UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC.,	Case No.: 23-10322 (JPM)
Debtor.[1]	

REED SMITH LLP'S OBJECTION TO REORGANIZED ELETSON HOLDINGS INC.'S MOTION FOR ENTRY OF AN ORDER COMPELLING REED SMITH TO IMPLEMENT THE PLAN AND IMPOSING SANCTIONS

[1] The Court has ordered the following footnote to be included in this caption: "Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. On [March 5, 2025], the Court entered a final decree and order closing the chapter 11 cases of Eletson Finance (US) LLC and Agathonissos Finance LLC. Commencing on [March 5, 2025], all motions, notices, and other pleadings relating to any of the Debtors shall be filed in the chapter 11 case of Eletson Holdings Inc. The Debtor's mailing address is c/o Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119" (Dkt. 1515 ¶ 7).

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PRELIMINARY STATEMENT

1. Yet again, Reorganized Eletson Holdings, Inc. ("Reorganized Holdings") seeks to burden this Court with a baseless, motion against Reed Smith LLP ("Reed Smith"), making unsubstantiated and inaccurate claims about Reed Smith's representation of clients, motives, and purported involvement in other proceedings. Reorganized Holdings also makes gross misstatements to this Court regarding Holdings' relationship to non-debtors Eletson Gas LLC ("Gas") and EMC Gas Corp. ("GasCo," and, collectively with Gas, the "Gas Entities") and their relationship to these proceedings in turn.

2. Importantly, the issues implicated by the motion are those currently being considered by the Second Circuit in two appeals being heard in tandem: (1) Provisional Eletson Holdings' Inc.'s ("Provisional Holdings") appeal of the December 30, 2024 judgment entering and granting Reorganized Holding's *Stipulation And Agreement To Dismiss Appeal Under Rule 8023 Of The Federal Rules Of Bankruptcy Procedure* (*In re Eletson Holdings Inc.,* Case No., 1:24-cv-08672, ("DC Plan Appeal"), Dkt. 9); and (2) Reed Smith's appeal of the District Court's February 14, 2025 Order displacing Reed Smith as counsel of record in the Arbitration Confirmation proceeding and ordering the turnover of Reed Smith's Eletson client file (*Eletson Holdings Inc. et al. v. Levona Holdings Ltd.*, Case No. 1:23-cv-07331 ("Arbitration Confirmation"), Dkt. 269).

3. These issues include the questions Your Honor raised during the hearing on April 30, 2025: (1) whether the Greek order appointing a provisional board undermines implementation of the Plan (it does not) (*see In re Eletson Holdings Inc.,* Case No. 25-176 (2d. Cir.) ("Dismissal Appeal"), Dkt. 30.1 at 18-25); and (2) whether full consummation of the bankruptcy plan requires recognition in Greece (it does) (*see Eletson Holdings Inc. et al. v.*

Levona Holdings Ltd., Case No. 25-445 (2d. Cir.) ("Turnover Appeal"), Dkt. 20.1 at 13-15) (together, with the Dismissal Appeal, the "Second Circuit Appeals").

4. The falsehoods set forth by Reorganized Holdings form the basis of a two-fold attack: (1) punish lawyers improperly in order to deprive parties of their chosen counsel (*see Martinez v. Ryan*, 566 U.S. 1, 12 (2012) ("[T]he right to counsel is the foundation for our adversary system,"); *F. D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974) ("[O]ne should not be penalized for merely defending or prosecuting a lawsuit."); and (2) misuse of the bankruptcy court to secure control of Gas in contravention of either the District Court's order confirming the Final Award or Judge Belen's status quo injunction (*see infra* Factual Background A.2).

5. Even more galling is the whiplash from Reorganized Holdings' about-face in position. Just weeks after it wasted this Court's resources in opposing *The Motion Of Reed Smith LLP To Withdraw Its Limited Representation Of Provisional Holdings [Dkt. 1543]* (Dkt. 1566) ("Reorg Withdrawal Objection"), Reorganized Holdings now wants the Court to rule that Reed Smith should be disqualified, but only if Provisional Holdings finds new counsel. Tellingly, Reorganized Holdings never explains why new counsel would not be subject to the very same attacks for failing to "assist in effectuating, implementing, and consummating the terms" of the Chapter 11 Plan ("Plan") (Dkt. 1132, Ex.1) and Confirmation Order ("Confirmation Order") (Dkt. 1223), and Consummation Order ("Consummation Order") (Dkt. 1402), when it continues to represent Provisional Holdings in its appeals. Indeed, *any counsel* that has represented a party opposing Reorganized Holdings in these or other proceedings has found itself staring down the barrel of a sanctions motion (*see* Dkts. 1268 (seeking sanctions against Reed Smith); 1310, Ex. 1 (email from Adam Spears threatening Liberian Counsel); 1416 (seeking sanctions against Reed

Smith, Daniolos Law Firm, and Sidley Austin); 1459 (seeking sanctions against Reed Smith, Daniolos Law Firm, and Sidley Austin)); and 1605 (seeking sanctions against De Castro & Robles and Royston, Rayzor, Vickery & Williams, L.L.P. and Jackson Walker L.L.P. for representing non-debtor entities in non-bankruptcy proceedings in the United States).

6. Finally, Reorganized Holdings wants this Court to improperly extend its authority to mandate disqualification of counsel for proceedings over which the Court has no jurisdiction, and parties over whom neither Reorganized Holdings nor this Court has authority. In doing so, Reorganized Holdings attempts to misuse the Bankruptcy Court to obtain the improper outcome that Justice Belen was concerned about when Pach Shemen initiated the involuntary proceedings: "the Levona-related entities were looking to either strip this arbitration of its jurisdiction or hedge against a potential loss in this arbitration," in order to obtain control over Gas through Holdings (Dkt. 371-3 ("Final Award") at 61). The Court cannot engage in such overreach.

