UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

SECOND SUPPLEMENTAL DECLARATION OF BRYAN M. KOTLIAR, ESQ. IN SUPPORT OF ELETSON'S HOLDINGS INC.'S OMNIBUS REPLY IN SUPPORT OF ITS APRIL 16, 2025 MOTIONS

I, Bryan M. Kotliar, Esq., hereby declare pursuant to section 1746 of Title 28 of the United States Code, as follows:

1. I am a partner at the law firm of Togut, Segal & Segal LLP, counsel to Eletson Holdings in the above-captioned chapter 11 cases.

2. I respectfully submit this Declaration in support of *Eletson Holdings Inc.'s Omnibus Reply in Support of its April 16, 2025 Motions* (the "Omnibus Reply")[2] filed contemporaneously herewith.

3. Attached hereto are true and correct copies of the following documents:

[1] 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.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Omnibus Reply.

Exhibit	Description
1.	Eletson Corp. November 2024 Berenberg Statement
2.	May 6, 2025 S.D.N.Y. Hearing Transcript
3.	January 2, 2024 S.D.N.Y. Hearing Transcript
4.	September 6, 2024 S.D.N.Y. Opinion and Order
5.	Response to Motion to Release Kithnos Vessel
6.	April 24, 2025 Kithnos Arrest Proceeding Hearing Transcript (S.D. Tex.)
7.	April 17, 2025 Kithira Arrest Proceeding Hearing Transcript (S.D. Tex.)
8.	February 25, 2025 Kithira Arrest Proceeding Hearing Transcript (S.D. Tex.)
9.	February 21, 2025 Kithnos Arrest Proceeding Hearing Transcript (S.D. Tex.)
10.	May 6, 2025 S.D. Tex. Order Denying Motion to Vacate Kithira Arrest
11.	February 14, 2025 S.D.N.Y. Order
12.	April 28, 2025 Second Circuit Letter
13.	German Action Against Berenberg (Eletson Corp. Account), including partial machine translation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Dated: New York, New York
May 12, 2025

/s/ Bryan M. Kotliar
Bryan M. Kotliar

EXHIBIT “1”

Monthly account 11.2024
Customer: [redacted] Eletson Corporation
Account: [redacted] (212 USD) USD curr. acc. / USD current account

BERENBERG
PRIVATBANKIERS SEIT 1590

Booking date	Voucher	Text key	Text key desc.	Multi-purpose	Value date	Payment purpose	Amount (USD)	Rate	Amount* (EUR)	Balance (USD)	Balance (EUR)
						Total as 31.10.2024				**386.803,88**	
06-Nov-2024	6838	1203	International Payment (electr.)	0153712	06-Nov-2024	ELETSON CORPORATION 241106OPE4919797 265000.00 USD CHARGES USD 20.00 TRANSFER TO ABN	-265.020,00	1,069500	-247.798,04	121.783,88	
07-Nov-2024	6838	1301	Incoming International	0153712	07-Nov-2024	ELETSON CORPORATION 241107IPE4925636 /OCMT/USD 265000,00/ TRANSFER TO BERENBERG	265.000,00	1,078500	245.711,64	386.783,88	
19-Nov-2024	6838	1401	Incoming Payment	0153612	19-Nov-2024	EMC Investment Corporation LISCR Tr 241119OPE4957020 700000.00 USD INTRA GROUP TRF	700.000,00	1,057800	661.750,80		
19-Nov-2024	6838	1203	International Payment (electr.)	0153712	19-Nov-2024	REED SMITH LLP 241119OPE4959675 1000000.00 USD CHARGES USD 20.00 ON ACCOUNT ARBITRATION ELET SON CORPORATION	-1.000.020,00	1,057800	-945.377,20	86.763,88	
20-Nov-2024	6838	1401	Incoming Payment	0153612	20-Nov-2024	EMC Investment Corporation LISCR Tr 241120OPE4963842 300000.00 USD INTRA GROUP TRF	300.000,00	1,056200	284.037,11	386.763,88	
29-Nov-2024	6666	21	Account Management		30-Nov-2024	Account Management Charge Staffelkonto: 0501537005	-15,80	1,056200	-14,96	386.748,08	
						Total* as 30.11.2024				**386.748,08**	**386.169,36**
						Debit	-1.265.055,80		-1.193.190,19		
						Credit	1.265.000,00		1.191.499,55		

* Foreign currency transactions will be converted at Euro reference quotation on the booking date respectively the end of month.

This document has been computer generated and is valid without signature. Errors excepted.
Joh. Berenberg, Gossler & Co. KG, Neuer Jungfernstieg 20, 20354 Hamburg, phone +49 40 350 60-0

EXHIBIT “2”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELETSON HOLDINGS INC. and
ELETSON CORPORATION,

Petitioners,

v. 23 CV 7331 (LJL)

LEVONA HOLDINGS LTD.,

Respondent Oral Argument

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IN RE: ELETSON HOLDINGS INC.

23 Civ. 7331 (LJL)

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New York, N.Y.
May 6, 2025
4:00 p.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

GOULSTON & STORRS PC
Attorneys for Petitioner Eletson Holdings Inc. and Eletson Corp.
BY: JENNIFER B. FUREY
NATHANIEL R. B. KOSLOF

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Respondent Levona Holdings Ltd.
BY: ISAAC NESSER
WILLIAM B. ADAMS
DANIEL M. KELLY

GREENBERG TRAURIG LLP
Attorneys for Proposed Intervenors Apargo, Fentalon Desimusco
BY: HOWARD S. SHAFTEL
ADAM KIRSCHBAUM

(Case called)

MS. FUREY: Good afternoon, your Honor. Jennifer Furey on behalf of Eletson Holdings and Eletson Corp.

THE COURT: Good afternoon.

MR. KOSLOF: Good afternoon, your Honor. Nate Koslof, Goulston & Storrs, also on behalf of Eletson Holdings and Eletson Corp.

MR. SHAFTEL: Good afternoon, your Honor. On behalf of the proposed intervenors, Apargo, Fentalon, and Desimusco, Hal Shaftel from the Greenberg Traurig firm. I'm joined by my colleague Adam Kirschbaum.

THE COURT: Good afternoon.

MR. NESSER: Good afternoon, your Honor. It's Isaac Nesser, William Adams, and Daniel Kelly at Quinn Emanuel for Levona.

THE COURT: Good afternoon.

We're here this afternoon on the motion to intervene of the proposed intervenors. I'll hear first from Mr. Shaftel or his colleague and then I'll hear from Levona, and if Eletson wishes to be heard, I'll hear from Eletson.

Mr. Shaftel, why don't I hear from you.

MR. SHAFTEL: Thank you, your Honor. We appreciate the Court hearing our application today. We appreciate that our arrival in your courtroom, at least as applicants for intervention, has been previewed, perhaps anticipated. We

believe that actually speaks to the propriety under Rule 24 why we're here. We think the right time to be here is now given the circumstances in the case.

Our application is based on Rule 24(a)(2). We think we're proposing to intervene as of right. There are three buckets of issues which that entails. First, whether we're timely — we are — and I'll speak to that; two, whether we have an interest at stake, a cognizable interest, I'll speak to that; and then whether there's adequate representation for those interests absent our intervention. I believe that last prong, your Honor, will also speak and ties to the timeliness, the appropriateness at this time of the application.

Let me first, from our perspective, take off the board quickly whether we have an interest. This court itself has recently, as least as recently as March the 24th in response to motion practice in its order, recognized that we are the principal beneficiaries, we have a direct interest, we have the most direct stake in the outcome of the arbitration confirmation --

THE COURT: Let me ask you, Mr. Shaftel, the award that currently exists, is that enforceable outside of the United States under the New York convention? Let's assume I don't confirm the award, do you have any rights?

MR. SHAFTEL: Are we living in a world where the award is vacated?

THE COURT: No. Let's assume that there was never a petition to confirm the award. There was an arbitration award that granted benefits to your client. Would that award give you any rights?

MR. SHAFTEL: It would, your Honor. This court does have primary jurisdiction. We are, and it obviously percolates in the motion papers on this motion, it has percolated in this courtroom beforehand from my review of the papers. We are pursuing my clients in one other proceeding in Greece, are pursuing confirmation I think maybe in the parlance of the treaty recognition, but we're not pursuing enforcement.

THE COURT: Could you, if this award was not confirmed?

MR. SHAFTEL: If the award was not confirmed here?

THE COURT: Correct.

MR. SHAFTEL: We do believe we're entitled to confirm it elsewhere. I don't want to slop into too many issues at once. There is what we believe is a collusive stipulation before your Honor to dismiss the confirmation half, the confirmation side of the two-sided coin that the petitioner and the respondent have presented, and we certainly believe that if there is no confirmation going on in the primary jurisdiction, we're within our rights to seek confirmation elsewhere. My clients do have the proceeding in Greece.

THE COURT: So why do you need to have it confirmed

here?

MR. SHAFTEL: This is the primary jurisdiction, we believe it should be confirmed. We are here standing up — it's the sports season — at the plate. We want to present --

THE COURT: Let's leave aside metaphors and give me the answer. Why do you need to have it confirmed here if you can have it enforced, recognized and enforced outside of the United States?

MR. SHAFTEL: Well, as the primary jurisdiction, if there is a confirmation proceeding going on here, this is the most suitable forum.

THE COURT: Right. It's nice to have.

MR. SHAFTEL: It is nice to have and it is also important to have in terms of enforcement purposes down the road.

THE COURT: Why? Explain that to me. Are you saying to me that you need a confirmation order here in order to enforce the award outside of the United States or are you saying something different or are you just not wanting to take a position?

MR. SHAFTEL: Your Honor, a judgment in the United States is something we believe we're entitled to obtain and we want, and it will facilitate enforcement ultimately if and when we get to that judgment.

THE COURT: I understand that. Judgments have value

that awards don't have. But my question is: Is the award something that can get you value? Do you have an interest in the award aside from whatever that award can yield in terms of a judgment here? And if so, tell me what that interest is, because if you don't have an interest in the award, then the only question for me is whether you're entitled to petition to confirm the award. So do you have an interest in the award? Legally enforceable interest, is the award itself legally enforceable anywhere?

MR. SHAFTEL: Not without confirmation.

THE COURT: In this court?

MR. SHAFTEL: We want a judgment in the United States, your Honor.

THE COURT: Can you just answer my question. Is the award legally enforceable, does it give you any rights other than in this court?

MR. SHAFTEL: In the U.S.?

THE COURT: No. Anywhere in the world. Does the award give you any rights, the award itself?

MR. SHAFTEL: The award, if confirmed elsewhere --

THE COURT: Yes.

MR. SHAFTEL: -- if confirmed, would provide potential rights for enforcement down the road.

THE COURT: Even if it was confirmed outside of the United States and not confirmed here?

MR. SHAFTEL: Correct. That it's not vacated or confirmed in the U.S.?

THE COURT: Correct.

MR. SHAFTEL: That is right, your Honor.

THE COURT: Explain that to me, how that works. What would you do?

MR. SHAFTEL: We have no decision in the primary jurisdiction. Under the convention, we would be able to take that award, confirm and enforce it. We want to leave aside the bankruptcy issues, we're speaking in a more abstract sense and enforce it where there may be assets elsewhere.

THE COURT: Okay. Thank you for answering that question.

So why do you need the confirmation here?

MR. SHAFTEL: Confirmation in the primary jurisdiction will have that much more meaning. It will give us a judgment here in the U.S. This is the locale, the domain of where the arbitration of course occurred and is the appropriate situs, we believe, for the primary confirmation of an award, which we have a substantial, perhaps the most, certainly a substantial interest.

So that was, as for metaphors, my swing of what I wanted to take off the table quickly in terms of our interests in the award. We hit a couple. The timing, my friends on the other side have taken issue with timing.

THE COURT: Let me ask you a question about standing. Let's assume that the processes in the bankruptcy court preceded the filing of Eletson's motions here and Eletson simply decided not to file a petition to confirm. Is it your view that, in that circumstance, you would have the right to have petition to confirm the award?

MR. SHAFTEL: Absolutely, your Honor.

THE COURT: And you say that because one of the things that you've said is that you participated as a witness in the arbitration. In your brief, you make mention to the fact that there were witnesses who testified in the arbitration and that's one reason why you should be considered to be a party.

MR. SHAFTEL: Your Honor, it certainly is one reason. I wouldn't put it on the top of my hierarchy.

THE COURT: It's one thing I'm interested in. Tell me who the particular individuals who are the representatives of your clients who were witnesses in the arbitration.

MR. SHAFTEL: I don't want the Court to trip me up on the pronunciation of names. They often go by, and I think my clients are appreciative of the initials, there is VK, VH and LK. They're each affiliated --

THE COURT: VK is Vassilis --

MR. SHAFTEL: Kertsikoff. Laskarina Kostoulakos. And then there is also Vasilis H. Your Honor, I'm going to have to plead the Fifth on Vasilis's --

THE COURT: It is Hadjieleftheriadis; is that right?

MR. SHAFTEL: Correct, your Honor.

THE COURT: What relationship do they have to your clients?

MR. SHAFTEL: Well, they were representatives, designated representatives. They are -- and I don't want to use this word in a hypertechnical way. My clients are three Cypriot limited companies. These are each of -- each one of the three clients is associated with one of those three individuals. We just designated by initial.

THE COURT: So they testified on behalf of your clients?

MR. SHAFTEL: Correct, your Honor.

THE COURT: As witnesses of your client?

MR. SHAFTEL: Correct.

And if I could at least quickly amplify because your Honor has focused on the witness aspect, and it's important, but it's far from what I would view as distinguishing in this case. Yes, the FAA, you all know, my friends have briefed it, refers to parties, lowercase P, but parties from the arbitral proceeding confirming or seeking to vacate.

THE COURT: I don't think there's any upper cases within the language of the FAA, other than at the beginning of a sentence.

MR. SHAFTEL: Fair enough, your Honor.

But I guess my point in framing it that way is the case law says yes you start with the text of the FAA, but you don't end with simply the explicit text. If you walk like a party — lowercase P — and talk like a party, you may be a party, and the cases so hold. In here, it's not simply, it really is not simply being a witness. It is of course being the specific beneficiary of the award. It's being not only the beneficiary of the award, because Arbitrator Belen plucked it out of thin air. That was litigated in a specific request in the arbitration. And your Honor at least in those portions of the award --

THE COURT: I read the Limited Liability Company Act and it seems to me it doesn't permit any third-party beneficiaries. So I'm not sure, in your mind, what gave your clients the right to compel Levona to resolve a dispute with you guys under the Limited Liability Company Act, which is the contract pursuant to which they were forced to arbitrate in New York. Right, the Limited Liability Company Act was the basis for the arbitration?

MR. SHAFTEL: Right. The limited liability agreement.

THE COURT: Yes. Limited Liability Company Act.

MR. SHAFTEL: Yes. Arbitrator Belen found the proviso to that arbitration clause covered the disputes relating to the purchase of the preferred interests.

THE COURT: I concluded that he had the authority to

grant relief to your clients.

MR. SHAFTEL: Just, if I can quickly tick off, your Honor. So, yes, witnesses. But more importantly, the specific, explicit, express third-party beneficiaries, it was specifically requested in the arbitration for that relief to be granted. And then of course my clients, through these representatives, the individuals heretofore known by their initials, agreed, consented, stipulated to be bound by the outcome of that arbitration.

THE COURT: How did they have that authority on behalf of the entities?

MR. SHAFTEL: They were designated internally by those entities.

THE COURT: They were paid officers of those entities?

MR. SHAFTEL: So it has changed over time. Directors and/or officers. At that point in time -- I don't want to make a misrepresentation to the Court exactly who was an officer, who was a director, who was otherwise a designee. I don't believe it's ever been in dispute that those commitments, we stand by them today.

THE COURT: So you're saying that they were at that point vested with the authority to speak on behalf of those entities?

MR. SHAFTEL: Yes, your Honor. And I don't believe there's been any genuine serious dispute about that and my

clients stand by that today.

So given those attributes, those characteristics, we think we fit more than neatly into the cases. Parties have cited them. The Contracting Plumbers Association. You had intervention by a party there -- by a nonparty, I should say, who did not appear at all in the arbitration.

THE COURT: The Circuit said that, obviously appropriately so because it's the Circuit, but said that the failure to recognize the international association's interest in the arbitration in the circumstance where the international arbitration had been vested previously with the authority to determine interunion disputes. That failure would destroy the whole union's existence. Your clients will survive if they're not permitted to petition for confirmation. They'll just have to have the same remedies that anybody else who has an award, assuming the award's not vacated, would have.

MR. SHAFTEL: Your Honor, on that front, obviously the facts in the union case, the dispute between the plumbers and the pipe fitters is not the dispute in our arbitration. I do believe the test or the touchstone, which the Second Circuit spoke of, was a substantial concrete interest in the award. Frankly, I think that language in the touchstone that the Second Circuit identified squares very neatly with this Court's --

THE COURT: All the time there are arbitrations where

the union is representing an employee, and the courts impose the same standards under the FAA as under the LMRA. The courts say the employee who's the only one who is directly affected by the arbitration decision doesn't have the statutory standing to vacate, modify, or confirm. The union in that instance is acting just only as representative. Your client is in a weaker position than the employees in those cases.

MR. SHAFTEL: Your Honor, we would suggest otherwise. We are the requested beneficiary and the named beneficiary in the award. As I say, we were bound by it, we think we meet the definition of having a substantial concrete interest. I know enough that it's always risky to cite the Court's own language back, but I do believe the Second Circuit's language in terms of determining when intervention by a nonparty is appropriate, fits with what this Court recognized and, frankly, is undeniable and we have a significant, perhaps the most direct stake in the other cases, as well.

Data Stream is a case where the nonparty to the arbitration was allowed to intervene in terms of confirmation, and the court said look at the level of participation of that nonparty. Now there was an assignment at issue. Every case you're going to find a distinction, but the question from our perspective is what is animating the court. In Data Stream, it was the level of participation, the nonparty who then seeks confirmation had witnessed, was engaged, had a level of

participation, we think is akin to the role that we played.

If I could turn to the timing, because the timing and the lack of adequate representation going forward.

THE COURT: When you're addressing that, make sure you touch on how I can be sure that your participation here doesn't come just to delay the proceedings so that you can accelerate the proceedings outside of this country and effectively divest the Court of the authority. Assure to me that you're not trying to divest the Court of authority to figure out whether this award should be vacated or not.

MR. SHAFTEL: Will the Court humor me if I could take the Court's question first?

THE COURT: Yes. Through your actions outside of the United States, why do you need to do the actions outside of the United States? Can't you put those on hold while we figure out whether this award should be vacated or confirmed or not?

MR. SHAFTEL: Your Honor, on the other side -- here, "the other side," I'm referring to Levona has of course its own action in the U.K. So there is some symmetry or lack of symmetry there. As I believe the Court has recognized, and it is certainly our position, the New York Convention recognizes parallel proceedings.

