct into the public record. ECF No. 1529-2. In good faith, the Special Committee sent LKC a private letter outlining its concerns, and LKC subsequently filed that same letter, and the Special Committee's draft objection to the Fee Application, with the Court. *See generally* ECF No. 1529-2.

iv. The Special Committee's litigation conduct was routine and reasonable.

76. LKC's Motion is devoid—because none exists—of the clear and convincing evidence necessary to establish that the Special Committee engaged in "vexatious" litigation conduct.

77. Vexatious conduct is "conduct that evidences bad faith, motive, or reckless disregard of the duty owed to the courts." *In re Ruth*, 473 B.R. 152, 166 (Bankr. S.D. Tex. 2012) (omitted quotations). It "implies not only that a litigant knew a position was unfounded, but that his purpose was to create trouble or expense for the opposing party." *Walters v. Tenant*

Background Search, 849 F. App'x 476, 479 (5th Cir. Mar. 12, 2021). In *In re Ruth*, the court denied a request for sanctions for alleged vexatious litigation conduct where the movants "ha[d] not provided evidence of any multiplicity of litigation or costs in their case," and the "filing of th[e] challenged claim ha[d] not led to extensive examinations or any court filings outside of the normal litigation process." *In re Ruth*, 473 B.R. at 167.

78. Such is the case here. LKC provides no evidence of "particular misconduct" required for the Court to make a finding of multiplicity of litigation or costs outside of the normal process for litigating final fee applications. *Id.* at 166. The Special Committee's litigation conduct was not vexatious—it was routine and done in good faith.

79. ***First***, as explained, fee application objections are a routine aspect of bankruptcy practice and have minimal impact on case administration because "even if no objection ha[s] been lodged, th[e] Court has an independent duty to examine all fee requests made by counsel." *In re King*, 546 B.R. 682, 701 (Bankr. S.D. Tex. 2016).

80. ***Second***, as also explained, the Special Committee's objections to LKC's Fee Application and breach of fiduciary duty claim were reasonably based in law and fact. *Supra* § III(B)(ii)-(iii).

81. ***Third***, contrary to LKC's allegation that the Special Committee engaged in "discovery gamesmanship," Mot. ¶ 80, the Special Committee properly used the judicial process in good faith. For example, when LKC served Rule 30(b)(6) topics, the Special Committee participated in the "iterative and cooperative" conferral process, discussing with LKC for more than a week about the 30(b)(6) representatives it was willing to produce, as well as the topics on which those representatives would testify. Ex. H, Oct. 30, 2025 Hr'g Tr. at 8:21–9:2, 10:21. When LKC later sought to cover a topic "broader than [the Special Committee] anticipated based on

conferrals to date," the Special Committee "responded to that in turn to ensure that [LKC] g[o]t the discovery they need[ed]." *Id*. at 11:2–11.

82. Further, when the Debtors refused to produce their Chief Executive Officer, Chase Blackmon, for deposition on the ground that LKC failed to provide adequate notice, the Special Committee proactively informed the Court of its intent not to produce the Debtors' CEO on that basis, underscoring its commitment to transparency rather than gamesmanship. Ex. C, Oct. 15, 2025 Hr'g Tr. at 17:2–10. As the Special Committee noted to the Court, difficulties in the discovery process arose because "it [was] just a little bit faster under the timeframe," not due to any deliberate obstruction. Ex. H, Oct. 30, 2025 Hr'g Tr. at 11:11.

83. ***Lastly***, the Special Committee continued to engage in good-faith negotiations to settle the success fee dispute without further litigation. The Special Committee made two additional offers to settle the dispute during the litigation, one for $7.1 million for the success fee and another for $7.4 million for the success fee ***and*** the hourly fees and expenses of LKC and Porter Hedges. Ex. D, Nov. 26, 2025 Email from Jon Cohn. LKC rejected both offers and refused to continue in settlement negotiations. *Id*.

84. LKC points to no case law supporting imposing inherent-authority sanctions against the Special Committee. The only three cases LKC cites that discuss courts sanctioning parties under their inherent authority for "vexatious" litigation conduct bear no resemblance to the circumstances here. *See Chambers*, 501 U.S. at 56 (sanctioning party for acting "in defiance of [a] preliminary injunction" and ignoring "repeated timely warnings . . . from . . . the court that his conduct was sanctionable"); *In re Cano*, 410 B.R. 506, 555 (Bankr. S.D. Tex. 2009) (sanctioning party for "violat[ing] court orders confirming chapter 13 plans"); *Day v. Amoco Chemicals Corp.*, 595 F. Supp. 1120, 1122, 1126 (S.D. Tex. 1984) (stating that future sanctions may be proper

because the court had "granted defendant's motion to dismiss with prejudice on the ground that plaintiff's case was frivolous and malicious"). Because LKC offers no evidence of bad faith or vexatious litigation conduct by the Special Committee, the Court should deny LKC's request for inherent-authority sanctions.

C. *ASARCO* bars LKC's attempt to collect attorneys' fees and expenses for defending its Fee Application under 11 U.S.C. § 328.

85. The Court should deny LKC's alternative request for additional fees and expenses under 11 U.S.C. § 328 because it is a transparent attempt at circumventing the core principle in *Baker Botts L.L.P. v. ASARCO LLC*, in which the Supreme Court held that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee applications. 576 U.S. at 135; *see also In re Vaughn*, 660 B.R. 827, 869 (Bankr. S.D. Ohio 2024) ("It is well-established that time spent defending a fee application is non-compensable."); *In re Huepenbecker*, 546 B.R. 381, 383 (Bankr. W.D. Mich. 2015) ("[B]ankruptcy courts may not award attorney fees to counsel employed by the bankruptcy estate for work performed in defending a fee application.").

86. In *ASARCO*, the Supreme Court affirmed the Fifth Circuit's reversal of a bankruptcy court's award of attorneys' fees and expenses for the cost of defending the attorneys' own final fee application. *Id*. at 125. The Fifth Circuit reasoned that "the American Rule—the rule that each side must pay its own attorney's fees—applies absent explicit statutory . . . authority to the contrary," and that "the Code contains no statutory provision for the recovery of attorney fees for *defending* a fee application.'" *Id*. (quotations omitted). Agreeing with the Fifth Circuit, the Supreme Court held that Section 330(a)(1) of the Bankruptcy Code "does not permit bankruptcy courts to award compensation for such litigation" because it "does not explicitly override the American Rule with respect to fee-defense litigation." *Id*. at 135.

87. LKC suggests that *ASARCO* is limited to the Section 330 context. Mot. at 22 n.4. Not so. The Supreme Court's reasoning in *ASARCO* applies equally to Section 328 because that provision does not explicitly "provid[e] for the recovery of attorney fees for *defending* a fee application." *See ASARCO*, 576 U.S. at 126. Other bankruptcy courts have so held. *See, e.g.*, *In re Boomerang Tube, Inc.*, 548 B.R. 69, 72 (Bankr. D. Del. 2016) (denying request for approval of fee defense provision in retention applications of counsel because, "like section 330, [section 328] is not a specific and explicit statute which authorize[s] the award of a reasonable attorney's fee, fees, or litigation costs") (quotations omitted); *see also In re Danner*, 2012 WL 3205242, at *4 (B.A.P. 9th Cir. July 31, 2012) ("The operative words [of § 328(a)] are 'may' and 'reasonable.'"); *In re Raocore Tech., LLC*, 2025 WL 828880, at *4 (Bankr. D.D.C. Feb. 20, 2025) (quoting *Boomerang*) (addressing fees arrangements under Section 328 and noting that "[a]n engagement agreement is a contract 'subject to objection by other parties and is ultimately subject to approval (and modification) by the Court.'").[5]

88. In addition to being barred by *ASARCO*, LKC's request for additional compensation under Section 328 is meritless because LKC seeks compensation for services performed for itself, not for the Debtors. In *In re Boomerang Tube, Inc.*, the court noted that "section 328(a) permits only approval of fees or expenses for performing services for the" trustee

[5] Even if *ASARCO* were limited to Section 330, LKC's argument for additional compensation under Section 328 still flies directly in the face of the American Rule. The "basic point of reference when considering the award of attorney's fees is the bedrock principle known as the American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *ASARCO*, 135 S.Ct. at 2164 (quoting *Hardt v. Reliance Std. Life Ins. Co.*, 560 U.S. 242, 252–53 (2010)). Any departure or exception to the American Rule must be "specific and explicit" and must "authorize the award of 'a reasonable attorney's fee,' 'fees,' or 'litigation costs,' and usually refer to a 'prevailing party' in the context of an 'adversarial action.'" *Id.* at 2164. Here, LKC's court-approved revised engagement letter does not expressly award either party its attorneys' fees or expenses incurred in litigating any such fee dispute—it only contemplates and provides a dispute resolution mechanism.

or a committee of creditors or equity security holders. 548 B.R. at 78. Because "the expenses sought" in the retention applications before the court would have been "for services performed for the professionals, not for the [applicable] Committee," the court concluded that "the fee defense provision [in the applications was] not a reasonable term of employment for serving as Committee Counsel." The same is true here.

89. Further, Section 328 only permits a court to "allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments ***not capable of being anticipated at the time of the fixing of such terms and conditions***." 11 U.S.C. 328(a) (emphasis added). LKC has not met this "weightier burden of proving that the subsequent developments were incapable of being anticipated at the time the engagement was approved." *In re ASARCO*, 702 F.3d at 258. To the contrary, LKC bargained for the court-approved revised engagement letter, which explicitly stated that fee disputes would be submitted to the Court. ECF No. 835 at 15. LKC fails to explain why such a fee dispute was incapable of being anticipated, and the record shows just the opposite.

90. Because *ASARCO* makes clear that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee applications, and because LKC seeks compensation for anticipated services performed for itself, LKC is not entitled to additional compensation under Section 328.

IV. CONCLUSION

91. For these reasons, the Special Committee respectfully asks that the Court deny the Motion.

Dated: March 6, 2026

Respectfully Submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on March 6, 2026, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ Travis A. McRoberts
Travis A. McRoberts

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Rhodium Encore LLC and Air HPC LLC Debtor.	)	CASE NO: 24-90448
	)	Houston, Texas
	)	Monday,
	)	November 3, 2025

FEE APPLICATION HEARING
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

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HOUSTON, TEXAS; MONDAY, NOVEMBER 3, 2025

(Call to Order)

THE COURT: All right. It is Monday, November 3rd, 2025. We're here in case number 24-90448, Rhodium Encore. There are various matters pending.

First, let's get appearances, and then we will proceed to talk about how we're going to conduct the hearing. So let's just get appearances first in the courtroom, and then we'll get them --

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl from Porter Hedges, on behalf of Lehotsky Keller Cohn, who I'll call LKC. And I've also got Jon Cohn, Will Thompson, Todd Disher, and Jacob Richards from LKC as well.

MR. SCHMELTZ: Good afternoon, Your Honor. Trace Schmeltz from Barnes & Thornburg, for the Special Committee of the Board of Directors of Rhodium. My partners, Katie Matsoukas and Paige Lohse, are here with me in the courtroom. Chuck Topping, the General Counsel for Rhodium, is here with us, as are Chase Blackmon, the CEO of Rhodium, here at counsel table, and Kevin Hays, the CFO of Rhodium. For the Special Committee, my client, David Eaton, is here in court. And obviously, you recognizes Ms. Tomasco as well.

THE COURT: All right. Let's get appearances on

the phone.

MS. SCHULTZ: Good afternoon, Your Honor. Sarah Schultz and Mitchell Hurley, Akin Gump Strauss Hauer & Feld, on behalf of the Ad Hoc Group of SAFE Parties.

MR. POTTER: Good afternoon, Your Honor. Chase Potter and Anna Richardson on behalf of the Transcend Group.

MR, ALLARD: Nathaniel Allard of McDermott Will & Schulte, for the Official Committee of Unsecured Creditors.

THE COURT: Okay. We've got 25 people on the line, including the ABI Project recording this. So let's first talk about how we're going to conduct the hearing, and then we'll get started.

MR. SCHMELTZ: So, as Your Honor can appreciate the dispute between counsel and client, and there's privileged information that's been produced in the matter, certainly there are communications between LKC on the one hand, and Debtors on the other. We have some concern not about -- I mean, obviously here in this courtroom, and with the constituents in the bankruptcy, but to have a broader waiver for people who aren't in the bankruptcy, beyond this bankruptcy matter, right, is of concern to us. And so we had asked for an order sealing, which I understand you indicated we could invoke on an as-needed basis.

I believe, at least from the best I could tell, keeping up with your roll call, that all the people who are

on the call at the moment are constituencies -- constituents in the bankruptcy, who have signed the protective order, and in that --

THE COURT: Except for the ABI Project.

MR. SCHMELTZ: Except for the ABI Project, and I don't really know how to deal with the ABI Project as a practical matter, but I suppose -- I suppose that's something we can deal with. But you know, we're content in this realm that these are people that need to hear most of what goes on.

I believe there are only one or two documents I'm aware of that we have had a dispute over privilege on that may come up today, and those are things where the communication doesn't involve LKC to client, and it was a -- we had, moving very quickly and trying to be transparent, we had some documents get out that were privileged, that we've tried to claw back. And I'm aware of one or two that they have used in depositions, that we have attempted to claw back, that we may have a dispute over. I don't know if we still do.

MR. WOLFSHOHL: I think that we -- I'm trying to remember. I don't -- I think there might only be one document that's subject to a clawback that we included, and we included it in a redacted form.

MR. SCHMELTZ: Okay.

MR. WOLFSHOHL: I think that's right. But we're not waiving the ability to argue that it shouldn't be clawed back, and that we should use it in the entirety, but I don't think we really have much of an issue.

THE COURT: Okay. Is that fair?

MR. THOMPSON: It may come up with a witness, Your Honor, but I don't see any reason to fight about the clawback right now.

MR. SCHMELTZ: Will, that's the document you and I have already talked about? It's -- without getting on the record what it is, it's the one --

MR. THOMPSON: I believe that's correct.

MR. SCHMELTZ: Okay. And we can deal with that one document when it comes up, and we will. I think beyond that, if things proceed as I expect them to, we are comfortable proceeding the way we have. And I would imagine if something comes up, you know, we've got a raft of people who will tell me to jump up --

THE COURT: Well, there are three more people who joined. I'm going to close, once we make these announcements, I'm going to go ahead and lock the conference room so nobody can hear. And then what I can do is I can just mute the courtroom so only the people in the courtroom will hear, to the extent that we get to a situation where you don't want to do that.

MR. SCHMELTZ: And then we, mindful of Your Honor's schedule, thought that it might make sense to put our case on through declaration. And so we filed declarations, and asked for leave for them to be entered in this matter. They're all witnesses that Counsel has had the opportunity to depose, and they're all here, subject to cross-examination, as we know they need to be, and we would ask that we proceed on that basis. I think it will expedite things. And you'll get a preview in my opening of what those people will be saying. And certainly, if Your Honor were to want to hear, you know, more about it from them on direct, we're happy to do that, too.

THE COURT: Okay. Yeah, and we'll leave that up to -- you know, we'll do it on a case-by-case basis. I'm not going to issue a ruling on that at this point.

Okay. So who is on here from the 512 area code? 512, last four digits --

MS. MATES: Your Honor --

THE COURT: Yes?

MS. MATES: This is Rhonda Mates for Imperium, the Blackmons, and Nathan Nichols.

THE COURT: All right. Thank you, Ms. Mates.

Okay. How about 925?

MS. FAIRBAIRN: Nina Fairbairn, for the Transcend Group.

THE COURT: And 954?

MR. ROCHMAN: Good afternoon, Your Honor. This is Matthew Rochman on behalf of Liquid Mining Fund I, Liquid Mining Fund II, and Liquid Mining Fund III.

THE COURT: Okay. And then -- I guess that's it.

All right. So I think I have everyone who is on, and I'm going to go ahead and lock the conference room.

Okay. And then, the only -- I think other than the ABI Project, everybody appears to have a -- a role in this.

All right. Mr. Wolfshohl?

MR. WOLFSHOHL: Your Honor, I heard what you said about taking up the designation of, I guess, the declarations earlier, and just doing that in sequence.

THE COURT: Right.

MR. WOLFSHOHL: Both sides filed some pre-trial motions as well. Do you want to take those up when they come up (indiscernible)

THE COURT: Yeah, I want to take them up when they come up. And I don't know to what extent we're going to be able to get done today, but you know, I'm trying to find some more time to finish up, to the extent we can't get done today.

MR. WOLFSHOHL: Okay. Thank you, Your Honor.

THE COURT: All right. So it's your motion. I

don't know who's going to take the lead. Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. Because I have some slides just for the opening, because there are some sealed documents mentioned in them (indiscernible)

THE COURT: Do you want to (indiscernible)

MR. THOMPSON: Thank you, Your Honor. And may it please the Court, Will Thompson from Lehotsky Keller Cohn. We're here on what I hope will be a relatively simple matter. The is our fee application.

Your Honor will recall, looking at slide 2, there are a few different pieces to this success fee and fee application formula. The first one is, I think, undisputed. It's under paragraph A of the engagement letter, it's a $600,000 payment based on the victory in the motion to assume proceedings. My understanding from the other side is that's not disputed, and so I think we have that locked in.

Looking at our next slide, the next component is the success fee related to the energy credits. This formula is slightly more involved, but not very. It's 5% on the first $5 million, which comes out to $250,000, plus 1% on anything else that is allocated to energy credit damages.

The final component of the success fee is 10% of the remaining non-energy credit damages.

So to put this all together, we need to figure out, or the Court needs to figure out, I'm sorry to say, how

much money to allocate to damages in total. And then of that, how much is energy credits, how much is the rest of it? And that's what's shown on slide 5 here. It's kind of a two-step allocation process.

Now, I know that Your Honor has received an incredible amount of briefing on this topic, and various motions related to it.

THE COURT: Forty-eight since last Friday night. So --

MR. THOMPSON: I'm sure we all apologize to the Court for that.

THE COURT: I only have two eyes.

MR. THOMPSON: At the beginning of this dispute about the fee application, Your Honor I think probably read quite a bit about an agreed tax allocation that should occur between Whinstone and Rhodium. We heard about how we couldn't do our fee application until that was over. Well, it turns out there is no agreed tax allocation on that. I think Your Honor has a motion before the Court.

THE COURT: Mr. Lockhart is listening.

MR. THOMPSON: Well, I'm sure Mr. Rosten will ably argue that motion for his side, and I'm sure my friends on the Rhodium side will argue it for their side. But that is, you know, not an issue that I think can stand in the way of our fee application, because it's just not resolved, I think

contrary to maybe some people's expectations.

So the first key thing to figure out is how much of the $185 million goes to damages versus what I call the business. We didn't build the business. We're not claiming a piece of the business. We did contribute on the litigation front, and think our success fee is tied to the damages, whatever they are, that came through in that settlement. The number we put before Your Honor, I think this is public, is $100 million. And I'm not going to describe too much about why, but Your Honor understands a lot of that is under seal, and that my friends on the other side have put forward $75 million.

What I think the evidence will show is that $100 million is a much more reasonable number. It's based on input from Counsel not just at my law firm, but also at the Stris law firm, that it was a number presented to the Rhodium Board, and that they were considering this actively at the time all relevant decisions were made. I think the evidence will show that the $75 million number did not come from the litigation team, did not come from a lawyer. It came from some non-legal professionals who, for various business reasons, wanted to lower that number to get a settlement done related to the business side of things.

The next slide, on slide 8 is some of that information that's under seal, but you can obviously see

where we're getting this number, and how the line in the total is fairly close to what we actually achieved in the total PSA, and that's one of our bases for using that $100 million number.

Now, of course, because we're trying to divide $185 million between the business and damages, we also need to know something about the state of the business, and what was going on at that time. This is also under seal on slide 9, but Your Honor can read what sorts of considerations were affecting the value of the business as the Board was thinking about it.

THE COURT: All right, hold on. Let me just take a look at it.

Okay. Go ahead.

MR. THOMPSON: And so I think Your Honor may have just been reading slides 9 and 10, and you know, I think the evidence will show that those risks in fact came to fruition, that there was not going to be the kind of business value people had hoped there would be because of those circumstances.

Moving on to slide 11, Your Honor, we also need to look at the allocation for energy credits. This is -- I think the evidence is going to be a bit strange around this, to be quite frank. This is the issue we previewed last week, where we talked to the corporate representative who

was designated on the topic about the success fee and our engagement letter, and the Debtors did not actually have someone who was able to testify about the Debtors' position on how much money should be allocated to energy credits. That's led to the dispute with this late disclosed expert witness and his report, and either that will be stricken, or Your Honor will hear all about it in the testimony.

But there is an issue on this slide that shows I think the consistent advice from the litigation team regarding the energy credits was that we would not -- Just one moment. I want to make sure I'm allowed to say this.

Okay. With no objection from Mr. Schmeltz, the consistent advice from the litigation team was that we would not recover on energy credits related to Winter Storm Uri unless we were able to plead and prove fraud. I think the evidence on this is fairly simple. Rhodium had contracts that we contended entitled them to these energy credits. Winter Storm Uri occurred, the price of electricity goes to the roof. Your Honor probably remembers all of this. But there was a settlement between Whinstone and Rhodium related to all the claims having to do with Uri.

So the claims we would want to bring to recover those energy credits had all been compromised via settlement agreement. That would obviously be a pretty good defense unless we could rescind that agreement via fraudulent

inducement. And so that's why we advised that, you know, we weren't going to win on those claims unless we were able to plead and prove fraud. And then also, there were considerations related to exemplary damages that, of course, require a tort claim like fraudulent inducement, and not just breach of contract. And that's really the point we're trying to drive home on slide 12. If we're not allowed to pursue fraudulent inducement, and the evidence will show, you know, we could not, as the publicly filed complaint will reveal, then there were going to be no recoveries for Winter Storm Uri energy credits.

There is also still a dispute about a smaller number related to our hourly fees. I think it's fair to say that the lion's share of that is Porter Hedges' expenses, Mr. Wolfshohl, and that the -- I think there's basically just one conceptual distinction there, which is are we able to recover the expenses from paying Porter Hedges to help us through this bankruptcy process? The engagement letter that Your Honor has approved in a previous order clearly allows as reasonable expenses, among other things, legal advice on retention and compensation matters, I think --

THE COURT: So I wasn't able to find this, so I'd like to see their fees broken out into retention -- all fees related to retention, all fees related to the fee apps, all fees related to the objection. All right? So -- And then

the third, just miscellaneous. And I know there's not going to be complete overlap, but just I'm doing it for ASARCO.

MR. THOMPSON: Sure. And is it the objection to the fee app (indiscernible) Is that right? When you said -- The last category I think you said it was the (indiscernible)

THE COURT: Yeah, no, it's the retention, the fee app, then time spent on the objection to the fee app.

MR. THOMPSON: Understood. Yeah, we can (indiscernible)

THE COURT: And then, just miscellaneous. And I just want to make sure -- I just want to look at ASARCO with respect to that, because ASARCO is just that one category.

MR. THOMPSON: No, no, that's fair enough. I think the vast majority of what's included in the actual fee app does not relate to the objection, because it was (indiscernible)

THE COURT: Right. I just -- yeah.

MR. THOMPSON: But we can break it down, as you said. That's not a problem.

THE COURT: Right. Okay. That's the only --

MR. THOMPSON: We'll of course confirm and get it the way Your Honor put it.

THE COURT: Right.

MR. THOMPSON: But that is my understanding, that

for the time period we're talking about, this is related to the updated retention order.

THE COURT: Right, right.

MR. THOMPSON: And then, the last kind of point here, Your Honor, is I think Your Honor also received a fair amount of briefing around allegations of misconduct or breaches of various duties. Your Honor may have seen on the docket all of that has been withdrawn. We were able to avoid pursuing discovery on that topic because our friends on the other side have withdrawn all such allegations. And so those should not be at issue, and we ought to be able to get to the heart of the matter, which is, in light of the work that our firm has done, how much of the value is attributable to damages, and how much of that goes to energy credits versus the other.

Thank you very much, Your Honor. We appreciate your time on this.

MR. SCHMELTZ: Your Honor (indiscernible) star screen (indiscernible)

THE COURT: Sure.

MR. SCHMELTZ: I'm going to try just to put one slide up, and keep this super simple, Your Honor. But while we're looking for that, I kind of want to start where this ended, almost where it ended. And the overriding theme that you'll hear from the witnesses and testimony from the

Special Committee is that the Debtors in the Special Committee wanted to pay a fair compensation to a law firm that did terrific work for the Debtors, that we continue to want to pay fair compensation to a law firm that did terrific work for the Debtors. We've got some disagreement with how they've handled this dispute. Rather than squawk about that before the Court, we thought let's get to the numbers, and try to get that fair compensation.

Your Honor knows we paid the first part of the success fee because it was undisputed, $600,000. Your Honor noted we could probably do a little better than that. So we went back to the drawing board, and we thought if everything was a power credit under our $75 million allocation to damages, that would be $950,000 more. So we paid that, and then we paid the Porter Hedges invoices to the extent they didn't seem duplicative. But we didn't actually have the invoices themselves. We didn't get them until they were put in as trial exhibits. We didn't even get them in discovery.

And we asked for backup. We said, hey, we need to pay reasonable expenses, and we asked, effectively, for exactly what Your Honor just asked for, but we didn't get it. But we're more than happy to pay Porter Hedges for good work that Porter Hedges did, that fits under the engagement letter. We're duty bound as Debtors in a bankruptcy to make sure we do good due diligence on that number, and we were

not able to get the diligence we wanted. We remain ready to pay those fees.

What this dispute is really about is what is fair and reasonable and proportionate. And Your Honor is far more aware of this than I am because you presided over the trial, but LKC is one of three law firms that represented the Debtors in the Whinstone litigation. They co-lead counsel with Stris & Maher, and of course Quinn Emanuel was involved. And the Stris & Maher firm, since inception of this bankruptcy, has received about $7 million in compensation. Quinn Emanuel, as Debtors' Counsel, has received about the same. So far, until the last couple of payments of $600,000 and $950,000, LKC had received about $2.4, $2.5 million, the last couple of payments bring them up to $4 million.

If you took their fee application of $8.9 million, and you back out about $1.5 million from it, they're asking for about another $7.5 million on top of the $4 million that they have received. That would put them at about $11.5 million. And of course, they got a success fee because they gave a discount to the Debtors, as you'll hear from Chuck Topping. Well, that would give them, you know, about an eight times premium on the savings that they made, and it would put them in a position of being largely disproportionate to other professionals doing the same

(indiscernible)

THE COURT: But why are we talking about proportionality? I thought we're talking about what the contract says.

MR. SCHMELTZ: And so the contract, at the end of the day, in part boils down to a good faith allocation of damages, and a good faith effort to allocate between the power credit, or provision B, and the 10%, provision C. And so I'm just framing it a little bit so that you have a sense of what I'm about to say next.

Katie, if we can just put that chart up on the screen? And let's -- You can make that as full screen as possible for those of us with older eyes. Thank you.

The Rhodium Board considered, as Mr. Thompson noted, a claims analysis going into the mediation. That claims analysis was originally fleshed out on February 12th, before a February 19th mediation. It was refined again on February 16th in a Board meeting, and then it was refined another time after the first round of mediation occurred. And the world sort of shifted in that mediation from being a settlement of litigation to a sale of assets, with some settlement of litigation attached.

And so numbers moved, and success fees moved, or ratings of success. But at the end of the day, the Debtors had, and you'll hear this from Kevin Hays, the CFO, it's in

his declaration, and of course he'll be here for cross-examination, that the risk-weighted damages as things continued to unfold moved from prior to mediation to after mediation, from $100 million to $75 million. Which is a pretty normal thing to do when you're seeing -- It's sort of like putting your house on the market, and nobody comes to buy it, and so you think I've got to move the price, you reevaluate. And the Debtors did that, and the Debtors continued to evaluate the strength of their claims. And you'll hear testimony that one claim in particular, which has a big damage figure, which is Building D at the bottom of that chart, went from 1.40%, to another point up to 50%, and then dropped back down to 20%.

Building D kind of proves what this case is about. And you know, in a contract where you have allocation of power credits or other things, what you see on this chart is the strongest claims -- and I mean claims. I don't mean damages like attorney's fees and the like, I mean actual claims, are the ERCOT curtailment, no Uri, and ERCOT curtailment/Uri, 70% and 60% likelihood of success on the base claims alone. And then a business shutdown case, because Whinstone shut Rhodium out of business, and the Court already found that was actionable, that's an 80% chance of success. Those are the three more than likely to succeed claims that went into mediation in this case.

You're going to hear a lot of testimony about Winter Storm Uri. We have a difference of opinion over what was mediated, but at the end of the day, the Whinstone settlement was a settlement of any and all claims for all time. So what do you -- And then you have this chart shows Building D $165 million at 20%, $33 million. The chart they're relying on in their claim has that same claim at 40% chance of success, $66 million.

And just think about that one for a minute. $66 million is far and away the greatest percentage claim. It's 50% of the claim. In their claim chart, the claims are $125 million total, and they've discounted it back to $100. That's 50% of those claims for a claim that those lawyers projected was a 60% chance of losing. And you'll hear testimony that those same lawyers agreed to move that percentage chance of success from 40% win to 20% win, meaning 50% of the claim on which they want 10% value is a claim they projected an 80% chance of losing.

In all of this -- And of course they want to box out the Winter Storm Uri claims as, you know, not cognizable because that makes a much bigger percentage go into that bucket that's capped. But you'll hear testimony from Mr. Topping that the reason the cap existed was because those power credit claims were known, were pretty darn certain, and were claims that were really well developed. His intent

was, and the Debtor's intent was to incent their lawyers, and align their incentives in order to get this discount, but certainly not to pay them a raft of a premium on a claim that was already developed. That 10% premium was for them to go out and find new claims, and see if they could drive new value, and if they could drive real value, they would get that additional 10%.

That's what this fight really comes down to. And the reason I lead with some proportionality and some fairness, is what you're being asked to determine is in a contract that talks about an allocation but doesn't have a real playbook for it, what's going to be a fair and reasonable way to come out here? And we would suggest at the close of the evidence that Your Honor would conclude that the bulk of the claims fall under power credits, and that a reasonable allegation somewhere between $2 and $4.3 million for them. And that claims like Building D, on which there is an 80% chance of losing, shouldn't be included in that allocation at all. You shouldn't drive 10% to a loser. And Your Honor will learn that the Whinstone settlement itself provides that each party will bear its own attorney's fees and costs, so that what I call fluff in the middle of attorney's fees and costs wouldn't get allocated at all to damages.

You'll hear from Chris Wheeler on sort of another

point that Mr. Thompson raised, that the tax allocation mattered. You had $185 million to allocate, and the numbers have to add up. The Debtors have been consistent in having that $75 million that they allocated to damages in this March board meeting I have up on the screen, and have used that number throughout. Your Honor will hear evidence that in May of 2025, as soon as Rhodium made an allocation proposal to Whinstone, the Special Committee attempted to resolve this matter based on that allocation with LKC. I'm not asking you to to hear that evidence because I want you to find liability or attribute a number to it. I'm raising it because it's been raised in their pleadings that there were no negotiations, and no one's talked to them, and that this thing has dragged out.

That $75 million, though, you're going to hear could have moved throughout the tax allocation. And as late as September this year, in the tax allocation, Your Honor has our pleading in front of you -- well, not in front of you now, but you have it on the motion to enforce the purchase sale agreement, the Debtors obtained a valuation of their hard assets that they had sold, and found that that valuation was $10 million higher than the book value that they had proposed originally in the tax allocation. Well, there are three buckets in the tax allocation, hard assets, contracts, and the settlement. So there are two ways to

find $10 million. One would be to take it out of the $75 million in damages, and the other would be to take it out of those contracts that were sold. You're going to hear testimony that those contracts were valued at $180 million.

THE COURT: And what contracts are you talking about?

MR. SCHMELTZ: There are these power contracts that Rhodium had with Whinstone, that allowed Rhodium to have the lowest costs of any of its competitors for power. But that caused a lot of pain to Whinstone because Whinstone was losing money on those contracts. And so a big component of the settlement, of course, was Whinstone wanting to get out of those contracts, effectively paying to cancel them. And so if Rhodium were inclined to play games with this damages allocation, as the hard assets go up in value, either the contracts have to come down $10 million in value, or the damages come down in value. You'll hear testimony from Kevin Hays and Chris Wheeler that they didn't take it out of damages. They took it out of contracts to keep the number in balance, but to ensure that we could continue to act in good faith with a consistent number. So I'm telling you two things. One, the Debtors have been consistent with their $75 -- maybe I'm telling you three things. The Debtors have been consistent with the $75 million allocation to damages. The Debtors and the Special Committee have

reached out to try to resolve this matter and get it paid on that same $75, and the Debtors haven't changed that $75 million when they could have.

And then finally, one last time, as you can see from this chart, the strong claims are the power claims and business shutdown. There is nothing else on this that they went to mediation on and settled, that had the chance of winning, and those did. It makes really good sense to pay out a success fee on those kind of dollars, and you can allocate $75 million, and it's right at $73 if you do the -- If you take the base amounts, $29 million, $36 million, and $8 million, you're right at $73 million, which is in our $75 million range, and we're more than happy to pay a success fee on that.

Appreciate your time, Your Honor.

MR. THOMPSON: Thank you, Your Honor. Assuming we're finished with openings, I think LKC will invoke the rule, and call our first witness.

THE COURT: Okay. Who's going to be testifying?

MR. SCHMELTZ: You know, I've got a lot of people who are representatives and testifiers. I mean, honestly, Mr. Eaton's our representative for the Special Committee, he's going to be testifying. Mr. Topping is a representative for the Debtors, and he's going to be testifying. And then I have two executives from the client,

or from Rhodium who are going to be testifying.

THE COURT: So who do you want to leave the room?

MR. SCHMELTZ: I suppose I need I need these two gentlemen to leave, because I can't live without Chuck, and I'd like Mr. Eaton as my client rep here. I have a weird dual client-rep role. I have Debtors and Special Committee (indiscernible) My apologies.

UNIDENTIFIED SPEAKER: No, that's okay.

MR. SCHMELTZ: Or you can thank me later (indiscernible)

THE COURT: Any objection to having two client reps?

MR. WOLFSHOHL: That's fine, Your Honor.

THE COURT: Okay.

MR. DISHER: Your Honor, good afternoon. Todd Disher, for Lehotsky Keller Cohn. Our first witness is Mr. Jonathan Cohn, so I'd call him to the stand, please. While he's going --

THE COURT: Is there anybody on the line who is going to be an expert, testifying?

MR. SCHMELTZ: Oh, I do -- My apologies. I have both, Mr. Wheeler, and I have (indiscernible) these two gentlemen are testifying (indiscernible)

THE COURT: Okay. So --

MR. SCHMELTZ: They probably should go as well.

THE COURT: Yeah.

MR. SCHMELTZ: I'm sorry. I'm a little (indiscernible) Sorry, guys.

Oh, yeah, Michael Rosten and Chris Wheeler are both --

THE COURT: They just left.

MR. SCHMELTZ: Yes.

THE COURT: Okay.

All right. Come up, Mr. Cohn.

MR. DISHER: Your Honor, while he's taking the stand, just logistically, I don't want to violate any sealing order or anything like that, so we filed a bunch of exhibits under seal. Would you prefer for us to use hard copies?

THE COURT: Yeah, I think that makes more sense, to use hard copies.

MR. DISHER: Okay. And Mr. Cohn, do you have a copy of our witness -- or our exhibit binder?

And then as we're eliciting testimony throughout the day, again, I'm certainly not intending to violate any type of order, so if anybody has any objection to the testimony that we're eliciting and needs us to go under seal or whatever, please just let me know.

MR. SCHMELTZ: I think we've worked pretty collaboratively on this, and we'll continue to do so.

MR. DISHER: Have you been sworn in?

THE COURT: All right. Mr. Cohn, would you raise your right hand?

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. COHN: I do, Your Honor.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. DISHER:

Q Good afternoon, Mr. Cohn. Will you please introduce yourself to Judge Perez?

A Good afternoon, Judge Perez. I'm Jonathan Cohn from LKC.

Q Mr. Cohn, what is your current profession?

A I'm an attorney at the LKC law firm.

Q How long have you been a lawyer?

A Let's see, I graduated law school in 1997, clerked for a year. I was in Portland at the time, so I didn't get sworn in until I moved back to New York. I believe that was spring of 1999.

Q And just briefly on your education, just undergrad, law school?

A I went to undergrad at the Wharton School, University of Pennsylvania, where I concentrated in finance and accounting, and then went to law school at Harvard.

Q Great. Quick overview of your career trajectory since graduating from Harvard?

A Clerked in the Ninth Circuit for Judge O'Scannlain, went back to my hometown, New York, where for the better part of two years I was an associate at Wachtell Lipton. Then clerked for Justice Thomas on the U.S. Supreme Court, worked at Sidley Austin in D.C. for a couple years before going to the Department of Justice, where I held a few different jobs, the last of which was the Head of Civil Appellate, as a Deputy Assistant Attorney General. After that, went back to Sidley as a partner for about 14 years before LKC.

Q Why did you join LKC?

A I had an opportunity to work with some really good friends, Scott Keller, Steve Lehotsky, with their litigation juggernaut, and the chance to work with you and Will Thompson, too.

Q Well, I appreciate that. I'll remind you that you are under oath.

All right. Let's jump into the dispute. So tell me about Rhodium. When did you first get introduced to Rhodium?

A That would have been May of 2023.

Q Who made the introduction?

A Peter Stris, of Stris & Maher.

Q How do you know, or how did you know Peter Stris before that point?
A Through college. He and I both did college debate.
Q When Mr. Stris approached you, what was the status of the relationship between Whinstone and Rhodium?
A At that point, there was not yet litigation. It seemed like things were getting heated. If I recall, there was an exchange of letters between Peter Stris and Foley, Rob Slovak, but there wasn't yet litigation.
Q Okay. Why did Mr. Stris contact you in particular?
A In addition to the fact that we had been friends and he had followed my career, he mentioned two things. One, there was an interest in the client to bolster the litigation team going up against a large litigation powerhouse at Foley. Also, the client wanted to have a Texas presence, and one of our main offices is in Austin, not far from the Rockdale facility.
Q Once Mr. Stris introduced you to Rhodium, what happened next?
A I was introduced to Mr. Topping and Mr. Chase Blackmon.
Q Did you discuss terms of a potential engagement?
A We did.
Q What did your original engagement letter say about the fees that would be paid to LKC for its work in this matter?
A Very similar to the current engagement letter, with, as

Mr. Topping put it previously, some minor clarifying changes. We provided discounts on our hourly fees, 20% to 30% depending upon volume. And at the time, one difference was there was a fixed fee for my time so that I wouldn't have to keep track of my hours, and I was very appreciative of that. I hate keeping track of hours. The discount, and then in exchange, there was the success fee, which essentially has remained the same.

Q Okay. And you've mentioned the progression of your engagement agreement. As we sit here today, as the Court knows, we're operating under a different engagement as opposed to that original one back in 2023?

A Yes. That's my understanding.

Q And if you look in your binder, at Exhibit 2 --

A I'm with you.

Q What is this document?

A This looks like the current operative engagement letter that I signed on March 4th, 2025.

THE COURT: Do you have a binder?

MR. DISHER: May I approach?

THE COURT: Yes.

MR. DISHER: Would you like a copy, too (indiscernible)

THE COURT: (indiscernible)

MR. DISHER: Your Honor, at this point, I'd offer

LKC Exhibit 2 into evidence.

THE COURT: Any objection?

MR. SCHMELTZ: None, Your Honor.

THE COURT: Okay. Exhibit 2 is admitted.

BY MR. DISHER:

Q Okay. So Mr. Cohn, just to reorient ourselves, what is Exhibit 2?

A Exhibit 2 is the current operative engagement letter, which I believe the Court entered.

Q And today, we're going to be talking a lot about the success fee contained in Exhibit 2. Could you just give us an overview of the various components of the success fee as they're laid out in Exhibit 2?

A Sure. And this is on page 2. It's the A, B, and C, starting in the middle of the page. The first component is the $600,000 for prevailing on the motion to assume. The second component relates to the energy credits, 5% for the first $5 million and 1% after that. The third component is the 10% for any additional damages, including, for instance, exemplary damages and attorney's fees.

Q Great. You mentioned energy credits. Could you please tell Judge Perez what are the energy credits contemplated under the engagement agreement?

A That relates to the ability of Whinstone to sell power back to the grid when the price of energy reaches a certain

point. It was profitable to do so in certain circumstances. Above a certain threshold, Whinstone was obligated to give those credits, the profits of those sales, back to Rhodium.

Q Did Whinstone do that?

A They did not.

Q Right. And now lastly, on Exhibit 2, I want to talk about the reasonable expenses for various professionals. I'll direct your attention to the first full paragraph on page 2. Do you have an understanding about why this provision is included in exhibit number two?

A So in particular, the provision about the legal expenses and legal advice retention, that language?

Q Yes.

A That actually is one of the changes, compared to the earlier versions of the engagement letter. We negotiated that with Debtors, and that related to the fact that we had to retain Porter Hedges to help us with legal advice matters. As the Court is aware, there were some issues with our prior engagement letter. We retained Porter Hedges to help us through that process.

Q Okay, great. Thank you. We can leave Exhibit 2 for now. I want to talk a bit more broadly about LKC's work for Rhodium. We can be brief, but I just want to kind of hit the high points. Let's start before the bankruptcy filing. What sort of litigation did LKC do for Rhodium before the

bankruptcy began?

A It started in State Court in Milam County. Not long after we got engaged, Whinstone shut down our power. We had to get a TRO. So Will Thompson went to the courthouse, and essentially camped out in the library until Judge Youngblood showed up and signed the TRO. After that, there was a hearing on I guess you'd call it a TI, not a PI in Texas, a hearing on the temporary injunction in which Will and attorneys from Stris & Maher successfully got the injunction that we needed for Rhodium to survive.

Q If the team of LKC and Stris had not been successful in obtaining those two emergency reliefs, what would have happened to Rhodium?

A It would have died.

Q Did the Stris and LKC litigation team have to go get emergency relief again?

A They did.

Q And what caused that to happen?

A There was another shutdown. I think it was in January of 2024. Once again, Whinstone shut down our power.

Q Were LKC and Stris successful in getting that emergency relief?

A They were indeed. We prevailed before an emergency arbitrator.

Q Did Stris and LKC have to get emergency relief against

Whinstone on behalf of Rhodium yet again?
A We did. The injunction we got from the emergency arbitrator had some temporal limit, so we had to go to the -- I'll call it a permanent arbitrator to get relief one more time.
Q All right. Then bankruptcy occurs, and I'm sure the Judge is familiar with this, it, but just brief overview of what work LKC has done on behalf of Rhodium in this bankruptcy proceeding.
A We prepared for, and then conducted, along with Stris & Maher, the trial on the motion to assume.
Q Great. And we prevailed on that motion?
A We did.
Q So we've talked about defensive measures. What about offensive measures? Has LKC -- or had LKC taken steps to go on offense for Rhodium?
A We did, almost from the beginning. As soon as Whinstone started shutting down our power, we began thinking about potential affirmative claims.
Q Great. Let's talk about those claims. If we go to Exhibit 12 in your binder, are you familiar with the chart that's contained in Exhibit 12?
A I am.
Q What is it?
A This is a chart that the entire litigation team

prepared in advance of a Board meeting that Rhodium had, the Debtors had on February 12th. I think we prepared this -- I mean, we started working on it before then, but I think we prepared this on February 11th.

MR. DISHER: Your Honor, we would offer Exhibit 12 in evidence.

THE COURT: Any objection?

MR. SCHMELTZ: None.

THE COURT: It's admitted.

BY MR. DISHER:

Q Okay. So let's talk about Exhibit 12. We're going to cover this document in length today. Was Exhibit 12 a creation solely of the LKC legal team?

A No, no, this was the joint legal team of LKC and Stris & Maher.

Q And what was the reason for putting this chart together?

A The Debtors asked us to put it together. They wanted us to put together our best collective judgment on the litigation odds in advance of that Board meeting they had on February 12th.

Q Okay. And this is the result of that combined effort?

A Yes, sir.

Q All right. I want to walk through the claims just to give Judge Perez some context about what these numbers mean.

So under the column of issue, do you see that?
A Yes.
Q There's various different entries. Are these the different claims that Rhodium was considering pursuing against Whinstone?
A Yes.
Q Okay. Let's look at the first one, shutdowns. What is that?
A That relates to the two aforementioned shutdowns. When Whinstone shut down our power, we were unable to mine Bitcoin. As a result, we had damages. And we used Dr. Milkovich, the expert that we had used in the motion to assume trial, to work with us in trying to calculate how much Bitcoin we lost because of the shutdowns. That added up to $8 million, roughly.
Q Great. So just to be clear, the base amount here is the total number of damages as projected by Stris, LKC, and Dr. Milkovich?
A That's correct.
Q All right. Let's look at the next entry, water. What is that entry for?
A We had a water agreement with Whinstone in which they're supposed to provide us with water, which you needed to cool the facilities to more efficiently mine Bitcoin. The water we got was filthy. At one point, a dead fish

showed up in the water that we were using. The lack of quality water made the Bitcoin mining inefficient, and on some occasions we didn't use the water at all because of the poor quality. As a result of not having good water, we mined fewer bitcoin. This number was also given to us working with Dr. Milkovich.

Q Great. So like with shutdowns, the base amount here is the combined effort of Stris, LKC, and Dr. Milkovich?

A That is correct.

Q All right. Then next, we see three entries related to ERCOT. Do you see that?

A I do.

Q What are those entries?

A So the first two relate squarely to energy credits. The one, the first one is energy credits not including Winter Storm Uri, the second is energy credits for Winter Storm Uri, and the third relates to something which might or might not have been considered, energy credits 4CP. That relates to there are four peak periods in the year when energy is at its highest usage. My understanding is if you reduce your demand for the energy, then the following year there's a deduction in your transmission expenses. It's not an energy credit per se, it's not selling stuff back to the grid, but we had a colorful argument that because of the financial benefit, Whinstone should have passed it on to

Rhodium as well. That's the 4CP.
Q Okay. Why did the Stris-LKC team break out these three different components of the ERCOT potential damages?
A Because in our view, the chance of success was different for each of the three.
Q Okay. Were the legal claims related to the ERCOT-Uri energy credits, did they have a different consideration as compared to the ERCOT curtailment credits that did not relate to Uri?
A They did.
Q How so?
A The Debtors, then Rhodium, signed a release after Winter Storm Uri. Chad Harris, the Whinstone CEO, made a representation that Whinstone never received any energy credits to give to Rhodium. Based upon that representation, and as I understand it some other factors, the Rhodium executives signed a release, a settlement giving up any claim to the Uri credits in exchange for some nominal amount, $1 million, maybe $2 million.
Q Okay. So in other words, Rhodium had signed a release purporting to give away any claim that it would have had to those Uri energy credits?
A That is correct.
Q Okay. So given that release, how did the legal team here think that Rhodium might be able to recover those

damages?

A Our only way we thought to recover those damages was to file a fraud claim, and argue fraud. In our view, Mr. Harris, with all due respect, lied to the executives when he said that Whinstone did not receive any energy credits. In fact, they did receive energy credits. That was a misrepresentation. But more than that, our executives relied on that representation. In our view, that representation was justifiable. It was reasonable. Their reliance on Mr. Harris was justifiable reliance.

Q So in the view of the LKC and Stris litigation team, in order to recover those Uri energy credits, Rhodium would have had to plead and prove fraud?

A Plead and prove fraud, and that involves pleading and proving the justifiable reliance.

Q Is that analysis by the LKC and Stris team reflected on Exhibit 12 anywhere?

A It is. So in the comments section, we said explicitly this, and that refers to the odds, this assumes we are allowed to plead and prove fraud.

Q Great. And we are going to talk at length about the Uri energy credits, but I want to finish out the rest of this chart first. The next item on the list is the block of the Temple sale. You see that?

A I do.

Q What was that potential claim?
A In addition to the Rockdale facility, Debtors operated a facility in Temple. They wanted to sell it. They were close to a deal, as I understand it. There was a tentative deal to sell it for over $100 million. That deal fell apart when Whinstone filed a fraud claim against, among other entities, Rhodium Renewables, which owned and ran the Temple facilities.

In our view, the fraud claim was frivolous to start, but it was especially specious with respect to Rhodium Renewables, which didn't even exist at the time of the alleged fraud. But because of that allegation, the deal fell apart, they didn't get the $100 million. Instead, they sold it as part of this bankruptcy for around half that amount. The $50 million base amount is roughly the difference between what Rhodium thought it could sell Temple for and what it eventually sold Temple for.

Q And if we look at the base success fee for the block of Temple sale, we see 5%. Is that right?
A Yes.
Q Did the Stris and LKC teams jointly collaborate to come up with these base success figures?
A They did. We did.
Q Okay. So this 5% given to the block of Temple sale, does that mean that the block of Temple sale was somehow

like a frivolous claim?

A No. In our view, it was a colorable claim. We were being cautious, we were being conservative. We are aware that it is difficult to prove a claim where the chain of causation involves a filing in court. So the odds were stacked against us. We thought we had a good claim. We had not yet had discovery, but we appropriately discounted the odds.

Q The next three issues all relate to fees. Do you see that?

A I do.

Q What are those three issues about?

A So three different buckets of fees. The one for which we have the highest base success rate was the attorney's fees pre-bankruptcy and this stuff, State Court arbitration for breach of contract. Under Texas law, we would get attorney's fees for a breach of contract claim, and a declaratory judgment. We thought those fees had a high likelihood of being recovered.

Then, less likely would be the fees for the assumption motion. The assumption motion, in essence, addressed Whinstone's argument that the contracts had been terminated, which was an affirmative defense they had raised against our breach of contract. So it's very much related to a breach of contract, but not quite the breach of contract, so in the

collective judgment of the litigation team, we discounted those odds more.

Q Great.

A The third bucket is non-litigation. That seemed like more of a stretch. In essence, we would have to show that the non-litigation professional fees were proximately caused by Whinstone forcing us into bankruptcy with the shutdowns, the bad water, and the deprivation of energy credits, and the other stuff they did.

Q Okay. Thank you. And related to the professional fees, I see there is a comment in red. Do you see that?

A Yes.

Q And it's referring to a number from Andrew's email.

A Yes.

Q Who is Andrew?

A I'm probably going to butcher his last name, but it's Andrew Popescu of Province. I believe he's the Vice President there.

Q Okay. So he provided some of the information that went into that line item?

A He did. He provided us -- he provided us the information for the bankruptcy fees, both attorney's fees and non-litigation. He also gave us the Building D amount. I believe those are the numbers we got from Province.

Q Okay. So let's talk about Building D. That's the next

issue down here. What is the potential claim related to Building D?

A So in the motion to assume, the Court had heard about the energy contracts that Debtors had on Buildings B and C. In addition to those contracts, they had a contract with Whinstone in Building D, also in Rockdale, different building. After the parties entered into a contract, Chad Harris sent an email in which he said he was resending the agreement. I think he meant rescinding the agreement. It was an anticipatory repudiation of that contract, and Whinstone never gave Rhodium that power. So if they had that power, they could have mined more Bitcoin.

We asked Province to calculate the value of those energy contracts, and they gave us a number. Or they actually gave us two numbers. They first gave us $165, they later gave us $195. We had the $165, and that was the number given to us by Province as to the value of the Building D contract claims.

Q Okay, great. And then, the last line item is Riot's tortious interference with Rhodium contracts. What's that about?

A It was our understanding that Riot was directing Whinstone to take actions against us even before their deal closed. We had not yet had discovery on this, but we thought we would have a colorable tortious interference

claim against Riot.
Q Why is it listed as $0 there?
A Because in our view, it probably wouldn't increase the overall damages we recovered. It would just give us an additional road to recover, to collect those damages.
Q All right. Great. Thank you. Thank you for walking through that. I failed to ask you one question about the energy curtailments. Where did you get the base amounts that went into those damage estimations?
A That was provided to us by our ERCOT expert, Mr. Charles Griffey, who was working with Liz Brannen from Stris & Maher.
Q Okay. So I just want to sum up who provided input to this chart at Exhibit 12? I heard the Stris litigation team. Correct?
A Yes, sir.
Q And certainly the LKC litigation team.
A Yes.
Q The folks from Province.
A Yes.
Q And the -- oh, and two retained experts, right, Mr. Griffey and Dr. Milkovich?
A That is correct.
Q Okay. Now under the expected value column, we see a total of $158 million.

A Yes, I see that.
Q To get to that, the team who created this chart first had to assign base success percentages. Do you see that?
A I do.
Q Okay. So how does the base amount relate to the base success percentage? And what are you trying to calculate by combining those?
A So the base amount is the amount that we expected to get if we won. The base success percentage was our collective best judgment on the odds of winning each of those claims.
Q Who calculated the base success percentages that we see on Exhibit 12?
A No one person. It was a series of conversations that the Stris & Maher LKC joint litigation team had. We just tried to do our best to give our collective judgment as to what the odds are.
Q Do you think that the base success percentages listed here are conservative estimates?
A I do. I do. Look, I mean, if you asked me to take the over or under, I would probably take the over. But I'm not going to deviate. I think that these are collectively our best judgment, though probably a little conservative.
Q Okay. All right. Finally, the expected value, $158 million. So just to be clear, what does that $158 million

figure represent?
A That represents the amount that the litigation team collectively thought we would get if we litigated these claims. If we litigated and we had a judgment, our expected value of that was $158 million.
Q Okay, great. Let's turn to Exhibit 8 briefly. So just to -- and maybe you answered this already, but why did the Stris and LKC litigation team create the chart at Exhibit 12?
A We did that because the Debtors asked us to do so.
Q Okay. And if we look at Exhibit 8, you've seen this email before?
A I have.
Q What does this email -- or what is this e-mail?
A It's a whole e-mail chain which I guess covers -- well, the first email is November 20th. But in essence, this is the email chain which, among other things, asks us to put together our chart, the one we put together.
Q So this is the email that asks the litigation team to create the chart that we looked at in Exhibit 12?
A That is correct.
Q All right.
A And this would be on the page 1 of 3 (indiscernible)
MR. DISHER: All right. Your Honor, I offer Exhibit 12.

THE COURT: Any objection?

MR. SCHMELTZ: No objection, Your Honor.

THE COURT: All right. Exhibit 12 is admitted.

BY MR. DISHER:

Q Okay. So --

MR. DISHER: Excuse me, I did mean 8. Exhibit number 8. Thank you.

THE COURT: Yeah, I was looking at number 8.

Any objection to Exhibit number 8?

MR. SCHMELTZ: I heard 8. I don't know what he said. I heard it -- I thought it was 8.

THE COURT: Yeah.

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 8 is admitted.

BY MR. DISHER:

Q All right. So Exhibit 8 makes the ask, Exhibit 12 is the result of the litigation team's effort, and then the litigation team sends the chart on Exhibit 12 back to the senior management at Rhodium. Right?

A That is correct.

Q Okay. What does the senior management of Rhodium do with the chart that y'all have created at Exhibit 12?

A They put it into a PowerPoint presentation, which they then used at a Board meeting on February 12th.

Q I'd ask you to turn to Exhibit 14, please.

A I got it.
Q Are you familiar with what Exhibit 14 is?
A I am.
Q What is it?
A This is the PowerPoint presentation I mentioned.
Q So this is the PowerPoint presentation material created for the Board meeting on February 12th, 2025?
A Correct.
MR. DISHER: Your Honor, I would offer Exhibit 14.
THE COURT: Any objection to Exhibit 14?
MR. SCHMELTZ: None. Thank you, Your Honor.
THE COURT: All right. Exhibit 14 will be admitted.
BY MR. DISHER:
Q So Mr. Cohn, I want to start with slide number 3. The title is Litigation Value.
A Yes.
Q What is this chart?
A Most of this chart is the same thing as the chart we had just looked at, in which we give our expected value of $158 million. The only differences are the last two lines, the discount rate line and the EOI 2025 expected collection line.
Q And if we look at the expected value before we go to the discount rate, that's $158 million. Right?

A Yes.
Q And that's the same $158 million that the litigation team came up with in its work in Exhibit 12?
MR. SCHMELTZ: Objection. Leading.
THE COURT: Why don't you ask your question again?
MR. DISHER: Sure.
BY MR. DISHER:
Q How does the $158 million figure on slide 3 relate to the work that the litigation team did reflected in Slide 12?
A It's the same number. The chart is the same, except for those last two lines.
Q Let's talk about the last two lines. Did you insert those last two lines?
A No, I did not.
Q Did somebody from Stris insert those last two lines?
A No.
Q Did somebody from LKC insert those last two lines?
A No.
Q Okay. Who inserted them?
A Probably Kevin Hays, the CFO.
Q The first one says, "Discount rate, 25%." What do you -- What is your understanding of what that means?
A I'm not entirely sure. He wanted to apply a discount rate to take into account some risks, like the time value of money and other stuff. I didn't fully understand it, one,

because you have prejudgment interest for the time value of money, and the rate he used is different from what he used the previous day, and different from rates that Province had used. But he wanted to apply a discount rate, and this is the 25%.

Q You mentioned different than a discount rate he used the previous day. Let's look at that. That's back at Exhibit 8.

A I'm with you.

Q Is the different discount rate he used the previous day reflected in Exhibit 8?

A It is. On page 103 in that chart, he has the second to last line as discount rate, and he applied 20%.

Q He applied a 20% discount rate. But if we look back at Exhibit 14, what is the discount rate he applied for the February 12th Board material?

A 25%.

Q Just to be clear about one thing, in the slide on February 14th, the commentary, Mr. Hays carried the commentary over.

A Correct, yep.

Q (indiscernible) that you did?

A Correct. All the commentary is the same, including that line, "This assumes we're allowed to plead and prove fraud."

Q Okay. Did Mr. Hays include prejudgment interest?
A No, he did not.
Q Did you object at the time to the 25% discount rate that Mr. Hays used here?
A No.
Q Why not?
A It didn't really matter too much for me. I mean, I figured he had his business reasons, he wanted to be cautious. I was not going to argue with him over it. And frankly, at the time, I didn't think that this PowerPoint presentation would be relevant for things like the LKC success fee, so it just wasn't top of mind.
Q Once Mr. Hays applies the 25% discount rate, what is the resulting number?
A $126.4 million.
Q And what is your understanding of what that number represents?
A That is the expected value of the litigation claims reduced by his discount rate.
Q Did Mr. Hays make any other changes to the expected value rate in the Board material presented on February 12th?
A Not to the expected value, but he did have a chart on the previous page.
Q Okay. So if we go back to slide 2, what are your understandings about what other changes Mr. Hays made to the

damages calculations?

A So his expected value post-discount was $126.4 million. He then made two additional changes. One is he reduced $126.4 million to $125 million. And the second thing is he built a range of plus or minus $25 million, and that's reflected in his commentary.

Q Okay, so let's break that down. $126.4 on slide 3. You said the first change was what?

A He reduced the $126.4 to $125.

Q Why?

A I don't know. Maybe he might have wanted a round number. But Mr. Hays can speak about Mr. Hays' thoughts.

Q Fair enough. And then, the second change that Mr. Hays made was what?

A He then built a range of plus or minus $25 million.

Q Is that range reflected on slide 2?

A It is. So on slide 2, there's that chart which shows risk damages, which means the same thing, I think, as litigation value. Under commentary, he states risked estimates from LCK, that means LKC/Stris plus or minus $25 million.

Q Do you know why he did that?

A I think he wanted to -- Again, Mr. Hays can speak to Mr. Hays. But I think he wanted to give the business a range, because it's unpredictable.

Q What damage number does LKC use in its fee application that's currently pending in front of the Court?
A We used the low end of that range, the $100 million.
Q And we'll talk about that briefly. After the February 12th Board meeting, have you seen -- Well, let me actually ask one question. Is it your understanding that this material was in fact presented to the Rhodium Board of Directors on February 12th?
A Correct.
Q Have you seen any other attempts to try to calculate the litigation value created subsequent to the February 12th board meeting?
A I have.
Q What subsequent attempts have you seen?
A I've seen a few sets of different numbers. So one was a few days later. I think it was either at or right after the February 16th Board meeting, Kevin sent me a spreadsheet which was identical to the spreadsheet on page three, except he reduced the odds of Building D from 40% to 20%.
Q Did Mr. Hays say why he did that?
A I think he said he wanted something that was more pessimistic, more cautious, something along those lines.
Q Do you --
MR. SCHMELTZ: I'd move to strike as non-responsive. He asked what Mr. Hays said, and the witness

said, "I think." So I'd just move to strike as non-responsive.

THE COURT: Overruled.

BY MR. DISHER:

Q Did Mr. Hays consult with you before lowering the odds on Building D from 40% to 20%?

A No, he did not.

Q To the best of your understanding, did Mr. Hays consult with anybody on the LKC team before reducing the odds from 40% to 20%?

A To the best of my understanding, he did not.

Q To the best of your understanding, did Mr. Hays consult with anybody from the Stris litigation team before he reduced the percentages from 40% to 20%?

A To the best of my understanding, he did not.

Q What effect did lowering the Building D success rate from 40% to 20% have on the expected value?

A It reduced it from $66 to $33, so a $33 million deduction. That reduced the total expected value from $158 to $125, and then after the discount of 35%, you would have $100 million as the expected collection.

Q So even with the reduction in Building D, the resultant expected value with the discount rate was how much?

A $100 million.

Q Have you seen any other charts that have attempted to

calculate the litigation value that Rhodium had against Whinstone?

A Yes. So the next one would be on February 18th. Debtors' management asked the litigation team to put together more optimistic numbers. So we had Kevin's more pessimistic numbers, and management asked us to have more optimistic numbers. And with that assignment, we obliged. We put together more optimistic numbers.

Q Why did the senior executives at Rhodium ask the litigation team to put together more optimistic numbers?

A I think they wanted to see what more optimistic numbers would look like before heading into the mediation with Whinstone.

Q If we turn to Exhibit 13, do you see that?

A Yes, sir.

Q Just kind of walk the Court through what is Exhibit 13?

A Exhibit 13 is an email that I sent to Debtors' management, and some other attorneys on the team, and Michael Robinson, Patty Tomasco, in which I mentioned that we followed through with their ask, and we ran the spreadsheets with more optimistic numbers.

Q Do we see those more optimistic numbers in the attachments to the email marked as Exhibit 13?

A We do. Yes, we do.

Q Okay. So the first chart in Exhibit 13, what is that?

A The first chart, that's the extremely optimistic scenario in which we win everything. The basic success percentage is 100% for everything.

Q Just note, what is the first comment that's listed in this new chart?

A It says, "This assumes we are allowed to plead and prove fraud."

Q What was the thinking behind including that comment there?

A We were very insistent that we would not have much of a chance of prevailing on the Uri credits unless we could plead and prove fraud. As I made clear to them, the odds of winning would likely go to zero if we could not argue fraud.

Q Okay. Then, the second chart in Exhibit 13, what's that?

A The second chart, that's Kevin's chart, with the more pessimistic numbers in which he reduced the Building D odds from 40% to 20%.

Q And then finally, the third chart in Exhibit 13, what's that?

A That is another optimistic scenario in which we took the original numbers we gave the Board on February 12th, and made, I believe, two changes to make the numbers more optimistic. That's what this chart shows.

Q And again, why did you create this chart?

A We did it because the Debtors' management wanted rosier predictions, something more optimistic heading into the mediation.

MR. DISHER: All right. Your Honor, I would offer Exhibit 13.

THE COURT: Any objection?

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 13 is admitted.

BY MR. DISHER:

Q Okay, so rosier predictions. Let's go back to the email that you sent attaching the rosier predictions. Okay?

A Yeah.

Q Now after you, in conjunction with the litigation team, came up with these rosier predictions, what was your best estimation about the damages range?

A It stayed the same. The litigation team still collectively thought that the numbers it provided on February 12th were the best numbers, the most reasonable numbers. Those are our collective best judgment.

Q And just to be clear, how did those numbers on February 12th relate to the rosier numbers you put together on February 18th?

A They were lower. Our best judgment was $158 million. The rosier numbers were $183 million.

Q Okay. Now, contemporaneous with this, did you see any

additional attempts to try to value the damages claims?
A Yes. Only in discovery, we learned that in March, the Board had another meeting with another PowerPoint, and we got that in discovery.
Q How did the numbers in that March PowerPoint relate to the numbers that y'all came up with on February 12th?
A They were lower. So those numbers, it used Kevin's more pessimistic numbers, which resulted in an expected value of $100 million. And the chart is the same, it shows $100 million. But then in calculating the range, Kevin reduces the $100 million to $75 million.
Q Why did he do that?
A Don't know.
Q Did he consult with you before doing that?
A No.
Q To the best of your knowledge, did he consult with anybody at LKC before doing that?
A No.
Q What about the Stris team?
A He did not.
Q Okay. Let's move to the actual calculation in our fee application. Okay?
A Okay.
THE COURT: Before we do that, we've been going for about an hour-and-a-half, why don't we take a five-

minute break?

MR. DISHER: Okay.

THE COURT: Do you need water. Do you have water there?

MR. COHN: I do. Thank you, sir.

THE COURT: All right. We'll be in recess. Come back at 3:30.

(Brief recess.)

(Back on the record.)

THE COURT: We're back on the record in case number 24-90448.

Go ahead, Mr. Cohn.

MR. DISHER: Mr. Cohn, are you ready to proceed?

MR. COHN: Yes, sir.

MR. DISHER: Okay, thanks.

BY MR. DISHER:

Q We were just turning to the calculation included in the LKC fee application. If you go back to Exhibit number 2, please --

A I'm with you.

Q And feel free to use this as your guide. I just want you to explain to Judge Perez how LKC calculated the different components of its success fee included in the fee application pending in front of the Court.

A Certainly. So the first component, the $600,000, is

undisputed. That's part of it. The rest of the success fee, roughly $8.3 million comes from paragraphs B and C. What we did was we proceeded in two steps. The first thing was calculating the total litigation value, and we used $100 million for the reasons that we talked about.

Q Let me pause you right there. $100 million of what?

A Of the $185. So the Whinstone settlement was $185 million. We assigned $100 to litigation value.

Q And why did you assign $100 million to the litigation value?

A We used the low end of that range on the February 12th PowerPoint, even though if you look at the two numbers that are part of that low end, it adds up to roughly $175 million.

Q Let's maybe pause there. Let's go to Exhibit 14 and look at the chart that you're talking about.

A Okay. I'm with you.

Q And again, sorry to interrupt --

A No worries.

Q But go ahead and explain to the Court how LKC calculated the $100 million that it uses in its fee application.