FACTUAL BACKGROUND

A. Reed Smith's Representation Of The Eletson Entities

7. In its *Motion for Entry Of An Order Compelling Reed Smith To Implement The Plan And Imposing Sanctions* ("Sanctions Motion") (Dkt. 1607), Reorganized Holdings reasserts falsehoods about Reed Smith's past and present representations of the Eletson entities. And in an effort to inflate the scale of the alleged problem, Reorganized Holdings pads its Appendix 1, listing so-called "improper representations," to include (1) this bankruptcy proceeding, in which it ***has objected*** to Reed Smith's withdrawal; (2) appeals by other parties in which neither Provisional Holdings nor Reed Smith have appeared (*see* Appendix 1, Case Nos. 25-cv-1685; 25-cv-2895; 25-cv-2897 (appeals by other parties of bankruptcy orders)); (3) cases in which Reed Smith has already been relieved as counsel (*id.*, Case Nos. 23-cv-7331; 24-cv-8672 (Arbitration Confirmation Action and Plan Appeal); and (4) an appeal Reed Smith has taken on

its own behalf (*id.*, Case No. 25-445 (incorrectly listing clients as Holdings and Corp, even though Reed Smith is the only party on appeal and is representing itself)).

8. Although the facts are not new to this Court, we must correct the record and set forth the truth below.

1. *The Greek Orders Appointing and Maintaining the Provisional Board of Holdings*

9. On October 25, 2024, the Bankruptcy Court confirmed the Plan ("Confirmation Opinion") (Dkt. 1212), issuing the Confirmation Order on November 4, 2025. On November 7, 2024, prior to the effective date, Reed Smith filed on behalf of Holdings a notice of appeal from the Confirmation Order (Dkt. 1233).

10. The need for foreign recognition was explicitly reflected in the bankruptcy documents leading up to, constituting, and supporting the Plan. The Petitioning Creditors' proposed plan made specific provision for compliance with foreign law and the need for later foreign recognition proceedings (Plan § 5.2(b) (acknowledging satisfaction of "the applicable requirements of applicable law" was required to implement the Plan"); § 5.4 ("all . . . stock (where permitted by applicable law) . . . shall be cancelled.") ; §§ V.5.1, V.5.9, IX.9.1, XI.11.2, XI.11.3 (similar)). Their Disclosure Statement, which is binding, likewise provided that the Petitioning Creditors would "make every effort to ensure that any Confirmation Order entered by the Bankruptcy Court and the steps taken pursuant to the Confirmation Order to implement the Plan are recognized and are effective in all applicable jurisdictions," and acknowledged the risk that "a foreign court may refuse to recognize the effect of the Confirmation Order" (Dkt. 847 § VIII.A.3; *see also* Dismissal Appeal, Dkt. 30.1 at 5-6 (listing promises made by the Petitioning Creditors that foreign law would be complied with and recognition sought)). Notwithstanding these promises, Petitioning Creditors decided to rush forward without securing the necessary

recognition in the relevant jurisdictions and declared the Plan effective on November 19, 2024 (Dkt. 1258).

11. Holdings' principal place of business and center of main interests are in Greece, and thus it is, and has always been, under the jurisdiction of Greek law (Dkt. 1407, Ex. B ¶ 8). On November 11, 2024, in response to the resignation of four of Holdings' board members, leaving it without a quorum, the minority shareholders of Holdings applied to the Court of First Instance in Piraeus, Greece to appoint provisional management for the company (*id.* ¶ 20; Dkt. 1300, Ex. 9). On November 12, 2024, the Greek court appointed a provisional board of eight members for Provisional Holdings with a mandate to take care of the urgent business of the company (the "Greek Order") (Dkt. 1290, Ex. A at 34-36, 49-50). Significantly, it granted the provisional board authority to appoint lawyers to protect the company's interests, including by appealing the Bankruptcy Court's Confirmation Order (*id.*) (holding that the provisional board is appointed, *inter alia*, "in order to take care of all the urgent matters of the said company and in particular to take care of its legal representation (appointment of lawyers) before the Courts of New York for its pending cases, temporarily until the hearing of the application at the scheduled hearing date and under the condition that the case will be heard at the said hearing date.").

12. The Greek Order was not obtained for purposes of undermining the Plan, but ***to preserve Holdings' rights to appeal the Confirmation Decision*** (*see id.* at 36, 50) and to ensure Holdings could continue to operate while the Petitioning Creditors sought the promised judicial recognition and enforcement of the Plan and Confirmation Order in Liberia and Greece.

13. On February 5, 2025, following an adversary proceeding *initiated by Reorganized Holdings*, a three-judge panel in Athens, Greece declined to recognize the reorganization of Holdings and declined to recognize Mr. Spears as Reorganized Holdings' representative in

Greece (Dkt. 1410, Ex. A ¶¶ 10-11). Again, Provisional Holdings' participation in the adversary proceeding was not for purposes of undermining the Plan. Rather, Provisional Holdings filed a joinder, correcting Reorganized Holdings' false assertions that (1) Holdings' "true seat, and beyond that, the center of its main interests, ***is located in the State of New York***, (One Pennsylvania Plaza Suite 3335, New York, NY 10199") (Dkt. 1459, Ex. 16 at 1) (emphasis added); and (2) that "[a]s far as Greece is concerned . . . [Holdings] does not maintain its seat there . . . does not maintain personnel, infrastructure, property, and does not maintain banks accounts there (*id.*; *see also id.* at 12 ("The Center of Main Interests of [Holdings] was, ***at the time the insolvency proceedings initiated, and remains to this day, the U.S.A.***" and "alleged detection in Greece . . . is a late myth . . . [and] is in fact unfounded in reality.") (emphasis added)).

14. Provisional Holdings advised the Greek court that Holdings' Center of Main Interests ("COMI") was, and always has been, in Piraeus, Greece and, further, that the address listed by Reorganized Holdings belonged to Movant's own U.S. counsel—Togut Segal & Segal (*id.*, Ex. 18 at 2). Provisional Holdings also noted that, under Greek law, "only the foreign administrator (which cannot be considered to be the bankruptcy or reorganized company itself) may request the recognition" of the Confirmation Order, further stating that the application should be submitted by Adam Spears and not on behalf of Holdings, where the Confirmation Order has yet to be recognized (*id.* at 1). The joinder also stated that, pursuant to the UNCITRAL Model Law, as enacted in Greece in law 3858/2010, a condition for the recognition of the Confirmation Order in Greece is that insolvency proceedings must have taken place before a court of the COMI of the company, in this case Greece (*id.* at 3) ("the reorganization proceedings

followed in the USA cannot be recognized in Greece, since it is not a 'foreign main procedure' as it was not conducted in a State where the debtor has the center of his main interests.").