I'm going to footnote the irony, I don't know if the Court wants to ultimately address it today, but the stipulation of dismissal, which would seek to -- I don't think it would be

effective or lawful, but seek to pull the rug under the confirmation process here at the same time that Levona, Levona and Eletson are complaining that we're seeking confirmation elsewhere. Under that role, we wouldn't have confirmation anywhere.

But what is important, I think from our perspective, is the Greek proceeding. And I think they're aware there are other proceedings elsewhere in the U.K., perhaps elsewhere. They don't involve my clients, so I want to speak less about them because I know that much less. But the Greek, the Greek proceeding is permitted under the New York Convention --

THE COURT: I don't doubt that. Well, my question doesn't go to whether it's permitted. My question is why you need to pursue it before this Court has the opportunity to determine either whether you've got a confirmed award or whether the award is vacated because, as I recall, when the original petition was filed here to confirm the award, Eletson was taking the position this was a summary proceeding and confirmed the award and there was no proceeding outside of the United States. The proceeding outside of the United States seems like it arose once I issued the order that effectively provisionally confirmed the award subject to the motion to vacate. So why not let these processes run here and then you can always go to Greece?

MR. SHAFTEL: As I understand it, your Honor, the

wheels of justice in Greece can be slower than the wheels of justice here in the U.S. We don't see any reason, zero prejudice to any of the other parties in this proceeding by allowing us to confirm the award without seeking any enforcement. At some point, if I --

THE COURT: How does that work? Because let's assume that I vacate the award here. Then doesn't that in effect undermine any Greek order that you've got confirming something that is illusory? The question is whether this award should be considered to be illusory. That's at least one of the questions. And so why not wait?

MR. SHAFTEL: Wait for the proceeding here?

THE COURT: Yes. We've got to move this proceeding quickly.

MR. SHAFTEL: Your Honor, we don't see it's prejudicial without any basis to simply put what we're entitled to do in Greece on hold and then wait. When this proceeding runs its course, I don't know what life after this courtroom at any sort of appellate level might be to then have to start the clock all over again --

THE COURT: Just ask the Greek court to withhold any decision on anything. Why not do that?

MR. SHAFTEL: Run the process in Greece and then ask the court to withhold a decision? Your Honor, I do not know. I cannot speak to the realistic mechanics or procedural or

substantive propriety of that in Greece. If it's something the Court is interested in, of course we can provide an answer for that. But having represented -- when I say "represented," it's been through counsel and in parties before our attendance knocking on the door in this proceeding. That enforcement will not take place unless there's a return to this court or to the bankruptcy court. We don't believe anything about the preferred interests in Gas pertain at all to the estate. The estate, Eletson Holdings, at least has -- claims to have -- it's a separate issue. There are interests in the common stock, but the preferred shares in seeking confirmation of our interest in the preferred shares, we don't think implicates the bankruptcy estate or the bankruptcy plan at all.

That said, we have represented Reed Smith, counsel for Reed Smith has represented in bankruptcy court here. We stand by it, that enforcement will not take place without returning to the U.S.

THE COURT: All right. Let me hear from you with respect to the timeliness and the question of why your participation will not delay proceedings here. There's really two sides. One is: Are you coming in too late? The other is: Are you going to delay things unduly?

MR. SHAFTEL: Not only are we not coming in too late, your Honor, one arguably could say we would have been premature much before now. One of the prongs, whether it be 24(a) or

24(b) permissive, is whether it there's adequacy of representation for my clients' interests. The Court is as aware as I am about the evolution in interests, incentives, representation in this case. I believe it was mid February, maybe February the 14th if my recollection is correct, there was an order displacing Reed Smith. Up until then, frankly through the arbitration up until then, my client's interests were being, in the parlance of the statute, adequately represented by Reed Smith. That changes in mid February. It changes in a -- I don't want to say a confused way, but it changes in a way which gives rise to a lot of litigation activity, I believe. This Court stays rehearings, Second Circuit activity. So the material change occurs in mid February.

It's not instantaneous for two reasons. That, it may be more importantly, it's only March 25th that the Court lifts the discovery stay. It is in or around that time in the calendar that the Greenberg Traurig firm raises its hand first ineloquently in a letter that the Court rejected because who are these Cypriot preferred shareholders. Then we moved for an amicus status. Ultimately, that led, through the Court's directives, to our motion on the date that we requested and the Court set of April 7th to move, to move to intervene. So the confluence of when our adequate representation was displaced, the week or the month from there with the various litigation

activity, but then the lifting of the discovery stay triggered what we think is the appropriate time to come in.

Frankly, with the discovery stay, realistically, how much different would this case look like if we had made our motion? I think it's very timely. I think much earlier could have arguably been premature. I could hear the other side already saying, what are these guys interveining for, they've got Reed Smith representing their interests. And the statute says if you have adequate representation, the intervention door may be or is blocked. So we think the time is ripe. I've heard references to strategic delay. I'm not clever enough to have had that sort of strategic delay --

THE COURT: Everybody in this courtroom at counsel table is clever. Might say to me that you're not engaged in strategic delay, but this is a case where the lawyers are very shrewed and smart and I've not been disappointed by the briefing in this case from you, Mr. Shaftel, or anybody else.

MR. SHAFTEL: I am an esteemed company. So we appreciate that, your Honor.

I'll simply add on the timing. I do want to go to whether we're going to engendered delay. I lost my other point on the timing, but hopefully it's in the papers.

Oh, strategic delay. It was Levona who first came to this Court on October the 28th by letter and said, can we have a discovery stay. So if there's strategic delay, we're all

clever at counsel, table as the Court has kindly observed, we could all argue from now until doomsday whose strategy, whose strategic delay, whatever. From our perspective, we want the Court to get the right result and are we going to engendered delay.

Quick footnote. My colleague cited, it was a Judge Wood case, relatively recently, City of Syracuse v. AFT. Permissive, and you could put a lot more conditions on -- the cases recognize it, put a lot more conditions on permissive intervention than intervention as a right because if you have a right, you have a right to be in the courtroom subject to ordinary case management protocols. But even the City of Syracuse v. AFT case recognizes that when you have a new party, life is life. There's going to be some delay. The question is not whether there's delay, the question is whether there's undue delay.

And I turned that question around, your Honor, because I'm concerned there's going to be an undue rush. There's a lot of attention on Greece, not sure why there's not attention on the U.K. where Levona is the petitioner, a lot of attention on Greece. We're not enforcing. We're seeking to confirm, no harm, no foul, no prejudice. We're not enforcing. What we do want -- and we're deferring to the U.S. My clients are simply not in Paros making arguments. They sent me to your courtroom, your Honor, to try to present to develop the evidence and the

arguments why this arbitration award should be confirmed. And I am as concerned about this undue delay argument as I am about undue rush.

THE COURT: Let me ask you on that. I indicated earlier — and it is the law of the case and it is the law that will be applied — that with respect to the case management plan, if you come in, you'll be permitted to make a motion to modify the plan. I assume that if you come in, whatever I order with respect to the plan, your clients will comply with. You can be heard and I'm not prejudging the outcome with respect to the case management plan. From my brief glance at it, it appears the case management plan will need to be altered in any event to some extent, but I do want to make sure that the pretrial orders that are in effect will continue to be equally applied to all parties in the case, unless and until they're modified.

MR. SHAFTEL: We are not looking for special treatment. So if we intervene, yes, we understand we're intervening in a case with circuit parameters.

If I could just preview -- well, it speaks directly to the issue of --

THE COURT: I do want to make sure you've answered my question, which is that if you come into the case, the state of play right now is that there's a case management plan. You will have to, if you come into the case, convince me or come up

with an agreement with the other side that convinces me to alter that case management plan. You'll be treated the same as every other party governed by that case management plan unless and until I modify that.

Do you agree with that?

MR. SHAFTEL: Your Honor, I agree with it. I want to be very precise. I think if the motion to intervene was without an opportunity, and on April the 15th, the day we all think of for other reasons, the Court memo endorsed a memo I wrote saying, we're not on board with this discovery plan, but who are we, we're still a nonparty. And your Honor memo endorsed and said if you are invited into the case, you will have an opportunity to be heard. I just want to make sure we have an opportunity.

THE COURT: I prefaced my comments to that effect. You'll have an opportunity. Everybody will have an opportunity to be heard.

MR. SHAFTEL: We abide by that.

THE COURT: The other thing that I want to make sure is nailed down is that if you come into the case, you've made objections with respect to the discovery requests that have been made of you in your capacity as a third-party, including with respect to the service. I would intend to construe those prior discovery requests to have been served on you as a party, and therefore treat it that way.

I take it you have no disagreement with that?

MR. SHAFTEL: None, your Honor. None, your Honor. And I don't know whether it's a profitable use of time. We're not trying to raise technical service issues. I tried to convey that in our papers. We responded to the --

THE COURT: I won't begrudge you from doing that while you were a third party, then if you're a big party, you don't have those issues.

MR. SHAFTEL: Your Honor, if I could, because it goes to the concern about undue delay, my concern about undue rush. If the Court was to ask me, so Shaftel, just give me a little sneak preview, what are you looking for in terms of extra time. My answer, Judge, is it's not about the days on the calendar. I cannot stand before this Court and come up — I don't want to get provocative by even putting a number — and say I need X or I need Y in terms of time. I need appropriate discovery. In the letter motions about the nonparty discovery, well, do you have control over this entity or that entity. We need discovery. There's two issues in play on discovery according to the Court's order. Equitable estoppel. That's them, not us. I've got nothing about equitable estoppel.

THE COURT: Let me interrupt you. If you come in, I'm going to permit you obviously to serve discovery and I'm not going to make any rulings right now with respect to the scope of the discovery. It seems to me that if you come in, you will

be entitled to be treated as a party. I do have limited time. I don't want to focus on that issue.

MR. SHAFTEL: Your Honor, given the limited time, maybe I'll just wrap up on that issue and see if the Court has any other questions.

There are conditions which we find objectionable, which I could speak to now. I'll simply say on the timing, the day after the Court, on March 25th, lifted the discovery stay, on March 26th, I reached out to my colleagues on the other side -- or both sides of the V in the configuration we have. I realize they were entitled to say, Shaftel, you're a nonparty, we're not talking about back-and-forth discovery with you. In essence, understood that, I couldn't require them to do it, but I did say to them, you know, if I do intervene, it is going to just have engendered delay. We just lost between March 26th and today, six weeks when I was saying let -- I wanted to have input into the discovery plan that was presented to you on April the 11th. I was rebuffed. I'm not going to argue, they were entitled to rebuff me, but strategic delay, there's context here. Conditions, maybe --

THE COURT: Just go ahead.

MR. SHAFTEL: Very quickly. And maybe we've covered them. The three conditions I'm recalling, one is Greece. Judge, I think we, first off, intervention as a right, we reject the propriety, frankly, of any conditions. Doesn't mean

there are separate motions that could be made, I'm not inviting them. They want an anti-suit injunction, we'll bring an anti-suit injunction. I'm not inviting it, I think it's wrong, I think it's been litigated in this case in different ways, but intervention should not be conditioned on that. And the Court has already heard, we've tried to explain it in the papers, tried to explain it today. We think the Greek proceedings --

THE COURT: What do you mean by anti --

MR. SHAFTEL: To enjoin us from proceeding with Greece.

THE COURT: I understand that suggestion. But you said anti-suit injunctions have been litigated in this case in various ways. What do you mean by that?

MR. SHAFTEL: I think right now there is -- I put in papers in the bankruptcy court as to why the Paros proceeding is appropriate. There's been questions raised in the bankruptcy proceeding. My clients are not the subject or the respondents of motions --

THE COURT: I got it. I understand now. You're not talking about any orders that I entered.

MR. SHAFTEL: No. In fact, your Honor, I was going to say none of that is before this Court. I apologize. I should have started where I just stopped. It's not before this Court, it shouldn't be before this Court as a condition, and if there are issues to be litigated, if they want to try to enjoin the

proceeding --

THE COURT: Greece was one thing. What was the others?

MR. SHAFTEL: Frankly, I don't know how it flies in the face of the April 15th memo endorsement that at least I can be heard, they don't want me to be heard on the discovery. Although, they also state that they may want an extension depending upon the Reed Smith documents and, of course, there appear to be pulling discovery that Reed Smith, on their then client, had served, it doesn't appear from the discovery plan that that is going forward. But I think the Court and I have addressed that issue already.

And I think the last restriction -- oh, was my ability to communicate with other counsel, including specifically Reed Smith. I will push back, by the way, and take exception. I know the ethical rules. I know how they're applied, irrespective of how my adversary may want to misuse them. Reed Smith represents Eletson Gas, the entity that my clients under a, I think undisturbed aspect as of now of Justice Belen's order, my clients hold the preferred shares. They're shareholders. They're not operating the company --

THE COURT: I think I understand your argument, which is the argument that I shouldn't interfere right now with your ability to communicate with Mr. Solomon and his colleagues.

MR. SHAFTEL: Correct.

THE COURT: I'll hear from the other side with respect to that.

MR. SHAFTEL: Thank you, your Honor.

THE COURT: Let me hear from Levona or Eletson, whichever wants to go first.

It will not be a surprise to you, I've come onto the bench with some targeted questions, I've read the papers carefully. Maybe I'll ask those up front, which is I do understand your argument with respect to intervening for the purpose of confirming the award, although I'll hear your response to Mr. Shaftel with respect to that.

Why should I conclude that there is, at a minimum, a legally enforceable interest that they've got in the award that would go away if I vacated the award?

Second, I'm going to want to hear you with respect to the conditions and why, with respect in particular to the Greek proceeding, the answer isn't to have you make an anti-suit injunction, which you can do on a relatively accelerated basis.

MR. NESSER: Your Honor, maybe I'll take the last question first. Judge Mastando issued a sanctions order in the bankruptcy directing that the Greek proceeding be withdrawn. They're in contempt of that order. And so there already is an order of the U.S. court directing that that be withdrawn. I don't know -- I mean we could file the anti-suit injunction here and file the suit again.

THE COURT: Is that one of the matters that's on appeal to me in the bankruptcy cases, do you know? I don't know if you're bankruptcy counsel, but --

MR. NESSER: I'd have to defer to --

THE COURT: Mr. Shaftel, do you know the answer to that?

MR. SHAFTEL: Your Honor, it comes up in different fashions. There may be some sanctions motions that are on appeal. My clients are not respondents. My clients are not respondents on any of these motions directed to the Greek proceeding. However, we put in a motion to reconsideration, call it a friend of the court. We weren't an aggrieved respondent, but to explain that the Greek proceeding does not interfere with the bankruptcy proceeding at all.

THE COURT: Okay. I put in an order asking for somebody to help me organize, counsel to help me organize the bankruptcy appeals, but not every party to those proceedings is here, and so I'm not going to ask any other questions about that.

MR. NESSER: Certainly.

Your Honor, if I may, I'll come to your question about vacatur. But I want to quickly address a few issues that you discussed with Mr. Shaftel.

The first is you asked the name of his client or the name of the owner as to Fentalon. It's Laskarina Karastamati.

I think counsel may have misspoken. I think he gave her a different last name.

THE COURT: So the owner of Fentalon is Laskarina Karastamati; is that correct?

MR. SHAFTEL: No, it is not the owner. I think Mr. Nesser maybe --

MR. NESSER: The person who testified in the arbitration --

THE COURT: Is that right?

MR. SHAFTEL: Right. Not the owner.

THE COURT: For Fentalon, the person who testified at the arbitration was Laskarina Karastamati; is that right, Mr. Shaftel?

MR. SHAFTEL: Correct.

THE COURT: And Vassilis Kertsikoff has a relationship to Apargo?

MR. SHAFTEL: Kertsikoff, yes, VH with Desimusco.

MR. NESSER: Your Honor, maybe I can help. The actual testimony, excerpts of the testimony are in the record.

THE COURT: What docket number?

MR. NESSER: Ms. Karastamati is 67-41. Mr. Hadjieleftheriadis is at 67-45, and Mr. Kertsikoff is at 67-43. Those are dashes. 67-41, -45, -43. They're excerpts, but they were excerpted for the purpose of capturing each of their testimony in which they each said -- I'll quote it,

Ms. Karastamati said, as my family's company is Fentalon, which I own with my sister, I have the authority to speak for this nominee. And then VH said, I have authority to speak on behalf of Desimusco, my family's company is Desimusco. And Mr. Kertsikoff said, my family's company is Apargo, which I own with my brother and sister.

Of course your Honor is aware there were these recent amended 7.1 statements reflecting apparently a sale of those companies. We don't know what that was about or why it happened. It certainly seems suspicious to us that it happened in the couple of days after the intervention motions were filed.

Number tow, your Honor asked whether those individuals were testifying on behalf of the entities or in their personal capacity. I did want to point your Honor to your Honor's decision from April on confirmation and vacatur. That's ECF 104 at page 71. Your Honor there said, quote, although representatives of each purported nominee testified, they did so in their capacity as witnesses and not in their capacity as parties.

A couple of other things coming out of the colloquy with Mr. Shaftel. My ears sort of shot up when the question was put or he was discussing about proceedings abroad. And Mr. Shaftel said, well, there are proceedings in Greece and there's proceedings in the U.K., and perhaps elsewhere. Your

Honor made a comment that I think no phrase in this case is not considered, and it is concerning to us that there may perhaps, perhaps the action's pending elsewhere to confirm the award that we don't know about. If in fact there is something pending to confirm the award other than in Greece and in the U.K., we respectfully request Mr. Shaftel tell us today or be directed to do that.

And then, related to that, Mr. Shaftel said, well, he committed for the first time here today that he won't pursue enforcement outside the United States. I'm sorry. He said he won't pursue enforcement outside the United States without -- I can't remember exactly actually. I thought I had written it down, but I didn't. We just can request clarification that what that means is that there will be no enforcement absent approval from your Honor and from Judge Mastando given the orders in both places.

So we have the proceedings here that your Honor's asked about, and then you have the writ stay order and the stay relief order entered by Judge Mastando that we've argued prohibits enforcement as well. We spent literal years trying to get a commitment from them that they will not enforce until Judge Mastando authorizes that enforcement and asked your Honor, as well, and we've never gotten that. So if that's what we're talking about --

THE COURT: What is it that you want confirmation of?

MR. NESSER: That there will be no enforcement or attempt to enforce the arbitration award outside the United States unless and until your Honor and Judge Mastando have approved doing that.

THE COURT: What's the basis for me to say unless and until I approve it. I understand you're asking the questions saying unless and until these proceedings are concluded and your motion to vacate has lost, if that's what happens, but the way in which you just put it didn't sound right to me.

MR. NESSER: The way in which your Honor put is better than the way I put it.

THE COURT: Let me ask Mr. Shaftel then, are you willing to make a commitment on behalf of your clients that there will be no enforcement or attempt to enforce the award unless and until the court has denied the motion to vacate the award?