A Well, no, this is definitely more helpful. Okay. So there is the total asset value, which is the sum of two numbers. There is the risk damages, which is litigation

value, and there's ongoing business value, DCF, discounted cash flow. That's the value of the underlying business, and there's a range for each, and then there's a total for the range. The total for the range, the total asset value is roughly $175 million to roughly $325 million. We used that low end of $175 million, which is roughly $10 million less than the $185 million purchase price. Although the total asset value is less than the total purchase price, to be conservative, we used only the $100 million for risk damages at the low end of that range.

Q Okay. All right. So first step, allocate $100 million to damages. Let's go to the second step you mentioned. What was the second step that LKC went through in calculating its success fee?

A We then had to take that $100 million, and separate it out into the two parts. There is the energy credit part, and there is the additional damages part. So for that one, we basically just did math, using --

Q And again, let me pause you there. Let's turn to the next slide. It might help our discussion.

A Okay.

Q So please continue. How did LKC allocate an amount to the energy credits?

A We used the numbers that were on the chart that the litigation team put together, and we added together two

numbers. One is -- And do we have the chart in front of us? It might be easier if I --

Q It should be slide 3 of Exhibit 14.

A Okay. Slide 3 of Exhibit 14 -- yeah, this is definitely easier. All right. So there's the ERCOT curtailment no Uri, which had an expected value of $25.2 million. Then the ERCOT 4CP had an expected value of $1 million. The sum of those numbers is $26.2 million. We left out the Uri curtailment because we were never allowed to plead and prove fraud.

Q We'll talk about that in a minute.

A So without that, it's $26.2 in expected value. But to compare apples to apples, we then used Kevin's 25% discount rate. If you have that discount rate applied to $26.2 or $26.2 divided by 1.25, you end up with $20.96.

Q Let me pause you there. And if we flip back to Exhibit 2, which is the engagement agreement -- See that?

A I do.

Q So paragraph B is related to interview credits, so how much did LKC allocate to paragraph B of the success fee?

A $20.96 million.

Q What about paragraph C? How much did LKC allocate to paragraph C?

A Roughly $79 million. It's the difference between $100 million and $20.96, so that would be $79.04 million.

Q Thank you. Okay. Let's talk about the Uri credits. Why did LKC -- why did LKC not add the value of the Uri credits to its calculation?

A We were never allowed to plead, prove, argue fraud.

Q Why not?

A The Special Committee directed us not to do so.

Q Do you have any understanding about why they told you not to pursue a fraud claim?

A I did. I do.

Q And what is that understanding?

A So it began with they wanted to conclude an investigation into whether or not Rhodium's executives had acted reasonably or unreasonably in relying upon Mr. Harris's misrepresentations. Akin, Mitch Hurley had sent a letter to the Special Committee contending that the executives had acted unreasonably, had breached the business judgment rule and their fiduciary duties by signing that release. In his view, it was unreasonable to sign that release.

Q Did LKC and Stris prepare a version of the complaint that included the fraud claims?

A We did.

Q If we turn to Exhibit number 6?

A I got it.

Q Do you know what Exhibit number 6 is?

A Yeah. Exhibit 6 is the redline of the draft complaint reflecting the changes when we were told to remove the fraud claim.

THE COURT: Your Honor, we offer Exhibit number 6.

MR. SCHMELTZ: No objection.

THE COURT: All right. Exhibit number 6 is admitted.

BY MR. DISHER:

Q And again, you were instructed to remove the fraud claim by whom?

A By the Special Committee.

Q If you turn to Exhibit number 5 --

A I'm with you.

Q What is Exhibit number 5?

A This is the cover email to the amended complaint which knocked out the fraud claim, and all the allegations regarding fraud and reliance.

Q Let's look at what you say in the email. You say, "Independent directors requested that the complaint not plead the Uri fraud claims," you talked about that. "We still seek the same amount of energy credits, and this draft still says Chad lied." What do you mean when you say, "We still seek the same amount of energy credits?"

A We're still seeking the same amount of damages.

Q In your mind, is there a distinction between seeking

damages and recovering damages?

A Absolutely. I mean, Plaintiffs can and do seek a whole lot of things. It's one thing to seek money. It's quite another to actually recover it in litigation.

Q How does the fact that the complaint no longer asserts a count of fraud affect, in your opinion, the ability to recover damages for those Uri energy credits?

A As I told the Special Committee, and anyone else on phone calls, emails, the odds of recovering the energy credits likely go to zero. We needed to overcome the settlement agreement, the release, and the only way we could think of to overcome it was with the fraud claim.

Q Your email goes on, the next sentence says, "We just don't call it fraud." What did you mean by that sentence?

A What I mean is we took out the fraud claim, and the allegations that underlie the fraud claim, including that there was reliance.

Q The next sentence says, "We can amend at a later date if we want to add back the fraud claim." Did I read that right?

A You did.

Q What do you mean by that?

A Well, we were hoping that we would eventually have the ability to add back the fraud claim. So we had it in there. We had that sentence in there.

Q Did you ever amend the complaint to add back the fraud claim?

A We did not.

Q Did you ever get authorization to amend the complaint to add back the fraud claim?

A We did not.

Q Did you want to amend the complaint to add back the fraud claim?

A Very much so.

Q Why?

A For three reasons, and this is all documented and memorialized. But number one, we thought it was a good claim. We thought we would collect the compensatory damages. I think we had the odds handicapped at around 60% of recovering those credits, and we wanted to do that. That was the first reason, to get that money back. The second reason was we thought we had a pretty good argument about exemplary damages as well, and with fraud, we could get exemplary damages. That chart conservatively ballparks the exemplaries at one-to-one. We thought we could at least get one-to-one, maybe more.

The third reason was if we had a complaint in which we showed that Chad Harris had lied, that he had committed fraud, then that would weaken one of their key witnesses, and that would be useful overall. By contrast, if the issue

was our own executives had acted unreliably, unreasonably, unjustifiably, that would hurt their credibility.

Q And who was advocating for making that latter argument, that our executives acted unreasonably?

A That was the Special Committee. Do you know if anything ever came of that argument that the Special Committee had against our executives?

A I do.

Q What happened?

A Well, we learned in discovery a couple of things. Number one, on April 19th, Mr. Schmeltz sent a letter to the lawyers for the executives contending that they indeed had acted unjustifiably, unreasonably, they had violated the business judgment rule and breached their fiduciary duties by signing that release. He claimed they failed to do even minimal diligence, and therefore violated the duty of care. That's the first thing.

Q And if -- Well, let me pause you there. If we go to Exhibit 19 in the binder --

A I'm with you.

Q Is this the letter that you were referring to?

A Yes, it is.

Q And this is the letter that we received in discovery in this matter?

A Yes, it is.

MR. DISHER: Your Honor, I would offer Exhibit 19.

MR. SCHMELTZ: No objection.

THE COURT: Exhibit 19 is admitted.

BY MR. DISHER:

Q Okay. And I interrupted you again. What was the next thing that you saw related to how the potential claims against the senior directors of Rhodium proceeded?

A We learned this just recently, in Mr. Thompson's deposition of Mr. Eaton. And Mr. Eaton testified that in fact, the Special Committee -- Well, I don't know who actually does this, but -- whether it's the Special Committee or the Debtors or the executives. But they sought insurance money under the D&O policy against the insurers, and one of the bases they had for getting this money from the insurers was the Uri release. And in fact, they did get $8.5 million from the insurers, and Mr. Eaton said he had not done an allocation, didn't know how much of that was attributable to the Uri fraud claim. But they asserted -- I'm sorry, the Uri fiduciary duty claim. They hadn't done the allocation. But $8.5 million was obtained from the insurance companies, and one of the claims that was presented to the insurance companies was the Uri release, the contention that they violated their fiduciary duties.

Q How does the fact that the Special Committee presented a claim to the insurance company related to the actions of

the Rhodium senior directors, how does that relate to your ability to potentially seek a fraud claim against Whinstone and Chad Harris?

A You can't have it both ways. You cannot simultaneously argue that there was reasonable reliance, which you need for the fraud claim, and unreasonable reliance, which they asserted to the insurance companies under the D&O policy.

Q So which route did the Special Committee pick? Fraud, or claim against the directors and officers?

MR. SCHMELTZ: Your Honor, that calls for speculation.

THE COURT: Why don't you rephrase your question. I don't know what you mean by which route they picked.

BY MR. DISHER:

Q So based on your understanding of looking through the documents, contemporaneous conversations, the discovery that we have received in this matter, did the Special Committee decide to pursue a fraud claim against Whinstone and Rhodium?

A They did not.

MR. SCHMELTZ: Your Honor, I'd just object to the relevance of Mr. Cohn's conclusion, reviewing documents, what he thought. It's not relevant. They're going to have -- Mr. Eaton's here, they've got witnesses -- this is irrelevant.

THE COURT: I mean, I think it's relevant to the ability to assert the fraud claim. So I'll let it in.

BY MR. DISHER:

Q Did the Special Committee pursue a D&O claim against the senior directors of Rhodium?

A They did.

Q Okay. So we've talked about the success fee component. of our engagement agreement. The fee application also seeks some amount of hourly fees and expenses?

A That is correct.

Q What are those hourly fees and expenses for?

A So there are two things. There are the hourly fees from LKC, and those were for supporting the Debtor's own motion on the revised retention application. We spent some time supporting that motion. That's about $60,000 in fees.

Q What else?

A The second thing is the Porter Hedges expenses, which were -- I think all of it, or almost all of it were for the work they did either on helping us with the application itself, or supporting Debtors' motion against the SAFEs.

Q If you turn to Exhibit 21, please?

A I'm with you.

Q Do you know what Exhibit 21 contains?

A This appears to be the Porter Hedges invoices for the period in question underlying our fee application.

MR. DISHER: Your Honor, we offer Exhibit 21.

THE COURT: Any objection?

MR. SCHMELTZ: Yes, Your Honor. This wasn't produced to us in discovery. The first we saw of it was when it appeared on an exhibit list this past week, in the period of what Your Honor said we were meant to do was be fully transparent, open kimono. This is about the least open kimono you can do. Not only did they not give it in discovery, but it's something that we asked for way back when, when we first saw these numbers and had questions about whether or not Porter Hedges fees were reasonable, and whether they were related to the (indiscernible)

MR. WOLFSHOHL: Your Honor, I don't think that that's accurate. I don't think there were any discovery requests that covered them. And when he talks about asking for them, they did put them at issue by objecting, but there was never any -- I mean, this was not anything that anybody was hiding. We put it on the witness and exhibit list, or on the exhibit list timely. That's all that is required to be done. If they had picked up the phone and said, hey, Josh, send us your invoices, we would have done it immediately.

So this is not -- I mean, I don't believe that this is subject to any request.

MR. SCHMELTZ: (indiscernible) they produced in

this matter seven documents. Seven. There is no world in which they didn't know (indiscernible) no matter what. Even if I had my head completely in the sand, these are the documents at issue. And not only have we had conversations about them, and we sought them early, but this is the very kind of thing that you would say, hey, I've got to produce those (indiscernible)

MR. WOLFSHOHL: They definitely did not request them orally. I mean, if they had asked for them, we would have given them. There's nothing (indiscernible)

THE COURT: I'm going to allow it. Exhibit 21 is admitted.

BY MR. DISHER:

Q Mr. Cohn, did you have a chance to review the invoices contained in Exhibit 21?

A Yes.

Q And just to be clear, your understanding is LKC has in fact paid all of these invoices to Porter Hedges?

A Yes, indeed.

Q And these invoices form at least a part of the fees that LKC is seeking, fees and expenses, excuse me, that LKC is seeking in the fee application that's pending in front of the Court?

A That is correct.

Q Okay.

MR. SCHMELTZ: I'd just like to interrupt and just ask for reconsideration of (indiscernible) ask for documents concerning the retention (indiscernible)

THE COURT: File a motion. I've ruled.

MR. SCHMELTZ: We did. We have. It's on file.

THE COURT: All right.

MR. SCHMELTZ: This is one of those --

THE COURT: I'll consider it.

MR. SCHMELTZ: Thank you, Your Honor. I appreciate it. I don't mean to -- I just want to make sure -- I really wanted to make sure the record was complete.

THE COURT: I think, you know, we're going to try this. We're not going to --

MR. SCHMELTZ: It's fair. I just wanted the record to be complete. I understand, Your Honor.

THE COURT: Yeah, we're going to try this. We're not going to fool around. Let's go.

BY MR. DISHER:

Q Okay. Two final topics, should be brief. First, once LKC files its fee application that's pending in front of the Court, did it meet any resistance from the Special Committee?

A It did.

Q What is your understanding about exactly what the Special Committee is disputing in our fee application?

A I understand in short, one, they contend that the amount of the $185 that should be allocated to litigation value should be $75 million instead of $100 million. And then second, they dispute the amount of energy credits that should be considered. And in specific, they contend that the Uri energy credits should be considered.

Q Let's break those down. So first on the $100 million versus $75 million, what is your understanding for why the Special Committee claims that only $75 million should be allocated to damages?

A I don't fully understand it, and they can put on their case. But my understanding is they're looking at the March presentation in which Kevin uses pessimistic numbers and the discount to get to $100 million, and then decides to lop off another $25 million.

Q Okay. Now of the $75 million that the Special Committee asserts, how much of that do they claim should be allocated to energy credits?

A Based upon their motion for partial payment, they're saying that all $75 million should be energy credits.

Q If we look back at the damages chart, what was the total amount of expected value of all of the energy credits combined?

A So it was, without Uri, $26.2. And the expected value of the Uri, including the exemplaries, which would not even

be energy credits, they're exemplaries, that was $29. So it was $26.2 plus I guess 60% of $29, which is roughly $18 million, so about $44 million it would be.

Q Okay. And so the Special Committee is allocating all of that amount to energy credits, and more?

A Plus another $31 million.

Q So more than the total amount of energy credits in the numbers that we've looked at?

A A lot more, yes.

Q Okay. What about the hourly fees and expenses? Do you have any understanding about the Special Committee's objections to those?

A I do. And -- Well, again, I think they should speak for themselves. But they didn't want to pay the Porter Hedges amount, the $200,000, on the view that they were not reasonable. And they objected to paying the $60,000 or so that LKC spent supporting the Debtors' own motion.

Q And do you know what the basis for their objection is?

A They -- I read their brief, but I can't tell you I understand it.

Q All right. I want to turn to, lastly, have you done any attempts to come up with alternative calculations to the potential success fee that LKC is due under the contract?

A I did.

Q If I remember your testimony right, when LKC did the

calculation that is in the application, it made how many assumptions?

A Well, it made two assumptions, the $100 million, ,and then the allocation to -- you know, the energy credits.

Q Did you run the numbers making any different assumptions?

A I did. I took some assumptions that were worse for us, and some assumptions that were better for us.

Q Okay. Let's talk about did you attempt to calculate what the success fee would have been if the litigation value was only $75 million, and the Uri credits should be included?

A I did.

Q What was that amount?

A The total success fee would be over $6.4 million.

Q Have you ever seen that number presented to the Court by the Special Committee?

A Not even close.

Q How did you get with that? How did you get to that, excuse me?

A I just used the same formulas. You use the $75 million, and then for the energy credits, it might make sense to look at the numbers in the chart, but in essence you take the full expected value of all the energy credits, including Uri, and then to compare apples to apples, you

have to discount it by the same discount rate, the 25%. You take and divide it by 1.25, and then whatever the number ended up being, $44 million or thereabouts, you plug that in, and then you just run it with the math. The first 5% million, you get 5%. Thereafter it's 1%, and any additional damages are 10%. You run it through that spreadsheet, and then you add $600,000, the net result of all that is over $6.4 million.

Q And just as a reminder, what is the total amount of the success fee that we're seeking in our current fee application?

A It's $8.9 million.

Q Now, I believe you said you've recently also done some calculations about maybe more aggressive assumptions.

A I did.

Q Can you tell Judge Perez about that?

A I did. So after reviewing the expert report of the proposed expert, I noticed that he was using the most optimistic numbers of all, which were on that February 18th spreadsheet, which we provided the Debtors, and they asked for the more aggressive. I used those numbers, and the $183, and I plugged those into the chart, and that gave us numbers -- It depended if you use Uri or not. But those numbers were in the $13 to $15 million range.

Q So using the numbers that the Special Committee's

expert used, what was your resulting figure for our success fee?

A Depends if you use Uri. But the range I believe was $13.-something to $15.3 million.

Q Okay. But just to be clear, LKC is not attempting to adjust the calculation of its success fee that is currently in the application pending in front of the Court?

A That is correct. We stand by our numbers.

MR. DISHER: Your Honor, I pass the witness.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. SCHMELTZ:

Q Mr. Cohn, your fee application seeks $8,913,600 in success fees. Right?

A That's correct.

Q Take $600,000 off of that. You've already been paid the $600,000. Right?

A Actually, I don't know if the Court entered the order in that one, but we did receive a wire.

Q So you've already been paid that amount. Right?

A With a gap, yeah, sure. Yes.

Q So that's $8,313,600 that would be at issue. Right?

A I think it's $8,319,600.

Q It's not $8,913,600, and we take $600 off that, it's $8,313 -- right, $600?

A I don't have the numbers in front of me. I can't recall if it's $8,313,000 or $8,319,000, but let's just call it roughly $8.3 million.

Q Now, that's -- of course, I think you testified using your $100 million number. Right?

A That's correct.

Q In your biggest disagreement with the $100 million versus the $75 million, if I understand your testimony correctly, it's that Kevin Hays made that adjustment in a March 2025 Board presentation, without consulting with members of the litigation team about the adjustment. Do I understand your prior testimony correctly, sir?

A No. You said that's the biggest issue. The biggest issue is not that he didn't ask me. The bigger issue is that I his numbers are just unreliable and wrong.

Q And his numbers include the adjustment to Winter Storm Uri by reducing the 40% success rate down to 20%. Right?

A I think you meant to say Building D.

Q I did 100% mean Building D. Thank you. That is an issue you have with his numbers, that he reduced the success percentage from 40% to 20% on Building D. Right?

A That's one issue, yes.

Q Are you aware that your partner, Will Thompson, signed off on that change in a Board meeting?

MR. DISHER: Objection. Foundation.

BY MR. SCHMELTZ:

A I'm aware that's not correct.

Q We'll get into that later. You object to the use of a 25% discount rate in that -- in Mr. Hays' number. Right?

A I wouldn't say that because we used his 25% discount rate in getting to our numbers. I do think that's an aggressive discount rate. But he's the business guy. He wanted to use it, he used it starting on February 12th, and we incorporate that.

Q Other than the Building D change then, there's not anything else that you thought was unreliable about Kevin Hays' numbers. Right?

A That's incorrect.

Q What else did you think was unreliable about Kevin Hays' numbers?

A Well, it depends on which spreadsheet you're looking at. But if you're looking at the March spreadsheet, after he reduced the Building D odds, and then applied the 25% discount rate, he then lopped off another $25 million, the gap from $100 million expected value to the $75 million.

Q So your big disagreements with him are the Building D change, and lopping off the additional $25 million. Right?

A That's fair.

Q Okay. Certainly, you would agree with me that your client has a right to analyze what it thinks it's settling

and for how much it thinks it's settling for. Right?
A Has a right to analyze what it's settling? I'm not sure I fully understand the question.
Q Your client was assessing the potential for settling with Riot-Whinstone at the time of that March presentation. Right?
A That's right. And you would agree with me your client has a right to lean into its professionals in any way it sees fit to assess that settlement. Right?
A I'm not sure I'm getting what lean is. But if you're asking if they have the right to talk to their professionals, certainly.
Q And your client isn't obligated to give you a call, to ask if you think the number that it's settling for includes $50, $75, or $100 million in damages, are they?
A That's correct.
Q And your client was also represented by Chuck Topping, General Counsel, at the time of that presentation. Right?
A That's fair.
Q And your client was represented by Quinn Emanuel at the time of that presentation. Right?
A Yes.
Q So if your client's March 2025 assessment of the damages, and what its damages were worth didn't include LKC or Stris, that's not problematic by itself, is it?

A I would say it's problematic.
Q Now, your methodology took $100 million, and subtracted $20,960,000 from that to get an amount to which you apply the 10% rate for that bucket C success fee. Right?
A I wouldn't phrase it quite that way, but I think we're on the same page. If you want me to say it differently, I can.
Q I don't want you to say it differently. Your number for power credits was $20,960,000. Right?
A For energy credits?
Q For energy credits.
A Yeah, $20.96 million. That's correct. And your number for the non-energy credits, to which you applied the 10% rate, was $79,400,000. Right?
A No, sir. Your math is --
Q $79,004,000. Right?
A No, no. $40,000.
Q You're right. You're right. I'm stumbling over a number there. But $79 million and change. Right?
A We can go with that one.
Q And you get that $79 million and change by subtracting $20,960,000 from $100 million. Right?
A That's right.
Q Okay. Let's use your number, $20,960,000 for energy credits. Okay? Let's use that number. If you subtract

that from $75 million instead of $100 million, you get $54,040,000. Okay?

A Okay.

Q And at 10%, that's $5.4 million of a success fee. Right?

A Your math is right, but there's a premise that you have that is incorrect.

Q And that's give or take $3 million off of the number you drive using $100 million. Isn't that right?

A Can you give me the numbers again? We have $8.9 and the other number is -- ?

Q $5.4.

A That would be a $3.5 million difference.

Q So by using your base, you drive a much bigger success fee than by using the base that your client viewed as its damages as of March 2025, well before there was a dispute here. Right?

A Well, like I said, your premise is wrong.

Q But you would agree with the numbers. Right?

MR. WOLFSHOHL: I'm just, I'm going to object.

THE COURT: I don't understand the numbers. If the difference is $25 million, and it's 10%, that's $2.5. So I don't know where the $3.5 comes from.

MR. SCHMELTZ: So it doesn't shake out that way, Your Honor, because it is -- First you calculate the energy

credits --

THE COURT: Right. And you're assuming you're calculating the same energy credits. So really, the difference is between the $75 and the $100, is just on the $25 million difference.

MR. SCHMELTZ: If you took that, Your Honor, and you have -- So the difference is $50 -- It's $54 million, right, instead of $79 million (indiscernible) $25 million difference.

THE COURT: Okay. All right.

MR. WOLFSHOHL: Object. Vague, foundation.

MR. SCHMELTZ: So I can just go back and say (indiscernible)

THE COURT: Yeah, because I was not following you there.

MR. SCHMELTZ: That's fine.

MR. COHN: May I explain what I was trying to say, or --

THE COURT: No, no. Let him ask a question.

BY MR. SCHMELTZ:

Q Under your model, using $100 million, you have $20,960,000 allocated to power credits. Correct?

A Yes, that's right.

Q And $100 minus $20,960,000 we have established is $79,040,000. Right?

A That's still the answer, yes.
Q And your model applies 10% to that number. Right?
A That's correct.
Q To get $7,904,000 in bucket C success fees. Right?
A I think there might have been a zero missing in there, but we could say roughly $7.9 million.
Q $7,904,000.
A Yeah, that's right.
Q No zeros missing. And to Your Honor's point, under a $75 million number, that bucket C would be $5,404,000. Right?
A No. Not if you were doing it accurately.
Q $75 million minus $20,960,000 is $54,040,000. Right?
A The math is right, but the methodology is incorrect.
Q In your fee application, you say in paragraph 36, you have a paragraph about additional damages, and you say those additional damages are $79.04 million, the difference between $100 million and $20.96 million. Right?
A Yes.
Q And so similarly, if you used a $75 million base, the difference for the additional damages, you would take the difference between $75 million and $20.96 million. Right?
A Like I said, your math is right, but your methodology is incorrect.
Q I'm just using your methodology. Right?

A No, you're not.
Q Let's take a look. You have a -- You I think said to Mr. Disher that the number, if you used $75 million and you included the power credits, that would be about a $6-plus million success fee. Did I understand that correctly?
A Not entirely. So if you were to assume that the proper number is $75 million, and you were to assume the Uri energy credits, and you did the math and methodology correctly, you would end up with over $6.4 million. And when you say the math and methodology correctly, you have applied a 25% discount rate -- pardon me, to the energy credits. Correct?
A That's part of it. We use the same 25% discount rate that Kevin used to compare apples to apples.
Q You don't use a 25% discount rate, though, to the $79,040,000 that makes up the basis for a discount. damages, do you?
A No, we did. Because we used his number, the $100 million, and you get to the $100 million only by using his 25% discount rate.
Q I see. So you, for energy credits, you double count -- You take 25% once to get to the $100 million, and then you take 25% again and add it to the energy credits. Right?
A No. That's not right. It's not double counting.
Q You do apply a 25% discount to the energy credits as well, don't you?

A We want to compare apples to apples. So the $100 million is the result of, among other adjustments, this 25% discount rate. When you go from the numbers in the chart to the $100 million, you go through the 25% discount rate. To compare apples to apples, if you're going to use the energy credit numbers in the chart, you have to apply the same 25% discount rate.

Q But the numbers in the chart drive the $100 million. So why aren't you -- You're not using -- I just want to be clear, you're not applying a 25% discount rate to the $79,040,000. Right?

A No, you are. Because you only get to the $100 million by taking the $158, applying that discount rate, which gets you to $126.4, and you then reduce it by $1.4 to get to his $125, and then you have the range getting him down to the $100. You only get to the $100 by using the 25% discount rate.

Q If you take the same --

A It's the transitive property of math. You could also use the numbers that you have in the chart, and then --

Q Sir, I'm fine. I don't --

A Okay, sure.

Q I think it was your testimony that you didn't agree with the 25% discount rate, and I think you also testified to Mr. Disher that you didn't think Kevin Hays discussed

that discount rate with anyone on your team. Is that correct?

A I didn't say disagree with it. We apply it. I think it's aggressive, I wouldn't do it. I don't think it's economically supported, and I can walk through the reasons why, but we ended up using it anyway.

Q And I think you also testified that you didn't think Mr. Hays consulted with anyone on your team before using that discount rate. Right?

MR. DISHER: Objection. Mis-states the testimony.

MR. COHN: Right. It's a little bit different --

THE COURT: Wait, wait, wait. Hold on.

MR. COHN: I'm sorry. I'm sorry.

THE COURT: I'm going to overrule that objection. You can answer the question.

BY MR. SCHMELTZ:

A I guess it comes down to the word "consult." If I recall, either on -- I think it was on the Board call, he mentioned it, that he was using it. But I don't think he asked if we ever thought it was right. So I guess it comes down to the word "consult."

Q You've got a couple of binders behind you that are our binders.

MR. SCHMELTZ: And Your Honor, if I might approach?

THE COURT: Yep.

MR. DISHER: Trace, do you have another copy of your exhibits, by chance?

MR. SCHMELTZ: (indiscernible)

MR. DISHER: Oh, great.

MR. SCHMELTZ: I think you already have them.

BY MR. SCHMELTZ:

Q If you would, sir (indiscernible)

THE COURT: Do you have an extra set for my law clerk, an extra set of binders?

BY MR. SCHMELTZ:

Q If you would, sir, turn to Exhibit 259, please.

A I'm with you.

Q I think you showed earlier the email at the bottom of the first page here between Kevin Hays and you and others, in which -- and it's the bottom of the first page and top of the second page, in which he says, "I put the table in my presentation. See attached." He then comments to Will, "I understand you'll be available to join the Board call." Do you see that?

A Which page are you on?

Q It's the top of the second page.

A I do see that, yes.

Q And then he says, "When I get to slide 3, I'll turn it over to you." Right?

A Yes.
Q And I think we looked at slide 3 earlier, under your Tab 14. Right?
A Correct.
Q And that's that litigation value chart, correct, that we've all looked at, that has the values, and the expected chance of success and all that. Right?
A That's right.
Q Then, on the first page of the email, Mr. Thompson says, he asks a question, and I'll start in the fourth sentence -- or pardon me, the third sentence, "If you're not in the meeting," and this is on February 12th, "If you're not in the meeting, it might make sense to connect briefly on the low-high range you provided. I want to make sure we're on the same page." He says, "Of course I don't have a problem with your range. I just want to avoid stepping on your toes, and confirm I understand how you calculated that." Have I read that correctly, sir?
A Not entirely. I think you put in that instead of it, but close enough.
Q Mr. Hays responds and says, "Will, good question. On page 2, I simply took the risk value from the damages, discounted a year at 25%, and roughly plus or minus $25 million. I can explain that on page 2 so you don't even half to mention it on slide 3." I think he might have, but

it says "half." Have I read that correctly?
A Yes, sir.
Q All right. And Mr. Thompson responds, "That makes sense to me." Right?
A I see that.
Q And he says, "I won't plan to talk about it at all," but he goes on to say, "If I were pressed, I'd say that the range of possible litigation outcomes is very wide. But I can certainly understand why, from a business perspective, it might make sense to look at the kind of band you're using." Right?
A You read it correctly.
Q So one, it's fair to say, and maybe we're quibbling on the word "consulting," but it's fair to say that your team was aware of the 25% discount rate. Right?
A That is correct.
Q And was aware of the plus or minus $25 million. Right?
A That is true.
Q And that the response was, "I can understand why, from a business perspective, it might make sense to look at the kind of band you're using." Right?
A You read the words correctly.
Q Certainly, using the discount rate and taking an additional 25% wasn't something that your team said was unacceptable at that time. Right?

A We did not say that.
Q It wasn't something that your team objected to as a matter of principle. Right?
A I'm not sure what you mean by a matter of principle, but Will is talking about it from a business perspective.
Q Your calculation of damages includes specifically from the chart of claims the power credit claims. Right? I should say the non-Uri power credit claims. Right?
A I prefer to say energy credits.
Q Is that a yes?
A I'm sorry, could you repeat the question?
Q Your chart includes the non-Uri -- pardon me, your calculation includes the non-Uri energy credits specifically from the chart. Correct?
A And by the chart, do you mean (indiscernible)
Q Your calculation of the success fee includes specifically the non-Uri energy credit claims from the chart that we looked at in Exhibit 14. Right?
A That is correct.
Q But it then makes no distinction between any other category of damages, etc. It's just simple math. It's subtract $20 million from $100 million to get the remainder. Right? You're not going back through that chart and picking other claims to allocate within the settlement amount. Correct?

A I'm not sure --

MR. WOLFSHOHL: Vague. Objection. Vague, compound. I'm not --

THE COURT: Rephrase the question. I think I understand what he's asking.

BY MR. SCHMELTZ:

Q The $79,040,000 that you attribute to bucket C in the fee app, in your engagement letter, is not tied to any specific claim on the chart in slide 3 of Exhibit 14, is it?

A I disagree. I can explain --

Q You don't make a specific allocation among the $79 million to any specific claim on the chart as part of your fee application, do you, sir?

A That is correct.

Q There is not anywhere I could find in your fee application, in the paragraph on additional damages, where I could figure out which claims are included in the $79 million. Is there?

A I think as you've phrased it, there is. I mean, the $79.04 million comes from the claims for other damages that are on this chart. If you meant specifically, like, how much of the $79 goes to one claim versus another, then I agree with you.

Q We don't know, from your fee application, if the $79 million includes attorneys' fees, bankruptcy case, do we?

A We do. It's all in there.
Q We don't know is it $4.2, or is it a bigger number, do we?
A It's the numbers that are on this chart. It's the expected value amounts, which were then reduced by the 25% discount rate, further reduced by the $1.4 million, and then reduced by $25 million.
Q Can you show me on the chart in your Exhibit 14, Tab 3, which litigation value claims are included in the $79 million?
A It's all of them. We used all the claims that are on this chart.
Q So you're seeking a success fee for the block of Temple sale on which you have a base success of 5%. Right?
A Yeah. We used the expected value, and then the other discount and deductions, correct.
Q And so you -- That's a claim that you told your client there was a 95% chance of losing that claim, you want a success fee on that claim. Right?
A Correct.
Q And then, there are bankruptcy case fees and pre-bankruptcy case attorneys fees. Right?
A That is correct.
Q Turn with me, please, to Exhibit 307 in your binder.
A I'm with you.

Q You recognize this document, sir?

MR. WOLFSHOHL: I'm sorry, which exhibit?

MR. SCHMELTZ: 307.

MR. SCHMELTZ: Oh -- Your Honor, I want to, before I get too far ahead of myself, I'd like to move the admission of Exhibit 259 into evidence.

THE COURT: Any objection?

MR. DISHER: No objection.

THE COURT: It's admitted. It's in, Exhibit 259.

BY MR. SCHMELTZ:

Q What do you recognize this document to be, Mr. Cohn?

A I'm not sure I do recognize this document.

MR. SCHMELTZ: Your Honor, may I have a minute?

THE COURT: Sure.

MR. SCHMELTZ: Readers are leaders, Your Honor. Sometimes I need someone else to read for me. My apologies.

BY MR. SCHMELTZ:

Q I represent to you, sir, that this is the compromise settle and release, settlement and release agreement that governs the Riot-Whinstone dispute. Have you ever seen this document before?

A I might have. I can't recall.

Q Okay. You understand that your client signed a settlement agreement with Riot-Whinstone. Right?

A I do.

Q And settled the disputes between and among the Rhodium Debtors, and Riot and Whinstone. Right?

A That is correct.

Q I'd ask that you take a look at what is marked at the bottom as Hearing Exhibit 307.011 (indiscernible) the Bates range. Let me know when you get to the 011 page, please.

A I'm with you.

Q This actually provides in paragraph 25 the settlement agreement, that "Except as otherwise provided in section III.26, each party will pay its own attorney's fees and costs." Right?

A I'm not sure where you're reading from. Sorry.

Q Paragraph 25, 25.

A Okay. I'm with you.

Q That's what it provides. Right?

A I'd have to hear you read it back to make sure you read it correctly, but I'm reading 25 now.

Q And it provides that, "Except as otherwise provided in section III.26, each party will pay its own attorney's fees and costs." Right?

A That's what it says.

Q And Roman III.26 is a prevailing party attorney's fees and costs provision. Right?

A It is prevailing party attorney's fees and costs. Correct.

Q And that provision only applies to a proceeding arising out of or in connection with the interpretation or enforcement of the settlement agreement. Right?

A It says, "In the event of any dispute or legal proceeding arising out of or in connection with the interpretation or enforcement of this agreement, the prevailing party shall be paid, and in the event of a legal proceeding shall be awarded reasonable costs, expenses, and attorneys fees."

Q And that, of course, is a situation not involving the settlement of the main dispute, but of a dispute about the settlement agreement. Right?

A I think I follow you, sure.

Q In other words, this agreement, the settlement agreement that your client signed specifically excludes recovery of attorney's fees and costs. Right?

THE COURT: In addition to the $185 million? Is that what you're asking?

MR. SCHMELTZ: Correct.

THE COURT: Okay.

BY MR. SCHMELTZ:

A In addition to the $185 million, it does exclude additional attorney's fees, which might or might not be included in the $185 million.

Q Which may or may not, and there is not any document

ever that you are aware of between Whinstone or Riot on the one hand, and Rhodium on the other, in which Whinstone or Riot expressed an intent to pay attorney's fees and costs as part of the settlement. Right?

A To my knowledge?

Q To your knowledge.

A Yeah, I'm not aware of that document.

Q To be clear, on the chart that we looked at in Exhibit 14 at slide 3, the only claims that you have that have a winning percentage other than -- Well, let's do it this way. Shutdowns on that chart in Exhibit 14 has a winning percentage of 80%. Right?

A A base success percentage, yes.

Q And water has a success percentage of 30%. Right?

A That is correct.

Q Meaning 70% chance you could lose. Right?

A That is correct.

Q ERCOT curtailment, no Uri, has a winning percentage of 70%. Right?

A That is right.

Q And ERCOT curtailment, Uri, has a winning percentage of 60%. Right?

A The base success percentage is 60%. The exemplary damages success percentage is 40%.

Q I'm talking about just on the base claim, 60%. Right?

A Sure.
Q Now, your testimony earlier, let's pause there for a second, was that you weren't ever allowed to plead and prove fraud. Right?
A That is correct.
Q You filed your complaint on February 11th. Correct?
A That is right.
Q The mediation took place on February 19th. Right?
A The first session did.
Q And by April, as we've just looked at in the settlement agreement at 307, by April -- pardon me, by April 28th, the matter was settled entirely. Right?
A I don't recall the exact date, but it was some date in late April.
Q So the fact that you weren't allowed to plead and prove fraud is a timing question. It's not some grand prohibition. You weren't prevented for all times from pleading or proving fraud had the case gone on. Right?
MR. WOLFSHOHL: Objection. Vague, compound, foundation.
THE COURT: Could you rephrase the question?
BY MR. SCHMELTZ:
Q You don't know whether you would have been allowed to plead and prove fraud had the case not settled, do you, sir?
A Do you want me to speculate? I would speculate that I

was never going to be allowed to plead and prove fraud because the Special Committee took the position with respect to the insurance companies and the D&Os that their reliance was unreasonable, unjustifiable, and that is contradictory to the fraud claim we wanted to bring.

Q Had the case not settled, and the litigation team been allowed to either plead and prove fraudulent inducement, or plead and prove duress, for example, that the settlement agreement was obtained under duress, those would be ways to overcome the defense that Riot-Whinstone would mount to an energy credit claim related to Winter Storm Uri. Right?

MR. DISHER: Objection. Vague, foundation.

THE COURT: I'm going to overrule it.

BY MR. SCHMELTZ:

A I don't understand the reference to duress, so I'll put that aside. But fraud would have been a way, in our view the only way to overcome the release that the executive signed, waiving away the rights to the energy credits.

Q And stating the obvious, you don't know what would have happened, because the Whinstone case settled. Right?

A I don't know what?

Q What would have happened with respect to pleading and proving fraudulent inducement, because the Whinstone case settled. Right?

A I do know that the Special Committee took a path which

is diametrically opposite and contradictory to pleading and proving fraud. Whether they would have asked me to contradict them, I can't speculate what they were going to do. But it wouldn't have been a good fraud claim if they're taking a contradictory position with the Ds, Os, and insurance companies.

MR. SCHMELTZ: Your Honor, first I want to move to admit Exhibit 307 into evidence. I realize I'm lagging in my offering exhibits.

THE COURT: Any objection?

MR. DISHER: No objection.

THE COURT: Exhibit 307 is admitted.

BY MR. SCHMELTZ:

Q You also don't know what the Special Committee would have done with respect to a D&O settlement had the Riot-Whinstone litigation not settled, do you?

MR. DISHER: Objection. Calls for speculation.

MR. SCHMELTZ: He's been speculating right along, I suppose.

THE COURT: Yeah, I think he's asking, you don't know, and I think the answer is kind of obvious.

MR. DISHER: Fair enough.

BY MR. SCHMELTZ:

A I don't know.

THE COURT: I'm not sure it's a question, but more

like a statement.
BY MR. SCHMELTZ:
Q The remaining claims on this chart, putting aside attorney's fees, none of them has a greater than 50% chance of succeeding. Correct?
A You mean other than the shutdown, the ERCOT curtailment, no Uri, ERCOT curtailment, Uri for base, you have a couple of attorneys fees. Aside from those, yeah, the numbers are below 50%.
Q Another reasonable way to allocate what was settled would be to allocate the full base amount of winning percentage claims. Right? That would be another way to make an allocation. Correct?
MR. DISHER: Objection. Vague.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Another way that one could allocate amongst the damages is to simply take the base amount of winning claims and add them up. Right?
MR. DISHER: Objection. Vague.
THE COURT: I'm not quite sure I understand the question. Is the question that you would just take the base amount of the claim without any percentage?
MR. SCHMELTZ: Yeah, let me do it this way.
BY MR. SCHMELTZ:

Q The base amount of shutdowns is $8 million. Right?
A That is correct.
Q Winning claim. Right? Greater than 50% claim. Right?
A Is the question whether 80 is more than 50? Yes.
Q ERCOT curtailment, no Uri, $36 million base amount. Right?
A That is correct.
Q Seventy percent chance of success. Right?
A That is true.
Q ERCOT curtailment, Uri, $29 million base amount. Right?
A Yes.
Q Base success, 60%. Right?
A True.
Q If you took the $29, the $36, and the $8, that gets you $73 million. Correct?
A That is correct.
Q And so another way to look at how you got the $75 million would just be to take the base amount of those three winning claims. Right?
A If you wanted to do something incorrectly.
Q Well, there's not a magic rubric for this, is there now, sir?
A A magic rubric?
Q There's not any rubric.

A I mean, I think we do things that are reasonable, and that make sense. Is that a rubric?
Q One of your allegations in your fee application is that the Special Committee is not responsive to requests from your -- you or your counsel to try to resolve your success fee. Right?
A I don't have the application in front of me. I don't think we made allegations, but if you show me the application, I can take a look at the language.
Q Just take one example, paragraph 23. You say, "To that end, shortly after entry of the LKC updated order on July 11th, 2025, LKC's counsel sent email correspondence to Barnes & Thornburg setting forth LKC's proposed allocation and contingency fee calculation, and inviting further discussion. Barnes & Thornburg never responded to the July 11 email correspondence." Have I read that correctly?
A I don't know --
Q You don't know because you don't have it in front of you. Do you recall making that allegation?
A No.
Q Okay.
A I don't know it's an allegation. I mean, I don't recall those exact words. But if you give me a copy of the fee app, I can take a look and read along with you.
Q In fact, do you recall -- Did I use 284?

MR. SCHMELTZ: Your Honor, the fee app is Exhibit 284. And first, I would ask that the witness turn to that, and then we can move to admitted it into evident.

THE COURT: That's a live pleading in this case. I'll just take judicial notice.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q Would you take a look at paragraph 23, please?

THE COURT: 284?

MR. SCHMELTZ: Oh, 284 is the objection on the fee app.

THE COURT: Yeah, 284 is the objection.

MR. SCHMELTZ: I'll just come back to it.

BY MR. SCHMELTZ:

Q I want to talk about this concept that there were not negotiations around your fee. If I might, I'd like you to turn to Exhibit 201. Exhibit 201 is an email exchange between me and Josh Wolfshohl. You and I went through this in your deposition. You recall that. Right?

A Okay.

Q Now, I'd like you to take a look specifically at 201.007, and it's a May 31st exchange. I'm not offering this email to suggest the value of the claim, and I'm not offering it to suggest that anyone has liability. I'm simply offering this to get to the bottom of the reasonable

action by the Special Committee to resolve this claim. And I would ask that you take a look at that email, and let me know if you recognize it.

MR. WOLFSHOHL: Your Honor (indiscernible)

THE COURT: Yeah.

MR. WOLFSHOHL: I do believe this is covered by our motion in limine (indiscernible)

I know the Court has not taken that up now, but this might be an appropriate moment to do so. And our associate, Jacob Richards, is prepared to argue that if the Court wants to hear argument about it right now. But I do believe --

THE COURT: No, I mean, it clearly says that it's 408 discussion. So I'm not bound by -- You know, obviously this is not -- I mean, just stepping back for a minute, whether there were discussions or there weren't discussions, that's not going to impact my ruling. I'm going to rule on what the contract says and what the evidence shows about the contract. So you know, I'm happy to hear this, but you know, this doesn't seem to focus on the contract language and the information regarding that. So I'm going to overrule the objection.

BY MR. SCHMELTZ:

Q So in the middle paragraph --

MR. SCHMELTZ: So first I would move to admit 201

into evidence.

MR. DISHER: And just for the record, we object on 408 (indiscernible) grounds.

THE COURT: I understand. And it's going to be -- It's not admitted for the truth of the matter. It's admitted that there was a communication regarding a proposal made under 408, and you know, it's not -- the proposal itself is not evidence in this case.

MR. DISHER: Thank you, Your Honor. Can I just have a running objection (indiscernible)

THE COURT: You can have a running objection, yes.

MR. SCHMELTZ: Move to admit 201 into evidence.

THE COURT: Yeah, with that caveat, I'll admit 201, subject to the objection.

BY MR. SCHMELTZ:

Q In the third sentence, it notes, "Based on the current tax plan, we see $75 million attributed to the settlement." Do you see that?

A I do.

Q In other words, you were aware as of May of 2025 that the Debtor intended to allocate $75 million to settlement. Right?

A In this particular email, but not in other correspondence.

Q Then it says, "It is my understanding that the $100

million number came from advice given by LKC. We're not likely to use that number. That is the present plan for our taxes." Have I read that correctly?

A You read it correctly.

Q And then there is a paragraph in which there's a rubric for potentially applying the formula in the contract, that says, "We see $50 million of that to energy credits." Have I read that correctly?

A You did.

Q So baseline is $600,000, which is that bucket A

Right? You'd agree with me $600,000 is the bucket A success fee. Right?

A Yes, sir.

Q And then 5% times $5 million is another $250,000. Right?

A That is right.

Q Plus 1% of $45 million is another $450,000. Have I read that correctly?

A You did.

Q And then, the remaining amount is $25 million, and it says, "And 10% times $25 million is $2.5 million." Have I read that correctly?

A You did.

Q For a total of $3.8 million. Right?

A You read it correctly.

Q That is one reasonable way to interpret the contract. Isn't that right?
A No.
Q It goes on to say, "I think there's a number between your $3.8 million and your -- our $3.8 million and your $8.1 million at which we can settle." Have I read that correctly?
A You did.
Q Mr. Wolfshohl responded to me on June 1st. Do you see that, two pages over at LKC 4848, or Hearing Exhibit 201.004?
A I mean, there are some other emails in between, but okay.
Q In his response at 201.005, it says, "Josh, please share this analysis with Trace." And you and I talked about that at your deposition, that's your analysis that you had shared with me. Correct?
A I say it's LKC's analysis. As I think I mentioned at deposition, it is likely that I would have spoken with my colleagues about this. But if you want to call it my analysis, that's fine.
Q At the next page, 201.006, there is a counter that is contingent. Do you see that in that top bullet point?
A I see the word "counter," and I see the word "contingent."

Q And it's contingent on the understanding, on the Debtor's understanding that the brackets are $8.1 million and $5.2 million. Correct?
A That is correct.
Q And then in the last sentence, it says, "If the Debtors want the negotiations to continue, they need to make an offer above $5.2 million." Right?
A That is correct.
Q Take a look, if you would, at Exhibit 291, please.
A Okay.
Q Do you recognize this document?
A I think so. I believe this is the document that you produced in discovery. Yeah, it does look -- it does look somewhat familiar.
Q And this is an analysis of potential estate causes of action prepared for the Special Committee of the Rhodium Enterprises, Inc. Board of Directors. Right?
A That's what it says.
Q And it's dated April 2025. Right?
A Yes, it is.
MR. SCHMELTZ: Your Honor, while this witness certainly isn't a foundational witness for this document, it's been produced in discovery in this case, and that's been produced really to all parties of record in this case as the Special Committee's report. I would ask that it be

admitted into evidence.

MR. DISHER: We object on lack of foundation. We also object on (indiscernible)

THE COURT: Well, I think when you put on Mr. Eaton, he can introduce it and go through the report.

I sustain that objection.

BY MR. SCHMELTZ:

Q When you received the Special Committee's report in Discovery, did you review it?

A Not the whole thing. For one thing, it is heavily redacted, and pages are missing. But I did look at the assertion at the end, that the company has a plausible claim against Whinstone for fraudulent inducement.

Q Well, I was going to ask if you recalled from reviewing it whether the Special Committee took a position with respect to the claims of fraudulent inducement versus the claim of the breach of duty of care around Winter Storm Uri. Just asking if you recall.

A As phrased, no. But -- And I'm looking at it right now on pages 83 to 85, the assertion of the company has a plausible claim against Whinstone for fraudulent inducement.

Q From your reading of the Special Committee's report, the Special Committee actually found there was a plausible claim for fraudulent inducement. Is that right?

A Well, I wouldn't say I read it because I only looked at

this part of it. I don't know, because I was so confused by that last paragraph before the redacted. It just seemed like the Special Committee had a fundamentally mistaken view of fraudulent inducement.

Q Do you recall from reading the report if the Special Committee made a recommendation as to whether the Debtor pursue a fraudulent inducement claim? Do you recall?

A No.

Q Is there anything that I might have that might refresh your recollection as to whether the Debtors -- pardon me, the Special Committee made a recommendation to the Debtors around pursuing a fraudulent indictment claim?

A I mean, I'm looking now at this 83 to 85, which was drawn to my attention earlier. So I looked at this before, I'm looking at it now, and as I said, you know, it's hard for me to get past that paragraph that begins, "Finally -- "

Q My question was, is there anything that might refresh your recollection?

A I don't know.

Q You would look at the last sentence of the first paragraph under the heading Winter Storm Uri on 291.043, and let me know if that sentence refreshes your recollection (indiscernible)

A It does not, and I'm not sure if I ever looked at this page before.

Q Okay. I want to make sure I understand your testimony correctly. The -- No, that's all right. I get it.

We talked earlier about the discount rate, and your application of the discount rate to the power credits. Right?

A We did. But I would call them energy credits.

Q The -- No, I think I've asked that.

MR. SCHMELTZ: Your Honor, may I just have two minutes?

THE COURT: Sure.

MR. SCHMELTZ: I'll just stay on, and collect my thoughts. Thank you.

THE COURT: Can we take a five-minute break? Does that make sense, or --

MR. SCHMELTZ: Yeah, five minutes.

THE COURT: Okay. All right. We'll be in recess for five minutes.

(Brief recess.)

(Back on the record.)

THE COURT: Okay. We're back on the record in case number 24-90448.

BY MR. SCHMELTZ:

Q Turn with me, if you would, to Exhibit 13. This is your Exhibit 13, Plaintiff's LKC 13. This is that February 18th email with the spreadsheets attached to it that you

went through with Mr. Disher on your direct. Do you remember that?

A I do.

Q You were well aware that the Debtors were applying a discount rate in their analyses of the numbers as of February 18th, weren't you, sir?

A I was.

Q And in fact, you noted in this email, in the third bullet point in the paragraph, "As requested," you say, "That is before both pre- and post-judgment interest, likely between $5 and $10 million, and a discount for TVM." Right?

A I did.

Q And discount for TVM is for the time value of money, and that's the discount rate. Right?

A Colloquially speaking, yes.

Q You didn't say in this email that the discount rate should be lower. Right?

A That's correct.

Q You do two things in this email, and you note -- and then, this is that third bullet, "What would change the bottom line would be rosier predictions on the big ticket items, energy credits, and Building D." Have I read that correctly?

A That is correct.

Q And then you say, "If we push up the odds on Uri

exemplaries to 60%, and the odds on Building D to 50%, which I think is high for this claim, the bottom line increases to $183 million." Right?

A You read it correctly.

Q In other words, By tinkering with the percentage likelihood of success, you can change the number, the bottom line number for damages. Right?

A I'm not sure you mean by "tinkering." But yes, if you change the assumptions, the bottom line changes.

Q And your client would be in just as good a position to change those percentages, up or down, as you would. Right?

A No -- I'm not sure you mean by "just as good a position." If you mean if they have the experience and the litigation background to make the assessments of litigation risk the way Stris and LKC did, then I would respectfully disagree.

Q But they have other risks that they could weigh in terms of business risks and the like, like Will Thompson acknowledged. Right?

MR. DISHER: Objection. Foundation.

THE COURT: Can you rephrase the question? I'm not sure exactly --

BY MR. SCHMELTZ:

Q I think your partner, Will Thompson, acknowledged that there were other business risks and the like that your

client would also be in a good position to weigh and evaluate. Right? We saw that in an earlier exhibit?

A My recollection of the email is not the same as yours. But if you're asking me if business people should be in a position to assess business risks, then I agree they should.

Q Okay. I want to ask specifically about this document. You've said that Winter Storm Uri wasn't going to be a topic in the mediation on February 19th. Did I understand your testimony correctly?

MR. DISHER: Objection. Misstates his testimony.

BY MR. SCHMELTZ:

A I think you're phrasing (indiscernible)

THE COURT: Wait a second. Hold on. I'm going to sustain that objection. I didn't hear him say that at all.

MR. SCHMELTZ: Okay.

MR. DISHER: Thank you, Your Honor.

MR. SCHMELTZ: I certainly didn't mean to misstate, so I apologize.

BY MR. SCHMELTZ:

Q Let me do it this way. The complaint that was filed, we looked at it in Exhibit 6, pleaded a breach of contract claim for all of the energy credits, including Winter Storm Uri energy credits. Right?

A We had a breach of contract claim, and we were seeking all the energy credits, that's correct.

Q Including the Winter Storm Uri energy credits. Right?
A Sure.
Q And the complaint in Count 6 said that Chad Harris from Whinstone lied to Rhodium. Right?
A I don't know about a particular account, but we, somewhere in the complaint, did mention that Mr. Harris lied. That's correct.
Q And certainly, as you're expressing here on February 18th, in an email in which you raised the chance of success for exemplary damages related to Winter Storm Uri, that was a topic that would get mediated the next day in mediation. Right?
MR. DISHER: Objection. Vague, foundation.
THE COURT: Ask your question again. I'm --
BY MR. SCHMELTZ:
Q The purpose of -- Let me do it this way. You raised the percentage likelihood of success for exemplary damages on Winter Storm Uri the day before the mediation. Right?
A At the client's request, I gave rosier predictions, and I obliged and I increased a couple numbers.
Q Certainly, if you thought that issue wouldn't be pursued in mediation, or that claim couldn't be pursued, that wouldn't have been one that you raised the chance of success for, would it?
MR. DISHER: Objection. Vague.

THE COURT: Restate the question.

BY MR. SCHMELTZ:

Q Certainly, if you thought the Debtors weren't going to be mediating a claim for energy credits related to Winter Storm Uri on February 19th, the next day, you wouldn't have increased the chances of success of that claim in a model for your client to assess the day before mediation. Right?

A My adjustment had nothing to do with the timing of the mediation. I made this adjustment because the client asked me to make the adjustment.

Q The client didn't tell you which claim to adjust, did it?

A That's correct.

Q You chose Uri. Right?

A I took the big ticket items and increased them because the client wanted to see what a more optimistic spreadsheet would look like.

Q Indicating that you intended to mediate Winter Storm Uri the very next day. Right?

A No.

Q Okay. Take a look, if you would at -- I'm going to have you bounce back to exhibit 307, with apologies for not doing this earlier, 307 in our binder, at 307.009.

Are you there, sir?

A 307.009?

Q Yes, sir.
A Yeah, I'm with you.
Q This is again the settlement agreement in the Whinstone matter. Right?
A Yes.
Q Paragraph 9, "Released by Debtors," you see that?
A I do.
Q That's a complete release of any and all claims. Right?
A Give me a chance to read it. That is correct.
Q The Debtors are releasing Whinstone and Riot for any and all claims, without any limitation. Right?
A It says any and all claims, and I agree I do not see any limitations in this paragraph.
Q Certainly you would agree with me there's a difference between settling a claim, and proving a claim in court. Right?
A That is correct.
Q And you would agree with me that you couldn't plead and prove a claim for fraudulent inducement in one court, and it would probably be hard to go plead and prove a claim for breach of fiduciary duty on the same claim in another court. Right?
MR. DISHER: I'd just object to that --
MR. SCHMELTZ: That's fine. I'll withdraw that.

We can argue it later.
BY MR. SCHMELTZ:
Q Would you take a look for me please at Exhibit 245? Exhibit 245 is a March PowerPoint. I think you first used this in Mr. Blackmon's deposition. Do you recognize this document, sir?
A I do.
Q And if you take a look at Hearing Exhibit 245.007, there are value considerations there. Right?
A I'm with you.
Q And it indicates additional upside Riot derives from a settlement. Do you see that?
A I see that line.
Q "Value of contracts, removal of these contracts creates value to Riot at a lower discount rate, no execution risk." Do you see that?
A I do.
Q And you understood that one of the things that was at issue between Rhodium on the one hand, and Riot-Whinstone on the other hand were these low-cost power contracts. Right?
A Initially in the litigation?
Q Yes.
A Yeah, yeah, those contracts were at issue in the litigation.
Q And you would understand from this type of statement

that the Debtor is indicating that there's value in the settlement for removing those contracts. Right?

A Yeah.

Q If you take a look at the ongoing business value, and the risk to damages low and high case on this page, 245.007, right -- You see that?

A I do.

Q It shows 75 million in the low case. Right?

A For risk damages? Yeah.

Q And the commentary is, "Risk estimates from LCK stress plus or minus $25 million." Right?

A Yes.

Q Do you have any reason to believe, as you sit here today, that this slide, which was presented to the Board of Rhodium, was prepared in bad faith?

A I don't have a reason to believe it was prepared in bad faith.

Q Take a look at the next page, 245.008. Building D at $165 million base amount has a base success of 20% here. Right?

A Yes, sir.

Q And this was presented to the Rhodium Board of Directors. Right?

A It was, at least in March, and then this slide says February 16th, 2025. But it was at least presented in

March.

Q It May have also been presented in February, on the 16th, possibly?

A Correct.

Q Do you have any reason to believe that this slide was prepared and presented to the Board of Directors of Rhodium in bad faith?

A Bad faith? No.

Q Any reason to believe that the allocation of 20% as the likelihood of success for Building D was done in bad faith?

A I don't think it was bad faith.

Q Do you have any reason to believe that that allocation was made somehow to skew a success fee claim by LKC months later?

A No, I don't have reason to believe that.

Q In fact, that claim wasn't even a gleam in anyone's eye in February or March 2025, was it?

A I'm not sure I follow that.

MR. SCHMELTZ: I would move to admit 245 into evidence, Your Honor.

MR. DISHER: No objection.

THE COURT: 245 is admitted.

BY MR. SCHMELTZ:

Q I'd like to draw your attention to 245.002, please. In the header on 245.002, Impact on Valuation, do you see that?

A I do.
Q The middle bullet point is Damages. You see that?
A I do.
Q "View from financing partners suggests risk to value less than $100 million." You see that?
A I do.
Q You understand that. that was a view from potential exit financing partners that was expressed here in this Board slide. Right?
A I have no idea what financing partners said what about anything.
Q The next bullet point is, "Higher risk of exit financing increased discount rate plus or minus 5% rate drives plus or minus $15 million in DCF." Do you see that?
A I do.
Q Here, the risk damages show $50 million to $100 million. Right?
A That is correct.
Q And I think you indicated that you were seeing different discount rates applied at different points in time. Do you have any reason to believe that an increase in the discount rate at any time, here or any other time, was done in bad faith?
A No.
Q Do you understand Kevin Hays prepared this analysis?

A That was my assumption.
Q And any reason to believe that Kevin Hays acted in bad faith in any way, applying the discount rate that he applied and reaching this conclusion?
A No.
Q At Hearing Exhibit 245.003, you see that what was happening at this point in time was there was a comparison of Riot's offer to the pre-mediation valuation. You see that?
A I see the heading that says, "Comparing Riot's offer to our pre-mediation valuation."
Q Are you aware that at this point in time, the Rhodium Board was trying to analyze whether or not to settle the Riot-Whinstone matter, and to determine how much value it could get for doing so?
MR. DISHER: Objection. Compound.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Do you understand that the Rhodium Board of Directors was trying to settle the Riot-Whinstone litigation at this time?
A That was my understanding. The mediation began in mid-February, and the case didn't settle until April. March was in between. My understanding is the Board was still seeking to settle, but at the same time, I recall there were some

ebbs and flows, and things got cold at a certain point, so I can't speak to those details.

Q And that's because when you went to the mediation with Riot-Whinstone, you weren't really involved in the mediation in a meaningful way. Right?

MR. SCHMELTZ: Let the record reflect the witness is looking at his counsel.

MR. DISHER: No objection. I was considering whether to object. I will not object.

THE COURT: Go ahead.

MR. COHN: I have been in trouble for cutting off my counsel before, so when he stood up, I wanted to give him a chance to (indiscernible)

MR. DISHER: Particularly me, for the record.

BY MR. SCHMELTZ:

A I'm sorry, what was the question?

Q That's because when you attended the Riot-Whinstone mediation, you were not heavily involved, were you?

A "That's because -- ?" I'm not sure, what does the "that" refer to?

Q I'm sorry, I was distracted by the tete-a-tete with your Counsel. Let's go back and recollect where I am.

I asked if you -- You and I were talking about Exhibit 245. And in Exhibit 245, I was asking about what was being assessed in terms of mediation and settlement, and you said,

I don't really know very much about that. And I said, that's because you weren't meaningfully involved in the mediation itself. Isn't that right?

MR. DISHER: I'll just object. It mischaracterizes the testimony.

THE COURT: I don't think he's asking about the testimony. I think he's just asking the question -- Overruled.

BY MR. SCHMELTZ:

A Meaningfully involved. So I was at the first session, I was not after that. That's true. And at the first session, we didn't spend much time with the mediator.

Q In fact, you spent about nine or ten hours in a room without the mediator. Isn't that right?

A That sounds right. It was a long time.

Q You didn't have an opportunity to really present your litigation case to the mediator during that mediation. Right?

A That is true.

Q And at the end of the day, the SAFE AHG came out and said they had a proposal, but they weren't prepared to make it. Isn't that right?

A Well, they did make a proposal.

Q Did they make it that day?

A I believe they did.

Q Okay. And that proposal then was less about settling the litigation, and more about the transaction. Right?
A I recall it was an amount for $170-something million. I thought that that was for everything, both the business assets and the litigation -- Yeah, I can't remember exactly what the SAFEs proposed at the end of that day, but it was a lower number. I don't recall much beyond that.
Q You never had a conversation during the course of that mediation or after about how much of that $170-plus million in consideration would go to damages or assets. Right?
MR. DISHER: Objection. Vague.
THE COURT: Yeah, why don't you ask -- Rephrase the question.
BY MR. SCHMELTZ:
Q You did not -- I can ask it again, and differently. You weren't involved in any conversations with Riot-Whinstone about how much of that figure would be related to damages versus assets, were you?
A That's correct.
Q And you haven't been involved in any of the tax allocation conversations between Riot-Whinstone on the one hand, and Rhodium on the other. Right?
A That's also correct.
Q You haven't been involved in any conversation with Riot-Whinstone in which you learned why Riot-Whinstone paid

the amount of money it paid. Right?
A That's true.
Q And so fair to say your client is in a better position to understand what had settled with Riot-Whinstone than you are. Isn't that right?
MR. DISHER: Objection. Vague, foundation, speculation.
THE COURT: Sustained.
MR. SCHMELTZ: I always love ending on an objection that gets sustained, but I -- And they teach you not to do that, but I'm going to do it.
Thank you, Your Honor, for your time.
THE COURT: Thank you.
MR. DISHER: Your Honor, I have a brief redirect.
THE COURT: Go ahead.
MR. DISHER: I'm going to take a second to get the binders up there.
REDIRECT
BY MR. DISHER:
Q Okay. Mr. Cohn, let's pick up on Special Committee Exhibit 245 that you've been talking about. Are you with me?
A Yes, sir.
Q And you were asked about some changes, and whether you thought there was any bad faith. Do you remember that?

A I do.
Q Now, the changes that were made that you walked through, do you think those changes were correct?
A I do not think those changes were correct.
Q Why not?
A Well, the main change that we're talking about here is lopping off the $25 million from the $100 million expected collection that is on 245.008. We previously discussed that I disagreed with the reduction of Building D from 40% to 20%, and I still disagree with that. With that 20%, however, and with the 25% discount rate, we still end up with an expected value, an expected collection of $100 million.

And then, what you see here on the 245.002 is the unexplained reduction by an additional $25 million. That appears to me to be baseless. I see no grounds for the additional $25 million. So I'm not saying that anyone operated in bad faith, but I don't see a basis for this. It strikes me as erroneous.

Q Let's break that down real quickly. So if we look at 254.008, the expected value -- or excuse me, the expected collection listed here is $100 million. Right?
A Yes, sir.
Q That's consistent -- or is that consistent with the amount that LKC has used in its fee application?

A It's the exact amount we're using in our fee application for the total litigation value.
Q And then if we look at the chart that was presented to the Board on March 5th, what is the high-end range that the Board, even after all these discounts, was given on March 5th?
A That's still $100 million.
Q Is that consistent with the LKC fee application?
A Not only consistent, but identical.
Q Now, lastly, on 245, let's go real quickly back to the last page, 254.008. These slides were presented to the Board in March?
A That's my understanding.
Q And as of March, what is the comment next to the claim for ERCOT curtailment, Uri?
A It's the same comment as before. This assumes we are allowed to plead and prove fraud.
Q And you weren't, were you?
A We are not.
Q Let's go back to the beginning of your cross-examination, when you were asked to do some numbers, some math on the fly. Do you remember that?
A I do.
Q And you repeatedly said the premise is incorrect. Do you remember that?

A I do.
Q What was incorrect about the premise from the questioning from opposing Counsel?
A So when you reduce the litigation value by 25%, when you go from $100 million to $75 million, you should be consistent. If you're going to knock off 25% from the total, you should knock off 25% from each of the two constituent parts. You knock off 25% of the energy credits, and you knock off 25% of the other damages. That's what you should do. And what Mr. Schmeltz was doing was he was not touching the energy credits. He was keeping the $20.96 million. And instead, he was taking all the deduction, the entire $25 million deduction from the additional damages.
Q Okay. I next want to turn to Special Committee Exhibit 307. This is the compromise settlement and release agreement.
A Yes.
Q You were asked about section III.25 on Hearing Exhibit 307.011. Do you remember that?
A Yes.
Q What is your understanding of the effect of Section III.25 of this settlement and release agreement?
A What this means is, aside from the $185 million consideration, there is not going to be any other payment to either side for attorneys' fees and costs.

Q Is that, in your opinion, the type of release of those potential claims for fees and costs?
A It's the standard release that you're going to see in agreements. It doesn't have any bearing one way or another as to whether the $185 million includes one bucket or another for litigation value.
Q Now let's go to the prior page, 307.009. And you were even asked about the section I want to talk to you about, III.9. Do you see that?
A I do.
Q What, in your understanding, is the importance of that provision?
A It's a standard release. Obviously, if you're going to be paying someone $185 million, you want a release from all the claims at the end so that they can't sue you after getting $185 million, especially whereas here, the $185 presumably includes a whole lot of litigation value. You don't want to be sued twice.
Q Is there some type of relationship in your mind between the release at III.9 and the release of costs and fees at III.25?
A I just think they're both standard provisions that you have in contracts. When you pay a whole lot of money, you want to be clear that, number one, you're not going to be sued twice, you're getting a release. And number two, you

can't be hit up for additional attorney's fees, especially whereas here, those attorney's fees might be part of the $185 million that you paid.

Q And if we look at the release in III.9, the release of all claims, do you understand anybody to be arguing that because of that release, none of the $185 million should be attributable to damages?

A Yeah, I don't think this little provision here has anything to do with the allocation of $185 million for damages.

Q Right. Now, you were also asked about the calculation in one of the Special Committee's emails back to you. Remember that back and forth about how to calculate? We can look at it if you don't remember that.

A I'd rather look at the numbers, sure.

Q Okay. Let's go to Special Committee Exhibit 201, and it's on page 201.007.

A Yes.