15. Just recently, in another adversary proceeding on April 1, 2025, the court in Piraeus, Greece issued an order extending its previous order appointing Holdings' provisional board pending further order of that court (Dkt. 1590, Ex. A ¶¶ 6-7). In that same proceeding, on April 4, 2025, Elafonissos Shipping Corporation and Keros Shipping Corporation ("Elafonissos" and "Keros," respectively) filed an "Addendum in Rebuttal" which addressed a number of issues raised during the April 1 hearing, including the improper re-domiciliation of Holdings to the Republic of the Marshall Islands and Movant's false assertions that Holdings' COMI is in New York, New York (*see* Dkt. 1603, Ex. 9 at 2-6). Elafonissos and Keros specifically stated that:

> [T]he foreign insolvency proceedings resulting in No. 1212/25.10.2024 judgment of the Bankruptcy Court for the Southern District of New York was conducted before a court of a state in which Eletson Holdings Inc does NOT have its center of main interests (as required by Law 3858/2010), ***we do not necessarily challenge the jurisdiction of the bankruptcy court for the Southern District of New York and we are not in conflict with the stated non-challenge of that jurisdiction during the bankruptcy proceedings***

(*id.* at 13) (emphasis added).

2. *Reed Smith's Limited Representation of Provisional Holdings*

16. Pursuant to the authority granted to the provisional board by the Greek Order, Provisional Holdings retained Reed Smith for limited purposes, including to represent Provisional Holdings in its appeals (*see* Dkts. 1407; 1465; 1544).

17. Despite having held that, as of November 19, 2024, Reed Smith was no longer counsel for any Debtor (*see* Dkt. 1405, 1/24/2025 Hr'g Tr. 23:17-25), this Court has not held that Reed Smith's representations of Provisional Holdings in its appeals violated the Plan or Confirmation Order.

18. On February 4, 2025, Reed Smith submitted a letter to the Court confirming the limited nature of its representation of Provisional Holdings (Dkt. 1407). In the February 4, 2025 letter, Reed Smith identified its scope of representation was limited to: (i) responding to all motions and applications in which Reed Smith itself has been named as a party; (ii) any appeal from this Court's January 29, 2025 Order (Dkt. 1402); (iii) the appeal to the Second Circuit from Judge Liman's dismissal of Provisional Holdings' appeal from the Bankruptcy Court; and (iv) briefing and argument regarding Goulston & Storrs PC's *Motion to Compel Reed Smith LLP To Produce The Eletson Client File* in the District Court (Dkt. 1407).

19. On February 21, 2025, Reed Smith submitted a second letter to the Court again confirming the limited retention of Reed Smith for Provisional Holdings (Dkt. 1465). In the letter, Reed Smith explained that its role in these Chapter 11 Cases (and related appeals) was limited to the following: (i) responding on behalf of Reed Smith to all motions and applications in which Reed Smith itself has been named as a party, including the turnover application in the District Court; (ii) any appeal from this Court's January 29, 2025 Order (Dkt. 1402), and (iii) the pending appeal to the Second Circuit from Judge Liman's dismissal of Provisional Eletson Holdings' appeal from the Bankruptcy Court (*see* Dismissal Appeal) (*see* Dkt. 1465). All of Reed Smith's actions have been consistent with its limited mandate.

20. Reorganized Holdings rehashes bad-faith arguments that Reed Smith has been advocating for nonclients or appearing "on behalf of Provisional Holdings only when doing so serves its true clients' interests" (Sanctions Motion ¶ 18-22; *id*. p. 10 n. 9) (referencing Dkts. 1293, 1354, 1410, 1426, 1537, 1558, 1594). In doing so, Reorganized Holdings seeks to exploit the very ambiguity and inconsistency ***it has created*** in the way it has targeted its motions and

through its inconsistent positions on the status of Provisional Holdings in order to mischaracterize Reed Smith's actions.

21. Reed Smith has been entirely forthright with the Court about the issues and dilemmas it has faced resulting from these ambiguities and inconsistencies (*see* Dkt. 1564, 34:12-40:25) and its arguments throughout all of the contempt motions have been in direct response to relief sought or arguments made by Reorganized Holdings in:

a. filing contempt motions against Reed Smith (Dkts. 1268, 1416, 1459) seeking joint and several liability for conduct allegedly carried out by Provisional Holdings, then claiming it is inappropriate when Reed Smith defends itself by arguing that the conduct itself is non-sanctionable (Reorg Withdrawal Objection ¶ 4);

b. seeking to force Reed Smith to stay in these proceedings so that it can (i) continue to advance arguments against Provisional Holdings, including that it does not exist (*see* Reorg Withdrawal Objection ¶ 5 & n.5), but then claiming (ii) Reed Smith is acting inappropriately in carrying out its responsibilities in defending Provisional Holdings against those claims (Reorg Withdrawal Objection ¶¶ 12, 14);

c. arguing Reed Smith should remain in these proceedings so that it can claim it has effectively served foreign individuals who are not Reed Smith's clients (Reorg Withdrawal Objection ¶ 3), then asserting Reed Smith is secretly representing those individuals when Reed Smith corrects the record (Reorg Withdrawal Objection ¶ 4; Sanctions Motion p. 10 n. 9).

22. And now, Reorganized Holdings wants the Court to punish Reed Smith because Provisional Holdings is unable to find new counsel that will face sanctions motions the moment it appears in the case, as Reorganized Holdings has done with every other law firm representing clients opposing its positions (*see* Dkts. 1268 (sanctions motion against Reed Smith); 1310 (Adam Spears threatening Liberian Counsel); 1416 & 1459 (sanctions motions against Reed Smith, Daniolos Law Firm, and Sidley Austin); and 1605 (sanctions motion against De Castro & Robles and Royston, Rayzor, Vickery & Williams, L.L.P. and Jackson Walker L.L.P.)).