MR. SHAFTEL: Your Honor, I think what we can commit to and what I believe we have is that we will enforce with notice to the courts. I don't know how long this proceeding will take or any appeals will take. If the other side has legitimate rights in this regard, your Honor, that should be the subject of a specific, maybe it's a first cousin to an anti-suit motion, but not a condition to our intervention.

THE COURT: I understand that point. I just wanted to understand what your position was, Mr. Shaftel. So I

understand. Let me go back to counsel for Levona.

MR. NESSER: I'm sorry. So is the commitment that there will be no enforcement --

THE COURT: No. What he said is that there will be no enforcement absent notice to the court first.

MR. NESSER: So turning to the substance. On statutory standing, your Honor, in our view, the FAA is clear, a motion to confirm is by a party, a motion to vacate is by a party. The motion to vacate gets served on a party. That language is clear. The New York Convention says likewise, a motion to confirm is filed by a party against the party to the arbitration.

I do want to point your Honor's attention to section 10C of the FAA. And section 10 is the FAA section that talks about vacatur. We cited your Honor to 10A, which says a party can move to vacate. 10C talks about vacatur in a particular circumstance of a particular type of arbitration involving federal agencies. And what that section says, what that subsection says is the United States District Court, where an award was made pursuant to that federal agency arbitration, may make an order, quote, vacating the award upon the application of a person other than a party to the arbitration who was adversely affected or aggrieved by the award, provided certain circumstances are satisfied.

And so why is that important, your Honor? It's

important because it shows that Congress knows how to permit non-parties to participate in vacatur proceedings when it wants to do that. And it did that. Congress did that with respect to vacatur proceedings involving federal agencies. It did not do that with respect to these kinds of proceedings otherwise under the FAA.

THE COURT: But here they're seeking to intervene, not for the purpose of asking the Court for relief on the vacatur. The way I hear what they're asking for is that they would be, and leave aside the confirmation, they would be just fine and dandy if the Court didn't take any action whatsoever. And so isn't there a difference between interveining for the purpose of asking the Court to exercise its powers and interveining for the purpose of opposing the Court's exercise of its powers?

MR. NESSER: Your Honor, denying vacatur is equally an exercise of the Court's powers.

THE COURT: But the analogous context of Article III standing, the Supreme Court has drawn a distinction as how the other federal courts between interveining for the purpose of asking a court for relief and interveining for the purpose of opposing relief, and then said you don't need Article III standing to oppose, you do need it for seeking relief. Wouldn't that apply here?

MR. NESSER: I don't think so, your Honor, because we have a statute, and the statute has text, and the text talks

about a party, and it talks about a party with respect to vacatur, it talks about a party with respect to confirmation, and the structure of the FAA is consistent even in other sections. Section 4 says a party can move to compel arbitration. Section 5 says a party can move to appoint an arbitrator. Section 11 says a party can move to modify or correct an award. So it's clear that Congress's intention in the FAA was to have parties be the only entities involved in confirmation and vacating proceedings.

And your Honor, the case law has recognized that, right. We cite Eddie Stone, and they of course cite -- oh, and I did want to flag, Eddie Stone in turn cites Katir, which was then affirmed by the Second Circuit in 1994. And that was a case where the parties said, I want to intervene for the purpose of pursuing vacatur. A nonparty wanted to pursue vacatur and the Court said you can't do that because you don't -- a nonparty lacks standing to vacate. Though I take your Honor's point that seeking vacatur is different than opposing a vacatur perhaps, but I did want to flag that for the Court.

So is there any case, your Honor, in history in which a nonparty has been permitted to intervene for the purpose of opposing of vacatur or for the purpose of seeking confirmation? We've not seen one, they've not cited one. So as far as any of us in the room is concerned, your Honor would be the first

Court in the history of the country to permit a nonparty to intervene for either of those purposes. The only case law that we have, which is the case they rely on, is Contracting Plumbers, Second Circuit decision, and Contracting Plumbers says, well, here's a narrow exception, a narrow circumstance in which a nonparty can seek to intervene for the purpose of seeking vacatur. Your Honor, that case, we think --

THE COURT: There also are the labor cases that apply principles of the FAA that say that a union employee can seek vacatur in the limited circumstance where there's been a violation of the duty of fair representation, right?

MR. NESSER: That, I think that's correct, your Honor. And those cases are discussed also in Katir and in the other cases.

THE COURT: Right.

MR. NESSER: But the point is the relief that they are seeking here, as far as any of us knows, has never been granted by any court in the history of the country. And we think there's a reason for that, because if you look at the Contracting Plumbers decision, right, Contracting Plumbers carves out a very, very narrow exception to the plain language of the statute, right. The plain language of the statute says the only party who can intervene -- the only party who can seek vacatur is a party. And Contracting Plumbers says, well, where you have a substantial interest and there was a strong public

policy because it's a union, its very existence is threatened and so forth, maybe we'll create an exception in that circumstance.

Your Honor, by the way, I'm sure your Honor noted, the parties in Contracting Plumbers had consented to intervention. At 466, there was a stipulation that intervention was permissible. The statutory standing analysis was separate. But in a context where it was the public policy involved where there was a strong public -- I'm sorry. Public policy involved where the viability of the union was at stake, whether there was consent to intervention, the court perhaps could understand to have been carving out an exception. But the court there did not address the Rules Enabling Act, which we believe governs, which other courts in the interim have relied upon. The Second Circuit in that decision didn't have 10C, your Honor. 10C was enacted two years after Contracting Plumbers.

And so, to the extent your Honor reads for it, right FAA 10C as an indication of congressional intent regarding the only circumstance in which a nonparty is permitted to intervene with respect to vacatur, then that certainly is evidence of congressional intent that the Second Circuit in Contracting Plumbers did not have.

Your Honor, of course in Eddie Stone and other cases have recognized since then that Contracting Plumbers is recognized as an outlier and as an exception limited to its

facts.

Now, counsel's point and your Honor's question to some extent, right, the point that they make is, well -- which, candidly, it was a question I asked, too. What's the difference, right, what's the difference between moving to intervene for purposes of seeking vacatur and moving for the purposes of opposing have a vacatur, right. If I'm in a Contracting Plumbers world and I can intervene to seek vacatur, then why can't I do the same with respect to vacating -- with respect to opposing vacatur? They say there's no distinction. But, your Honor, there is a distinction. The distinction is that it's easy to understand a situation like Contracting Plumbers where, unless you're permitted to intervene to seek vacatur, you may have no other avenue of relief. And we'll talk about the facts of Contracting Plumbers in a moment. But with respect to opposing vacatur and with respect to seeking confirmation, if you're not permitted to intervene, ordinarily, you have all sorts of other ways in which you can deal with that situation. File your own lawsuit.

Now here, I'm not -- I don't concede they have the ability to do that because they agreed to be bound by whatever happens here, right, but there's no reason to modify or to go beyond or to building an exception to clear statutory language, right, to permit non-parties to take actions when parties are only allowed under the statute. There's no reason to carve out

an exception to the statute in a context where, ordinarily, you have other rights.

THE COURT: So hypothetically, if they came to intervene and they hadn't agreed to be bound by the proceedings here, what would their avenues of relief been with respect to --

MR. NESSER: -- for the damage that we supposedly caused them.

THE COURT: You mean bring a totally separate lawsuit?

MR. NESSER: I assume so.

THE COURT: I understand.

MR. NESSER: They chose not to do that, right.

THE COURT: I understand.

MR. NESSER: And so that's where we are.

And so, again, if we're in a world of creating exceptions and statutory language, which is the world of Contracting Plumbers, Contracting Plumbers did that in a situation where what would have happened if the union, international union had not been permitted to intervene as to vacatur, right? Your Honor, what would have happened is there would have been a decision in the collective bargaining agreement arbitration in favor of employees against the plumbers that said the plumbers have to perform the disputed services. And then there would also be, right -- and that would be a confirmed award, confirmed by a judge in this

district. And then at the same time there will have been an arbitration award by the UA saying that the plumbers cannot take those actions. Then what happens? Then what happens, your Honor? Then you have one award confirmed saying the plumbers can't act and one award confirmed saying the plumbers can act. In a context where the plumbers act and the UA can't control the actions, the very existence of the union is gone. That's Eddie Stone.

THE COURT: I suppose the question would come about, if they brought a separate lawsuit, whether some form of collateral estoppel applied with respect to the arbitral findings against your client.

MR. NESSER: Oh, I'm sorry. I misunderstood the question.

THE COURT: So I'm thinking about your hypothetical. Your hypothetical, what Mr. Shaftel could quite rightly say is, well, listen, we got an award. Your hypothetical doesn't honor that award, but somebody might respond to that by saying, well, actually, there are findings and you've had a full and fair opportunity to participate.

MR. NESSER: But your Honor, they didn't get an award. That's the entire issue. If they had wanted to participate in the arbitration, they could have asked and maybe that would have been agreed to. They chose not to. So now they're an outsider to the award and they're trying to come in, right, and

do things that the FAA says a nonparty is not permitted to do. I'm exaggerating a tiny bit, but that's our position, that's our reading of the statute, right. And so in that situation where they have recourse, there's no reason to create an exception to the plain language of the statute in the context where no court in the history of the country has done so before.

THE COURT: Why don't you bring your argument to a close.

MR. NESSER: Sure.

THE COURT: Given you a lot of time.

MR. NESSER: Yeah, I appreciate it.

I just want to say two things on timeliness, if I can. One of them is your Honor asked the question why not just put the foreign proceedings on pause. The answer was, well, it takes a long time. My question in response to that is if it takes a long time, why do they wait until November and December of 2024 to initiate proceedings abroad with respect to an arbitration decision that had been issued over a year before?

The other point I wanted to make is on the schedule. We've heard a lot about how they need extra time, they're going to need extra time in discovery. I know your Honor hasn't reached that, but I did want to point out that in September, your Honor will recall the parties proposed competing case management schedules for discovery. We submitted a schedule,

your Honor adopted it in part. Your Honor adopted it in substantially all of what we had proposed. Reed Smith proposed a schedule at that time. Reed Smith supposedly was representing the interests of the purported nominees, which is why they didn't bother to intervene. So Reed Smith in its capacity as an entity representing the interest of the nominees puts in a schedule. What did the schedule say? The schedule said three and a half weeks for discovery. As of today, we have five weeks left of discovery. And so the notion that -- which is to say the discovery schedule that we at Levona had requested was significantly longer than the schedule that they were seeking to impose. And so the significance that all of a sudden we need to redo the whole thing because they now need to completely reverse position instead of asking for a faster schedule than we wanted, now they want to have a longer schedule that we wanted, right. This is not real, this is just -- this is just, you know -- anyway, I won't use pejorative words. I believe that's what I had, unless your Honor has further questions.

THE COURT: I don't. Well, it sounds like you're no longer pressing the point about -- well, maybe it's Eletson's point about communications with Reed Smith. So I'll hear from counsel for Eletson. And you can tell me why that would be something that the Court would have any authority to do, either as a condition of intervention or just generally. But I'll

hear any other arguments Eletson also has. Thank you very much.

MR. NESSER: Thank you, your Honor.

MS. FUREY: Thank you, your Honor.

The Court has brought authority to manage the cases and the attorneys and the parties before it in order to maintain the fairness of the proceeding to make sure the proceeding is run ethically, to maintain the integrity of the proceeding. We heard that Reed Smith recently filed a letter with the Court saying they represented Eletson Holdings and Eletson Corp. for over two and a half years. Now they are coming and, we heard today, representing the interests of the Cypriot nominees who are directly adverse to Eletson. Those interests at the moment are directly adverse. And so for it to represent a client in a matter directly adverse to its former client is a violation of rule 1.9, and to do so would benefit --

THE COURT: Let me make my question a little bit more pointed. There is authority that a court has to control the proceedings before it to make sure they're not tainted. That usually comes in the form of if an expert has testified for one side and then can be using privileged information testifying for another side, or if a lawyer switches sides. But here I'm proceeding on the notion that Reed Smith is out of the case. I realize that the Second Circuit may have the question of

whether it may have stayed that. But on the assumption that that sticks, how do I have the authority to do what you're saying? Is there a case that supports it? Frankly, even if there was a case, would I condition intervention on it? Why wouldn't I require you to make a separate motion?

MS. FUREY: Certainly if a separate motion needs to be made, we'll do so, your Honor. But it felt funny to move to disqualify Reed Smith.

THE COURT: Right.

MS. FUREY: Because they had been displaced. And both the advisory notes to Rule 24 as well as several cases that hadn't been cited in our brief, but including Finance Ware v. UBS, Chevron v. Donziger, those are all Southern District of New York cases, talk about how it's well within the court's discretion to obviously condition intervention. One of those conditions, just like managing the court's docket, just like managing the schedule, is to maintain the integrity of the proceeding, to maintain the efficiency of the proceeding. And, frankly, to issue an order to say that the Cypriot nominees could not receive confidential information from Eletson Corp. and Eletson Holdings former attorney seems to be uncontroversial. It would seem -- this is information we haven't been able to receive. So we have not received a single document from Reed Smith, and yet, the Cypriot nominees are going to be in a position coming in as a party to be able to

receive information from Eletson Corp. and Eletson Holdings' prior counsel that we don't have, and that seems to be inherently unfair. And not only, I mean, it's a violation of the ethical rules *vis-à-vis* Reed Smith, but it's also an unfair advantage that a Cypriot nominee, if it comes in, it will be a party to this case. And maybe it's a motion for an injunction, your Honor, to enjoin the parties from communicating or using information that is confidential to Eletson Holdings. I mean, we'd have a likelihood of success on it, we'd have irreparable harm in the form of misuse of confidential information. Happy to put forward that. It just seemed in the usual case, and this is a, in all respects, an unusual case.

THE COURT: I'm thinking about what you're asking for and it seems to me that what you're describing to me is a lawsuit that you might have against the Reed Smith law firm. I'm not suggesting you bring that or you not bring that, but that seems to me that that's what your claim is and that I don't have the Reed Smith law firm here. But in the ordinary case where The lawyer betrays the confidences of its former client, if that is what is happening — and I'm not making any judgment with respect to that, I'm not — number one, Reed Smith is not here; and number two, I don't have any facts in front of me that would support that. It's just not an issue in front of me. But in that ordinary case, that's what the client would do. I'm not sure why that comes before me. You'd have to give

them notice and bring them into the case.

MS. FUREY: Absolutely, your Honor. And that may in fact be in the future. But for now, if the Court sets the schedule and all parties are going to adhere to that schedule, it's going to be fairly quick, it would seem just unfair that Cypriot nominees would be receiving documents from Reed Smith when we have had to go before your Honor, brief the issue, receive an order, go to the Second Circuit and still don't have a single document. Maybe a way around that is an order that anything they received from Reed Smith needs to be delivered to us. But it would seem to me to be --

THE COURT: That's a discovery request.

All right. I don't know also whether there's an aiding and abetting a breach of fiduciary duty, but I'm not proposing to address any of that now.

Maybe you can answer one more question, and then if Mr. Shaftel he has anything he urgently needs to tell me, he will tell me. Can you brief me on what the status is in front of the Circuit on the turnover of the client photos?

MS. FUREY: Absolutely. So it's been placed on an expedited track. So we're waiting hear from the Second Circuit, hopefully before the summer recess in order to receive an order on the motion to stay in the turnover order, and that's been linked in tandem with the appeal of the bankruptcy of your -- the order of the stipulation of dismissal. So I

think both are on an expedited basis in front of the Second Circuit.

I did have one other point, your Honor, and that is one other condition that we had proposed in our brief, is that the parties here before the Court that are seeking to intervene comply with current bankruptcy orders. They are currently in violation of those orders and we think it is entirely appropriate that this Court condition intervention on compliance with the bankruptcy orders.

So, just for an example, Vasilis Hadjieleftheriadis — we'll say VH — has been sanctioned by the bankruptcy court both as a director of the purported provisional board, but also in its individual capacity. He's the controlling principal of purported nominee Desimusco.

So he is in violation of several bankruptcy orders and monetary sanctions have been issued against him, and he has not complied, he has not paid those. Those orders are not stayed, I understand they're on appeal, but it would seem to me that it would be a very rational and fair condition for intervention that the parties who seek to take advantage of this Court comply with this Court, a division of this Court's orders before doing so.

THE COURT: Who's not in compliance and what are they not in compliance with?

MS. FUREY: So there's four orders. They're at docket

No. 14-02, 14-95, 15-36, and 15-37, bankruptcy doc numbers. And all of the principals of the purported nominees are within the umbrella of the stanchioned parties. Vasilis Hadjieleftheriadis — I'll say VH — has individually been sanctioned, but the other principals are also principals of the former majority shareholders who have been sanctioned. And the sanctions, first they were $1,000 per day per party, they're up to $5,000 --

THE COURT: They haven't satisfied --

MS. FUREY: They have not satisfied the sanction orders in addition to the order to withdraw the Greek proceeding and other proceedings that counsel had mentioned earlier.

THE COURT: Let me raise one other housekeeping point with you as we're thinking about the case going forward. On the docket there is a response by Eletson to the second amended petition to vacate the arbitral award. That was entered when Eletson had different counsel.

MS. FUREY: We'll be eventing that, your Honor.

THE COURT: That was my question.

Mr. Shaftel, anything --

MR. SHAFTEL: Your Honor, I don't want to have a tinnier, certainly not a very tinnier --

THE COURT: You don't have to defend, by the way, whether Mr. Solomon is breaching his duties or he's not

breaching his duties. He's not here, Reed Smith is not here.

MR. SHAFTEL: Fair enough. I'll pass on that. I do have a reaction. I will pass on that. Other than just to note, Reed Smith is representing Gas in various proceedings, okay, Gas is the entity, my clients are shareholders, preferred shareholders in. There is a commonality of interests in play.

THE COURT: Whether he can do so consistent with his fiduciary duties as prior counsel to Eletson Holdings and Eletson Corp. is not an issue that I'm going to address today.

MR. SHAFTEL: Understood, your Honor.

In terms of the sanctions, I did make the point before. The Cypriot entities are not named respondents on any sanctions, on any sanctions. We've heard about principals, VH individually. I believe they have their own representation in bankruptcy court, I believe it's the Rolnick firm, at least in terms of the former provisional board. But the Cypriot entities, there's no sanction for the Cypriot entities to satisfy. So I just factually want to clarify that.

Last, but not least, back to the law. I do believe Levona is putting a gloss on the cases and the FAA text which isn't found anywhere in the cases. The notion that 10C, the drafting history, the legislative history should be read to override the prior case law, finds no support in the case law. We're not trying to violate the Enabling Act and put aside the cases. We're nonparties. We've not heard Levona respond to

Data Stream. But whether it be Data Stream or Association of Contracting Plumbers, Levona's own -- the case they embrace, Eddie Stone says, a nonparty, in limited circumstances -- yes, your Honor, limited circumstances. The limited circumstances fit this case. Quote, this is Eddie Stone, a nonparty may have so substantial an interest in an arbitration that it should be permitted to intervene as of right in a subsequent federal confirmation proceeding. That's what we're doing. We think it's undeniable we have that substantial interest. We think we satisfy the standard of the case that Levona embraces.