Q In the middle of the page, you see this formula that opposing Counsel walked you through?

A Yeah.

Q Your testimony was, this is not a reasonable way to interpret the contract. Do you remember that?

A I do.

Q Why is this an unreasonable way to interpret the

contract?
A Because he's allocating $50 million to energy credits. And he's also using the $75 million. So I think both of his assumptions are incorrect.
Q Let's look at Special Committee Exhibit 259. I just want to make sure we have the timing right on this. Are you there?
A I'm sorry, which one?
Q Special Committee Exhibit 259. This is the email from Mr. Thompson.
A Yes.
Q What is the date of Mr. Thompson's email?
A It's February 12th.
Q Is it the same day that the Board was meeting?
A Same day, yes, that is correct.
Q Is it your understanding whether or not Mr. Thompson is commenting on slides that were presented at the Board on February 12th?
A Yeah, and actually, it looks like based upon the time and the language of the email, the Board meeting might already have begun.
Q But to answer my question, Mr. Thompson, to your understanding, is he commenting about the materials that were being presented to the Board on February 12th?
MR. SCHMELTZ: Your Honor, calls for speculation.

MR. DISHER: I'm just asking whether he has an understanding one way or the other.

THE COURT: Ask him if he knows.

BY MR. DISHER:

Q Do you know one way or the other?

A One hundred percent sure, no. But this is on --

MR. SCHMELTZ: Move to strike everything after "Not 100% sure." Not foundation.

THE COURT: Let him finish the answer, and then we'll consider that.

MR. SCHMELTZ: Thank you.

BY MR. DISHER:

A I'll say if you look at this email chain, it is talking about the damages template on February 12th, and it's talking about the tables in my presentation on February 12th. And then, the comment is about that presentation. So I can't say there's any kind of metaphysical certainty. But looking at this email chain, which I was not on, it certainly, it does look like they're referring to the February 12th presentation.

Q Does this email chain refer to any other change that was made to the damages chart after the February 12th presentation?

A No.

Q Okay. And then finally, let's go to -- You were asked

about expected percentages of success on various different claims. Do you remember that?

A Correct.

Q Mr. Cohn, have you repeatedly represented corporations facing class action lawsuits?

A That is correct.

Q Have you seen repeatedly whether any of those class action claims have a less than 50% success rate?

A I would say the overwhelming majority have less than a 50% success rate.

Q In those cases, have you seen corporate clients settle those claims for some amount of expected damages?

A All the time, as they probably should. Look, if there's a 40% chance of paying $1 billion, you don't ignore that risk.

Q If you had a 5% chance of success on a $1 billion claim, would you pursue it?

A Five percent chance on a $1 billion? Yes. I mean -- Yes.

Q As your partner, I certainly hope you would.

MR. DISHER: I have nothing further. Pass the witness.

THE COURT: Mr. Schmeltz?

RECROSS

BY MR. SCHMELTZ:

Q I think you said that the Building D movement to 20% was wrong. Did I -- and I'm not putting words in your mouth, but if I have it wrong, let me know.

MR. SCHMELTZ: I got a quizzical look for giving somebody their property back, for crying out loud. Just being a nice guy.

BY MR. SCHMELTZ:

Q Did I have that correct, you thought it was wrong?

A Reducing the odds to 20%, yes, I do.

MR. SCHMELTZ: Your Honor, I don't know how exactly you want me to proceed. I've got -- In our exhibit designations, we left open the ability to designate exhibits for rebuttal purposes. And I have a rebuttal exhibit, and with my apologies to everyone, I only have two copies. I managed to take a photo of it with my iPad so that I can read it, but I can give one to Counsel to take a look at, and give one to Your Honor, and then I could take Counsel's version to the witness, if that is all right.

THE COURT: Okay.

MR. SCHMELTZ: May I approach, Your Honor?

THE COURT: Yes.

MR. SCHMELTZ: We will bring more copies.

MR. DISHER: Your Honor, can I have a couple minutes just to read this?

THE COURT: Sure.

MR. DISHER: Okay. We've had a chance to review.

THE COURT: Okay. Your Honor, may I take Counsel's copy to the witness?

THE COURT: Yeah, go ahead.

MR. DISHER: Can I just read off of your screen (indiscernible)

BY MR. SCHMELTZ:

Q I think that you testified earlier in response to questions from Mr. Disher that your recollection was that, or understanding was that no one from your team was consulted on the Building D change from 40% to 20% as well. Did I understand your earlier testimony correctly?

A I think you might be paraphrasing it, and I guess there's a question of the word "consulting." But if you want to ask me a question, I'm happy to answer it.

Q Okay. These are meeting minutes of the Board of Directors of Rhodium Enterprises for February 16th, 2025. Do you see that?

A I do.

Q And it indicates that --

MR. DISHER: And Your Honor, I'll just interject at this point. We object to this line of questioning. I don't think he's the proper witness to authenticate this, and it appears to be hearsay as well.

THE COURT: Yep, if you're going to -- I mean, if

you're going to ask him questions about it, it has to be in evidence.

MR. DISHER: And also, I think this is an improper rebuttal exhibit. I mean, Mr. Cohn made his position on this line of questioning clear during his deposition. He easily could have included this on the witness and exhibit list.

MR. SCHMELTZ: So Your Honor, what I do here is I'd like to make a very short proffer on this point, and then we'll attempt to bring this in through another witness.

MR. WOLFSHOHL: But it's still not on his exhibit list, Your Honor.

MR. DISHER: Yeah, I mean, he didn't include it on his exhibit list --

THE COURT: Well, I mean, this is a rebuttal exhibit, so I'm going to let him use a rebuttal exhibit.

MR. DISHER: But I mean, just so that the record is clear, it's not a proper rebuttal exhibit when they knew that this was our position from, you know, prior, including during the deposition. They had ample time to have included it on the exhibit list. I think rebuttals are meant to be for when something is unforeseen, that you didn't expect, testimony you didn't expect it.

THE COURT: Well, what are you trying to use this for?

MR. SCHMELTZ: Well, Your Honor, it's clear from the Board meeting itself, and I can have witnesses who were there testify to it without the minutes, that Will Thompson and John Stokes were present at the meeting, and this is where --

I'm making a proffer, Counsel, if you'd just let me.

-- were present at the meeting, and were consulted on the change from 40% to 20%, and are recorded in the minutes as agreeing, as seeing that as reasonable. So --

THE COURT: I mean, but -- okay. So when you get this document admitted, I mean, it's --

MR. SCHMELTZ: Well, I'll either get it admitted, or --

THE COURT: Have someone testify.

MR. SCHMELTZ: Or someone will testify. Fair enough.

THE COURT: (indiscernible) proper --

MR. SCHMELTZ: (indiscernible) That's fine. I'll end on yet another whimper today, but we know where we're going for another day.

BY MR. SCHMELTZ:

Q All right. You -- In your engagement letter from March of 2025, which was your Exhibit 2, Section D of the

potential success fee provides that, "The client and Lehotsky Keller Cohn, LLP will determine in good faith the portion of transaction value to the client allocable to the energy credits and damages specified in Sections B and C." Right?

A You read it correctly.

Q And it then goes on to say that if you can't do that, the dispute gets resolved by the Court. Right?

A "That the client and Lehotsky Keller Cohn, LLP are unable to reach a resolution regarding the amount of fees payable under Sections B and C, including with respect to the allocation of transaction value allocable to the energy credits and damages, such disputes shall be resolved by the Bankruptcy Court." That's --

Q I'm sorry, is that a yes?

A I'm sorry, could you repeat the question?

Q And then it provides that if the parties can't in good faith resolve the dispute, it will be resolved by the Court. Right?

A Yeah, that's right.

Q There's not anything in this agreement that sets out how the parties are to go about determining how an unallocated settlement should be allocated, is there?

MR. DISHER: Objection. Outside the scope of redirect.

THE COURT: How is that within the --

MR. SCHMELTZ: I'm going to connect it in one more question.

THE COURT: All right, I'll let -- I'll give you some leeway.

BY MR. SCHMELTZ:

A Well, it does say they should determine it in good faith.

Q And then it says if they can't, the Court would resolve it. Right?

A That's true.

Q And there's not anything that points the Court to what specifically it should look to, is my question.

A I think we read the entirety of the language.

Q So there's not. Right?

A Well, the Court has to make its own determination consistent with principles and interpretations of the contract law. I wouldn't ignore all that. But you're asking by the words on the page, and there aren't other words on the page that bear upon that determination.

Q And so there's nothing in this agreement that suggests the Court needs to go through the settlement rubric that you presented to the client with your percentages of chance of likelihood of success, and your base amount of damages to determine how much should be allocated to settlement, is

there?

MR. DISHER: Objection. Vague, compound.

THE COURT: I'm going to overrule that.

BY MR. SCHMELTZ:

A Yeah, certainly, this agreement does not specifically cite any particular exhibit or spreadsheet or other methodology.

Q Thank you.

MR. SCHMELTZ: I have no further questions.

MR. DISHER: Nothing further.

THE COURT: All right. Thank you, Mr. Cohn. You may step down.

MR. COHN: Would you like me to leave the binders up here?

THE COURT: Go ahead, just leave them there. Thanks.

MR. DISHER: Your Honor, Lehotsky Keller Cohn calls Chase Blackmon.

THE COURT: Okay.

You've got plenty of water?

MR. BLACKMON: Well, I'm almost out. But I'll survive. Is this for me, or is this left behind?

THE COURT: Oh, it was a present.

MR. BLACKMON: Yeah. (indiscernible) bricks of presents.

MR. SCHMELTZ: Your Honor, before we proceed with the witness, I have a witness who would like to go (indiscernible) it seems unlikely to me today we'll get to him (indiscernible) may I excuse him?

THE COURT: Yeah. I mean, how long do you think we're going to be --

MR. DISHER: Ten minutes or less.

MR. SCHMELTZ: I have other people I would (indiscernible)

THE COURT: Okay, yes. Go ahead.

Mr. Blackmon, would you raise your right hand, sir?

Do you solemnly wear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. BLACKMON: Yes.

DIRECT EXAMINATION

BY MR. DISHER:

Q Good evening, Mr. Blackmon. How are you?

A I'm good. I look a little shiny this part of the day, but I'm well. How are you, sir?

Q I'm doing well. So Mr. Blackmon, you've been either the CEO or co-CEO of Rhodium for how many years?

A Two-and-a-half, maybe going on three at this point.

Q And your current title today is what?

A CEO and Chairman of the Board.

Q You've been with Rhodium since the beginning of its litigation with Whinstone?
A Yes, sir.
Q That's been about two years or more?
A Yes.
Q Whinstone in that litigation was very aggressive.
A I believe so, yes.
Q They were relentless, even?
A Indeed.
Q They took every shot on goal?
A They did, yeah.
Q Rhodium hired Lehotsky Keller Cohn to join the Stris litigation team. Correct?
A Yes, sir.
Q Together, Stris and LKC won everything for Rhodium?
A Yes.
Q You actually said, "I've never seen a team of winners win so perfectly and with such consistency." Do you remember that?
A I do.
Q Stris and LKC secured multiple emergency orders to keep Rhodium alive before it filed for bankruptcy. Correct?
A Yes.
Q And you, of course, agree that LKC deserves a contingency fee based on the contract that we have with

Rhodium?
A Yes.
Q Now, despite all that winning, before bankruptcy, Rhodium was having cash flow problems?
A Yes.
Q At the time Rhodium entered bankruptcy, Rhodium was running out of cash.
A Yes.
Q You know that Whinstone didn't think much of the value of Rhodium during that litigation?
A So I heard.
Q And I believe the quote was that, "Whinstone would buy Rhodium for $1."
A That's what I heard.
Q And Rhodium was also unable to get alternative financing before it filed for bankruptcy?
A Yes, sir.
Q After filing for Chapter 11, Rhodium got DIP financing?
A Yes.
Q That DIP financing was critical for the continuation of Rhodium's business. Right?
A Yes.
Q The DIP financing represented the best and only source of post-petition financing?
A At the time, yes.

Q But Rhodium, of course, was unable to get exit financing.
A Well, yeah. I think we chose not to proceed with pretty aggressive exit financing, yes.
Q Rhodium couldn't live with the terms of the exit financing.
A Right.
Q Even though Michael Robinson and the Province team tried.
A Oh, there was definitely a valiant effort.
Q But in the end, they just simply couldn't get terms that would allow Rhodium to survive.
A Without -- I mean, taking into account the risks associated with taking, you know, expensive money, we decided it was best to settle with the Whinstone folks instead, yeah.
Q But of course, you agree that at the time of the settlement, Rhodium also had valuable damages claims against Whinstone?
A (indiscernible)
MR. SCHMELTZ: Your Honor, I'm going to object. This is leading. And I understand the oddity of that objection, but this isn't necessarily an adversity scenario. Mr. Blackmon is the CEO of the Debtor, and was actually pursued by the Special Committee. I think Counsel needs to

establish some adversity between the attorney for a long-time client who's called his attorney winners before we (indiscernible)

MR. DISHER: And may I respond?

THE COURT: Yes.

MR. DISHER: Federal Rule of Evidence 611(c)(2), A party can proceed through leading questioning if a party calls an adverse party, or witness identified with an adverse party.

Now, we have made --

MR. SCHMELTZ: (indiscernible)

MR. DISHER: Hold on. We've made a request for fees, Rhodium has objected to that request. So this is the definition of when this type of questioning should be allowed.

MR. SCHMELTZ: Not at all. That's exactly my point. He's neither an adverse party, because the adverse party is the Special Committee, and he's not identified in an adversary. That's why that 611 doesn't apply (indiscernible)

THE COURT: Well, I don't know the answer to the question, so I'm going to sustain it. But I'm going to let you brief it, and we can come back and ask him questions leading again.

MR. DISHER: Okay.

BY MR. DISHER:

Q While Rhodium -- Well, let me say it this way. Before Rhodium entered into the settlement and release agreement with Whinstone, was it your understanding one way or the other whether Rhodium had valuable damages claims against Whinstone?

A Yes, I thought the claims were valuable.

Q Did you review draft complaints that the Stris and LKC team drafted against Whinstone?

A Yes.

Q Do you remember what you referred to that final version of the complaint as?

A Oh, something -- masterpiece something or other.

Q Did Rhodium ask LKC and Stris to value the damages claims?

A Yes, sir, on multiple occasions.

Q Do you have the yellow binder?

A Yes. It's a big boy.

Q If you turn to Tab 14, please, which is for the record LKC Exhibit 14. You see that?

A Yes, sir.

Q Have you seen this exhibit before?

A I think so. This is one version of that slide deck, I think. Yes.

Q If we go to slide 3 of Exhibit 14 --

A Okay. Yes, sir.
Q Do you understand one way or the other whether this chart here reflects the Stris and LKC teams' attempt to value Rhodium's damages claims against Whinstone?
A Yes, I believe this is the -- this chart in particular on page 3 is one of the versions that you guys put together for us.
Q Mr. Blackmon, do you have any reason to doubt that the Stris firm gave its best estimates regarding the numbers that went into the chart on Exhibit -- well, on page 3 of Exhibit 14?
A Any reason to doubt that the Stris team gave its best effort to come up with the numbers? Is that right? No, I don't.
Q Likewise, do you have any reason to doubt that the LKC team gave its best efforts to come up with the numbers that are reflected on page 3 of Exhibit 14?
A No. But I think that y'all gave your best effort.
Q You have no reason to doubt?
A No reason to doubt.
Q Okay. Rhodium settled with Whinstone, ultimately.
A Yes, sir.
Q For how much?
A $185 million.
Q And is it your understanding whether part of that $185

million was for damage claims?
A I would imagine, yeah, some of it's for damages.
Q Right. And we know that Province failed to get exit for Rhodium. Right?
MR. SCHMELTZ: Objection. Leading.
THE COURT: (indiscernible)
MR. DISHER: I can rephrase it.
THE COURT: Yeah, why don't you rephrase it?
BY MR. DISHER:
Q Do you know whether Province was successful in getting exit financing for Rhodium?
A Not on terms that we were willing to take.
Q If we turn to slide 7 of Exhibit 14, you see the first bullet point there? I'm just going to read it. "Energy contract should be worth more to Riot than to Rhodium and another buyer." Do you see that?
A Yes, sir.
Q Do you have any understanding of what that bullet was trying to convey to the Board during this February 12th meeting?
A Sure. Riot was, you know, I believe that they came out and said that they were losing money on Rhodium's contract to -- I think it was like $2 million a month, something like that. And so therefore, you know, they would be able to reap the low energy cost that we were, you know, getting

less, and also take off the additional $2 billion burden.
Q Now, another buyer of Rhodium wouldn't be -- Or would -- Let me phrase it a different way so I don't get an objection. Would another buyer of Rhodium be able to experience that same benefit?
MR. SCHMELTZ: Your Honor, objection. Lack of foundation.
THE COURT: I think he's trying to address the "and other buyer question." So I'm going to overrule that.
BY MR. DISHER:
A Okay. No, I don't -- I don't think so.
Q And just explain that to the Court.
A Well, there's -- Riot, because they were losing $2 million a month on the energy contract itself, you know, whether it was Rhodium or any other buyer, they wouldn't automatically be getting that additional $2 million savings like Riot would.
Q Right. Now if we look at the second bullet in that section, do you see that, it says Rhodium? Do you see that?
A Yes, sir.
Q We can read it. "Rhodium-Whinstone contracts valuable, but need to be deployed in a business with significant risk, market volatility, execution, future litigation." Did I read that right?
A Yes, sir.

Q Do you have any understanding what the "future litigation" that's mentioned there is referring to?
A I mean, I think it's kind of a similar situation as above. If Rhodium were to continue, you know, fighting the good fight, so to speak, and try to continue deploying assets, capital, resources, etc., or just OpEx into the Whinstone Rockdale facility, you know, I think we said this before, Whinstone had -- it seemed as though they had a track record of taking every shot on a goal, I would have expected them to continue being aggressive.
Q And so this is specifically referring to litigation against Whinstone.
A Right.
Q Now, the next bullet point says, "Another buyer likely has similar risks in assuming the contracts." Do you know whether that phrase, "similar risks," is referring to things like future litigation against Whinstone?
A Yes.
Q Explain that.
A I've talked with many folks who were, you know, interested in a buying Rockdale site from us, but they just couldn't get over the hurdle that they might have to take on Riot at some point in the near future too, unfortunately, in litigation and such.
Q You were at the February 12th Board meeting?

A I visit pretty much every Board meeting.
Q Was there an effort after the February 12th Board meeting to push down the value of the damages claim?
A My memory's a little spotty on exactly which Board meeting you're referring to.
Q The February 12th, the slides we were just looking at.
A These? Okay.
Q After this meeting, do you remember an effort to push down the value of the damages claim?
A An effort to push down the value -- I know the value definitely did go down for various reasons.
Q Do you remember testifying that Michael Robinson and David Dunne were trying to push down the value of the damages claim?
MR. SCHMELTZ: Now this is improper impeachment, with (indiscernible)
MR. DISHER: I haven't impeached him. I'm asking whether he remembers testifying to that.
THE COURT: Overruled.
BY MR. DISHER:
A Can you say that one more time?
Q Yes. Do you remember testifying during your deposition that Michael Robinson and David Dunne were trying to push down the value of the damages claim?
A If I said it like that, I'm surprised. But I think I

know where you're going.
Q I'll just ask you, after the February 12th Board meeting, do you remember an effort to try to push down the value of the damages claim?
A Okay, I would say --
MR. SCHMELTZ: (indiscernible)
MR. DISHER: He hasn't answered it yet.
THE COURT: Overruled.
BY MR. DISHER:
A Okay, so let me say it in a way that I would say it. Okay, like, was there an effort made specifically to try to drive the value down? I really wouldn't say it like that. I would say that there was a new circumstance which necessitated revisions of the numbers, given new information.
Q But you never heard any lawyer tell you that the damages claim should be between $50 million and $100 million, though. Right?
MR. SCHMELTZ: It's leading. Objection, leading.
THE COURT: Why don't you rephrase, sir?
BY MR. DISHER:
Q Do you ever remember any lawyer telling you that the damages value, the value of the damages claim should be between $50 and $100 million?
A Not that I recall.

Q Okay. Do you remember that, or do you remember whether LKC and Stris were willing to take the damages claim on a pure contingency?

MR. SCHMELTZ: Your Honor, objection. Relevance.

MR. DISHER: I'm happy to respond.

THE COURT: Yeah.

MR. DISHER: It goes to what the litigation team's perspective was of the value of the damages claim, and how confident we were in our ability to recover it.

MR. SCHMELTZ: That doesn't go to the formula in the contract.

THE COURT: I'm sorry, what did you say?

MR. SCHMELTZ: That doesn't go to the formula in the contract, their confidence.

THE COURT: Well, it goes to the quantum of damages. So I'm going to overrule the objection.

BY MR. DISHER:

Q Would you like me to ask it again?

A If you don't mind. Thanks.

Q Sure. Do you remember whether LKC and Stris were willing to take the damages claim on a pure contingency?

A Oh, yeah, I remember we had discussions about it. I remember Mr. Cohn and the folks over at Stris definitely entertained it. And I was very appreciative of that, by the way, guys. I really do. I do not remember if it was pure

contingency, or if there were some other components to it. But I'm pretty sure there's emails and whatnot.

Q Do you remember both firms enthusiastically responding that, yes, we'd be willing to take it on pure contingency?

A I do, yes.

MR. DISHER: Give me one minute, please.

BY MR. DISHER:

Q Do you remember whether Whinstone ever told Rhodium that -- Well, let me phrase it differently. Did Whinstone ever tell you that they were paying you money because of the Uri energy credits?

A Not that I recall.

Q Finally, let's look back at slide 3 of Exhibit 14. If you look down in the expected value column, you see the total $158 million?

A Yes, sir.

Q And you understand that that number is the litigation team's estimate of the expected value of all of Rhodium's damages claims?

A Yes.

Q You lived this case.

A Every day.

Q You believed this case?

A Absolutely.

Q If you were in Las Vegas, would you take the over or

the under on Rhodium collecting $158 million in damages?
A Instantaneously, in that moment?
Q Yeah.
A And if it's a penny short, then I lose? Sorry. Would I take the over or the under? I'm not a gambling man. Well, if it's a simple question, I think I would have to take the under.
Q That's -- again, that's not what you testified to in your deposition.
A Oh, okay.
Q I'm happy to show that to you, if you'd like. So let me just ask you again. If you were given Vegas odds, would you take the over or the under on Rhodium collecting $158 million in damages?
MR. SCHMELTZ: (indiscernible) do not just get to say (indiscernible) That's not right.
THE COURT: All right. Well, show him the deposition, and we'll go through that.
MR. DISHER: Sure. Yeah. (indiscernible)
THE COURT: Do you want me to -- Do you still have rights, or --
COUNSEL: No, I need them again, please. (indiscernible)
THE COURT: (indiscernible)
MR. DISHER: And it's page 199 (indiscernible)

COUNSEL: 199?

MR. DISHER: Yes.

MR. BLACKMON: Studied those depositions a little bit?

MR. DISHER: Say again?

MR. BLACKMON: Studied the depositions a little bit?

COUNSEL: 199?

MR. DISHER: 199. You know what? It might be in our binder.

THE COURT: Yeah, it's in your binder, page 199, Exhibit number 26.

MR. DISHER: 26 -- Thank you, Your Honor.

BY MR. DISHER:

Q So Mr. Blackmon, are you with me?

A I'm getting there.

Q Okay. Tab 26, page 199.

A Yep

Q Line 16. You see that?

A Mm-hmm.

Q And you were asked, "If there were Vegas odds on this, and you could take the over or the under, what would you do? A. Over or under on? Q. The $158. A. Of like, what I thought we could get in a settlement? Q. No. If we litigated this thing to the end, over or under, do you think

LKC Stris beat Whinstone again? Would you take the over or the under? A. I mean, it's speculation. Right? I lived it. But, I almost forgot the but, but I lived this, I believed in the claims, I'd take the over."

That was your testimony. Right?

MR. SCHMELTZ: No, no, that's not a prior inconsistent statement. What the witness said here today, was, "I'm not sure. I'd take the under." Here he said it was speculation, "I'd take the over." It's not an inconsistent statement. It's not a proper (indiscernible)

THE COURT: Overruled.

BY MR. DISHER:

Q That's what you testified to?

A Yes.

Q That you'd take the over on the $158?

A Yep.

MR. DISHER: Nothing further.

THE COURT: All right. Mr. Schmeltz?

MR. DISHER: Thank you, Mr. Blackmon.

MR. BLACKMON: Thank you, Mr. Disher.

CROSS-EXAMINATION

BY MR. SCHMELTZ:

Q You were just asked about the over or under on a claim. What if here, in this situation, you'd agree with me that to get to $158 million was going to take a fair amount of time,

energy, and resources for Rhodium to continue to litigate against Whinstone. Right?

MR. DISHER: Objection. Leading.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Did you have a view one way or the other?

MR. DISHER: A view -- Objection. Vague.

THE COURT: Well, I don't think he's finished his question.

MR. DISHER: Oh, I'm sorry. I apologize.

MR. SCHMELTZ: Well, I was just going to comment how it's great that sauce for the goose is sauce for the gander (indiscernible)

THE COURT: (indiscernible) I mean, I might have to recall you, but he can leave. So --

MR. DISHER: Yeah, that's fair.

BY MR. SCHMELTZ:

Q Do you have a view one way or the other as to whether it would take a significant amount of time, money, and effort for Rhodium to litigate with Whinstone, and achieve that kind of $158 million value?

A At the time when we were having to make the decision?

Q Yeah.

A Yes, we had discussions about that.

Q When you're talking Vegas odds, like Vegas pays out

immediately. Right? That's a different question. Right?
A Yeah.
Q Did you have an understanding one way or the other as to whether this litigation would pay out the same way Vegas pays out?
A No. My understanding was it would take a, you know, considerable amount of time.
Q And in fact, take a look at TX 212, Exhibit 212 in our binder. Our binders are the white ones.
A Okie doke.
Q And this is an email exchange of 10 February 2025. You're asking questions of @JonCohn and @JohnStokes. Right?
A Yes.
Q And you see where it says, "Kevin and I were reviewing the exit financing term sheets we have received from Invesco and Galaxy, and it appears we're going to need to have the damages collected within roughly one year to be able to survive these aggressive financing terms." Have I read that correctly?
A Yes, sir.
Q What were your concerns, sir?
A Runway.
Q And how much would the claims have been worth to Rhodium if Rhodium ran out of runway?
A I'm not a lawyer, but I'm going to assume a lot less,

if not zero.
Q And the question that was asked of you was, did your lawyers believe in the value of these claims? Remember that? Were they ebullient, did they want to take it on contingency? Remember all that?
A Yes.
Q Well, did the client's view of the value of these claims change over time?
A I would say yes on some, no on others, you know? Bullish on, you know, a good chunk, and other factors impacted, you know, feelings about others.
Q What were you bullish on?
A The shutdowns. I felt like that was really strong. That seemed very strong. I think the energy credits seemed very strong. And I think that lines up with how the litigation team felt as well. Well, I could find that chart to help me, but those are the two that jump out at me.
Q You ask a few questions here. You ask about collectability, timing, and reliability. What were you trying, what concerns were you trying to convey to your legal team in this email?
A We were trying to decide between taking expensive, very expensive dollars to continue fighting the good fight, so to speak, right, and you know, taking it all the way with Whinstone. We were trying to compare and contrast that

with, you know, what a settlement scenario might look like if we found ourselves in one. I don't think at this time, but maybe the mediation was already scheduled. I don't remember. But I knew that if we took the money from, you know, Galaxy or Invesco, we'd be on a clock, countdown to D-Day, so to speak. And so I needed to know, you know, if we win, awesome, that's great. You know, how soon can we -- you know, do we think we'll be able to recover those funds, and how quickly would they be paid to us? And then, you know, I guess the reliability of it, how do they -- how is the litigation team that we can rely on the collectability and timing of this to help us make decisions on where we go from here?

Q Were you concerned one way or the other that Rhodium might run out of money, or have to pay back money with funds it didn't have before it could collect on this litigation?

A Yes. Yes.

Q And did that impact one way or the other your view of the value of the litigation? Of the damages claims, I should say?

A Did it impact? I mean, it certainly was a factor worth considering. I think that we had already applied a discount rate to the damages, which is, you know, supposed to help account for some of those things, you know, time value of future cash flows. But yeah.

Q Can you please take a look at TX 245 in your binder?
A Yes, sir.
MR. SCHMELTZ: Somebody -- Mitch, you need to mute.
BY MR. SCHMELTZ:
Q Take a look with me please at 245.002. First of all, do you recognize this as a presentation that was made to the Rhodium Board of Directors?
A This looks like the presentation that was -- Yes, it is.
Q Do you recall participating in Board meetings in which this type of information was presented to the Board?
A Yes, sir.
Q Do you know what the purpose of this information was for the Board?
A At this time, was this -- when was this? March. So this is after the first mediation with Whinstone, I think. Right?
Q The first mediation was February 19th.
A Yeah. And this was March. Okay, gotcha. Sorry, there were a lot of these. Sorry, what was your question?
Q What was the purpose of this type of information in the Rhodium Board meeting?
A To update the Board on, you know, recent developments as it pertains to the Whinstone mediation. you know,

potential settlement, you know, discussions, you know, versus, you know, going the distance on litigation.

Q In this slide at 245.002, do you see where it says, "Risked damages," and it has a low of $50 and a high of $100 million?

A Yes, sir.

Q Do you recall there being conversation at the Board meeting about the risked damages amount?

A Yes.

Q Do you recall if there were lawyers present in that Board meeting?

A I mean, there were probably a lot of lawyers in that meeting.

Q What types of lawyers would have attended this meeting?

A Ms. Tomasco usually joined, Chuck almost always joined, Morgan Soule, our assistant GC always joined. Let's see -- Sometimes you would come. I'm not sure if you were here at that point in the meetings or not. And then, of course, our litigation team would sometimes join as well.

Q Do you recall any conversation about whether the risked damages might not reflect the best thinking of all of the professionals, including the outside litigators at that Board meeting?

MR. DISHER: Objection to hearsay. Objection to foundation.

THE COURT: Ask you a question again. Are you asking whether he heard something? (indiscernible)

MR. SCHMELTZ: I'm asking if he recalls. And then I'll find out -- lay some more foundation. So I don't think we're at hearsay yet.

THE COURT: Okay.

BY MR. SCHMELTZ:

A What was the question again?

MR. DISHER: Your Honor, I guess my basis for my objection is that he applied in his question a statement that might have been said. So he's injecting hearsay into the question, and then asking him, do you recall anybody saying that?

THE COURT: Well -- yeah, rephrase -- rephrase the question.

BY MR. SCHMELTZ:

Q Do you recall conversation around the risked damages number?

A Yes.

Q What types of subjects do you remember being discussed about the risked damages numbers?

MR. DISHER: And I will object to hearsay.

THE COURT: Yes, you're asking for hearsay. Sustained.

MR. SCHMELTZ: I am asking not for the truth of

the matter asserted. I'm asking for what the deliberative body considered, so that we have a sense of what was important to the deliberative body, but not for the truth of what somebody said or didn't say. It goes to effectively corporate state of mind, which is the only thing (indiscernible)

THE COURT: But if it's corporate state of mind, then you're asking for the truth of the matter (indiscernible)

MR. SCHMELTZ: (indiscernible) state of mind is never -- it's a hearsay exception. Right? It's not hearsay.

THE COURT: Well, state of mind is different than asking people what they said. But re-ask your question.

BY MR. SCHMELTZ:

Q Do you recall the types of subjects that were discussed around the risked damages number?

MR. DISHER: Objection to hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q In the meeting where risked damages were discussed, did you personally have a concern that you weren't getting advice from your outside litigators on this risked damages number?

A Not that I recall.

Q As you left this -- You were the Chairman of the Board. Right?
A Yes, sir.
Q As you left this meeting, did you feel like you had a Board consensus on moving forward with this risked damages range?
A Oh, man --
Q Let me ask it differently. Take a look at 245.003.
A Okay.
Q Same exhibit, next page.
A Yes.
Q Do you recall there being discussion comparing Riot's offer to Rhodium's pre-mediation valuation?
A Yes. Okay, that was actually helpful.
Q Do you recall the purpose of this conversation?
A Okay. I remember where we're at now. Sorry. Timelines get, you know, mixed up. There were a lot of things going on.
THE COURT: (indiscernible) No, go ahead.
BY MR. SCHMELTZ:
A Okay. Yeah, so I believe at the previous mediation that had happened in February, a number had come forth from -- well, I guess it was technically the SAFE AHG, I think, that sent it to us post-mediation. And that was, you know, a number that Whinstone was kind of anchored towards.

Right? And so some of the new information that we had here in this presentation was, you know, we finally get an indication from the other side about where their head is at value-wise. And this is the Board, you know, looking at data, and trying to make sense of where they're at versus where we want to be, and trying to make decisions around that.

THE COURT: So let me just make sure I understand this. So $171 million in cash from Riot, SAFE, instead of $87, they would have agreed to $87 minus $12.2?

MR. BLACKMON: That was my understanding. Yes, sir.

THE COURT: Okay. And then the energy deposits, you would have gotten that returned, and -- You got MR. BLACKMON: I believe so. Yes, sir.

THE COURT: Okay, and then the IP. Okay.

BY MR. SCHMELTZ:

Q And it says under $195.3 million, "Apples to apples, with authorized $225 million pre-mediation." Do you see that?

A Yes, sir.

Q So do you understand, one way or the other, whether the Board was considering whether to take an offer that was on its face perhaps lower than what it had wanted pre-mediation?

A Yes.
Q And did the Board come to a conclusion in this Board meeting, to the best of your recollection?
A I am confident that we came to some resolution. I don't recall exactly what that number was. But it was higher than the $171.
Q Higher than the $171, but it wasn't an abandoned settlement process? Is that a fair understanding of where -- of what you're saying?
A Yeah, no, finally, we were actually having settlement discussions after, you know, a long time.
Q And so let me go back one page and ask, if you have a recollection if the Board had a consensus moving forward around that risked damages range that we saw at 245.002.
A I believe so. Right? There were external factors, just new information that, you know, the Board -- was presented to the Board, and the Board considered with regards to, you know, lowering the risk damages number. And the comment on the right-hand column, you know, kind of calls it out, reduce the estimates by $25 million.
Q You recall in this timeframe having a value placed on the power contracts that Rhodium had with Whinstone?
A I remember Michael Robinson testifying that they were worth roughly $180 million, if I recall correctly.
Q You were asked about -- Oh, I've covered that. That's

good.

MR. SCHMELTZ: I have one topic, Your Honor, that I think is in the scope of direct, but may not be, but I would ask for a little leniency because we could get this witness off one time for all purposes.

THE COURT: I'm okay with that.

MR. DISHER: No objection, Your Honor.

THE COURT: Okay, yeah. I know you'd like to be here, but --

MR. BLACKMON: Hey, I'll hang out all day. That's fine.

MR. SCHMELTZ: He's getting good at it, Your Honor.

MR. BLACKMON: It's my second home.

BY MR. SCHMELTZ:

Q Do you recall a Board meeting in which it was discussed whether or not a claim for fraudulent inducement related to Winter Storm Uri should be pleaded in a publicly filed complaint?

MR. DISHER: I'll object to hear a say on that one.

THE COURT: You know, I think he only asked whether he recalls a Board meeting where that was discussed.

Isn't that the question?

MR. SCHMELTZ: That is correct.

THE COURT: Overruled.

BY MR. SCHMELTZ:

A Yes.

Q Do you recall if in the course of that discussion the Board formulated any particular course of action with respect to that specific topic, as opposed to anything else random?

A Sorry, I guess I just blanked. What was the topic again?

Q Whether to plead a fraudulent inducement claim related to Winter Storm Uri on a publicly filed complaint.

A Yes, we ultimately decided not to put the fraudulent inducement claims, you know, in the pleadings for Whinstone. There was a whole section that was dedicated to it that was largely deleted out. And you know, I was actually a big advocate for keeping that in because I believe that's, you know, what happened. But for, you know, lots of reasons we decided to take it out.

Q Do you recall what reasons the Board relied on in deciding to take it out?

MR. DISHER: Your Honor, objection to hearsay. I don't think he can answer that question without disclosing what was said on that day by certain individuals.

THE COURT: Why don't you rephrase it, and ask him what the reasons that he relied on?

BY MR. SCHMELTZ:

Q What reasons did you rely on in coming to that conclusion?

A Well, you know, as typically happens at Board meetings, there's a lot of discussion, and if I recall correctly, there were kind of three sides. That's not the right way to say it. Three differing opinions on the matter. Frankly, I was in the camp that wanted to put the fraud claims in because as a fiduciary, a bigger number is better for my constituents. Right? My equity holders, shareholders, Creditors, SAFEholders, etc. But then there was also logic --

Should I not say names?

Q No, you can?

THE COURT: Yeah, you can --

BY MR. SCHMELTZ:

A Okay. If I recall correctly, I believe it was Jonas who brought up a good one, and said, well, if you put fraud in now, I mean, that's going to, one, inflame the other side, Whinstone. And two, as a publicly traded company, if we're trying to, you know, subtle with them, a component of it could be stock, and that might drive their stock price down and that not be particularly great for us.

I don't remember who said this part particularly, but another school of thought was that why not, you know? Let's

leave the numbers the same, the same, you know, damages numbers and whatnot, leave all the numbers the same, and take the words "fraud" and "fraudulent inducement," and take that out altogether, but still say that Chad lied, keep the numbers the same, and if we need to during, you know, negotiations with them, use that fraud as kind of like a, you know, a big stick. Like, we will plead this if y'all don't settle with us.

And so the Board ultimately decided to take it out, take the fraud out.

Q And what was persuasive, particularly, to you in making that decision, of the things you discussed? You discussed the various logic. Was there one or more that was persuasive to you?

A I thought, well, they were all good points. I think the fact that the numbers largely stayed -- well, the numbers stayed the same as far as, you know, damages and whatnot. That's really how I got comfortable with it. Because if the number stays the same and we just don't call it fraud? You know, what do I care?

Q Ultimately, did you feel comfortable that Rhodium could mediate all of those power credit claims in the upcoming mediation?

A Absolutely.

Q Ultimately, Rhodium entered into a settlement with

Riot-Whinstone. Right?
A Yes, sir.
Q And are you aware, one way or the other, if that settlement included a settlement and release of all claims?
A That was my understanding.
Q So did you understand that Riot-Whinstone paid consideration to have all potential claims against it released, for all time?
A Everything, for all time is my understanding, yes, sir.
Q Thank you.

MR. SCHMELTZ: I have no further questions.

THE COURT: (indiscernible)

MR. DISHER: A few follow-up, Your Honor?

THE COURT: Yes.

REDIRECT

BY MR. DISHER:

Q Mr. Blackmon, will you turn to Special Committee Exhibit 236, please?
A I'm piling up over here.
Q A little bit.

MR. SCHMELTZ: Your Honor, I remiss would like to just move the admission of 212, which I put in my apologies. And my apologies, Mr. Disher, for interrupting.

THE COURT: Any objection?

MR. DISHER: I'm sorry, what number?

MR. SCHMELTZ: It's 212.

MR. BLACKMON: Oh, wait, I was wrong. You said 236?

MR. DISHER: No objection to 212.

BY MR. DISHER:

Q Yeah, it's in the big one. I'm sorry.

A Yes, sir.

Q Do you know what 212 is? I'm sorry. Do you know what 236 is?

A (indiscernible) Oh, yes. This was the mediation statement on the Whinstone matter.

Q This is Rhodium's mediation statement that its Counsel prepared?

A Yes.

Q Did you look at this before it was sent to the mediator?

A Yes. Is there a date on this one? I don't see it.

Q Yeah, on page 8. February 14th, 2025.

A Okay, yes.

Q You reviewed this before it went out?

A Yes.

Q And so you can take as long as you want, but I will represent to you that nowhere in this mediation is any claim about fraud. Do you remember that?

A I do remember that.

Q So the complaint didn't have any mention of fraud. Right?
A Correct.
Q And the mediation statement didn't have any mention of fraud?
A Uh-huh.
Q Is that a yes.
A Yes.
MR. DISHER: Your Honor, I'll move for the admission -- or excuse me, I will offer Exhibit 236 into evidence.
MR. SCHMELTZ: No objection.
THE COURT: All right. It will be admitted.
BY MR. DISHER:
Q My last line of questioning here, I believe that you said you were particularly bullish on Rhodium's potential damages claims related to the shutdown?
A Yeah, the multiple shutdowns. Yes, sir.
Q Now, I know you're not a lawyer. Right?
A No.
Q Do you have any idea what would happen to those claims if, during this bankruptcy, the Rhodium -- if Rhodium stopped operating as a company?
A No.
Q Do you know whether those claims would just vanish?

A I don't know.

MR. SCHMELTZ: He's already answered he doesn't know.

MR. DISHER: Nothing further, Your Honor.

THE COURT: Anything further, Mr. Schmeltz?

MR. SCHMELTZ: Yeah.

RECROSS

BY MR. SCHMELTZ:

Q Just -- you just had that mediation statement put in front of you. I'm going to ask you to take a look at page 7. That's 236.008. I want you to take a look at a paragraph three-quarters of the way down the page. It starts with, "If Riot and Whinstone want a global resolution -- " Do you see that?

A Yes, sir.

Q It says, three sentences in, it says, "Now that Rhodium's contracts are secure, and it has a clear path to hundreds of millions in damages against Whinstone, Rhodium feels strongly that its $453 million offer is below fair value. Whinstone and Riot should be prepared to pay meaningfully more than that at this stage." Have I read that correctly?

A I think so.

Q Do you have a view one way or the other, if you could ever get to $453 million in damages without including the

Winter Storm Uri energy credit claim?

A Well, let me look. (indiscernible) I'm lost. Does anyone know where that chart is?

THE COURT: 212.

MR. BLACKMON: 212. Thank you.

THE COURT: I'm sorry, 12.

MR. SCHMELTZ: It's at 12, and also, there's one at (indiscernible) I think I put it in front of you at 245.

MR. BLACKMON: Hold on -- 12 is faster, I think, at this point.

MR. SCHMELTZ: All right. Okay -- This was -- which version was this? $158.

THE COURT: It's the original version.

MR. BLACKMON: Okay --

THE COURT: It's also at 245, if you wanted to look at that fast.

MR. BLACKMON: Yep (indiscernible) I'm trying to be thorough here.

THE COURT: It's the last page.

BY MR. SCHMELTZ:

A Okay. No, it does not appear that we could get to the $453 million without taking into account the Winter Storm Uri credits.

Q One last question -- or just a -- The next page, page 8 says, "If the litigation goes to judgment, Rhodium fully

expects to collect hundreds of millions of dollars in damages from Whinstone and Riot, Whinstone's puppeteer." You see that? Did I read that right?

A Yes, sir.

Q Do you have an understanding, one way or the other, whether Rhodium would have green-lighted its counsel to amend the complaint to add a fraudulent inducement claim back in if the case didn't settle?

A My understanding was that if we needed to, if Counsel needed to, they could add it back in later.

Q Thank you.

MR. SCHMELTZ: No further questions.

MR. DISHER: Nothing further, Your Honor.

Thank you, Mr. Blackmon.

MR. BLACKMON: Thank you.

THE COURT: Thank you. You may be excused, sir.

MR. BLACKMON: And I'm out. Right?

THE COURT: Right. And don't talk to anyone outside about your testimony.

MR. BLACKMON: Sure. Thank you. Is it okay if I hang out, too?

THE COURT: Yep, you can hang out. You can stay in.

MR. BLACKMON: (indiscernible)

THE COURT: Yeah, you're done.

MR. BLACKMON: Okay. I'll stay in (indiscernible) These seats are more comfortable.

MR. THOMPSON: No further witnesses, Your Honor. We rest.

THE COURT: Okay. All right.

MR. SCHMELTZ: Your Honor, we'd call Chuck Topping to stand.

THE COURT: Okay.

MR. SCHMELTZ: If Your Honor is interested in continuing. Thank you.

THE COURT: Yeah, we're going to go for a little bit, but not forever.

Raise your right hand, sir.

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. TOPPING: I do.

THE COURT: Okay. Go ahead, Mr. Schmeltz.

DIRECT EXAMINATION

BY MR. SCHMELTZ:

Q Mr. Topping, thanks for hanging in tonight. You were engaged in negotiating a fee arrangement with LKC. Is that right?

A Yes.

Q Could you tell me what the components of that, the success fee aspect of that arrangement were initially?

A The success fee had three components. The first component, Part A, was based on the contracts at issue being declared upheld, being upheld, our interpretation of the contracts being upheld, that called for a flat fee of $600,000. The second component was energy credits. Energy credits recovered came with a success fee in the amount of 5% of the amount recovered, up to $5 million. Anything above $5 million came with a success fee of 1%. And then there was a third component allocable to other amounts not attributable to energy credits, and that came with a success fee of 10% of the amount recovered.

Q Was it important to you to establish the caps effectively in the -- that bucket B, the energy credit section?

MR. THOMPSON: Objection. vague as to "caps."

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Bucket B had a 5% -- I call it a cap, and then a 1% cap on success fees for energy credits. Right?

MR. THOMPSON: Objection. Leading.

MR. SCHMELTZ: It is. It's a super foundational question. We'll establish the terminology so I'm not vague anymore, and then we -- I promise I'll move on.

THE COURT: Yeah, I --

MR. THOMPSON: I think I misheard the question. I

wouldn't have objected, but it sounded not correct also. A 1% cap?

THE COURT: I think what you're trying to say is that there was 5% on the first $5 million, and then a 1% on anything above that. I think that's what they're trying to --

MR. SCHMELTZ: I'm actually trying to say something different, but clearly failing.

THE COURT: Okay. Well, then I didn't understand the question.

MR. SCHMELTZ: I'll get it. It's totally fair. no, I'm -- Listen, that's not me being angry. That's me being a little -- It's a little late in the day. I apologize.

BY MR. SCHMELTZ:

Q Is there a reason that you separated energy credits out into a different success fee bucket than other non-energy credit claims?

A Yes.

Q What was that reason, sir?

Again, Your Honor, I apologize --

A I think that the view that we had was that energy credits was by far the strongest claim. There was data that demonstrated the energy sales that Whinstone had made. We were able to look at that data and determine, you know, that

sales had taken place. So we saw this really as the low-hanging fruit. And they were, in essence, claims that we thought would be very, very strong. So we wanted to put the financial incentive in the other bucket of claims for damages, and so that came with a higher success fee percentage.

Q We're going to talk a little bit about the claims, and the nature of the claims in a minute. Can you take a look at -- And it's going to be not in my white binders, but in their binder, Exhibit 3, please?

A In the black one?

Q In the black binder. Thank you.

A Yep.

Q Do you recognize the document at Exhibit 3?

A Yes. This appears to be LKC's fee application.

MR. SCHMELTZ: And I think Your Honor noted you'd take judicial notice that this is in the docket. Thank you.

BY MR. SCHMELTZ:

Q In the engagement letter that you negotiated, was there a provision allowing LKC to recover fees and some limited expenses and some limited attorney's fees?

A I didn't get the last part of your question. I'm sorry.

Q Yeah, that's okay. Was there a provision allowing LKC to recover expenses and limited attorney's fees in the

engagement letter that you negotiated?

A LKC had -- I think expenses and attorney's fees were a component of the success fee in Part C, at the 10%.

THE COURT: I didn't understand that answer. I'm sorry. I thought it was a different question.

BY MR. SCHMELTZ:

Q Yeah. Let me make this easier on us, Chuck, and put this document in front of you. I just need the engagement letter.

If you would take a look at Exhibit 203 in our binder? I'm going to do this from the March document, but I think the expense provision is the same in both the early one and the (indiscernible) Whinstone matter. But take a look at Exhibit 203. I think this was (indiscernible) probably duplicating exhibits, because I think they've got it as exhibit --

A I've got it.

Q All right. Wonderful.

MR. SCHMELTZ: Yeah, Your Honor, this is the same as Exhibit 2. So no need for me to move to admit it again, but if Your Honor is okay with me using this version?

THE COURT: Sure.

BY MR. SCHMELTZ:

Q Can you take a look at page 2, the paragraph that starts with, "We will continue to provide -- " Do you see

that?
A Yes.
Q And what was your understanding of this paragraph? And what was its purpose, from your perspective?
A This paragraph provided for graduated discounts based on volume. So for the first $250,000 of standard rates, there would be a 20% discount. For the next $250,000, there would be a 25%. And then for all additional time, so in other words time over $500,000 in a given month, there would be a 30% discount.
Q And what did you -- what, if anything, did you trade or negotiate away to get those discounts? What did you give up to get that?
A The structure, the overall structure that we came up with was one that allowed for Rhodium to receive discounts in exchange for a success fee. So the success fee structure, the discounts helped Rhodium with much needed cash flow at the time.
Q And about how much in discounts has LKC provided to Rhodium at this point?
A I don't know the exact figure, but I think the ballpark that I understand it to be is somewhere around the $1 million ballpark in terms of aggregate to date.
Q The paragraph goes on to talk about bills for hourly fees and reasonable expenses. Do you see that?

A Yes.
Q What do you understand that provision to mean in this engagement letter?
A This lists a number of different categories of hourly types of expenses that can be reimbursed provided that they are reasonable.
Q And did you have occasion to review the fee application that we started to look at in LKC Exhibit 3?
A Yeah, I have it right here.
Q And did you review the fees and expenses that LKC was seeking in this fee application?
A Yes.
Q Did you reach a conclusion, based on what you had in this application, as to whether or not the professional fees and expenses sought were reimbursable under the provision we just looked at in the engagement letter, which also is in LKC Exhibit 2?
A There were amounts that were included that didn't have any support. So we had never received invoices, for example, for the Porter Hedges amounts, so there was no way to determine if those amounts were reasonable. There were certain other amounts that were difficult to determine from the description, as to whether or not they were reimbursable.
Q And do you recall asking for additional detail?

A I believe that request was made through Counsel.
Q Do you recall whether you ever got any additional detail?
A I have not seen any additional detail.
Q Are you -- are you, or would you be allowed by the Bankruptcy Court, etc., adverse to paying additional attorney's fees and expenses if they were determined to be reasonable based on additional data?
A Am I prepared to pay if they are determined to be reasonable?
Q Are you adverse to it, or are you prepared to pay? Two ways of saying the same thing.
A Yes.
Q Yes, you're prepared to pay?
A Yes.
Q Did there come a point in time maybe around about February 2025 in which there arose a dispute about LKC's fee agreement?
A I'm sorry, there was an issue that arose in February of 2025. Correct.
Q And I shouldn't say about its fee agreement, but maybe it's right to obtain a success fee. Is that right?
A Yes.
Q What did you understand that dispute to be?
A To my recollection, the SAFE AHG had raised an issue

with whether or not LKC could receive a success fee due to the nature of the original fee application, and the way in which the success fee was described. There was a contention made that LKC would not be able to recover a success fee because of the lack of specificity in that original fee application. I'm sorry, in the retention application.

Q What, if anything, did you do about -- Well, in an effort to address that dispute?

A So I'm not sure if I would call it a dispute. But we certainly were concerned about the issue, and so Jon Cohn, Chase Blackmon, myself, the three of us explored how best to remedy the situation, and respond to the Safe AHG's concern. We ultimately arrived at a solution that was put before the Court, and that the Court considered, and it resulted in the filing of an amended retention application.

Q Okay. And what was the amended retention application meant to address, if you recall?

A One thing it was meant to address was the SAFE AHG's concerns about the level of specificity of the success fee, and to fully disclose the components of the success fee. Another purpose was to make clarifying changes, to make explicit the way in which the success fee would be determined in the event that you had a situation where there was a transaction that resulted in a sale of Rhodium's assets, and how to allocate the transaction value to the

different categories set forth in the engagement letter.
Q And that, the last thing that you've referred to in front of you is Exhibit 203 in our binder, but -- or you're in the black binder. Just turn to Exhibit 2, if you would, which is the engagement letter as marked by LKC.
A I have it in front of me.
Q And at the bottom of page 2, there is a provision under ld. Do you see that?
A Yes.
Q Was that provision added to address the issue that you've just described?
A Yes.
Q And that's the provision that we've been talking about today in court, that has a requirement to determining good faith, the portion of transaction value allocable to energy credits and damages, and then that provides for coming to court if that can't be decided. Right?
A Yes.
Q Now, I've used the word "dispute," and you have been very careful about it. When I say "dispute," I'm meaning this dispute between the SAFE AHG and LKC. I'm not referring to a dispute between LKC and Rhodium. Okay?
A Understood.
Q During this time frame, from your perspective, was there a dispute between LKC and Rhodium around what the fee

agreement between Rhodium and LKC meant?
A There were negotiations that took place. We considered a number of different ways to try to resolve the issue. We ultimately arrived at the solution that was presented to the Court.
Q And again, was the issue that you're describing what success the LKC would get in the event there was a transaction instead of simply a settlement of litigation? Is that what you're referring to?
A Yes.
Q What were some of the options that you explored with LKC?
A We explored trying to come up with a flat number, a flat amount that LKC would get in the event of a transaction. We also explored trying to come up with a fixed percentage that LKC would receive in the event that there was a transaction, in order to simplify the manner in which the success fee would be calculated.
Q Let's hop on that question or that issue. Right? You're describing a transaction that also leads to a settlement of the dispute. Right?
A Yes.
Q And we'll just, maybe we use as a hypothetical the transaction that actually occurred with Whinstone and Riot to resolve the dispute between Rhodium and Whinstone.

Right? Did you have a concern that in that type of transaction, it would be problematic to figure out how much of the consideration was going to settlement versus going to the purchase of assets?

A I think it would be potentially problematic. It would be potentially challenging. One of the things that we explored was a fixed number to avoid that. Another thing that we explored was a fixed percentage, based on the total transaction value.

Q Did you at any point reach an agreement with LKC, between Rhodium and LKC, as to how, in good faith, to come up with that allocation, based on a fixed percentage?

MR. THOMPSON: And Your Honor, I may be confused about where we are. I'm not seeing the relevance about negotiations around contractual terms that weren't adopted, and how we apply the contractual terms that were adopted (indiscernible)

THE COURT: Yeah. So what's the relevance?

MR. SCHMELTZ: So at this point in time, the parties actually came up with a solution that embodies what paragraph D, how it -- one way it could work in a good faith basis to come up with that allocation. And so we're getting into what they did to show how one could act in good faith, and that they attempted to act in good faith to do that. It is an example of how that provision can be carried out which

is, I think, what Your Honor has asked for today, tell me how it's supposed to work.

THE COURT: I'm really not following. Sorry, but --

MR. SCHMELTZ: So in paragraph D --

THE COURT: Paragraph D, it says, if you can't reach agreement in B and C, and you negotiate in good faith, then we'll bring it to the Court. I mean --

MR. SCHMELTZ: Prior to that, it says -- it says in relation to the fees in A and B, in a transaction that resolves or otherwise terminates the matter, the client and Lehotsky Keller Cohn will determine in good faith the portion of transaction value to the clients allocable to the energy credits and damages is in sections B and C.

THE COURT: Correct.

MR. SCHMELTZ: And one way they could do that is to come up with a flat percentage as an alternative to that, or as a way to affect that.

THE COURT: Yeah, but that didn't happen. Right? So why are we talking about it?

MR. SCHMELTZ: It happened. And that's what we're talking about.

THE COURT: There was an agreed percentage?

MR. SCHMELTZ: There was, at a point in time, an agreed percentage.

THE COURT: Okay. But that didn't come to pass. Right?

MR. SCHMELTZ: It is still an example of how to do that, and what that would look like.

THE COURT: I think that's irrelevant. Move on.

BY MR. SCHMELTZ:

Q In February of 2025, Riot-Whinstone and Rhodium were preparing for a mediation. Correct?

A Correct.

Q What, if you recall, what kind of work went into preparing for that mediation?

A There was work involved in preparing a mediation statement, there was work involved in preparing a complaint against Riot-Whinstone that we wanted to file before the start of the mediation. There was also work involved in coming up with a basis upon which the Board could set parameters inferring authority on the members of the management team that would be present at the mediation to potentially settle the litigation.

Q Did your outside Counsel also prepare a complaint for damages to be filed prior to this mediation?

A Yes.

Q All right. We're going to get into a couple of these buckets. We're going to talk about the work done by the Board (indiscernible) parameters, and we're going to talk

about the complaint. Let's talk about the complaint first. The original complaint as drafted, did that have a claim for energy credits?

A Yes.

Q Did it have a claim that included energy credits both for Winter Storm Uri and non-Winter Storm Uri?

A Yes.

Q Did it have a claim for fraudulent inducement of a settlement related to Winter Storm Uri included in it?

A Yes.

Q At some point in time, did there arise a conflict around whether or not that complaint should in fact contain a claim for fraudulent inducement?

A I'm not sure if I would describe it as a conflict. But there was an issue that arose about whether or not to include the fraudulent inducement claim in the publicly filed complaint. So there was definitely a discussion and some disagreement, debate around that point.

Q Did you have an understanding one way or the other as to -- did you have a view as to whether or not a publicly filed complaint should include a fraudulent inducement claim.

A I was in favor of including fraudulent inducement as a count in a publicly filed complaint.

Q Did ultimately a fraudulent inducement claim get filed

in a publicly filed complaint?
A No.
Q Do you know why?
A The Special Committee had requested that we refrain at the time from including a fraudulent inducement count in a publicly filed complaint. Did you understand one way or the other if the Special Committee was prohibiting that from ever happening, or was asking that it not happen at a point in time?
A My understanding at the time that the complaint was filed publicly was that the Special Committee was leaving open the question of whether or not the complaint could be subsequently amended to include a fraudulent inducement count.
Q Did you ever come to learn one way or the other whether the Special Committee was willing to allow a fraudulent inducement claim to be filed in a publicly filed complaint?
A Yes.
Q What's that understanding?
A The Special Committee authorized the filing, stated that it would allow the filing of a fraudulent inducement count in the publicly filed complaint if the mediation ultimately did not result in a settlement.
Q Do you have an understanding one way or the other whether Rhodium was able to mediate a claim for all of its

power credits, energy credits, Winter Storm Uri, and non-Winter Storm Uri?

MR. THOMPSON: Objection. Vague (indiscernible)

THE COURT: Restate your question?

BY MR. SCHMELTZ:

Q Did you have an understanding as to whether Rhodium was able to go to mediation, and pursue all of its energy credit claims, both Winter Storm Uri and non-Winter Storm Uri?

A My understanding is that the Special Committee did not prohibit Rhodium from asserting fraudulent inducement in connection with the mediation.

Q Do you have an understanding as to whether the ultimate settlement with Riot-Whinstone included a settlement of all energy credit claims, including Winter Storm Uri energy credit claims?

A It did. The release was very broad.

Q We talked about the work being done around settlement authority. From your perspective as the general counsel of Rhodium did the value that Rhodium placed on the claims it was pursuing in litigation change over time in this time frame?

A Yes.

Q And what is your understanding of that change, and -- what was your understanding of that change?

A My understanding is that a process began starting with

I would say early February, continuing with the February 12th Board meeting, continuing with several Board meetings thereafter, in which the Board, as well as members of the management team, and working collaboratively with our advisors, our professional advisors, our attorneys, took a very deep dive into the value of the claims, and refined its analysis during that period.

Q And did the value of the claims from Rhodium's perspective go up or go down based on that refined analysis?

A The value of the claims did reduce as part of that process.

Q And do you know what it reduced from and to?

A There were refinements made to, I think, management's understanding of how long it would take to recover. There were refinements made to management's understanding of probability of success at least on one claim, which was building D. And there were -- As a result, the total value of the claims reduced, and the risk-adjusted value of at least one of the claims also changed.

Q We're going to talk about the risk-adjusted value of one of the claims in just a minute. Do you -- have you -- Well, why don't you take a look at Exhibit 245 in our binder?

A Okay.

Q Do you recognize this document, sir?

A Yes. This appears to be a Board -- a presentation that was given to the Board in March, I believe.
Q And on the first page, 245.002, does that reflect the evolution of the risked damages that you've described?
A It does reflect some of the thinking, I think, at the time. I'm looking at 245.002.
Q And you see risked damages, with a low range of $50 million and a high range of $100 million. You see that?
A Yes.
Q Do you have an understanding as to whether that is reflective of how the company valued its litigation claims at that time?
A That is reflective of how the company valued damages at that time, it does say reduced estimates by $25 million.
THE COURT: Let me ask you a question. Where it says exit financing less certain due to -- and it goes on and says, "Galaxy less robust view on damage potential, longer timeline to recover from partner Fortress." Was that Galaxy's view? Is that what this is saying?
MR. TOPPING: Yes. Correct.
THE COURT: Okay.
BY MR. SCHMELTZ:
Q And Galaxy, was Galaxy brought in to potentially provide exit financing?
A Yes.

Q And did Galaxy bring in a partner, Fortress, to help think about the litigation claims?
A Yes.
Q And did you know one way or the other whether Fortress was a litigation financing shop?
A I have limited understanding. I've never really interacted with them, but my understanding at the time was that, yes, Fortress was a specialist in evaluating litigation claims.
Q And was it significant to you in the Board meeting that Fortress and Galaxy had taken that view of the claims?
A As the general counsel of Rhodium at this time, were you concerned that that risked damages range was too low?
A No, I don't think I had that concern.
Q Were you concerned that that risked damages number hadn't received enough input from your professionals to be reliable?
A That was not one of my concerns.
Q You mentioned the risked change to one of the claims, and I think you said it was Building D. Did I hear you correctly?
A It was indeed Building D.
Q Did you participate in a Board meeting in which that risk adjustment change was presented to the board?
A I did. And what was that risk adjustment change?

A Can you repeat the question?
Q What was the change in risk -- Sorry, that's a dumb question because I said "the risk adjustment change." What was the change, if any, in the risk rating for that claim?
A It was reduced from 40% to 20%.
Q From your perspective as the General Counsel of Rhodium, was that a well thought out decision?
A I believe it was.
Q From your perspective as the General Counsel of Rhodium, was that decision made with appropriate input from the corporation's professionals?
A Yes.
Q In 245.008, there is a litigation value chart, and it actually shows building D at 20%. Do you see that?
A I do.
Q Did you have a view, as the General Counsel of Rhodium, as to the strength of the various claims on this chart?
A There were several claims that I would describe as winning claims. There were several claims that I would describe as losing claims. I would describe a winning claim as something that had a probability of success greater than 50%. So there were several that would fit that category, and then there were several that would not.
Q In the engagement letter that we looked at in Exhibit 2, it talks about that reasonable good faith attempt to

allocate damages. Did you feel like it was a reasonable and good faith allocation to allocate $75 million to damages?

A Yes.

Q For purposes of that, for purposes of the LKC success fee?

A Yes.

Q Do you have a feeling one way or the other as to whether it would be fair and reasonable to pay a success fee on winning claims?

A I feel it would be reasonable.

Q Do you have a view one way or the other as to whether it would be fair and reasonable to pay a success fee on losing claims?

A I feel --

MR. THOMPSON: Objection. Vague. I'm sorry, did the witness already explain a losing claim, which means something with a lower than 50% winning success?

MR. SCHMELTZ: Yes. Yes.

MR. THOMPSON: If that (indiscernible)

BY MR. SCHMELTZ:

A I don't feel it would be reasonable to pay a success fee on a losing claim.

MR. SCHMELTZ: Your Honor, if I might have a minute just to confer to my colleagues.

THE COURT: Sure.

BY MR. SCHMELTZ:

Q From the start of the preparation for mediation to where we were in March, the March timeframe in this exhibit we're looking at in 245, from your perspective, did the process change, the settlement process or the expectations change about what was happening with Rhodium vis-a-vis this litigation?

A As we were going through the process of negotiating settlement, it started to become apparent to us that it would be very difficult to get exit financing on our terms. At that point, the -- at that point, what we saw as the best way to provide a return to our Stakeholders, provide a return to our Creditors was starting to emerge as the solution of an asset sale, the sale of assets to Whinstone. The possibility of settling the litigation -- I'm sorry, the possibility of continuing the litigation started to evaporate because of the inability to obtain exit financing. So the solution of an asset sale began to emerge at that time as the most viable solution.

Q And did that play a role in in the company's view of the value of the claims it was settling?

A It did play a role in the calculation of the discount, and it did play a role in the overall assessment, yes.

MR. SCHMELTZ: I have no further questions. I pass the witness.

THE COURT: All right. Mr. Thompson, how long are you going to be?

MR. THOMPSON: Very brief. Like ten minutes.

THE COURT: Okay. And I think after that, then we should call it a day, and then figure out when we're going to come back.

Go ahead.

MR. THOMPSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q Will Thompson, for LKC. Mr. Topping, good evening. I seem to recall that you have trouble hearing in one ear? Will you let me know if you can't hear me properly?

A That's correct. I'm deaf in my right ear. I will let you know. Thank you.

Q And if you want to turn or anything, do whatever you want to hear the question, please.

You were involved in hiring LKC and Stris for the litigation. Is that fair?

A Yes.

Q Are you glad you hired LKC?

A Yes.

Q Are you glad you hired Stris?

A Yes.

Q Do you trust that those firms did the best they could

for you?
A Yes.
Q And do you trust that they gave you the best advice they could?
A I do.
Q Stris and LKC, is it true that Stris and LKC obtained exceptional results for Rhodium?
A I believe it is.
Q And is Rhodium committed to having -- or sorry, is Rhodium committed to having LKC fully compensated for the work it has done and the success fee it has earned?
A That has always been my position and my belief.
Q You told the Court that before. Right?
A Yes.
Q You testified on direct that LKC's discounted rates amounted to about a million dollars over the life of the matter. Do you remember that testimony?
A That was my rough understanding, and was kind of a ballpark figure of what LKC's aggregate discounts to date had been.
Q Right. And I think that's about right. I'm not trying to quibble with you about the precise number. Do you remember being asked by not an LKC lawyer, about whether a success fee of eight or nine times the discount that LKC provided would be fair?