23. Finally, as previously address in Reed Smith's *Reply Memorandum Of Law In Further Support Of its Motion To Withdraw Its Limited Representation Of Provisional Holdings* ("Withdrawal Reply") (Dkt. 1572 ¶¶ 15-36), each of the filings raised in the Sanctions Motions (Sanctions Motion ¶ 18-22; *id*. p. 10 n. 9) (referencing Dkts. 1293, 1354, 1410, 1426, 1558, 1594) falls within the scope of one of Reed Smith's limited mandates:

a. Reed Smith's filings at Docket Numbers 1293, 1354, & 1410 related to issues affecting the Dismissal Appeal pending in the Second Circuit (Withdrawal Reply ¶ 36);

b. Docket Number 1426 related to Reed Smith's objections to Reorganized Holdings' attempts to hold Reed Smith jointly and severally liable for conduct by unnamed, unserved parties (*id.* ¶ 33);

c. Provisional Holdings' appeal of the "Foreign Oppositions Order [Docket No. 1537]" (Dkt. 1558) falls under Provisional Holdings' directive to Reed Smith to appeal the January 29 Order (*id.* ¶¶ 30, 36, 39).

24. With respect to the recent filing at Docket Number 1594, Reed Smith's arguments were in direct response to Levona Holdings Ltd.'s ("Levona") assertions of harm on a sanctions

motion (Dkt. 1367) in which Levona (following the Murchinson playbook) sought joint and several liability against Reed Smith. Finally, Reorganized Holdings mischaracterizes as argument (Sanctions Motion p. 10 n. 9) Reed Smith's mere statements correcting the record during the hearings on March 3 and March 25, 2025.

3. *Reed Smith's Representations of Corp and EMC Investment Corp. in the London Arbitration Proceedings*

25. Reorganized Holdings asserts that Reed Smith's continued representation of Corp and EMC Investment Corp. ("EMC Investment") are invalid by virtue of various written consents purportedly executed by Reorganized Holdings (Sanctions Motion ¶¶ 26-29). However, these consents are invalid under the orders issued by the Greek courts, who vested authority in the provisional board to manage the affairs of Holdings, including management of its subsidiaries (*see supra* Factual Background A.1).

26. Next, notwithstanding that Reorganized Holdings' use of documents from proceedings in London violates the confidentiality restrictions of those proceedings, as those documents demonstrate, the issue of Reed Smith's authority as counsel for Corp and EMC Investment is currently being evaluated by the tribunals in those proceedings (Dkt. 1608, Ex. 40).

4. *Gas and GasCo's Irrelevance to these Proceedings*

a. Gas and GasCo's Structure

27. Gas is a limited liability company formed under the laws of the Republic of the Marshall Islands. The Third Amended and Restated Limited Liability Company Agreement, dated August 16, 2019 (Dkt. 1588-1) ("LLCA"), and its April 16, 2020 Amendment (Dkt. 1588-2) ("LLCA Amendment") govern Gas's ownership structure and management. Gas's membership interests are made up of common unit holders (the "Common Shares") and preferred unit holders (the "Preferred Shares") (LLCA § 2.1). At all relevant times, Holdings has

held **only** the Common Shares of Gas. Thus, Gas is not and has never been a Holdings "subsidiary" and is not part of the Debtors' estate (*see* Dkt. 579 ¶ 23 (citing Offering Memorandum, dated December 12, 2013). It has also never submitted itself to the jurisdiction of this Court.

28. GasCo is a wholly-owned subsidiary of Gas in which Reorganized Holdings has no direct interest (Dkt. 580 ¶ 58). It is also not a part of the Debtors' estate.

b. Reorganized Holdings' Lack of Authority to Direct Gas and GasCo

29. Reorganized Holdings falsely asserts that it had the authority to conduct corporate actions with respect to Gas. Even assuming, without waiver, that Reorganized Holdings had fully consummated its obligations under the Plan and Confirmation Order, it still lacks authority to direct the affairs of Gas and GasCo because it holds only the Common Shares of Gas. It also cannot assert that its actions were done with the consent of the Preferred Shares because either the Final Award and Confirmation Order confirm that those interests are held by the Preferred Nominees, or the Status Quo Injunction issued by Justice Belen in the Arbitration—maintaining day-to-day management of Gas by Laskarina Karastamati and Vassilis Kertsikoff—remains effective

30. Pursuant to the LLCA, as amended, the holders of the Common Shares may designate two directors on Gas's Board and the holders of the Preferred Shares may designate four directors on Gas's Board (LLCA Amendment§ 3.3(a)). And the holder of the Common Shares may not:

> "take part in the management or control of the Company or its activities, vote on behalf of the Company with respect to any action taken or to be taken by the Company, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company"

(LLCA § 4.1).

31. Reorganized Holdings' alleged authority to act for Gas and GasCo is based on the faulty assumption that the directors formerly nominated by Levona are still on the Board of Gas (*see* Sanctions Motion p. 14 n. 12 (incorrectly asserting that "Section 1 of the [November 29, 2024 Action by Written Consent of the Common Unit Holder of Eletson Gas] reflects the true composition of the Eletson Gas Board," which includes "Levona's prior appointees"). That is incorrect.

32. Since March 11, 2022, the Preferred Nominees have held the Preferred Shares. As this Court has itself previously recognized, "as the Arbitrator found (and the District Court confirmed), the transfer of the Preferred Shares occurred on March 11, 2022, which was nearly a year before the involuntary cases were filed" (Dkt. 721 at 36). As such, the purported November 29, 2024 Eletson Gas Board Action by Unanimous Written Consent is invalid: none of the Gas board members appointed by the Preferred Nominees executed it (*see* Dkt. 1608, Ex. 17) and so none of the resolutions passed therein were made by the unanimous written consent of a validly constituted board.

33. Even assuming, *arguendo*, that the lack of a judgment in the Arbitration Confirmation Action means that the Confirmation Opinion is not final (it does not), then the Status Quo Injunction issued by Justice Belen—which remains in effect "until the later of the final court judgment being entered on any Award or any further order of this Arbitrator" (Final Award at 96)—remains effective and would prohibit Levona from carrying out such actions.

34. The Status Quo Injunction was entered by Justice Belen following a series of attempts by Levona to exercise control over Gas management in a manner nearly identical to Reorganized Holdings' and Levona's efforts here. Specifically, Levona sought to assert itself over the day-to-day management of the company, improperly call board meetings and

resolutions, and divert Gas's financial assets (*see* Dkt. 7-3 at 13-14 (listing Holdings' and Corp's request that the arbitrator issue an order halting Levona from attempting to, *inter alia*, alter the business and affairs of Gas and divert assets)), notwithstanding the fact that it was the "ultimate question" for the Justice Belen to decide (*id*. at 23).