Thank you, your Honor.

THE COURT: All right. I'm prepared to rule.

With respect to the motion to intervene, the motion to intervene is granted in part and denied in part. The proposed intervenors are granted leave to intervene for the limited purpose of opposing a motion to vacate. Proposed intervenor shall submit a response to the amended answer and second amended cross petition no later than May 20th, 2025. The motion to file the proposed petition and to intervene for purposes of petitioning to confirm the award is denied.

An opinion will follow.

With respect to the conditions, I'm declining to impose conditions other than the conditions that I discussed with Mr. Shaftel and to which he agreed, which are: Number one, that, as intervenors, the persons who were proposed

intervenors will now be treated as parties, and therefore they are bound by the case management plan that is in effect at present.

To that end, if the intervenors wish the case management plan to be modified, they may make a letter motion for modification of the case management plan no later than May 12th and shall do so after meeting and conferring with counsel for Eletson and for Levona.

The other condition is that the objections to the discovery request directed to the intervenors on the basis that they were third parties is no longer applicable. In other words, the condition is that the intervenors are deemed to have abandoned the argument that the discovery requests were not served properly because the intervenors are third parties or that the discovery requests are overbroad or otherwise violate Rule 45. The Court is treating the discovery requests to the intervenors as discovery requests governed by the rules of Rule 26 and the discovery rules with respect to document requests directed to parties.

With respect to the Greek action, if Levona wants to file a motion for an anti-suit injunction or for some other form of relief to ensure that the Court is able to render an effective decision with respect to the motion to vacate, Levona has leave to make such a motion.

With respect to the arguments about the sharing of

information, as I flagged earlier, I'm not making that as a condition. If Eletson thinks that they have a motion that is properly directed to this Court with respect to sharing information, they can make that motion, as well, and they can do that on an expedited basis if it's appropriate.

And with respect to the sanctions imposed on the individuals in the bankruptcy proceeding, I'm also not making that a condition. I'm not aware of authority that would permit me to condition intervention in this case on compliance by the individuals with a court order in a different case. Even if that different case is deemed to be related to this case for administrative purposes, it's not consolidated.

I also have in front of me a motion to compel the production of documents from the intervenors. In other words, from Apargo Limited, Desimusco Trading Limited, and Fentalon Limited. The motion to compel the production of documents is granted. There will be a separate memorandum and order that will lay out my reasoning with respect to that. But those entities are directed to produce the documents called for by the subpoenas no later than May 20th, 2025, and to produce an itemized privilege log by no later than that date indicating that any documents being withheld and the reasoning for withholding, including all information required by Local Civil Rule 26.2(a)(2).

Is there anything else I need to address today from

the perspective of Eletson?

MS. FUREY: No, your Honor.

THE COURT: What about from the perspective of Levona?

MR. NESSER: No, thank you. No, your Honor.

THE COURT: What about from the perspective of intervenors?

MR. SHAFTEL: No, your Honor.

THE COURT: Have a good day, everybody.

* * *

EXHIBIT “3”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS INC.,

Petitioner,

v. 23 Civ. 7331 (LJL)

LEVONA HOLDINGS LTD.,

Oral Argument

Respondent.

New York, N.Y.
January 2, 2024
2:00 p.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

REED SMITH LLP
Attorneys for Petitioner
BY: LOUIS M. SOLOMON
COLIN A. UNDERWOOD
MELISSA CONN

QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for Respondent
BY: ISAAC NESSER
WILLIAM ADAMS
ALEX VAN DYKE
JOHN SUPER
ERIC KAY

(Case called)

THE DEPUTY CLERK: Starting with counsel for the petitioner, please state your appearance for the record.

MR. SOLOMON: Good afternoon, your Honor. Lou Solomon from Reed Smith.

THE COURT: Who else do I have at the petitioner's table?

MR. UNDERWOOD: Your Honor, Colin Underwood from Reed Smith.

MS. CONN: Melissa Conn from Reed Smith.

THE COURT: And for respondent.

MR. NESSER: Good afternoon, your Honor. Isaac Nesser, Quinn Emanuel for Levona.

MR. ADAMS: Good afternoon, your Honor. William Adams, Quinn Emanuel for Levona as well.

MR. VAN DYKE: Good afternoon, your Honor. Alex Van Dyke from Quinn Emanuel.

MR. SUPER: Good afternoon, your Honor. John Super, Quinn Emanuel for Levona.

MR. KAY: Eric Kay from Quinn Emanuel for Levona.

THE COURT: Good afternoon.

So we're here today for oral argument on the petition to confirm and the motion to vacate or dismiss the arbitral award. I'll hear first from the respondents, and then I'll hear from petitioners, and then anybody who wants rebuttal

after that, I'll hear from you all.

I'm comfortable with you arguing the respective motions in whatever order you think would be most persuasive. I would ask the parties, each of them, to order a copy of the transcript on an expedited basis after today's proceedings. I have no doubt that even if I didn't ask you to do that, you would do it.

So let me hear from respondents.

MR. NESSER: Good afternoon, your Honor. We prepared a hand up just to organize the presentation. Would that be okay?

THE COURT: I assume you have shared that with opposing counsel.

MR. NESSER: We have not, but we have copies.

THE COURT: Why don't you show it to them first and have them look at it. And then after that, you can hand it up to me.

Mr. Solomon, do you have a handout?

MR. SOLOMON: We do not, your Honor.

THE COURT: Okay. I can't imagine that there's going to be anything problematic with me seeing the handout. It's not as if this is a jury proceeding.

MR. SOLOMON: If your Honor wishes to have it, it's just another brief.

THE COURT: You can hand it up.

MR. SOLOMON: Can we at least have an understanding that there's no new cases and new arguments asserted in here.

THE COURT: Well, we can ask them that. But if there are new cases they would have been mentioning them to me. And if you have new cases you want to mention to me, I'm perfectly comfortable seeing them. I can tell you all that I have looked through your cases, but I have also not confined myself to your cases.

Mr. Nesser, are there new cases?

MR. NESSER: I think we cite the one Second Circuit case that was in the creditor's committee letter. Maybe one other somewhere, but it's overwhelmingly what was in the --

THE COURT: You can hand it up.

I will tell you that I find oral advocacy more effective if I'm looking at the advocate rather than looking at the piece of paper.

MR. NESSER: It's really more just a reference. So where there are places where the text matters, we can point the Court to the text.

Am I clear to proceed?

THE COURT: Yes.

MR. NESSER: Your Honor, I'll start with the Article III standing issue. This case rather involves an effort by petitioners to seek confirmation of an award that directs Levona to pay nearly $90 million to other people,

people who aren't parties to this proceeding, who weren't parties to the arbitration, and for the most part weren't even signatories to the arbitration agreement. Now, if Levona pays that money, your Honor, petitioners won't receive it. If Levona doesn't pay that money, petitioners won't have lost it.

THE COURT: Let me ask you --

MR. NESSER: Sure.

THE COURT: -- the question that troubles me about your argument on this point.

MR. NESSER: Yes.

THE COURT: You seem to concede, as I think you would need to, that the petitioners would have had standing to bring a contract claim for breach of the LLCA or breach of the BOL if they brought it in federal court, Article III standing, even if they were suing to enforce a provision that had a third-party beneficiary, or do you dispute that.

MR. NESSER: Is your Honor's question if there were an award in favor --

THE COURT: No. Let's leave aside the arbitration context. Let's proceed from kind of first principles on Article III.

MR. NESSER: Yes.

THE COURT: Assume, hypothetically, that the petitioner in this case was suing under the BOL -- and I realize they are not, they're pursuing under the LLCA, and I

want to hear you on that -- but let's assume that they were suing under the BOL to enforce the option, as to which the beneficiaries are Eletson Gas or its preferred nominees, do you concede that, in that circumstance, they're suing for specific performance to benefit a third-party beneficiary, but they are the contracting party, they would have had Article III standing?

MR. NESSER: Your Honor, I believe, if the only relief they were requesting were a transfer of the shares to someone other than the plaintiffs in that scenario, that they would not have Article III standing.

THE COURT: Isn't that quite a remarkable proposition? I mean, what you are asking me to say is that the contracting party who is suing on behalf of a third-party beneficiary and who has the rights -- the statement says you have the right to do it, it's black letter law that a contracting party can sue to enforce a contractual provision that benefits a third-party beneficiary -- that they can't do that in federal court?

MR. NESSER: Your Honor, there's been no argument by the petitioners here that there's a right in federal court to bring an action on behalf of a third-party beneficiary, where the party itself lacks standing. We have not --

THE COURT: Let's assume that Eletson would have had the standing to enforce a contract provision to sue for breach of contract. Is there something about the fact that this is a

confirmation proceeding that -- as to which the relief would go to a third party that would distinguish it from an ordinary breach of contract claim?

MR. NESSER: Well, your Honor, we have Second Circuit case law discussing how the standing analysis works in the context of an arbitral award.

THE COURT: That's the Stafford opinion?

MR. NESSER: Stafford and we have Compagnie Noga, which says if there's been an assignment, you don't have standing, and other cases as well. And so we think it's pretty clear, under Second Circuit cases, under TransUnion, that if the petitioner seeking confirmation is not going to have any concrete harm and no benefit from confirmation, then they lack Article III standing to seek confirmation.

THE COURT: There are contract provisions all the time where there are third-party beneficiaries. Does that mean that you can't bring an Article III proceeding if the other side has breached a provision that benefits a third party?

MR. NESSER: Your Honor, the purpose -- as I understand it, the purpose of a third-party beneficiary clause is to give the third-party beneficiary standing to assert the claim.

THE COURT: It does when there's an intended beneficiary, but not to the exclusion of the obligor or the contracting party. That is, under the law, as I understand

it -- but you can correct me -- either party can sue under that circumstance.

MR. NESSER: Again, your Honor, from what we have seen, from what I have seen, if a party does not obtain a concrete benefit, which is to say, if there's no concrete harm, there's no standing. That's what TransUnion said. And so from what we have seen, if the petitioner is seeking confirmation of an award that would not directly benefit it in a cognizable Article III fashion, then it does not have standing to seek confirmation.

Now, your Honor is --

THE COURT: Could they have sued just for -- can you sue just for specific performance? In other words, let's assume there was no monetary element to this, do they get a benefit in the form of effectively seizing control of Eletson Gas?

MR. NESSER: Your Honor, if this were not an arbitration, if they had filed a complaint seeking specific performance, which is to say an exercise of rights to which they are a counterparty, then perhaps in that scenario they would have standing to do it. But that's not the situation that we have here.

Your Honor -- and I guess where I was going earlier is that, if the Court -- we have not seen case law giving a third-party beneficiary standing to sue -- sorry, giving a

petitioner or a plaintiff standing to sue where it in fact lacks a cognizable Article III injury, if the court is referring to specific cases, we're happy to look at that, those cases haven't been cited by either party.

But again, your Honor, the point was, if the issue were specific performance, then that would be one thing, right, because it is a performance that is owed -- I suppose, in theory -- is owed to the plaintiff, right. But here, it's after the fact.

So the question is: After the fact, what interest do the petitioners have in confirmation -- I suppose, we're talking about now the declaratory judgments as to the option having been exercised.

THE COURT: But wasn't a portion of the award -- didn't it declare that the preferred interest should go to the nominees? If I confirm the award here --

MR. NESSER: Yes.

THE COURT: -- wouldn't that have the effect of -- at least with respect to books and records -- meaning that the preferred interest would go to the preferred nominees and your client would no longer be able to exercise the rights of preferred interest holders in Eletson Gas?

MR. NESSER: If your Honor were to confirm the portion of the award providing for a transfer of preferred nominees, the question then would become still what rights does Eletson

Holdings and Eletson Corp. have, right, what is their concrete injury, what is their concrete harm. And the answer is they wouldn't have it.

Your Honor, let me actually just take a step back for a second. So let's talk about Eletson Corp. for a minute, which is one of the two petitioners here, so I believe it would be undisputed that Eletson Corp. certainly would have no interest in any of that, even what your Honor is describing. They are essentially, for these purposes, they're just a vendor to Eletson Gas.

THE COURT: I guess I understand that. Because they are a counterparty to the contracts, they have contract rights that they are able to enforce, whether the enforcement of the vindication of those rights in and of itself gives rise to standing, I guess the question I'm asking is whether vindication of contractual rights themselves is enough to give rise to Article III standing.

MR. NESSER: Sure. I understand the question. As to Holdings, I'll talk about in just a minute, but as to Eletson Corp., which is one of the two petitioners, we think there's really not any serious argument. They are party to the LLC agreement, but none of their rights under the LLC agreement are impacted or specifically at issue here in any way, and petitioners haven't argued that, right. So they're a signatory to the LLC agreement, the fact you are a signatory to a

contract doesn't give you standing to assert claims held by other signatories of that contract. The question is whether you have standing to assert the claims that you are asserting.

Eletson Corp., right, with respect to its position as a signatory to the LLC agreement -- by the way, it's a very, very limited -- it's signed to very, very limited capacity, essentially for purposes of implementing this vendor relationship, so the LLC agreement signature doesn't confer standing. And then second, you have this contract between Eletson Corp. and Eletson Gas, pursuant to which Eletson Corp. provides services to Eletson Gas and gets paid for it. If there's standing on account of that relationship, then that's like any vendor to Wal-Mart having standing all of a sudden to assert claims in connection with a governance dispute involving Wal-Mart, right. Corp. is just a bystander to all of that.

THE COURT: I'm not sure that a lot turns upon this, but you did say that Corp. signed in a limited capacity. Is there a provision of the LLC agreement that you're relying upon for that proposition?

MR. NESSER: I don't have it at my fingertips, but we'll provide it.

THE COURT: Maybe one of the lawyers back there will provide it.

MR. NESSER: So that's as to Corp., so we really don't think standing is really at all a close call as to Corp. on

these issues.

But again, as to Holdings, right, let's just take a step back here, if I could. Who are the parties here, right, who are the entities that are in the mix? We have Levona. Levona obviously has an interest in knowing whether it owns the shares, right. That's a direct, concrete Article III interest, if it doesn't have the shares, it is injured, right. We have the Cypriots, the Cypriots, who are not here, who are not represented, we don't know really who they are, but the Cypriots clearly have an interest in knowing whether they own the shares. Then there's Eletson Gas. Does Eletson gas have an interest in knowing who owns its preferred shares? Maybe. We can debate that. But that's not an issue in front of us. Then we have Corp., who doesn't have any real interest here. And then you have Holdings. But what is Holdings' relationship to all of this? Holdings to essentially just a bystander as relevant --

THE COURT: They own the common of Gas; right?

MR. NESSER: So?

THE COURT: So, as the arbitrator concluded, the -- and as I think you sort of indicated -- Eletson Gas may not particularly have an economic interest in who owns its shares, it's just a corporate entity, it should be indifferent as to who owns its shares, but the other holders of its shares should have an interest in who owns the other part of it and whether

they've got control.

MR. NESSER: So two things, your Honor. Number one, the arbitrator himself -- this isn't an Article III issue per se, but it's relevant -- the arbitrator himself addressed an argument by Eletson where Eletson said, your Honor, we want you to take action with respect to the sale of the preferred shares from Blackstone to Levona, right. This was before any of the issues happened, there was a sale of the preferred shares, the same ones we're talking about here, sale of those shares from Blackstone to Levona. Eletson said, arbitrator, you have to issue relief as to that transaction. What did the arbitrator say? That's outside my jurisdiction, right. That's an issue as between Blackstone and Levona. What does that have to do with Holdings and Corp., right, they're just bystanders to issues as between two proposed owners. Even though, your Honor, Eletson Holdings in that situation, right, would have supposed want to know, who was in that joint venture party, right, but the arbitrator said that's not sufficient.

Number two, your Honor, TransUnion specifically says, informational injury is not sufficient to create Article III standing, right. And so your Honor will recall, the plaintiffs there had credit reports and there was disclosure about the credit risk and so forth and so on. And Justice Kavanaugh there said, no concrete harm, no injury.

So, your Honor, that's what we're dealing with here.

Would it be nice for Eletson Holdings to know who owns the stuff? I suppose it would be nice. But is that cognizable Article III injury? And the answer is it's not. And that makes perfect sense, your Honor, because if Eletson Holdings and any shareholder --

THE COURT: Under your theory, why did Eletson and the BOL contract for a purchase option where the interest, the preferred interest would go not to Eletson Holdings or to Corp., but to Eletson Gas or the preferred nominees of Eletson Gas? Isn't the whole theory of the BOL that Eletson was negotiating to get control?

MR. NESSER: But your Honor, the position of Eletson, the position of the petitioners here is that they don't own the shares, number one. The disclosures -- and it's in the post hearing brief, I believe, and in their pre-hearing brief of Eletson -- what they say repeatedly is that the preferred nominees and Eletson are separate entities, that they're not affiliates, right. Reed Smith has told us --

THE COURT: I understand that -- I think you have -- there's some power to your argument with respect to the transfer to the preferred nominees. I'm still having some trouble understanding your Article III argument.

MR. NESSER: So here's a hypothetical. Imagine Eletson Holdings had a hundred shareholders instead of just a small number. Would every one of those shareholders have an

Article III standing right to intervene -- not to intervene, actually -- to literally assert a claim as a plaintiff in federal court in order to obtain a determination about whether Levona or someone else owns the shares? And clearly, that could not be the case, right? The fact that they're shareholders of the company doesn't give every single shareholder Article III standing to assert claims regarding a dispute between two entities.

THE COURT: I think I understand your argument.

MR. NESSER: Your Honor, let me turn back, if I could. I hear your Honor on that portion of the declaratory relief, right, which is to say, just the portion of the award that declares that there had been an exercise of the options, right. And I suppose your Honor's inquiry also addresses the portion that talks about the fact that by virtue of the exercise of the option, there had been delivery of the shares to the Cypriots. Those are two pieces of declaratory relief, your Honor. And if that is what is concerning your Honor, your Honor could confirm as to those two pieces of relief, but your Honor would nonetheless have to dismiss the petition, we think, with respect to everything else.

THE COURT: So tell me exactly how that works, because there is a way to read the Federal Arbitration Act to say that there's a single claim to confirm the award and that, while the Court has the authority to modify the award under some

circumstances -- which I'm sure you are going to argue -- what you would have courts do is, in every instance where there is an award, look at each item of relief --

MR. NESSER: Correct.

THE COURT: -- piece by piece, confirm some portions and not confirm other portions.

MR. NESSER: That's correct.

THE COURT: Sounds like that undermines the whole arbitral proceeding.