A I do.
Q And your answer was it would certainly not be unfair for the success fee to be eight or nine times the discount. Is that fair?
A That was my answer, yes.
Q I want to touch briefly on the Porter Hedges fees. We've looked at the engagement letter before. It's our Exhibit 2, if you want to look at it again. But do you remember the language that talks about the reasonable expenses, including legal advice on retention and compensation matters?
A I do.
Q Is your understanding that there would -- Sorry, was it your understanding at the time that was negotiated that there would be a need for LKC to obtain advice on retention and compensation matters from a bankruptcy expert?
A Yes, and I think that's why we included that language.
Q Right. And that bankruptcy expert is Mr. Wolfshohl from Porter Hedges here. Right?
A Yes.
Q And so you, on behalf of Rhodium, were expecting that Rhodium would pay reasonable expenses for legal advice on retention and compensation matters that LKC incurred by hiring Mr. Wolfshohl. Correct?
A That was the language that we included, and that the

Court approved.
Q Even though you thought it was unlikely, you thought it was a possibility that Rhodium and Whinstone, in the PSA, the agreement between them, could reach one allocation, and then Rhodium and LKC, pursuant to the engagement letter, could reach a different allocation. Do you remember testifying to that?
A I did acknowledge the theoretical possibility that there could be two allocations. I did not want to --
Q Yeah. Let's talk about --
A I did not want -- Okay. Can I finish, or -- ?
Q You may finish if you want to. I think you've answered the question, but I'm not trying to interrupt you.
A Okay. I also said it's unlikely.
Q Are you finished now?
A Yep.
Q Thank you, Mr. Topping. You talked a little bit about fraudulent inducement, I think. You are, although a no doubt talented lawyer, you're not a Texas lawyer. Fair?
A I am not.
Q When you had questions about Texas law, you tended to ask Mr. Disher or myself, or someone else from Texas. Is that right?
A That is correct.
Q And so if I told you that the elements of fraudulent

inducement in Texas require justifiable reliance by the person claiming that he was fraudulently induced, would you have any reason to disagree?

A No.

Q And if I told you that justifiable reliance is inconsistent with not having done reasonable diligence on the front end, as a matter of Texas law, would you have any reason to disagree?

A I'm not sure if I would be willing to agree with that as a categorical statement. Perhaps generally, maybe.

Q I just mean you wouldn't have a position one way or the other because you haven't read the Texas cases about that topic. Right?

A That is correct.

Q You testified a little bit on direct about the mediation. You were in the mediation room. Right?

A I was in one of them.

Q That's a good point, Mr. Topping. And I don't need to get into a bunch of details about this, but it's fair to say in the mediation room you were in, there were also all the Rhodium people. Right?

A That is correct.

Q And in that mediation room, there was no opportunity to press a fraudulent inducement theory against Whinstone. Fair?

A I'm not sure what you mean by "press." There was an opportunity to meet with the mediator, and explain briefly our claims, which Mr. Cohn did very eloquently, as I recall. Beyond that, I would agree that for the remainder of the day, there was no such opportunity.

Q And I'm not going to hold you to a precise number or anything, but overall, about how many hours do you think we were in that mediation room?

A It seemed like a long time. I don't know exactly how many hours it was.

Q Maybe 11?

A Possibly. That sounds about right.

Q And out of those 11 hours, about how many minutes do you think we spent talking to the mediator?

A Thirty or less, maybe.

Q Right. And when Mr. Cohn went through our claims very briefly at the beginning of the day, there was no discussion of fraudulent inducement. Correct?

A That is correct.

Q Because he was talking about the claims in the complaint that we publicly filed. Is that fair?

A I don't recall. But I recall that I was happy with the way that it was presented, and I don't recall specifics or details.

Q And you recall that there was a mediation brief that

you reviewed?
A I did review it.
Q And you recall that it doesn't say anything about fraud?
A It included all of the allegations. It may not have included detrimental reliance or justifiable reliance. But other than that, I think it did include all of the same facts and allegations that were in the version of the complaint, the draft complaint that did include the fraudulent inducement count.
Q Right. It included the fact that, for example, in our contention, Mr. Harris lied.
A Yes.
Q But it did not say anything about whether the founders of Rhodium had justifiably relied on those misrepresentations from Mr. Harris. Fair?
A I have no reason to disagree with that statement.
Q You were the 30(b)(6) witness on behalf of Rhodium during a corporate representative deposition for four different topics last week. Is that right?
A Yes.
Q And we don't need to get into a bunch of details about it, but do you recall my asking questions about what Rhodium's position was on what numbers should be plugged into the different parts of the success fee formula?

A Yes.
Q And I'm not blaming you in any way, but you were not able to answer those questions as a corporate representative. Is that fair?
A I don't think that's fair. Rhodium designated a different witness to answer those.
Q I'm sorry, I'm not talking about what happened subsequent to that deposition. I just mean in the room, Mr. Schmeltz said you're unable to testify on that even though you were the corporate rep for topics 1 through 4. Is that right?
A No, I don't think that's fair. I don't think that -- Rhodium understood that topic to encompass those questions about that topic.

I also recall, Mr. Thompson, that Rhodium had objected, and (indiscernible) that topic of being overly broad.

THE COURT: All right, we've only got one hour, so (indiscernible)

MR. THOMPSON: Thank you, Your Honor.

BY MR. THOMPSON:
Q Again, I'm not trying to assign blame, or have anybody work that out. The Judge will work out what the consequences of anything are. All I'm saying is you were explaining that Rhodium hadn't interpreted the topic to cover the questions I was asking about what numbers get

plugged into the success fee formula.
A Right.
Q And you were giving that explanation because you weren't prepped on that topic for that day. Right?
A It wasn't one of the topics that was encompassed by the notice.
Q We can agree to disagree about that part. You talked a little bit about what you called winning claims and losing claims based on the likelihood of success on the merits. Do you remember that testimony on direct?
A Yes.
Q And if I heard you correctly, you described as a losing claim something that is more likely than not to lose. Right?
A Yes.
Q So I understand this isn't what happened, but just hypothetically speaking, if Rhodium had asserted a single claim against Whinstone and had a 40% chance of winning and it was worth a billion dollars, you would call that a losing claim. Right?
A Yes.
Q But it would have a fair amount of settlement value. Right?
A I'm not sure how to answer that.
Q Well, in your assessment as the company's general

counsel, do you think that a 40% likelihood of recovering $1 billion means the claim has settlement value?

A I wouldn't know how to answer that. It's very difficult to answer that in the abstract.

Q Okay. And if we settled that claim, 40% likelihood of $1 billion, we settled it for some amount of money, would your position be, well, I have no idea where that value could be allocated because it's a losing claim?

A I'm not really sure how to answer that either.

Q You testified a bit about exit financing problems affecting the assessment of the damages claims on direct. Do you remember that testimony?

A I do.

Q I don't know if you have an understanding of this one way or the other. Do you know whether if Rhodium ceased operations due to, say, a lack of exit financing and a lack of settlement, whether those claims that would benefit the Rhodium bankruptcy estate would disappear, or whether they would continue in some way?

A So my general understanding is that they would not necessarily disappear, but the ability to continue to prosecute the claims would be impaired, because there would be no ability to pay for lawyers such as yourself or LKC to continue to prosecute the claims.

Q Have you ever heard of a litigation trust?

A Yes.
Q Okay. And do you remember -- You were in the room when Mr. Blackmon testified. Right?
A Yes.
Q Do you remember Mr. Blackmon testifying about how LKC and Stris were enthusiastic about the possibility of taking these claims on pure contingency?
A Enthusiastic about, sorry, about what?
Q About the possibility of continuing to represent Rhodium as to its affirmative claims against Whinstone on pure contingency, without any hourly bills being paid.
A I was part of those discussions.
Q And so you remember them. Right?
A I do.
Q And Mr. Blackmon's testimony was accurate that both firms were enthusiastic about that possibility?
A I was also enthusiastic about that possibility. But when I talked with our professionals, it unfortunately was not a huge needle mover in terms of being able to create an opening for Rhodium to move forward without exit financing.
Q That's right. It didn't save the company enough to allow the company to continue being a going concern. Right?
A Something like that. I mean, that's roughly, I think, what my understanding was.
Q But of course, if the lawyers are working for free on

the front end, that would be enough savings for the claims to continue. Right?

A I think theoretically, yes.

MR. THOMPSON: Thank you, Mr. Topping. Have a good evening. I will pass the witness.

THE COURT: All right. Mr. Schmeltz?

REDIRECT

BY MR. SCHMELTZ:

Q Mr. Topping, you were asked about testimony that you gave that eight or nine times the savings certainly would not be unfair. Do you remember that?

A Yes.

Q Do you want to give any further gloss to that prior testimony?

A The reason why I didn't say it would be fair --

MR. THOMPSON: (indiscernible) that question and answer, Your Honor, instead of a narrative?

THE COURT: Yeah. Why don't you ask him a question?

BY MR. SCHMELTZ:

Q What did you mean by that?

A What I meant by that was I was not prepared to rule out the possibility, categorically, that solely by virtue of the amount, that that level of compensation would be per se unfair, inherently unfair solely because of the amount. We

hadn't done the analysis yet. We hadn't done the tax allocation. I wasn't involved in the analysis that was undertaken by Mr. Rosten, for example. I wasn't involved with the ongoing discussions about the tax allocation. I did not want to categorically rule out or state that a certain amount was per se unfair, or per se -- yes, unfair, or fair for that matter.

THE COURT: Wait. Hold on just a second.

(indiscernible) you need to dial in again, and (indiscernible)

MR. DISHER: I'm back on now, Your Honor, if you were waiting on me for something.

THE COURT: Okay. I was, and then Ms. Mates, too.

All right. Ms. Mates is on.

All right. Go ahead, Mr. Schmeltz. Sorry.

BY MR. SCHMELTZ:

Q Do you have a view, as you sit here today, under the facts and circumstances currently, whether it would be fair to pay LKC a success fee, fair and reasonable as eight or nine times the savings?

A I believe that what is reasonable, as I sit here today, based on everything that I know, based on everything I know about Mr. Rosten's work, and about the tax allocation work that was done, that the compensation for LKC proposed under Mr. Rosten's model would be fair and reasonable. I'm not

sure if I could agree that something more than that would be fair and reasonable.

Q You were asked if you could allocate value if you settled a losing claim. You remember that?

A Yes.

Q Here, is there an added complexity in that you settled for a number, and it's not clear whether the parties settling paid more for stuff or claims? Is that an added complexity?

A I do agree that there is added complexity in the sense that we're talking about a singular settlement number, and trying to come up with a mechanism for allocating different claims, and coming up with the constituents that would comprise that number. That is definitely a challenge.

Q So is it more likely than not that the settled claims, the damages includes those that are greater than 50%, or not?

A Can you repeat the question? I'm sorry.

Q Is it more likely than not that the settled damages includes those claims that have a greater than 50% chance of success?

MR. THOMPSON: I'm going to object as vague. I'm not sure, but he might be asking about whether it's more likely than not Whinstone was thinking something? Or -- Forgive me, I'm confused about what is more likely than not.

THE COURT: Can you rephrase your question?

BY MR. SCHMELTZ:

Q Yeah. If you had to make an allocation to damages, would it be more fair and reasonable to fill that allocation with winning claims, or with claims that were losing claims?

A In my opinion, it would be more fair and reasonable to fill it out with claims that are winning claims.

MR. SCHMELTZ: Thank you. No further questions for this witness.

MR. THOMPSON: Very briefly, Your Honor.

RECROSS

BY MR. THOMPSON:

Q Mr. Topping, in between your June testimony about eight or nine times the discount being not unfair, and your testimony today, have you spent a considerable amount of time meeting with Mr. Schmeltz?

A Have I spent a considerable amount of time what?

Q Meeting with Mr. Schmeltz, the attorney from Barnes & Thornburg?

A We did meet to prepare.

Q And are you asserting attorney-client privilege over the content of your conversations related to this testimony?

A Yes.

MR. THOMPSON: No further questions.

THE COURT: Okay.

REDIRECT

BY MR. SCHMELTZ:

Q I'm a little concerned (indiscernible) he asked if you had spent a considerable amount of time, and you said you'd spent time. Well, to be clear on the record, was it a considerable amount of time, or was it time?

A No, I wouldn't describe it as a considerable amount of time.

Q Okay, thank you.

MR. SCHMELTZ: Thank you. No further questions.

MR. THOMPSON: Nothing further, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Topping. You may step down.

MR. TOPPING: Thank you.

THE COURT: So it's 8:00. We're going to -- First of all, I need to get a real assessment of how long you think it's going to be, how long the rest of the case is going to be, and then the various -- I need for you all to tee up the various motions related to this, and I think there's probably eight or nine. And tee them up, give me an agenda, I'll go through them. To the extent I can rule on them, I'll rule on them. If not, we'll do it. So once you have a timeline as to how long you think it's going to take, then get with Mr. Laws, and we'll get another continued date for you.

And I don't know exactly when that's going to be. We're coming up on the holidays. But in order to -- Ms. Tomasco, I'm going to make the Debtor escrow the $8.3 million as part of whatever it does at confirmation, so that will take the time pressure off until I can rule.

MS. TOMASCO: I think that's perfectly fine, Your Honor.

THE COURT: Okay. So I will enter an order for you to escrow the amount, and subject to my further court order.

MR. SCHMELTZ: We've already paid $1.5 million of that (indiscernible)

THE COURT: No, no, it was -- My understanding was that it was the $8.3 million. That's what the testimony that you elicited today, that there was $8.3 still owed.

MR. SCHMELTZ: So it's $8.9 minus $600 is $8.3, but then we paid $950 on that.

THE COURT: Okay. Well, whatever hasn't been paid, I want that escrowed in a separate account.

MS. TOMASCO: I'm sure Mr. Wolfshohl will provide me with the number.

THE COURT: Okay. And then I'll enter an order to that effect so that we have that money there until I can rule on this. So -- all right?

MS. TOMASCO: Thank you.

THE COURT: Thank you all.

MR. THOMPSON: And I don't mean to suggest anything by this question, but I think last week, Your Honor might have suggested we'd be going tomorrow for travel purposes (indiscernible)

THE COURT: Yeah, no, I can't go tomorrow. I said we were going 'til tomorrow, but that was -- that went back to my lawyer days. But -- no. But I mean, look, it depends. If you need another half a day, then it's going to take a while to be able to come back. And then, you know, obviously, I'm going to need to rule. But I want to have whatever the amount is that is owed escrowed in a separate account for you all.

All right. We'll be in recess until tomorrow morning. Thank you.

MR. WOLFSHOHL: Thank you, Your Honor.

COUNSEL: Judge Perez?

THE COURT: Yes?

COUNSEL: Would you like for us to get with Mr. Laws about resetting the motion to compel that was scheduled for today as well?

THE COURT: Oh, I totally forgot about that. Yes, please do that. Yeah. (indiscernible)

COUNSEL: Absolutely. No problem.

THE COURT: You should have told me about that at

the beginning. I'm sorry.

COUNSEL: Oh, that's okay.

THE COURT: No (indiscernible)

MR. HURLEY: And Your Honor, Mitch Hurley with Akin, again for the record. We also had made an emergency motion for entry of a 502(d) order, which we had hoped to have heard today. And if that order were entered, I think it resolves at least one of the concerns that Mr. Potter had raised.

THE COURT: Yeah -- okay. So the 502(d) order, I don't think I need a hearing on that. Does anybody object to that?

Okay, I'll enter that.

COUNSEL: No, we're unopposed to that.

THE COURT: Yeah, I'll enter that either later today or first thing in the morning.

All right. Thank you.

MR. HURLEY: Thank you, Your Honor.

THE COURT: All right. And are you going to leave the exhibits, these exhibits here?

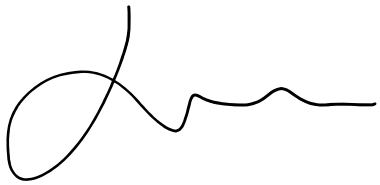
COUNSEL: Only if Your Honor wants us to. But I think we can take them, and return with them.

THE COURT: Well, we can take them and return them. We'll keep them.

(Proceedings adjourned.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Lindsay Peacock

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: November 6, 2025

EXHIBIT B

From: "Schmeltz, Trace" <TSchmeltz@btlaw.com>
To: "Lohse, Paige" <Paige.Lohse@btlaw.com>
Subject: FW: LKC Contingency Fee Calculation
Date: Thu, 14 Aug 2025 21:40:42 +0000
Inline-Images: image001.png; image002.png

[redacted]

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 9:59 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Yes. Am on a 5 a.m. flight. Should be in the office by 7:00 a.m.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 8:37:30 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I know you were tied up today. Are you available to talk in the morning?

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
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Exhibit 01
10/28/2025
Jonathan Cohn

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:14 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

I am helping with a last minute witness prep. I won't be on the Chuck dep today. If anything comes up and you think I could be helpful, text me. We can talk later this afternoon.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 8:11:10 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

I'm in the Topping depo then. I don't think that will take more than 2 hours.

I'm also free now if you can talk.

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • Web • V-Card

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 8:10 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

My apologies. Between 2:30 a.m. and now, I have been asked to convene a call of folks for the larger bankruptcy resolution. Let's talk at the lunch hour. Can we say 12:30?

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Monday, June 2, 2025 7:57:34 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I'll call you then. I cell the best number?

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

1000 Main St, 36th Floor | Houston, TX 77002
t 713.226.6695 **e** JWolfshohl@porterhedges.com
Bio • **Web** • **V-Card**

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Monday, June 2, 2025 2:55 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Actually, I can make 10 minutes at 8:30.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Sunday, June 1, 2025 5:23:37 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

I am in trial tomorrow. I will reach out on a break.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Sunday, June 1, 2025 5:10:13 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] Re: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, can you speak in the morning? I am free starting at 8:30.
Joshua W. Wolfshohl
Porter Hedges LLP
1000 Main St., 36th Floor
Houston, Texas 77002

On Jun 1, 2025, at 3:26 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:

Josh —

Thanks for this. Obviously, your client does not get to make the allocation for Rhodium. Our numbers reflect our work with Kevin and the Debtors. I am not sure how LKC can question their work. Likewise, our assessment of the degree to which energy credits make up any portion of the settlement amount is based on data we obtained from the Debtors—and the Debtors' views of the strength of its claims. We actually believe a fair assessment would lead to a success fee much closer to $2 million. It is unclear to us how your client intends to question its client's analysis on these issues.

In any event, we are prepared to make one more offer. Please call me to discuss, as we do not think the email dialogue is as productive as one might hope.

Kind regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Sunday, June 1, 2025 9:02:39 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, I appreciate the explanation. It is my understanding that these discussions predated my retention. While I now understand that back in February LKC was willing to compromise its fee to obtain certainty and to avoid litigation, expense, and distractions of the past 3.5 months, the Debtors did not honor that deal and should not now claim the benefit of a bargain they rejected. For a further explanation of its position, LKC asked me to send you the following:

Josh, please share this analysis with Trace:

- As an initial matter, no, we are not going to return to the deal the Debtors breached. Clarity and certainty would have been great back in February, and for that reason, we left a lot on the table. But, after the Debtors reneged, we endured months of threats, litigation, and a multi-headed effort to pressure us to compromise our fee. We needed to retain top legal counsel—at great expense—and I personally had to spend an enormous amount of time on this distraction while running a law firm. Trace must understand that under no circumstance will we accept $5.2 million.
- We have also looked at Trace's calculation. The $75 million allocation is a non-starter and inconsistent with Rhodium's own internal documents. During the mediation, Rhodium had a range of potential settlement values, and the lowest end of that range was approximately $174 million—with $100 million attributable to the affirmative case against Whinstone and roughly $74 million for the going concern value of the business. As it turns out, Rhodium ended up better than the low-end scenario, as the Debtors settled for $185 million, $11 million north of $174 million. Nonetheless, we are willing to use the $100 million allocation to be conservative. (Contrary to Trace's suggestion, $100 million was not *our* number; we expressed an expected value range to $150-215 million.) But we will not accept a lower number that Trace now claims might be relevant for tax purposes, which presents a completely different analysis. We are not doing tax accounting here.
- We appreciate Trace's attempt to further allocate between damages and energy credits, and his percentages (10%, 5%, 1%) are correct. Where he errs is allocating $50 million to energy credits. To be blunt, his allocation is utterly inconsistent with the Special Committee's approach to the affirmative case against Whinstone. Trace should remember that the Special Committee forbade us from making a fraud claim to recover the *Uri-related* energy credits. Against my strong recommendation, the Special Committee wanted to maintain the position that the founders signed away any rights to the Uri-related energy credits, that the sign-away was not procured by fraud, and that the founders might be liable for breach of their duty of care.
    - Therefore, Trace can claim only the value of the *non*-Uri-related credits, which is $36 million, according to the Debtors' expert. But, of course, there was no guarantee we would recover even that amount. Thus, the expected value of the *non*-Uri-related credits is roughly $25 million, as shown on the spreadsheet that Rhodium's own CFO put together.
    - In the attached spreadsheet, I modeled our contingency fee in two scenarios: first, using the $25 million expected value; second, using the full $36 million maximum value. The numbers are $8.532 million and $7.560 million, respectively.
    - Note the midpoint of those numbers is roughly $8.1 million, the number we previously proposed. But, for the sake of closure, I'm willing to use $7.560 million, provided that the Debtors pay our fees and expenses (including attorneys' fees) for having to deal with this dispute since mid-February.
    - If there is litigation over our LKC fees, I do not see how the Special Committee can argue for more than $36 million being allocated to energy credits. I have no idea whether the Special Committee still plans on pursuing a D&O. claim, but either way, an argument from the Debtors for an allocation to Uri-related energy credits would lack credibility and be inconsistent with the prior position they took. Discovery could be interesting. And if they are planning on maintaining their argument about the founders' duty of care, then I do not think they will want to argue a contrary position in the context of our fees—especially when they would not let us make the fraud argument in the first place.

- In terms of a counter, we will make one *contingent* on the Debtors understanding that the "brackets" are $8.1 million and *$5.2* million, not $3.8 million. With that, we can offer $7.56 million, which is the lower number on the attached spreadsheet (plus our fees and expenses as noted above). If the Debtors want the negotiations to continue, they need to make an offer above $5.2 million.

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

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From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Saturday, May 31, 2025 4:28 PM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Josh —

I have it on good authority that your client was willing to cap his fee at 2.5% of a sale up to $200 million back in February. On a $185 million sale, that would be $4.6 million plus $600,000, or $5.2 million. I don't think $3.8 is low-ball relative to that number, but I do think $8.1 million is a good deal above $5.2 million. Given those brackets, we should be able to reach an agreement.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Saturday, May 31, 2025 3:46:19 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] RE: LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, thank you for your email. I have forwarded it to my client and hope to speak with him again later today. I'll tell you that he is extremely unhappy and not currently interested in countering what he views as another low-ball offer.

As I've mentioned to you before, LKC's position is that it should get more than the $6.25M you shared with other stakeholders. I realize you've characterized $6.25M as a "top line" number, but my client strongly disagrees and sees it as *below* the lowest possible calculation. Your $3.8mm number is well below even that.

In summary, my client is not countering at this time, but I will work on him, as I do see benefit in getting this resolved.

I will get back to you later if I can get LKC to make a counter.

Josh

Joshua W. Wolfshohl | Partner
Porter Hedges LLP

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From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Saturday, May 31, 2025 9:51 AM
To: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: Re: LKC Contingency Fee Calculation

Rule 408 Discussion

Dear Joshua,

I hope this message finds you well. Let's collaborate to find a solution regarding the LKC contingency fee calculation. Based on the current tax plan, we see $75 million attributed to the settlement. It is my understanding that the hundred million dollar number came from advice given by LKC. We are not likely to use that number. That is the present plan for our taxes.

We see $50 million of that to energy credits. So, baseline is $600,000. Then, .05 * 5,000,000 is another $250,000. Plus .01 * 45,000,000 is another $450,000. And .1 * 25,000,000 is $2.5 million. For a total of $3.8 million.

I think there is a number between our $3.8 million and your $8.1 million at which we can settle. I appreciate your patience and understanding as we work through these details. Your insights have been very valuable to us. I am eager to discuss this further.

Thank you for your cooperation.

Best regards,
Trace

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

From: Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>
Sent: Thursday, May 29, 2025 4:33 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Dearman, Michael B. <MDearman@porterhedges.com>
Subject: [EXTERNAL] LKC Contingency Fee Calculation

Caution: This email originated from outside the Firm.

Trace, thank you for the productive call this morning. I agree it is better for the Debtors and LKC to reach an agreement, if possible, because that would spare the estate litigation expenses and potentially avoid a deposition of Mr. Topping.

Along those lines, I wanted to respond to your question of how we calculate the $8.1 million contingency fee. In short, we used Rhodium's own projections of (a) the value of the damages cases and (b) the contingency fee percentage.

- Value of the damages case: In the attached documents, Kevin Hayes provided a range of estimates of the value of the damages case: $100 million is his low point, and $150,000,000 is the high point. To be Debtor-friendly, we took **his low point, $100,000,000**.
  - Please note that, in our view, Kevin's range was conservative. We were more optimistic about the damages case.
  - Kevin's estimate also did not reflect the fraud claim that LKC wanted to bring.
  - Even using Kevin's conservative range, the damages allocation should be higher than $100,000,000. Kevin estimated the range for the ongoing business value as $74,450,842 to $176,306,256 million. Rhodium's settlement of $185,000,000 exceeds the combined low points of the damages case ($100 million) plus ongoing business value $74,450,842) by over $10 million. Thus, we should not be using the low point of $100 million.
- Contingency fee percentage: We used **7.5%,** which appears to be the contingency percentage the Debtors themselves used in calculating the contingency fee. We understand that Debtors used an allocation of $75 million and calculated a contingency fee of $5.625 million (excluding the $600,000). 5.625/75 = 7.5%

We then multiplied the $100,000,000 allocation by the 7.5%, and that gets you $7.5 million. Adding the $600,000, you get $8.1 million.

I hope this helps. Just let me know if you have any questions.

Best,
Josh

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EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 24-90448
	Chapter 11
RHODIUM ENCORE LLC, et al.	
	515 Rusk Street
	Houston, TX 77002
Debtors.	
	Wednesday, October 15, 2025
	4:30 p.m.

TRANSCRIPT OF DOC# 1752 EMERGENCY MOTION CONDITIONALLY APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B) APPROVING THE SOLICITATION PROCEDURES AND SOLICITATION PACKAGES, (C) SCHEDULING A COMBINED HEARING, (D) ESTABLISHING PROCEDURES FOR OBJECTION TO THE PLAN AND FINAL APPROVAL OF THE DISCLOSURE STATEMENT, (E) APPROVING THE FORM, MANNER, AND SUFFICIENCY OF NOTICE OF THE COMBINED HEARING, AND (F) GRANTING RELATED RELIEF;
DOC# 1776 EMERGENCY MOTION TO COMPEL DEPOSITIONS;
DOC# 1777 EMERGENCY MOTION TO CONTINUE HEARING ON THE SPECIAL COMMITTEE'S OBJECTION;
DOC# 1779 EMERGENCY MOTION TO QUASH THE NOTICES OF DEPOSITION OF PATRICIA B. TOMASCO
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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Also Present:	John Cohn Will Thompson David Dunn Marcus Parrish

(Proceedings commence at 4:30 p.m.)

THE COURT: All right. Good afternoon. It is 4:30 on Wednesday, October 15, 2025. We're here on several matters in Case Number 24-90448, Rhodium Encore. So why don't we get appearances of counsel in -- first in the courtroom, and then online, and then we can proceed?

MS. TOMASCO: Good afternoon, Your Honor. Patty Tomasco, Lindsay Weber, Quinn Emanuel Urquhart & Sullivan on behalf of the debtors.

MS. SCHULTZ: Good afternoon, Your Honor. Sarah Schultz and Mitchell Hurley, Akin Gump Strauss Hauer& Feld on behalf of the SAFE Ad Hoc Group, and I bet you didn't think you were going to see a day with all of us sitting together over there.

THE COURT: I still don't believe it.

MS. SCHMELTZ: It's not an optical illusion. Your Honor, Trace Schmeltz and Ken Kansa for the Special Committee.

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl for LKC, and I've also got Jon Cohn and Will Thompson at counsel table with me as well.

MR. SHANNON: Good afternoon, Your Honor. RJ Shannon on behalf of Nicholas Cerasuolo.

THE COURT: Thank you.

MR. PEREZ: Good afternoon, Your Honor. Alexander Perez with Munsch Hardt Kopf & Harr on behalf of the Transcend

Group, and our co-counsel will also announce themselves.

THE COURT: Okay. Go ahead, Mr. Potter.

MR. POTTER: Yes, Your Honor. Chase Potter on behalf of the Transcend Group.

THE COURT: Ms. Mates.

MS. MATES: Good afternoon, Your Honor. Rhonda Mates for Imperium Investment Holdings, Chase Blackmon, Cameron Blackmon, and Nathan Nichols.

THE COURT: All right. Mr. Allard.

MR. ALLARD: (Audio interference) for the Official Committee of Unsecured Creditors.

THE COURT: Say that again. You cut out a little bit.

MR. ALLARD: Sorry. Daniel Allard of McDermott, Will & Schulte for the Official Committee of Unsecured Creditors.

THE COURT: All right. Thank you. All right. Does anyone else wish to make an appearance?

All right. Go ahead, Ms. Tomasco.

MS. TOMASCO: I think we're going to amaze you even further, Your Honor. We took to heart the Court's admonishment to be transparent, and we also want to try to keep the process as efficient as possible. And usually, that means I used to think -- say that, you know, time is money in Chapter 11, except sometimes it's not.

And in this case, what I think we have for the Court

that resolves both the motions to compel, the motions for -- the motions to quash, as well as the disclosure statement hearing, the following proposal, and if I get it wrong, I have plenty of paper graders in the courtroom that will tell me where I've gotten it wrong.

We reached out to Mr. Laws and asked for some time on the Court's docket for a two-week delay for the confirmation hearing. Mr. Laws reached back out to us and gave us a time, which I'm sure you're aware of, of December 3rd at 9:30.

What that allows us to do is, instead of Mr. Potter feeling compelled to take ten depositions because he doesn't know who knows what, is we're going to have a --

THE COURT: All right. I'm going to go ahead and mute the line. So Mr. Potter and Ms. Mates, why don't you hit "five star"?

AUTOMATED VOICE: Conference, muted.

THE COURT: Okay. Mr. Potter, do I have you? I know I have Ms. Mates.

MR. POTTER: I believe so. Can you hear me?

THE COURT: I can hear you fine.

Okay. Go ahead, Ms. Tomasco.

MS. TOMASCO: Thank you, Your Honor. So a couple of meet and confers, some really good collaborative thinking.

THE COURT: I was prepared to have a status conference every morning at 8 so the children could get off to

school.

MS. TOMASCO: So the proposal is this: We are going to circulate to Mr. Potter a redline of the revised disclosure statement that addresses the information omissions that he cited in his objection. We hope that that is sufficient for his purposes. I will note that --

THE COURT: I have some comments also.

MS. TOMASCO: Okay. And thankfully I brought Ms. Weber here who has the pen on the disclosure statement and we'll be happy to take those down religiously.

THE COURT: These are mostly plan comments.

MS. TOMASCO: Okay. I understand, Your Honor. We're here to help. We're here to get that done, to get everybody's input. Mr. Potter is the only one that objected to the disclosure statement. We're happy for him to grade what we've done to address his concerns. We plan to get that redline to him. And we were hoping to get a virtual-only hearing time on Friday in the -- just -- you know, taking everybody's comments, getting them processed.

THE COURT: Well, the main thing that I'm not going to approve conditionally until I've had an opportunity to review a fully vetted liquidation analysis. So I'm not prepared to conditionally approve.

MS. TOMASCO: I wholeheartedly agree with Your Honor. And --

THE COURT: I'm not going to allow it to go out on the -- so you tell me when you have it and then we'll have the hearing two days, you know, 48 hours after that.

MS. TOMASCO: I understand. So that will not allow us to have, I believe, a hearing on Friday, but I will let the parties opine on that. There's one circulated. It just hasn't been approved by all of the planned proponents.

THE COURT: And there's going to be a fair amount of high and low recoveries, obviously, because we still have various pending items.

MS. TOMASCO: Correct. Correct. And I understand, Your Honor. And it is my feeling as well. I've never sent out a disclosure statement without a liquidation analysis. And it is -- I don't know how one actually does that in a conditional approval anyway.

THE COURT: Especially in a liquidating plan.

MS. TOMASCO: Correct. I understand. And so I'm 100 percent with the Court on that front.

So to sort of -- the way in which giving us more time should save us money is that we've agreed with respect to the depositions to do corporate representatives of the plan proponents, being the debtors, the special committee, the SAFE, AHG, and Imperium. If those 30(b)(6) depositions do not prove fruitful enough for Mr. Potter, we would like a hearing sometime after November 6th, which is the date that one of the

deponents would be earliest available.

So you see how this is all fitting together. And so we would like an interim hearing on discovery sometime that week of the 1st or 2nd -- sometime after the November 6th.

THE COURT: Got it. If you think that November 7th, Mr. Potter, is, and everybody else, if you think that's sufficient time, November 7th, no?

MR. HURLEY: I think actually, Your Honor, it probably has to be a little bit after that.

THE COURT: Okay.

MR. HURLEY: Sorry, Mitch Hurley, for the record. And I think that's because at least one of the 30(b)(6) witnesses is not available until the following week, and we want to have the conference after the 30(b)(6) witnesses are finished.

THE COURT: Got it. Okay. So when would it be? I mean --

MS. TOMASCO: Friday the 13th -- 14th.

THE COURT: Okay. We could do Friday the 14th. It would be virtual.

MS. TOMASCO: No, virtual is also preferred for cost savings, Your Honor.

THE COURT: Yeah. No, no. Yes.

MS. TOMASCO: Okay. And with those -- that basic plan, we're happy to take anybody's additional comments, the

Court's or anybody else's, to how we can improve the disclosure statement.

THE COURT: Okay. All right. Does anybody else wish to be heard on the disclosure statement?

MS. TOMASCO: Oh, I'm told that we can have a hearing on Monday, which, as you know, is my vacation. But if it's virtual, I will have palm trees in the background.

THE COURT: No, no.

MR. ALLARD: On the disclosure statement.

MS. TOMASCO: On --

THE COURT: So when is the -- so --

MR. ALLARD: We're going to file the disclosure statement, like, this week.

THE COURT: No, no. The liquidation analysis.

MR. ALLARD: Pardon me. The liquidation analysis imminently. It -- within -- tomorrow morning, probably? Or tomorrow by COB.

MS. TOMASCO: Tomorrow by close of business, which gives us Monday for -- unfortunately. But --

THE COURT: Oh, I'm in the wrong day, the 20th. So Monday, I have a confirmation hearing that is contested that starts at 9. So we could do it at eight o'clock, or we could do it at 3:30. Or 3. You could --

MS. TOMASCO: 3 would -- I think 3 works, Your Honor.

THE COURT: 3?

MS. TOMASCO: Yeah.

THE COURT: Okay. So let's do Monday at 3.

MS. TOMASCO: Virtual only?

THE COURT: As virtual only.

MS. TOMASCO: Thank you.

THE COURT: And if my confirmation hearing goes long, I'll call it, and we may need to push it back a little bit.

MS. TOMASCO: I understand, Your Honor. Thank you.

MR. POTTER: Your Honor, did you say Monday, October 20th at 3 p.m.?

THE COURT: Yes, sir. At 3 p.m. Yes, sir.

MR. POTTER: Thank you.

THE COURT: All right. So just in terms of my comments. So obviously, you're going to rework the schedule backing back off from the new hearing date on the plan.

MS. TOMASCO: Correct.

THE COURT: All right. So my biggest concern about the plan is that it kind of backdoor gives the debtor a discharge with the third-party releases. So the scope of the third-party release should only be the covered claims. So with respect to anything that is, you know, subject to a third-party release, it has to be a covered claim, which is the claims that arise, you know, in connection with filing the plan, the -- and anything that happened post-petition pre-effective date.

And with respect to everything else, you know, the

debtor can provide a release, or there could be, you know, mutual releases exchanged where people sign. But in terms of the third-party release in the plan, it's only -- I think the scope has to be only the covered claims. So that's it.

And I like your definition of covered claims, but I didn't see where it was exactly used. Because usually you would see that in the excluded -- in the, I'm sorry, exculpated parties, but it wasn't in the exculpated parties.

MS. TOMASCO: I think what you're referring to is something similar that we had in the cons plan?

THE COURT: Exactly.

MS. TOMASCO: Okay. I got it.

THE COURT: It's a liquidating plan. Yeah.

MS. TOMASCO: All right.

THE COURT: It's a liquidating plan. So it's exactly the same. So as it relates to -- even if you vote to accept the plan, I think you can opt out. And that's not in there right now. So, you know, obviously C has to be limited to the covered claims. You have to make sure that the scope of the injunction is limited to the claims that are released by the releasing parties. I think the scope of your injunction gives you kind of a backdoor discharge. So -- and that's in a couple of places, 11.1 and in the injunction.

Yeah, and then the exculpation talks about being exculpated from preference, fraudulent conveyance, fraudulent

transfer claims, and all of that. I mean, that's not -- I mean, the exculpation is limited to acts that happen within the bankruptcy for those three parties and not for related parties. You don't get -- related parties don't get exculpated. Just the debtor, the Committee, its members and the two independent directors. That's the only people getting exculpated.

MS. TOMASCO: What about counsel?

THE COURT: Counsel doesn't get exculpated. There's a release, but there's no exculpation.

MS. TOMASCO: Okay.

THE COURT: Okay. Covered claims. All right. I also had a question about employee arrangements. That's more -- that's my only really disclosure issue.

I just, obviously that's going to have to be reflected in a line item in the liquidation analysis where all of these monies are coming out, you know, the substantial contribution fee and all of that. I mean, all that's going to have to be detailed in the liquidation analysis.

MS. TOMASCO: It is, Your Honor. It's been in there for a long time.

THE COURT: Okay. All right. And let me see. Okay. On the definition of released parties in 1.96, as it relates to related parties, only to the extent that they would be liable derivatively of the released parties. So if I'm a related party that would be liable derivatively, then that would be --

if there's independent liability, we're not releasing that. And as it relates to the releasing parties, only if the releasing party would be compelled by principals of agency to issue a release.

And then -- so here in your definition of releasing parties, you have the debtors related parties, including Imperium and the founders. There's a separate provision in the treatment which says that they're going to opt in, that they're not going to opt out. So I don't -- I'm not quite sure, because you don't otherwise -- releasing parties does not include related parties other than for the debtors. Was that intentional? Because it's like there twice.

MS. TOMASCO: Like, it's probably -- I didn't -- that as not -- that's not in my bailiwick because I'm --

THE COURT: Yeah.

MS. TOMASCO: -- I didn't do that part. I didn't negotiate that part. But my imagination is that that was just belt and suspenders duplicative.

THE COURT: Okay. Well, I think he -- I mean, I think -- I don't think this is necessary if you already have it in the plan otherwise. So take a look at that. So those are my comments to the plan.

MS. TOMASCO: We will incorporate those changes, Your Honor.

THE COURT: Okay. Thank you. All right. So that

just then leaves the setting on the -- and the discovery related to the LKC fees. Is there anything else related to the plan?

MS. TOMASCO: Nothing else related to the plan. Nothing else related to the motions to compel or to quash. And I'll ask Mr. Potter to confirm.

MR. POTTER: The one thing I would mention, Your Honor, and we talked about it in our meet and confer, while we agreed to begin with the 30(b)(6) depositions, I could envision, and we're going to endeavor to give corporate -- you know, we just made this agreement today. And so we're shifting to 30(b)(6) depositions. And so we obviously need to provide topics.

I'm endeavoring to do that by tomorrow to all the entities that will be deposed. But I could see -- and I know we're trying to move quickly so I could foresee some objections to topics potentially. I know you wouldn't expect objections or any fights in this case at all. So I'm sure it'll go smoothly.

But in the event that that happens, I could foresee needing to maybe get in front of you quickly next week. But I just wanted to -- I don't know that we need necessarily a setting, but I wanted to forewarn you on that.

THE COURT: I was prepared to have hearings every morning at eight o'clock --

MR. POTTER: Okay.

THE COURT: -- to get this through, so.

MR. POTTER: Very good.

THE COURT: So don't. All right. So then --

MR. POTTER: But that's all for me, Your Honor.

THE COURT: All right. Thank you. All right. So then we have the emergency motion to continue the hearing on the Special Committee's objection.

Go ahead, Mr. Schmeltz.

MS. SCHMELTZ: Thank you, Your Honor. Trace Schmeltz for the Special Committee. Your Honor, we took your words to heart and paid. There's $600,000 under the agreement that's unequivocally due. We looked at time invoices, and we found about another $165,000 we thought unequivocally we should pay. We've wired that amount. I've confirmed LKC has received that wire.

We are very close to being able to either resolve or file a motion on the Riot Whinstone allocation question. I'd anticipate that Riot Whinstone allocation question motion can get resolved relatively quickly. And that helps set the stage, we believe, for a conversation around fees.

We are doing a couple of things at once. One, LKC has already provided discovery to the Special Committee and we've sent discovery back. So we're pursuing that litigation track. Two, we're trying to resolve this issue short of

litigation, and we'll continue to do that.

We do have -- I think we will -- we would like that hearing to occur later, given the confluence of plan discovery and LKC discovery for our team all at once. We do have -- we did receive a deposition notice for Chase Blackmon that's set to occur tomorrow. I just got that notice last week. We've noted that we would not have Chase Blackmon there. I think LKC's view is they properly noticed that. I'll let, obviously, them speak for themselves. We thought that was awfully tight, and it was not sufficient notice.

We'd like this whole thing phased out a little bit and now with the plan, you know, confirmation moved to December 3rd, I think we put, like, November 17 or something on our request. I'd love to see that even a little later if we can. But I'm mindful we have Thanksgiving and other things going on.

So we would be prepared to handle discovery in the month of November with LKC and would like to do it that way. I know they have some alternative views and I don't want to get in Mr. Wolfshohl's way in that regard.

MR. THOMPSON: May it please the Court. Thank you, Your Honor. Will Thompson from Lehotsky Keller Cohn. Good to see you again.

Mr. Schmeltz just alluded to the possibility of a deal. Deals are great if we can move toward one. In my experience, deals do not happen when everyone gets endless

extensions and deadlines are just pushed out and we can deal with other things in the meantime.

So I think it might help to talk a little bit about the timeline here. This settlement was approved by this Court back in April, more than six months ago.

THE COURT: I'm aware of the timeline.

MR. THOMPSON: Got it.

THE COURT: And I want to get this resolved quickly. So I would -- I'm really not inclined to move the hearing. But in deference to Mr. Schmeltz, I'll move it a week. But otherwise, it's going to go that next week. So I will tell you exactly when it's going. We're going to have -- we're going to start on Tuesday, November 4th at 2 p.m.

MR. THOMPSON: Thank you.

THE COURT: And have the hearing then.

MR. THOMPSON: Thank you, Your Honor. Appreciate that guidance.

THE COURT: Okay. And then to the extent that you need any -- I mean, if there's continuing, and now that you know -- and the hearing's not going to move, so we'll have that hearing. And so to the extent that there's additional issues relating to discovery that can't be resolved now that you know the date, I'm happy to take that up on a further status conference.

MS. SCHMELTZ: I will note that we're not going to

have Mr. Blackmon available tomorrow for a deposition. And if the effort is then to impose costs on the estate, because the feeling was it was properly noticed, I'd ask for relief from that. -- or that -- so.

THE COURT: Let them file the motion first if they're going to do that.

MS. SCHMELTZ: Fair enough. Thank you, Your Honor.

MR. THOMPSON: Thank you, Your Honor. Just for context, you know, we have provided documents to the other side. We've not received any documents in response. We've tried discovery through a number of different procedures and efforts here.

THE COURT: If they don't provide discovery, then they won't be able to introduce any evidence.

MR. THOMPSON: And that's exactly what I'm looking for, Your Honor.

THE COURT: All right. I mean --

MR. THOMPSON: I'm --

THE COURT: -- that's --

MR. THOMPSON: Yeah.

THE COURT: -- that's -- you know, it's got to work both ways.

MR. THOMPSON: I'm with Your Honor 100 percent. All we want to avoid is --

THE COURT: You know, we know the date that this is

moving forward. I expect all parties to provide, you know, full discovery. And to the extent somebody thinks somebody's being unreasonable, I'll call balls and strikes. But otherwise, I believe in, you know, we're going to try it on the merits. And to the extent people aren't trying it on the merits, then they don't get to introduce their evidence.

MR. THOMPSON: I appreciate, Your Honor. I don't want to take up more of your time. I do have one question about this wire transfer.

I believe Mr. Schmeltz was correct. There was a wire transfer. I saw a copy of it. I'm not a bankruptcy lawyer, Your Honor knows. My understanding is there's usually a court order before the money changes hands. And we're not touching the money until we know what we're supposed to do on that.

THE COURT: So, Mr. Schmeltz, I mean, I don't know. There's no court order approving the fees.

MR. SCHMELTZ: Your Honor, I think your comment and your inclination was that there was an undisputed amount. We should --

THE COURT: Right.

MR. SCHMELTZ: -- pay it, and then you would move the hearing.

THE COURT: Right. But I actually thought the undisputed amount would include part of the contingent fee, not just the $600,000. I was a little surprised that it was only

that amount. You know, I was -- and I'm -- you know, I was actually very surprised that it only included the $600,000 plus some, you know, other small amount. So, you know, just send an order approving that, and I'll enter it tomorrow. And then that way, we have it covered.

MR. SCHMELTZ: Thank you.

MR. THOMPSON: Thank you, Your Honor. We appreciate it.

MS. SCHMELTZ: I will -- well, if there's a dispute about the discovery, we'll dispute that at the time. I don't --

THE COURT: Yeah. Understand. No, no, you're --

MR. SCHMELTZ: -- agree necessarily with the characterization.

THE COURT: Right. Yep.

MR. SCHMELTZ: I don't want you to think my silence was a rollover on that.

THE COURT: Yep. Got it. Got it.

MR. SCHMELTZ: Thank you.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: All right. All right. Is there anything else we can do today?

Mr. Shannon, you've been uncharacteristically quiet. What -- are you not feeling well?

MR. SHANNON: No, Your Honor. I'm happy that we've

been able to work through these things, so.

THE COURT: Okay. Thank you very much. All right. We're in recess to my five o'clock hearing.

MR. WOLFSHOHL: Thank you, Your Honor.

THE COURT: Thank you.

MS. TOMASCO: Thank you, Your Honor.

THE COURT: You may be excused.

MR. POTTER: Thank you, Judge.

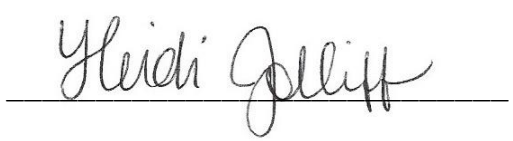
THE COURT: Thank you.

(Proceedings concluded at 4:56 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Heidi Jolliff, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



HEIDI JOLLIFF, AAERT NO. 2850 DATE: October 17, 2025

ACCESS TRANSCRIPTS, LLC

EXHIBIT D

From: Jon Cohn <jon@lkcfirm.com>
Sent: Wednesday, November 26, 2025 5:10:56 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Will Thompson <will@lkcfirm.com>; Hurley, Mitchell <mhurley@akingump.com>; Chase Potter <potter@imcplaw.com>
Subject: [EXTERNAL] Re: Rhodium

Caution: This email originated from outside the Firm.

Trace: Will informed me that, earlier today, the SAFE AHG and the Transcend Group directed you to terminate all settlement discussions with us because they no longer like where the negotiations are headed and they want to move backwards.

To recap the past week:

- After months of refusing to negotiate at all, the Special Committee offered $7.1M to settle the fee dispute—far in excess of the Special Committees' prior lowball offer of $3.8 million. The $7.1 million offer confirms the Special Committee's prior bad-faith negotiating tactics, which created unnecessary litigation and depleted the estate while enriching Barnes & Thornburg.
- We countered with $8.4 million on the success fee and made clear that the Special Committee must pay the hourly fees and expenses of LKC and Porter Hedges, none of which should ever have been in dispute.
- The Special Committee countered with $7.4 million for the success fee and agreed to pay the hourly fees and expenses of LKC and Porter Hedges. Although the Special Committee's number was still unacceptable, we were pleased to see that the Special Committee *finally* was engaging in good-faith negotiations.
- We countered with $8.25 million for the success fee, plus the now-undisputed hourly fees and expenses of LKC and Porter Hedges.
- But, instead of accepting our offer (which is $650,000 less that the conservative amount in the fee application) or even providing us with a good-faith counter, you informed Will today that you will no longer negotiate—despite the contractual obligation to do so—because he SAFE AHG and the Transcend Group want to move backwards, offering a lower amount that what you offered before. You further stated that these third parties would take over negotiations (though they have been silent since then).

The implications of this are clear:

- First, trial will resume on December 3. I have cc'd the SAFE AHG and the Transcend Group to confirm that we absolutely oppose their request for a continuance.
- Second, the Special Committee has (again) breached the LKC retention agreement by refusing to negotiate in good faith. We will present this evidence to the Court, as you have already opened the door to disclosing settlement communications.
- Third, the SAFE AHG and the Transcend Group have tortiously interfered with that agreement.
- Fourth, the Debtors have violated their ongoing discovery obligations. As you may remember, LKC's discovery requests include all communications between the Debtors and third parties. Judge Perez has already ordered you to comply with that request, but you have produced nothing. Please comply immediately. The SAFE AHG should as well.

Best regards,
Jon

Cc: Mitch Hurley, Chase Potter

EXHIBIT E

From: Schmeltz, Trace
To: Will Thompson
Cc: Rhodium Bankruptcy Investigation
Subject: Re: Withdraw
Date: Wednesday, October 29, 2025 5:11:31 PM
Attachments: Image.png

Agreed. We will file something with the court by Monday morning.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL



From: Will Thompson <will@lkcfirm.com>
Sent: Wednesday, October 29, 2025 5:08:32 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>
Subject: [EXTERNAL] RE: Withdraw

Caution: This email originated from outside the Firm.



Trace,

Thanks for the email. Based on our conversations, I think we're in agreement. You aren't bringing claims against LKC and are not arguing LKC violated any rules of ethics, fiduciary duties, etc. As a result, I will forgo discovery into these issues, including deposing Mr. Topping.

If you could confirm in writing, I'll treat this as resolved.

Thanks,
Will

Will Thompson | Lehotsky Keller Cohn | 210.286.0806

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Wednesday, October 29, 2025 4:57 PM
To: Will Thompson <will@lkcfirm.com>
Subject: Withdraw

We agree to withdraw arguments about misuse of privilege for the hearing on LKC's fee application.

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

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EXHIBIT F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RHODIUM ENCORE LLC and AIR HPC LLC, Debtors,	CASE NO: 4:24-bk-90448 Houston, Texas Wednesday, December 3, 2025 9:30 a.m. to 11:52 a.m.

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:	PATRICIA B. TOMASCO RAZMIG IZAKELIAN Quinn Emanuel Urquhart & Sullivan 700 Louisiana Street, Suite 3900 Houston, TX 77002
	VINCENT PAUL SCHMELTZ, III KENNETH KANSA Barnes Thornburg, LLP One North Wacker Drive, Suite 4400 Chicago, IL 60606
For Ad Hoc Group of SAFE Parties:	SARAH A. SCHULTZ Akin Gump Strauss Hauer & Feld LLP 2300 North Field Street, Suite 1800 Dallas, TX 75201
For Creditor:	BRENDA LYNN FUNK Munsch Hardt Kopf & Harr, P.C. 700 Milam Street, Suite 800 Houston, TX 77002
	CHASE JORDAN POTTER Iacuone McAllister Potter PLLC 4925 Greenville Avenue, Suite 1112 Dallas, TX 75206

For Lehotsky Keller Cohn LLP:	JOSHUA W. WOLFSHOHL Porter Hedges LLP 1000 Main, 36th Floor Houston, TX 77002
For United States Trustee:	HA MINH NGUYEN Office of the U.S. Trustee 515 Rusk Street, Suite 3516 Houston, TX 77002
For Creditor Nicholas Cerasuolo:	R.J. SHANNON Shannon Lee Beatty LLP 2100 Travis Street, Suite 1525 Houston, TX 77002
For Caleb VanZoeren:	ANNMARIE ANTONINETTE CHIARELLO Winstead PC 500 Winstead Building 2728 North Harwood Street Dallas, TX 75201
For Imperium Investment Holdings, LLC:	RHONDA BEAR MATES Streusand Landon Ozburn Lemmon LLP 1801 South Mopac Expressway Suite 320 Austin, TX 78746
Court Reporter:	AKEITA HOUSE
Case Manager:	
Transcribed by:	Veritext Legal Solutions 330 Old Country Road, Suite 300 Mineola, NY 11501 Tel: 800-727-6396

Proceedings recorded by electronic sound recording;
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INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL ROBINSON	100	105		
CHRIS WHEELER	115	116	127	132
KEVIN HAYES	134	180	217	227

EXHIBITS	RECEIVED
Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110, 111	21
Exhibit 9	24
Exhibit 10	24
Exhibit 11	25
Exhibit 108	26
Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, 100-107	107
Exhibit 216	149
Exhibit 244	150
Exhibit 259	220

HOUSTON, TEXAS; WEDNESDAY, DECEMBER 3, 2025; 9:30 a.m.

(Call to Order)

THE COURT: It is Wednesday, December 3rd, 2025. We are here for the 9:30 docket, Case Number 24-9044, Rhodium Encore. There are various matters that are set. So Ms. Tomasco, why don't you start us off. Make an appearance and we'll get the appearances of counsel in the courtroom and then online.

MS. TOMASCO: Thank you, Your Honor. Just making sure the Court saw the amended agenda uploaded at Docket Number 2107.

THE COURT: Yes. The one that -- yeah, I did.

MS. TOMASCO: Thank you, Your Honor. Patty Tomasco. I'm here with my colleague, Razmiz Izakelian. Quinn Emanuel Urquhart & Sullivan. I will let the other law firms at my table make their own introductions. Thank you.

THE COURT: Thank you.

MS. TOMASCO: On behalf of the Debtors.

MR. SCHMELTZ: Your Honor, Vincent Schmeltz, and Ken Kansa from Barnes & Thornburg on behalf of the Special Committee of the Board of Rhodium.

THE COURT: Good morning.

MS. SCHULTZ: Good morning, Your Honor. Sarah Schultz and Mitchell Hurley, Akin Gump, on behalf of the SAFE Ad Hoc Group.

THE COURT: Good morning.

MS. FUNK: Good morning, Your Honor. Brenda Funk and Chase Potter for the Transcend Group.

THE COURT: Good morning.

MR. WOLFSHOHL: Good morning, Your Honor. Joshua Wolfshohl on behalf of Lehotsky Kellen Cohn.

THE COURT: Good morning.

MR. NGUYEN: Good morning, Your Honor. Ha Nguyen for the U.S. Trustee.

MR. SHANNON: Good morning, Your Honor. R.J. Shannon on behalf of Nicholas Cerasuolo.

THE COURT: All right. Who do we have on the phone?

MS. CHIARELLO: Good morning, Your Honor. Annemarie Chiarello of Winstead PC here on behalf of Caleb VanZoeren.

THE COURT: Good morning.

MR. ALLARD: Nathaniel Allard of McDermott Will & Schulte for the Official Committee of Unsecured Creditors.

THE COURT: Good morning.

MS. MATES: Rhonda Mates for Imperium Investment Holdings, Chase Blackmon, Cameron Blackmon, and Nathan Nichols.

THE COURT: Good morning. All right. All right. I'm going to go ahead and mute the lines. And hit five-star

if you wish to speak.

Whoever is at the 205 area code, that's what's giving us the background noise.

MR. CAMARA: Are you able to hear me? This is Justin Camara, Your Honor, appearing pro se. I hold indirect equity interest through Trine Mining, Cross the River, and Elysium Mining, which old equity in Rhodium Enterprises Incorporated.

THE COURT: Okay. I can hear. Keep your phone on mute because I was getting the feedback from your line.

MR. CAMARA: Sorry, sir.

THE COURT: No problem. All right, Ms. Tomasco.

MS. TOMASCO: Thank you, Your Honor. the order on the agenda, I hope the Court agrees with it. The parties, the plan proponents agree with this order. And if I could just -- because we need to address the mediation confidentiality stipulation before we can proceed to the case in chief on confirmation. We wanted to take that up first.

THE COURT: Okay.

MS. TOMASCO: Your Honor, as you know, the agreed mediation order that appears at Docket Number 966 has pretty onerous confidentiality terms. Can't use anything that you learned in mediation, can't use any of the events at mediation. That's consistent with the Court's complex case

rules and the mediation procedures.

The parties to the mediation want to use some of the things that happened at that mediation, the Whinstone mediation back in February of 2025 in support of in particular the contribution claim made by the SAFE Ad Hoc Group. They were a participant in the mediation as were the Debtors, the Unsecured Creditors' Committee and Whinstone.

As you'll recall, in connection with the LKC matter, some mediation materials were used, notwithstanding the fact that they were designated mediation privileged. And so there has been some precedent already in the case for using some of the information from the Whinstone mediation because of the issues with allocation of the proceeds of that settlement. This would just be a stipulation that evidence adduced that is mediation privilege would be done in a sealed manner just like all of the other sealed documents that we've been dealing with in the LKC litigation. We would do that here for the confirmation hearing for that limited purpose.

It could be, Your Honor, that you say I don't need to hear any of that. And that's an option. But to the extent that we are going to get into mediation-privileged documents, I think it's important that we follow the stipulation which essentially just says it's going to be submitted under seal. No one has filed an objection to this

stipulation. Three out of the four mediation parties are before you today. And we all agree that this is evidence that comes in in support of the role played by the SAFE AHG in connection with the Whinstone settlement. And that's it. And we --

THE COURT: Did you ask for Whinstone's consent?

MS. TOMASCO: We did not, no.

THE COURT: Okay.

MS. TOMASCO: But we had very productive conversations with them, but no, we did not ask their consent with respect to this.

THE COURT: All right. Well, I would like to hear from them on that issue.

MS. TOMASCO: Okay. All right, Your Honor. I will reach out to them and perhaps we can move forward with confirmation and in the interim get some consent from them. I haven't looked at --

THE COURT: Mr. Hurley?

MR. HURLEY: Could I address the Court very briefly?

THE COURT: Go ahead.

MR. HURLEY: Thank you, Your Honor. For the record, Mitch Hurley with Akin on behalf of the SAFE AHG.

Your Honor, I really don't have anything to add to what Ms. Tomasco said excerpt I'd like to cite a couple of

cases, Your Honor, in case it's helpful.

THE COURT: All right.

MR. HURLEY: So the mediation confidentiality or mediation privilege is obviously very important, but it's not absolute. It's a qualified kind of privilege. This is a concept that's been recognized pretty uniformly by the cases. And I want to cite to two cases -- I have copies of them if that would be helpful, I could hand them up -- that recognize exactly that principle.

So the first one I'm going to cite, Your Honor, is from the Northern District of Texas. It is FDIC v. White, 53 F.R.D. 560. And that is Northern District of Texas 1999. That case is a little bit different than our facts because that was a case where there was a mediation and one of the mediation parties in a later proceeding wanted to argue based on communications in the mediation that a settlement that emerged from the mediation was produced by coercion. So that's a little different than our case, but it recognizes the main principle, which is that it's a qualified privilege. The judge did allow that material in connection with asserting the defense.

The other case I want to cite I think is a little more apposite to our facts. It's very recent. It is 2025 WL 1312393. The name of the case is In re Wells Fargo. And that's February 3rd, 2025. This is a case that, again,

recognizes the general principle that mediation privilege is very important mostly to encourage candor among the substantive parties to the mediation but can -- there are circumstances where it's not absolute it's qualified and you can use material from the mediation if the circumstances warrant.

And the Wells Fargo case is somewhat similar to what we have here in that a mediation had produced a settlement of a class action. The settlement was a resolution amongst the actual substantive parties to the case. It actually included an agreement that 25 percent of the proceeds of the award was going to be provided to the Plaintiff's lawyers. It did not allocate the 25 percent between plaintiff law firms.

The plaintiff -- one of the plaintiff law firms in a subsequent fee dispute argued based on its contribution at the mediation effectively that it should have a larger share of the 25 percent than law firm number two believed it should have.

Law firm number two objected, I think moved to strike, and the court overruled the motion and heard the evidence about what happened in the mediation in connection with the fee dispute and held, you know, very specifically that again the purpose of mediation confidentiality is to encourage candor between the parties. And when a party

wants to offer that kind of information at a hearing, the court engages in a balancing test where you weigh the importance of the information against the harm that would be caused if the information were admitted. And the court noted that the evidence was directly relevant to the question of who deserved what for the 25 percent of the fees, so it was very important. And then evaluated what the harm would be if it were allowed and observe that the actual parties to the dispute had already settled. They were at peace with one another. And that allowing evidence of communications in the mediation that involved solely a fee dispute wasn't even of enough significance to the substantive parties that it could any way be viewed as discouraging candor and so allowed admission of that material. And we think we're in a very similar situation here in terms of the importance of the information, Your Honor.

The SAFE AHG, as you know from reading the papers, and the plan proponents general submit that the SAFE AHG engaged in many activities that qualify under 503(b) as substantial contribution.

This particular aspect of it we do think is quite important. It's a piece of a larger substantial contribution puzzle, if you will, but we think it's an important piece.

So in particular the Whinstone transaction is the transaction that effectively enabled everything that came after. It created the proceeds, the cash, that frankly everyone has been fighting about since the Whinstone transaction was agreed to.

Obviously, it's going to pay if the plan is confirmed a very substantial part of the SAFE AHG, the SAFE parties' claims. It's also going to make value available for parties junior to the SAFE claimants. And it is what has paid everybody else too, Your Honor, including the claimants that were senior to the SAFE AHG. So it's a really important inflection point in the case. We think critically important to the success of the cases. And having evidence of our involvement in helping make that happen we think is again an important part of the puzzle.

Already on the record I think you have acknowledgement that the mediation effectively produced the Whinstone transaction. When Debtors announced the transaction, they thanked Judge Mullin for getting us most of the way there at the February 19 mediation. That was the only day that we all met with the judge.

What's not on the record is the detail that identifies what at SAFE AHG did. And that's --

THE COURT: Here's my only concern.

MR. HURLEY: Sure.

THE COURT: I don't think -- I'm a little reluctant, especially without Whinstone's consent, to get into who shot who at the mediation.

MR. HURLEY: Understood.

THE COURT: I don't -- I have not heard anyone object and say that you didn't make a substantial contribution. So do we have a real dispute? So that's my concern.

MR. HURLEY: Understood. I thought it was possible Your Honor might look at it that way.

THE COURT: Yeah.

MR. HURLEY: And I think I've said enough --

THE COURT: Because I don't view this as a fee dispute. I view this, you know, more as did you meet the requirements. And we're going to hear evidence on whether you meet the requirements, but do I need to get into the specifics of what was said and who said it and all of that?

MR. HURLEY: Understood. And I'll yield the podium. I'll only say I guess that to the extent Your Honor at any point concludes that you do need to get into that, we would submit that you can. And I would note that we put the stipulation on the docket some days ago. We haven't heard anything from Whinstone. Maybe they're here today and maybe they'll speak up. I don't know. But with that, I'll yield the podium. Thank you, Your Honor.

THE COURT: All right.

MR. CAMARA: Your Honor?

THE COURT: Yes.

MR. CAMARA: Justin Camara, pro se.

THE COURT: Yes, sir.

MR. CAMARA: Permission to speak?

THE COURT: Yes.

MR. CAMARA: I'm not sure -- I need my camera here. Not a hundred percent sure if this is the right time to say this, but I filed a motion for late -- for leave to file a late objection and I also filed an objection to confirmation yesterday by FedEx with delivery to the clerk's office confirmed. I do have the FedEx notification.

THE COURT: All right.

MR. CAMARA: And I can send PDFs to anybody.

THE COURT: Yeah, it hasn't gotten on the docket. What is your objection?

MR. CAMARA: Focuses on two issues. First is the nondisclosure of the Special Committee's pre-mediation investigation and the second is the lack of proper disclosure and Rule 9019 review of Transcend's settlement terms.

THE COURT: Okay. Well, they're going to have to -- you know, they're going to have to prove that up just as they would have to prove everything up. So I'll look for

your objection if it gets filed during the course of the day. But you'll have an opportunity to bring that up at the appropriate time.

MR. CAMARA: Thank you, sir.

MR. HURLEY: Your Honor, just for the record, I do think it hit the docket while we were sitting here. It's at 2108.

THE COURT: Okay. I'm up to 2107. So hold on.

For some reason I don't have it yet. Kind of weird.

MR. TOMASCO: I can email it to Mr. Laws if you'd like.

THE COURT: Oh, okay. Got it. It is on the docket. It's just not in numerical order.

Okay, I've read your objection, Mr. Camara. So we'll just consider it in the ordinary course during the hearing. All right. Thank you, sir.

MR. CAMARA: Thank you, sir.

THE COURT: All right. Mr. Wolfshohl?

MR. WOLFSHOHL: Your Honor, on the stipulation that we were just talking about, I think I'm equally confused maybe as to the purpose of it. The concern -- I have a couple of concerns.

One, it's being presented as being necessary to elicit evidence related or supportive of the substantial

contribution claim and that it's going to get into things that happened in mediation. My concern is we're here in a confirmation hearing. I don't want anything that gets presented to have any kind of impact on the pending dispute that we have regarding the LKC fees. As you know, some of that dispute center around what happened at mediation because you're trying to do an allocation of claims. I don't want some sort of back door attempt at getting evidence in. I mean, frankly Your Honor is the trier of fact in both cases. But I don't think there's going to be -- I am not aware if there had been disclosed any evidence that would relate to what happened at mediation. Mr. Hurley and his client are not testifying in the fee hearing. And so what I don't want is a bunch of evidence to come out during this hearing that somehow taints the Court's judgment of what's happening in the fee hearing.

And so given that we don't really have any kind of visibility into what it is that they're really trying to do here and I don't really understand why it's necessary, that's the concern that I have. And so I just want to make it very clear that we would certainly oppose any kind of evidence that has any kind of impact on what's going to be -- I know Your Honor started the hearing. We're going to finish the hearing hopefully this afternoon. I don't think it should have any impact on that. And that's the position

that I -- hopefully Your Honor agrees with that. And I think with that we don't really have an objection to what they're asking for. I just don't want it to bleed into information that is relevant to the fee hearing and have any kind of impact on that.

THE COURT: Okay. Thank you. Mr. Hurley?

MR. HURLEY: Thank you, Your Honor. Just to clarify. We tried to clear this in the stipulation. The stipulation is seeking to use the material in the declaration and the other mediation material for a limited, specific purpose which is in connection with confirmation and substantial contribution. Thank you.

THE COURT: All right. Does anyone else wish to be heard? All right.

Mr. Wolfshohl, I'm not going to rule on anything before I rule on everything together. So we're going to hear the various motions this morning, we're going to hear the continuation of the hearing this afternoon, and then I will rule subsequent on everything.

MR. WOLFSHOHL: Great. I appreciate that, Your Honor. Thank you.

THE COURT: I'm not going to piecemeal it. All right, Ms. Tomasco.