35. Again, Reorganized Holdings (conspiring with Levona) has attempted to freeze Gas accounts by sending letters to Berenberg Bank ("Berenberg") in Hamburg, Germany purporting to revoke the banking authorizations of prior representatives for Holdings and sixty-three non-Debtor Eletson bank accounts, including Gas and GasCo, and improperly designating Mark Lichtenstein as the new authorized representative (Dkt. 1290, Ex. G). Additionally, Reorganized Holdings (acting as Gas) is inappropriately attempting to arrest Gas's ships (*see* Dkt. 1594, Exs. A-C).

36. In granting Holdings' and Corps' motion, and denying Levona's cross-motion, Justice Belen held:

> The phrase "status quo" refers to, *inter alia*, the value of the Company [Eletson Gas], its assets, ***its current management and operations, and its relationship with the ships' crews***. Levona's argument that the "status quo" means that it is the preferred holder until a ruling otherwise—and accordingly, it can do as it wishes with respect to the Company's assets or other assets in dispute . . . is flawed . . . . Thus, preserving the "status quo" is not about who is the preferred holder, but concerns the rights each party has, and the current value of the Company [Eletson Gas] that must be preserved until I issue a Final Award in this arbitration.

(Dkt. 7-3 at 24 (emphasis added)); *see also* Final Award at 96 (extending Status Quo Injunction "until the later of the final court judgment being entered on any Award or any further order of this Arbitrator")).

37. The managers of Gas at the time of the Status Quo Injunctions were Laskarina Karastamati and Vassilis Kertsikoff. There has been no judgment entered by any court or tribunal modifying or vacating the Final Award (or its continuance of the Status Quo Injunction).

Thus, if Reorganized Holdings asserts that Levona holds the Preferred Shares because there is no final judgment, then the Status Quo Injunction remains in effect because there is no final judgment. And if it argues that the Status Quo Injunction is vacated without entry of a judgment, then the Preferred Nominees own and control the Preferred Shares for the same reason.

B. **Issues Before The Second Circuit**

38. The motions and arguments presented before the Court largely hinge on issues and arguments for consideration squarely in front of the Second Circuit now.

39. On December 30, 2024 (DC Plan Appeal, Dkt. 19 and 20) (the "December 30 Order"), the District Court granted Reorganized Holding' Stipulation of Dismissal of Provisional Holdings' appeal of the Plan and Confirmation Order and displaced Reed Smith as counsel (DC Plan Appeal, Dkt. 9). On January 7, 2025, Reorganized Holdings also filed a motion in the Arbitration Confirmation to compel ("Motion to Compel") Reed Smith to turn over its Holdings client file (Arbitration Confirmation, Dkt. 242).

40. On January 16, 2025, Provisional Holdings filed a notice of appeal of the December 30 Order (DC Plan Appeal, Dkt. 24). On January 17, 2025, the Second Circuit docketed the appeal (Dismissal Appeal, Dkt. 8). On January 20, 2025, Reorganized Holdings filed a motion to strike Provisional Holdings' notice of appeal of the December 30 Order ("Motion to Strike") (DC Plan Appeal, Dkt. 27). It also filed a letter in the Second Circuit requesting that the Court refrain from taking any action on the appeal (Dismissal Appeal, Dkt. 6).

41. On January 23, 2025, the Second Circuit issued an Order staying the appeal on the ground that "[t]he district judge has indicated that he 'will consider' both the underlying stipulation of dismissal that is challenged in the notice of appeal and the pending motion to strike" and ordered that "[w]ithin 14 days of the district court's action, Mr. Lazaroff [of Rimon] and Solomon [of Reed Smith] and Ms. Furey [of Goulston], separately by letter, shall advise the

Court regarding the status of the appeal" (Dismissal Appeal, Dkt. 9). On January 27, 2025, the District Court ordered that the Motion to Compel and the Motion to Strike would be heard in tandem (Confirmation Action, Dkt. 256; DC Plan Appeal, Dkt. 38).

42. Following briefing and oral argument on both the Motion to Compel and the Motion to Strike—the heart of which centered on the issue of whether Provisional Holdings or Reorganized Holdings controlled Holdings—on February 14, 2025, the District Court granted the Motion to Compel and issued an indicative ruling on the Motion to Strike and displacement of Reed Smith as counsel (Arbitration Confirmation, Dkt. 269; DC Plan Appeal, Dkt. 66). On February 24, 2025, Reed Smith appealed the District Court's order of the turnover of Reed Smith's Eletson client file (Turnover Appeal, Dkt. 1)

43. After the District Court's indicative ruling on the Motion to Strike, Provisional Holdings submitted its letter regarding the status of the appeal. (Dismissal Appeal, Dkt. 14). On March 3, 2025, the Second Circuit directed that both the Appeal of the Stipulation of Dismissal (Dismissal Appeal, Dkt. 16) and the Appeal of the Turnover Order (Turnover Appeal, Dkt. 9) be heard in tandem, accepting the appeals and recognizing that both appeals are similar and have common issues of fact and law. The Second Circuit—in ordering that both appeals will be heard in tandem—has recognized that the issues between the bankruptcy and the arbitration confirmation are interconnected and therefore must proceed together.

44. Reorganized Holdings filed motions to dismiss in both appeals, which both Reed Smith and Provisional Holdings have opposed. In these actions, the Second Circuit will consider: (1) who controls Holdings (*see* Dismissal Appeal, Dkt. 30.1 at 13-15; Turnover Appeal, Dkt. 43.1 at 4-6, 18); and (2) whether Reed Smith was properly displaced as counsel (*see* Turnover

Appeal, Dkt. 43.1 at 7-8; Dismissal Appeal, Dkt. 30.1 at 18-26). A resolution of those issues on the merits will necessarily affect the Court's rulings here.

ARGUMENT

I. THE COURT SHOULD ABSTAIN FROM DECIDING ISSUES PROPERLY NOW BEFORE THE SECOND CIRCUIT

45. As a threshold matter, this Court should delay its decision until the Second Circuit Appeals are decided. Doing so preserves judicial resources, allowing common issues of law and fact to be decided by the Second Circuit, once and for all.