MR. NESSER: Well, your Honor, here is the answer. As I said, Stafford, Second Circuit, last year, held, "The FAA's provisions authorizing applications to confirm, vacate or modify arbitral awards do not themselves support federal jurisdiction." The Second Circuit could not be clearer. The FAA itself does not confirm, does not provide Article III standing. So that's number one, your Honor.

Number two, your Honor, we know that the standing inquiry, in general, right, outside the arbitral context, we know the standing is not assessed in gross, it's assessed claim by claim. We know that because Town of Chester, Supreme Court 2017, that standing is assessed "for each claim and for each form of relief." We know that the Supreme Court has also held, in TransUnion last year, standing is not dispensed in gross. And then we have --

THE COURT: Let's give a different hypothetical. Say

that the arbitral award listened to a district court judgment and your client is on the losing end of the district court judgment, but only portions of the judgment affect your client, is it your view that, in that circumstance, because it's -- standing is addressed piece by piece, rather than in gross, that the court of appeals would be required to address only those portions as to which you are aggrieved and not the other portions?

MR. NESSER: Yes, absolutely, your Honor.

THE COURT: Do you have authority for that proposition?

MR. NESSER: Yes. So TransUnion itself held that -- TransUnion itself held a party can have standing to seek to obtain an injunction, but not have standing to seek declaratory -- to seek damages as to the same claim. So your Honor, here is the question, right, in your Honor's hypothetical, imagine that -- and this is discussed somewhere, I can't remember which case discusses this -- but if the approach your Honor is suggesting were the law, where you could say, as long as you have one claim somewhere in your complaint as to which you have standing --

THE COURT: That's not what I -- the question that I'm asking is, let's assume I'm an appellate judge, Second Circuit, we all know the proposition that you need to have standing at all stages of the proceeding, so whatever standing existed in

the district court is kind of irrelevant because it's now standing on appeal, and you're arguing to me because you lost a portion of the judgment, and I conclude that the district court judge goofed, I think what you are saying to me is that the court of appeals would not have the authority to vacate the judgment. It would only have the authority to issue a limited remand with respect to certain portions, but not with respect to the judgment as a whole.

MR. NESSER: Well, I think what the appellate court would have to do in that scenario is dismiss with respect to the portion as to which the party did not have standing and proceed with the rest.

THE COURT: What would happen with the judgment?

MR. NESSER: The judgment would remain --

THE COURT: So what you are saying is that the court of appeals would just take the judgment piece by piece?

MR. NESSER: Yeah. And your Honor, look, DH Blair and Co., another case cited by the creditor's committee -- I had it in my outline before they filed -- but quote, that the Court reviewing the arbitration award under the FAA, "Can confirm the award either in whole or in part." Your Honor, there are literally hundreds of decisions in the Southern District, in the Second Circuit saying that. It goes all the way back to Orion where the court said the same thing.

THE COURT: No, I understood the proposition. I'm

just asking the question of how it applies to standing.

MR. NESSER: Sure. And so, your Honor, if we know that -- your Honor is correct, there are two related inquiries. Can you do standing piece by piece, can you confirm an award piece by piece? On both, the answer is obviously yes. Apologies for using the adverb. But as to standing, we know it's not piece by piece, because the Supreme Court said that three years ago. And on the confirmation piece by piece or vacatur in part, the answer to that is also yes, you can do it piece by piece. So on either side, the law is absolutely clear -- as far as we're concerned -- absolutely clear. I see no case that suggests the opposite. And we have lots of cases that confirm in part and vacate in part.

The Sixth Circuit in Nationwide confirms parts and vacates parts.

THE COURT: I know that proposition.

All you have is the Noga case and -- which is the district court opinion in the Russian case, where the question had to do with an assignment --

MR. NESSER: Yes.

THE COURT: -- and Stafford, where the claim was entirely moot. You have not cited to me -- frankly, the other side hasn't cited to me -- cases that are on all fours with the proposition that you are arguing here.

MR. NESSER: As to standing in particular?

THE COURT: Correct.

MR. NESSER: Yeah, but I don't -- well, your question is really -- by all fours, your Honor means a case in which the court affirmed in part and --

THE COURT: Stafford is a case in which the entire award was moot because it was all satisfied.

MR. NESSER: Sure.

I guess what I'm trying to say is, what your Honor is looking for is a case in which it was confirmation of an arbitral award in which the court dealt with standing piece by piece.

THE COURT: Correct.

MR. NESSER: I don't know that either party has cited a case that sits on all fours with that; however -- we can check -- however, as I said, the principles are completely clear. It's unclear to me why there would be a question --

THE COURT: They're not clear to me. I'm not sure that the either side has convinced me, but you are not helping by saying they are clear, because if they were clear, there would be authority that you would be able to cite that's on point.

MR. NESSER: I apologize. What I meant to say is the underlying principles of how standing work and how confirmation of awards works are -- the case law we cited is recent, is binding and is unambiguous. You can confirm in part, and you

have to assess standing.

THE COURT: Why don't you move to your next argument.

MR. NESSER: So there's a $3 million award of attorneys' fees in that award. And that's an award that was not directed to the petitioners, but rather to the -- quote, the entity or individuals who paid those costs and fees, that's page 68 of the award.

And your Honor, this is related to what we were talking about earlier with respect to the damages award. If the petitioners want to seek confirmation of an award of money, the petitioners have to have an Article III interest in that award of money. And we know that parties don't have standing to seek confirmation of monetary awards that are made in favor of others.

Were the petitioners the parties that were the recipients of these monetary awards, were they the ones who paid the costs and fees? We have no idea. It's not specified in the award, it's not specified in the petition, it's not in any of the materials. So from our perspective, they have utterly failed to meet their burden to demonstrate Article III standing as to that part of the award. If the Court has any question about that, of course, the Court has --

THE COURT: Isn't the implication of what you are saying that those portions of the award are illusory, because if I accept your view, then also under the Federal Arbitration

Act, it's only a party who can bring suit to confirm an award. Those persons we're talking about here, the Eletson Gas and the preferred nominees, are not parties, they would not have the authority to bring confirmation action.

MR. NESSER: Well, your Honor, I would say it slightly differently. What I would say is that the Article III analysis asks the question, were you injured.

THE COURT: Can you answer my question --

MR. NESSER: Yes.

THE COURT: -- as to whether, if you are right, the Eletson Gas and the preferred nominees would be able to seek confirmation of those portions of the award that benefited them.

MR. NESSER: No, we don't believe they would have standing to do that.

THE COURT: With respect to those portions of the award, could they be enforced at all by those parties?

MR. NESSER: Your Honor, we have a -- by those parties?

THE COURT: By those parties.

MR. NESSER: I don't know the answer to that question.

THE COURT: It's kind of an important question, because it really -- what I'm try to do is understand the implications of your argument.

MR. NESSER: There may be courts in which there is no

Article III requirement in which they could seek confirmation.

THE COURT: Under the Federal Arbitration Act and the New York Convention, which is the authority of law for confirmation, would they have a claim for confirmation?

MR. NESSER: Putting aside the standing question?

THE COURT: Putting aside the standing question, does Eletson Gas or the nominees have a right under the Federal Arbitration Act or the New York Convention to obtain confirmation of those portions of the award that benefit them?

MR. NESSER: As your Honor indicated, the issue is that the FAA and the Convention talk about confirmation or vacatur positions by a party, so they weren't parties. And so I don't know how -- your Honor, the problem is not of our making. The problem is the wrong parties -- if that is the issue -- the problem is the wrong parties filed the arbitration demand.

THE COURT: Unless there's something more that you really feel like you haven't told me about standing that's not in your papers, let's get to the question that you have raised about the arbitrator's authority to grant relief in favor of nonparties.

MR. NESSER: Your Honor, could I make just a couple small additional points.

THE COURT: Sure.

MR. NESSER: Number one, to your Honor's question

earlier about whether a party can assert rights on behalf of others, I meant to cite Worth v. Selden, Supreme Court 1975, which held a litigant must generally assert his own legal rights in interest and cannot rest his claims to relief on legal rights or interest of third parties. That's the third party standing, and what it means, as I was indicating, is that parties have to assert their own claims. You can't assert claims as a proxy, which is literally what they suggest here.

Number two, on the declaratory judgment issues -- and I recognize, your Honor, there's a threshold question about whether you can take some but not others, right -- but on the declaratory judgment issues, the Deshaun case, the Second Circuit held, a plaintiff seeking declaratory relief cannot rely on past injury to satisfy Article III, but must show a likelihood that he or she will be injured in the future. And why does that matter? That matters because the overwhelming majority of the declaratory relief here is as to purely past injury that has not future -- that couldn't harm anybody going forward. So we have arguments that, in the past, there was unlawful behavior, in the past, there was an effort to take control of the award. All of that is backward looking.

THE COURT: Except to the extent that it informs the portions of the award that --

MR. NESSER: That's a separate issue. If you put aside all of that, and you just ask the question, can we

confirm as to that, the answer is, there's no standing as to that.

And I did want to flag just one other thing in this regard, on the standing -- I'm sorry -- on the declaratory judgment, they're also seeking confirmation of declaratory judgments that Levona violated the status quo injunction, right. So that is, perhaps, in our view, maybe the clearest spot where it's purely backward looking, cannot cause harm in the future. Why? Because, under the award, the status quo injunction vaporizes the minute your Honor rules on this petition. The instant your Honor rules on the petition, by its terms --

THE COURT: I do have a question about the status quo injunction order. As I read some of the papers, it seems like the arbitrator is asserting the authority to continue to enforce the status quo injunction even after rendering of the final award. Am I reading that correctly, until confirmation or something like that?

MR. NESSER: I don't think so. I think what it says, that the status quo injunction remains in effect until such time as the award is -- as the Court rules -- until such time as there is a final ruling on the confirmation and vacatur.

THE COURT: How does the arbitrator have that authority? Doesn't that violate the functus officio rule?

MR. NESSER: Yes.

THE COURT: He's done.

MR. NESSER: I don't know whether this is in the record, but the petitioners asked the arbitrator to retain jurisdiction to continue to enforce that order. And even the arbitrator responds to that and say, no way, I'm functus officio, I don't have authority ongoing to enforce that, okay. So I don't know. They have made -- there is a pending motion that they filed in the Bankruptcy Court in which they're asking the Bankruptcy Court to enforce the status quo injunction that's reflected in the arbitration award.

We don't think that makes any sense. Their position is the status quo injunction remains in effect, but it's for somebody other than the arbitrator to enforce, we don't think that makes any sense.

THE COURT: That's something Mr. Solomon will have to address. But to me, it doesn't make any sense whatsoever.

MR. NESSER: The point for standing purposes, your Honor, is even more stark, right. How can you have future injury, right, if the status quo injunction by its terms will not exist the day after your Honor issues an award?

THE COURT: Can we get to nonparties.

MR. NESSER: Yes.

THE COURT: Isn't there law -- first of all, to the JAMS rules, which you agreed to, the arbitrator has the authority to fashion relief, including specific performance,

and there is law to the effect that arbitrators, just like district court judges, have the authority to fashion effective relief. And so I guess one question that rises in my mind -- it's the same third-party beneficiary question -- let's assume that, in this case, the arbitrator didn't award the preferred interest to the nominees, but awarded them to Gas. That was part -- that was something that was in the third amended claim, it said, we want specific performance of the BOL. In that instance, would it be your position that the arbitrator would have no authority to award that relief?

MR. NESSER: Well, Gas was a party to the arbitration clause in the LLCA, right, and so if Gas had been made a party to the arbitration, then the arbitrator would have had that authority.

THE COURT: But because it was not made a party to the arbitration, I take it your position is that the arbitrator had no authority to grant that relief.

MR. NESSER: Yes, your Honor. And the case law that we cited -- not from the Second Circuit, although -- let me rescind that statement.

So in Smarter Tools, last year, Second Circuit very clearly held, arbitrators exceed their powers by determining the rights of a corporation not a party to the arbitration.

THE COURT: I may agree with that, in terms of the rights of Eletson Gas and the preferred nominees. So that, to

me -- you'll correct me, maybe that's a separate question -- to me, there's an argument that that's a question for the Bankruptcy Court or in the bankruptcy proceeding, to put it more precisely. But let's take it, again, outside of the arbitral context.

If Eletson had sued your client here to enforce the BOL and to get specific performance, is it your view that the only way in which it would be able to enforce the option would be to also name Eletson Gas?

MR. NESSER: Your Honor, if we are in court --

THE COURT: Yes.

MR. NESSER: -- it's a completely different analysis.

THE COURT: What's the answer to that question?

MR. NESSER: If there were an order -- if there were a request to a court to order a party to specifically perform -- I apologize, the hypothetical --

THE COURT: Let's take it out of that context. Let's say that you and Mr. Solomon have a contract that's going to benefit Mr. Underwood and you have bought from Mr. Solomon his promise to give something of value to Mr. Underwood, and Mr. Solomon has breached that contract, would you need to bring Mr. Underwood into the case in order to sue to get him to honor his obligation to you to benefit Mr. Underwood?

MR. NESSER: I think -- I'm not sure. I think the answer is no. I think the answer to your Honor's question is,

in a court, court of equity, right, a judge acting in equity can do all sorts of things to render justice as it believes is appropriate.

But an arbitration is not a court of equity. An arbitrator may have equitable powers, but those equitable powers are constrained by the four corners of the arbitration agreement. And that's what the authority --

THE COURT: So let's change my hypothetical a little bit. The contract that you and Mr. Solomon have agreed to has an arbitration provision. It says, anything relating to our agreement, anything that arises under it or relates to our agreement must be brought in arbitration, and there are only two clauses to that contract; one is a clause that requires the payment of money by you to Mr. Solomon, the other is Mr. Solomon's agreement to pay Mr. Underwood. Under that hypothetical, you're saying that you couldn't enforce an arbitration agreement?

MR. NESSER: You couldn't enforce the portion of the arbitral award that directed us to pay money to third parties in the arbitration.

Your Honor, Nationwide in the Sixth Circuit couldn't be clearer on these issues. If you give me just a minute --

THE COURT: Go ahead.

MR. NESSER: What were the facts in Nationwide? You have a company, Nationwide, has a contract with a reinsurer

named Home. Home then sells the interest in the contract to Cigna, okay. And then there's a dispute that arises, contractual dispute that arises between Nationwide and Home with respect to Nationwide's obligations under that contract. In the context where because of the sale to Cigna, the only party that incurred any damage was Cigna, right. So the counterparty on the contract, the party to the arbitration clause is Home, but Home incurred no damage, only damage to Cigna. Now, there's an arbitration. Who are the parties to the arbitration? The parties to the clause, Nationwide and Home.

Cigna, by the way, is in the room during the arbitration. Why? Because it's the party that's interested, right, it's the party that actually incurred a loss. Then the question is, well, can a court -- and what the arbitrators do is they issue an order, they issue an award directing Nationwide to pay money to Cigna, okay. And it goes to the Sixth Circuit. The Sixth Circuit vacates. Why does the Sixth Circuit vacate? If you would turn to the handout, only because we have two quotes from the decision that I think are significant. It's page -- I apologize.

THE COURT: You have it on page 3.

MR. NESSER: Yes, I was looking at my notes instead of the handout.

Yes, to the two key issues, right. Footnote number 6

in Nationwide quotes one of the arbitrators, right, in the proceeding. What the arbitrator said was, said to Nationwide, are you seriously suggesting, in a context where the real party in interest, the real party who is harmed is Cigna, right, are you seriously suggesting that because Cigna is not in the arbitration that I don't have the authority to do justice, right. And what they said here is, in the real world, Cigna is the real party in interest, we are called upon to render commercial justice and what you are suggesting is an absurdity. But the Sixth Circuit said no. They said, quote, the panel's pragmatic, but nonetheless improper, desire to resolve the problem efficiently, even if it meant exceeding the scope of its mandate, was improper.

THE COURT: Was Cigna an intended third-party beneficiary in that case?

MR. NESSER: The contract was assigned to it, your Honor.

THE COURT: Was it an intended third-party beneficiary?

MR. NESSER: It wasn't a party to the contract at the time the contract was signed, so I suppose the answer to the question is no.

So your Honor, that's Nationwide.

Then we have NCR, right, same story. Arbitrator awards damages, right, damages to the party, and then punitive

damages to third parties, right. And this is to your Honor's question, can I really pick and choose as between different pieces of the award. And the Sixth Circuit said, look, I confirm as to the damages award to the party. I vacate as to the punitive award for the nonparty.

We cite Pharmco, another Sixth Circuit decision, same situation, right. The court awarded damages in favor of some parties, awarded damages to a nonparty and the Circuit vacates. You just can't do that.

So to your Honor's question, it does feel commercially -- the force of the arbitrator's argument here, what I believe your Honor's question is, how could that be the case --

THE COURT: No, I'm thinking about simply honoring the reasonable expectations of the parties and whether there's any -- your proposition is that there's no way that you and Mr. Solomon could ever agree to arbitrate a contractual provision that benefits a third party, that that's just not something that the law permits. That seems an extreme proposition.

MR. NESSER: Perhaps we could consent to do that, but we -- I don't know -- I don't know that we could.

THE COURT: And your position is that you couldn't in advance agree that if a dispute arose between the two of you as to something that would benefit a third party, you would have

to litigate that, you could never agree to arbitrate it?

MR. NESSER: I think that's right. If the claim is held by a third party, then the third party --

THE COURT: The claim is held by each of you, because you each have a contractual right. Maybe this goes back to the point you said you hadn't researched, which is whether if you are a party to a contract, you have a right to enforce the provision benefits to a third-party beneficiary.

MR. NESSER: Your Honor, so the petitioners make a number of arguments here -- if you don't want to hear these, I'll stop as we go -- but one argument they make is the Cypriots and Gas were in fact parties -- actually, they don't say -- they say they were not nonparties. We know that's not true, right. The final award, very first sentence says, the parties are the three parties. We have -- it's on the hand up -- multiple spots where Eletson itself in pleadings was characterizing Gas as a nonparty and characterizing Eletson Corp. and Eletson Holdings as the only parties. So the Cypriots were not ever a party, Gas was never a party.

Then they say, well, we stipulated, the Cypriots stipulated to be bound by an award. We address that. There was no stipulation. There's an announcement in one sentence in hearing testimony in writing, that which we knew nothing in advance, and said they would be bound by an award. They didn't agree to participate in the arbitration, they didn't agree to

be bound by your Honor's decision here. And Levona was never asked whether it consented to that, and Levona never did consent to that. And that's dispositive under Spokeo, which says, quote, arbitration is a matter of consent, not coercion. You can't show up and declare that somebody is arbitrating with you.