MS. TOMASCO: Your Honor, as is the custom at confirmation hearings, we want to -- and not just because

it's custom, but it means a lot to us that the Court has been here for this company and these employees and these creditors and these shareholders for the last 15 months or more.

As you'll recall, we filed in late August of 2024. At that point we had been litigating with Whinstone for several years at that point. The Debtors had $2.5 million in cash when we filed. And you'll recall that we were able to obtain a $30 million DIP from Galaxy. The Court understood the need for an expedited resolution of our issues with Whinstone and we went to trial on November 12th of 2024 and we were here for about a week, sitting right here. And ultimately that netted the estate $185 million in addition to the sale proceeds of other assets of the Debtors. Put the Debtors in a position to pay ordinary creditors in full. And then we had the task of dividing up the rest with a very complicated capital structure the likes of which I have never seen before exactly with these documents and these interactions.

So I am pleased that today we're able to with the help of the Court and the court staff -- Mr. Laws has been very helpful in getting us before the Judge as needed. But the confirmation of the plan is before you today. I'm going to hand the podium over to the person who contributed most at Quinn Emanuel to getting the plan ready to go, and that

will be Razmig Izakelian, to handle the confirmation hearing itself.

THE COURT: Thank you.

MR. IZAKELIAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Izakelian.

MR. IZAKELIAN: Razmig Izakelian, Quinn Emanuel, for the Debtors. So I'm going to walk through the evidence and the confirmation elements, at which point I'll turn the podium over to Mr. Hurley and then to Mr. Schmeltz to address various issues. Specifically they will be addressing substantial contribution, the releases, and the LKC objection. So just going to start with some housekeeping matters, which are the exhibits and the testimony.

Starting with exhibits, we filed a joint exhibit list at ECF 2077 and at 2079. And we filed some additional exhibits at 2104. We'd like to move some of these into evidence now, specifically Exhibits 2 --

THE COURT: Hold on a second.

MR. IZAKELIAN: Yes.

THE COURT: Okay, two.

MR. IZAKELIAN: Exhibits 2, which is the first amended plan; 3, which is the disclosure statement; 4, which is the liquidation analysis.

THE COURT: Is this the two-page liquidation

analysis or the fulsome liquidation analysis?

MR. IZAKELIAN: It's the fulsome liquidation analysis.

THE COURT: Exhibit D?

MR. IZAKELIAN: Yes. It's at ECF -- it's the liquidation analysis at ECF 1813. Yes, this is the one.

THE COURT: Okay. Because I have the other short version of it.

MR. IZAKELIAN: Exhibit 5, which I don't know that we technically need to move into evidence. But for good order probably makes sense. That's the Court's --

THE COURT: I'll just take judicial notice of that.

MR. IZAKELIAN: Okay. Exhibit 6, which was the plan supplement. Exhibit 7, which was the second plan supplement. Exhibit 8, which is the Transcend settlement stipulation. Exhibit 27. That's the plan support agreement. Exhibit 109, which is the D&O settlement term sheet. Exhibit 110, which was the amended plan supplement that kind of puts together all the plan supplements into one place. And of course Exhibit 111, which is the second amended plan. That's the operative plan.

There are additional exhibits that I believe Akin and Barnes and Thornburg will move into evidence in their portions.

So we would like to move those into evidence, Your Honor.

THE COURT: Okay. Does anyone have any objection to the admission of Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110 and 111? All right, hearing no objection, they will be admitted.

(Exhibits 2, 3, 4, 6, 7, 8, 27, 109, 110 and 111 entered into evidence)

THE COURT: Mr. Izakelian, one thing I'm going to ask you after the hearing, if you could in addition to filing a -- file an exhibit list which lists where each of the documents are on the docket by ECF number, I think that will make it much easier to follow. Because you're going to have to flip back and forth between them. Mr. Shannon?

MR. SHANNON: Your Honor, I apologize. I had the one from last night so I didn't have 109.

Absolutely no issue with it as long as -- I haven't seen some of these documents. I assume that they're the right documents and they are what they say they are. That's fine. But I'll just note that for the record if it comes up in some alter hearing.

THE COURT: Ms. Schultz?

MS. SCHULTZ: Thank you, Your Honor. Sorry, we're maybe a little left-hand-right-hand. I thought that he was going to move all the exhibits in. For purposes of the

evidentiary record and for purposes of the record, Sarah Schultz on behalf of the SAFE Ad Hoc Group. We would also like to ask the Court -- and this is the reference to Exhibit List 2104 -- to move in Exhibits 13 --

THE COURT: Hold on a second. Okay. Exhibit 13 is just my order. I'll just take judicial notice of that.

MS. SCHULTZ: Okay. Your Honor, I was going to shorthand it. Because I think we're going to ask for 13 all the way through -- I think it's 107.

THE COURT: 13 through 107?

MS. SCHULTZ: Yes, Your Honor. We tried to avoid putting in anything that was already on the Court's docket on that list.

THE COURT: All right. I'm going to need to -- I've looked at almost all the documents but I'm going to need to go through them in more detail. So 13 through 107, I'll get them. And some of these are mediation privileged documents.

MS. SCHULTZ: And we marked on here, Your Honor, which ones were the mediation privilege. And I omitted Mr. Hurley's declaration which has the substantial portion of that information. Thank you, Your Honor.

MR. HURLEY: Sorry, Your Honor. There are substantial parts of my declaration that are related to mediation, but there are a couple of paragraphs that are

not. And so at the appropriate time at least I want to make sure at least that part will get offered into evidence. Thank you.

THE COURT: Understood. Okay.

MR. IZAKELIAN: Thank you, Your Honor. Just to clarify, the -- are the original exhibits, those were the plan-related exhibits, not the ones we just addressed? All right. Have those been admitted?

THE COURT: Those have been admitted.

MR. IZAKELIAN: Great. So we also filed several declarations in support of confirmation specifically from Mr. Miller, Mr. Robinson, Mr. Eaton, and Mr. Hurley. We put those on the exhibit list for ease, but those are at ECF 2086 for Mr. Hurley.

THE COURT: Where are they on the exhibit list?

MR. IZAKELIAN: On the exhibit list they are 9...

THE COURT: That's Mr. Miller's ballot certification.

MR. IZAKELIAN: Correct.

THE COURT: Does anyone object to Exhibit 9 found at Docket 2050, the certification of Mr. Jeffrey Miller with respect to the tabulation of ballots as being his direct testimony subject to cross-examination? All right. I hear no objection. We'll treat Exhibit 2050 as Mr. Miller's direct testimony, obviously subject to cross-examination.

(Exhibit 9 entered into evidence)

MR. IZAKELIAN: Okay. And then moving on, the next one is Exhibit 10 on the list. That's the declaration of Michael Robinson.

THE COURT: Right. And that's basically the 1129 factors and the liquidation and the (indiscernible).

MR. IZAKELIAN: Mr. Robinson's declaration mostly focuses on the best interest test, 1129(a)(7).

THE COURT: I'm sorry, liquidation (indiscernible).

MR. IZAKELIAN: But yes, that's correct.

THE COURT: All right. Does anyone object to admission of the declaration of Mr. Michael Robinson at Exhibit 10 on ECF 2063 as his direct testimony with respect to the 1129 factors subject to cross-examination? All right. I will admit that.

(Exhibit 10 entered into evidence)

MR. IZAKELIAN: Next up is Exhibit 11. That's the declaration of Mr. Eaton. And this goes through the majority of the 1129 elements.

THE COURT: Right. Okay. Anyone object to the declaration of Mr. David Eaton, Exhibit 11 found at Docket 2074 as his direct testimony in connection with the 1129 factors? All right. Hearing no objection, that will be admitted subject to cross-examination.

(Exhibit 11 entered into evidence)

MR. IZAKELIAN: And the final one is at exhibit 108. That's the declaration of Mr. Hurley we just spoke about. A portion of that is not mediation privileged. I guess we would move to admit that portion of it as his direct testimony for now and then once the mediation privilege issue gest sorted out, we can move in the rest.

THE COURT: Okay. So --

MR. WOLFSHOHL: I mean, on that one we haven't seen the unredacted portion. And so --

THE COURT: But I'm not going to admit the --

MS. SCHULTZ: It's on the docket.

MR. WOLFSHOHL: The entire thing or --

MS. SCHULTZ: He's only moving in the redacted piece.

MR. WOLFSHOHL: I haven't seen what's been redacted (indiscernible).

THE COURT: Okay. So 2086 is the redacted, corrected declaration of Mr. Hurley.

MR. IZAKELIAN: That's correct, Your Honor. I believe the only reason for the corrections were the exhibit lists got moved around so some exhibit references had to change.

And we would move the unredacted portion into evidence at this time.

THE COURT: All right. So does anyone object to the admission of Exhibit 108 as redacted and found at Docket 2086 as Mr. Hurley's direct testimony subject to cross-examination? All right. Hearing no objection, that will be admitted.

(Exhibit 108 entered into evidence)

MR. IZAKELIAN: So I think if anyone would like to cross-examine the witnesses, now is probably the time. Because after that I'll be walking through the 1129 requirements.

THE COURT: Well, why don't you go ahead and they can put it up in their case.

MR. IZAKELIAN: Okay. that sounds good. So, Your Honor, we've also filed the proposed confirmation order at ECF 2106. This was an updated order. It reflects agreed-upon language resolving Mr. VanZoeren's objection. I believe we're still working through some things. But the language in the order itself is agreed upon. And I've seen Ms. Chiarello on the line. She can speak up if she thinks I said anything incorrect.

THE COURT: I was looking for a redline and I hadn't seen one. I don't know whether one has been filed.

MR. IZAKELIAN: It should have been attached to that. If it was not, I apologize and we will get that uploaded immediately.

THE COURT: Yeah, it wasn't. The difference between version five and version six --

MR. IZAKELIAN: Okay, we will get that uploaded immediately, Your Honor. The agreed-upon language is at...

THE COURT: What paragraph?

MR. IZAKELIAN: Paragraph 5. That's on Page 25.

THE COURT: Okay.

MR. IZAKELIAN: Paragraph 5(ii) also includes competing versions of language that may resolve LKC's objection to the plan. I will leave that for Mr. Schmeltz to address.

THE COURT: Okay.

MR. IZAKELIAN: Okay. Now that our housekeeping part is complete, we had filed a confirmation brief that walked through all the requirements of 1129. Plan proponents submit we've satisfied all the elements of Section 1129. I'm happy to walk through each of them if you'd like.

THE COURT: Yes. And Ms. Chiarello, do you want to address the Court? I think I need to unmute you. Hold on. Okay. I think you're unmuted now.

MS. CHIARELLO: Wonderful. Thank you, Your Honor. Again, Annemarie Chiarello on behalf of Caleb VanZoeren.

Your Honor, I just wanted to confirm that that language is sufficient to resolve our objection, the

language in Paragraph 5 that was referenced earlier. We appreciate Akin and Quinn working with us on that language. And while the plan supplement is a little inconsistent with that language, we think that it's going to predominate. We just did receive a copy of the relief that's contemplated under that section and we obviously reserve all right to review and comment on that. But we expect our comments to be quite light. And we're comfortable that we can get there on the relief. So I just wanted to make sure Your Honor was aware that our objection is resolved.

And I'd like to -- I'm going to -- if Your Honor would allow me, I'd like to be able to save my client a little bit of money here. I'll be able to -- I'll be monitoring, but given the size of the claim, that concludes our position. And I'd like to be excused if that's possible.

THE COURT: That's fine. Thank you for getting this done. And you may be excused.

MS. CHIARELLO: Thank you, Your Honor.

MR. IZAKELIAN: So, Your Honor, I'll walk through the 1129 elements now. 1129(a)(1) requires that the plan comply with the applicable provisions of the Bankruptcy Code. Cases have primarily construed this to mean that the Debtors have complied with all provisions of the Bankruptcy Code including Sections 1122 and 1123. With respect to

Section 1122, the Second Amended Plan places claims and interests in classes if they are substantially similar to the other claims in that class. With respect to 1123, the plan specifies which classes are unimpaired, specifies the treatment of impaired classes, provides fair and equal treatment within classes except if a particular holder has agreed to a different treatment. It also provides adequate means for implementation and it discloses the identity of the plan administrator.

THE COURT: The plan administrator is G...

MR. IZAKELIAN: GXD Labs, Your Honor.

THE COURT: GX -- okay.

MR. IZAKELIAN: Moving on to 1123(b), the plan also specifies unimpaired classes. It provides for default rejection of executory contracts unless they are on the list of assumed contracts. It incorporates the terms of several settlements including the D&O settlement and the settlement with the Transcend Group. It also contains releases, exculpation, and injunction provisions which Mr. Schmeltz will address.

Moving on to 1129(a)(2), it requires that the plan proponents comply with the applicable provisions of Title 11. We think that has been satisfied, Your Honor. The plan proponents have complied with all disclosure and solicitation requirements. That's set forth in the Miller

declaration at Paragraphs 6 to 11, which is Exhibit 0 on the exhibit list.

Moving on to (a)(3), that requires that the plan be proposed in good faith. We think the plan meets those requirements. The plan as proposed maximizes the value of the assets that are recoverable to creditors. The plan proponents have proposed the plan honestly. It was a product of long, contentious, and good-faith negotiations and it has the intention of maximizing recoveries for all interested parties.

1129(a)(4) requires that all payments made by the Debtors for services and costs in connection with the case have been approved are subject to approval of the Court. That's what the second amended plan says. That's Sections 1.89 and 2.2.

With respect to the substantial contribution claim, Mr. Hurley will be addressing that portion of it.

Section 1129(a)(5) requires that the Debtors disclose the identity and affiliation of any entity or individual proposed to serve as a director or officer. Here, the winddown debtor is going to be managed by the plan administrator, which is GXD Labs. That was disclosed int eh plan supplement that's Exhibit 6.

THE COURT: Who is the winddown debtor?

MR. IZAKELIAN: The winddown debtor, I don't know

if it's been fully decided yet which one of the entities will be the winddown debtor.

THE COURT: And how are we going to know that?

MR. IZAKELIAN: That will be likely through discussions with the plan proponents.

MS. SCHULTZ: It's REI.

THE COURT: REI.

MR. IZAKELIAN: So next up, 1129(a)(6) requires that the Debtors comply with governmental authorities for any change of its rates. We think this is inapplicable because there are no government authorities setting rates here.

1129(a)(7), that's the best interest of creditors test. Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are present to accept the plan. Classes 6 and 11 have voted to accept the plan. And there aren't any holders in those classes that voted to reject the plans, either. This only leaves Classes 10 and 12. As reflected in the liquidation analysis, that's Exhibit 4. And then the Robinson declaration, that's Exhibit 10. The plan provides all holders in classes 10 and 12 with the same or better distribution than they would receive in a Chapter 7 liquidation.

Next up we have 1129(a)(8).

THE COURT: Let's spend a minute on that one.

MR. IZAKELIAN: Of course.

THE COURT: So his declaration -- I just want to make sure I'm looking at the...

So it's Exhibit 10. I misheard.

MR. IZAKELIAN: That's correct.

THE COURT: Okay. So the class who voted to reject is class...

MR. IZAKELIAN: Class 10.

THE COURT: Class 10. Okay. And so where in Mr. Robinson's analysis does he discuss Class 10?

MR. IZAKELIAN: So if you look at Paragraph 19, Your Honor, he refers to the liquidation analysis. And he says that holders of interest in Rhodium Enterprises Inc., which is Class 10, may receive a distribution under the plan. Whereas holders with claims or interests junior to Class 6 are not expected to receive any Chapter 7 recoveries.

THE COURT: Okay. And then where is that in the liquidation analysis?

MR. IZAKELIAN: So if you turn to the liquidation analysis, that is on the first page, which is the liquidation analysis of Rhodium Enterprises Inc. And just going through that chart, if you look at the bottom, it shows that in a Chapter 7 in either the high case or low case, there's anticipated to be a deficit before any return

to equity whereas there is not anticipated to be such a deficit under the plan.

THE COURT: Okay. The first page...

Where are the escrows here for the admin expenses?

MR. IZAKELIAN: I think those were assumed, but they are not reflected on this page, Your Honor.

THE COURT: Okay. Is there a footnote or something?

MR. IZAKELIAN: Oh, I see. Okay. The -- let me get the page number for Your Honor.

THE COURT: So the one thing that I've been looking for and that I haven't found is the sources and uses of the cash coming in and going out. Is there such a document?

MR. IZAKELIAN: The sources and uses? Well, we've been filing the monthly operating reports, Your Honor.

THE COURT: I understand. But I'm talking about to consummate the plan.

MS. TOMASCO: There is a document, Your Honor. It's not in the exhibits, but the distributable cash is -- takes the cash that's in the Debtors right now and then reduces it by anticipated expenses. And then you'll see that everything flows up in the waterfall. Well, it's actually a water-down.

THE COURT: Right.

MS. TOMASCO: And so we do have sources and uses of cash. That's reflected in the distributable cash number.

THE COURT: Okay. So can that exhibit be filed?

MS. TOMASCO: Yes. I will get it filed.

THE COURT: Thank you.

MR. IZAKELIAN: So if you look at Page 10 -- let me make sure that's right -- of the liquidation analysis, Your Honor, it's the Rhodium 30MW LLC. That includes the estimated administrative and priority claims.

THE COURT: I'm sorry. Rhodium 30MW LLC?

MR. IZAKELIAN: Yes. That's Page 10 of the PDF. It doesn't look like --

THE COURT: Of course my pages don't have numbers on them. They're not numbered at the bottom.

MR. IZAKELIAN: It's Page 6 of the analysis. So it should be the sixth sheet you have there.

THE COURT: All right. So where are the admin expenses?

MR. IZAKELIAN: So the admins at 30 MW are accounted for under estimated administrative and priority claims.

THE COURT: And it shows 0503(b)(9), it shows administrative priority tax claim and administrative taxes. It doesn't show any other admin claims.

MR. IZAKELIAN: Yeah. I think they are on a

debtor-by-debtor basis. So I can go through and pull the rest.

So I see this is on the second page. This is the Rhodium Technologies LLC analysis. If you go down toward the bottom, for reserves there's an illustrative reserve for the success fees.

THE COURT: Right.

MR. IZAKELIAN: So that's where that would --

THE COURT: Well, the plan supplement you have a document that shows what amounts are going to be reserved. But what I haven't found is a document that says here is the cash we have on hand and here is how the waterfall is going to work. That's what I've been looking for.

MR. IZAKELIAN: Oh, I see what you mean. So this was provided on a debtor-by-debtor basis. And that's where the waterfall is. We can add in more detail if you'd like, Your Honor, especially --

THE COURT: I'm actually looking for simplifying clarifications as opposed to more detail.

THE COURT: Okay. We can file a simplified version. Our intent here was to file the liquidation analysis on a debtor-by-debtor basis. Yeah.

THE COURT: And I think you're correct to do that. Because this is not a substantively consolidated plan. But I mean the statement is that in Mr. Robinson's declaration

is -- I mean, he makes a statement -- and I'm just saying okay, fine, where can I find it. And I'm just having a hard time finding it.

MR. IZAKELIAN: Yeah. So that statement at Paragraph 19, that's reflected on the Rhodium Enterprises Inc because that's where all the money flows up to. And that just goes towards the bottom. Because all the interests get paid out of Rhodium Enterprises because that's where they land.

THE COURT: But the problem -- basically what it says -- and I see where the $903,000 and $22 million come from. But again, I don't know if the plan, you know, has a non-positive number of a $1,129,000, but I don't know what all went into that number to get there. I don't...

MR. IZAKELIAN: Yeah. So at the top of that page, it shows where the cash comes in from each of the other debtors coming up. Yeah.

THE COURT: I understand. But this one didn't really have any admin or any reserves or anything like that. So that's why I'm a little confused.

MR. IZAKELIAN: I think it's because those reserves and a lot of those admin fees are paid out of the subsidiaries directly and then the money flows up there, flows up to REI.

THE COURT: Yeah. And that's what I'd like to

see, you know, kind of a mapping if you will for that.

MR. IZAKELIAN: Okay. We can put together that mapping for you. That will not be a problem.

THE COURT: Thank you.

MR. IZAKELIAN: Of course. So next up we have 1129(a)(8). This requires that each class of claims or interests either accept or be unimpaired under the plan. Here, classes 1, 2, 3, 4, 5A, 5B, 7, 8 and 9 are presumed to accept because they are unimpaired. And classes 6 and 11 have voted to accept the plan. This only leaves classes 10 and 12. And I'll address those with 1129(b) in a minute.

THE COURT: Okay.

MR. IZAKELIAN: Next we have 1129(a)(9), which requires payment of administrative claims, certain priority claims, and certain priority tax claims. The plan provides that all administrative claims as allowed will be paid. Priority claims under 507(a) will get their appropriate treatment under 1129(a)(9)(B) and that priority tax claims will receive cash payments to the extent allowed within five years of the petition date. That's at Section 2.3 of the plan.

THE COURT: So you're going to stretch out the tax -- the tax?

MR. IZAKELIAN: I don't think they are going to be stretched out. But if it needs to be stretched out, the

plan provides for that. I'm not even sure that there are any that need to be paid now. So...

THE COURT: Okay. I don't understand that. If you're going to have a plan administrator that basically has a $2 million budget to do everything, how five years would work. So...

MR. IZAKELIAN: Well, I think the plan just gives that option in case the plan administrator needs it. I don't think the plan administrator is going to need that.

THE COURT: Okay. Well, maybe we need to address that someplace.

MR. IZAKELIAN: Okay.

THE COURT: Because if you're going to stretch it out five years, then I'm going to need to see evidence that they're going to have the capability of paying it out over five years.

MR. IZAKELIAN: Got it. Got it. Yes, we will address that, Your Honor.

So just moving on, next up is 1129(a)(10). That requires one impaired non-insider class of claims to accept. That's Class 6 has accepted the plan.

Next up, 1129(a)(11) requires that the plan be feasible. This is a liquidating plan and the plan specifies the sources of the cash and the distributions to be made. So I don't think any further liquidation is going to be

necessary, therefore feasible.

1129(a)(12) requires that all statutory fees have been or will be paid. That is exactly what the plan says. That's at Article 2D.

Next, there are a few subsections that are inapplicable. That's (indiscernible) 13, retiree benefits, 14, the domestic support obligations. 15 only applies to individual debtors. And 16 for on moneyed corporations.

So moving on to 1129(b) with respect to classes 10 and 12, those are the only classes that were impaired and did not accept. So we think the plan is confirmable because it does not discriminate unfairly and it's fair and equitable. With respect to the fair and equitable analysis under 1129(b)(2)(C) which applies to classes of interests, the plan is fair and equitable. If the holder of any interest junior to that class will not receive or retain anything on account of that interest. This is the absolute priority rule, but it's (indiscernible) interest in this case. We think the plan satisfies that. It's a strict waterfall.

We also think that the plan does not discriminate unfairly. Interests are grouped together. And then Class 12 is the intercompany interests which of course should come at the bottom.

THE COURT: Okay. So one question that I had is

in connection with Class 11, the Imperium interest, when I read 5.9, it says that Technologies shall receive a hundred percent of Imperium's interest in Rhodium Technologies for the consideration contemplated in Section 5.9(a) of the plan without the requirement to pay any cash payment or other cash consideration. But I don't see in Section 5.9(a) what the consideration is.

MR. IZAKELIAN: I'm going to get that for you, Your Honor.

THE COURT: I read it ten times and I just don't see that.

MS. TOMASCO: Your Honor, the redemption of the Rhodium Technologies interest is an integral part of the settlement and compromise between Imperium and the Debtors. In other words, it allows for the interests -- Imperium's interest in Technologies to be redeemed. So it's basically taking Imperium's interests and not giving them anything for it. So it's a net positive to the estate, but it's an integral part of the settlement with Imperium. I believe that if you were looking for an answer, it's going to be in the mechanics of the Imperium compromise, the D&O settlement.

THE COURT: Okay. And then whose declaration would address that, Mr. Eaton's?

MS. TOMASCO: Mr. Eaton's.

THE COURT: But I mean, I understand what you just said. And that's what I anticipated. But it says here for the consideration contemplated by this section 5.9(a). And 5.9(a) doesn't contemplate any consideration.

MS. TOMASCO: I see. What you're saying is that that particular phrase is surplusage.

THE COURT: I don't know whether it is or not.

MS. TOMASCO: I believe it is surplusage. The consideration is the -- it should be for the consideration contained within the plan and not necessarily that paragraph.

THE COURT: Okay.

MR. IZAKELIAN: So that is it with respect to the elements of confirmation, Your Honor. Unless Your Honor has any questions, I will turn over the podium to Mr. Hurley now to address the substantial contribution --

THE COURT: All right. Why don't we just do it one step at a time. Does anybody wish to address the 1129 factors, what Mr. Izakelian had addressed?

All right. Go ahead, Mr. Hurley.

MR. HURLEY: Thank you, Your Honor. Again for the record, Mitch Hurley with Akin for the SAFE AHG.

Just a housekeeping matter, Your Honor. I had referenced some cases I had copies of before. And if I could hand them up, I --

THE COURT: Yeah, please.

MR. HURLEY: Thank you.

THE COURT: Give it to Ms. Hernandez.

MR. HURLEY: I have, if I keep one for myself, three copies. Three copies. And I gave copies to Mr. Wolfshohl.

THE COURT: Okay.

MR. HURLEY: So, Your Honor, turning to the substantial contribution claim. First of all, I'm going to be very brief because our arguments are really contained int eh submissions that were provided to Your Honor in great detail. And I know you have a lot to accomplish today, and there's a lot of estate professionals here listening, so I'm going to try to keep it as short as I can.

I think as an initial matter I just want to make clear that while I am the person addressing the specific aspect of the plan that goes to substantial contribution, of course it's a term of the plan that's supported by all the plan proponents.

I think it's also notable that it is supported not just by the plan proponents, SAFE AHG, the Debtors, also the Special Committee, also Transcend. These are really the parties that were the most involved in these cases throughout their course. These are parties that often didn't agree on a lot and have come together on this plan.

And one of the important pieces of the plan is the provision that provides substantial contribution to the SAFE AHG.

I think another important thing to keep in mind as sort of a general theme is that SAFE AHG, as we said in the papers, submits that all of the activities we engaged in over the course of the cases we think we could support as 503(b) types of activities. We are not seeking payment in full of all of the fees that were incurred in that regard. The substantial contribution amount, as Your Honor knows, is eight-and-a-half million dollars. We anticipate our actual fees are going to be substantially greater than that, as described in our papers.

And in addition, in order to try and get this thing the last yard to the goal line, we agreed to settle the Transcend objection in part by putting a part of that eight-and-a-half million dollars into an escrow that we hope we'll be able to return to the SAFE AHG. But if there is insufficient proceeds from the estate other than that escrow, a part of it could be released to the Trasncend group to get them to a $6.6 million recovery. That recovery isn't guaranteed. But to the extent that there isn't enough money to at least get them there, that would be the circumstance under which the escrow would be released. If the proceeds plus the escrow are in excess of 6.6, then an excess would be released back to us.

So I'll need to pause there and make sure the Court understands the mechanism of --

THE COURT: I understood that.

MR. HURLEY: Fair enough. Okay. And then I guess the last kind of general observation I would make about our substantial contribution claim is I think this is the kind of circumstance that you see contemplated in many of the cases. And we cited at least one of them in our submission.

So we cited the Bayou Group decision, Judge Drain from the Southern district of New York, 2010 where he said often substantial contribution is awarded where the creditor played a leadership role that normally would be expected of an estate professional. And I think that's really exactly what happened here, Your Honor. And this is no knock in any way, shape, or form on the UCC or what it did. But because of the very unusual circumstances of this case, it made sense we submit for the SAFE AHG to step in and carry out a lot of the kinds of activities you would usually expect from statutory committee.

So why is that? Well, part of it is that while Your Honor's decision recognized the SAFEs as creditors, contingent creditors from the beginning of the cases, SAFEs were not initially scheduled as creditors by the Debtors. We, as we described in our papers, tried a couple times to convince the U.S. Trustee to create a committee for us or to

post on the Official Committee. The U.S. Trustee ultimately agreed that SAFEs in fact were creditors, but it didn't happen until almost the end of the case.

So from the UCC's perspective, its constituents did not include the SAFE claimants. And so they proceeded as one would expect under those circumstances, including in that they weren't formed until the end of November of 2024. And by the time we had the Whinstone transaction agreed to in principle, which was -- let's call it late February of 2025, it was clear that the constituents that the UCC did recognize were certain to be paid a hundred cents on the dollar.

So we stepped in I think and undertook a lot of activities that were appropriate and important in the cases. Again, that you might ordinarily see a statutory committee do, but didn't happen here, including for those unusual circumstances I just described.

Very quickly, some of the key things that we did throughout the course of the cases -- and this is detailed again in the submissions and I would encourage Your Honor to, as I know you will, read Mr. Eaton's declaration with particular care. He spent a lot of time on this. We spent a lot of time investigating the claims against the insiders. We, like other parties in these cases, recognize that was a very important aspect of the cases. Because the insiders

owned their interest in -- equity interest at -- sorry, through Imperium, which owned its interest at RTL. REI also owned an interest at RTL. Imperium's interest was in the neighborhood of 60 percent of RTL.

So to the extent you wind up with a lot of cash going to RTL, say a hundred million dollars, round numbers, they would have been claiming -- they get $60 million of it and only $40 million is left for everybody else.

We didn't think that would be an equitable outcome. We thought there are lots of reasons why that shouldn't happen. And so we were very focused on trying to demonstrate the claims existed to prevent exactly that outcome.

We coordinated with the Special Committee. As we said in the papers, you know, it wasn't always harmonious. Which is pretty typical I would say of bankruptcy cases where there's a creditor group that is investigating insiders alongside the debtors. And so we had to engage I think again, as is typical in these cases, in pretty labor-intensive back-and-forth to get information. I think over the course of that period of time there were some points that the Special Committee made to us that we ultimately recognized and helped our process of going through our investigation. And I'm sure we did the same for them. And I think that's detailed in Mr. Eaton's declaration that in

fact there were aspects of their investigation that were improved by our involvement and our coordination with them.

The Whinstone transaction we've talked about already a little bit this morning. It's enormously important in the cases. I'll leave for now any detail about what happened in the mediation, but it was a very big part of the contribution that I think we made here, is to make sure that we became parties to the mediation, which we did in part by negotiating an agreement with the Debtors that we would defer some discovery in exchange for being an official mediation party. And we were in fact made an official mediation party. And obviously we know what emerged from that mediation. It was very valuable.

Again, when you're talking about sort of measuring the substantial contribution application against the value that was delivered, I think there's a lot of other things I'm going to talk about in a second. But one thing to keep in mind is, again, as I said before, there wouldn't be anyone getting a near-term payment in these cases were it not for the Whinstone transaction. There would only be a potential sort of speculative payment in the future, which I think would be one that none of the main stakeholders in these cases would have preferred. So I think that was a very important part of this -- of the cases.

We engaged in the plan mediation in good faith as

did many other parties. That happened in the spring or earlier this year. Outside of the mediation we also engaged in settlement efforts, in particular with equity. We were very near to an agreement with equity that wound up not working. And equity wound up supporting the plan that was filed in June, as Your Honor will of course remember. And from our perspective, that meant we were going to have to litigate over the status of the SAFEs.

Now, the SAFE status was an issue that the Debtors themselves identified as a gating issue. I think they argued to you, Your Honor, that we should put everything else on hold and figure out what the answer to this question is. Because we really can't have a confirmable plan that conforms with the Bankruptcy Code until we answer the question whether SAFEs are claims or interest. And I think that was right.

But that did require a very substantial amount of work around that question. Your Honor recognized it in your decision that at least some of the issues (indiscernible) were issues of first impression. And so there were very substantial disclosures that were --

THE COURT: I looked for a case.

MR. HURLEY: I know, right. Believe me, we all did. So there was an unusual amount I would say of energy and effort put into answering that question.

And then when the decision came down at the end of August of this year, Your Honor, the SAFE AHG immediately sought to try to get to where we are today. I think less than 24 hours after the decision came down, I emailed Mr. Schmeltz and said I think we now should be able to get to a deal quickly. And to his credit, he wrote back and said I think you're right. Let's start working. And then we worked together diligently with a whole lot of other people too for the next couple of months and arrived at most of the terms of the plan that are before Your Honor today.

Once those terms were generally agreed, then we on behalf of SAFE AHG participated with the other parties that are proponents of the plan in helping to review and draft documents. And so that was another part of our contribution.

And I would say again, and I referenced this before, the last couple of yards to get to the finish line today we're really trying to resolve the objection that Equity had made and the Transcend Group in particular. The SAFE AHG took the laboring oar on that. We reached out to Transcend and said, hey, there's got to be a way to do this that doesn't involve all the spending a fortune in the next three weeks that is going to come out of everybody's recoveries. And they responded in good faith. We worked for a few days together and we were able to come up with an

agreement.

That agreement was that there was going to be two-and-a-half million dollars paid into an escrow that was going to be funded by professional fees. And when the agreement was made, the contemplation originally was that it would be shared among more professionals than just the SAFE AHGs. I would say the contemplation that I had certainly, and I think Transcend had, was that it would be shared escrow. Didn't turn out that we were able to negotiate that. But in order to be able to, again, get us across the finish line, the SAFE AHG agreed we'll fund it all ourselves, which is what we're doing.

By settling the Transcend claim -- and this is in the declarations -- I think the estimate is at a minimum it would save another 42 million in estate fees because that was going to be a very hotly-contested objection.

So those are examples of some of the things that we did. Others are detailed in our submissions. Again, there's nobody who objects to the substantial contribution claim, which is somewhat unusual I would say under the circumstances. And we submit that the standard on a 503(b) is readily met here, including when you think about things like, again, the sort of amount of contribution versus the amount being applied for. I already mentioned what I think is a very important part of the Whinstone transaction, which

is very valuable for everybody. But there are a host of other ways to measure the value in our view.

Few of the cases, they acknowledge that they are -- often in these cases there are concrete kinds of contributions that are really easy to put dollars and cents and associated dollars and cents with. But then there are often equally important kinds of contributions that it's not as easy to assign a dollar and cent value to. And I think we have both here.

One of the I think clearest sort of dollar and cents items is that if you look at our plan compared to the plan that was supported by others in June, we have reduced the amount that is going to insider stakeholders by $13.2 million. And that means that there is $13.2 million more to go to the non-insider stakeholders.

I think this is important to sort of pause on. Because if you think about it, following Your Honor's decision and the priority that we believe we had at that point, if we had just accepted the deal that had been negotiated back in June, the SAFE parties still would have been paid. Not in full, but almost in full. A very, very substantial part of the SAFE parties' claims would have been paid. But there would have been no value for anybody junior to the SAFE parties. And the fact that we pressed and got the additional -- liberated the additional cash if you will

for payment to other non-insider stakeholders is the only reason that there is the potential for there to be millions of dollars paid to stakeholders who are junior to or subordinated by agreement now to SAFE parties.

The insurance settlement we supported. And while that had been negotiated before we got involved, I don't think it was finalized until after we did. That's another eight-and-a-half million dollars. You have the $2 million that we definitely saved in professional costs by stepping up and settling the Transcend claim. And there is no indemnification of the insiders' tax obligations in the plan. There was in the other plan. That was an obligation that people would assign some of the $18 million to. So another example of the kind of dollar and cents claims.

THE COURT: That's 5.9(e), right? Is that right, 5.9(e)?

MS. TOMASCO: Yes, Your Honor.

THE COURT: Okay.

MR. HURLEY: Thank you. So -- and then there's the other category, right? Which are the kinds of contributions I think that are not quite as easy to assign value to. We cited case to Your Honor that I think make very clear that assisting in ensuring that a plan allocates value in accordance with the Bankruptcy Code is itself the kind of contribution that can be recognized and compensated

under 503(b). And so an example of that, we would submit anyway, is the work that we did in connection with the SAFE claim litigation. And Your Honor wound up reaching the conclusion that you did. And a part of that was obviously we were all involved in litigating that and that was part of the expense that we incurred. And I think it's the kind of expense that is compensable under the Code.

And again, I guess I would refer back a final time to the mediation which resulted in I think an outcome that -- resulted in a better outcome for these cases than anyone before that had really hoped.

So, Your Honor, again, I don't want to go through every word in our submissions and I'll basically leave it there except I guess to ask Your Honor if there are any questions that you have. I'd be happy to try and answer them.

THE COURT: I don't think so.

MR. HURLEY: Okay. thank you, Your Honor.

THE COURT: Okay. Does anyone wish to be heard on the substantial contribution claim?

MR. SCHMELTZ: Your Honor, I'm going to say something in support of it, but it's more just I'm going to talk about the D&O settlement and how that -- why that supports it. So not (indiscernible).

THE COURT: Okay. All right. So we'll -- I think

Mr. Schmeltz is going to talk about the D&O settlement. Who is going to talk about the Transcend settlement?

MR. POTTER: I plan to briefly, Your Honor.

THE COURT: Okay.

MR. POTTER: Would you like me to do so now?

THE COURT: Why don't we do that since we're...

MR. POTTER: Your Honor, Chase Potter on behalf of the Transcend Group. Over the past couple of months, I wouldn't have expected to be here as a plan proponent for the Transcend Group. But I'm glad that --

THE COURT: Me neither.

MR. POTTER: I'm glad that we are because I do think it results in, kind of dovetailing off what Mr. Hurley was saying, results in a good result for the estate for many reasons, all of which are in the evidence already. So I'll be very brief.

Given the Transcend Group settlement, we do fully -- the Transcend Group does fully support the plan. On behalf of the Transcend Group, we contend the evidence admitted including the declarations admitted subject to cross-examination establish all the factors necessary to confirm all aspects of the plan including the Transcend Group settlement, particularly the David Eaton declaration and the uncontroverted testimony therein. Specifically, Your Honor, Paragraphs 38 through 42 of such declaration

address and establish the factors, both 1129 and 9019, for the Transcend Group settlement.

This settlement was certainly negotiated at arm's length and resolved substantial, ongoing, and forthcoming litigation, substantial both from a time and cost standpoint with respect to Transcend's objections to the plan and also Transcend's warrants, which have been entered into evidence, Your Honor, and Transcend's proof of claims, which are all on file and the Court can take judicial notice of.

Those proof of claims were filed against REI, RTL, and Encore, which claims may have entitled Transcend to recovery in advance of others, including the SAFE group, if we had been successful and these ongoing litigation issues were not resolved.

Your Honor, I do agree with Mr. Hurley that the estimate of a $2 million savings based on this resolution I think is a light one, especially for this case. Very conservative. Especially in light of the fact that the Transcend Group had also filed an appeal of the SAFE ruling which we absolutely intended to pursue along with all claim objections and our proof of claims and everything else, Your Honor.

So other than that, we believe that the evidence is in the record. It's subject to any -- to cross-examination, specifically Mr. Eaton and his declaration.

And that's all we have.

THE COURT: All right. Let me just ask a couple of questions. So in connection -- 513 is the Transcend -- what's in the plan regarding the Transcend settlement. So the 513(f), which is the 345 Partners v. Nathan Nichols, that is going to continue.

MR. POTTER: Yes, Your Honor.

THE COURT: Okay. And I think I have a hearing on that coming up.

MR. POTTER: I wish I knew. It's coming up soon. It's a remand hearing. If it remains necessary. The Court, as you may recall, was very prepared for that hearing and gave us thoughts on where that might be going. So we might be able to resolve that in advance. But we've been so focused on plan confirmation issues, we haven't quite got there yet.

THE COURT: And then the other thing is to the extent that I confirm a plan, I may not have any jurisdiction at that point.

MR. POTTER: Right.

MR. SCHMELTZ: And, Your Honor, I do want to talk about -- I talked with Mr. Potter beforehand about this subsection (f) of 513. Mr. Potter can confirm it now. But our position is that there might be some effect to the extent that the Transcend Group receives money under the

plan that may affect damages, things like that. Mr. Potter certainly didn't agree with that. But he said that this provision in 513(f) does not preclude us from making that argument when the time comes.

MR. POTTER: Sure. I agree with that. This provision does not preclude any defenses that may be argued by way of asset, settlement credit, anything else that they may try to argue. I do disagree with it, but that time will come.

THE COURT: All right. So the way that I understand this is that you will -- so this is kind of where I really kind of need a waterfall. Because -- so your claim, you have a $10 million claim below the SAFEs, ahead of equity. To the extent that there are -- the recovery is $6.6 million, they don't hit -- you don't hit the $8.5 million, but you have an allowed claim up to ten. So to the extent there is distributable cash above the 6.6 to the 10, you would get that ahead of equity. Is that correct?

MR. POTTER: I believe that's correct. I won't speak -- I'll let my bankruptcy partner answer that question.

MS. FUNK: That's correct, Your Honor.

THE COURT: Okay. All right. And I guess this is more a question for the debtor. Is there any kind of waterfall that would show this?

MS. TOMASCO: That would show what, Your Honor?

THE COURT: Kind of the way that the Transcend settlement would work depending on the distributable cash.

MS. TOMASCO: Yes. We do have a revised liquidation analysis. We can probably upload it at the same time that we do the sources and uses of cash exhibit that we have prepared.

THE COURT: Okay.

MS. TOMASCO: We're going to upload it in moments.

THE COURT: All right. Thank you. All right.

MR. POTTER: And I would also add, Your Honor, I believe if memory serves, the settlement stipulation goes through some of the potentialities and examples.

THE COURT: It does. But I just want to make sure that the plan reflects it and that I understand what I'm approving.

MR. POTTER: Thank you, Your Honor.

THE COURT: Thank you. All right. Does anyone else wish to be heard on these issues?

MR. CAMARA: Your Honor?

THE COURT: Yes.

MR. CAMARA: This is Justin Camara, pro se. I may be in a situation with a little bit of background noise. Full disclosure I'm actually -- but this might be the appropriate time to discuss the Transcend thing or --

because my other objection deals with the Special Committee Report or a component of it.

THE COURT: Well, I think the Special Committee is going to go next. So why don't you wait for that. You have the time. Why don't you wait for Mr. Schmeltz to go.

MR. CAMARA: Yes, sir. I can wait a little longer. I do have like a balloon (indiscernible). But I can -- I pushed it back. So I think we can do that.

THE COURT: Okay, all right. Well, you let me know if you need to -- if you're running out of time. So I'll let you go ahead. All right.

Mr. Schmeltz?

MR. SCHMELTZ: Thank you, Your Honor. It's for the record Trace Schmeltz from Barnes & Thornburg on behalf of the Special Committee.

You know, I didn't think I'd be in a position that Chase Potter, Mitch Hurley, and I were all saying nice things about one another, but I'll echo that I'm glad to be doing that.

Paragraphs 33 through 37 in Mr. Eaton's declaration which is found at Docket 20754 lay out the benefits of the D&O settlement that the Special Committee and others were able to obtain for the debtors' estates. After an extensive investigation by the Special Committee, the Cm concluded that there were -- an investigation, by the

way, into literally dozens of allegations of purported wrongdoing, concluded that there were a handful of plausible claims that could be pursued.

Of course as with any plausible claim, there were defenses and weakness in those claims which the Special Committee's report recognizes. And that Special Committee's report, Your Honor, has been shared with all constituencies and the estate. Nonetheless, the Special Committee was able to obtain $8.5 million in recovery off of $20 million in D&O policies without ever filing a complaint.

In addition, working with founder's counsel, the Special Committee obtained a million dollars in coverage for indemnifiable defense costs for the founders that would have otherwise had to be borne by the estates.

The settlement with the founders and with Imperium allowed for the flattening of Rhodium Technologies, which was a partnership. That allows Rhodium Enterprises to file taxes as a consolidated enterprise. And that savings is somewhere between a million-and-a-half and $2 million to the estate in lowered taxes.

The founders had significant claims that they intended to litigate for a significant amount of value from the estates based on operating documents that were not always translucently clear, or as Your Honor knows from the litigation over the SAFE document itself, not always on

their face seeming to suggest what the parties believed they were getting into. The savings in litigation or lack of litigation from that settlement obviously was significant to the estates as well.

The settlement with the founders and Imperium also provided a gateway for the original plan and then for the subsequent plan that we're here today in support of. It is ultimately a resolution that is -- that brings millions of dollars into the estate, has saved millions of dollars, and has been a cornerstone for two plans, what we believe here a very confirmable plan.

With that, Your Honor, I stand available to answer any questions you might have. And Mr. Eaton is here should there be any questions of him.

THE COURT: No, thank you.

Your Honor, I can speak in favor of it. I don't' know if you want to go with Mr. Camara's...

THE COURT: No, I think everybody at this table has spoken. Correct, Mr. Izakelian? Okay. All right.

MR. HURLEY:

MR. SHANNON: Thank you, Your Honor. Again, R.J. Shannon on behalf of Nicholas Cerasuolo. He is one of these founders who you've heard about. Also one of the insiders that were discussed as well as part of this settlement by Mr. Hurley.

Judge, there's a lot about the plan that I just don't know about. Right? So I'm just going to stick to my lane and my part of the case and support the plan that way. Right? I do think this is a good plan --

THE COURT: That must be difficult for you to do.

MR. SHANNON: It is. So many things I'd love -- but anyway. What I can focus on is the D&O settlement and why that's a good deal for the estate. And related to that, why -- I do think it is part of the puzzle that Mr. Hurley talked about as part of the puzzle for substantial contribution.

You know, I'm going to tell you kind of my view of these claims that I don't think anyone else here, besides I guess maybe Ms. Mates online, would be able to say. I view the claims against the founders are exceptionally weak. And I think it's a testament to, frankly, the SAFE Ad Hoc Group and the Special Committee to really get as much out of them as possible.

The last time I talked about these claims in this Court, I think I said something that I think we might be getting bluffed. Right? That was my view. And again, not that there's anything inappropriate with that. And there are risks.

I don't know if the Court has ever actually heard what the purported claims are. So I'd like to go over them

just very briefly and say why I think they're weak claims in support of, again, the settlement and the plan.

I'll talk about the three largest. The first one was a March and April 2021 private sale. Essentially the allegation was that there's a potential claim against the founders for a breach of the duty of loyalty by selling Imperium's equity in Rhodium Enterprises LLC, now Rhodium Technologies -- in the rollup they changed their name -- rather than seeking additional financing for Rhodium projects. So that's the allegation.

And the problem was that there was no unified Rhodium at the time, right? Rhodium operated under a project finance basis. That's described in the Dunn Declaration, which I noticed was not admitted at this hearing, but has been admitted before. It's that first day hearing.

And so the only equity owners on a Rhodium-wide basis at the time was Imperium, which was owned solely by the founders. So there was no duty of loyalty to -- this is our position. And I'm sure the SAFE Ad Hoc Group and the Special Committee might push back on some of this, but this is our position. We think that fails as a matter of law. Right? We think we would be successful.

I would liken it to an analogy. As you may know, we brought another partner in on our firm. It would be like

if the original two partners when the third partner came in, that we had done something before that would be a breach of duty of loyalty prior to the additional partner coming in. It just doesn't make sense to have a breach of the duty of loyalty under those circumstances.

The other -- the second and I would say probably the largest of the claims that were identified by the Special Counsel related to the 2021 Whinstone settlement between the Debtor and Whinstone regarding Winter Storm Uri.

Judge, you know more about that than I do. I know it's something you've dealt with a lot. And the argument was it was -- you know, they didn't do their diligence. It was a breach of the duty of care. That was the position.

And there was a form 8-K that was out there from Riot that the founders -- the argument is the founders should have looked at and should have identified.

Our position is that, one, looking at an 8-K from a counterparty and noticing that to see that there might have been something else going on, well beyond the duty of care. Right? The business judgment standard also applies in that it was a resolution that we think falls in that. And also, I think you're going to hear later today that the Debtors want to attribute $75 million of the ultimate settlement with Whinstone to settlement of claims, right? Again, our argument is we think we would win on summary

judgment.

And the last big -- the last big claim that was kind of identified as a potential claim against them was related to the June 2021 rollup transaction. And the part identified by the Special Committee and I think also based on some of the documents, the SAFE Ad Hod Group, was related to the -- an extra five percent of equity that Imperium had that the argument is it should not apply.

Essentially the argument or the position of the Special Committee was that the use of the term of a control premium was somehow misleading, that in these documents that were presented to investors that it just wasn't clear. Usually a control premium is separated amongst everyone. And that's their argument, right?

Our position is that the rest of the document explained what was meant by the term and that it was set out within there. Again, something we certainly think we would win at trial. Perhaps summary judgment. Probably not on a motion to dismiss. But something we ultimately feel, that the founders ultimately feel they would be vindicated at the end of the day.

So the other ones aren't really any better and they're smaller claims.

And I say all that to say it's $8.5 million. I think if -- I know sometimes at some points it might have

been believed that there would be more there than that. But from our position, it's $8.5 million for claims that are exceptionally weak, like I said.

On account of those claims that again we'd knock out very easily, there is $8.5 million in cash, as you know. Also the reduction in Imperium's interests in RTL, that intermediate company. And not just from 60 percent to 55 percent. Right? All the way down to nothing.

There are a number of reasons for that, Your Honor. But certainly a part of it is the potential for litigation if we did not agree to that. There's also a benefit to both the estate and the founders for the tax reasons that were described. The way I calculated the numbers, which is not the way that the Debtor's financial advisors calculated the numbers, that even with the SAFE AD Hoc Group having a claim and even with a contribution up that they argued was required for that, there would still be $2 million to Imperium from RTL if that 60/40 split remained. Again, that is a benefit to the estate in addition to the tax. So the $8.5 million I think is really more a higher number than that. It's probably really $12 million, $12.5 million.

Why did we settle? Well, Judge, again, for the normal reasons. Even if we were successful, there's certainly a cost to it. I'm not here working for free in

this case where there is DO& insurance. There would be a significant amount of defense costs. Also the risk is never zero, right? There are a lot of good attorneys that were asserting these claims were legitimate. And while I have a very high opinion of myself, I get it wrong sometimes.

And, you know, so because of that, there was a settlement, right? And I do believe that a large portion of the driving force behind that was the SAFE Ad Hoc Group. They really dug down. And, you know, tactically just because -- maybe it was tactical, maybe it was whatever. It really pushed us to really get the best deal that the founders could accept, that the insurers would accept under the circumstances.

So because of that, Judge, again -- I've been speaking for the founders. I will now just say Mr. Cerasuolo supports the plan for all those reasons and we think it should be confirmed, Your Honor.

THE COURT: All right. Thank you. Ms. Mates? Hit five-star one time. There you go.

MS. MATES: Thank you, Your Honor. I echo everything Mr. Shannon said. I would like to tell the Court that Imperium, Chase Blackmon, Cameron Blackmon, and Nathan Nichols also support this plan. It's not -- it doesn't end up the way that they had hoped that this would end up when they formed the company. And they put their blood, sweat

and tears into it. But it is what it is. They recognize the risk and recognize the parties involved and other constituents and therefore have agreed to express their support.

THE COURT: All right. Thank you.

MR. KANSA: Your Honor, for the record, Ken Kanza of Barnes & Thornburg on behalf of the Special Committee. I would just add one point in response to Dr. Camara's objection which we received during this hearing that's directly relevant to the Special Committee. And that concerns the disclosure of the Special Committee's investigation and the claims against Imperium and the founders.

The disclosure statement at Docket Number 1832 does address the Special Committee's investigation and recites the claims that Mr. Shannon ably summarized for the Court here today. So that was disclosed to holders of claims and interests who received the disclosure statement. And we just wanted to make sure the Court knew that that was out there. It's at Section 6(J) of the disclosure statement at Page 40.

THE COURT: Thank you.

MR. KANSA: Thank you, Your Honor.

MR. POTTER: If I may quickly, Your Honor.

THE COURT: Yes.

MR. POTTER: Before we get to Dr. Camara's objection. One point on it. Obviously, we just received it this morning. And I'm looking through the objection which was late-filed. It states it's filed on behalf of Justin Camara appearing pro se. But at the same time in the standing section it says there's standing to object based on equity interests for three entities, Trine Mining, Cross the River, and another one that I'm going to butcher the name of. But under -- I don't believe that Mr. Camara and these entities can proceed pro se. And the appropriate relief would be to strike the objection because it was inappropriately filed. And that's' what we would request be done.

THE COURT: Okay. All right. Dr. Camara?

MR. CAMARA: Your Honor, Justin Camara appearing pro se. I guess I'll just first make a comment if I could about Chase Potter's comment. Generally I would hope that the Court would be understanding of a pro se filer. My intent was to file as a pro se. And I was just basically trying to show that I owned equity ownership in the company. I'm sorry if there was some kind of logistical issue there.

THE COURT: Well, do you own equity interest in any of the debtors?

MR. CAMARA: Yes.

THE COURT: Which one?

MR. CAMARA: Rhodium Enterprises Incorporated.

THE COURT: Individually, you individually?

MR. CAMARA: By way of an LLC.

THE COURT: Okay. Well, that's his objection. Normally if it's a corporate entity, even if you're the only owner, that entity has to be represented by an attorney. You know, you --

MR. CAMARA: My understanding was that -- yeah. I'm sorry. I might have misunderstood.

THE COURT: Yes. For tax purposes it's a disregarded entity. But for purposes of a plan or -- I'm sorry, for purposes of the Bankruptcy Court, a pro se filer can file pro se if they are asserting claims that they directly own. But if you're asserting claims that are owned by a corporation or a legal entity, not an individual, then you can't -- generally you can't appear -- I'm going to let you talk. But I am going to consider that.

MR. CAMARA: Yes, sir. My apologies.

THE COURT: Okay, there's nothing --

MR. CAMARA: Okay. So I'd start with -- I'd mentioned that my objection focuses on two issues. It's the nondisclosures related to the Special Committee (indiscernible) investigation. My concern is that the maximum amount of transparency for any party involved in reviewing the plan should be available with that report. So

I understand that the issue is -- that possibly there are some disclosures. I had not seen a disclosure that to me gave enough information to satisfactorily allow, for instance, you or anybody else to weigh the releases that are being considered for Imperium. So I'll kind of go on a script here and then I'll ad lib a little bit based on what some of the others have said.

So the estate funded a month-long factual investigation. There's public fee applications that show that the Special Committee committed like extensive pre-mediation work, forensic analyses, and creditor transaction reviews, safe conversion review, tracing of transfers, legal research and interviews, and repeated drafting of the written Special Committee report.

The Special Committee report and certainly details related to the signing to my knowledge do not appear in the disclosure statement or the plan. You know, these are the kind of factors that I would think the Court would want to consider to evaluate potential insider releases, potential estate claims in good faith.

The first time that I became aware that the Committee results were going to be -- or at least details related to them were going to be withheld was November 30 when I saw that the Special Committee was being dissolved in the Second Amended Plan. So that's the portion related to

that.

I'll ad lib a little bit here. But basically the estate paid $2 million for an investigation that went into a ton of detail, more than $2 million. And we're considering whether we want to allow $1.9 million in recoveries to insiders, Imperium. And I think that that really has to be juxtaposed with a detailed look at the findings. I understand that anyone can get up here and say (indiscernible) or sandbag certain claims. But just to point out a few specific things, right? It was mentioned that the private sale breach of loyalty was one of the claims. I would say that there's a lot of detail that is extremely relevant considering whether that claim is colorable, specifically that representations were made to various investors related to the private sale that basically the founders were pitching a SAFE agreement as a form of capital raise while at the same time selling their own equity. And even that private sale was not disclosed in the S-1 statements that were filed for the cancelled IPO.

Also, we never had -- as investors we never had any control over the operating agreements. And the founders amended the operating agreement without proper disclosure. Because my twin brother actually emailed the founders asking for the operating agreement. And either Nathan Nichols or Nick Cerasuolo or one of the founders refused or just

ignored the email for us to even get the operating agreement. But they amended the operating agreement so that in addition to getting the private sale money while none of the investor had gotten any money, the founders indemnified their own tax payments. So they basically changed the operating agreement so that their company had to pay their taxes at a rate for whatever the highest state corporate taxes while meanwhile, I need to be honest with you, Nick Cerasuolo is domiciled in Puerto Rico to avoid any taxes. And I don't think that there was ever a refund for any of that that came back to the company based on taxes that Nick Cerasuolo may not have paid.

So there's tremendous more detail related to the private sale. And it's very, very concerning that counsel -- I mean, you would expect it, right? But would just blow over that as if it was a nothingburger.

There is also -- I mean, it's worth noting that the investment vehicle that the founders were using to raise capital at the same time that they were doing a private sale without disclosure is the vehicle that ultimately basically, other than Transcend carving out something for themselves possibly here, wiped out equity entirely. So I think that's very relevant.

There's other issues. The Winter Storm Uri item that was brought up, Nathan Nichols pitched the business to

investors with one of the competitive benefits of the business being that Rhodium would receive energy credits if the company was shut down. And the 8-K filing states that Whinstone received energy credits. And then somehow inexplicably Nathan Nichols signed an agreement that signed away millions of dollars in energy credits in return for I think a paltry like $1 million to $2 million. That seriously harmed the company. I don't think those are claims that you could just blow over in a court. It certainly to me does not seem that in a derivative action or an adversarial proceeding against Imperium that that would just get summarily dismissed.

And I think the energy credits are somewhere in the range of $20 million to $30 million, but don't quote me on that. But they were substantially greater than what Nathan Nichols signed them away for. There's no explanation for that either, really. I mean, I guess you could pin it to negligence possibly.

And then one other final thing is that I'm very versed to speak about the control premium issue because that was not even really something that was started as part of the Special Committee's investigation report, although it may have been covered in there. Okay?

The rollup transaction, Nick Cerasuolo quoted that nothing would change about the pre- versus post-equity

interests. And then it's not five percent. That is factually wrong. It's 6.5 percent that the founders skimmed off of the company in the corporate reorganization. That would have been worth $195 million at the time of that reorganization. It was not disclosed. You cannot find anywhere in the documents where it says who gets allocated the control premium. There is one appendix table in the rollup that basically says here's a control premium. It doesn't say where it would go at all.

And then well post hoc once they published the S-1, you could do the math and figure out that equity holders who were part of the rollup had their equity changed in a way that was not how it was presented to investors. So those are very colorable in my opinion.

The insiders try to hide behind a defense of contemporaneous ownership, meaning like we changed all the structure, we weren't part of the company at the time or whatever. But that was contentious at the time of the bankruptcy when there was a stay placed on how the Delaware court was going to handle it. So those are not issues that are -- just my opinion, right -- from what I can tell something that can just be blown over. Certainly if you're -- because what you're really trying to do, right, we're trying to say is the $8.5 million D&O settlement sufficient to compensate that and do we justify insider releases.

So that's my point on the insiders. I just think that it really deserves a fair observation so that we can weigh those two things.

So the second point is that the -- regarding the Transcend issue, I just don't have any way to really know for sure if that's fair. So going back to my script. Basically on November 20, one day before the objection deadline, the SAFE AHG stipulated for the first time that there would be a $10 million allowed unsecured claim to Transcend and a $6.6 million guaranteed minimum recovery. I would just ask that those would be reviewed possibly under Rule 9019 or certainly that there would be a very thorough evaluation for fairness there. Again, I'm pro se, so it's a little bit -- sometimes my vocabulary might not be quite right.

So in summary, I respectfully request that the Court accept my objection as timely and the Court require disclosure of the Special Committee's investigation sufficient for meaningful review under Sections 1125 and 1129 and that the Court require appropriate disclosure or a 9019 review of the Transcend settlement terms.

THE COURT: All right. Thank you, sir. Ms. Mates?

MS. MATES: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MS. MATES: And I didn't want to interrupt Mr. Camara's allegations directly tit for tat. I know that's not why we're here. I will point out that he says that the claims were blown over yet started out his objection saying how much money was spent by the special committee and the professionals on investigating the claims. The other thing I will point out is much of the information that was provided by Imperium and the founders to the Special Committee out of, you know, a willingness to cooperate in the investigation was done in a confidential manner. And so to the extent the report contains that information, we object to its disclosure on a public level.

And my only point directly to one of Dr. Camara's arguments was on the energy credits. That was part of the settlement of the Whinstone Rhodium litigation. But that's all I wanted to say. Thank you.

THE COURT: All right. Thank you. All right, Mr. Hurley?

MR. CAMARA: Your Honor?

THE COURT: Hold on a second.

MR. CAMARA: Sorry.

MR. HURLEY: Your Honor, just quickly if I could just clarify something for the record that Mr. Camara said. There is no guaranteed $6.6 million recovery to the

Transcend Group. So if there's $2 million net at the end of the day, they would be able to draw on the escrow and they would get a four-and-a-half million-dollar recovery. And then they wouldn't be entitled to anything else. I just wanted to make that crystal clear and make sure Mr. Camara understood that, too. Thank you.

THE COURT: All right. Mr. Potter?

MR. POTTER: Very briefly, Your Honor. I was just going to reassert the Transcend Group's request to strike the objection. Based on the argument, it appears that Dr. Camara recognized he lacks standing personally as an equity holder and that he also lacks the -- he lacks the ability to represent the entities. Thank you.

MR. WOLFSHOHL: Your Honor, I'm not really sure order we're going in. But we did file a limited objection.

THE COURT: Correct.

MR. WOLFSHOHL: It's a pretty narrow one. I'm sure Your Honor read it.

THE COURT: Right. And then there's language that they put in their proposed --

MR. WOLFSHOHL: They did. They put basically where we ended up, I guess last night or late yesterday as what they were proposing versus what we were proposing. I'm not sure if Your Honor has had an opportunity to review that.

THE COURT: I have reviewed the -- on Page 25 of the proposed order, there are two -- there are plan proponents, LKC's proposed language.

MS. TOMASCO: Your Honor, we uploaded a redline confirmation order at Docket Number 2109.

MR. WOLFSHOHL: And, Your Honor, for purposes of this language, I don't know that the redline is helpful because this language just wasn't in there before.

MS. TOMASCO: If you look at ECF Page 2109-1, Page 26 of 46, you'll find the redline with that language in it.

THE COURT: I mean, I saw Page 25 of the clean. I have that in front of me.

MS. TOMASCO: Correct.

THE COURT: And let me just see if there's anything else. All right. Okay, go ahead.

MR. WOLFSHOHL: Thank you, Your Honor. Just to kind of sum up what I think is really in dispute now that we've kind of gone back and forth between the parties over the language, first I think nobody is contesting that we're not a "releasing party". And so that language is consistent in both versions of the proposed language.

I think what it comes down to -- and I'll tell you the part that -- or what we asked for, which was we wanted a provision that said no claims of LKC related to the LKC engagement, the LKC success fee, or the Special Committee's

motions, actions and claims related to LKC are released under the plan or confirmation order and such claims are fully preserved.

I think if you just kind of distill what the difference is between what they are proposing versus what I just read to you is that they're saying we're fine with that essentially being preserved as to claims against counsel for the Debtors and counsel for the Special Committee, but I think they're still trying to say the Debtors and the Special Committee are beneficiaries of an exculpation provision that would eliminate those claims. And I think we've got a pending dispute related to the LKC success fee. We haven't finished evidence.

I think there are some -- I think stated in prior pleadings that there are claims that we believe could exist depending on the result of that because of some of the actions taken by both of the Special Committee, maybe to some extent the Debtors depending on who it is that was actually doing stuff. And so I just don't think that you can have a pending existing dispute like that and then have some plan get confirmed that exculpates -- we are not asking for an elimination of the exculpation effects as to all the other things that the Special Committee or the Debtors have done in this case, but I think we've got an existing dispute and I don't think I should have to come in, prove up my

claims at a confirmation hearing to avoid the effects of an exculpation provision that I think is inherently overly broad and potentially impairs our rights relative to the existing dispute.

And that's what I think this comes down to. Mr. Schmaltz might say it differently. But I think what it comes down to is they're saying okay, fine, well, they're not really giving us much by saying Debtor's counsel and Special Committee counsel, because they're not beneficiaries of the exculpation provision anyway. So that's not -- essentially what I think their language says is -- if anything it's just clarification of what the plan is already doing. What we're saying is we don't want to be subject to the exculpation provision that benefits the Debtors and the Special Committee to the extent of claims that relate to the items that I specifically identified, which again, I'm not talking about D&O settlement, I'm not talking about Whinstone settlement. I'm talking about things that relate to LKC, its retention, its success fee and many of the things that were done in connection with the LKC fee application and some of the pleadings and things like that that were filed.

So that's the thing that we're talking about. Those are the things we were talking about. And I really don't think that it's appropriate for an exculpation

provision to swoop in and eliminate those claims that exist.

MR. KANSA: Your Honor, Ken Kansa, Barnes & Thornburg, on behalf of the Special Committee. I think Mr. Wolfshohl has accurately recited the narrowing of the issues between LKC and the plan proponents on this issue. We do agree that they're not a releasing party, and we've put that into our language. The Court has seen that. Similarly, I think they had initially stated that counsel for Debtors and Special Committee were indisputably getting exculpated under the plan. We disagree with that. We think, candidly, Your Honor, the Court would disagree with that. So we have clarified that we are not getting that exculpation under the plan.

But the real focus of our dispute is whether the Debtors and the Special Committee themselves can get the benefit of releases and exculpation under this plan. We think they can, Your Honor. We think it's appropriate in this circumstance. Certainly there are provisions in the plan that would let other claims go forward if there is, for example, an administrative claim that's otherwise provided by the plan.

THE COURT: To the extent that they have a defamation claim against the Special Committee, wouldn't that be an administrative claim?

MR. KANSA: To the extent they have a defamation

claim against the Special Committee and they -- it's an administrative claim subject to being, you know, meeting the requirements of an administrative claim as opposed to having a sort of free-floating carveout to assert whatever they may like and not satisfy those requirements I think, Your Honor.

THE COURT: Right. But if it's conduct that is covered from the petition date through the effective date and there's a claim that arises from that, obviously subject to meeting the requirements of 503, it would be an administrative claim.

MR. KANSA: I think that's correct, Your Honor, yes.

THE COURT: Okay. I mean, is there a circumstance where the claim wouldn't fall into that?

MR. KANSA: None that I can think of, Your Honor. But it's not my carveout to argue. So I would leave that to Mr. Wolfshohl as to whether he's trying to preserve something outside the administrative claims context. But we certainly don't think he either can or should be able to.

THE COURT: I mean, to the extent that -- I mean, if there was a car accident post-petition, obviously that wouldn't be a benefit to the estate, but it would still be an administrative claim.

MR. KANSA: Understood, Your Honor. Yes.

THE COURT: Okay. All right. Thank you.

MR. KANSA: Thank you, Your Honor.

MR. WOLFSHOHL: Your Honor, the problem I have is that, you know, I don't know that we are going to be able to state with certainty today that the types of -- you identified a very good example, defamation. I can't -- unless there's going to be a stipulation that a claim like that is going to flow through the estate and that there are going to be adequate proceeds to satisfy that claim, I think it -- I mean, I don't know the details of the Special Committee's indemnification rights relative to the Debtor for things that they did while -- you know, I don't even know if some of the stuff that they did was acting within the appropriate capacity as a special committee.