46. The authority to stay a motion "is firmly within a [bankruptcy] court's discretion." *Lasala v. Needham & Co.*, 399 F. Supp. 2d 421, 427 (S.D.N.Y. 2005). The Court can, "in the interest of judicial economy, enter a stay pending the outcome of proceedings which bear upon the case, even if [the Court decides that] such proceedings are not necessarily controlling of the action that is to be stayed." *Diatek Licensing LLC v. Estrella Media, Inc*., 2022 U.S. Dist. LEXIS 181724, at *2 (S.D.N.Y. Oct. 4, 2022) (Liman, J.) (citations omitted); *see also Campbell v. City of N.Y.*, 2024 U.S. Dist. LEXIS 195238, at *4 (S.D.N.Y. Oct. 22, 2024) ("[T]he Court should stay the instant matter in the interest of judicial efficiency.").

47. Courts in the Southern District ordinarily weigh five considerations set forth in *Kappel v. Comfort*, when deciding whether to issue a stay pending a decision in a related federal case. 914 F. Supp. 1056, 1058 (S.D.N.Y. 1996) ("Balancing these factors is a case-by-case determination, with the basic goal being to avoid prejudice."). Where a question properly on appeal before a circuit court "will be of substantial importance to the instant matter" and "will provide clarification on key issues in this case," the *Kappel* standard is readily cleared. *McCracken v. Verisma Sys*., 2018 U.S. Dist. LEXIS 152008, at *11 (W.D.N.Y. Sep. 6, 2018) (granting stay based on pendency of appeal); *Fried v. Lehman Bros. Real Estate Assocs. III, L.P*., 2012 U.S. Dist.

LEXIS 10340, at *16 (S.D.N.Y. Jan. 24, 2012) (same); *Catskill Mts. Chapter of Trout Unlimited, Inc. v. United States EPA*, 630 F. Supp. 2d 295, 304 (S.D.N.Y. 2009) (granting stay to wait for disposition of case on appeal to the Eleventh Circuit).

48. Here, the Court should follow this practice with respect to the Sanctions Motion, where a stay "will conserve judicial resources, avoid prejudice to [Reed Smith] by having to litigate the same issues pending the appeal's outcome, avoid possibly inconsistent results, and not unduly delay resolution of the case." *Tyus v. Semple*, 2020 U.S. Dist. LEXIS 39181, at *10 (D. Conn. Mar. 6, 2020); *see also Pride v. Zimmer, Inc. (In re Zimmer M/L Taper Hip Prosthesis),* 2021 U.S. Dist. LEXIS 241221, at *10 (S.D.N.Y. Dec. 16, 2021) ("Courts regularly stay cases where an appeal in a related case will resolve (or at least greatly simplify) the issues in the stayed case.").

49. For at least once, it is likely the parties before the Court agree on one thing—that the District Court and Second Circuit have before them a pipeline of largely overlapping appeals. Here, "[t]here is significant overlap between this lawsuit and the lawsuit on appeal, both legally and factually, which is a solid ground upon which to issue a stay." *Fried,* 2012 U.S. Dist. LEXIS 10340, at *15. Before the Second Circuit is, *inter alia*, the question of who has the authority and capacity to act on behalf of Eletson Holdings in light of Petitioning Creditors' failure to obtain the promised foreign recognitions of the Plan and Confirmation Order (*see* Dismissal Appeal, Dkt. 30.1 at 13-15; 25-445, Dkt. 43.1 at 4-6, 18), which would include in these proceedings. Importantly, that very issue underpins the Sanctions Motion. If Provisional Holdings indeed is the entity that possesses the authority to act on behalf of Holdings, then this motion is dead on arrival. In these kinds of situations, the caselaw instructs this Court to stay any decision on a motion pending the outcome of the Second Circuit Appeals.

50. Reorganized Holdings' subjective beliefs about the strengths of the Second Circuit Appeals should not sway the Court (*see* Sanctions Motion ¶ 22 (recounting the fact that the Court and District Court have ruled against Reed Smith and Provisional Holdings in the past)). It proves nothing that this Court and the District Court have ruled against Reed Smith and Provisional Holdings when the Second Circuit is considering the validity of those very decisions.

51. Reorganized Holdings and Levona have filed Motions to Dismiss in both of the Second Circuit Appeals (*see* Turnover Appeal, Dkt. 32; Dismissal Appeal, Dkt. 27). And irrespective of Reorganized Holdings' repeated blustering that the Second Circuit Appeals lack merit, the Second Circuit is giving such arguments due consideration by, among other things:

a. Accepting the appeals notwithstanding the multiple attempts by Reorganized Holdings to prevent appellate review of the merits and Judge Liman's indicative ruling (Turnover Appeal, Dkt. 9; Dismissal Appeal, Dkt. 16);

b. Allowing Reed Smith to appear on behalf of Provisional Holdings (*see*, *e.g.,* Dismissal Appeal, Dkt. 9 (directing Reed Smith to advise the court of status of appeal));

c. Recognizing the interrelatedness of the issues and ordering that the appeals be heard in tandem (Turnover Appeal, Dkt. 9; Dismissal Appeal, Dkt. 16); and

d. Issuing an administrative stay on the turnover of Reed Smith's client file while it considers the merits of the motion to stay (Turnover Appeal, Dkt. 50).

52. The Second Circuit could dismiss the appeals in the future, or it may not (it should not), but until it does, or until the merits are decided by our Circuit's highest court, this Court should decline to answer the predicate question underpinning the Sanctions Motion.

II. THE COURT CANNOT NOT IMPOSE COERCIVE SANCTIONS IN ORDER TO FORCE REED SMITH TO WITHDRAW FROM OTHER PROCEEDINGS

53. Reorganized Holdings' Sanctions Motion essentially seeks to sanction Reed Smith for: (1) representing Provisional Holdings in its good-faith appeals; (2) representing non-debtors in other proceedings, including Gas—which is **not** a part of Debtors' estate, has never been a part of this proceeding, and over whom Reorganized Holdings has no functional authority; and (3) responding to motions and arguments made by Reorganized Holdings against Provisional Holdings and Reed Smith in this proceeding, despite having objected to Reed Smith's withdrawal. None of these requests are proper or within the Court's authority to grant.