Next, your Honor, they argue that, well, this is okay because Gas couldn't have been a party, because there was a dispute about its ownership. And that, your Honor, is irrelevant and also wrong. It's irrelevant because the question the case law asks is, was Gas a party or not. It doesn't ask the question whether it could have or should have been or might have been. If it wasn't -- which it wasn't -- then that's the end of the inquiry. But even beyond that, we cite the case -- and to, me it's uncontroversial -- Eletson Holdings, the petitioners here, could have -- they believed they controlled Eletson Gas, they could have caused Eletson Gas to file a claim. We would have said, arbitrator, what are you talking about, they don't own Eletson Gas, that would have been an issue that got resolved in the case, but Gas hasn't been a party, right. They have no response to that.

Number three, here's what makes it more absurd, Eletson Gas, right now, today, in the London arbitrations, is represented by Reed Smith taking instruction, as far as we know, from the petitioners, as a party. So the notion that

Eletson Gas couldn't have been a party because there is a dispute about who owns it, we just think is not credible.

Your Honor, third -- or next, they argue that we never objected to the request for an award of damages in favor of the Cypriots, and we understood that relief would be awarded as set forth in the BOL to Eletson Gas or its nominee. Look, number one, what they don't mention there is we in fact moved to strike, back in 2022, all of the BOL claims at the start of the arbitration. Number two, we moved to strike all of the claims with respect to the transfers to the Cypriots, that motion was filed on May 10, I think it was like three business days -- I'm sorry, May 15th, a few business days after that claim had first been asserted on May 5.

But your Honor, more importantly, what they don't mention, is the very first time they asked for an award in favor of anyone other than the petitioners was in their post hearing submissions, after the hearing had concluded. And your Honor, here --

THE COURT: So what prejudice did your client suffer by virtue of that? Isn't that a relevant question, whether your client suffered any prejudice?

MR. NESSER: Did we suffer prejudice?

THE COURT: Yes. Were there things that --

MR. NESSER: Of course we suffered --

THE COURT: The arbitrator makes the point that you

never asked for discovery of the preferred nominees, it looks like they didn't testify live, right, they just had written testimony --

MR. NESSER: The three human beings who signed the pieces of paper testified.

THE COURT: You never asked for discovery of them and never asked for depositions?

MR. NESSER: Your Honor, the arbitrator said it is undisputed that this whole Cypriot thing was first raised on May 5. That's what the arbitrator himself said. It was a handful of days before the hearing was set to begin after a year of arbitration. And immediately, what Levona did was move to strike those new claims on the basis that they were completely out of bounds, they had never been asserted, and they had to be thrown out, okay. So in that context, discovery had closed -- I mean, it was like -- and discovery be closed, the arbitration was scheduled to begin in a few days, even the disclosures that were submitted at the time, they didn't even provide the formal names of these Cypriot. They used these shorthand, one-word names, we didn't know who they were. So what we said was these claims had no business being in the arbitration. And the arbitrator nonetheless adjudicated them. I mean --

THE COURT: You are going to quarrel with me when I reference federal court proceedings, but if something like that

happened in a courthouse, one would expect the party who alleges that they were surprised to say, listen, we need a continuance, we need more discovery, the stipulation that we signed before saying the proceedings are fair no longer applies because the proceedings aren't fair, we haven't gotten the discovery, give us an extension and let us take the discovery. And maybe I would accept that argument if I were the judge, maybe I would reject it, but wouldn't it be within the province of the adjudicator to make a decision with respect to that? And shouldn't you be held at fault for not making that --

MR. NESSER: Two responses, neither of which is -- number one, there had been requests in the past for an adjournment of the hearing, and the arbitrator said no on the basis that the parties had agreed to try to get it done within 150 days.

Number two, even in a court proceeding, a party -- one thing a party might do in that scenario, if there's a brand new claim raised the day before trial, one thing a party might do is say, your Honor, we need a continuance. Another thing a party might do is say, this is crazy, I'm going to go to trial and we're going to appeal on the basis it was late notice, and that's part of what happened here.

But, your Honor -- I can't remember where I left off -- so here is what happened, right, we have page 4 of the hand up, item CB, so the arbitrator held that Eletson held the

contingent transfer for the first time on page 5 in their pre-hearing brief, right. But in their pre-hearing brief, in that document, the petitioners were still seeking an award of damages to Eletson. It says, Levona must pay Eletson for damages, Levona must pay Eletson compensatory damages, Eletson must be awarded damages, Eletson should be awarded punitive damages, on and on. Then for the very first time -- and at the hearing, in their opening argument on May 15th, counsel says, well, you know, we've been thinking about it, we have to structure relief so that we don't implicate the bankruptcy.

THE COURT: So get back to my question about whether your client was prejudiced. Is there anything from the arbitral record that would support the notion that your client was prejudiced by the late introduction of these parties into the case?

MR. NESSER: Well, that claim never should have been pending --

THE COURT: Can you answer any question?

MR. NESSER: I thought I was, I apologize.

The prejudice was that we agreed to arbitrate certain issues, and we had never agreed to arbitrate the question of paying nonparty --

THE COURT: What does the record show with respect to what you would have wanted to do that you did not do because they were introduced to the case late?

MR. NESSER: No, your Honor, the issue was that the Cypriot issue should not have -- it was prejudice to permit the Cypriot issue to be adjudicated inside an arbitration in which the Cypriots weren't parties.

THE COURT: Okay. So let's assume that I find that argument without merit. I thought you made a separate argument that there was some problem with the fact that this issue was introduced into the case late. And that's what I wanted to explore. Whether your point is independent with respect to that or whether it's just subsumed within it.

MR. SOLOMON: Sure. The reason I'm making the point is not that it's independent. The reason I am making the point is the petitioners argue that we somehow waived or consented to their participation.

THE COURT: Got it.

MR. NESSER: I'm saying, we never waived or consented to anything. How could we have waived or consented, when for the very first time they asked for an award or damages in favor of somebody else is in the post hearing brief.

THE COURT: You are not arguing that that is a separate independent grounds for vacating that portion of the order?

MR. NESSER: That we asked for discovery and it wasn't granted?

THE COURT: Or that it was not until the eve of the

arbitration hearing and maybe, in fact, at the very beginning of the arbitration hearing that petitioners said, you should grant relief in favor of Eletson Gas and the nominees?

MR. NESSER: I believe the answer is yes. I want to be super careful, because we have this issue of the order that was issued on April 17th. The arbitrator held that this whole issue of the Cypriots wasn't raised until May 5, the arbitrator said that was undisputed, okay. That claim was asserted late. The timing of the claim matters for that issue.

THE COURT: I get that. I understand.

Let me tell you the couple of issues that I really hope that you spend some time focusing on. One is the award against the Pach Shemen and Murchinson.

MR. NESSER: Yes.

THE COURT: I'd like you to spend some time on that.

The other thing I would like you to spend some time on is the award of preferred interest in favor of the nominees. And as to that, my question is really whether the nature of your argument is in the form of a fraudulent conveyance and, in fact, whether all of the issues that you are raising are issues that are appropriately raised in the bankruptcy proceeding, whether the award here doesn't give the nominees the right as against the creditors of Gas to the preferred interest, it doesn't resolve anything with respect to that, it just gives them, I guess, possession, but wouldn't be estoppel.

And then the question of damages with respect to the filing by Pach Shemen in bankruptcy court and the litigation. Those are the issues that I really want --

MR. NESSER: Sure.

So let me start with the first of those issues, which is the award. The issue of the arbitrator holding that nonparties, such as Pach Shemen, are liable on an alter ego theory. Your Honor, I want to be clear, we are not claiming we have standing on behalf of Murchinson or Pach Shemen to seek vacatur of that portion of the award. However, your Honor has an independent obligation -- and they have an independent obligation to demonstrate the confirmation is permissible and possible with respect to that portion of the award.

Judge Engelmayer in the GE case that we cited says, you have to treat it like an unopposed summary judgment motion, you have to ask the question, was there evidence here submitted sufficient to confirm. And so we know what the case law says on the issue of whether you can hold nonparties in an arbitration liable, the answer is, you can't, American Reinsurance, Second Circuit 1974, ultimately arbitrators do not have the power to bind a corporation which is not a party in the arbitration contract or a voluntary participant in an arbitration proceeding, that was citing Orion. And that was the case even where the party was so closely related that it had, in effect, participated in the arbitration and was present

in the arbitration.

And your Honor, as well -- Orion, I should have mentioned, the Second Circuit case, obviously, which vacated a partial arbitral award, part of an arbitral award against a nonparty, even where the party was a shell, the nonparty was a guarantor and the nonparty guarantor had, quote, conducted -- this had been an argument -- that the nonparty had, quote, conducted the arbitration, interposed defenses personal to it alone and all the testimony and documents emanated from it.

So those two cases, very clear, even where a third party is in the room, even where a third party is participating in some respect, if they are not a party, the arbitrator lacks jurisdiction, lacks power to issue an award as against them. And so we think that that portion of the award cannot be confirmed.

And I would point your Honor to the petitioner's response in paragraph 170 of the 56.1 statement. And what they say there is, our assertion was, petitioners have not sought confirmation of the award against Pach Shemen. And what did they say in response? They say, disputed as stated. Petitioners are seeking confirmation of the final award, including all of the factual findings involving the roles and actions of Murchinson and Pach Shemen and all legal conclusions as a judgment. We just think the Court didn't have power to do that.

Any questions from your Honor on that?

THE COURT: I do have a question, which is prompted by something that you said and also prompted by the quote that you just read, which is why I could grant -- whether I can grant relief vacating those portions of the award that grants relief against Pach Shemen and Murchinson when they haven't intervened in this case.

MR. NESSER: And again, your Honor, I think the point is the petitioners have filed a petition to confirm. It is their burden on that petition to demonstrate the confirmation is permissible. And they have not done that and they cannot do that.

And the question of whether the third parties are in the room is irrelevant to that question. That's exactly GE. It's a motion to confirm. The other side didn't show up. Judge Engelmayer said, have to do the analysis anyway.

Your Honor asked me as well to address the question of the timing of the claims with respect to the lift-stay order. So the lift-stay order was issued on April 17. It said that the arbitration could continue with respect to claims that were pending as of that date.

THE COURT: My question, really -- you make a point that the arbitrator exceeded its powers by intruding into something that was committed to the Bankruptcy Court, which is determining the estate of the property.

MR. NESSER: Yes.

THE COURT: The property of the estate.

MR. NESSER: Yes.

THE COURT: I have two questions.

One is, there is some language from the Second Circuit on arbitrators exceeding their authority, and I'm going to give it to you. It's a case that you all cite. In the Jock case, 646 F.3d 113.

MR. NESSER: Did you say Jock?

THE COURT: Jock. There are several Jock cases.

In one of them, the Circuit says that there are two circumstances in which an arbitrator exceeds the arbitrator's authority. Circumstance number one is when the arbitrator adjudicates or determines an issue that's not within the scope of the arbitration agreement. Circumstance number two that the court seems to refer to is where the arbitrator exceeds the law or decides an issue not permitted by law.

The legal question in my mind is what falls within category number two. In other words, let's assume that if all this falls within the scope of the arbitration agreement, are there limits imposed by external law on what the arbitrator can do? We know that, for example, at the confirmation stage, that a court cannot confirm an award where the results would be contrary to public policy. I've got a decision on that from a couple of months ago. But the proposition here is a little bit

different. What issues, as a matter of law, can't be committed to the arbitrator.

Second question is whether reading the award literally here it intrudes into anything that was committed to the Bankruptcy Court, whether everything that you argue here you could argue in the Bankruptcy Court, and therefore, whether that argument about exceeding the -- intruding into the Bankruptcy Court has any force whatsoever.

MR. NESSER: Okay. So look, I think it is undisputed that disputes regarding debtor property and whether something is the property of a debtor are court proceedings reserved exclusively to the Bankruptcy Court. I don't believe they contest that. Number two --

THE COURT: They may not contest it, but as you point out, I have to come to a right decision in the law. And there's all kinds of law about, for example, antitrust claims and federal securities claims as to which the federal courts have exclusive jurisdiction. And the Supreme Court has said, all right, well, that's very nice and well, but parties can agree that the arbitrators decide those issues. So they may not disagree with it, but help me with the law and the legal principles.

MR. NESSER: So I don't have case law to cite, but here's what I will say, whether it's construed as a question of the arbitrator's powers or whether it's construed as a question

of whether your Honor can issue an order confirming the award, right, because that would be independent exercise of your Honor, right, issuing an order that directly impacts the bankruptcy, and so that's the creditor committee's issue, right, they're concerned that your Honor is going to enter an order and it's going to be prejudicial to the question of who owns these shares in the bankruptcy, which is a matter exclusively reserved for the bankruptcy court's jurisdiction. Why does that matter? This is not something that the parties can agree to divest the Bankruptcy Court of exclusive jurisdiction over. Why not? Because there are creditors in the bankruptcy. And I want to correct the misimpression, Pach Shemen owns maybe 35ish percent of the debt -- I'm sorry -- of the claims in the bankruptcy, so they're not -- there's hundreds of millions of dollars being asserted in claims by dozens of different creditors in the bankruptcy. And if your Honor were to confirm this award, holding that disputed property is actually not property of the debtors, then that would have very significant implications for these dozens of creditors who are asserting claims.

THE COURT: I guess my question is whether my confirmation would do that or whether my confirmation order would simply adjudicate the rights as between your client, Levona and the preferred nominees without addressing the questions of whether the transfer to the -- from Eletson Gas to

the preferred nominees was -- can be voided, was a fraudulent transfer, all of those questions, I mean --

MR. NESSER: Of course. Look, I think --

THE COURT: So is there something in the -- if I confirm, what I'm doing is taking the award portion of what the arbitrator did, the relief portion of it and I'm reducing it to the form of a judgment. And so if I read that language very closely, tell me what portion of that language you think intrudes into, decides the issue that should be decided by the Bankruptcy Court, because I'm not sure I see language in the award that does that.

MR. NESSER: Your Honor, the award has pages and pages of discussion.

THE COURT: It has facts and all of that stuff. Mr. Solomon is going to argue to me -- I'll give you a chance to rebut it -- the facts I'm somehow confirming. I'm not.

Those facts that the arbitrator is reciting go to the question of whether the arbitrator manifestly disregarded the law, whether the arbitrator exceeded the authority. But you and I both know that the arbitrator needs to have very few facts in order for an award to be confirmed. The confirmation just goes to the relief. So assume that he doesn't convince me on that.

What is it in the language of the award itself, the relief that causes you to believe it intrudes into the

Bankruptcy Court's jurisdiction?

MR. NESSER: Your Honor, I guess, there was a live dispute in the arbitration -- and please forgive me, I recognize I'm not giving you a black and white yes or no, but hopefully I'll come to it, and I apologize -- there was a live dispute in the arbitration on the question of this whole shift in time, where they woke up and decided that, oh, actually, this isn't mine, this belongs to somebody else. We said, move to strike because you can't make those claims, right. And the arbitrator then adjudicated exactly that issue, right. The arbitrator adjudicated the issue of, was the assignment -- were these shares given to the Cypriots or were the shares given to somebody else. That question is the question that would be presented to the Bankruptcy Court.

THE COURT: Well, it certainly is not the question for me, I don't think. The question for me is whether the arbitrator manifestly disregarded the law or exceeded his powers in granting the actual relief in this case. So in a way, all that the arbitrator did was say, listen, I know that Levona is not entitled to these, so it's a choice between Eletson Gas and the preferred nominees. I'll give it to the preferred nominees, and you guys fight it out later on.

MR. NESSER: Well, but he didn't say, you guys fight it out later on.

THE COURT: I know. He didn't need to say that. But

I can say that.

MR. NESSER: So number one, if your Honor were inclined to go this route, then, of course, we would request that your Honor make explicitly clear that nothing that your Honor would be doing here would be prejudicial in any way, shape or form to the Bankruptcy Court's ability to look at and assess and resolve those issues.

THE COURT: Did the arbitrator have before him whether there was a fraudulent conveyance or an avoidance or anything like that?

MR. NESSER: I don't believe so.

But here is my concern, right. In the real world, in the real world, your Honor issues an order confirming this arbitration award. There's now a confirmed arbitration award that says the shares are now owned by the preferred nominees.

THE COURT: I don't think it actually says owned by -- you may correct me -- but I don't know that it actually uses those words.

MR. NESSER: Well, they were transferred to --

THE COURT: Correct.

MR. NESSER: -- the Cypriots. We would be happy to push on that distinction, but there will now be available this decision confirmed by your Honor saying that there was a transfer to these Cypriot nominees. In the real world, we all know what's going to happen. Mr. Solomon -- I'd do the same

thing -- is going to run to the Bankruptcy Court and say, your Honor, it's res judicata --

THE COURT: And then you're going to come back to me and say -- if the bankruptcy judge issues a ruling against you, either you're going to say, withdraw the reference or you're going to appeal to me.

MR. NESSER: Yeah, and the whole thing is a problem because we went to the -- respectfully, this is -- your Honor will recall, months ago, we said, maybe your Honor should refer this to the Bankruptcy Court.

THE COURT: I don't think so. I'm just confirming an award. There are a whole lot of issues in this case.

MR. NESSER: I understand.

But more importantly, what I would say is, there was a request by the creditor's committee in the Bankruptcy Court to stay this proceeding pending the Bankruptcy Court's assessment of this whole situation, right, the fraudulent transfer, whatever the claims will be in the Bankruptcy Court. They said, look, you can't let Judge Liman go ahead and do this, because if you go ahead and do this, it's going to be prejudicial when you conduct an assessment of those issues. That motion was argued, the judge has it under advisement and we'll have a decision at some point in time, we don't know when. But we are in a little bit of a weird bind because, on one hand, we're telling Judge Mastando, you have to do this.

On the other hand, it's like -- you know, which court is going to go first. So somebody needs to go first.

But I guess the point I would make --

THE COURT: Just as a matter of bankruptcy law, if the -- if I confirm an award that grants possession of the preferred interest to the nominees without addressing any issues regarding legal title and whether it was rightful or not, just they are the holders of it, does that as a matter of bankruptcy law intrude into the Bankruptcy Courts or undermine their ability -- the Bankruptcy Court can still effectively claw it back from the estate, so just educate me as to whether that's --

MR. NESSER: Our view is that any determination about whether -- what became of these shares, whether -- in the context where there is a dispute between Holdings and the nominees, that any resolution of that issue would impinge upon the Bankruptcy Court's core jurisdiction to address disputed issues concerning ownership of estate property. Having said that, I don't want your Honor to be under the impression that I'm not hearing you on this.

If the Court's intent were to fashion some sort of order making explicitly, extremely clear that nothing your Honor is doing can be argued as res judicata, nothing can be argued as collateral estoppel, nothing --

THE COURT: I can't determine the collateral estoppel,

res judicata, but I can read the law with respect to collateral estoppel.

MR. NESSER: That's right.

THE COURT: That's going to be for a subsequent court to determine whether there's estoppel.

MR. NESSER: Of course.

THE COURT: You know what the law is on that.