So I think my problem with that is only that I don't know everything and I don't know -- I think you've kind of hit it on the head. If I know that there's a pot of money that's going to satisfy those claims, maybe I don't care where it comes from. But my concern is that just standing up in court and saying, yeah, we think it's probably an administrative claim but not knowing with certainty that it is, that's the problem I have.

THE COURT: Okay. Thank you. All right. Anything further on confirmation?

MR. CAMARA: Your Honor?

THE COURT: Yes, sir.

MR. CAMARA: Justin Camara appearing hypothetically pro se. I just wanted to add that I hope there will be some consideration of, you know, beneficial ownership if I made a mistake related to the pro se filing. I just wanted to bring those issues for people to be able to just be aware of.

And the final comment I would say before I run off to surgery here is that one of the main concerns and the reason that I was motivated to file the objection as we're contemplating giving the insiders $1.9 million in recoveries. And whether we want to reduce the value of the claims or increase the value of the claims, certainly to the extent that any of those claims even marginally exceeded the value of the D&O settlement, the insiders in my perspective should get -- you know, that $1.9 million is kind of absurd to contemplate to give to insiders.

THE COURT: Okay. Thank you.

MR. KANSA: Your Honor, Ken Kansa for the Special Committee. I just would want to clarify in response to Dr. Camara's remarks, the $1.8 million that's going to Imperium and the founders under the plan is on account of notes only. And that is the only consideration that is going to them under the plan. It's on account of their secured notes at several of the Debtors as specified in Section 6.18 of the plan. So we've been very clear there that this is not a

free-floating claim, if you will, where a negotiated amount -- it ties very specifically to certain rights that Imperium and the founders have. Thank you, Your Honor.

THE COURT: All right. Thank you, Dr. Camara. I have an independent obligation to assess the settlement and the provisions of the plan. So I will take what you said into account, you know, whether I recognize or not your actual objection.

MR. CAMARA: Thank you, sir.

THE COURT: All right. Ms. Tomasco?

MS. TOMASCO: Your Honor, we have pending a notice that will upload, sources and uses of cash on a consolidated basis. It would be two -- I mean, it would be taciturn to do it on a per-debtor basis, but it's on a consolidated basis. Sources and uses of cash.

In addition, a slightly modified liquidation analysis that shows the effects of the Transcend settlement. I will tell you that the sources and uses of cash is based on the old liquidation analysis. There is not a new one for the amended liquidation analysis. The difference is that there have been some cost savings compared to the sources and uses of cash that is going to be uploaded. So it's going to be slightly more beneficial than the original. But we do have a new liquidation analysis to --

THE COURT: And how long would it take you to do

the sources and uses for the...

MS. TOMASCO: Ms. Howell is working on it right now.

THE COURT: For the new liquidation analysis.

MS. TOMASCO: For the new liquidation analysis and the new sources and uses. If you want a sources and uses that's tied to the new cash number based on savings compared to estimates, the Province team reflects that's going to take about 30 minutes to have that updated sources and uses of cash. So that's the difference.

And I can walk you through like the differences between the old liquidation analysis and the new liquidation analysis. Mr. Robinson can also testify. But I can tell you that the differences are as you would expect. Slightly less professional fee spend, that sort of thing. That's what we're going to -- we would show you.

In addition, as I said, the updated blackline of the confirmation order has been uploaded. I have been in contact with Mr. Lockhart. He does not object to the use of the Hurley declaration, the redacted portion, as long as it's in a closed courtroom and that they can dial in and listen to whatever the proceedings are that pertain to that.

THE COURT: Well, they're certainly welcome to dial in. But I'm not -- I mean, there's really been no opposition to the substantial contribution claim. I think

the redacted portions which don't' involve a mediation privilege, I don't -- you know, I have to look at everything in the context, but I don't know that it would be helpful.

THE COURT: I understand. And obviously you prepare your exhibit list and your presentation assuming that there's going to be a contest. To the extent it's not contested and we don't have to go through the brain damage, I can see why the court would make that decision.

With respect to the Transcend settlement, I just wanted to mention that on Page 29 of the disclosure statement that was sent to all creditors there is a detailed explanation of the Transcend warrants and the effects that they could have if we did not prevail on that claim objection. I think that it was fully disclosed to creditors what could happen. And what we are settling is that claim objection in context of the plan. And I think that's entirely proper, Your Honor.

THE COURT: All right. All right. So is there anything further with respect to confirmation? All right.

Then the next matter is the motion to enforce. And I've read Mr. Wheeler's declaration and it really didn't tell me what the issues were that resulted in the need to file a motion as opposed to having agreement with the parties. And I know you tried to explain it to me, but I'm still not really comprehending.

MS. TOMASCO: We were unable to reach an agreement with Whinstone with respect to the allocation that the Internal Revenue Code contemplates.

THE COURT: What was that dispute? I have no evidence as to what that dispute was.

MS. TOMASCO: The dispute had to do -- and I will tell you this one thing that may feed into this. The only thing that the IRS requires that we have consistent valuation of would be the physical property. That is the point of the IRS forms that you should fill out when you close a transaction of this type.

Whinstone did their own valuation, hired their tax consultants, et cetera. And they valued the property somewhere around $7 million. We said that can't possibly be true, because a lot of the miners that were at the Rockdale location actually came from the Temple location. And I don't know if you recall this, but Riot had made an offer for the Temple location primarily -- it was a leased location, so primarily for the miners -- upwards of $48 million. And so how could that be true?

And they said, well, you know, we have to be able to justify this to the IRS. And we said okay, we didn't want to spend this money, but we'll go out and we'll do our own evaluation. And we valued the property at $48 million. And that's really the dispute.

It also came to pass that because of the origin of the parties' relationship that Whinstone had property the debtor invested in creating the Rockdale Facility, invested its money in exchange for these contracts, these favorable power contracts which were the subject of the motion to assume litigation. And property, equipment, infrastructure, coolers, chillers, HVAC, all of those things the Debtor paid for and had on their books. But Whinstone, for whatever reason, we believe -- and in conversations it appeared that they had them on their books, too. And so they were not able to actually agree that they were actually ours and that they had been sold to them in the PSA.

And so they said to resolve it, they said we can't agree to something, we can't sign our name on anything. The only thing that we can do is we'll honor whatever the court order is. That's all we can do. We can't agree to it.

THE COURT: Okay. Well, what I really need is a declaration from somebody with knowledge that goes through what the dispute was, what happened back and forth or put a witness on. Because right now I have no evidence to that effect.

MS. TOMASCO: If you would like...

THE COURT: I mean, you don't have to do it right now. But, I mean, that's what I thought I was going to get. I thought I was going to get a full declaration as to what

happened, who said what, you know, and everything.

MS. TOMASCO: If you would like, he's in the hall. Mr. Wheeler is in the hall. He is our -- he was our tax consultant.

THE COURT: But was he involved in all of the negotiations with Whinstone?

MS. TOMASCO: The part about the tax negotiations, yes.

THE COURT: Yes, Mr...

MR. SCHMELTZ: I had one thing. Your Honor, if I might, part of the complexity is -- it's my understanding that Riot Whinstone has taken a public position in an SEC filing with respect to the value of the hard assets. Their accounting team, my understanding from our conversations, is concerned about contradicting that position at this point but is willing if there is a court order directing that the amount of hard assets be, for example, $45 million, $48 million commensurate with the valuation we've obtained, that they will live with that for purposes of the tax allocation. That is a cornerstone, that piece of the hard assets is a cornerstone allowing us then to allocate the rest between settlement and the contract value, the contract buydown value. Obviously, that's a subject of a dispute we have with LKC and we'll address that this afternoon. But it's my understanding that the need for a court order is

really one of sort of accounting cold feet to alter treatment that they've taken a public stance on.

But again, my understanding of the reason they non-opt, they didn't file an opposition to this is anticipating Your Honor would issue an order saying that the Debtors have obtained a proper valuation, the hard assets are properly valued at $45 million, that for tax purposes that 45 -- is it 48? But in any event, that that number is the proper number. And we can move on then with the rest of the dispute with LKC getting to the question of whether or not $75 million is appropriate for the settlement, or $100 million as they suggest, et cetera. And again, we'll put evidence on of that this afternoon with Your Honor.

So I think that's the disconnect. That's why we don't have this other witness. It would have to be probably me or Patty to do exactly what I've just done.

THE COURT: Right now if I have to rule, I would deny the motion. Because I have no evidence.

MS. TOMASCO: We have -- we can put Mr. Wheeler on and go through --

THE COURT: But Mr. Wheeler is going to testify as to me, right?

MS. TOMASCO: Correct.

THE COURT: And so unless he has personal knowledge of the discussions with Whinstone as to why they

couldn't agree on that number, that doesn't help me.

MS. TOMASCO: Well, all of us were on the call. Myself, Mr. Schmeltz, Mr. Wheeler.

THE COURT: Okay. If he's got personal knowledge then, you know, we can -- you can do a supplemental declaration, give people an opportunity to review it. But this was not what I was expecting.

MR. SCHMELTZ: And I think there's an interim conversation that both Patty and I have had separately I think with Whinstone's lawyer, which is that the missing piece of the puzzle where they have said to us, we can't agree to your position, but we'll agree to a court order. Mr. Wheeler may not have been on that particular call with that missing puzzle piece. I know I'd testify to it if it's appropriate.

MS. TOMASCO: I would testify as well. We were all on the calls.

THE COURT: All right. then let's get a declaration on.

MR. SCHMALTZ: All right. We can do that.

THE COURT: All right. Mr. Wolfshohl?

MR. WOLFSHOHL: I'm fine with a subsequent declaration as long as we have an opportunity to review it, weigh in on it. All this is very different than what's set out in the motion, which I think is Your Honor's concern.

The other thing is I don't really understand why this is being brought up today, because I did not see it on Your Honor's calendar. I saw it on the agenda, but not until I was preparing this morning. And so I just don't know why this is being brought up today at all.

We did see the declaration today. I saw that it was filed yesterday. There were a flurry of pleadings and we were trying to get through all of them. And my reaction was the same --

THE COURT: Yeah. No, no, I had asked -- I had asked for -- when we had the hearing on this, I had asked for the declaration that I would consider a connection with confirmation. But I still -- the declarations really didn't help me.

MS. TOMASCO: Just so the Court understands, this is not connected to LKC at all. This has to do with taking the Whinstone settlement proceeds and treating them appropriately for tax purposes as they wind their way up to distributions. In other words, the valuation of the Debtor's assets at various subsidiaries is very important because it matches up with the Debtor's books and records and available tax attributes.

So this is not something that is being done for, you know, smoke and mirrors purposes. This is very important to the tax savings that the Debtors are looking to

accomplish.

THE COURT: And I don't dispute that one bit. I just don't have any evidence to that effect.

MS. TOMASCO: Just so we're not at cross purposes, Your Honor, the evidence you're looking for is...

THE COURT: The reason why you could not agree on a valuation with Whinstone, the steps that you took to address the valuation, and the dispute that I'm resolving as opposed to giving an advisory opinion.

MS. TOMASCO: I see.

THE COURT: Okay. This -- Mr. Wheeler's declaration basically said here's what I did. Okay, great. And I don't have any question that he did what he said he did. But that just doesn't resolve this dispute. I mean, it doesn't address the dispute. It addresses maybe one number there.

MS. TOMASCO: Correct. Is it -- is the Court concerned with the allocation that Mr. Wheeler made? Like an advisory opinion with respect to something other than the property value?

THE COURT: Correct.

MS. TOMASCO: I see. Okay. I understand.

THE COURT: And that's one. But two, more importantly is, what's the dispute that I'm really resolving here, okay? Because, you know, I resolve disputes, not give

advisory opinions. And obviously you all have told me what you think the dispute is. And, you know, and I have no reason to doubt that that's not true. But I don't have any evidence.

MS. TOMASCO: That there was a dispute.

THE COURT: That there was a dispute, you know, who said what, why did they say it, why couldn't they do it, the fact that they had an appraisal at $7 million and you disagreed with the appraisal. I mean, all of the stuff that you just told me. You know, I need to look at it as evidence.

MS. TOMASCO: And we couldn't get them to send us a list of what they had appraised. And so we couldn't even speak to the nature of the dispute because we had different equipment lists to start with, right? So --

THE COURT: Well, I don't know that.

MS. TOMASCO: Okay. I'll prepare a declaration that goes through all of those elements, Your Honor. Because that's essentially what it was. We couldn't even get -- agree on a list of what the equipment was that was sold to them.

THE COURT: Understood.

MS. TOMASCO: Thank you.

THE COURT: All right. Anything further on the stipulation, plan, or the motion to enforce?

MS. TOMASCO: I believe that with respect to the stipulation, it's moot because the Court has decided that it doesn't need to consider any mediation privilege documents.

With respect to the plan, the notice of the amended liquidation analysis and the flow of funds and sources and uses of cash have been uploaded. I don't have the docket in front of me, but it should be the last thing on the docket.

MR. KANSA: Your Honor, it's Docket 2110.

MS. TOMASCO: 2110, Your Honor. And so you'll have both of those. If the Court has any questions about those, Mr. Robinson can take the stand and explain anything about that. To the extent that you want a sources and uses of cash that ties to the amended liquidation analysis, that should be available in 30 minutes or so.

THE COURT: So the 139 cash on hand, that includes the sales proceeds from the Riot stock, correct?

MS. TOMASCO: Correct.

THE COURT: Okay, all right. So this Exhibit 1, 2110-1, ties to the liquidation analysis before the --

MS. TOMASCO: Transcend settlement.

THE COURT: Transcend settlement. Okay. So I want to see the one with the Transcend settlement and we can look at that. All right. So it's now noon. So we're coming back at 1:00 for the --

MS. TOMASCO: LKC dispute.

THE COURT: All right. So we'll be in recess until noon.

MS. TOMASCO: Until 1:00.

THE COURT: Until 1:00.

MS. TOMASCO: Thank you, Your Honor.

(Recess)

THE COURT: All right. We're back on the record in Case Number 24-90448, Rhodium Encore LLC. And I'm going to go ahead and activate the hand-raising feature. So to the extent somebody wants to speak, please hit five-star one time.

All right. Ms. Tomasco?

MS. TOMASCO: Thank you, Your Honor. I know we need to take up the LKC thing, but I was wondering if we could go through the additional exhibits. Because some of us weren't planning to stay for the whole thing, if that's okay.

THE COURT: Okay.

MS. TOMASCO: If we could do that part now and then turn to that.

So just FYI, Your Honor, we uploaded and sent to Mr. Laws Document Number 2112, which has the updated sources and uses of cash.

THE COURT: Correct.

MS. TOMASCO: That is an update to the document that's filed at 2110-1.

THE COURT: Correct.

MS. TOMASCO: Which is the sources and uses of cash based on the original liquidation analysis.

THE COURT: Yeah. And so this -- the way I understand this, there is no distributable cash to equity based on this analysis under the plan.

MS. TOMASCO: That's correct. And that's a number of mechanics that are different, mostly because of the Transcend settlement. There have been -- as one would expect, the estimates have gone up or down. And I can summarize those differences for you. Or Mr. Robinson is in the courtroom if --

THE COURT: Yeah. Why don't we get Mr. Robinson on to go through it.

MS. TOMASCO: Thank you. Your Honor, the Debtors would call Mr. Michael Robinson to the stand.

THE COURT: Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. ROBINSON: I do.

THE COURT: Thank you. Do you have a copy of it?

MR. ROBINSON: I don't.

MS. TOMASCO: Yeah. That's what we were -- we were trying to do a couple of things. What I can do is I

can hand up the original liquidation analysis -- I mean the updated liquidation analysis to the Court. This is the document that's found at 2110-2.

THE COURT: I've got a copy.

MS. TOMASCO: Okay. Then I'll just approach the witness?

THE COURT: I have copies and --

MS. TOMASCO: May I approach the witness?

THE COURT: Yes.

MS. TOMASCO: All right. Your Honor, if I could approach the witness one more time?

THE COURT: Absolutely.

DIRECT EXAMINATION OF MICHAEL ROBINSON

BY MS. TOMASCO:

Q Mr. Robinson, just to keep this short, we're going to look at the revised liquidation analysis, which is the first document I handed you, which is the same that can be found at 2110-2. Do you recognize that document?

A I do.

Q And what is it?

A It is a liquidation analysis.

Q And how did it change from the liquidation analysis that was filed with the disclosure statement?

A The core differences in this analysis were we updated it for certain professional fees and other expenses that

were known. Ultimately that resulted in a savings of several million dollars, roughly about $3 million. It additionally contemplated an increase in the winddown budget shifting from $1.15 million to $2 million. It also reflected the request to increase the reserve for the LKC success fee and then it also contemplated the change in how the substantial contribution would have a reserve amount of two-and-a-half million dollars and also showed how that would flow accordingly.

Q So to summarize, Mr. Robinson, how much did the winddown budget increase?

A $850,000.

Q And how much did the actual professional fees versus budget decrease?

A I'd have to look to quickly reference that. But I believe it was just over a million.

Q And then how much did the estimated fees to LKC and B. Riley, or what we call the success fee category, increase?

A Yeah. So we effectively had a reserve of six-and-a-quarter million dollars that ultimately would have went up to $9.9 million, but we already paid out certain amounts of $1.7 million. And in there, there's also a reserve for B. Riley of $550,000 as well as ultimately some invoice fees for hourlies of roughly $400,000 and change, give or take.

Q Okay. Let's look at what's been marked as -- which

document -- it should have at the heading ECF marker 2112. Do you have that in front of you?

A I do.

Q And what is that document?

A This is the revision to the liquidation analysis I believe containing predominantly the cash reconciliation.

Q Okay. Now, with respect to those five movers that we've just discussed, the winddown budget going up, the actual professional fees going down, the LKC reserve going up, the Transcend settlement figure of $2.5 million which resulted in a net reduction of distribution of equity from $1.129 to negative $400,000, correct?

A Correct.

Q And where is that reflected on the distributable cash to equity on Docket Number 2112-1?

A So effectively if you look at the very bottom of what is Page 2 of 2 per the top of the document, you'll see at the bottom it shows distributable cash to equity as zero. In fact, it's a bit negative, to your point.

Q It's negative $400,000, correct?

A Correct.

Q Okay. And where is the increase in the LKC B. Riley reserve reflected on Docket Number 2112-1?

A Yeah. So if you look a bit further up, you'll see a category called reserves. And in there you'll see initially

late-filed claims of $500,000. And then right below that, LKC and B. Riley listed at $8.18 million.

THE COURT: And B. Riley is 1.7 of that?

THE WITNESS: No, they are $550,000 of that?

THE COURT: $550,000, okay.

BY MS. TOMASCO:

Q Mr. Robinson, does this change materially any other aspect of your declaration on file with respect to the confirmation of the plan?

A It does not.

MS. TOMASCO: Any other questions, Your Honor?

THE COURT: Okay. So Paragraph 19 -- hold on. Let me find it.

Ms. Tomasco, do you want to take him through Paragraph 19?

MS. TOMASCO: Of his declaration?

THE COURT: Yes. And see how that compares with the new -- with this new sources and uses.

MS. TOMASCO: Paragraph 19?

THE COURT: Yeah.

MS. TOMASCO: May I approach, Your Honor?

THE COURT: Yes.

BY MS. TOMASCO:

Q Mr. Robinson, do you see Paragraph 19 of your declaration?

A I do.
Q Does that analysis change based on your updated liquidation analysis?
A Give me one moment, please. The deficit amount does change, but the concept does not.
Q And what do you mean by that?
A Ultimately, there is a difference in the amount of recoveries that would flow through given the changes we addressed.

THE COURT: The equity? The equity?

THE WITNESS: Well, ultimately the amount that could potentially be available to equity. There is effectively that blocking position now in the plan. Not in the Chapter 7 scenario.

THE COURT: Okay. And you're assuming that there would be an eight-and-a-half million-dollar substantial contribution claim in a Chapter 7?

THE WITNESS: I actually assume that there may be a larger substantial contribution claim in a Chapter 7. We were notified by the SAFE Ad Hoc Group their intent to pursue an administrative claim up to I believe it was $12 million we were told. We represented a low of -- well, I was talking in the high case. But in the high case effectively zero and then in the low case the potential full amount.

MS. TOMASCO: Nothing further, Your Honor.

THE COURT: All right. Does anyone wish to cross-examine Mr. Robinson? Yes.

MR. POTTER: Mr. Robinson, this will be very brief. May I proceed, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION OF MICHAEL ROBINSON

BY MR. POTTER:

Q Do you have in front of you Document 2112-1?

A I do.

Q Okay, great. If you go down to, I believe it's the last page of that document, what's the SAFE substantial contribution claim now listed at in that document, the line item for that? I won't hide the ball. Do you see where it says $6 million?

A Yes. I see $6 million. And then below that.

Q Is the Transcend reserve, correct?

A That's right.

Q So that's the eight-and-a-half million-dollar substantial contribution claim that would have been paid even before the Transcend settlement, correct?

A Correct.

Q And is it your understanding that the Transcend settlement also resulted in a significant savings and potential professional fees?

A Absolutely.

MR. POTTER: Nothing further, Your Honor.

THE COURT: Okay, thank you. All right. You may step down.

MS. TOMASCO: Your Honor, before we move on to LKC, is there anything else that the Court wants to hear about with respect to confirmation?

THE COURT: No. I think that -- I mean, we still have the other open issue on the stipulation -- on the motion to allocate.

MS. TOMASCO: Beg your pardon?

THE COURT: On the motion regarding the allocation of the purchase price.

MS. TOMASCO: Oh, correct. But that's not -- that's not tied with confirmation. That's separate.

THE COURT: Okay.

MR. POTTER: Thank you, Your Honor.

MS. SCHULTZ: Your Honor, for the record, Sarah Schultz on behalf of the SAFE Ad Hoc Group. I just wanted to modify the documents that we're asking Your Honor to consider for submission as evidence given your ruling with respect to the previous stipulation.

So, Your Honor, I'm looking at the exhibit list that was filed at 2104. And, Your Honor, we would move for admission of Exhibits 14 through 26.

THE COURT: Hold on a second. Okay, 13 I've already took judicial notice of.

MS. SCHULTZ: Yeah.

THE COURT: All right. 14 through 26.

MS. SCHULTZ: 28 through 32 and then 35 through 80, 91. We would ask Your Honor to take judicial notice of 90.

THE COURT: Okay. So take judicial notice of 90.

MS. SCHULTZ: Yes, Your Honor. That transcript is already on the docket. We would move for admission of 91, 93, 95 through 98 and then 100 through 107. And I believe Your Honor has already admitted the portion that is available to the public of Mr. Hurley's declaration, which was 108.

THE COURT: All right. I will take judicial notice of the transcript that's on file.

MS. SCHULTZ: Thank you.

THE COURT: Okay. Does anyone object to the admission of Exhibits -- let me make sure I get this right. 14 through 26, 28 through 32, 35 through 80, 91, 93, 95 through 98, 100 through 107?

Hearing no objection, they will be admitted.

(Exhibits 14-26, 28-32, 35-80, 91, 93, 95-98, and 100-107 entered into evidence)

MS. TOMASCO: Thank you.

THE COURT: All right. Anything further on confirmation?

MS. TOMASCO: No, Your Honor. I think you understand that the plan support parties all urge the confirmation of the plan, overruling the objections that we haven't already resolved.

I know that there's a toggle issue for LKC in the confirmation order which you have by virtue of the redline that we've uploaded. If the Court wants additional argument on any of those points, we're happy to give it.

THE COURT: Okay. I'm going to take the matter under advisement and I will -- I'll go ahead and -- I mean, I'll rule promptly, but I'm going to consider everything.

MS. TOMASCO: Thank you, Your Honor.

THE COURT: All right. Why don't we go to LKC.

MR. SCHMELTZ: Good afternoon, Your Honor. Trace Schmeltz for the Special Committee from Barnes & Thornburg.

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl from Porter Hedges on behalf of LKC. And then we've got Will Thomson, Todd Disher, John Cohn, Jacob Richards.

MR. SCHMELTZ: Your Honor, my partner, Paige Lohse is here. And my clients are here -- or my client, David Eaton, is here as well. We'd like to proceed today if it pleases the Court, we've submitted a declaration for Chris

Wheeler. We would stand on that declaration. He is here in the hallway subject to cross-examination if that's what LKC would like to do. We would put on Kevin Hayes, the former CFO of Rhodium live today, and we would put David Eaton on live as well. And then stand for argument. We've got closing argument and some exciting slides to prepare -- or to present. That's from our perspective all that's left to be done.

Mr. Thompson, I assume you've got an alternate plan.

MR. THOMPSON: Your Honor asked us to confer on any pending motions that might need rulings. What I understand from Mr. Schmeltz is that he's not calling Mr. Rosten about whom there was a motion to strike. Assuming he's not a witness, the motion to strike does not need to be ruled upon.

As to the declaration from Mr. Wheeler, we were fine with that in principle, though we have some evidentiary objections to particular paragraphs just as we would if he were testifying. I'm happy to make those whenever Your Honor wants.

THE COURT: Do it now.

MR. THOMPSON: Does Your Honor have a copy of the declaration in question? I believe it's at 1943-2. I can also hand Your Honor a hard copy.

THE COURT: Yeah, why don't you hand me a copy. I did have it in front of me.

MR. THOMPSON: So this is fairly similar to the declaration that Your Honor saw this morning in connection with the other matter. If you look at the very last paragraph -- it's Page 5, Paragraph 11. It seems to offer a personal belief regarding the value of the damages claims based on "information I have been told or received". I have a hearsay objection if he's offering an opinion based on information he's been told. He's not designated as an expert witness. It is not a proper lay opinion because it is not rationally based on the witness's perception and it is based on at best I guess specialized knowledge.

I guess to the extent we read the paragraph as just saying this is his understanding, then I guess we can solve some of those other evidentiary problems, I think it's probably then irrelevant to the matter at hand. But that's our issue with regard to Paragraph 11.

And then pretty much the same thing with regard to Paragraph 9. He talks about his understanding of the power contracts and how they allegedly could have been valued significantly higher. Again, if it's just he's stating his understanding without trying to smuggle in the basis for it, I suppose that's fine. We think it's irrelevant, but Your Honor can deal with that. To the extent we're kind of

smuggling in the basis for his understanding, we have foundation and hearsay objections.

THE COURT: All right. Mr. Schmeltz?

MR. SCHMELTZ: We're at 9 and 11. Is that right?

THE COURT: Yes.

MR. SCHMELTZ: So with respect to Paragraph 9, it is my understanding that the power supply agreements could have been valued significantly higher than the $60 million allocated is -- sort of from a tax professional's perspective I think Mr. Wheeler would tell you supportive evidence in support of his understanding of how the allocation would be made. I think it's evidence that he as a tax professional relies on in the ordinary course and he can testify about that and can provide the backup for that.

The Paragraph 11 information I've told or received regarding the amount related to litigation and/or settlement, I believe the amount allocated could have been significantly lower than 75 or even zero. I'm happy to strike that paragraph. Mr. Eaton, who was involved in the negotiations, will testify to that.

THE COURT: All right. So does this then contradict what you told me this morning, Ms. Tomasco, that he was only offering the $43 million? I mean, this is the problem that I'm having that seems we're getting very contradictory positions on this issue. And I haven't gotten

a real straight answer.

MS. TOMASCO: The valuation of the equipment?

THE COURT: Right.

MS. TOMASCO: Oh, the valuation of the equipment was a valuation performed by Riveron using their valuation professionals. To the extent that we need -- to the extent that that would be pertaining to the tax allocation, we can make a formal valuation evidence issue.

My understanding though is that the exercise that we went through with Whinstone may reflect something that's relevant to LKC. But in my view, I do not view those things as related.

THE COURT: But the question that I have is as it relates to the -- what I understood this morning was that the only number in his declaration that you needed for purposes of a dispute to the extent that there is one with Whinstone was the $43 million and that the other three numbers were not -- that he wasn't testifying as to those. That's what I understood.

MS. TOMASCO: It's not necessary to file the tax forms. I think they're 8650 -- I don't know what the IRS number is. But it's not necessary to file those tax forms. The tax forms pertain only to the physical assets.

THE COURT: All right. Mr. Schmeltz?

MR. SCHMELTZ: So Mr. Wheeler, as Your Honor

knows, was retained under a Kovel agreement to provide advice to the professionals who are advising the Debtors. In that capacity, he worked on the tax allocation. He also has helped to prepare analyses of the enterprise's tax situation for purposes of projecting in the cash waterfall what available cash would be there and what would be needed for taxes. As a part of that, he helped gather information related to the entirety of the $185 million so that the Debtors could make intelligent decisions about what the expected taxes would be. And what he is testifying to in the LKC dispute different than the tax allocation motion is here are all the buckets we considered and here's how we considered them for tax filing purposes.

The tax allocation motion is different in that we need a ruling on the hard asset piece in order to resolve what would be two different tax treatments between Whinstone and Rhodium on that issue. So he has -- he wears two hats and he certainly in this dispute is going necessarily further than you need to go in the other dispute to get what is needed for the tax allocation purposes, if that makes sense. He is the same guy. Two hats, carrying out two different mission. And we obviously need to make that more clear to you in the other matter, and we will.

THE COURT: Well, yes. I'm really very confused as to what's going on here. And, you know, Riveron

obviously was retained not through the Court, but they were retained -- I don't know what they were doing. I don't know what they were supposed to do. I haven't seen an engagement letter. I haven't seen anything.

MR. SCHMELTZ: Understood.

THE COURT: And when I ask for information, I haven't been provided the information.

MR. SCHMELTZ: Understood.

THE COURT: I want to see the engagement letter. Let's take a break and get that to me.

(Recess)

THE COURT: All right. We're back on the record in Case Number 24-90448, Rhodium Encore LLC.

MR. SCHMELTZ: Your Honor, I understand you had questions about the engagement letter for Mr. Wheeler. I want to make sure we get you whatever information you want. Do you want to take that issue up now? Or how do you want to proceed?

THE COURT: No, I mean, let's -- there was an objection to Paragraph 9 and 11, you agreed to take out Paragraph 11. So why don't you put him on and...

MR. SCHMELTZ: All right. Let's just do it. We're here. (indiscernible). I just told him he could step out to the bathroom because I didn't know how -- I feel like my timing on that was bad. But give us half a second.

He'll be right back.

THE COURT: Why don't you come up to the witness stand.

MR. SCHMELTZ: I want to make sure -- you guys have invoked the rule. So I should have (indiscernible). And then, Your Honor, we previously had -- you did some magic with the recording and who could listen. And I don't know if we have that same magic here.

THE COURT: Well, we have 40 people on the line.

MR. SCHMELTZ: Do we have a sense of their party status from anything you can...

THE COURT: At the ABI project. Mr. Lockhart is on. I mean, so I could go one by one and unlock the conference. But is his testimony going to be...

MR. SCHMELTZ: I don't think his testimony will cover anything privileged. So we should begin.

THE COURT: All right. So let's just go ahead. All right. I'm going to go ahead and mute it. If anybody wants to be heard, please hit five-star.

All right. Raise your right hand, sir. Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. WHEELER: I do.

THE COURT: Okay. Thank you.

DIRECT EXAMINATION OF CHRIS WHEELER

BY MR. SCHMELTZ:

Q Just for the record would you please introduce yourself to the Court?

A Sure. My name is Chris Wheeler. I'm a managing director at Riveron Consulting.

Q And, sir, what's your background?

A I am a certified public account and have been practicing for approximately 23 years.

Q And you've submitted a declaration in this matter, correct?

A I have, yes.

Q Did you have a chance to review that declaration before it was submitted?

A I did.

Q Do you agree with its contents, sir?

A I do.

Q Do you have anything that you want to change in that declaration today?

A No, I do not.

Q Your Honor, I would pass the witness.

MR. THOMPSON: Thank you, Your Honor. Will Thompson from Lehotsky Keller Cohn.

CROSS-EXAMINATION OF CHRIS WHEELER

BY MR. THOMPSON:

Q Good afternoon, Mr. Wheeler.

A Good afternoon.
Q Good to see you again. You I believe have a binder in front of you. I believe Your Honor also has a copy of our binder. Could you take a look at Exhibit 23? It's Tab 23 in the yellow copy there. You should find a copy of the purchase and sale agreement that you referred to in your declaration. Would you let me know if you see it there?
A I do see it, yes.
Q Would you please turn to Section 2.3? It's on Page 2 of the internal pagination.
A I am there.
Q This is the section of the purchase and sale agreement about the tax allocations that you referred to in your declaration, right?
A Yes, that's correct.
Q Okay. The allocation statement required by Section 2.3 is prepared for tax purposes, correct?
A That is correct.
Q In fact, "For tax purposes" are the first three words of Section 2.3 after the heading, right?
A Also correct.
Q If you look at the next page, you should see kind of the full part of the provision, Section 2.3. Is it fair to say Section 2.3 requires Rhodium and Whinstone to follow the tax -- to follow the allocation statement when filing their

taxes?
A Yes.
Q Now let's take a look at the last sentence. I'm going to read it and you'll confirm I read it correctly. "For the avoidance of doubt, nothing contained herein shall be deemed an allocation of asset value for purposes of distribution to any seller-stakeholders." Do you see that?
A I do see that.
Q And seller in this provision refers to the Rhodium entities, right?
A I believe it refers to the Debtors collectively, yes.
Q And you could view LKC as a Rhodium stakeholder, correct?
A I don't see stakeholders defined here. It's not capitalized. So I'm not sure if that was the intended context as drafted.
Q Do you remember being asked this question in your deposition?
A Vaguely.
MR. THOMPSON: Mr. Disher, could we bring up -- oh, I'm sorry. Your Honor, is it all right if we give Mr. Disher presenting privileges to pull up the transcript?
Mr. Disher, I would love to look at Page 23 starting on Line 19.
BY MR. THOMPSON:

Q We'll try it this way while we see if we can figure out the technical issues, Mr. Wheeler. Do you remember my asking you, "LKC is a Rhodium stakeholder, correct?"
A I remember you asking the question.
Q And do you remember that your answer began, "I think that you could view them as that, although I don't know that this is how that was intended"?
A It sounds consistent with what I said.
Q All right.
MR. SCHMELTZ: I would just note, Your Honor, my objection that it's improper impeachment. It's (indiscernible).
MR. THOMPSON: I'll get to it.
BY MR. THOMPSON:
Q And as Rhodium's corporate representative, you could not testify about the intent behind that last sentence in Section 2.3, right?
A That's correct.
Q But based on the language in the document, if Rhodium and Whinstone reach one allocation for the purposes of the PSA and then Rhodium and LKC reach a different allocation for purposes of the fee dispute, that wouldn't violate the PSA in Rhodium's understanding, correct?
A My personal view is it wouldn't violate the PSA, but I've also been advising on matters related to the tax

filings. And I think that those would have to be considered as well.

MR. THOMPSON: Objection. Nonresponsive to everything after, "It wouldn't violate the PSA."

THE COURT: Okay.

BY MR. THOMPSON:

Q Now, your declaration says that $75 million should be allocated to Rhodium's claims against Whinstone, right?

A Correct.

Q You didn't perform your own independent analysis of how much the damages claims were worth, right?

A I did not.

Q You used a number from a board presentation, fair?

A That's correct.

Q In your view, a board presentation was a reliable source of information for valuing the damages, right?

A Yes.

Q That the board presentation was based in part on input from the company's attorneys you thought made it more reliable, right?

A I thought that certainly lent to its credence, yes.

Q But you don't know who presented the $75 million number to the board, correct?

A I do not.

Q You don't know whether there was disagreement about the

$75 million, right?
A I do not.
Q You don't know how the board reacted to the $75 million number, right?
A Correct.
Q You don't know whether other values for the damages case were discussed with the board, right?
A My understanding is that there were values that were discussed that were higher than that in the past, and that they had been trending downward throughout the course of the dispute with Riot Whinstone.
Q I guess this is an understanding you gained since the time of your deposition?
A I don't recall that you asked me that question previously.
Q Do you remember my asking, "Do you know whether other values for the damages case were discussed with the board?"
A I don't recall the specific question.
MR. THOMPSON: Mr. Disher, if we have the technical problems resolved, could we go to Page 52 of Mr. Wheeler's deposition transcript, Line 17?
MR. DISHER: Your Honor, may I have presenter --
THE COURT: I think you're still -- oh no. Here you go.
MR. THOMPSON: Fifty-two, 17 to 19.

BY MR. THOMPSON:

Q All right, Mr. Wheeler, can you see the question on Line 17, "Do you know whether other values for the damages case were discussed with the board?"

A I see that, yes.

Q And you see your answer was, "I do not know"?

A I see that, yeah.

Q All right. Would you have wanted to know if the lead litigation attorney had told the board that he thought the value of the damages case was between $100 million and $150 million?

A I would have wanted to understand all facts relevant to the basis for the payment from Riot Whinstone to the company.

Q Is that a yes?

A Yes.

Q Now, Mr. Wheeler, could you look at Exhibit 13 in your binder in front of you? You should see an email from Mr. Cohn. Do you have that email in front of you?

A I do.

Q And do you see the part where he talks about trying to settle the damages case from between $100 million and $150 million? It's in bold text about two-thirds of the way down the page.

A I see that.

Q That's not a document you were able to consider during your tax analysis, right?
A I have not seen this before, no.
Q Now, in the tax allocation discussions with Whinstone, you were a part of those, right?
A Correct.
Q So you know that Whinstone wanted to allocate less value to the fixed assets than Rhodium did, right?
A Correct.
Q And Whinstone wanted to allocate about $7.2 million or $7.3 million to the fixed assets, right?
A Also correct.
Q And Rhodium's number was $43.5 million?
A Yes.
Q That's a larger gap than you might normally see, right?
A I don't know about whether it's a larger gap than normal, but certainly a large gap.
Q Do you remember saying in your deposition, "I think it's a larger gap than I might normally see"?
A I don't recall if I said that, but...
MR. THOMPSON: Your Honor, if it's all right, I'm going to approach the witness with the 10-Q that we heard about this morning. I didn't have that printed previously.
BY MR. THOMPSON:
Q Mr. Wheeler, do you have the copy of Riot's 10-Q in

front of you?
A I do.
Q All right. And if you could turn to Page 9 based on the internal pagination, you'll see a section entitled Rhodium Settlement and Acquisition of Assets.
A I see that.
Q If you look at the second full paragraph and the third line, there's a sentence that begins, "The fair value of the tangible assets acquired was estimated to be $7.3 million. Do you see that?
A I do.
Q That's consistent with what Whinstone was telling you, right?
A Yes, it's consistent with their view.
Q Were you in the courtroom this morning?
A I was not, no.
Q Okay. I don't want to violate the rule. You're aware that Whinstone has said that it doesn't want to contradict public statements it's made about the value of the fixed assets, right?
A Yes.
Q Is this the public statement that Whinstone is talking about when it says that?
A They did not tell me specifically which public statements, but I can assume it could be one, yes.

Q Okay. And if you turn to Page 45 of this same document. I'm looking at the fifth paragraph on the page. It's a one-sentence paragraph. Do you see where it says, "The loss on contract settlement of $158.1 million was attributable to the Rhodium settlement"?
A I do.
Q And that's not the number you used in your tax allocation, is it?
A It is not, no.
Q In your view, the valuation of the power contracts is somewhat subjective, right?
A Yes. I think there was a range of interpretations of the value of any contract between different parties.
Q And aside from whatever it has put in its public statements, Whinstone didn't convey to Rhodium as far as you're aware its view of the value of those power contracts, right?
A In any discussions of which I was part, they only referenced the value of the fixed assets and the remainder of the value being related to the termination of the contracts. They didn't specify any further breakout than that or propose any further breakout than that.
Q So when your declaration has a breakdown, those numbers aren't based on some kind of agreement with Whinstone, right?

A That's correct.
Q As part of your analysis for the tax allocation, you didn't look at issues related to Rhodium seeking exit financing, right?
A I did not as part of my analysis, no.
Q And if Rhodium had not struck a deal with Whinstone, you don't know whether Rhodium would have been able to continue operating at Rockdale and benefit from those power contracts, correct?
A That question was not within the scope of my engagement, no.
Q So you don't know the answer, right?
A I do not.
Q And you don't know whether Rhodium would have been able to sell or transfer the power contracts to a third party, right?
A I'm not an attorney and I'm not aware of the ability to transfer those contracts or the like.
Q No further questions. Appreciate your time, Mr. Wheeler.
MR. SCHMELTZ: Your Honor, may we have presentation capabilities to put the deposition up on the screen?
THE COURT: Yes. Who should I give it to?
MR. SCHMELTZ: Ms. Lohse. Thank you, Your Honor.

There it is.

THE COURT: I think I see her.

MR. SCHMELTZ: And if you could go to Page 23, please.

REDIRECT EXAMINATION OF CHRIS WHEELER

BY MS. TOMASCO:

Q Mr. Thompson in his examination of you asked you if he had asked the question LKC is a Rhodium stakeholder and gave your answer that I think you could view them as that. Right?

A Yes.

Q You gave a more complete answer than that at your deposition, isn't that correct?

A I believe I did.

Q We're going to put that on the screen and I'm going to have you read your complete answer for the record, please. Why don't you start at Line 24 and read through to Page 24, Line 5, please.

A Certainly. I'd said at the time, "I think you could view them as that, although I don't know that this is how that was intended. I was not a party to drafting of this agreement and I can't really speak to the intent of that. I could also see a reasonable view that -- and if you could scroll up for me a little bit. That would simply be viewed as -- that would simply be viewed as shareholders rather

than stakeholders, in particular as it relates to the distribution, which is typically in the tax world a term we use when it relates to the transfer of cash or property to a shareholder of an entity.

Q So you were viewing the word Stakeholder in a provision regarding taxes from a tax perspective in giving that answer, is that right?

A Correct.

Q Let's take a look if we can at Page 52 of the deposition. You were asked whether you knew if other values for the damages case were discussed with the board and you said, "I do not know."

A Correct.

Q In your testimony today, you said you understood that number was trending down.

A Yes.

Q Can you help us understand how your answer in court was consistent with your answer in the deposition?

A Certainly. At the time I -- at the time that we discussed with the company the various damage claim amount, I think I was looking at the most recent board presentation. I have also learned since then that that number had been revised and had considered -- had been -- you know, different aspects had been looked at over time and that that had kind of trended downward. But I don't for -- at the

time I don't think I knew for sure what specifically had been discussed with the board.

Q And at Page 53 of your deposition, you also gave a more completed answer. And if you'd read Lines 10 through 12 to give a more complete view of your answer.

A On 53?

Q Yes, sir.

A Starting with ten?

Q Yes, sir.

A Where that says intellectually?

Q Start with the word "so".

A "So the most recent view on what the damages were seemed to be the reasonable number to include in the calculations."

Q And can you explain that please for the Court?

A Sure. So there are a couple of different obligations that both a company and the tax preparer has when preparing a tax return. A company would need to attest to essentially the veracity of the information presented there. And the preparer's obligation is that they are considering all the facts of which they are aware.

And I think my comment here related to the fact that being aware of the most recent, most current information that the company had discussed internally related to the damages and as well related to the value of the other assets

that were transferred or the value of the contracts that were terminated was what would need to be included in considering the entire purchase price allocation among those different either assets transferred, contracts terminated, et cetera.

Q Did you have evidence or information suggesting that the contract piece of the assets that were sold could have been valued either higher or lower than what is in your allocation?

A I'd had discussions with the company previously and its other advisors, including Mr. Robinson, related to the value of those contracts and the view that those contracts were valued significantly in excess of kind of the residual after taking into account the fixed assets such that they could have represented the entire value above the fixed asset value. But we also had the information related to the view on damages that was presented to the board and so needed to reconcile all of the pieces together and make an attempt to take all of that into account when assigning value to each of the components of that Riot Whinstone contract.

Q You as part of your work engaged in conversations with Riot Whinstone about the tax allocation. Is that right?

A That is, yes.

Q Did you have in the course of those conversations -- did you come to an understanding of how Riot Whinstone

valued what it had purchased?

MR. THOMPSON: Objection. If the answer is going to be limited to yes or no, I guess I don't have to object. But to the extent he's about to relay what prior Whinstone said, I object on the grounds of hearsay.

THE COURT: It's a yes or no answer. Go ahead.

THE WITNESS: Can you ask the question again?

BY MR. SCHMELTZ:

Q Did you come to form an understanding of how Riot Whinstone valued the assets it had purchased, other than the hard assets, during the course of your negotiations?

A Yes.

Q And did you factor that into your tax allocation?

A The view that they expressed to us was that the value related to the termination of the contracts. But I still felt we had to consider the value of the damages over which they'd been litigating. And no view was ever agreed between the parties as to what the allocation was from that perspective.

MR. THOMPSON: Object as nonresponsive and hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q I'm going to try one more time. Did you factor in their view -- did you -- did you -- let me ask it this way.

Did you adopt their view in your tax allocation?
A No.
Q Had you adopted their view, would you have a higher or lower allocation to contracts in your tax allocation?
A A higher allocation of the contracts.
MR. SCHMELTZ: Thank you. I have no further questions for this witness.
THE COURT: All right. Mr. Thompson, anything?
MR. THOMPSON: Just one last topic.

RECROSS EXAMINATION OF CHRIS WHEELER

BY MR. THOMPSON:
Q Mr. Wheeler, Mr. Schmeltz asked you about a reasonable interpretation of Section 2.3. And I think you testified that we could just read the word stakeholder to mean shareholder. Did I get that right?
A Specifically in context that it discusses distributions to stakeholders, yes.
Q Did you know that elsewhere in the PSA the language uses the term shareholder instead of stakeholders?
A I don't recall that.
MR. THOMPSON: No further questions.
THE COURT: All right. Mr. Wheeler, by the time that you were engaged, had the Whinstone transaction already been in process?
THE WITNESS: The purchase and sale agreement had

been executed, Your Honor. I believe we were engaged toward the end of April. And that transaction closed within a week I think of our being engaged.

THE COURT: All right. And have you done any other work -- you personally. I understand there's another team of Riveron that's involved. Personally anything other than the allocation of the Whinstone purchase price?

THE WITNESS: No, Your Honor.

THE COURT: Okay. I don't have anything. Do you have any questions as a result of that?

MR. SCHMELTZ: You've been very patient over a couple of days of this hearing, and I really appreciate your time. Thank you, sir.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, Your Honor.

MR. SCHMELTZ: Your Honor, I would call Kevin Hayes to the stand.

THE COURT: All right.

MR. SCHMELTZ: I think I misspoke earlier in my mind because of the way today was structured. We might have a ruling and Mr. Hayes would still -- would not be the CFO anymore of Rhodium. He is still the CFO of Rhodium. I didn't mean to undersell him earlier, Your Honor. But...

Go ahead and take the stand, Kevin.

THE COURT: Raise your right hand, sir. Do you

solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. HAYES: I do.

THE COURT: Okay. Go ahead.

DIRECT EXAMINATION OF KEVIN HAYES

BY MR. SCHMELTZ:

Q Sir, would you do me a favor and introduce yourself to the Court?

A Yes, sure. Kevin Hayes. I am the Chief Financial -- excuse me -- Chief Financial Officer of Rhodium Enterprises.

Q Could you tell us a little bit about your -- just at a very high level your credentials for being a CFO, sir?

A Sure. I spent -- I have an MBA from Rice University here in town. Spent 13 years as an investment banker, ten years after that as a CFO for various private companies, predominantly private equity backed companies. I also have a chartered financial analyst designation as well.

Q Tell us a little bit about your involvement in preparing and presenting claim valuations to the Rhodium board of directors in February and March of 2025, please.

A Sure. My recollection is we were having a -- mediation was set for February 19th, I believe. And in preparation for that, knowing that that could lead to an offer to settle the damages or an offer to perhaps purchase the entire company, we prepared valuation materials that addressed both

in advance of that. And the first meeting we had with our board was on February 12th. And I would characterize that meeting as the initial discussion to kind of facilitate a robust discussion on value. It was not the final board meeting we had. We had a board meeting on February 16th. Prior to that board meeting -- well, let me take a step back. So the valuation of the company as we framed it was really two principal components; the discounted cashflow of the ongoing bitcoin mining business and then the discounted value of the damages.

So when we thought about the value for the whole company in the context of an offer, a potential offer from Riot, we valued both of those. And I prepared -- I pulled together slides for the February 12th board meeting and as part of that reached out to the LKC team who provided me I believe a couple hours before the board meeting an analysis or a spreadsheet that listed out the components of the damages. And it had categories in rows of the damages with kind of a base value allocated to each. And then next to each it had a success factor. And so the value for each component was that base value times that success factor.

Q Now, on February 12th when you were working to pull that information together, did you have information you had already received from LKC about potential damages that you were using?

A We had as a placeholder in that presentation an analysis that was a few months old, I believe. And it -- yes.

Q Let's take a look -- you've got hopefully this in front of you. We filed a declaration at Docket 1943, exhibit 2 to that declaration, which is found at Pages 14 to 22 of Docket 1943.

MR. SCHMELTZ: I'm going to mark it, Your Honor, as Trial Exhibit 332. It's not up there. Let's make sure he gets a copy. Your Honor, may I approach the witness?

THE COURT: Yes, go ahead.

MR. SCHMELTZ: Your Honor, would you like a copy as well, a hard copy?

THE COURT: Sure.

MR. SCHMELTZ: If I might approach, Your Honor?

THE COURT: Yes.

BY MR. SCHMELTZ:

Q And again, Pages 14 to 22 of this document is Declaration Exhibit 2, now marked as Trial Exhibit 332. Can you explain to us what this email is?

MR. THOMPSON: Hold on, Chris. What page are you on?

MR. SCHMELTZ: It's 14 of 1943. It's actually 15 is the first substantive page.

MR. THOMPSON: Okay, thanks.

THE WITNESS: Sorry, could you repeat the question, Trace?
BY MR. SCHMELTZ:
Q Just tell us what we're looking at here. What is this document?
A Okay. So starting on Page 16?
Q Yes, please.
A These are slides that were pulled together for the board discussion that we had Wednesday, February 12th.
Q Okay. And if you would look at page 18 of the overall document. It's 18 at the top-right-hand corner. And it says, "Litigation value, get update from Stris LKC." Is that the charge that you -- the placeholder you were referring to a moment ago?
A This is the placeholder, yes.
Q And this placeholder has values for energy credits, right?
A Correct.
Q Has value for Uri energy credits, right?
A Yes.
Q Has a value for a revenue loss from business shutdown, right?
A Yes.
Q Has an ERCOT 4CP value, right?
A Yes.

Q It has a value for many of the things that we see on your later charts. But there's one notable thing missing. Do you agree with that?
A Yes.
Q What's missing, please?
A Building D.
Q And do you know why Building D wasn't on this earlier analysis?
A I don't know specifically. But I know that it was added in an analysis that was provided a couple of hours before our February 12th meeting with some commentary on that -- on the spreadsheet that was provided that said this is a new claim, something to the effect of this is a new claim, hasn't -- hasn't been discovery, we don't have all the facts yet.
Q So fair to say Building D first showed up on a damages analysis you were aware of on February 12th, 2025, is that right?
A Yeah, that's correct.
MR. SCHMELTZ: I would move to admit Exhibit 332 into evidence, Your Honor.
MR. THOMPSON: Which part of this document are you moving to admit?
MR. SCHMELTZ: Page 2.
THE COURT: What pages is that at the top?

MR. SCHMELTZ: Pages 14 through 22.

MR. THOMPSON: Your Honor, we do object. A couple of grounds. This document was not included on their exhibit list. I don't think it was properly disclosed before this hearing. Also, I think this lacks foundation. I don't think it's bene proven up who created this, when, or for what purpose. So I would object that it both is late and lacks foundation.

MR. SCHMELTZ: Your Honor, first and foremost, it was produced in discovery. It was part of the declaration that we filed on November 3rd. It's been on the docket for a month. Certainly full disclosure that we were going to use the declaration and its constituent parts. And I think the witness has just testified that he created the document, and he created it for a board meeting.

MR. THOMPSON: I believe he testified he created portions of this. But the chart that he was just asked about, I don't think that he testified that he created that. And I don't think he testified who did or when it was created or for what purpose. And it's also hearsay.

THE COURT: Unless he created it.

MR. THOMPSON: Right.

THE COURT: So, Mr. Schmeltz, do you want to...

MR. SCHMELTZ: I can lay some more foundation.

THE COURT: Yeah.

BY MR. SCHMELTZ:

Q From where did you receive the chart at page 18 of Exhibit 332?

A I don't recall from where. I mean, there were lots of these valuations that had been sent around in the months prior. And I just grabbed something to show everybody that we need to update this.

Q And you in fact -- are these your notes, "Ge update from Stris LKC?"

A Correct.

Q And what was your intent in including this document, this page in the overall document?

A My intent was to -- well, for a number of reasons. I wanted to have an updated valuation of the damages and I wanted to alert LKC to say, hey, we're going to need to get an updated version of this, LKC or Stris.

Q As part of your job as CFO, were you engaged in advising or, pardon me, informing the board about the damages and the expectations from the Whinstone litigation in these board meetings?

A I mean, in the context of how it fit with the overall valuation of the company, yes. But as to the specific components of valuation, no.

Q So you kept -- did you keep versions of this damages analysis like we see at Page 18 in the course of your job so

that you could provide information to the board?
A Did I keep these?
Q Did you have them in email or file or otherwise that you maintained for purposes --
A Yeah. This is a previous version. And again, I don't know where it came from. But it's a previous version that I pulled really just to show that we need to update this.
MR. SCHMELTZ: Your Honor, the overall document is a draft of a board presentation that he's pulled together as part of his job to inform the board. I think it's a business record and should come in.
MR. THOMPSON: Your Honor, I believe the foundation for this specific slide still has not been laid.
THE COURT: I agree. I'm going to exclude this slide. He doesn't know where it came from.
MR. SCHMELTZ: So 332 comes into evidence minutes Page 18, is that right? Or 332 is excluded altogether?
MR. THOMPSON: Well, Your Honor, I haven't had a chance to review all of this right here in part because all of this was still late. The deadline to file the exhibits was October 30th. This was filed on November 3rd as we just heard. And so I would object to all of this coming in based on the grounds that it's late.
THE COURT: I think the only testimony that is appropriate is that he wanted people to update the slides.

And that will come in. But I guess the -- so which pages are you offering?

MR. SCHMELTZ: Your Honor, I'll withdraw the exhibit and move on to the next exhibit. I understand. Let's take a look please at Exhibit 216, which is already in evidence.

THE COURT: It's in the big white book.

MR. SCHMELTZ: It's in the big white binders. Thank you, Your Honor.

THE COURT: The big one. No, that second one. That one.

THE WITNESS: Okay.

MR. SCHMELTZ: It's Exhibit 216.

THE WITNESS: Okay.

BY MR. SCHMELTZ:

Q Can you take a look at this document please and let us know what it is?

A I believe these are the materials that were discussed in the February 12th board meeting.

Q And is this an updated version of what we just looked at?

A It is, yes.

Q Let's take a look please at Document -- it has on the bottom of it Hearing Exhibit 216-003, third page of the document. From whom if you recall did you receive this

slide, the information on this slide?
A Yeah. I believe this was emailed to me by LKC. And the only change that I made to it was to add the discount rate at the bottom.
Q And how did you receive -- did you receive this in response to a communication you made to LKC?
A I believe it was, yes, it was my emailed request to get a revised litigation value table like this.
Q In your litigation -- pardon me. In your email request to LKC, did you include the table that you had in your possession at the time?
A I believe I did, just to make it easier for them to say this is a previous version, give me an update, something like this to include in the board -- for board discussion.
Q And in response to your communication with that slide, did they express any surprise that you were using that analysis of damages?
A No, they didn't. But they -- my recollection is they sent me this spreadsheet at some -- you know, a couple of hours before the meeting.
Q And this spreadsheet that we are looking at on Page 3 has Building D on it. Is that right?
A Correct.
Q And is that the first time you saw Building D in a damages analysis?

A Yes, it's the first time.

MR. SCHMELTZ: Your Honor, I would move again for the admission of 332. The slide in question is one that he sent to LKC to get updated and they sent it back with an update. And they didn't express surprise or chagrin or anything other than that's a business record and here's an update.

MR. THOMPSON: Your Honor, first of all, it's still late. Second of all, he didn't testify that the slide we were just looking at was the one that he did in fact send to LKC. I imagine there's an email to that effect. That would be the best evidence of that rather than some undisclosed late exhibit from some other slide that who knows who created. So we continue to urge our objection.

THE COURT: I'm going to continue to sustain the objection.

MR. SCHMELTZ: To the extent -- and I understand -- it is because it was late, I would note, one, we were on a pretty expedited clock. And two, I received their invoices, the invoices that they have a burden of proof on, after the deadlines for discovery. I didn't even get them in discovery. So at some level -- I just note that. I understand we were late and we were all moving fast and there were sins on both sides.

THE COURT: Right.

MR. SCHMELTZ: I'm not questioning Your Honor's ruling.

BY MR. SCHMELTZ:

Q All right. So your testimony I believe was that this is the first time you had seen Building D on a damages analysis.

A That's correct.

Q And can you read for the Court what it says in the right-hand column under commentary next to Building D?

A Sure. "This is a claim that was not previously at issue. We had not yet had discovery on it and do not have all the facts."

Q You said that you've added a discount rate here on this chart. What's the purpose of a discount rate, sir?

A The purpose of the discount rate is to bring the value of cashflows that you're going to receive in the future to the present to get the present value of those future cashflows. So in general discount rates are akin to cost of capital. And so an appropriate discount rate for a company that's in Rhodium's situation, you know, in Chapter 11, a volatile business, tends to be a lot higher than a company that's larger, maybe public, it has better access to capital.

Q Did you have an expectation as to how far in the future you would collect damages in using this 25 percent discount

rate, we see at Page 3 of Exhibit 216?
A Yeah, I did. It was a year. And you can kind of do the math here. The math is the discount rate is 26 percent. What we're doing is we're taking 158, which is the value in a year, dividing it by 1.25. So that's one year of discounting.
Q And the success rate here at 40 percent for Building D, did you ever have occasion to talk to anyone at LKC or otherwise about that?
A No, not prior to the meeting. We didn't have time to discuss this at all. We had to pull this together and have the discussion with the board.
Q And here the total risk damages number is 126.4. Is that correct?
A That is the -- yes, discounted to today, yes. That is the discounted value.
Q And at Page 2 of this analysis, same document, you actually have what I think you described earlier the ongoing business value of DCF and risk damages. Is that correct?
A Correct.
Q And what was the ongoing business value as of February 12th?
A The range was essentially $75 million to $175 million.
Q And how about risked damages?
A $100 million to $150 million. And that's kind of

rounding that $126.4 million and roughly adding plus or minus $25 million to it.

Q Do you have an understanding of what net claims means on that chart, 216-002?

A Yeah. My recollection is that is the debt we have net of cash, net of other assets we could possibly sell. It's basically the debt we had less assets that we had that would offset that debt.

Q What was your intent -- you've got net claims and then you have SAFE claim, right?

A Mm-hmm.

Q What was your intent in communicating this information to the board of directors of Rhodium as of February 12th?

A My intent was to frame the value of the company overall as an asset and then taking that asset value and converting that into equity value.

Q Did you have an understanding of whether the board was trying to understand one way or the other how to add value to the various constituents of the estate?

A I'm not sure I understand the question.

Q Net claims is $51 million, right?

A Correct.

Q And the value net of claims on the low end was $123 million, correct?

A Correct.

Q Was that intended to say that would be the money left over after we pay our debt?
A Correct. Yeah. The $51 million was our debt, which I think was $65 million less some assets that we had that we would offset that. We had some cash as well. So yeah, correct. Before the SAFE holders, after the debt holders, that's what that value net of claims represents.
Q And the SAFE claim at $87 million, that number below it, at least on the low end for equity, is $36.3 million, right?
A Correct.
Q What is that intended to communicate to the board?
A That would be the value to -- I'll say common equity net of the safe
Q So was the purpose of this chart to say sort of this is what we need to clear in order to pay these various constituents?
A That was one purpose. The other purpose was to show what the asset value of the business was. And then yeah, and then translate that into what that means for equity and what that means to equity after we pay off the SAFE.
Q Let's take a look at Trial Exhibit 244.
MR. SCHMELTZ: Page 216 is already in evidence, right? Oh, I need to move 216 into evidence, Your Honor.
THE COURT: I thought you said it was already

admitted.

MR. SCHMELTZ: I thought it had been. Paige tells me it's not.

THE COURT: Any objection?

MR. THOMPSON: No objection. I'm sorry, 216, right?

THE COURT: 216, yes.

MR. THOMPSON: Yes, no objection.

THE COURT: It's admitted.

(Exhibit 216 entered into evidence)

MR. SCHMELTZ: Let's take a look at Exhibit 244.

THE WITNESS: Okay.

BY MR. SCHMELTZ:

Q Tell us what this document is.

A I haven't read it. I'm not going to read it here. I'll just -- but I'll say this is an email from John Cohn. And this was prior to the mediation. And I believe this is a damages spreadsheet that totals $440 million. And it goes on to say that, you know, we should aim to settle the damages at $100 million to $150 million. I could read the whole thing if you want but --

Q No, that's okay.

THE COURT: Have you seen this document before?

THE WITNESS: I've seen the email before, but I haven't seen it in a few months.

BY MR. SCHMELTZ:

Q You're copied on it, right?

A Yes, I'm copied on it. I've read the email, but it's been a few months since I've read it.

MR. SCHMELTZ: Your Honor, I would move for the admission of 244 into evidence.

MR. THOMPSON: No objection.

THE COURT: Admitted.

(Exhibit 244 entered into evidence)

BY MR. SCHMELTZ:

Q Take a look at 244-002. We see that is a chart of damages like the one we just looked at, right?

A It is, although the values are different. Building D is $33 million instead of $66 million.

Q This is an email from John Cohn at LKC, right?

A The previous pages was, yes.

Q And this is an attachment to this email. Do you understand that?

A I believe so, yes. I think he -- this was probably something that was sent back to him and he sent back 003.

Q Okay. So on February 18, 2025, Mr. Cohn had an analysis that showed Building D at 20 percent. Is that right?

MR. THOMPSON: I'm sorry, could you repeat that question?

BY MR. SCHMELTZ:

Q As of February 18, 2025 Mr. Cohn had an analysis that showed Building D success rate at 20 percent, right?

MR. THOMPSON: I will object to that question. Misleading, lacks foundation, misstates the document, and misstates his testimony.

THE COURT: Why don't you try and lay a foundation.

BY MR. SCHMELTZ:

Q So this was an email you received from John Cohn, right?

A Correct.

Q It had two attachments to it, correct?

A Yeah. It may have had two attachments or it may have had one tab that was my spreadsheet and he added another tab. I don't remember this being two separate spreadsheets.

Q In other words, both documents here were sent to you by John Cohn, right?

MR. THOMPSON: I will object that that misstates the testimony and lacks foundation.

THE COURT: It's leading. So why don't you try to lay a foundation.

BY MR. SCHMELTZ:

Q This document, whether it was a single spreadsheet or two separate attachments, did it have an attachment of some

kind with the information we see at 002 and 003?
A Yes.
Q And that information was in the email that you received from Mr. Cohn, is that right?
A Yes.
Q So the information that was attached to the email you received from Mr. Cohn --
MR. THOMPSON: Objection, leading and misstates his testimony.
MR. SCHMELTZ: I have half a question.
MR. THOMPSON: I'm sorry. I thought you'd finished. Go ahead.
THE COURT: Finish your question.
BY MR. SCHMELTZ:
Q So the information in the email that you received from John Cohn, did it show a success rate for Building D at 20 percent?
MR. THOMPSON: Objection, vague.
THE COURT: Well, I think he's asking him is the number in the base success percentage for Building D in this document 20 percent. I think that's what you're asking.
MR. THOMPSON: And the basis for my vagueness objection is I don't know if he's referring to -- I don't know if he's referring to information that Mr. Cohn sent to Mr. Hayes or that Mr. Hayes first sent to Mr. Cohn and then

it was just reattached when Mr. Cohn sent the email responding to Mr. Hayes' email.

THE COURT: So the problem that I'm having with this document is, first of all, it's not a complete document. It cuts off in the first page. Second, in one chart it has a 20 percent success rate. And in the other chart it has a 50 percent success rate. So I don't know that we know from this gentleman what was said or what wasn't said.

MR. SCHMELTZ: Right.

BY MR. SCHMELTZ:

Q At dot 002, that reflects your analysis from a chart you had prepared with a 20 percent success rate of Building D. Is that right?

A That's correct. And it was also discussed -- this chart was discussed on the board call on February 16th.

Q And we'll get to that February 16 board call in a minute. It shows a discount rate of 25 percent, right?

A Correct.

Q And that's all in information that was in an email you received from John Cohn, correct?

A Correct.

Q Let's talk about the February 16 board meeting, please.

A Okay.

MR. SCHMELTZ: And 244 is in evidence now. Is

that correct, Your Honor?

THE COURT: It is in evidence.

MR. THOMPSON: That's fine.

MR. SCHMELTZ: Let's take a look at -- Paige, may I have Exhibit 245, please?

BY MR. SCHMELTZ:

Q Let's take a look Exhibit 245.

A Okay.

Q And can you tell -- this is in evidence, and I -- I'd ask you to identify what this is for the Court.

A These are slides that were used that were discussed with the board on March 5th, 2025.

Q Okay. And in this March 5th document, let's take a look at 245.008, the last page. Is this the same chart that we just looked at in Exhibit 244?

A Yes, it is.

MR. THOMPSON: Hold on. 244?

THE COURT: This is 245.

MR. THOMPSON: The question was is it the same chart as 244?

MR. SCHMELTZ: Yeah.

MR. THOMPSON: Okay.

THE WITNESS: Yeah, it is.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q And this says litigation value, 2/16/25. Do you see that?
A Right. This is --
Q Why does it say that?
A It says that -- we're -- the -- if you look at the first slide of this presentation, it talks about what's changed since the last board discussion, which was on February 16th. And so we talk about a few things that changed and the impact that has. And then this is just last slide, kind of an appendix slide that just reminds everybody this is where we were on 2/16 for the damages.
Q Okay. So we've discussed a board meeting on 2/12. And that's the board meeting where you first saw Building D, right?
A Correct.
Q And that Building D -- I'm just recapping quickly -- had a 40 percent success rate. Is that right?
A Correct.
Q We saw Exhibit 244, Mr. Cohn's email of February 18, right?
A Correct.
Q And it had this same chart that we're looking at 245.008 in it, right?
A Correct.
MR. THOMPSON: Objection, vague. Which chart is

he referring to in 244?