A. The Court Cannot Properly Impose Sanctions Against Reed Smith for Representing Provisional Holdings in Its Appeals

54. Reorganized Holdings' Sanctions Motion against Reed Smith is nothing more than a thinly disguised effort to punish Provisional Holdings and Reed Smith for seeking appellate review of the Court's orders. However, Reorganized Holdings failed to address (or deliberately omitted) clear Second Circuit case law prohibiting this Court from doing so.

55. The Second Circuit has long held that a district court lacks power to impose sanctions for appeals taken to the Court of Appeals. *See Schoenberg v. Shapolsky Publishers*, 971 F.2d 926, 935 (2d Cir. 1992) ("In any event, it is improper for a district court to impose sanctions for appeals taken to this Court."); *see also Cheng v. GAF Corp.*, 713 F.2d 886, 891-92 (2d Cir. 1983) ("We are also surprised by the district judge's willingness to sanction appellant's attorney, not for a motion made in the district court, but for appeals taken to [the Second Circuit] and the Supreme Court. A rule permitting a district court to sanction an attorney for appealing an

adverse ruling might deter even a courageous lawyer from seeking the reversal of a district court decision."). "The same principle applies when the appeal is taken from the bankruptcy court to the district court." *Worms v. Yuri Vladimirovich Rozhkov,* 2021 U.S. Dist. LEXIS 171238, at *7-8 (S.D.N.Y. Sep. 9, 2021) (Liman, J.), *aff'd* 78 F.4th 554 (2d Cir. 2023).

56. Perhaps a party might argue that an appeal is frivolous, but as set forth, such matter would need to be addressed in the appellate court.

B. This Court Does Not Have Authority to Order the Effective Disqualification of Counsel in Other Proceedings

57. This Court does not have the authority to impose coercive sanctions for purported ethical violations in other courts. "[A] bankruptcy court's authority generally extends only to imposing sanctions for behavior before it." *Worms,* 2021 U.S. Dist. LEXIS 171238, at *7-8 (Liman, J.). Thus, "the Court has no authority to exercise . . . its inherent power . . . to sanction a party for conduct that occurred before another court." *In re Galgano*, 358 B.R. 90, 104 (Bankr. S.D.N.Y. 2007); *see also Schaefer Salt*, *Schaefer Salt Recovery, Inc.*, 444 B.R. 286, 299 (Bankr. D.N.J. 2011) (holding a court's inherent power to sanction is directed to "conduct that occurs before the court considering the sanction—not conduct in some other court"). Reorganized Holdings improperly seeks to have this Court overreach its judicial authority to impose sanctions for conduct in other proceedings.

58. Reorganized Holdings' citations to *In re WB Bridge Hotel LLC*, 656 B.R. 733 (Bankr. S.D.N.Y. 2024), *U.S. Football League v. National Football League*, 605 F. Supp. 1448 (S.D.N.Y. 1985), and *Avra Surgical, Inc. v. Dualis MedTech GmbH*, 2014 U.S. Dist. LEXIS 71803 (S.D.N.Y. May 27, 2014) are, therefore, inapposite here. In those cases, the parties sought disqualification before the proper court.

59. Not only is that the outcome that the caselaw of this circuit dictates, but it makes sense given the procedural posture of the appeals. First, the issue of Reed Smith's displacement as counsel is currently before the Second Circuit in the Turnover Appeal. Second, the Second Circuit has, at the very least, allowed Reed Smith to appear and make its arguments on behalf of Provisional Holdings in the Dismissal Appeal. Similarly, the issue of Reed Smith's authority to represent Corp and EMC Investment (both non-debtors) is before the London Tribunal.

C. **The Sanctions Motion Is Frivolous as to This Proceeding**

60. For the one matter before this Court, there is nothing for the proposed sanctions to appropriately coerce. Relevant here, Reed Smith has tried to withdraw as counsel to Provisional Holdings in this Court (Dkt. 1543). In fact, the only capacity in which Reed Smith has represented Provisional Holdings since filing the appeal of the Confirmation Order (and related briefs) is in response to sanctions motions filed by the Reorganized Holdings, and its affiliates, including related letters (*see supra* Section A.1). It is only because Reorganized Holdings continues to file motions against Reed Smith and its client that Reed Smith must respond.

61. Reorganized Holdings' actions make the requests for protection from this Court all the more necessary (*see* Dkt. 1572 at 13). Absent those protections (like the permissions issued by Judge Liman in the District Court (Arbitration Confirmation, Dkt. 256; DC Plan Appeal, Dkt. 38 ("The Court will permit counsel for '(provisional) Eletson Holdings, Inc.' to be heard on why the Court should not sign the Stipulation of Voluntary Dismissal.")), Provisional Holdings will be unable to find counsel to take on the burden of being subjected to repeated sanctions motions.

62. Second, because Reed Smith is attempting to withdraw its representation in this Court over Reorganized Holdings' objection, there is nothing before this Court to coerce that is not within Reorganized Holdings' control. It therefore has "become[] obvious that sanctions are not going to compel compliance," and therefore, as sought, have "los[t] their remedial

characteristics and [have] take[n] on more of the nature of punishment." *Soobzokov v. CBS, Inc*., 642 F.2d 28, 31 (2d Cir. 1981). This is, of course, improper. *See, e.g., Manhattan Indus. v. Sweater Bee by Banff, Ltd.,* 885 F.2d 1, 5 (2d Cir. 1989) ("[I]t is well settled, however, that civil contempt proceedings must be 'remedial and compensatory, and not punitive.'").

III. REED SMITH'S REPRESENTATIONS OF ELETSON GAS OR EMC GAS VIOLATES NO RULE OF CONDUCT

63. In a defective effort to sanction Reed Smith for its continued representations of Gas and GasCo, Reorganized Holdings improperly attempts to have this Court as the Disciplinary Committee of the Bar, where Reorganized Holdings should long ago have raised any legitimate issue and which it did not, since there is no legitimate issue. Reorganized Holdings also inaccurately asserts that Gas has terminated Reed Smith's representation (*see supra* Factual Background A.3) and stretches the professional rules far beyond their practical application and completely ignores long-standing Second Circuit precedent. Even assuming, *arguendo,* that the authority and capacity to act on behalf of Holdings has vested in Reorganized Holdings, then Reed Smith's representation of the Gas Entities marks a clear-cut illustration of a situation where once-joint clients become adverse to one another. The law is clear—a law firm in that situation need not drop its client.