MR. NESSER: Of course. That is to say, with respect to the question of what you were doing was ruling on ownership versus merely a transfer and so forth.

But the point is if your Honor were to rule in a way that made explicitly clear that Judge Mastando's ability to address these issues is uneffected, obviously, that would be, in our view, better than nothing. But we do think, in the first instance, the correct answer is the arbitration shouldn't have been dealing with this at all.

Can I just make a related point.

THE COURT: I take it, so that would be -- go ahead.

MR. NESSER: A related point -- and it is related, although it's distinct, but it's related -- is the issue of April 17th, right.

So there was a question of whether the arbitration could continue at all, right, in view of the bankruptcy stay. And the parties -- and more importantly, Judge Mastando -- got comfortable that the claims that currently were pending, right,

which were claims strictly between Levona and Holdings, could be adjudicated and then they would go to Judge Mastando afterwards and he would deal with them as he needed to. These questions that we have been discussing just now, right, have an arbitration, get the arbitration award confirmed, everybody got comfortable, including Judge Mastando, that that was okay. But the separate question of whether they could inject this completely new approach in which the relief was not going to the estate, the relief is going to these other people, that was a fundamentally new claim. But more importantly, for this point, it fundamentally altered the entire nature of what everyone, including Judge Mastando, got comfortable with. And that's why this is not just a footfall in terms of, well, April 17 was the deadline and they asserted it after and it was barred, right. It's directly relevant to the question of the automatic stay, right. And that's why the arbitrator shouldn't have gotten involved in any of this in the first place, because it directly impacts the estate issues.

And look, as I said, we say clearly, the arbitrator says undisputed, this was first asserted on May 5 -- May 5 is after April 17th -- really, their only argument is, well, it's not a claim, they say it's not really a claim, it was just allegations. That's just not true, right. I mean, this was -- this went to the heart of what the lift-stay order was intending to address, which is, is the arbitration going to

prejudice the rights of the estate. And by completely shifting the nature of the claim from a claim that was requesting relief to Holdings, the debtor, to a claim that was requesting relief to somebody else, again, that was not a technical violation, that went to the heart of the entire deal of what could proceed and what couldn't.

Let me just say one thing here, and I'll say it with trepidation --

THE COURT: What I'm really struggling with is that I don't think your argument would be the same if, in the arbitration, they took the position that the preferred interest should go to Eletson gas, it would be a nonparty that the preferred interest would go to, but it wouldn't undermine the bankruptcy proceeding because Eletson Gas is an entity that would be owned by Eletson Holdings, so what is it about -- isn't it in fact just the fraudulent conveyance type issues that you are raising that are implicated by what happened in the arbitration? And if that's so, then isn't the right answer that those are not issues that either were addressed by the arbitrator or would be addressed by me in the confirmation?

MR. NESSER: Your Honor, we have $90 million of damages that were awarded to the Cypriots and to Gas. The creditor's committee will tell you, those are estate assets. That was a claim that should not have been adjudicated. It was a violation of the lift-stay order.

THE COURT: So with respect to Gas if the preferred interest went to Gas, then that doesn't undermine the damages award to Gas; right?

MR. NESSER: Your Honor, look, I'm not -- for better or worse -- I'm not a bankruptcy lawyer, so I won't stand here and opine on that issue. But the lift-stay order was carefully negotiated and was clear that only claims that could be asserted and litigated and adjudicated inside the arbitration were the claims already pending. And these kind of interesting questions about if it was a new claim, it was basically a new claim --

THE COURT: You are mischaracterizing my question. What I'm really trying to do is tease out your argument --

MR. NESSER: Sure.

THE COURT: -- to try to understand your argument. A moment ago, you said, I can't just confine it to the transfer of the preferred interest because it implicates the damages award.

MR. NESSER: Yes.

THE COURT: And I now understand the point that you are making with respect to the damages, the monetary damages to the Cypriots. Those are the nominees; correct?

MR. NESSER: Yes.

THE COURT: So I take it you are saying, it's only by virtue of them being the nominees, them being the actual

nominees that they are getting damages, and so it's all wrapped up together, but then you also went on and talked about Gas. I'm having trouble understanding the gas part of your argument.

MR. NESSER: Yeah, no, and I am a little hamstrung here, again, because I am not expert in how that would impact the bankruptcy. Gas is not a debtor, right. Holdings is a debtor. Is there a distinction, where there's assets sitting in a subsidiary, but the subsidiary is a subsidiary of a debtor? I don't know the answer to that question. We can get back to your Honor with the answer to that question.

The point I'm trying to make is, number one, it might matter. Number two, these questions about, well -- and I'm not meaning to mischaracterize -- these questions about, well, what if the new claim was in the nature of a claim for an award to gas or what if the new claim was in the nature of a claim to this other place, let's try out different approaches --

THE COURT: You are the one who is telling me that what I should do is not throw out the whole thing or I don't need to throw out the whole thing, I can just throw out portions of it.

MR. NESSER: Sure. Look, with respect to the award with respect to the award to the Cypriots, I'm telling your Honor, that was an award way outside the bankruptcy estate, therefore, directly, hair on fire emergency in the Bankruptcy Court, lift-stay order, et cetera, et cetera.

Do I have my hair on fire with respect to the award of Gas in the same way? Standing here right now, without consultation, I'm not.

But what I'm saying there is, again, these questions were the questions that the parties were debating at the time that they negotiated, the time that Judge Mastando issued the lift-stay order. And there were questions, well, Eletson argued, Eletson said, your Honor, we can proceed in the arbitration, it's no problem for the estate, right, everything can proceed. And so all of that, the resolution of all of that was, we have a box, we know what's in the box is what's pending now, what's pending now can proceed. There's going to be other stuff. We are having a debate now whether the other stuff is going to impact the estate negatively or not. We are just going to say, that stuff cannot be asserted.

THE COURT: Was one of the things that was in the case specific performance of the BOL? That was actually, I think, in the third amended claim.

MR. NESSER: I don't believe it was -- I could be mistaken -- but I don't believe it was part of the relief that was requested in the proposed order. There were lots of claims that were asserted once upon a time that were effectively dropped. And we can look at the proposed order and confirm that. But I think the proposed order only sought -- and I think the award only granted -- damages and declaratory

damages.

THE COURT: My question is, when you are talking about what was in the case --

MR. NESSER: I see.

THE COURT: -- I was under the impression that, in the third amended claim, one of the forms of relief being sought was specific performance.

MR. NESSER: I think that's fair. That may well be correct. I understand the question.

But again, your Honor, the question of whether the BOL option had been exercised and whether there was an obligation to turn over the shares, the nature of that claim -- assuming that claim was pending, specific performance, right -- the nature of that claim was a claim in which they were seeking specific performance, culminating in delivery of shares to Eletson Holdings, the debtor, a claim that all of a sudden you should have specific performance in which we transfer --

THE COURT: Specific performance of the BOL could never have resulted in the delivery of the preferred interest to Holdings because the BOL didn't provide for transfer to --

MR. NESSER: To gas or its nominee, right.

And there had never been a request -- the point I'm making is there had never been a request for delivery of anything to the nominees. Nobody had ever suggested that ever. And so what was inside of the box, let's assume there was a

specific performance request, what was inside of the box was specific performance with delivery to a certain party. It wasn't with delivery to nominees outside the bankruptcy estate.

THE COURT: You have been arguing for a while. Do you think you could finish up in about 15 minutes or so?

MR. NESSER: Yes.

MR. SOLOMON: And then we'll take a break, and then I'll hear from Mr. Solomon.

MR. NESSER: Sure. So --

THE COURT: I think one of things you were going to address is the damages for the violation of the arbitrator's award by filing a Pach Shemen --

MR. NESSER: So that issue, that's problematic in so many ways, your Honor. Number one, it's problematic on the standing issue that we talked about in the morning -- or it feels like the morning -- that we talked about in the beginning, in which it's an award in favor of people other than petitioners, in our view.

Number two, the lift-stay order is dated April 17th. When did this request for attorneys' fees associated with the bankruptcy, when was that first asserted? It was first asserted on April 25, in this 18-page formal pleading in which they asserted a claim. That was after the lift-stay order was entered. There can't be any suggestion here that that wasn't a new claim. Of course that was a new claim.

And so what's their response? Their response is, we sent letters on March 8th and March 10th to the arbitrator. And in those letters, we put this claim at issue, right. But your Honor, that's just not correct.

The March 8 letter was a two-page letter to the arbitrator. Actually, let me say the following, the bankruptcy was filed on March 7th. On March 8, the next day, there's a two-page letter they send to the arbitrator, in which they address the question, can the arbitration proceed notwithstanding the automatic stay. And at the very end in the last sentence, they say, by the way, we reserve rights with respect to claims arising from this bankruptcy filing.

And then, on March 10, they put in a three-page letter, again addressing directly the issue of does the automatic stay preclude the arbitration from continuing. And again, at the very end, they say, we reserve our rights with respect to claims.

Neither of those letters actually asserted a claim. And how do we know that? We know that because, on March 10, the arbitrator issues an order -- I'm sorry, on March 10, same day as the second letter, the arbitrator issues an order resolving issue of the stay. And what does he say in the order? He says, the claimants -- which are the petitioners here -- have asserted that the filing of the bankruptcy was arguably a violation of the status quo injunction. He uses the

word "arguably." So even the arbitrator recognized there had not actually been a claim. The claimants had not said that it was a violation of the status quo injunction. They had reserved rights. And by the way, it makes -- I don't want to say a certain amount of sense -- but if you think about, again, in the real world, the bankruptcy was filed on March 7, that was a pretty significant event in the scheme of this whole situation. The notion that the next day Eletson was asserting claims arising out of the bankruptcy is just not really consistent with how things operate. What's consistent with how things operate is the bankruptcy is filed in March, and then in April, they think about it, they figure it out and file their motion, yes, I'm finally asserting a claim.

So that claim, we think, was barred by the lift-stay order, it violated the automatic stay. That award is problematic for additional of reasons. We know -- and the petitioners do not dispute -- that awards of fees associated with an involuntary bankruptcy petition are within the exclusive jurisdiction of the Bankruptcy Court, so that's where we get that -- the arbitrator issues this decision after we file our first -- it wasn't fees, it was damages. But the problem is we also cite case law -- and I don't think petitioners dispute it -- saying that damages on state law claims associated with a bankruptcy filing are within the exclusive jurisdiction of the Bankruptcy Court under the

Bankruptcy Code. And why is that? Well, that reflects a congressional policy determination that a party should be permitted to file bankruptcy without worry about getting sued on the back end, which is exactly what happened here, and shouldn't have been permitted to happen.

Number three, your Honor, what happened -- why do we have these rules, right -- why we have these rules -- I forgot to say, what this was, basically, was an injunction saying, you cannot file a claim. Even a federal court doesn't have the right to enjoin other federal cases if they are nonduplicative. So that was problematic as well, beyond the power of the arbitrator.

THE COURT: Do you have any authority that would support the notion that the arbitrator didn't -- wouldn't have had the authority as a matter of law to enjoin, let's say, your client in its capacity as a creditor, assuming that it was a creditor -- I'm building a bunch of things into a hypothetical -- but wouldn't have had the authority to preclude your client from availing itself of its rights under the Bankruptcy Code to file a petition?

Let's assume hypothetically that it was your client, not Pach Shemen, who was the holder of the bonds and the arbitrator said, Levona cannot file a bankruptcy petition, I enjoin them from filing a bankruptcy petition, would the arbitrator have had that power in your view?

MR. NESSER: I don't believe so.

THE COURT: Why not? Give me logic. Either give me a case or give me logic.

MR. NESSER: Because the Bankruptcy Code is not common law. The Bankruptcy Code is a policy, it reflects policy determinations by Congress, right, that occupy the field that say you cannot preclude somebody, you cannot create a state court damages claim when somebody files a bankruptcy. And we think that that is what happened here.

And then what I was going to say is, why do we have these rules reserving to the Bankruptcy Court questions about whether there was a problem with respect to the bankruptcy filing? Because look what happened here. We had the award was issued, it says we owe all this money of attorneys' fees associated with the bankruptcy filing, which was purportedly in bad faith. And then after that happens, after the award is issued, they voluntarily convert to a Chapter 11 bankruptcy proceeding, they drop their motion to dismiss on the basis that it had been a bad faith filing. Dozens of creditors show up asserting hundreds of millions of dollars of claims, nobody has asserted they're problematic. And then this is where it gets really insane, the Bankruptcy Court awards a million and a half dollars of the petition creditors fees to be paid by the debtors. So literally, the petitioners here, there's an order right now in the Bankruptcy Court saying the petitioners here

are required to pay the petitioning creditors, which includes, Pach Shemen, a million and a half dollars of attorneys' fees.

THE COURT: What was the logic of that award? What was your client's legal --

MR. NESSER: The logic was that we filed a legitimate bankruptcy case, we then had to litigate, including with depositions -- not we, but Pach Shemen -- there was a legitimate bankruptcy case, there was then discovery, depositions, all kinds of expense associated with defending against a motion to dismiss the bankruptcy. Then they said, fine, we'll convert to a voluntary. There was all those fees associated. That was, I think, the logic.

The point, your Honor, I'm trying to make, if your Honor were to confirm this award, the result will be that there is an order directing that there's this arbitration award directing us to pay a million and a half dollars of the debtor's fees in the bankruptcy, $3 million of the debtor's fees in the bankruptcy and an award in the Bankruptcy Court directing them to pay a million and a half dollars in return. It's like a fantasy world in which sides are being required to pay the other side's fees. It's not -- it frankly almost rises to the level of a judicial embarrassment. That's why these rules exist, reserving these questions to the court in which the supposedly bad thing actually happened.

What else, your Honor.

THE COURT: You tell me what else.

MR. NESSER: Would the Court like to hear from us -- I assume the Court is not particularly interested in hearing from us on the BOL or the manifest disregard issues.

THE COURT: I mean, if there are things that you think were not covered in your papers, then by all means mention them.

MR. NESSER: I don't believe so, your Honor.

THE COURT: Maybe one thing that you could help me with, just as a matter of sort of understanding the business logic under the BOL, tell me your view in terms of how the BOL worked. I know the arbitrator didn't accept it, but tell me what your view is of it.

MR. NESSER: You mean the substance of the transaction?

THE COURT: Yes.

MR. NESSER: So what happened in our view was, they delivered the -- that they delivered the ships to us, they then had -- and we gave them ultimately 12 or $13 million as a loan, required to repay. And in exchange for granting that loan, we granted them -- in exchange for granting them that loan, we granted them an option to repurchase the shares that they had given to us, right, by sending us a written note and by satisfying certain other requirements, including paying off the loan. And so we think that the delivery of the shares -- I'm

sorry -- we think the delivery of the ships to us was part of the consideration for us offering or agreeing to give them an option. And what they say is, no, no, no, no, the delivery of the ships was actually the exercise of the option.

THE COURT: How does the 23 million fit into this, the notion of the 23 million? Was that going to be. If the ships were not worth 23 million, they would top it up to 23 million?

MR. NESSER: Yes, that's right.

THE COURT: Okay.

MR. NESSER: So if I could make one thing -- maybe I just make one point on the BOL arbitration clause issue. So number one, they say, well, the LLCA gave the arbitrator the right to adjudicate issues relating to the LLCA agreement and the BOL issues satisfied that standard, but your Honor, what the arbitrator did -- if you look at the very first paragraph of the declaratory relief -- he didn't interpret the LLCA, he wasn't resolving LLCA claims interpreting the BOL in order to address that, he actually held the BOL option was exercised, that was a ruling on the BOL.

Number two, they say, well, even apart from that, they say that there was a consent, right, that we asserted counterclaims, and therefore, we consented to have the BOL issue resolved. And what is that argument? If you think about it for a minute, that is an argument that, basically, there was a third arbitration agreement entered into, right; there's a

LLCA, there's a BOL and, during the JAMS arbitration, we entered into this separate agreement to arbitrate the BOL issue in JAMS, right. And if that is the theory, then that doesn't work, because the arbitrator did not have jurisdiction to address and rule upon arbitrability as to this second arbitration contract. He was only an arbitrator inside of JAMS. And First Union and the other cases that we cite are clear that, number one, issues of arbitrability, the arbitrator's rights to assess arbitrability, the default is not, right, there's a finger on the scale against. And number two, in making that determination -- first of all, that was not a determination the arbitrator could make -- but even if it was, in making that determination, the case law is really clear that where you have an objection to arbitrability, you make the objection and you can also participate in the arbitration without waiver of your objection. And then later, after you have an award, you can, in court, raise your dispute about arbitrability. And that's very clear in First Union, which is the case from the Supreme Court.

I did want to raise just two sort of ancillary issues. One of them is just so the Court is aware of other things going on. One of them is that we have raised today in the papers various questions about why it is that the debtors, Eletson Holdings are spending all of this time and money and effort making arguments about why it is that money and shares and

other things should be going to nondebtors. Whatever the merits of that, it's just weird. And I will just -- I just wanted to inform your Honor that right now, Reed Smith has an employment application pending in the Bankruptcy Court, same as the creditor's committee. It hasn't been granted on either side. And there have been arguments raised in connection with that proceeding. Look, Reed Smith is -- there are conflicts and so forth and so on. And the bankruptcy judge, in due course, will resolve those. I think there's a hearing set for tomorrow morning on the employment application. And I just put that on the table, to the extent your Honor is concerned. Of course, your Honor would have discretion to wait and see what happens, if there's some other law firm that winds up representing Holdings and that they maybe make different arguments, that's not my call to make. I just wanted your Honor to be aware.

Number two -- and I raise this with apologies -- on the standing point, we have become aware, your Honor, based on disclosures on the bankruptcy in the middle of December that it appears as if Holdings has never had, during the relevant period, independent directors, as are required under its organizational documents. If that's the case and if that was the case going back, it raises questions about Article III standing with respect to their capacity to be seeking the relief that they were seeking here and their authority to be

pursuing any of this in the arbitration and otherwise. I wouldn't raise this ordinarily because we're not to the bottom of it yet. As I said, it just arose in disclosures in the bankruptcy. It implicates Liberian law, having to deal with Liberian lawyers on it, it's difficult. But given it's an Article III, nonwaivable standing issue, we just wanted to make sure that we at least mentioned it. If the Court would permit us to file something, perhaps, next week on this issue, to the extent that we determine it is an issue, we would appreciate the right to do that.

THE COURT: I think the way I'm going to handle that is that you can make a motion to file it, make a supplemental filing, because I'm not going to grant you right now blanket permission to file something that you don't even know whether you have the stuff to file on, so you can make a motion to make it.

MR. NESSER: A motion to make a motion.

THE COURT: Yes.

MR. NESSER: I hope it's okay for me to ask, is there some date by which we can make that motion which we know will be before your Honor rules on --

THE COURT: In a way, you are asking how quickly am I going to render a decision here. I can't tell you that. So you will have to proceed at your risk.