THE COURT: Yeah. Why don't we be specific as to the number.

BY MR. SCHMELTZ:

Q We looked at the same chart at 244.002 that we're looking at in 245.008, right?

A Correct.

Q And if I understand what you've testified to just now correctly, 245.008 was presented to the board in a subsequent meeting on February 16th. Is that right?

A Correct.

Q Do you recall if there was conversation on February 16 about Building D and about a change in the success percentage from 40 percent to 20 percent? Do you recall?

A Yes.

Q Do you recall if there were lawyers from LKC and Stris present in that board meeting on February 16th?

A Yes, there were. And you could look in the board minutes. I presented the valuation and I said the only change we've made to the damages is to adjust the success factor for Building D from 40 percent to 20 percent which reduces the expected value or the risked value from $66 million to $33 million.

This was a call on a Sunday. LKC was on the call, Stris was on the call. And if you look in the minutes --

MR. THOMPSON: that's where I'll object as hearsay.

MR. SCHMELTZ: It's a statement of a party opponent. We're talking about what LKC said in the meeting to him.

THE COURT: The minutes reflect what LKC said? I haven't seen the minutes.

MR. SCHMELTZ: Very good. Let's do that. Let's take a look at Exhibit 334, which are the minutes from the February 16, 2025 board meeting. Your Honor may recall I tried to introduce these in our hearing on November 3rd and I think Your Honor correctly pointed out I didn't have a foundational witness who could explain what these were. I have that now.

THE WITNESS: Which is this? 334?

MR. SCHMELTZ: Hold on.

THE COURT: It's not in the document. It's not in the book.

THE WITNESS: Thank you. Appreciate that.

MR. SCHMELTZ: May I approach?

THE COURT: Yes.

MR. SCHMELTZ: This was previously marked as 334 but not entered into evidence.

BY MR. SCHMELTZ:

Q Could you identify this for the record, sir? Just

identify what this is for the record.
A This looks like a -- these are the board -- starting on page 1 I see the board minutes from the board meeting on February 16th. The third page I should say.
Q You've seen board minutes like this before in your capacity as a CFO, is that right?
A Yes.
Q Are these the standard form of board minutes for Rhodium Enterprises Inc?
A Yes.
Q And do you have an understanding as to who typically kept the minutes for these meetings?
A Yeah.
Q Who was that?
A My entire time at Rhodium it was Becky Rice, a paralegal.
Q And were the minutes signed by the general counsel and corporate secretary as well?
A It looks like they are on Page 2 here, yes.
Q And do the minutes have attached to them a board presentation?
A They do.
Q And is that the board presentation -- are you familiar with this board presentation?
A Yes, I am.

Q How are you familiar with this board presentation?
A This was the board presentation that we gave on the 16th. And this was -- this was the one where -- this was the version where we adjusted the value for Building D. That was the change that we made to damages.
Q And is that shown at -- I have a page number 866943.6 in the bottom right-hand corner of my document. I don't know how yours are paginated.
A Yes.
Q Do you see that?
A Yeah, that's the page.
Q And that chart at .6 in Exhibit 334, is that the same as 245.008 that we looked at?
A Yes, it is.
Q And is that the same as 244.002 that we looked at?
A Yes, it is.
MR. SCHMELTZ: I would move the admission of the board minutes of Rhodium for February 16th into evidence.
MR. THOMPSON: We object. It's not on their exhibit list that was filed before the deadline to file and serve exhibits for this hearing. So that's one independent ground, that it's late. The second independent ground, this is hearsay. It is double hearsay in fact. It reflects -- not only are the minutes an out-of-court statement, but they also reflect statements that were made out of court. So

there's actually two levels of hearsay in here. And I don't believe this witness is in the proper position to authenticate this document. So three objections.

MR. SCHMELTZ: First of all, Your Honor, it's a corporate record. He is the CFO of the corporation. Second of all, he participates regularly his testimony in these board minutes. The minutes were kept by the same human. He's familiar with the form. He is certainly in a position to authenticate this as a corporate record as the corporate CFO. So that takes care at least of one layer of hearsay.

Within the minutes and what I want to focus on is the conversation that involves Mr. Hayes on the one hand and Mr. Thompson of LKC on the other hand. That would be the statement of a party opponents and that should come into evidence as well.

Finally, Your Honor, John Cohn testified in his direct examination that he had not talked to anybody about a change in success percentage from 40 to 20 percent. He wasn't aware of anyone at LKC who had talked to Mr. Hayes or anyone at Rhodium in changing the percentage success from 40 percent to 20 percent. So this is also proper impeachment in that regard.

MR. THOMPSON: He referenced a paralegal who is nowhere on here as the one who kept these minutes. We don't have any way to know if that's accurate. I don't think he's

laid the foundation that these were made in the ordinary course, kept in the ordinary course. I don't think he's even a proper custodian of the records for Rhodium. I don't think any of that necessary foundation has been paid. So these still are hearsay just on its face. And then of course there's the double hearsay which we can also address. But there's certainly hearsay, not authenticated, and they're still late. They weren't on either their exhibit list filed before the deadline, and then they filed a supplemental exhibit list after the deadline but still not on the supplemental exhibit list. So this is -- our third and final objection is this is late.

And of course at this time LKC and Mr. Thompson in particular were not party opponents to Rhodium because we were representing them and they were still seeking our legal advice.

THE COURT: So why weren't these put on the witness and exhibit list?

MR. SCHMELTZ: We had -- I can't even remember -- something like 500 documents originally on the witness and exhibit list. Prior to trial we tried to make some hard cuts of things that we thought in large chunks we could eliminate as testimony could come in otherwise. We quickly identified in the hearing in November that this particular set of minutes needed to come in. That's why I brought them

immediately to the Court on November 3rd. It was an oversight on my part trying to get a chunk of documents out so we didn't have five million exhibits. And this was one that as soon as it came -- it was produced in discovery, right? Unlike the invoices that we received as an exhibit but never received in discovery in this case and never had a chance to analyze and never had a summary of. We produced this in discovery. I just missed it. And I brought it to the Court's attention as soon -- in the last hearing as soon as I saw it. That's why we brought it up in the last hearing.

THE COURT: So why can't you prove this up as a business record? Are you saying that he is the custodian with knowledge to prove this up as a business record?

MR. SCHMELTZ: I could bring Mr. Topping back on the stand if that's your preference to do that. I believe the CFO of the company who regularly participates in the board meetings and is in every board meeting where these are approved is appropriate to relay that foundation. And if you'd like, Your Honor, I can ask a few more questions and do that now.

THE COURT: Yeah. I mean, I think people know how to get in exhibits as business records, and we can do that.

MR. SCHMELTZ: Understood. Happy to do that.

THE COURT: But -- you know, and then there's

additional comments. But why don't you go ahead and try to do that.

BY MR. SCHMELTZ:

Q In your capacity as a CFO do you regularly participate in board meetings at Rhodium?

A Yes.

Q And in your capacity as the CFO, do you regularly review minutes from prior meetings for their approval?

A I don't regularly do that, but I've done it, yes.

Q And on how many occasions have you done that?

A Five or six times.

Q Five or six total times?

A Yeah.

Q And is this set of minutes consistent with the minutes that you've seen approved in other meetings?

A Yes.

Q And have you -- do you understand whether the minutes of Rhodium Enterprises Inc are kept in the ordinary course of business to document what happens at board meetings?

A Yes.

Q And I think you testified about a paralegal who regularly kept those minutes.

A Yes.

Q And did you have occasion to review the accuracy of her work and her minutes over time?

A Yes, on occasion I did, yes.
Q And how did you find the accuracy?
A Accurate. Very accurate.
Q In the course of your participation in board meetings, did you ever hear anybody have a meaningful disagreement with what was recorded in terms of its accuracy in board minutes for Rhodium?
A No.
Q In the course of your time at Rhodium Enterprises did you have occasion to see board members rely on the board minutes for purposes of conducting business or talking about issues within board meetings?
A I didn't hear that they relied on them, no.

MR. SCHMELTZ: Your Honor, I think with limited exception I've laid a sufficient foundation under these circumstances for the admission of this document as a business record.

MR. THOMPSON: Just one other point, Your Honor, is these purport to be the minutes from the February 16th, 2025 board meeting. But I don't see anything subsequent from the board approving these as the official minutes from the February 16th, 2025 meeting. So we don't know if this is in fact the final version that was approved by the board or if this was simply a draft or what this was.

And again, I don't think that Mr. Hayes, given his

limited exposure to the minutes and the process that Rhodium went through to create and store the minutes is in a position to authenticate them as business records even if they are, which we're not sure they are, because we still don't know if these are the final minutes that were approved by the Rhodium board subsequent to the February 16th meeting.

MR. SCHMELTZ: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. SCHMELTZ: (indiscernible).

THE COURT: So there's Exhibit B and there's the part one. And that's the only one that's signed. And then there's Exhibit A presumably. I don't know to what. And then there's part two that, again, is not signed.

MR. THOMPSON: And finally, Your Honor, again, not only are they late, if Mr. Schmeltz is saying they were produced, I have no reason to doubt that. I will just note that the Bates label is different than all of the other productions from the Special Committee. And I'm only saying that because I don't know when they were produced or why the Bates number is different. Again, I don't doubt that they were, but they certainly weren't on the exhibit list that was filed before the deadline.

BY MR. SCHMELTZ:

Q Have you had occasion to review the minutes in front of you?
A Yes, I have.
Q Does the information in the minutes in front of you comport with your recollection of what occurred in the February 16, 2025 board meeting?
A Yes, it does.
Q And does the presentation that's attached comport with your recollection of the presentation that you prepared and presented in that board meeting?
A Yes, it does.

MR. SCHMELTZ: Your Honor, I think that I have established all appropriate indicia of reliability of this document as at a minimum a reliable recording of the events in the board meeting, and I move its admission.

MR. THOMPSON: Same objections. And as a -- just to clarify, the slides that Mr. Hayes prepared purportedly attached to these minutes, we have no objection with those slides coming in. It's just the minutes themselves. Because I don't think that they've laid the foundation. They're late, they're hearsay. For all the reasons we've explained. They don't show that these are the final minutes that were adopted by the board at a subsequent meeting.

I believe Mr. Hayes can authenticate the slides because he testified that he created those. So we have no

problem with those coming into evidence. But the minutes themselves, I don't think that they meet the criteria for admissibility.

THE COURT: My problem is that I don't really understand what these documents are. So the first one is Exhibit B. Is that what's being approved in part one that is signed? Did somebody testify as to that?

MR. SCHMELTZ: I'll put Mr. Eaton on the stand next and we can go through that with Your Honor. I can ask some --

THE COURT: Maybe this is 11 and 12 and they should be at the end of the document.

MR. SCHMELTZ: It is. In my version, it's established. For whatever reason part one starts with that board meeting, the meeting minutes, and you don't have that vestigial document up front on the version I have, which is 866943.1 through 943.10.

THE COURT: Okay. So it should be 866943.1 through 866943.12.

MR. SCHMELTZ: Correct, Your Honor.

MR. THOMPSON: And again, on just that Bates number point by itself, I will note that all of the other production from the Special Committee -- Special Committee, underscore, LKC, underscore, and then the Bates number. This is obviously a totally different format. I don't know

what production this was a part of, if that Bates number even relates to a production that's occurred in this proceeding. That could be some sort of internal tracking number.

MR. SCHMELTZ: So, Your Honor, this -- there was a production, the production version of this document -- because this is -- I mean, they have this document. Special Committee LKC 4657 is the start of this document. And it runs through -- let me scroll through real quick. It runs through 4668, Special Committee LKC 4668. There's a production version. They have it in their production. It's not an issue.

MR. THOMPSON: That's not this version, right? That could be a different document. How am I supposed to know that?

MR. SCHMELTZ: Yeah. So the native version of this exact same document has 866943.1. This is -- what happened is someone in pulling this, when I asked for it pulled in the last hearing, pulled it as the native version. The number, 866943, is from the native. The Bates is the exact same document, just produced with the Bates on it. It's the same document, Your Honor. It was a mistake in how we pulled it and printed it. but it's the exact same document. I'd represent that to the Court. And I could hand Counsel (indiscernible). And that's the original

number. (indiscernible).

MR. THOMPSON: But is the Bates version included in the exhibit list?

MR. SCHMELTZ: (indiscernible). Is it the same document, it's the same document.

MR. THOMPSON: But Your Honor, this is why we have a deadline for exhibits, right? And so we don't have this in live court with a witness on the stand. And I'm sorry, I'm at a loss to know, as Your Honor, what is this document, why does it have a different Bates number, what is the Bates number document, is that different. When was this produced, was it the final version that was approved by the board, et cetera. So we have to stand on our objection.

THE COURT: I'm going to consider whether to admit this document or not.

MR. SCHMELTZ: Thank you, Your Honor. During the --

THE COURT: You can continue asking him questions and I'll determine later.

MR. SCHMELTZ: Thank you.

BY MR. SCHMELTZ:

Q In the section called Mediation Strategies Discussion, do you see that?

A Yeah.

Q It notes, "To begin the meeting, Kevin Hayes shared

with the board the attached presentation, Exhibit A." Do you see that?

A Yes.

Q Did you in fact share the presentation that is Exhibit A that we've talked about?

A I did.

Q And you gave the board some information about the presentation, correct?

A Yes.

Q And what did you inform the board about your presentation?

A I said that it was the same as what we went through on Wednesday with one change. And that change was to change the Building D success factor from 40 percent to 20 percent or, you know, in absolute dollar terms from $66 million to $33 million undiscounted.

Q Did anyone in the course of the board meeting speak up and comment on your -- in response to your presentation and your changes?

MR. THOMPSON: Objection, hearsay.

THE WITNESS: I asked did anyone speak up in response to your statements about the changes in the presentation. I didn't ask -- I didn't ask what they said, I didn't ask who said anything. I asked did anyone stand up in response.

THE WITNESS: No.
BY MR. SCHMELTZ:
Q Were the lawyers from LKC present in the meeting?
A Yes.
Q This particular document notes Mr. Thomson then joined the --
MR. THOMPSON: Your Honor, he is now reading from a document that has not been admitted into evidence. That is not a proper line of questioning.
THE COURT: You can ask him what Mr. Thompson said if anything, but not from the document.
BY MR. SCHMELTZ:
Q Do you recall Mr. Thompson saying anything about the change in success percentage to the Building D claim?
A I don't recall him objecting to it. He says here that he --
THE COURT: No, no, just from what your recollection.
THE WITNESS: I don't recall him objecting to it.
BY MR. SCHMELTZ:
Q Do you recall him approving or disapproving one way or the other of the change?
A I don't. I don't recall him objecting. I don't remember. I mean -- yeah.
Q And the change is to the slide that we've looked at in

245.008. That's the same slide, right?
A Right.
MR. SCHMELTZ: And if I haven't admitted 245 into evidence, I'd like to do that, Your Honor.
THE COURT: Any objection?
MR. SCHMELTZ: It was previously admitted Paige tells me. I apologize. I thought I had a list somewhere of my admits, and I misplaced it. 245 is in evidence.
BY MR. SCHMELTZ:
Q So in other words, 245.008 is the same information presented in this presentation that we see attached to 334, right?
A It matches 8669436, right. Yeah.
Q Thank you. And it also I think we've established matches 244.002, right?
A Yes.
Q A document that was attached to an email from John Cohn, right?
A Correct.
Q Do you have -- did you interact with LKC in the course of your experience as a CFO and on these claims, these Riot Whinstone claims?
A A little bit. I mean, not extensively. I mean, we probably interacted during this period fairly frequently. But other than that, you know, prior to that I didn't

interact with them very much.
Q In your experience if they disagreed with something you said or did, would they speak up and let you know it?
A We didn't have disagreements very often, but yeah, I've seen them voice their opinion pretty strongly on a lot of board discussions.
Q In the course of your compilation of damages analyses, did you -- I think we have established that you saw Building D come in for the first time in February '25, right?
A Right.
Q Did you ever see energy claims related to Winter Storm Uri excluded from a damages analysis?
A No, I never did.
Q Did you have an understanding one way or the other as to whether the energy claims were considered to be strong claims?
A My understanding was they were all strong claims. And I think, you know, we talked about them my entire time at Rhodium as really what we could hang our hat on. And if you look at the spreadsheet that was provided, the one that was provided from John, you see base amount in one column and you see base success factor. And all those energy claims, 70 percent, 60 percent. You know, 4CP, that's different. That's small. But those were the bigger, stronger claims.
Q Do you have a sense as to how much a change in Building

D as a $66 million claim versus it as a $33 million claim impacts the potential success fee for LKC in this case?
A I do.
Q What do you understand that --
A Well, Building D is int eh bucket of non-energy credit claims which get ten percent. LKC's success fee gets ten percent of those claims. So if you reduce it by 30 -- let's just say you reduce -- by round numbers we reduce that by $33 million, that has a $3.3 million impact on their fee. That was -- I had no idea of that at the time we were doing all this. I was worried about the company and the company's viability.
Q At the time you prepared these claim charts, were they meant to have any bearing on the success fee for LKC?
A No. It was meant to give the board a realistic view of the value so they could make a very important decision, you know, as they considered an offer from Riot today versus future cashflows from bitcoin mining and potential damages.
Q Did you work with Chris Wheeler on his tax allocation?
A I did.
Q Were you involved in determining how much to allocate to settlement versus the purchase of assets as part of that process?
A We used the $75 million for settlement. So that $75 million had my input and the board's input. So I would say

yes.
Q Let's take a look at Exhibit 245 again. And 245.002 shows an ongoing business valuation and risked damages at the bottom of the page. Do you see that?
A Hang on a second. Okay. We're on...
Q 245.002, bottom of the page where it says 3/5/2025. Do you see that?
A Sure, yeah.
Q And this is after the mediation that took place, Riot Whinstone on February 19th, correct?
A Correct. It's a few weeks after that. So this is on March 5th. So it's a few weeks after that mediation.
Q And at this point in time you note on 245.002 some exit financing less certain -- due to certain things. Do you see that?
A Yes.
Q How did that impact if at all your views of damages?
A Yeah. So between February 16th and February -- and March 5th, we -- it became clear to us that a few of the financing -- potential financing partners that we were hoping that would be able to provide exit financing, one of which we had a lot of comfort with, they were not going to get there. They -- much to all of our efforts, and that would include LKC and Stris as well, trying to get them comfortable within the value of the litigation in addition

to the business. They couldn't get there.

So as of March 5th, we had one term sheet that would have met our needs, which we needed $75 million. The other ones couldn't get anywhere close to that. And that term sheet, if you looked at the term sheet, you can see the interest rates and the fees. But I think what kind of tells it all is there are exit fees that we needed to pay depending on when we repaid the loan. And if you looked at that, any one of those scenarios, there was no scenario where the cost of that capital was going to be less than 30 percent.

So as a result, we adjusted our discount rate from 25 percent to 30 percent and we applied that change to our ongoing business value which affected the DCF. We also applied that increased discount rate to the claims.

The other thing that we changed was it became apparent to me and others that were looking at this from a valuation perspective that we were not going to collect these damages in a year. In fact, we were probably going to be lucky to collect them in two years. Another year of discounting at a high discount rate for a company that's in a very tenuous state, that has an impact on value as well.

So from the damages perspective, we had to look at it and say, well, discount rate can't be 25 percent; it's 30 percent now. Look at the term sheet we have here. That's

the only term sheet we have. And we're not going to get this in one year, we're going to get this in two years. So instead of taking that $125 million that's not discounted and dividing it by 1.25, which is one year at 25 percent, we've got to divide it by 1.3 squared, which is 1.69. So 125 divided by 1.69, it's about $74 million. So the updated middle of the range for the damages discounted back to present was $75 million based on that.

Q During the course of your efforts to get exit financing, did financing partners also weigh in on the value of claims that were potential collateral for financing?

MR. THOMPSON: Your Honor, yes or no is fine. Collaboration hearsay.

THE COURT: Go ahead, you can answer.

THE WITNESS: Okay. So the feedback we got -- and there was one group in particular that needed a litigation partner, and the litigation partner didn't see the value int eh claims --

MR. THOMPSON: Your Honor, I'm going to have to object to hearsay.

THE COURT: I think the question was did people weigh in.

THE WITNESS: Yes, they did.

BY MR. SCHMELTZ:

Q And did you report that information to the board?

A Yes.
Q And did you take that information into account in risking the damages in this presentation to the board?
A I used that to increase the discount rate, but I did not change the $125 million.
Q Do you see where it says impact on valuation on 245.002?
A Correct, yes.
Q Do you see the second bullet?
A Yes.
Q Can you please read that to the Court?
A "Damages. View from financing partners suggests risked value less than $100 million."
Q And the next bullet?
A "Higher risk of exit financing, increased discount rate." And then is say -- and this has to do with the ongoing business. If you toggle the interest rate -- the discount rate five percent, that has a $15 million impact on discounted cashflow. That applies to the business, not the damages.
Q And at the time you prepared this presentation and presented it to the board, did you have any idea that it might come up in a later conversation around the success fee with LKC?
A No.

Q And is that risked damages number of $75 million what you discussed with Chris Wheeler?
A Yes.
Q And was that based on this presentation to the board?
A Yeah, that was based on this presentation.
Q Did anyone at the board object to or oppose the idea of valuing damages at $75 million at or about this time?
A My recollection, you know, the board always has healthy opinions on the value of the business. And I think at this point we were -- the board was -- and the management team were agreeing on these ranges. You know, we had a lot of robust discussions on the 12th and the 16th.
Q The total asset value, business plus risk damages, has a low of $108 million, right?
A Mm-hmm.
Q And a high of just about $249 million, correct?
A Correct.
Q Just as a math guy, can you give me a midpoint on that?
A About $180 million. Yeah. 180, $185 million, something like that.
Q About where you came out in the transaction?
A Correct. We of course didn't negotiate that transaction until I think the end of March.
Q So that $75 million is the midpoint of risked damages, right?

A Correct.
Q And 180, 185 is the midpoint of the total asset value, right?
A Correct.
MR. SCHMELTZ: I don't have any further questions for this witness. Thank you, Your Honor.
THE COURT: Thank you. So it's 4:00. Why don't we take a ten-minute break. It's 4:08. Why don't we come back at 4:20. And then I'll talk to my staff to see how late they can stay tonight.
MR. THOMPSON: Thank you.
(Recess)
THE COURT: All right. We're back -- okay, we're back on the record in Case Number 24-90448. And you are still under oath. Go ahead.
MR. DISHER: May I proceed, Your Honor?

CROSS-EXAMINATION OF KEVIN HAYES

BY MR. DISHER:
Q Good afternoon, Mr. Hayes. How are you?
A Good to see you again.
Q You too. So I want to start just by clearing up one thing. You were asked questions about Special Committee Exhibit 244. If you could go ahead and turn to that in your white binder, please.
A Yes.

Q If we look at the bottom of the first page, you see it says one of two in the bottom-right corner?
A Yes.
Q And if we flip the page, it doesn't say two of two, correct?
A Correct.
Q And if we look here, there's only two charts attached to the email at Special Committee 244, right?
A There's only two charts. You mean 244.002 and 244.003?
A Yes, sir.
Q Right. Now what I want you to do is switch binders. Go to the black binder, please. Go to Tab 13 if you will.
Okay, are you with me?
A Sure.
Q If we look at Tab 13 which is LKC Exhibit 13, this is the same first page email that's reflected in Special Committee 244? Oh, I'm sorry, I should have had you leave that open.
A Let me just check the time. Yes.
Q If we look at LKC Exhibit 13, we see there are two pages of email texts, right?
A Right, yes.
Q If we turn the page through the rest of the exhibit, we see that there are actually three charts attached to Mr. Cohn's email in LKC Exhibit 13?

A Yes.
Q So is it your recollection that LKC Exhibit 13 is the complete version of Mr. Cohn's email with the three charts as opposed to Special Committee 244?
A Give me a second here. Well, it has more attachments. I don't recall if this is absolutely complete or not, but I have no reason to believe it's not.
Q Now, I just again wanted to clarify one thing in LKC Exhibit --
MR. THOMPSON: And I'm sorry, Your Honor, I believe we've offered this into evidence. But in case I haven't, I would offer it.
THE COURT: Any objection?
MR. SCHMELTZ: No objection. I believe it's in evidence.
BY MR. DISHER:
Q Okay. So LKC Exhibit 13. There was some back and forth about precisely what information Mr. Cohn provided to you and what information you provided to Mr. Cohn, correct? Do you remember that on your direct examination?
A Yes. I think we passed the spreadsheet back a little bit. He had versions, I had versions. I think that's right.
Q Great. And I just want to be clear about one thing. The chart that is on page 5 of 6 of exhibit 13 that shows

the Building D percentage at 20 percent, do you see that?
A Correct.
Q Your testimony was that you sent that chart to Mr. Cohn, right?
A Yes, that's my recollection. That's what was in the board presentation from the 16th.
Q Right. Mr. Cohn did not create this chart with the Building D percentage at 20 percent and then send it to you, correct?
A Yeah, I believe that's correct.
Q What Mr. Cohn did send you is the chart on Page 6 of 6 of LKC Exhibit 13?
A Okay.
Q Is that right?
MR. SCHMELTZ: Calls for speculation.
THE COURT: Just ask him if he knows.
THE WITNESS: I mean, I don't remember if this was in the attachment or not. But it's in the email. It's in this exhibit. But --
BY MR. DISHER:
Q Do you remember whether these are the rosier predictions that Mr. Cohn provided in advance of mediation?
A Yeah. I would have to read the email to get -- to comment on the context. But I recall that there was -- there was a case that we see on four of six that was -- you

know, everything un-risked. And I don't know if that went into the complaint or not, if that exact number went into the complaint or not. And then I think if you read the email, it appears that John talks about six of six in his email.

Q Right. And one other thing John -- excuse me, Mr. Cohn mentions in his email if we look at Page 1 of 2, do you see that? Will you go to Page 1 of 2, please?

A Sure.

Q The third paragraph down, second sentence, "I remain of the view that we should aim to settle damages in the $100 million to $150 million ballpark. Did I read that right?

A Yeah, that's what it says.

Q Now, I want to take a step back. I want to go to the February 12th slides. I'm going to use the version in the black binder. So that would be LKC Exhibit 14.

A Okay.

Q Will you turn to Page 3, Slide 3, please, the litigation value chart? Are you with me?

A I am with you, yes.

Q I want to spend some time on this. I'm going to give myself some more room here. So this was a slide that you put into the materials that would have been presented to the board on February 12th, correct?

A Yes. The spreadsheet was provided to me. And what I

did was I added that discount rate and then kind of the discounted today value at the bottom, yes.

Q Great. And we'll talk about the discount rate in a minute. But before we talk about the discount rate, I want to talk about everything above the discount rate leading to the expected value of $158 million. Do you see that?

A Yes.

Q These are numbers that were provided to you, right?

A Yes.

Q And I believe you testified Mr. Cohn provided you those numbers?

A Yes.

Q You are aware of course that LKC wasn't the only firm that worked on these numbers?

A I'm honestly not aware of that. I mean, they may have had -- I never received any sort of analysis like this from Stris. Whether they had input on it, I don't know. But...

Q Great. So you don't know one way or the other whether Stris did in fact play a role in creating the numbers reflected in the chart on Slide 3?

A I don't. I mean, I know that they were on calls where we discussed this, but I don't know that they -- no, I don't.

Q Do you know whether the hired retained litigation consultants were -- provided input to these numbers that are

reflected on Exhibit 3?
A The hired litigation consultants? I'm sorry.
MR. SCHMELTZ: Lack of foundation, Your Honor.
MR. THOMPSON: Asking whether he knows.
THE COURT: Yeah, overruled.
THE WITNESS: Who the hired litigation -- you mean the attorneys or --
BY MR. DISHER:
Q No, the expert witnesses that the attorneys hired in the litigation, do you know whether they were consulted in creating the numbers reflected in Slide 3.
A The expert witnesses.
Q Correct.
A I don't know who you're talking about.
Q Dr. Miljkovic, for example. Do you know whether he was consulted in coming up with these numbers?
A I don't know if -- that name doesn't ring a bell to me. So no, I don't know if he was consulted.
Q Okay. What about a consultant related to the energy creditors, do you know whether that consultant provided any input to the numbers reflected in Exhibit 3?
A I don't know who these consultants are. So...
Q So no.
A Yeah.
Q Great. What about the Province team? Do you know

whether the Province team provided any input into the numbers that are reflected in Slide 3?

A Not in this slide, other than their input on the discount rate.

Q So when you say not on the slide, do you mean they didn't provide or you don't know whether they provided?

A They didn't provide anything above the one -- the row that sums up to 158.

Q Okay. And ultimately the numbers that you got from Mr. Cohn, you put those into this chart that was then presented to the board?

A Correct.

Q And of course you want information presented to the board to be reliable and accurate and trustworthy?

A Well, yeah, I do. But I also want to have it in there so we could have the discussion. And I got this about an hour before the meeting. So I didn't have a whole lot of time to go vet it with a wide group of people. We had to put it in there. And I think it's important to have that discussion when you can and not wait for people to, you know, boil water, and get it to you.

Q And we'll talk about further discussions, trust me. Now I want to turn to the 25 percent discount rate, okay?

A Correct.

Q To the numbers that were provide to you by Mr. Cohn,

you then applied a 25 percent discount rate, correct?
A I -- well, I would put it this way. The way that these were presented, the assumption I made was that we would -- we would win or, you know, receive these damages in a year.
Q And Mr. Hayes, I promise we'll talk about what went into the 25 percent discount rate. My question is much simpler than that. My question is simply were you the one who put the 25 percent discount rate on the chart that's reflected in Slide 3?
A Yes.
Q Great. Now, your goal with that discount rate was to attempt to account for more than just the time value of money, right?
A No, it was the time value of money.
Q Did you not also have the intent of accounting for the risk that Rhodium would somehow become insolvent before it could collect the damages?
A Well, that goes into the discount rate, right? That's what discounting is.
Q That's exactly my question. So the 25 percent discount rate that you applied takes into account the risk that Rhodium might become insolvent before it could collect on those damages.
A I would frame it differently. I would also say that I could look back to a data point from a few months ago when

we had our DIP financing. And if you calculate the fees and the interest rate there, that's 25 percent right there. So I felt very justified in that 25 percent based on that DIP financing.

Q Okay. And again, that's not precisely my question. My question is this. Does the discounted rate here, the 25 percent that you put into this chart, does that account for both the time value of money as well as the risk that Rhodium would somehow become insolvent in that year?

A It accounts for the risk -- it's an appropriate discount rate for Rhodium. So that includes a lot of risks, variability in its business, and I suppose, you know, insolvency is one of those as well?

Q Thank you. That 25 percent discount rate is in fact the same discount rate that you applied to the discounted cashflow analysis in the material presented to the board on February 12th, right?

A Correct.

Q LKC did not tell you to apply that same 25 percent discount to the expected value of the damages reflected in Exhibit 3, right?

A They did not.

Q Stris did not tell you to apply that same 25 percent discount rate, correct?

A Well, let me add something to your first question

though.
Q It was a yes or no question.
A I sent an email to Will and said -- I put the slide in. He noted, I see that you put a 25 percent discount rate. I'm not -- I don't have a big problem with that, but I'm going to let you carry the water in the board meeting on that.
Q Did you consult with anybody from the LKC or Stris team before you applied the same discount rate that you used for your discounted cashflow analysis?
A I sent the email to Will and ran it by him. And he made the comment that I just told you.
Q But he didn't say yes, that sounds good to us?
A He said basically I don't have a problem with it.
Q Okay.
A Splitting hairs.
Q Now, when we look at the chart on Slide 3, you did not add in any accounting for pre-judgment interest, right?
A I did not.
Q Once you added your 25 percent discount rate, the EOY 2025 expected collection is $126.4 million, correct?
A Yeah. That's probably a typo. That should have read that -- not EOY 2025, it should have been discounted back to today.
Q Sure.

A Right.
Q But the ultimate number that you calculated on Slide 3 is $126.4 million?
A Correct.
Q Okay. Now you carried that number back into the chart that is on the proceeding slide, Slide 2, right?
A Correct.
Q And that 126.4 is the basis for the low/high range of risk damages?
A Yes.
Q But before you did the range, you of course subtracted $1.4 million from the 126.4, right?
A Well, I rounded it, yes. So the midpoint in the analysis is 126.4. For the sake of the presentation I made $126.4 a 125 and added plus or minus 25 million, correct.
Q But just to be clear, nobody from the Stris team told you to subtract out $1.4 million?
A No, they didn't.
Q Nobody from the LKC team told you to subtract out $1.4 million?
A No.
Q Okay. Now, once you subtract the $1.4 million, you get to $125 million, right?
A Correct.
Q That's the midpoint, right?

A Correct.
Q And from that $125 million, you then did a plus or minus of $25 million to get to that range of $100 million to $150 million?
A Correct.
Q Part of the variability that you're trying to capture with the plus or minus $25 million is the fact that if you went through this entire litigation, there is a chance that Rhodium would not have collected some of the numbers included on the damage chart in Slide 3.
A I think that's just a range that -- I mean, I think to say that the number was exactly $125 million or $126.4 million, to me it was a false level of precision. I just simply added plus or minus $25 million to reflect the variability in what we could -- what those claims were going to be. So I don't --
Q I just want to be clear, part of the variability that you're trying to capture with that plus or minus $25 million is the fact that if Rhodium went through with this entire litigation, there's a chance that Rhodium would not have collected some of the numbers included in the damage chart on Slide 3, right?
A Yeah. It reflected the variability in the merits of these respective buckets of claims.
Q So the answer to my question is yes?

A I think your question was did it reflect like that we would be distressed. And the answer to that is no. That's what I thought I heard.
Q No, I think the -- my question about the distress was about the discounted rate. Now I'm talking about the plus/minus $25 million --
A Yes.
Q -- that you applied on the chart on Slide 2.
A Yeah.
Q That $25 million, part of it was to account for the variability of not collecting some of the damages listed in the chart on Slide 3.
A To account for the variability in the success in the claims, correct.
Q Okay. Nobody from the Stris team told you to do a plus/minus $25 million range?
A No.
Q Nobody from the LKC team told you to do a plus or minus $25 million range?
A No.
Q Now, if we look at the chart on Slide 2, Risked Damages, that you presented to the board on February 12th, the low end of that range is $100 million, right?
A Correct.
Q And you understand of course that that is the $100

million that LKC uses in its fee application that is currently pending in front of this Court?

A I guess I understand. I mean, I don't know that I totally -- like that's -- I haven't reviewed it in detail. But if you say that's the basis, then that's fine.

Q Okay, great. All right. Now I want to switch to the February 16th slides.

A Okay.

Q If you go to Tab 245 in the white binder, please. 245.

A Okay.

Q Are you with me?

A Yes.

Q If you turn to the last page, which is 245.008, please.

A Okay.

Q This chart is the chart that was presented to the board on February 16th?

A Correct. This is in the March 5th board presentation. The last slide in that presentation, just for reference.

Q Right. But just to be clear, this is in fact what was presented to the board on February 16th?

A Correct.

Q So from the February 12th board slide showing the damages -- and we can flip back to it if we need to -- there's only one change in the numbers, right?

A Correct.

Q And that change is to the base success rate for Building D?
A Correct.
Q So the damage numbers presented to the board on February 16th were identical to those presented to the board on February 12th but for the one change to the Building D success rate?
A Correct.
Q And that was -- obviously February 16th is four days after the February 12th board meeting, right?
A Right.
Q Now, the change from -- well, let me back up. In the February 12th slide, the building D base success rate was 40 percent?
A Correct.
Q And now it's 20 percent on February 16th?
A Correct.
Q The change in Building D success rate from 40 percent to 20 percent, that was a collective decision between you and the Province team?
A Yes. I don't remember if we discussed this with Chase and others before the board meeting, but we discussed it ad nauseum on the board meeting on February 16th.
Q But prior to the board meeting, the decision to change the base success rate from 40 percent to 20 percent, that

was a collective decision between yourself and the Province team, right?

A Correct.

Q And specifically Mr. Robinson on the Province team?

A Correct.

Q Prior to the February 16th board meeting, you, Mr. Hayes, you never personally talked to any of the potential exit financers related to the slide that's reflected on Page 8 of Exhibit 245?

A During what time period?

Q Prior to the February 16th board meeting.

A I did, actually. I was on calls with one of the -- diligence calls with one of the groups.

Q Okay. My question is simply did you yourself have any discussions with the exit financers prior to the February 16th board meeting related to the information that went into the presentation provided to the board on February 16th?

A No.

Q You don't remember talking to anybody from the Stris team about that change in Building D success rate prior to the February 16th board meeting.

A No.

Q You don't remember talking to anybody from the LKC team about that change prior to the February 16th board meeting.

A No.

Q Now, if we look back at the slide, we see the same discount rate of 25 percent, right?
A Correct.
Q Likewise, we also see that you did not add back in any accounting for pre-judgment interest, right?
A Right. I mean...
Q Now, if we flip back to slide -- one page to 245.007, do you see that? Are you there?
A I'm there.
Q Okay, great. So this slide was also presented to the board on February 16th, 2025?
A Yes.
Q Okay. And we see risk damages, and we see the commentary there, risk estimates from LCK -- typo -- /Stris plus/minus $25 million?
A Correct.
Q So, to the number that you calculated prior to the February 16th board meeting, you did that same plus/minus $25 million?
A Correct.
Q Of course, $100 million is right in the middle of that range?
A Correct.
Q And that, of course, is the number that LKC is using in its fee application that's pending in front of the Court?

A Correct. And I want to point out this is as of February 16th.

Q Right. Now, let's also talk about what happened during the February 16th board meeting. Do you remember that Mr. Chase Blackmon made a motion to set the litigation settlement minimum at $100 million?

A I do. I think it's important to note that the language there was a $100 million minimum, and if it's less than that, bring it back to the board for negotiation.

Q That's exactly right. Any amount below that would have to then be presented to the board?

A That doesn't mean that we'll take --

Q That's just a yes or no.

A Doesn't mean we'll take less than $100 million.

Q Just a yes --

A So I think your -- I don't --

Q It's a yes or no question. That was your understanding after the February --

A I think it's important to say it was $100 million, and if it's less than that, bring it to the board for discussion. That was a really important part of that.

MR. DISHER: Your Honor, it's a yes or no question. Objection, non-responsive.

THE COURT: Sustained. Why don't you just ask his question. Your counsel can clean that up.

BY MR. DISHER:

Q That resolution to set the litigation minimum at $100 million, that was passed by the board at that February 16th meeting?

A Correct.

Q Okay. Next meeting, March 5th, same exhibit. If we go to Slide Number 2 --

A Correct, yep.

Q -- we see the updated chart that was presented to the board on March 5th?

A Yes.

Q And it has the risk damages range?

A Yes.

Q Now, that risk damages range, that's still based on the numbers in the chart that was presented to the board on February 16th?

A Look, I'll explain the differences. It's based on $125 million that --

Q Let me pause you right there. That's the $125 million that was presented to the board on February 16th?

A Right.

Q Right. Okay. Keep going.

A So, that $125 million is the risk expected value, but it's not discounted. So we had some feedback. We learned some things between February 16th and March 5th. We had a

mediation. We got feedback from the exit financing process that the lender that we had high hopes for that was -- you know, that provided our DIP financing was not going to get there. And the only term sheet we had had a cost of capital that was in excess of 30 percent.

Q Okay.

A So that was one thing we learned. The other thing that I learned and others on the valuation, you know, side of things learned was the litigators and others sort of said to us, you're not going to collect this in a year. You're going to collect this in a couple of years.

So, you know, with that information, we did two things. We took that $125 million. We slightly adjusted the discount rate from 25 to 30 percent to tie to the term sheet, the one term sheet that we had. And then we also discounted it by two years instead of one year.

Q Right.

A So, if you take that $125 million, divide it by 1.3 to the second power, that's $74 million, so roughly $75 million.

Q And that is what is reflected in the commentary on Slide Number 2 in the material that was presented to the board. It says reduced estimates by $25 million. Do you see that?

A Correct.

Q So that reduction of the estimates by $25 million, that's the result of the process you just described of increasing the discount rate --

A Right.

Q -- from 20 percent -- excuse me -- from 25 percent to 30 percent --

A Yes.

Q -- and then adding another year of that discount rate?

A Right.

Q And just to be clear, that 30 percent, you then also use that same 30 percent discount rate for the discounted cash flow analysis that you presented to the board on March 5th, right?

A You mean for the ongoing business?

Q Correct.

A Correct.

Q Okay. The decision to, "reduce estimates by $25 million", you and Michael Robinson, again, were the ones who made that decision prior to the March 5th board meeting?

A I would say yes. And I don't recall if we socialized that before the board meeting, but we did, and we explained it at the board meeting --

Q Right.

A -- and had a robust discussion about it.

Q And even once you and Michael Robinson decide to reduce

estimates by another $25 million, the high range of your risk damages estimate is still $100 million?

A Correct.

Q And that, of course, is the amount that we are using in our fee application pending in front of the Court, correct?

A Correct.

Q Okay. Just to be clear about one last thing in the March meeting, on Slide 2 there's the third bullet that says, "exit financing less certain due to" -- do you see that?

A Yes.

Q Galaxy ultimately refused to provide exit financing? Is that right?

A Yeah. I don't know if we can share the name here, but yes.

Q Okay. And Invesco here, it says cost prohibitive?

A Correct.

Q Okay. Now, I want to shift gears slightly to the tax allocation. You've been involved in discussions with Whinstone related to the allocation of taxes for -- excuse me -- the allocation of the sales price for tax purposes, right?

A I've been involved with Whinstone. I would characterize that as the purchase price allocation, yes. Those -- I've been involved in those discussions

predominantly with Chris and Wheeler at Whinstone -- or at Riveron, and then on a few calls with Whinstone as well.

Q Okay. Because the $185 million sales price, that has to be split between different buckets? Right?

A Correct.

Q Okay. Rhodium, in its initial proposal for the tax allocation, proposed to allocate $75 million of the 185 to the settlement of damages under the tax allocation?

A Correct.

Q Meaning the remainder of the 185 would have to go to the value of the business?

A Yeah. And this may be like a detail on the process, but I think we only had to allocate for the non-damages portion among the entities. So, what we actually allocated on the forms did not include the $75 million, but it left $75 million.

Q Great. So $75 million of damages, the rest to the value of the business?

A Right.

Q Okay. Whinstone, of course, initially objected to Rhodium's proposed allocation?

A They rejected -- they objected to the -- to a component of it, the fixed asset component of it, the equipment and the miners' portion of it.

Q Let's turn to Tab 17 in the black binder, please? You

with me?
A Yeah, I'm with you.
Q Okay. So the first email in LKC Exhibit 17 is an email from you to Mr. Topping and some other folks at Rhodium?
A Yes.
Q And if we skip down to the next email, it looks like you were forwarded an email from Mr. Topping, right?
A Yes.
Q Mr. Topping was forwarding you an email from Mr. Lockhart?
A Yes.
Q Mr. Lockhart, of course, is one of the lawyers for Whinstone?
A Yes.
Q And here he says, "Patty: Below, please find Whinstone's objections to Rhodium's purchase price allocation." And there's a bullet. That's $33.42 million in tangible assets, right?
A Mm hmm.
Q So that was Rhodium's initial proposed allocation to tangible assets was $33.42 million?
A Yes.
Q And if we look at the next page, there's a sub-bullet that says, "Based on our third-party valuation, the amount is approximately $7.2 million." That's Whinstone's

objection to the $33.42 million in tangible assets, right?
A Correct.
Q So Whinstone is saying, we think the tangible assets should only be allocated $7.2 million, right?
A For the fixed assets, correct.
Q Then, if we look at the next bullet point, $70.46 million in intangible assets. Do you see that?
A I do.
Q Whinstone, in responding to that proposed allocation, says it assigns zero value to any tangible asset, right?
A Yeah. I mean, we talked about this email at the deposition. I think this email was -- I think he was confused.
Q But my question was simply yes or no. The lawyer for Whinstone is saying, in response to Rhodium's initial allocation, that Whinstone assigns zero value to any intangible asset, right?
A Yeah, but that doesn't mean he doesn't put value on the energy contracts.
Q What he's saying here is zero value to any intangible assets. That's all he's saying. I'm just -- it's a yes or no question.
A That's what he's saying, but --
Q Right.
A -- this is a confusing email.

Q Now, after Whinstone objected, you were part of discussions about how Whinstone's proposed allocation would affect Rhodium's tax liability?

A Yeah, I was. I was on some of those discussions, yes.

MR. DISHER: Now, Your Honor, I have to pause here. We flagged an issue -- I know it was a month ago -- before we started this hearing, that there was one document that the Special Committee clawed back. Under the protective order, I was allowed to keep one copy in this manila envelope for the Court to review, should it so desire.

We are challenging that claw back. We don't believe that this document is privileged. It is, in fact, a provision of business advice, not legal advice, and any privilege that might have attached to it has been waived.

I asked Mr. Hayes about this document extensively during his deposition. No objection was raised at that point. No attempt to claw it back was raised at that point. Mr. Thompson then asked their 30(b)(6) witness about this same document four days later. Still no objection, no attempt to claw it back. It wasn't until after Mr. Thompson used it for a second time in the deposition that Whinstone attempted to claw -- or, excuse me -- that the Special Committee attempted to claw it back.

We don't think it's an appropriate use of the claw

back, and we don't think the document is privileged at all. I would be happy to provide the Court a copy of it, should the Court want to review it.

THE COURT: Let me hear from Mr. Schmeltz.

MR. DISHER: And just -- it's this document.

MR. SCHMELTZ: So, first of all, Your Honor, I want to address the delay in claw back. It's a little bit of a right-hand, left-hand. I had a misunderstanding with Quinn as to the scope of what aspects of the privilege we would be waiving. And Ms. Tomasco brought to my attention that I misunderstood a conversation she and I had about how that was to work, and I immediately said about clawing it back.

It was not her intent for me to produce this document, ever, and we shouldn't have produced it. So it was an error on my part, and it was a misunderstanding on my part. So we addressed it as quickly as I could, given the circumstances.

The document itself is, you know, 100 percent the provision of legal advice in a dispute, and it's why you hire an accountant on a Kovel agreement, because you've got to know how the accountant approaches it so that you can give appropriate legal advice. And Ms. Tomasco is literally referring to going to talk to the accountant to get some information so that she can give that legal advice. I

think, again, that's exactly why you hire that consultant, and it is the provision of legal advice. I know Ms. Tomasco has risen to address it as well. I want to (indiscernible) have an opportunity, if Your Honor will allow her to address it as well.

THE COURT: Yes.

MS. TOMASCO: I didn't know this was going to come up today, but I will tell you what the mistake was. It was not a misunderstanding. The at-issue waiver of the privilege applies to anything that was happening between LKC and the Debtor prior to the dispute arising between the parties.

Once the dispute arise, the at-issue waiver no longer applies to communications. The review team viewed it as a temporal matter that there was no distinction. But this email -- and to be honest, it's quite innocuous, and this is more a matter of I never waived the privilege.

I never agreed to have this communication, which we had carefully engaged Riveron under a Kovel agreement so that our Quinn Emanuel tax legal team could give advice to Rhodium with respect to tax issues that were going to arise from the allocation. All right?

In that context, a dispute arose previously with respect to LKC. So the -- I can brief this for Your Honor, but the at-issue privilege waiver, as you know, pertains to

the conversations that we've been going through where LKC is on and the Rhodium board is on, and that at-issue waiver is because there is a dispute between the law firm and the client. That doesn't apply after the dispute has arisen, and I'm giving advice about a completely different thing. Right?

So, there is a temporal nature to the at-issue, once the dispute arises. If I wanted to go to Rhodium, to Chuck Topping, and say, you know, I think LKC is wrong on this point, obviously the at-issue waiver does not apply to that communication because now there is a dispute between Rhodium and LKC.

This email, to the extent it even applies to the LKC dispute -- and I don't think it does -- it's privileged as between myself and Rhodium. And the fact that this was inadvertently produced because of a misunderstanding of the scope of the at-issue waiver between LKC and Rhodium should have nothing to do with the veracity of the claw back. And if you read the parties' 502 agreement, it says that any of this is not a waiver. You can't waive it once you have a 502 agreement, and they do.

So this is one of the things that has raised my hackles up to here because, number one, I didn't know this email was produced. Number two, the at-issue waiver that has been the prevalent issue between these parties, the

Special Committee and LKC, it only applies to communications between LKC and Rhodium before the dispute arose.

After the dispute arose, Rhodium is entitled to my counsel, his counsel, counsel of their choosing. The attorney-client privilege, after the dispute arises, cannot be breached. And that's what this is. This is a July 15th. And as you know, we had a whole bunch of adversity with LKC well before then. And so this privilege cannot be waived.

THE COURT: When do you -- what date do you determine there was adversity with LKC?

MS. TOMASCO: I believe when they would have -- well, they've made a lot of threats -- but I believe when -- after we filed the amended application to retain them with more detail about the contingency fee. But certainly by this point, we understood, and we were not sharing with them as counsel anything to do with valuation, because we understood it was going to be an issue with how do you determine what their fee is.

MR. SCHMELTZ: And by this time, Your Honor, I had made a settlement -- this is -- I made that settlement offer in May, at or about the date that we -- let me just grab the first exhibit. Hang on. June 27th. "Please find attached."

So by June, right after we made the tax allocation proposal to Riot Whinstone, I made a settlement offer to

Lehotsky Keller and Cohn, through Josh Wolfshohl, which was met with a great deal of antagonism. So you're right in -- I mean, we're right on the cusp of it.

But again, Your Honor, this is why we negotiated a 502(d) agreement. We knew we were moving awful fast. We took Your Honor's, you know, be transparent and get it done very seriously, and our team put the jets on to do that. And this was a mistake on our part. I own it. And that's why we had a 502(d) in place. And I pointed it out to them as soon as I realized where this fell on the wrong side of the (indiscernible).

MR. DISHER: A couple of responses, Your Honor. First of all, I think that from the substance of this email on its face, it's clear that this is not the provision of legal advice. This is business advice. So I don't think this is covered by privilege at all, whether it's within the scope of the limited waiver or not. This is just not privileged because it's not the provision of legal advice.

Second, the claw back was way late. If they really thought this was a privileged document, you act on that immediately. You can't wait four days after it's used for the second time in a second deposition and then belatedly try to claw this back, just because they don't like the answers that this witness gave about this document. That's not the proper use of a claw back.

And then third, they're saying that -- somehow, they're saying that... Well, I'll leave it at that. I'll leave it at those two points.

MR. SCHMELTZ: I do want to note a hyper-contempt with the answers (indiscernible) with the scale of the documents has nothing to do with that. I mean, this is an absolute provision of legal advice at the time --

THE COURT: Let me look at it. Ms. Tomasco, what is it that is here providing legal advice?

MS. TOMASCO: Can I see it again? I mean, I feel like this is a trap, Your Honor. If I explained to you how this relates to other legal advice I'm giving the client with respect to its tax matters, I would be waiving the privilege because --

THE COURT: I don't see anything in there about -- in your email about tax. So, maybe we just need to brief this.

MS. TOMASCO: I'm happy to brief it, Your Honor. I feel quite strongly about this, because the only reason why, at this point, Chris Wheeler was involved was under a Kovel agreement with Quinn Emanuel to provide privileged tax advice in running through the various --

THE COURT: Let me -- I must have missed the tax advice part of it in what you're saying in that email. Let me see that again? I mean, the attachment is Mr. Lockhart's

email, which is already in evidence. So we're only looking at the first email. Is that correct?

MR. DISHER: Mr. Lockhart's email will be in evidence, once I offer it. I haven't --

THE COURT: Okay.

MR. DISHER: So, Exhibit 17 is the one we already looked at. I'm going to offer that into evidence. This is Exhibit 18, which we included the redacted version. If Your Honor rules that the claw back was improper, we obviously will offer the unredacted version of 18 into evidence.

THE COURT: I'm going to let you make a record, and then I'll decide after we get the briefing.

MR. DISHER: Thank you, Your Honor. At this point we offer LKC Exhibit 17, which is not the subject of the claw back. That's the prior one we were talking about a minute ago. We offer that into evidence.

THE COURT: Any objection?

MR. SCHMELTZ: None, Your Honor.

MR. DISHER: Your Honor, we offer Exhibit 18. We have included a version of that on the exhibits that we filed with the Court in which the claw back portion was redacted. We also would offer to the Court the unredacted version of Exhibit 18, and with the argument that this is not privileged, it's business advice, it's not the provision

of legal advice, and any privilege that might have been associated with this was waived because they didn't act expeditiously in order to claw this back.

THE COURT: All right.

MR. DISHER: Would you like me to leave this with...?

THE COURT: No, you can keep it.

MR. DISHER: Okay.

THE COURT: And I'll just wait for the briefing.

MR. SCHMELTZ: Your Honor, with respect to the redacted version of 18, no objection. Obviously, with respect to the unredacted version, we're going to brief it.

BY MR. DISHER:

Q Okay, Mr. Hayes, just a few final questions here. I want to stay on line with the tax allocation, just to close the loop on this. Will you turn to Tab 23 in the black binder, please?

A Sure. Yes, I'm here.

Q If you go to -- it's this -- it's Page Number 2. It's probably about four or five pages in, Article 2, Section 2.3?

A Yep.

Q There's a provision about purchase price allocation?

A Mm hmm.

Q The first three words of that provision say "for tax

purposes", right?
A Correct.
Q So this purchase price allocation is done for tax purposes, correct?
A Correct.
Q Okay. Now, if we look at the very last sentence of Section 2.3, I'm just going to read it. "For the avoidance of doubt, nothing contained herein shall be deemed an allocation of asset value for purposes of distribution to any seller's stakeholders." Did I read that right?
A You read it right.
Q Great. Now, finally, let's go back to Exhibit 14, please.
A Okay.
Q There's been some discussion about the energy contracts.
A Yes, 14, right?
Q Yes. If you go to Slide 7, which is the last slide in the presentation of the board --
A Sure.
Q -- you see the first bullet point that says, "Energy contracts should be worth more to Riot than to Rhodium (and any other buyer)."?
A Yes, I see that.
Q You wrote that sentence?

A Yeah.
Q Yeah.
A I believe I did.
Q Now, the first bullet point is talking about Riot. The second bullet point is talking about Rhodium. Do you see that?
A Correct.
Q And it says, "Whinstone contracts valuable, but need to be deployed in a business with significant risk, market volatility, execution, future litigation." Right?
A Correct.
Q And you wrote that sentence?
A I believe so, yes.
Q And then, finally, you conclude it with a sentence in red that says, "Another buyer likely has similar risks in assuming the contracts." Right?
A Yeah. Notice it's in brackets. But, yes, I did put that in there.
Q One of the risks that another buyer would likely have is future litigation risk, correct?
A Yes.
Q And that's the future litigation with Whinstone, correct?
A Correct.
Q And you, of course, don't dispute that the litigation

against Whinstone is adversely affecting Rhodium's ability to raise money, right?

A Yes.

Q Do you have any reason to dispute that when Rhodium filed for Chapter 11 bankruptcy, it had just $2.5 million cash on hand?

A I don't have any reason to dispute that.

Q If Rhodium had not been able to get DIP financing, Rhodium could not have made payroll, right?

A I mean, it would have made payroll for presumably a few periods, but, yeah, we would have run out of money.

Q From May 2024 through Rhodium's initial Chapter 11 filing, Rhodium did not have a month that it was cash flow positive?

A That sounds right. I don't know that for a fact, but that sounds about right.

Q Thank you, Mr. Hayes.

A Due in large part to a lot of litigation expense.

Q Thank you, Mr. Hayes. Nothing further.

THE COURT: I think he's going to re-cross you.

THE WITNESS: Oh. I'm sorry.

MR. SCHMELTZ: We'll see how far I can go. I know you need to get out of here.

REDIRECT EXAMINATION OF KEVIN HAYES

BY MR. SCHMELTZ:

Q You have significant experience in your career making projections, right?
A I do.
Q Are the tools that you used in these financial projections tools, like, plus or minus $25 million in discount rate, standard tools for projecting how something economic might come out?
A Yes.
Q They certainly were tools that you applied from your experience, and I doubt to kind of cook the books here.
MR. DISHER: Objection, Your Honor. Leading.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Did you use these tools to try to cook the books?
A No. No. My -- I was worried about presenting a fair valuation, a fair view of the valuation to the board to give them the best data to make a good decision. And where I used plus or minus $25 million, I think it reflected the -- I think it was -- it would be intellectually dishonest to say that the right number is, you know, $100.2 million. That's way too much specificity for what the damages were. And so I merely rounded it and added plus or minus $25 million to translate something and kind of make it easy to follow and realistic for the board.
Q You mentioned that Will Thompson and you had had an

exchange about prejudgment interest, right?

MR. DISHER: Objection. Misstates the testimony.

THE COURT: I don't remember that.

MR. SCHMELTZ: Pardon me?

THE COURT: I don't remember that testimony.

THE WITNESS: No, I didn't -- I didn't mention that. I don't remember mentioning that.

THE COURT: I don't think he mentioned it.

MR. SCHMELTZ: My apologies.

BY MR. SCHMELTZ:

Q You mentioned that you and Will Thompson had a back and forth about discounts, present value and risking the damages, right?

A Yeah, it was a brief email exchange before the February 12th board meeting.

Q Let's take a look at Exhibit 259, please, which is in the white binders?

A Okay.

Q Let's take a look at -- do you recognize this document?

A I do.

Q 259?

A Yes, I do.

Q Is this the email exchange you were describing?

A Yes, it is.

Q And it's an email exchange, at least for the first

several emails, that is between you and Will Thompson, correct?

A Correct.

MR. SCHMELTZ: Move admission of 259 into evidence.

THE COURT: Any objection?

MR. DISHER: No objection, Your Honor.

THE COURT: Admitted.

(Exhibit 259 entered into evidence)

BY MR. SCHMELTZ:

Q Let's start with at the top of 259.002, email where you respond to John Cohn and Will Thompson. Do you see that?

A Yes, I do.

THE COURT: Wait, I'm sorry. What page are you on?

MR. SCHMELTZ: 002.

BY MR. SCHMELTZ:

Q It says, "Will, I understand you'll be available to join the board call. When we get to that Slide Number 3, I will turn it over to you." Did I read that correctly?

A Yes, you did.

THE COURT: I'm sorry, Mr. Schmeltz. I don't know --

MR. SCHMELTZ: 002.

THE COURT: (indiscernible) 259?

MR. SCHMELTZ: 002.

THE WITNESS: 259.

BY MR. SCHMELTZ:

Q And Slide 3 that you're describing is the damages -- risk-based damages calculation we've been talking about, right?

A Yes.

Q And that's the risk-based damages calculation that had a discount rate, right?

A Of 25 -- yes.

Q And plus or minus $25 million?

A Correct.

Q And Mr. Thompson says to you, "Thanks for sharing these. This is on 001. If you're already in the board meeting, I don't mean to interrupt you. If you're not in that meeting, it might make sense to connect briefly on the low-high range you provided. I want to make sure we're on the same page. Of course, I don't have a problem with your range. I just want to avoid stepping on your toes and confirm I understand how you calculated it." Have I read that correctly?

A You have.

Q Explain your response to him to the Court, please?

A Well, I can read it. "Good question. I simply took the risk value, discounted at a year at 25 percent, and

roughly added and subtracted $25 million."
Q He responds, "That makes sense to me. I won't plan to talk about it at all. If I were pressed, I'd say that the range of possible litigation outcomes is very wide, but I can certainly understand why, from a business perspective, it might make sense to look at the kind of band you're using." Have I read that correctly?
A Correct.
Q He didn't suggest to you that you should add pre-judgment interest, right?
MR. DISHER: Objection, leading, Your Honor.
THE COURT: Sustained.
BY MR. SCHMELTZ:
Q Did he make any suggestion about how you should tweak your risk adjustment?
A No.
Q Did he ever make any suggestion about how you should tweak your risk adjustment?
A No.
Q You were asked about -- prior to the board meeting on February 16th, whether you had consulted with Stris or LKC about your adjustment to Building D. Do you remember that?
A Yes.
Q I think when I asked you if you remembered about what happened in your conversation at the board about that, you

did not recall, right? When we were...
A Right. No objections on the board call.
Q Is it possible that if I showed you a copy of the minutes from that meeting, it might refresh your recollection about the back and forth you might have had with Stris LKC at that board meeting?
A Yes.
MR. SCHMELTZ: Your Honor, may I approach the witness?
THE COURT: Yes.
MR. SCHMELTZ: Oh, I'm sorry.
THE COURT: I'm sorry. I said yes.
BY MR. SCHMELTZ:
Q Could you take a look at the Mediation Strategies section? Take a look at it.
A Mm hmm.
Q Let me know if it refreshes your recollection. And if it does, I'm going to have you hand me that document back, and we'll hear what you think. Okay?
A Yep. It does.
Q And what is your refreshed recollection about what occurred at the board meeting in conversation about Building D?
A I think I began the discussion of the valuation to point out -- to make it crystal clear to everybody, that the

only thing we changed from four days ago was Building D. And we changed it from $66 million to $33 million, or, you know, from a 40 percent success factor to a 20 percent success factor. I didn't hear anybody push back on that. And, in fact, there were comments from Will and John Stokes that said --

MR. DISHER: (indiscernible) object, Your Honor.

BY MR. SCHMELTZ:

A -- that makes sense, and they agree with that.

MR. DISHER: Hearsay.

THE COURT: Sustained.

BY MR. SCHMELTZ:

A We decided that because LKC wasn't a party opponent then, but they are now, their statements about what they believed about Building D then aren't -- or don't fall under that exception, because I think --

MR. DISHER: (indiscernible)

THE COURT: I'm sorry. I think he's -- do you recall what Mr. Thompson said specifically?

THE WITNESS: He said he didn't have a problem with it, and John Stokes said he agreed.

MR. DISHER: (indiscernible) I will object to that, as hearsay.

MR. SCHMELTZ: Okay. I think Mr. Thompson's views about Building D and the success rate --

THE COURT: Well, they weren't a party opponent at this time, right?

MR. SCHMELTZ: But they surely are now. The idea of a statement of a party opponent does not require you to have been an opponent at the time. It is about what you say is reliable for the truth of the matter asserted, because you are presently a party opponent. Certainly the reliability of what LKC was saying about Building D at the time is reliable, which is why it comes in as non-hearsay, now that they are in a statement of -- that they are an opponent. Right? So what you say is reliable.

MR. DISHER: I think the reliability is contingent on the adversity. Right? There's no reason to lend additional credibility to what your own lawyer says at the time that there was no adversity. The reason something becomes more reliable is because there is adversity at the time that it was said.

MR. SCHMELTZ: No, what makes it reliable is that you are adverse to the current situation. And so, what you said then we take as reliably true because now you are adverse to the situation. So light was red, light was green. Whatever you said then, you're adverse to the situation now. We take as true reliably what you said then. That's the way that works.

THE COURT: All right. I'm going to let it in for

now, but I'll -- you know, I'll make a final decision.

MR. SCHMELTZ: Thank you. I also think it's a present-tense impression, non-hearsay, as well as Ms. Lohse reminds me, this is his immediate reaction upon hearing it. Present-tense impression would suggest that that is non-hearsay --

THE COURT: If you literally read this, one could say that he joined the meeting after this was said. Okay? So it's not clear to me from these minutes what, in fact, was being said. So we'll leave it at that.

MR. SCHMELTZ: Well, I think it's joined the conversation as opposed to the meeting, but I take your point, Your Honor.

THE COURT: Yeah, you know, and --

MR. SCHMELTZ: And the witness's recollection is refreshed, and that's what we're bringing in to evidence at this point.

BY MR. SCHMELTZ:

Q Exhibit 6 in the black binder, the question was about zero value to intangible assets. Do you remember that?

A Yes.

Q What, in fact -- you mentioned that you thought the attorney from Foley was confused. Why don't you explain your answer?

A Yeah, I think their email was confused. We had

subsequent discussions with them to clarify. But their statement -- and this is my impression, and, you know, others could perhaps recall their -- they could share as well. But that $73 million, that did not apply to the energy contracts. That applied to intangibles, and I think he was confused. And if, you know, intangibles, in fact, meant the energy contracts, that was not his intent.

And I think in subsequent calls, we quickly clarified that. Riot certainly was buying us for the energy contracts. That's why they were buying us. Nobody questions that.

MR. SCHMELTZ: I have no further questions of this witness. Thank you.

MR. DISHER: Just briefly, Your Honor.

THE COURT: Sure.

RECROSS EXAMINATION OF KEVIN HAYES

BY MR. DISHER:

Q You looked at Exhibit 259 on redirect in the white binder?

A Okay.

Q This is the back and forth between you and Mr. Thompson prior to the February 12th board meeting?

A Correct.

Q Do you know what experience Mr. Thompson has, if any, with discount rates at this point?

A I don't. Although that he said that makes sense to me.
Q Now, after you applied the 25 percent discount, and after you applied your range of plus or minus $25 million, the low end of that range that was presented to the board on February 12th was $100 million, right?
A Yes, with a $66 million value for Building D, but yes.
Q And that is the $100 million, the low-end estimate presented to the board on February 12th, that we use in our fee application pending in front of the Judge. Correct?
A Correct.

MR. DISHER: Nothing further.

THE COURT: Anything further?

MR. SCHMELTZ: Nothing further for this witness. I'd like to call Mr. Eaton to the stand.

THE COURT: All right. We've got to stop at 6:00, so are we going to get done with him by 6:00?

MR. SCHMELTZ: Yes.

THE COURT: All right. I'm going to stop at 6:00, and if we're in the middle of a cross, we'll just have to come back.

MR. SCHMELTZ: It's not optimal, but I want to be efficient.

THE COURT: Okay.

MR. SCHMELTZ: And ideally, I wouldn't put my witness on for a half hour, and if we're crossing, to give

them another week to figure out more cross. But I want to be --

MS. TOMASCO: Right.

MR. SCHMELTZ: I'll take your preference, but I'd like to --

THE COURT: No, no, no. I'm --

MS. TOMASCO: My new friend Sarah Schultz is concerned about catching a plane, so we're wondering, are we coming back tomorrow or sometime when the Court has another availability?

THE COURT: No, sometime when the Court has another availability. I'm pretty much booked up through -- I have a four-day trial next week.

MS. TOMASCO: I'm aware.

MR. SCHMELTZ: So, if I might, then, I'd like to not call Mr. Eaton tonight --

THE COURT: Okay.

MR. SCHMELTZ: -- and we'll bring him -- we'll do it all at once. He's my last witness, and then we'd have argument.

MR. DISHER: I'd love to just finish tonight. I mean, he can take 20 minutes, I can take 10 minutes, and we'd be done.