64. It has long been the law in the Second Circuit that "[b]efore the substantial relationship test is even implicated, it must be shown that the attorney was in a position where he could have received information which his former client *might reasonably have assumed the attorney would withhold from his present client*." *Allegaert v. Perot*, 565 F.2d 246, 250 (2d Cir. 1977) (emphasis added). This framework provides an "exception" to the rule against improper successive relationships, "where the attorney's representation was of two, commonly interested clients, one of whom is now complaining." *Felix v. Balkin*, 49 F. Supp. 2d 260, 268 (S.D.N.Y.

1999). "Under such circumstances, 'the substantial relationship is inapposite,' as the former client could not reasonably expect confidences imparted to the attorney during the course of the joint representation to be withheld from the other client." *Rocchigiani v. World Boxing Counsel*, 82 F. Supp. 2d 182, 187-88 (S.D.N.Y. 2000).

65. This is clearly not a situation where Reed Smith "changed sides from a former client to a current, adverse client." *New York v. Monfort Tr.*, 2014 U.S. Dist. LEXIS 142589, at *12 (E.D.N.Y. Oct. 7, 2014). Rather, Reed Smith's representation of the Gas entities was done *with Holdings' express knowledge and consent. See Rocchigiani v. World Boxing Counsel*, 82 F. Supp. 2d 182, 188 (S.D.N.Y. 2000); *Allegaert,* 565 F.2d at 251 (2d Cir. 1977). The matter here is quite simple. Holdings and Gas were commonly represented by Reed Smith in a portion of their global litigation against Murchinson and its affiliates, including Pach Shemen and Levona. Holdings' now-purported adversity to Gas does not render Reed Smith's continued representation of Gas improper. Rather, it brings this matter squarely within the exception outlined by the Second Circuit in *Allegaert*. Reorganized Holdings' complaints are unsupported by law. Holdings, as a corporate client, cannot complain that its former co-client with common interests had access to privileged materials.

66. In any event, this Court should not and need not police any purported violation of the professional rules by Reed Smith (which has, in any event, engaged both outside counsel and an expert on the matter, and Reed Smith is acting consistent with all advice received). "The business of the court is to dispose of litigation and not to act as a general overseer of the ethics of those who practice here unless the questioned behavior taints the trial of the cause before it." *W. T. Grant Co. v. Haines*, 531 F.2d 671, 677 (2d Cir. 1976). Simply, "[g]iven the availability of both federal and state comprehensive disciplinary machinery" "courts should be quite hesitant to

disqualify an attorney." *Bd. of Educ. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979). The Sanctions Motion, which does not point to any real "taint" in these proceedings, should not compel the Court to expand its ordinary role.

IV. REORGANIZED HOLDINGS HAS WAIVED THE ABILITY TO SEEK DISQUALIFICATION ENTIRELY, AND ACCORDINGLY SANCTIONS TOO

67. "It is well settled in this Circuit that a motion to disqualify should be made within a reasonable time of discovering a possible conflict of interest, or a waiver will be presumed." *Levy v. Suissa*, 2020 U.S. Dist. LEXIS 232997, at *2 (E.D.N.Y. Dec. 11, 2020) (cleaned up) (citations omitted). In making this determination, courts consider numerous factors, such as "[w]hen the movant learned of the conflict; whether the movant was represented by counsel during the delay; why the delay occurred, and, in particular, whether the motion was delayed for tactical reasons; and whether disqualification would result in prejudice to the nonmoving party." *KLG Gates LLP v. Brown*, 506 B.R. 177, 192 (E.D.N.Y. 2014). "[L]length of delay in bringing a disqualification motion is an important (but not determinative) consideration." *Id*. Here, Reorganized Holdings "knew all of the facts relating to the bases that he has alleged for disqualification, but sat on those rights," therefore waiving them. *Secured Worldwide, LLC. v. Kinney*, 2015 U.S. Dist. LEXIS 83558, at *14 (S.D.N.Y. June 24, 2015). Reorganized Holdings has been arguing that Provisional Holdings does not exist, and that Reed Smith "does not represent Eletson Holdings Inc. (the Togut Firm does) and should be enjoined from making further filings in this Court representing otherwise" (Dkt. 1314 at 3) since December 2024. Reorganized Holdings' delay was for tactical reasons and will greatly prejudice Reed Smith's clients. In fact, the delay is entirely motivated by bad faith, where Movant, in reality, has wished to keep Reed Smith before this Court just to wage sanctions motion after sanctions motion against it.

V. REORGANIZED HOLDINGS IS NOT ENTITLED TO DISCLOSURE REGARDING SOURCE OF FUNDS

68. Reorganized Holdings' request that Reed Smith disclose its fee arrangements should be denied. Reorganized Holdings has cited no authority to support that such a proposition would be appropriate and indeed has not even attempted to address law that explicitly states that such discovery would need to be properly issued and evaluated under the Federal Rules of Civil Procedure. *See In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) ("[O]nce an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure.").

69. Moreover, even if Reorganized Holdings were to issue discovery on this topic, courts in this circuit have declined to compel parties to produce agreements regarding litigation financing, heavily scrutinizing their relevance to the claims made in the case. *See Kaplan v. S.A.C. Capital Advisors, L.P.*, 141 F. Supp. 3d 246, 247-48 (S.D.N.Y. 2015) (litigation financing discovery denied over an argument in shareholder litigation that agreement went to the adequacy of counsel); *Hybrid Ath., LLC v. Hylete, LLC*, 2019 U.S. Dist. LEXIS 148245, *36 (D. Conn. Aug. 30, 2019) (finding no meaningful purpose to litigation financing or fee related discovery that would be relevant or proportional to the claims of the case). The Court had the opportunity to ask Reed Smith whether assets of the estate were being used to pay legal fees, and Reed Smith answered the Court's questions (4/3/2025 Hr'g. Tr. at 28:5-29:10). The Court should deny Reorganized Holdings' request.

CONCLUSION

The Court should deny the Motion and grant such other relief as the Court deems proper.

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REED SMITH LLP

/s/ Louis M. Solomon
Louis M. Solomon
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 251-5400
Facsimile: (212) 521-5450
E-Mail: lsolomon@reedsmith.com

Reed Smith LLP