MR. SCHMELTZ: I don't think I can take 20. I mean, I think I'm closer to half hour, 40 minutes. I'm

pushing it at 30, so...

THE COURT: Okay. Well, we will then come back.

MR. SCHMELTZ: Thank you.

THE COURT: All right, we'll be in recess.

(Proceedings adjourned at 5:31 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electRONic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: December 10, 2025

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RHODIUM ENCORE LLC and AIR HPC LLC,	CASE NO: 24-90448
	Houston, Texas
Debtor.	Thursday, December 11, 2025
	1:00 to 1:54 p.m.

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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INDEX

PLAINTIFFS' WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
David Eaton	5	29	33	

GOVERNMENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS

PLAINTIFFS' EXHIBITS	RECEIVED

GOVERNMENT'S EXHIBITS	RECEIVED

HOUSTON, TEXAS; THURSDAY, DECEMBER 11, 2025; 1:00 PM

(Call to Order)

THE COURT: Good afternoon. It is 1 p.m. on Thursday, December 11, 2025. We're here in case number 24-90448, Rhodium. Why don't we get appearances of counsel and then we can proceed.

MR. KELLY: Good afternoon, Your Honor. Cameron Kelly from Quinn Emanuel Urquhart & Sullivan on behalf of the debtors. I'm joined by Patty Tomasco on the GoToMeeting.

THE COURT: All right, thank you.

MR. SCHMELTZ: Good morning, Your Honor. Trace Schmeltz and my partner Paige Lohse from Barnes & Thornburg on behalf of the Special Committee.

THE COURT: All right, good afternoon.

MR. SCHMELTZ: Afternoon.

MR. THOMPSON: Good afternoon, Your Honor. This is Will Thompson from Lehotsky Keller Cohn.

THE COURT: Good afternoon.

MR. ALLARD: Nathaniel Allard of McDermott Will & Schulte for the Official Committee of Unsecured Creditors.

THE COURT: All right, thank you.

All right, Mr. Schmeltz, are you going to take the lead?

MR. SCHMELTZ: I am, Your Honor. At this time,

the Special Committee would like to call David Eaton to the stand, Your Honor.

THE COURT: All right. Mr. Eaton, can you hear me?

MR. EATON: I can hear you. Can you hear me?

THE COURT: Yes, I can. Okay, would you raise your right hand, sir?

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: All right, thank you. Go ahead, Mr. Schmeltz.

DIRECT EXAMINATION OF DAVID EATON

BY MR. SCHMELTZ:

Q Mr. Eaton, would you please state your full name and introduce yourself to the court?

A Thank you, Your Honor. I'm David Eaton, and for over 47 years, I've been involved in business (indiscernible). I've been involved in business and sponsoring matters.

THE WITNESS: Can you still hear me, Your Honor? I'm sorry. I've got a lot of feedback.

THE COURT: I'll tell you what. Let me activate the hand-raising feature, so hit five-star one time.

AUTOMATED VOICE: Conference muted.

THE WITNESS: Good not.

THE COURT: All right, I can hear you. Go ahead, sir.

THE WITNESS: Okay, thanks, Your Honor. Your Honor, for over 47 years, I've been involved in business restructuring matters. That includes decades, decades as a restructuring partner at Kirkland & Ellis. As an investment banker, I also managed PricewaterhouseCoopers Special Situations Investment Banking Group.

In the course of my career, I also co-founded a financial advisory firm and have experience acting as a financial advisor and chief restructuring officer. I also taught international bankruptcy law as an adjunct professor for years at University of Illinois College of Law, and I've regularly acted as an independent director in restructuring situations.

BY MR. SCHMELTZ:

Q Sir, would you mind explaining what position you hold with Rhodium?

A I am one of two independent directors, and I'm a member of the Special Committee that deals with -- a committee of two -- that deals with potential conflict matters.

Q In your role as a member of the Special Committee, did you and the committee become involved in a question of the LKC success fee?

A We did, because we have no stake in the outcome, and it

was arguable that others may have had some sort of potential conflict. We hoped to be able to resolve this in an agreement, but we've been unable to do so, and that's why we're here.

Q I want to start your testimony by talking about the allocation of proceeds from the Riot-Whinstone sale to the settlement of claims as opposed to value for the sale of assets or the termination of contracts.

Are you aware that the company has allocated $75 million from the Riot-Whinstone transaction to the settlement of claims for tax purposes and for purposes of this LKC fee?

A Yes, I'm aware of that.

Q Do you know who at the company made that allocation?

A Yes. Kevin Hayes, our CFO, did that in conjunction with Chris Wheeler, who was a tax expert that had been retained by counsel.

Q Did you review that allocation in your role as a member of the Special Committee?

A I did.

Q From your perspective, is it appropriate to use the same amount for purposes of the tax allocation and the LKC fee?

A I would give that a qualified yes.

Q Would you explain your qualification, sir?

A Yes. I'm satisfied that the source of that number had been prepared by Kevin and others and that the numbers were accurate and sound, and I've seen it presented to the full board of directors. I'm also satisfied that using $75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit.

But the data that was used -- my qualification is that the data that was used was created for much different purposes before it was transferred over to apply to the settlement of success fees, and I think it substantially overweights the value of litigation claims; and so I would say it is at the absolute top of any number that should be used for a gross settlement recovery for a couple of reasons.

Q Why don't we get into those couple of reasons? What are they, sir?

A The first one is that in the final settlement discussions with Rhodium, all we ever talked about was the value of the assets in their hands and that the enterprise value was much more valuable to them and accretive to them immediately than where we were at and the -- than the numbers that were being bounced around in that negotiation.

And in fact, in that negotiation, we never even discussed the litigation claims because they had told us in

no uncertain terms, they did not want to discuss them, and we'd heard that before when months earlier in a different context, we tried to settle with them. So that's the first reason. We were -- is that the settlement discussions were solely centered around the value of the business.

But the second point that was a real game-changer was that --

MR. THOMPSON: Your Honor -- I'm sorry, Your Honor, I think I was muted. I'm sorry to interrupt, Mr. Eaton. I was trying to object, and I think I was objecting into a mute button.

I'm objecting to the discussion of things that Whinstone allegedly said when no one has called anyone from Whinstone to the stand, so it's a hearsay objection, Your Honor.

THE COURT: Sustained.

BY MR. SCHMELTZ:

Q Okay.

A All right. And the second point -- nonetheless --

Q You can continue with your answer.

A Okay. I will tell you -- I will just tell you that we -- that I only discussed the enterprise value and trying to get the highest settlement. And the second point that was a real game-changer is that within days after the mediation, but before our final deal discussions with Riot, it became

apparent that we'd been unable to obtain exit financing to pursue a reorganization plan built around it.

Q I appreciate the two points, and I want to go back. Were you personally involved in negotiations with Riot-Whinstone?

A Yes, I was.

Q And were you involved in the negotiations after the mediation and up until the time there was a finished deal with Riot-Whinstone?

A That's exactly right.

Q And during that time, did you ever discuss one way or the other the claims or the value of the claims?

A Not with Riot.

Q Was there ever an opportunity in your discussions with Riot to discuss the value of the claims?

A I suppose we could have mentioned it, but there were reasons that we didn't.

Q And from your perspective, why did you not mention it?

A Well, there's a couple. I have to say, I had -- we'd been admonished that it was of no value to engage in that discussion, but more importantly --

MR. THOMPSON: Objection, Your Honor.

THE WITNESS: -- is that -- but you know, when I talked -- the other reason really relates to what I mentioned as the second what I call game-changing factor.

And so maybe I can -- maybe I'll explain what that is.

BY MR. SCHMELTZ:

Q Why don't you do that?

A Okay. The only committed financing that we had, which came out with finality like day -- after the mediation, but a couple of days before we met to see if we could negotiate a final deal, was a $75 million face amount, which would have enabled us to pay general unsecureds and secured creditors and provide some working capital, but it was so exorbitantly priced that if we took two years to pay it, which was the expected timeframe to get -- to obtain and collect, if possible, a judgment, the SAFEs and the equity holders would have been behind two times below, or about $150 million in new senior debt before they could recover a penny.

Q And how did that -- let me ask you a question. So you had this expensive exit financing that required you to pay two times the loan amount; how did that compare to other alternatives Rhodium had at that point in time?

A Okay. So the alternative that was in front of us was that the SAFEs had reached a very high floor in their negotiation with Riot at the mediation and had presented a settlement totaling $177 million to the estate that would have paid all creditors I discussed, and in addition, have $90 plus million to distribute immediately to the SAFEs and

equity holders.

Q And so did you -- as a fiduciary, how did you weigh those two alternatives?

A Well, at that point, coming fresh off the unacceptable and untenable exit financing, I thought it would have been irresponsible to roll the dice by saddling the company with this super expensive new debt to fight litigation for a couple of years, where our business would be -- end up highly leveraged, greater risk, and far less valuable than it would be through an immediate sale.

And so from a fiduciary point of view -- so to me, since the only way you could achieve any value at all for the claims was to operate the business and fund it for a couple of years to get to that end point, to me, the value of the claims was effectively going to zero because we couldn't responsibly afford that alternative.

So at best, the claims became the tail on the dog. And so by comparison, we already had in the hand a $90-plus million, even after creditors were paid, a proposal that we could -- we thought we could and did approve in our final discussion, our final settlement with Riot.

So that comes back to explaining why essentially the value of the claims were diminishing and to me could have gone to zero because we weren't -- that was not going to lead us anywhere. We could never -- we couldn't get the

verdict in a fiduciarily responsible way. So that's why we focused on the sale and the enterprise value of the business to Riot.

Q You've mentioned the enterprise value of the business to Riot. How, if at all, does the enterprise value of the business to Riot differ from a discounted cash flow analysis of the business in the hands of Rhodium?

A Well, the value to Riot, even though the value to us was what we looked at as declining because of the additional risk that we'd be putting on or if we ever even -- with that exit financing, or -- and we're a private company facing financing with a huge coupon on it. On the other hand, Riot was a well-capitalized public company with a much lower, significantly lower cost of capital.

And the value to them wasn't changing. The value for them to gain control of these assets was much higher than it is for a smaller private riskier company on a discounted cash flow basis than it was to Riot, as I mentioned, a well-capitalized public company, you know, with a much smaller discount rate, so --

Q Can you quantify -- can you quantify that value?

A I can't quantify it. We -- yes. We had presentations from management before the mediation that in the hands of Riot, the business value alone, the DCF alone was upwards -- was nearly $500 million. So multiples of what we were

looking at with our risk factors and discount.

And then we -- for tax purposes, we also had an independent third-party valuation of the business that we had sold. And that came out with a minimum of $173 million, and the high range of that was $207 million, the midpoint of that being $190 million, which was in fact very close to what we had achieved in the final settlement. So those were checks on a market value and a DCF value.

Q In a context in which --

A I -- go ahead, I'm sorry.

Q In the context in which you have enterprise values as high as almost $500 million, an independent valuation with a midpoint of $190 million, is there any reason that the Special Committee hasn't pushed for a lower allocation to settlement than the $75 million that's been allocated?

A I -- personally, I felt that the 75 was, for lack of a better word, over generous. It was at the very end, very top end of a range of numbers. But it would comply with the contract, surely; was consistent with the allocation, which was a benefit for the reason I mentioned; and it recognized the good work that LKC had done.

So we stuck with the number that Kevin had proposed and testified was the midpoint of the last numbers he presented to the board even before the Riot deal was struck. And I'll say, I think it's at the top end of what should have been

done, but it creates a windfall for LKC. That is my view.
Q But you're not walking away from that number, right?
A No, no.
Q Let's shift gears a little bit and talk a little bit about the calculation of the success fee. I want to start by talking about the LKC success fee for energy credits. Do you understand how the energy credits work under the March -- sorry. Do you understand how success fee for energy credit claims works under the March 2025 engagement letter?
A Yes. The success fee for energy credit claims is 5 percent on the first $5 million and 1 percent for everything after $5 million.
Q How would that compare to the success fee for non-energy credit claims?
A For non-energy credit claims, the success fee is 10 percent of those claims.
Q From your perspective, is it appropriate for LKC to eliminate the energy credit claim related to Winter Storm Uri from the calculation of the success fee?
MR. THOMPSON: Objection, Your Honor. I have to object to asking this witness about what percentage of total damages ought to be allocated to energy credit. The debtors put up a 30(b)(6) witness on the topic of the LKC success fee. As Your Honor may recall from a hearing in October, that witness was unable to share any position of the debtors

on how much money ought to be allocated to the energy credit. He explained on the record that he wasn't prepared to address that. Mr. Schmeltz confirmed it. I can pull up the transcript if we need to, but I think it's undisputed.

We have disagreements about whether that should preclude them from putting on a witness on this topic at all. The debtors then decided that they would try a different witness, and I think Your Honor said if they can produce them for a deposition, that would be all right. They used an expert named Mr. Reston from PDO. In the face of our motion to strike that witness, they have withdrawn that witness.

So we've gone through two witnesses who should have been able to give us discovery on what Rhodium's position was with regard to the energy credit allocation. Neither one of them has done it, and so I think it's inappropriate for Rhodium having told us during a 30(b)(6) depo they haven't -- they7 can't tell us any position on that matter, and now try to elicit such a position through Mr. Eaton.

THE COURT: Mr. Schmeltz?

MR. SCHMELTZ: Two responses. First of all, Mr. Eaton was presented as a witness to talk about the D&O settlement. The D&O settlement relates to Winter Storm Uri. Mr. Eaton has already testified on Winter Storm Uri and on

that energy credit. We also have testimony on Building D, which Mr. Eaton will speak to briefly.

I direct Your Honor's attention to Johnson v. Big Lots Stores, Inc., 2008 WL 6928161 at 5. It is an Eastern District, Louisiana court. I understand it's not binding on this Court, but it provides specifically that a party at trial may use the testimony of a witness who is not its corporate representative during a prior 30(b)(6) witness deposition.

It goes on to note that "30(b)(6) does not require a corporate party to exclusively call its designees at trial, nor does it prohibit calling other employees as witnesses. The new witness may testify," that court says, "about the same subject matter so long as the testimony is based on personal knowledge." That case cites Union Pump Company v. Centrifugal Tech, Inc., 404 F. App'x 899, 907-908 (5th Cir. 2010).

At trial, Johnson goes on to say, "A party is not foreclosed from introducing testimony by a new witness, even if it may differ from or explain statements made by its Rule 30(b)(6) designee. Testimony by the new witness may even contradict the 30(b)(6) representative," and the proper course of action is for counsel, as Mr. Thompson has suggested, to impeach with the prior testimony. That's from Crompton Greaves, Ltd. v. Shipper's Stevedoring Company, 776

F.Supp.2d 375 (S.D. Tex. 2011).

Ultimately, 30(b)(6) testimony is not binding judicial admission if it's evidence subject to contradiction, explanation, or impeachment by other testimony, and it's for the trier of fact to decide its weight.

Mr. Eaton will tell you that he has personal knowledge of the Winter Storm Uri claim and why it was appropriately mediated. He will also tell you that he has personal knowledge as a board member of the Building D claim and how it was presented.

Both of those things will be the subject of his testimony. He is not going to be calculating the success fee, which is the issue Mr. Thompson has raised and the issue for which we had Mr. Reston originally to come in to calculate. I'm going to do that because it's simple math in my closing, Your Honor. We don't need a witness. I can do that for you, and I will do it at closing.

Mr. Eaton is instead testifying as to components of the claim and damages, and I want to be clear on that. He will not be calculating a fee for you, which again would have been what Mr. Thompson asked Mr. Topping, who was not prepared to answer that, and what Mr. Thompson asked Mr. Reston about as well.

THE COURT: All right, I'm going to sustain the

objection. I'm not going to let him testify about Winter Storm Uri. I don't think when one party asked for information regarding that and the person isn't able to testify, I'm not going to let them bring that at trial. So why don't you move on?

MR. SCHMELTZ: I want to be clear. Mr. Eaton was our designee to talk about Winter Storm Uri. He -- what he's not -- what Mr. Thompson is saying is they had a witness to do the calculation. Mr. Eaton is not doing the calculation. He was the designee for Winter Storm Uri. He --

MR. THOMPSON: Maybe it'd help if I just read the question that led to the problem at the deposition, Your Honor. The question was, "Does Rhodium have a position on what portion of the $75 million it mentioned is allocable to energy credits?"

As I understand it from Mr. Schmeltz's introduction to his line of questioning, that's the purpose of this line of questioning. He wants to establish what portion of the 75 Mr. Eaton was just talking about should go to energy credits and what portion should go to other stuff.

They couldn't tell us that during the 30(b)(6) deposition, and I don't think there's any other reason to have Mr. Eaton testify on the other topics that Mr. Schmeltz is talking about.

MR. SCHMELTZ: Mr. Eaton was the designee to talk about why Winter Storm Uri was included in the Whinstone mediation, Your Honor. That's what he testified.

THE COURT: All right. I've made my ruling. Move on.

MR. SCHMELTZ: Your Honor, may I have five minutes?

THE COURT: Excuse me?

MR. SCHMELTZ: May I have a five-minute recess, Your Honor?

THE COURT: Sure.

(Recess)

MR. SCHMELTZ: Your Honor, when you're ready.

THE COURT: I'm ready. Go ahead.

MR. SCHMELTZ: Two things. First of all, Mr. Topping was the witness that Mr. Thompson was just referring to in Pages 53 to 58 of Mr. Topping's deposition as a 30(b)(6). He testified to Winter Storm Uri and its inclusion in the mediation and how it's appropriate to include it in a damages calculation. I would offer that, first of all, Your Honor, for a reason to allow me to go forward.

If Your Honor prefers to stick with your ruling, which I respect, I'd ask to make an offer of proof such that I can preserve the issue for appeal. The pages are of the

deposition.

MS. LOHSE: No, that's the November 3rd hearing.

MR. SCHMELTZ: Oh, also at the November 3rd hearing, Mr. Topping was permitted to testify Pages 199 to 200 to this topic, which is all I'm asking for an opportunity to bring this through this witness quickly to bring the issue to a close.

MS. LOHSE: And 198 to 200.

MR. SCHMELTZ: Thank you, 198 to 200 of the November 3rd transcript.

THE COURT: All right. After the close of the hearing, you can make your proffer. All right, let's continue on.

MR. SCHMELTZ: Thank you, Your Honor. Thank you.

BY MR. SCHMELTZ:

Q Sir, were you -- you sat on -- regularly on the Board of Directors in your capacity as a Special Committee member; is that correct?

A Yes.

Q Were you in February 16, 2025 board meeting where various claims were discussed?

A Yes, I was.

Q Were the claims that were discussed in that board meeting claims that were expected to be mediated in the upcoming mediation with Riot-Whinstone?

A Yes.
Q Did those claims include the claim for Winter Storm Uri and Building D?
A Yes, both of those.
Q Were you involved in a conversation about the chance of success for Building D as a claim?
MR. THOMPSON: Objection. We're getting into a fair number of leading questions now.
MR. SCHMELTZ: I asked, were you involved in a conversation about the chance of success for Building D?
THE COURT: Yeah, overruled. Go ahead and answer that.
THE WITNESS: Yes, I was present for and heard that. I don't recall piping in on it, but I was there for the conversation.
BY MR. SCHMELTZ:
Q Was the conversation around the chance of success for that claim, if you recall?
A Yes, it was.
Q Do you recall what the conclusion in that meeting was in terms of the chance of success for Building D?
A Yes, that the risk-adjusted probability of recovering at Building D was reduced from 40 percent to 20 percent.
Q Were litigation attorneys from LKC and Stritz & Mayer present in that conversation?

A Yes, they both were.
Q Do you recall whether either lawyer from LKC or Stritz agreed or disagreed with that conclusion?
A No one disagreed, and I do remember that in fact they concurred with that decision.
MR. SCHMELTZ: Your Honor, may I please have screen share capability?
THE COURT: You have that?
MR. SCHMELTZ: Thank you, Your Honor. Now I have to figure out if I'm competent enough to use it.
CLERK: If you want to click the PDF, (indiscernible) declaration form.
MR. SCHMELTZ: Why is that the thing -- no, it's not what I want.
CLERK: Then you might need to go back to the GoTo. There you go.
MR. SCHMELTZ: There we go.
CLERK: Sorry about that.
MR. SCHMELTZ: No worries.
Your Honor, I'm putting on the screen Exhibit 334, which has been provisionally or taken under advisement by the Court.
BY MR. SCHMELTZ:
Q Mr. Eaton, do you recognize this document?
A Yes, I do recognize the document.

Q And what do you recognize the document to be?
A To be minutes of the Board of Directors meeting on -- we had two that day, but this was the first one, February 16, 2025.
Q Have you reviewed these minutes?
A I have.
Q Do they reflect fairly and accurately the meeting from your perspective?
A Yes, they do.
Q Were they taken by someone at the meeting in real time?
A Yes.
Q Who was that?
A That was Becky Rice.
Q Was that ordinary for Rhodium to do that that way?
A Yes, that was how it was done.
Q And are these minutes kept in the ordinary course of Rhodium's business for its business purposes?
A Yes, they are.

MR. SCHMELTZ: Your Honor, I would move again for the admission of Exhibit 334 into evidence.

MR. THOMPSON: We stand on the same objections as last time, Your Honor. This is, I believe, (indiscernible) untimely exhibit and it was -- Mr. Eaton did not testify that he wrote any of these. If he wants to testify about his recollection from the meeting, that seems like a more

sensible way to proceed.

MR. SCHMELTZ: Your Honor, if I might direct your attention to U.S. Commodity Futures Trading Commission v. DeZona, Fifth Circuit case, 594 F.3d 408, 415. "There's no requirement that the offering witness be able to testify to the record's accuracy. A qualified offering witness simply must explain the recordkeeping system of the organization and vouch that the requirements of 803.6 were met."

Mr. Eaton has met all three, all of the requirements of 803.6, that the record was made at or at time by or from information transmitted by someone with knowledge; that the record was kept in the ordinary course of a business activity; that it was part of the regular practice of that activity.

Those, under 803.6(e), that does not need to be done by a custodian. It simply needs to be done by a qualified witness. And under the case of Morris v. B.C. Olympiakos, 721 F.2d 546 at 551 (S.D. Tex. 2010), the court made it clear that the -- it is not essential that the offering witness be the person who actually recorded the events.

THE COURT: Okay, so --

MR. SCHMELTZ: For that, I think we've laid a proper foundation, Your Honor.

THE COURT: Okay, so what exhibit is it again?

It's not Exhibit 334.

MR. SCHMELTZ: It's what I show as 334 in my exhibit list, Your Honor.

THE COURT: It says 334 down here, but do you know where it is in the record? Because my Exhibit 334 is a confidential placement memorandum.

MR. SCHMELTZ: Paige, can you see in the transcript what we called it last time, please?

THE COURT: Let me see, there's another Exhibit 334.

MR. SCHMELTZ: Understood, Your Honor.

MS. LOHSE: 334 --

MR. SCHMELTZ: Say again?

MS. LOHSE: Page 157 of the transcript shows it's Exhibit 334.]

MR. SCHMELTZ: Page 157 of the last day's trial transcript shows it as 334 as well, Your Honor. I don't know if I double-labeled. I don't have anything else. I mean, our last exhibit was 331, and then this was, as you know, offered late, as we've explained, and we've explained why.

THE COURT: Okay. Do you -- but do you know where it is on the docket, filed on the docket?

MS. LOHSE: It has not been filed.

MR. SCHMELTZ: I don't think it's been filed on

the docket, because we presented it to Your Honor, and you took it under advisement when we were there last. I can email it to Mr. Laws right now.

THE COURT: No, that's okay. All right.

MR. SCHMELTZ: And I can page through it here on the screen as well.

THE COURT: No, no, I remember the document. I just wanted to look at it. Yeah, I'm going to have to look -- I'm going to have to find the document to look at it again.

MR. SCHMELTZ: Your Honor, may I ask questions from it directly, or do you want me to have the witness give his best recollection, or how do you want me to do that?

THE COURT: No, why don't you go ahead and ask him the questions, and then when I look at it, I'll make a decision as to whether to admit it.

And by the way, we basically have 15 more minutes, so if we can't finish, then we're going to need to go to the 17th.

MR. SCHMELTZ: I just have two questions for him.

THE COURT: Okay, go ahead.

BY MR. SCHMELTZ:

Q I have on the screen the mediation strategies discussion. Do you see that, Mr. Eaton?

A Yes, I do.

Q It notes, "Mr. Hayes informed the board this presentation was the same as presented to the board at Wednesday's board meeting with one small revision. The base success percentage for the Building D litigation has been downgraded from 40 percent to 20 percent." Do you see that?
A Yes, I do.
Q That comport with your recollection of what Mr. Hayes reported at the meeting?
A Definitely.
Q It then notes, "Mr. Thompson then joined the conversation by stating he had gone through the litigation buckets at Wednesday's meeting and appreciated why the Building D bucket had been revised and did not have any material concerns about this revision, and Mr. Stokes concurred." Does that comport with your recollection of what happened at the meeting?
A It does. I didn't know that it was Mr. Thompson. I knew that there was an LKC attorney and Mr. Stokes were on, and I knew that -- and so this definitely comports with my recollection of what happened at the meeting.
Q And I guess my final question. Mr. Thompson -- did Mr. Thompson join the meeting at that moment, or was he already present to the best of your recollection?
A I believe he was already present when we started the meeting.

MR. SCHMELTZ: Thank you. I have no further questions for this witness, Your Honor.

THE COURT: All right. Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. Will Thompson from LKC. I also don't have an electronic copy, I think, of those minutes, but if I need to figure it out, I guess I will.

CROSS-EXAMINATION OF DAVID EATON

BY MR. THOMPSON:

Q Mr. Eaton, you were just talking about February 15th board meeting. Do you remember that board meeting?

A February 16th.

Q February 16th.

A Yes.

Q Do you remember setting a minimum value for the litigation claims to be used in mediation at that board meeting?

A I remember that the board discussed the minimum -- the amounts that they wanted to go into the mediation requesting.

Q Let me ask you using the right words here, Mr. Eaton. Did the board establish a minimum mediation litigation settlement amount of $100 million?

A I believe -- well, oh --

Q Just answer the question, sir.

MR. SCHMELTZ: I think he's trying to answer it.

THE WITNESS: I'm going to answer it. I believe that was -- my recollection is that that was authorized, that number was authorized to accept, and if it was lower that people were instructed to come back to the board.

BY MR. THOMPSON:

Q So it's correct that the board establishes a minimum mediation litigation settlement amount of $100 million on February 16th, correct?

A That was the target, and yes, on February 16th, that occurred.

Q Now, Mr. Eaton, you got into this a little bit in your direct. Mister -- you've heard Mr. Schmeltz in these proceedings because you've been the representative for the Special Committee in the courtroom, right?

A Yes.

Q Because you weren't excluded under the rule. You were in the courtroom for many of the days that we've been here for this matter, right?

A Yes.

Q So you've heard Mr. Schmeltz make a lot of claims about what I said during the February 16th board meeting, right?

A I've heard Mr. Schmeltz talk about that, yes.

Q Are you aware that the Special Committee didn't seek my deposition in this matter?

A I wasn't aware one way or another about that.
Q Were you aware the Special Committee didn't put me on a witness list?
A I was not aware one way or the other about that.
Q And before you heard Mr. Schmeltz's questions during this proceeding, during your deposition, you didn't remember ever talking to me before, right?
A That's not correct. I remembered not speaking with you to my knowledge, but that we may have been on some calls together and I just wasn't aware that the particular person speaking was you.
Q During your deposition, do you remember testifying, we've never spoken before? Remember saying that?
A Yes, that was my recollection that we had never directly spoken before.
Q Okay. On direct, Mr. Eaton, you also testified about exit financing. Do you remember talking about that?
A Yes.
Q Now, it became apparent around the time of the mediation that Rhodium's ability to get exit financing was evaporating, right?
A Yes, I agree with that.
Q It also was apparent that because of the market in general, but in particular, Whinstone's actions and the fact that Whinstone owned the property and the fact that there

was a limited energy contract that was favorable to produce the positive cash flow, that there was only one buyer, and that was Whinstone, right?

A I think that's -- I happen to agree with that. Whinstone was the one we had to sell the assets to as a practical matter.

Q So Rhodium wasn't going to be able to continue and it wasn't going to be able to sell to a third party, and so it found a way out by selling its assets and selling its claims with Whinstone, right?

A Well, we sold the assets, and to me, the claims were along for the ride.

Q That's not the wording you used during your deposition, is it?

A I don't remember exactly the words I used.

Q When I asked, so Rhodium wasn't going to be able to continue and it wasn't going to be able to sell to a third party, and so it found a way out by selling its assets and settling its claims with Whinstone, right, you answered yes. Do you remember that?

A Okay, yeah. I confirm that.

Q All right. On direct, you talked about having to operate the business to fund the claims against Whinstone. Do you remember that testimony?

A Yes.

Q Did you hear Chase Blackmon's testimony in Houston about LKC and Stritz enthusiastically offering to take the claims against Whinstone on a pure contingency basis?
A I don't recall that testimony.
Q Do you maybe recall Chuck Topping's testimony confirming Mr. Blackmon's testimony?
A I have a vague recollection that it was discussed.
MR. THOMPSON: No further questions, Your Honor. Thank you.
THE COURT: All right, Mr. Schmeltz?
REDIRECT EXAMINATION OF DAVID EATON
BY MR. SCHMELTZ:
Q Had LKC taken on the claims on a pure contingency basis, would that have been sufficient to bring the same value to creditors through the reorganization process that the sale to Riot-Whinstone achieved?
A No, there's no way that could have occurred. Because to take the claims on a contingent basis, we could not have sold -- I do agree, we could not have sold the assets to Riot without, as I said, the tail on the dog, settling the claims along with it. And if there's nobody else to sell it to, that means we got to operate the business under -- to enable the continuation of the litigation or wind down and liquidate the business without having almost $200 million of value in front of us.

Q So in your 47 years of experience --
A -- it's not possible to separate -- I'm sorry. You can't just say someone would have done on a contingency without considering what alternatives and what the consequences would be for selling the business.
Q In your 47 years of experience in bankruptcy, is a straight liquidation of assets likely to bring more value or less value than a sale of the business?
A Far less value than selling the business intact.
MR. SCHMELTZ: Thank you. I have no further questions, Your Honor. I would like to make my proffer when it's appropriate.
THE COURT: Mr. Thompson?
MR. THOMPSON: Other than -- nothing further, Your Honor. Thank you.
THE COURT: All right. So, Mr. Smeltz, why don't you just file your proffer and we'll just include that in the record?
MR. SCHMELTZ: I will. Thank you, Your Honor.
THE COURT: All right. And so we'll be in recess till the 17th, correct?
MR. SCHMELTZ: Yes, Your Honor.
THE COURT: Yeah, one o'clock on the 17th. All right, thank you.
MR. SCHMELTZ: Thank you, Your Honor.

MR. THOMPSON: Thank you.

(Proceedings adjourned at 1:54 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
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Mineola, NY 11501

Date: December 15, 2025

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Rhodium Encore LLC and Air HPC LLC Debtor.	)	CASE NO: 24-90448
	)	Houston, Texas
	)	Thursday,
	)	October 30, 2025

MOTION HEARING
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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HOUSTON, TEXAS; THURSDAY, OCTOBER 31, 2025

(Call to Order)

THE COURT: Case number 24-90448, Rhodium Enterprises, Rhodium Encore.

Why don't we get appearances of Counsel? I think Mr. Wolfshohl is here in the courtroom, but --

MR. WOLFSHOHL: Good afternoon, Your Honor. Joshua Wolfshohl, on behalf of Lehotsky Keller Cohn. And Bill Thompson is on the line as well. He can introduce himself.

THE COURT: All right. All right. Thank you.

All right. Let's go -- Go ahead. Why don't we get appearances of Counsel on the line.

MS. LOHSE: Your Honor, this is Paige Lohse, on --

MR. THOMPSON: Your Honor, this is Will Thomson --

THE COURT: Go ahead.

MR. THOMPSON: Sorry, Your Honor. This is --

MS. LOHSE: Your Honor, this is Paige Lohse, on behalf of the Special Committee.

THE COURT: All right. Thank you, Ms. Lohse.

Mr. Thompson?

MR. THOMPSON: Apologies, Your Honor. Will Thompson, on behalf of LKC.

THE COURT: All right. Ms. Schultz?

MS. SCHULTZ: Good afternoon, Your Honor. Sarah

Schultz, on behalf of the SAFE AHG.

THE COURT: All right. Mr. Allard?

MR. ALLARD: Thank you, Your Honor. Nathaniel Allard of McDermott Will & Schulte, for the Official Committee of Unsecured Creditors.

THE COURT: All right. So we have a couple of motions that are sent for this afternoon. Where are the parties with respect to them?

MS. LOHSE: Your Honor, this is Paige Lohse speaking.

It's my understanding that LKC does not oppose the Special Committee's motion for sealing the courtroom, but we will still need to discuss logistics for that.

THE COURT: Yes

MS. LOHSE: My understanding is the Special Committee's second motion is opposed, however/

THE COURT: Okay.

MS. LOHSE: Their motion for the protective order.

THE COURT: Ah. I actually have a problem with sealing the courtroom. I think that we're going to need to kind of figure out what parts of the testimony are going to be -- that have to be under seal. But I'm not going to seal the entire, you know, the entire hearing without -- I'm going to only seal those portions of the hearing that need to be sealed. And I don't know how you all are intending to

work through it, but what I need to do is --

I'm going to -- Somebody's typing furiously.

But anyway, so I fully understand and respect the need to maintain the confidentiality of a lot of these documents and a lot of the testimony, but I don't -- I just don't want to blanket do it. So if you -- if you all can agree on, you know, what documents, what -- you know, what testimony regarding the documents is -- needs to be sealed, we'll go ahead and do that, and then we'll just try to have, you know, the sealed part of the hearing at one time, and then everything else together. But I don't think, you know, that opening statements or anything like that should be sealed. I think we can do it in a way that that doesn't do it.

But again, I'm reluctant to enter the order, but I'm happy to grant the relief with respect to specific items and specific testimony.

MS. SCHULTZ: Your Honor --

MS. LOHSE: Thank you, Your Honor.

THE COURT: Yes, Ms. Schultz.

MS. SCHULTZ: Your Honor, thank you. For the record, Sarah Schultz, on behalf of the SAFE AHG.

If I could just ask a clarifying question? We're trying to be conservative with our fees, but would like to request that parties keep us in the loop with respect to

what they intend to try to seal and not seal. We, for example, have requested from Mr. Wolfshohl a copy of the sealed exhibits that he put on the docket today, and have not yet received that, although we have executed the protective order. So we just want to make sure we have everything in hand. If not, I suspect we, and although I don't want to speak on behalf of the Official Committee, I assume they're in a similar position, and we'd need to be there live on Monday, as opposed to considering participating virtually.

THE COURT: Okay. All right, yeah, you can speak to -- yeah, Mr. Maxwell about that. I mean, obviously, go ahead and do that.

All right. So then, I think we have the motion for a protective order. So go ahead, Ms. Lohse. It's your motion.

MS. LOHSE: Your Honor, we've moved for a protective order to prevent LKC from forcing us to produce witnesses on topics designated as number 8 and 9 in their notice of Rule 30(b)(6) deposition. Topic 8 focuses on a common interest privilege between SAFE and the Debtors and the Special Committee, which we view as irrelevant, and certainly unduly burdensome under the timeframe of discovery for this hearing. It's unlikely to have any probative effect on the ruling on this issue.

THE COURT: Okay. So my understanding in reading topic number 8 is they just want whether there is any agreements. Right?

MS. LOHSE: We read it as broader, Your Honor.

THE COURT: All right. Mr. Thompson, are you going to be arguing this? I thought this was just, do they exist, and who knows about them, and what's the scope? That's what I -- that's the way I read this.

MR. THOMPSON: That is what we were looking for, Your Honor. But I think I can short circuit some of this, if that would be helpful.

So just by way of background, we served these topics on the 18th. On the 28th, at 10 p.m., they served their objections, which was less than 12 hours before the deposition started. They did not produce witnesses to address topics 8 or 9. At this point, I'm really not looking to multiply the depositions, and go back and make them answer a bunch of these questions. What we were really just (indiscernible) the fact that they didn't produce a witness on this topic, they won't introduce evidence about these topics at the hearing.

And so what I'm assuming we can do is, given that they wouldn't tell us about any common interest agreements with the SAFE, they won't be asserting a common interest privilege against our objections a the hearing.

Similar story for topic 9. Topic 9 has to do with their communications with third parties related to our fees. And if we're, you know, we're not able to question anyone from the Debtors about that, I hope that we won't be hearing from third parties about our fees, who received information from the Debtors, or are working on behalf of the Debtors and that kind of thing at the hearing. Unfortunately, it appears, based on the witness list filed slightly after noon today, that they do intend to call third parties, such as a witness, purported both fact and expert witness, from BDO. And then, they also want to include a purported fact and expert witness from what I understand to be an investment bank called B. Riley.

So our view of this is that if they're not willing to produce witnesses at the corporate representative level to discuss these topics, they should be precluded from introducing evidence about these topics at the hearing, and hopefully that can avoid the need for increased legal spend on things like doing 30(b)(6) depositions.

MS. LOHSE: Your Honor, if I may respond to that?

The Special Committee Counsel has been conferring with LKC for over a week now, or at least a week, on what witnesses we intend to call at the hearing on Monday, and so LKC has been informed for a while now about the Special Committees' intent. We've also been conferring on 30(b)(6)

representatives that we are willing to produce, and on what topics. And so LKC has been informed orally through the course of these conferrals on the Special Committees' intent with witnesses, so LKC was not surprised by the timing of those designations. It was simply a formality to ensure it was in writing, where we corresponded and discussed this previously.

Additionally, the rule -- the topic 9 that they've identified in their designation is essentially the same as their topic 1, but it's seeking to obtain information about communications with any third party at all. We have identified corporate representatives who are third parties to speak to topic 1 and topic 2. And so we're agreeing to it in a limited scope, and we believe that topic 9 is an unduly broad expansion of those initial two topics. So we only seek to obtain a protective order on topic 9, to the extent it goes further than what topics 1 and 2 cover. And 4.

THE COURT: Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. I apologize, I'm trying not to interrupt. I'm not very good at the virtual appearance.

With respect to my friend on the other side, I don't think that's fully accurate. I learned about this potential BDO witness yesterday, in person, during the

30(b)(6) deposition, when the witness designated to talk on topics 1 and 2, which are about our engagement letters and our success fee, was unable to answer questions about Rhodium's position on what numbers should be fed into the success fee formula. I think my question was something like, what is Rhodium's position on how much money should be allocated to energy credits for the 1% part of the success fee formula? And the answer turned out to be that the corporate representative on topics 1 and 2 was unable to answer, and that they did not have anyone to testify about that. There was no one designated to explain Rhodium's position on the success fees.

That's when my friend on the other side told me that they had been considering, and would now find someone from BDO to testify about that. So I don't think yesterday afternoon was the appropriate time for that.

THE COURT: Well, to the extent that they had --

MS. LOHSE: Your Honor, if I may?

THE COURT: Yeah, go ahead.

MS. LOHSE: Conferrals on Rule 30(b)(6)s are intended to be iterative and cooperative. And for instance, topic 2 seeks communication, discussions, negotiations, and analyses concerning the LKC success fee. One could interpret that as negotiations around the success fee, and one could also interpret that as evaluation and mathematical

formula around the success fee.

And so through the course of events in this very short, less than two-week timeframe in which we've been engaging in these 30(b)(6)s, we found that LKC wanted to cover a topic that was broader than we anticipated based on conferrals to date. It had been unclear before. And so now that the clarity has arisen, we're responding to that in turn to ensure that they get the discovery they need on the topic, and we're offering up a witness, and we're willing to provide it. This is part of the iterative process, and it's just a little bit faster under the timeframe.

THE COURT: Well, I will tell you that if your 30(b)(6) witness was unable to testify on that topic, I don't know how you're going to defend their, you know, their witness on that topic. And to the extent that now you're designating -- Are you designating one of these individuals now as a 30(b)(6)?

MS. LOHSE: Yes, Your Honor. We sent a letter to LKC about this prior to this hearing. We had five, four or five individuals represent -- designated for various topics, because these are broad and varying topics on their 30(b)(6) designations. And so now that we know a specific part of one topic they want to cover, we plan to provide a witness to speak to that. It's simply a damage and calculation, while they were questioning a witness who was prepared to

speak more from the perspective of contract negotiation.

THE COURT: All right. Well, to the extent that that person is not the --

Go ahead, Mr. Thompson.

MR. THOMPSON: I don't mean to nitpick, Your Honor. But the purported new designations we got on the 30(b)(6), if I'm looking at the right email, are from 3:15 p.m. today, less than an hour before this hearing was supposed to start, and well after the witness and exhibit deadline.

MS. LOHSE: Your Honor, it was something that was discussed yesterday. Mr. Thompson did know it was going to be a BDO representative who we designated, added to this designation. And under the timeframe of discovery in this matter, it seems that allowing time for the merits, rather than strict enforcement of procedure, is probably allowing for further discovery when we're offering it. Telling LKC we can have a witness prepared on this topic promptly seems like thee -- seems like a reasonable route to take here.

THE COURT: All right. Well, I'm not -- So if you can present them for deposition before the start of the hearing on Tuesday, and giving, you know, LKC sufficient time to take the deposition, I'll let that happen. And then we'll go forward, and then at the hearing we'll determine whether that person can testify or not. But I'm going to go

ahead and allow you to take the deposition of that person. And I guess he's going to produce an expert report that -- that, and you provide all of the information regarding the expert report, what he was given, etc.

So let's go -- Going back to the motion for protection --

MS. LOHSE: Your Honor, back to the motion for protection. On topic 9, we are willing to produce witnesses, and have, on the topics to the extent they pertain to communications between Debtors and LKC. But any third party is incredibly broad and unnecessary. And so to the extent third parties are relevant, they fall within the scope of what we have already provided. This is simply preventing overreach.

THE COURT: Well -- well, any other third party may be too broad, but I'm going to -- I'm going to not grant it with respect to -- I think topic 8 is not an issue at this point. It doesn't add up here that there is any witness from the SAFE AG that's going to be testifying at the hearing. Is that correct?

MS. LOHSE: Correct, Your Honor.

THE COURT: Okay. So I think topic 8 is not an issue. With respect to topic 9, any party is too broad. But I am going to -- I am going to make you produce it with respect to the parties, you know, the parties who have been

active in the case, the SAFE AG, the other objectors, the Committee, those parties, yes. But not any other party, but parties who have been active in the case.

And I think that's probably, Mr. Thompson, what you really meant here, not anybody off the street.

MR. THOMPSON: Right. We don't anticipate that they've been speaking to random people off the street.

THE COURT: Right.

MR. THOMPSON: Really, we're just trying to get at whoever you've been talking to about our success fee, whoever's helping you calculate it, or anything like that. That's what we want to know.

THE COURT: Right. Yeah. And obviously, to the extent that, you know, you talk to other people about the success fee in a material fashion, then I think those would need to be produced. And then, you can have them do that.

MS. LOHSE: Understood.

THE COURT: All right. Any other issues?

MS. LOHSE: Your Honor, we did want to make an oral request today for a witness to appear remotely to testify. Our witness from B. Riley will only have limited testimony, and he lives in Virginia. And so we would like to request the ability for him to testify remotely, rather than fly in in person.

THE COURT: All right. What is he testifying on?

MS. LOHSE: A valuation of the company as it pertains to the success fee.

MR. THOMPSON: Your Honor, they have not provided an expert report in connection with this. They didn't identify him as an expert, they did put expert next to his name on the witness and exhibit list, which they filed a little bit after the deadline today. They've offered him up for a one-hour remote deposition on Sunday. We're preparing for a hearing on Monday. This is too little, too late.

THE COURT: Yep.

MR. THOMPSON: And the idea that he would get up and testify on valuation when it is a fundamental issue that they should have brought up during the period that we were taking discovery -- We've taken, like, four, or -- I think, four different depositions. I mean, this is something that they are springing -- They are attempting to do trial by ambush, and I don't think that that should be permitted, Your Honor.

THE COURT: Yeah, unless you can produce his report, and make him available for deposition tomorrow, I think this is a situation where it's too late, you know? So if you can produce his report and make him available for deposition tomorrow afternoon, so that they have an opportunity to study and maybe get their own person to look at it -- You know, this is not intended to be a trial by

ambush.

MS. LOHSE: Your Honor, we did produce his report as part of our exhibit. It's listed in our exhibit list, and we did supplement our documents earlier today with that report.

MR. THOMPSON: After the deadline. It doesn't meet the requirements of Rule 26. I don't think that they've met the requirements, Your Honor. And frankly, it was never -- Nobody ever said ahead of today's deadline that B. Riley was going to be an expert, testifying in an expert capacity. They are the hired investment banker. They mentioned the possibility of B. Riley testifying, that, you know, they might be a fact witness about something. But telling us that they can testify for one hour remotely on Sunday before a hearing that's on Monday, that's just --

THE COURT: Yeah, that's not acceptable. So make him available for a deposition tomorrow, if that's the case. And if the expert report is there already, then it's there. So make him available for a deposition tomorrow, if you want to.

MS. LOHSE: Okay. Thank you, Your Honor.

THE COURT: All right. Anything further?

All right. Okay. So we'll be in recess until tomorrow morning.

MR. THOMPSON: Thank you, Your Honor.

MS. LOHSE: Oh, Your Honor -- I'm sorry, just one more thing.

THE COURT: Yes. Yes.

MS. LOHSE: We believe that the testimony for this hearing is likely to last of full day, and right now, the hearing is set to begin on Monday, at 2 p.m. And so for scheduling purposes, we wanted to raise this issue with you in advance, so we could schedule accordingly.

THE COURT: Well, my other hearing doesn't start until 9:00 the next morning, so we can go as late as you want.

MS. LOHSE: Okay.

MR. THOMPSON: Your Honor, I think our case in chief is going to be an hour. We're going to focus on what's relevant. I'm not sure what they're planning on doing on Monday, but I think we're probably going to be an hour.

THE COURT: Yeah, no, so just -- I mean, I was intending on going as late as need be.

MS. LOHSE: Understood. Thank you.

THE COURT: And you know, I would have some time the next day. I would have to squeeze it in, but I would probably have a couple of hours the next day.

And you know, I'm really focused on, you know, what does the contract say, and evidence regarding that.

All right. Okay. So we'll be in recess until tomorrow morning. Thank you.

MR. THOMPSON: Thank you, Your Honor.

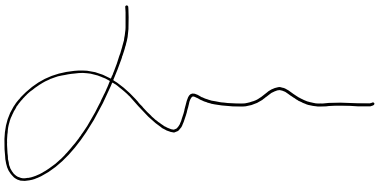
MS. LOHSE: Thank you, Your Honor.

MR. WOLFSHOHL: Thank you, Your Honor.

(Proceedings adjourned.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Lindsay Peacock

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 31, 2025

EXHIBIT 5

ECF NO. 2374 – FILED UNDER SEAL

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)
	§	

LEHOTSKY KELLER COHN LLP'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE AND BARNES & THORNBURG LLP
[Relates to ECF Nos. 2302, 2303, 2337, 2338, 2373, and 2374]

Lehotsky Keller Cohn LLP ("***LKC***") files this supplement brief in support of its *Motion for Sanctions Against the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors and its Counsel Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses Under Section 328* [ECF Nos. 2302, 2303] ("***Sanctions Motion***") and respectfully states as follows:

1. At the status conference on the Sanctions Motion, the Special Committee argued that its "response to the sanctions motion[] raised threshold legal issues[:] Specifically, whether or not the sanctions notion is barred by the *ASARCO* ruling and the *ASARCO* opinion in the Supreme Court. Hearing Tr., Apr. 30, 2026, at 10:4-9 (citing *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015)). The Special Committee proposed "an oral argument on the *ASARCO* issue." *Id.* at

[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.

10:17-18. The Court obliged, setting a non-evidentiary hearing and permitting "any additional pleadings that [the parties] want [the Court] to consider." *Id.* at 13:20-14:3. LKC submits this supplement brief addressing the purported "threshold legal issues." *Id.* at 10:4-9.

2. The Special Committee's contention that *ASARCO* bars the Sanctions Motion is both new and contradicted by precedent. Previously, in its response brief, the Special Committee asserted only that *ASARCO* affects LKC's alternative argument for fees under Section 328, not that *ASARCO* affects sanctions. *See* ECF No. 2338 at 29 ("*ASARCO* bars LKC's attempt to collect attorneys' fees and expenses . . . *under 11 U.S.C. § 328*." (emphasis added). The brief did not argue that the "sanctions [m]otion is barred by the *ASARCO* ruling." Hearing Tr., Apr. 30, 2026, at 10:7-9. To the contrary, the brief expressly acknowledged that this Court has "inherent authority" and "discretion" to impose sanctions, ECF No. 2338 at ¶¶ 35-38, and simply took issue with whether the Special Committee acted in bad faith, *id.* ¶ 46, a plainly factual question.

3. Likewise, the response brief filed by Barnes & Thornburg LLP did not argue that *ASARCO* affects the availability of sanctions. Citing the opinion in only one paragraph, Barnes & Thornburg argued only that "LKC seeks sanctions instead" of "accept[ing] the rule from *ASARCO*," "the rule that costs incurred defending a fee application are not recoverable under 11 U.S.C. § 330(a)(1)." ECF No. 2337 at ¶ 3. That is irrelevant because LKC's Sanctions Motion does not rely on Section 330. As Barnes & Thornburg recognized, the Sanctions Motion turns on "bad faith or abuse of the judicial process," *id.*, which require an assessment of the "evidence," *id.* at ¶¶ 5, 22, 26, 56, 72 (which Barnes & Thornburg then disregards, *see infra* ¶ 9).

4. Regardless, *ASARCO* does not bar a sanctions motion. *ASARCO* itself notes that its interpretation of Section 330 does not foreclose sanctions for "frivolous objections to fee applications" and "bad-faith litigation conduct." 576 U.S. at 134 n.4.

5. Accordingly, as Judge Rodriguez explained: "This Court does not read the holding in *Baker Botts* [*v. ASARCO*] as precluding this Court's ability to award attorneys' fees, including fees incurred defending a fee application, as a sanction for bad faith conduct under § 105(a). This Court, as well as the Fifth Circuit, has upheld a bankruptcy court's authority to award attorney's fees as a sanction under § 105(a) since the *Baker Botts* decision." *In re Trevino*, 648 B.R. 847, 905 (Bankr. SD Tex 2023). *ASARCO*'s "analysis focused on the express language of § 330(a)(1)," and "the Supreme Court's rationale in limiting fee awards under § 330(a)(1) is highly dependent on the specific limiting language 'services rendered' that appears in the statute." *Id.* (citation and internal quotation marks omitted).

6. Moreover, the Supreme Court has made clear that "a court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. Nasco*, 501 U.S. 32, 45-46 (1991) (citation and internal quotation marks omitted). Bad faith is an exception to the "so-called 'American Rule' prohibit[ing] fee shifting in most cases." *Id.* at 45. Courts "may assess attorney's fees" when "a party 'shows bad faith by delaying or disrupting the litigation.'" *Id.* at 46 (quoting *Hutto v. Finney*, 437 U.S. 678, 689, n.14 (1978)). Contrary to the Special Committee and Barnes & Thornburg's position on *ASARCO*:

> The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy."

Id. (quoting *Hutto*, 437 U.S. at 689, n.14) (brackets in original).

7. The Fifth Circuit has similarly recognized that "the bankruptcy court has numerous tools by which to sanction the conduct of individuals," including "'inherent powers'" and statutory authorities, such as the All Writs Act, 28 U.S.C. § 1651, and 11 U.S.C. § 105. *In re Carroll*, 850

F.3d 811, 816 (5th Cir. 2017) (quoting Scaife v. Associated Air Ctr. Inc., 100 F.3d 406, 411 (5th Cir. 1996)). In *Carroll*, the Fifth Circuit affirmed a bankruptcy court's order requiring payment of attorneys' fees incurred in "responding to certain instances of . . . bad faith [and] . . . vexatious conduct," after concluding that the bankruptcy court's findings were not clearly erroneous. *Id.*; *see also Ratliff v. Stewart*, 508 F.3d 225, 235 (5th Cir. 2007) (holding that once the vexatiousness requirement is met, "*all fees thereafter bec[o]me recoverable*") (emphasis added); *In re Rodriguez*, 652 B.R. 750, 764 (Bankr. S.D. Tex. 2023) (noting sanctions "include actual damages incurred and reasonable attorney's fees" and courts "may exercise discretion and judgment in allocating litigation expenses, and may take into account its overall sense of a suit") (citation and internal quotation marks omitted).

8. The Special Committee's newest position lacks support and, if adopted, would invite widespread abuse. Under the Special Committee's view, it could engage in bad faith behavior in fee disputes with impunity, rendering the Court powerless to impose sanctions.

9. There is no need to envision a worst-case scenario. The facts of this case tell a grim tale—with the Special Committee and Barnes & Thornburg repeatedly and maliciously defaming LKC, peddling a fiction to the Court about a purported "agreed-upon" tax allocation that did not exist and that Debtors later admitted was "not connected to LKC at all," threatening a frivolous fiduciary-duty claim, actually filing that claim and doing it publicly for maximum damage, requesting sanctions for LKC's discovery requests, failing to appear for a deposition, failing to produce documents specifically ordered by this Court, engaging in expert ambush, and refusing to pay the fees ordered by this Court until LKC moved for contempt. *See* ECF No. 2374 at 3-4 (citations omitted). Under the Special Committee's view, this Court is powerless to stop any of that, including the fraudulent tax canard, *see also id.* ¶¶ 12-17.

10. Nor is the Special Committee's more limited argument meritorious. As LKC previously explained, *ASARCO*'s interpretation of Section 330 does not apply to Section 328. *See* ECF No. 2302 at 22 n.4; ECF No. 2373 at ¶ 47. The Court's textual analysis of the phrase "actual, necessary services rendered" in Section 330, *see ASARCO*, 576 U.S. at 128 (citation and quotation marks omitted), does not control the application of a different provision lacking that phrase.

11. LKC respectfully requests that this Court grant the Sanctions Motion.

Dated: May 28, 2026
Houston, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 28, 2026, 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, et al.,	§	Case No. 24-90448 (ARP)
	§	
Debtors.[1]	§	(Jointly Administered)

DAVID EATON AND SPENCER WELLS'S RESPONSE TO LEHOTSKY KELLER COHN LLP'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SANCTIONS AGAINST THE SPECIAL COMMITTEE AND BARNES & THORNBURG LLP

David Eaton and Spencer Wells, in their capacities as former members of the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the "Special Committee"), one of the debtors in the above-captioned chapter 11 cases (collectively, the "Debtors" or "Rhodium"), file this response to the Supplemental Brief in Support of Its Motion for Sanctions [ECF No. 2389] (the "Sanctions Motion") filed by Lehotsky Keller Cohn LLP ("LKC").

I. INTRODUCTION

1. The Court set a non-evidentiary hearing for June 4, 2026 to resolve threshold legal questions, including whether *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015), bars the relief requested in LKC's Sanctions Motion. LKC's Supplemental Brief largely avoids that question, devoting most of its five pages to reciting factual allegations and arguing that the Special Committee's *ASARCO* defense is somehow "new." Supplemental Brief ¶¶ 2–3, 6, 8–9. The Court should not be distracted by these diversions. LKC's Sanctions Motion seeks more than $1.5

[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.

million in fees and expenses that LKC incurred in defending its own Fee Application. Whether that relief is labeled "sanctions" or "additional compensation under Section 328," it remains fee-shifting for the cost of fee-defense litigation—precisely what *ASARCO* prohibits. The Sanctions Motion is barred as a matter of law, and the Court need not consider the underlying facts (which have already been developed and fully presented in connection with LKC's motion) to resolve this threshold legal issue.

2. LKC's Supplemental Brief fails to support the relief sought in the Sanctions Motion for three independent reasons. ***First***, LKC's contention that the Special Committee's *ASARCO* arguments are "new" is belied by the record: The Special Committee raised *ASARCO* squarely in its Response [ECF No. 2338] (the "Response"). ***Second***, *ASARCO* bars the specific relief LKC seeks—fee-shifting outside the fee application process—through an after-the-fact motion that is functionally indistinguishable from the fee-defense recovery the Supreme Court held impermissible. ***Third***, LKC's alternative Section 328 argument fails because that provision governs compensation arrangements for estate professionals; it does not authorize fee-shifting sanctions against estate fiduciaries and their counsel.

II. ARGUMENT

A. LKC's characterization of the Special Committee's *ASARCO* arguments as "new" is meritless.

3. LKC asserts that the Special Committee's *ASARCO* argument is "new." Supplemental Brief ¶ 2. This is wrong. In its Response, the Special Committee dedicated Section III(C), spanning pages 29 to 31, to arguing that "*ASARCO* bars LKC's attempt to collect attorneys' fees and expenses for defending its Fee Application under 11 U.S.C. § 328." ECF No. 2338 at 29–31. The Response explained that the Supreme Court "held that counsel retained by the bankruptcy estates cannot collect fees and expenses for defending their own fee

applications," and argued that LKC's request was a "transparent attempt at circumventing" that principle, reasoning that *ASARCO*'s holding "applies equally to Section 328." ECF No. 2338 ¶¶ 85–87.

4. LKC selectively quotes a single sentence from the Response to suggest the Special Committee limited *ASARCO* to Section 328. This is nitpicking, not legal argument. The Response addressed the Sanctions Motion in its entirety; the common denominator across all of LKC's theories is fee-shifting for the cost of defending a fee application, and the Special Committee's invocation of *ASARCO* was directed at that common denominator.

5. LKC further claims that the Special Committee "expressly acknowledged" inherent authority and merely "took issue with whether the Special Committee acted in bad faith." Supplemental Brief ¶ 2. But acknowledging that a court possesses inherent authority in the abstract does not concede that such authority may be deployed to accomplish what *ASARCO* expressly forbids. The Special Committee raised both legal defenses (including *ASARCO*) and merits defenses (including good faith), and they are not mutually exclusive. LKC's effort to recast the Special Committee's *ASARCO* argument as "new" is designed to divert the Court from the threshold legal question it set the June 4 hearing to resolve.

B. *ASARCO* bars LKC's after-the-fact sanctions motion because it seeks the same prohibited relief.

6. Contrary to LKC's accusations, the Special Committee does not argue that *ASARCO* categorically bars *all discrete sanctions motions* in bankruptcy cases; the Court unquestionably retains its inherent authority to sanction egregious, bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991). Rather, the Special Committee's argument is narrower and more targeted: *ASARCO* bars *this particular* Sanctions Motion because its sole

purpose and effect is to shift fee-defense costs incurred by an estate-retained professional onto estate fiduciaries who exercised their statutory right to object under Section 330(a)(2).

7. In *ASARCO*, the Supreme Court held that Section 330(a)(1) "does not permit bankruptcy courts to award compensation" for fee-defense litigation because it "does not explicitly override the American Rule with respect to fee-defense litigation." 576 U.S. at 135. The Court grounded its holding in the "bedrock principle known as the American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Id.* at 126 (quoting *Hardt v. Reliance Std. Life Ins. Co.*, 560 U.S. 242, 252–53 (2010)).

8. LKC's Supplemental Brief seizes on *ASARCO*'s footnote 4, which observed that the Court's interpretation of Section 330 "does not foreclose sanctions for 'frivolous objections to fee applications' and 'bad-faith litigation conduct.'" Supplemental Brief ¶ 4; *ASARCO*, 576 U.S. at 134 n.4. But this footnote does not create an open-ended authorization for estate-retained professionals to recover all their fee-defense costs simply by invoking the word "sanctions." It acknowledges that courts retain inherent power to police genuinely bad-faith conduct through narrowly tailored sanctions; it does not enable estate-retained professionals to recover the precise relief that *ASARCO* bars by bringing a sanctions motion after prevailing on a fee application. If LKC's reading were correct, *ASARCO* would be meaningless: Any prevailing applicant could repackage a request for its fee-defense costs as a sanctions motion by alleging "bad faith," and the American Rule would apply only to professionals who lose their fee disputes. That result would be both absurd and contrary to the Supreme Court's express holding.

9. Post-*ASARCO* authority supports rejecting creative attempts to work around ASARCO's prohibition. For example, in *In re Boomerang Tube, Inc.*, 548 B.R. 69 (Bankr. D. Del. 2016), the court sustained the United States Trustee's objection to fee-defense provisions in

professionals' retention applications, holding that Section 328(a), "like section 330, is not a 'specific and explicit' statute which 'authorize[s] the award of a reasonable attorney's fee,' 'fees,' or 'litigation costs.'" *Id.* at 72. LKC's use of an after-the-fact sanctions motion rather than a contractual fee-defense provision does not change the analysis.

10. LKC's reliance on *In re Trevino*, 648 B.R. 847, 905 (Bankr. S.D. Tex. 2023), does not alter this conclusion. *Trevino* addressed sanctions for bad-faith conduct under Section 105(a) in a factual context distinct from this case. The Special Committee does not argue that *ASARCO* eliminates the Court's inherent power to sanction bad-faith in all contexts—only that where, as here, the movant is an estate professional seeking to recover fees incurred in its own compensation dispute, the Court must scrutinize whether the "sanctions" label is being used to circumvent what the Supreme Court has prohibited.

11. The policy consequences of adopting LKC's position underscore the correctness of the Special Committee's argument. If estate fiduciaries face personal fee-shifting liability every time they exercise their statutory right to scrutinize fee applications under Section 330(a)(2), independent directors, committee members, and other stakeholders will be deterred from raising even legitimate objections (or even serving in a fiduciary capacity)—undermining the fee-review process that Congress established. The Special Committee's objection was filed in accordance with LKC's own Court-approved engagement letter, which expressly provided that fee disputes "shall be resolved by the Bankruptcy Court." ECF No. 835 at 15. That LKC now does not like what it agreed to is irrelevant.

C. LKC's Section 328 argument fails because Section 328 does not authorize fee-shifting against estate fiduciaries.

12. LKC's Supplemental Brief reasserts its alternative argument that the Court should award LKC additional compensation under Section 328(a), contending that *ASARCO*'s "textual

analysis of the phrase 'actual, necessary services rendered' in Section 330" does not "control the application of a different provision lacking that phrase." Supplemental Brief ¶ 10. This argument fails for multiple independent reasons.

13. ***First***, Section 328(a) does not provide the fee-shifting authority LKC seeks. Section 328(a) permits employment of professionals "on any reasonable terms and conditions," and allows post-engagement compensation adjustments only if the original terms "prove to have been improvident in light of developments not capable of being anticipated." 11 U.S.C. § 328(a). The statute says nothing about fee-shifting, prevailing parties, or adversarial litigation. As the *Boomerang Tube* court explained, Section 328's "text does not refer to the award of defense fees to a prevailing party," and, like Section 330, it is not a "specific and explicit" exception to the American Rule. 548 B.R. at 72.

14. ***Second***, the fees LKC seeks are not for services rendered to the Debtors. Section 328(a) "permits only approval of fees or expenses for performing services for the" trustee or committee. *Boomerang Tube*, 548 B.R. at 78. Because the fees LKC seeks were incurred in defending its own Fee Application—*i.e.*, "for services performed for the professionals, not for the [applicable] Committee"—Section 328(a) does not authorize the recovery LKC seeks. *Id.* at 75 (concluding fee-defense provisions were "not reasonable terms for the employment of Committee Counsel because they [did] not involve any services for the Committee" but rather were "for services performed by Committee Counsel only for their own interests"); *see also In re Capitol Litho Printing Corp.*, 573 B.R. 771, 776 (Bankr. D. Ariz. 2017) (denying fee-defense costs because such work "in no way benefitted the estate, but benefitted only the [professional]").

15. ***Third***, even assuming Section 328(a) could authorize a post-engagement compensation adjustment in this context, nothing in the statute contemplates or provides for estate

fiduciaries or their counsel to bear such a compensation obligation. By its plain terms, Section 328(a) authorizes "[t]he trustee, or a committee appointed under section 1102 of this title," to "employ or authorize the employment of a professional person under section 327 or 1103 . . . on any reasonable terms and conditions of employment." 11 U.S.C. § 328(a). The statute does not speak to, much less impose any obligation upon, third-party estate fiduciaries such as the Special Committee members, or their separately retained counsel such as Barnes & Thornburg. LKC's Sanctions Motion seeks to conscript the Special Committee and Barnes & Thornburg into paying LKC's fee-defense costs, but Section 328 provides no mechanism for imposing compensation obligations on them; to do so would be contrary to the statute's plain meaning and structure, and would effectively transform a compensation-adjustment provision into a sanctions mechanism—something Congress plainly did not intend.

16. ***Fourth***, LKC cannot satisfy Section 328(a)'s demanding "improvidence" standard. The Fifth Circuit has recognized that Section 328(a) "creates a 'high hurdle'" requiring the movant to prove "that the subsequent developments were incapable of being anticipated at the time the engagement was approved." *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012). Here, LKC's own revised engagement letter expressly contemplated that the parties might be unable to agree on the success fee and provided that "such dispute shall be resolved by the Bankruptcy Court." ECF No. 835 at 15. A fee dispute was not merely foreseeable—it was expressly anticipated as a possibility and contractually addressed. LKC cannot claim that the very fee dispute mechanism it bargained for was "incapable of being anticipated."

17. LKC's Supplemental Brief attempts to distinguish *Boomerang Tube* by asserting that it addressed pre-approved fee-defense provisions rather than after-the-fact compensation adjustments. Supplemental Brief ¶ 10 (citing ECF No. 2374 ¶ 47). That is a distinction without a

difference. Whether fee-defense costs are sought through a pre-approved provision or through an after-the-fact motion, the result is the same: The estate bears the cost of a professional's fee-defense litigation. Indeed, an after-the-fact attempt is more objectionable because it denies the estate and the Court the opportunity to evaluate and consent to such terms at the outset of the engagement.

III. CONCLUSION

18. The threshold legal issue before the Court is straightforward. LKC's Sanctions Motion seeks fee-shifting for the cost of defending its own Fee Application. That is the very relief *ASARCO* held impermissible, and LKC cannot circumvent the American Rule by relabeling that relief as "sanctions" or a "Section 328 adjustment." LKC's arguments in its Supplemental Brief to the contrary are meritless.

19. For the foregoing reasons, the Special Committee respectfully requests that the Court find that LKC's Sanctions Motion is barred by *ASARCO* and deny the Sanctions Motion in its entirety.

[Remainder Intentionally Left Blank]

Dated: May 29, 2026

Respectfully Submitted,

BAKER BOTTS L.L.P.

/s/ Travis A. McRoberts

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 29, 2026, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ Travis A. McRoberts
Travis A. McRoberts