I did mention something from the Jock case, it's at

942 F.3d at 622, the quote is the following: An arbitrator may exceed her authority by first considering issues beyond those which the parties have submitted for her consideration, or second, that the issue is clearly prohibited by law or by the terms of the parties' agreement.

And it strikes me that part of what you're arguing with respect to the stay put order and with respect to the relief granted to the preferred nominees is that, even if the parties' agreement permitted this relief, it's clearly prohibited by law. We have not been able to find much authority on what the Circuit meant by "clearly prohibited by law." At the conclusion of today's proceedings, there are going to be some things on which I may want supplemental briefing. That may be one of them.

MR. NESSER: Sure.

THE COURT: It's now 4:12. We'll take a break until 4:30. And then I'll hear from Eletson. And then we'll have some opportunity for reply by Levona.

I appreciate that we have gone long. My thanks to the court reporter. But it's a case where there are a lot of issues, so the argument is necessary. See you back here at 4:30.

(Recess)

THE COURT: I should put on the record that I know Mr. Underwood from a long time ago when we were, I think,

associates together at the Cravath firm a long time ago. But I'll hear from whoever wants to argue for Eletson.

Go ahead, Mr. Solomon.

MR. SOLOMON: Thank you, your Honor.

Your Honor, this is a petition under the Convention for the enforcement and recognition of foreign arbitral awards. Congress was, I think, quite serious about wanting to join the community of nations to make arbitrations available to parties in the United States and parties outside of the United States and was very clear about how the process, I think, how the process is to work. The Second Circuit has decisions on this, your Honor has decisions on this. I'm not purporting to teach your Honor the law.

This summary proceeding, however, I think, will be turned into something that Congress doesn't want and the Second Circuit doesn't want and no case wants.

THE COURT: Maybe we can start with something at the very beginning, in terms of what the proceeding is about. You do have a line that appears in a number of your different papers where you say that I should confirm the award and the factual findings and all of that stuff. And the way I read the Second Circuit law is that the effect of a confirmation is simply to take those portions of the award that grants relief and convert them into a judgment and that all of those findings, you can argue that the arbitrator's findings

constitute collateral estoppel, but you can't argue that anything I do constitutes estoppel, other than if I find that something is not manifest disregard or that it exceeds the arbitrator's authority. With respect to the all of underlying findings, if those are entitled to estoppel, then god bless you, if they're not entitled to estoppel because they're persons who are not parties to the arbitration, then they're not worth the piece of paper they're written on.

MR. SOLOMON: So I agree with your Honor that this petition that we have filed, that Eletson has filed has a single claim for relief and that claim is to confirm the arbitral award against Levona and to enter judgment against Levona.

THE COURT: Well, that is kind of avoiding the issue because -- tell me if I'm wrong -- but I thought that what you were seeking is confirmation of the award, which if you are seeking would result in there being a judgment that says, among other things, that Pach Shemen has to pay, et cetera, and then you would be entitled to pursue enforcement proceedings against them. But in those enforcement proceedings, they would be limited to the defenses that are available in enforcement proceedings, they wouldn't be able to argue things like manifest disregard and the like. You would have a judgment that they pay. Or are you telling me that I'm supposed to edit what the arbitrator did?

MR. SOLOMON: It is our position, your Honor, that your Honor should not edit what the arbitrator did, that your Honor should confirm the award. I was looking -- because your Honor asked the question -- I was looking at various of the cases that have been cited, and we will continue to look for them, but with respect have not seen the courts here, in the Second Circuit or in the Southern District, edit awards.

Levona was clearly a party to the award. They were a party to the arbitration. And the award, in all of its findings, in all of its detail should be confirmed against Levona, even those respects --

THE COURT: Where do you get the notion that findings get confirmed, is there authority for that proposition? I don't understand it.

MR. SOLOMON: The proposition, your Honor, is that the award is confirmed. It is a separate question, and I would like to address it separately.

We have not asked your Honor to enforce any part of this award. We cannot do that because of the bad faith bankruptcy filing that was made against Holdings. We, in order to get the arbitration done, entered into a stipulation that, to the extent -- to the extent the automatic stay covered our claims -- and it did not, and it does not, and the Bankruptcy Court never found that it --

THE COURT: But it did cover their claims against you.

MR. SOLOMON: It did cover our claims --

THE COURT: So there's every reason for the arbitrator to have focused on the notion of whether the bankruptcy filing affected the arbitration, because it did.

MR. SOLOMON: No, your Honor.

THE COURT: Absent the lift-stay order, how could Levona pursue its counterclaims against you?

MR. SOLOMON: The arbitrator did not address those, your Honor. Absent the lift-stay order, Levona could not assert claims against Holdings. We agree with that. It could against Corp., not against Holdings.

THE COURT: So it did affect the bankruptcy. The bankruptcy filing absolutely affected the arbitration, because the bankruptcy filing affected what might have been the more serious claims in this case, which were Levona's claims against you.

MR. SOLOMON: It's going to take me a minute to try to answer all of your Honor's questions, but I hope to at least do the best that I can to answer them.

The arbitrator did not address the question of whether anything he was doing violated the bankruptcy order because it was never raised to him, not once. And in the Rule 56 statement -- and I think it was a very good -- actually, a very good effort for the parties to go through, so your Honor knows exactly what the facts are -- in three places, which I'll send

your Honor to as soon as I can find them later in my notes, we asked Levona, did you assert that anything the arbitrator was doing violated the lift-stay. And in each of those cases, the answer was no, they never raised it.

THE COURT: My question really was not whether anything violated the lift-stay order, but whether had the arbitration proceeded without getting relief from the Bankruptcy Court, it would have violated the automatic stay, because in the arbitration, there were claims by Levona against your client that seems to me would even, under your argument, affect the bankruptcy estate.

MR. SOLOMON: Paragraph 3 of the lift-stay, your Honor, does discuss the lifting of the stay for certain purposes. That paragraph never applied to Eletson's claims, because the automatic stay never applied. But it certainly did apply to Levona.

THE COURT: You made a point, Mr. Solomon, which I think maybe I misheard you, that the issue of whether the arbitration could proceed in the face of the bankruptcy should not have been raised at all because the arbitration clearly could proceed in the face of bankruptcy, and the answer to that is no, it couldn't proceed.

MR. SOLOMON: Then I think I misspoke, your Honor, and I want to be clear about what Justice Belen said. Justice Belen never found that the automatic stay applied to the case.

What he found was that Levona was going to refuse to continue in the arbitration, that's what he found. And in his opinion -- it is lengthy and it is very detailed and those findings are entitled to deference and a great deal of deference from your Honor in respect of the pleading and the proceeding --

THE COURT: The award -- you're right, I need to review his legal reasoning for manifest disregard. The findings are never going to be collateral estoppel.

MR. SOLOMON: I believe, your Honor, that as between Eletson, the claimants, and Levona, the party against who a judgment -- we're asking for a judgment to be entered -- there will be res judicata and collateral estoppel against that party.

THE COURT: Only on my order if I confirm, only with respect to the limited issues that you have said I should consider, which is whether, number one, there's manifest disregard; and number two, the arbitrator exceeded the authority.

I could very well disagree with the arbitrator's legal rulings and think they were crazy. I could disagree with the factual findings and say they don't have much support in the record. But your point is, Judge, that's not your role. So there is law to the effect that arbitral findings, under limited circumstances, are entitled to estoppel effect, it

doesn't carry over equally with respect to the judicial determination on a petition to confirm. Petition to confirm, all that you get is the estoppel against them with respect to the limited issues that are before me. It's just the flip side of everything you have been arguing; Judge, this is a summary proceeding.

MR. SOLOMON: Certainly.

THE COURT: And Judge, you don't have much to do in this case.

MR. SOLOMON: It is certainly a summary proceeding. The statute allows for any party in a proceeding to apply for confirmation of the award. And absent specific grounds -- there are some under the Convention and there are some under the FAA -- Levona has raised no grounds under the Convention. They have raised a single ground under the FAA. And they have raised the catch-all in respect to a very narrow issue, application of English law, a manifest disregard. That is all they did.

And if your Honor finds that their claims, their grounds for vacatur are without merit, then as the statute says --

THE COURT: I will never find -- what I will find is they can't show the manifest disregard or excess. I won't find that your arguments are legally correct as to the underlying merits.

MR. SOLOMON: That is correct, your Honor. We agree with that.

All we're asking your Honor to find is, under the applicable legal standard, if your Honor finds that they do not carry their heavy burden -- and it is a burden on them, despite the number of times they want to shift it to us in their briefing -- it's their burden, if your Honor does not find that they have carried their burden, as the statute says, your Honor shall confirm the award. That is what is says.

We're not in this proceeding asking for enforcement. And that -- I would like to get to that when I get to the issue of Pach Shemen and Murchinson. The findings that are made against Levona concerning its role with respect to Murchinson and Pach Shemen are among the findings in the award that we ask that the Court confirm. We are not here seeking enforcement of the award against Pach Shemen or against Murchinson. And the reason for that is because we agreed to go back to the Bankruptcy Court after confirmation, after your Honor confirms, before any enforcement. That is the stipulation. We have been honoring it, and we intend to continue to honor it.

So the standard for your Honor to apply is, as your Honor said, whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement to reach a certain issue, not whether the arbitrator correctly decided that issue. That is -- your Honor has that -- your Honor's

opinion and the Second Circuit has said it as well.

The Second Circuit goes further, it says, once we determined that the parties intended for the arbitration panel to decide a given issue, it follows that the arbitration panel did not exceed its authority in deciding the issue, irrespective of whether it decided the issue correctly. That's in T. Co Metals, which the parties cite.

THE COURT: What's your interpretation of that language from Jock, 942 F.3d, which says clearly prohibited by law?

MR. SOLOMON: It does -- that is not a Convention case, your Honor. I believe under the Convention, I believe what the Court is going to have to do is look quite narrowly at what Justice Belen did, and look to see whether issues were presented to him. And if they were presented to him and he decided them, then even if he is wrong, they are entitled to confirmation, absent carrying the extreme burden that they did. That's not --

THE COURT: You'll address at the right time the interaction with the Bankruptcy Code?

MR. SOLOMON: I will, your Honor. I will.

Counsel suggested maybe there was a third arbitration agreement that was entered into. There was no third arbitration agreement. The parties, in their agreement, said -- entered into a very broad arbitration provision --

THE COURT: So let me ask you that question. Under the arbitrator's reading of the arbitration clause in the LLCA, what would be left of the arbitration provision in the BOL? Under his reading, wouldn't any dispute that could arise under the BOL be subsumed by the arbitration provision in the LLCA?

MR. SOLOMON: I do not know about any, but I will -- I do assert to your Honor that Justice Belen found that the LLCA arbitration agreement was broad enough to include those claims under the BOL.

THE COURT: Can you try to answer my hypothetical, because I think, under the Second Circuit law, one of the things that I ask with respect to the arbitrator's determination of arbitrability is whether he drew his interpretation from the contract or whether he came up with his own brand of industrial justice and whether it was arbitrary. And it certainly seems like it should be relevant, the general reading of contract law, that when you have two contracts that are in existence between parties, you try to read them together in a way that doesn't deprive any provision of meaning. And so that's where I'm coming from in asking you the question about, under his reading of the LLCA, what's left of the arbitration provision of the BOL?

MR. SOLOMON: With respect to the claims that Eletson asserted and the claims that Levona asserted, I believe there was nothing left. It is completely consistent with -- so your

Honor is aware --

THE COURT: What, hypothetically, would be -- under his reading -- what, hypothetically, would be left to the arbitration provision in the BOL?

MR. SOLOMON: The arbitration provision in the BOL was itself likely unenforceable. The tribunal that was identified there does not exist. It says the London center for international arbitration or something. There is no provision, there is no entity like that.

But I am comfortable saying, your Honor, that I could imagine claims that would be under the BOL relating to the loan, relating to things that have nothing at all to do with the relationship between the parties under the BOL, that is, who is going to own the preferred, in terms of the heart of the LLCA, I could imagine claims, I'm comfortable saying, that not everything is swallowed, it doesn't completely ignore it. But with respect to the claims that we assert, that Eletson asserted and Levona asserted, he found that he had enough authority --

THE COURT: So what would be left under the BOL, hypothetically?

MR. SOLOMON: Well, I could --

THE COURT: You must have thought about this question over the course of the arbitration.

MR. SOLOMON: Well, I will tell you, your Honor, that

it wasn't necessary to think about it for the following reason: Levona went all in on the claims that it wanted arbitrated and that's what your Honor needs to see.

THE COURT: I misspoke by saying you must have thought about it. Let me now ask you to think about it.

MR. SOLOMON: I wasn't trying to -- I believe I can imagine claims that do not implicate the LLCA but do implicate the BOL. If there's a technical question concerning the loan -- counsel misspoke -- there was never an obligation to repay the loan. The loan asked for the loan either to be repaid or collateralized. And as Justice Belen found, the loan was collateralized. We can park that.

But I could imagine a case under the -- Mr. Underwood seems that he can, okay. There were -- under the BOL, there were technical questions about how the SMEs, which owned the ships, were to transfer or going to transfer to Levona. I could imagine a case where that would not be under the LLCA. But all Justice Belen said -- and I believe, your Honor, he had the right to do this, because our arbitration agreement and JAMS each said that including the determination of the scope or applicability of this agreement, that's exactly what the Supreme Court in Schein said, if you don't have that, then, then there is an argument for going to court, as Mr. Nesser said, the presumption is you want to have a court decide that. What the Supreme Court actually held is where you have language

like we had, or when you invoke JAMS, which has language like it has, which I will read to your Honor --

THE COURT: I've read it. You don't need to.

MR. SOLOMON: Okay. Then the decision is the arbitrator's, and it's the arbitrator's finally, absent your Honor finding that there has been manifest disregard, because he had the authority to do so.

THE COURT: I'm just pressing the manifest disregard point to see whether there is some point at which the arbitrator could have exercised authority under the LLCA that would have been in manifest disregard of the arbitral provision under the LLCA.

MR. SOLOMON: I believe his determination that it did not -- that the parties had agreed that the arbitration provision was not replaced or superseded by the BOL, he finds that on the bottom of 12 to the top of 13, I believe that that is entitled to great deference. He was also entitled to determine under his rules that Levona waived its right by asserting counterclaims. What the JAMS rules say is that his determination of that is final. It is not to be reviewed; it is final.

I believe your Honor could say, yes, but, I, as a court, can review even that for manifest disregard. We don't have to address that. I don't think there was any manifest disregard at all anywhere here by Justice Belen, and certainly

not with respect to here, because Levona took it on itself -- and Justice Belen goes into this in detail in his award -- Levona then took it upon itself to raise all of its BOL claims, every one of them and to sue for hundreds of millions of dollars of damages because of the alleged -- hundreds of millions of dollars of damages and billions of dollars of punitive damages -- for alleged violation of the BOL and the associated transaction documents and what Justice Belen found --

THE COURT: So what would you expect a party in their position to do if they have claims against your client but believe that the arbitral tribunal doesn't have authority, but they don't want to lose their claims, are they put into the Hobson's choice of either subjecting themselves to jurisdiction or giving up their claims?

MR. SOLOMON: No, your Honor. Levona, I think --

THE COURT: What could they have done?

MR. SOLOMON: They did not have to take that Hobson's choice. They did not have to assert those claims. Those claims would not have been decided. If they were not arbitrable, then they did not have to assert them.

THE COURT: But if they want to protect against, not lose -- you didn't answer the Hobson's choice. You, in fact, just restated the Hobson's choice by saying that they didn't have to assert their claims.

Let's say they didn't want to give up their claims, but they also wanted to preserve their argument that the arbitrator didn't have jurisdiction, what could they have done, in your view?

MR. SOLOMON: They could have commenced an arbitration or commenced a litigation where a court would have decided the issue of whether or not the arbitration provision covered those claims. It's done all the time.

And I believe they do not have the right to sit and wait, to lie in wait.

Counsel gave your Honor an example where you utter an objection and then you go ahead and you preserve it. That's not the way it works in this court and certainly not the way it works in an arbitration. The description --

THE COURT: So what they should have done is they should have filed a lawsuit against your client and then waited for your client to move to compel the arbitration of it and send it to the arbitrable tribunal? Help me with, under your view of the law, what they could have done, should have done that they didn't do.

MR. SOLOMON: What they could have done, had they disagreed, had they not wanted to try this issue -- and I believe they did, and I believe that's what the Second Circuit means by looking at what parties actually do, not just the extent of the arbitration agreement --

THE COURT: Answer my question.

MR. SOLOMON: They could have gone to court, if they believed it was a court issue, or they could have --

THE COURT: What would the court issue have been?

MR. SOLOMON: Well, they could have --

THE COURT: They can't bring an action in court to enjoin the arbitration that you're bringing. So hypothetically, they want to preserve their claims, but also preserve their objection to jurisdiction, what could they have done that they didn't do?

MR. SOLOMON: They don't assert the counterclaims. They go to a tribunal they believe has jurisdiction. They have gone to a tribunal in disregard of this award. They have gone to London, to England and have started all over again after this award was final.

THE COURT: So your view is that they would have had the right to go to England and to bring a -- I still am not getting your point, Mr. Solomon.

MR. SOLOMON: I apologize, your Honor. I'm trying to be clear.

THE COURT: So my question, again, is what they could have done that they didn't do in order to preserve their claims and preserve their jurisdictional challenge, or are you saying that there's a Hobson's choice?

MR. SOLOMON: I do not believe that's a Hobson's

choice, your Honor. They could have had the tribunal decide that issue in a timely way. They do not assert the counterclaims. They go to court and they determine that a court or another arbitration unit --

THE COURT: That's fine. You're not answering my question. You're not telling me what law they could have relied upon that would have given them an avenue that they didn't pursue.

MR. SOLOMON: The CPLR allows a party to go into New York court and seek a determination of whether a claim is arbitrable. It's under 7500, CPLR 7500.

They could have brought an arbitration in London where they claim that they had jurisdiction over it. And they could have asserted these claims. We would have opposed on the basis of the fact that we believe that they are to be arbitrated here. We would have gotten a ruling on that, and that could then have been appealed to a court in London. They could have done all of that.

THE COURT: And then, on the assumption that they used all of that in London, your view, they still could have come back to JAMS and asserted their counterclaims?

MR. SOLOMON: Yes, your Honor. Yes, your Honor. Because the way the arbitration worked -- your Honor has read the JAMS rules -- it's a very flexible kind of dispute resolution. The idea that your Honor has been told -- I think

I heard two or three or maybe four times -- that parties can't do in an arbitration what they could do in court is not the law. Arbitration is extremely flexible.

In arbitration, a claim can be asserted by a letter, it says that, it says that in the JAMS rules, in Rule 20. The parties were entitled to raise issues that they wanted the arbitrator to decide all the way until the end when the 20(b) submissions were made, and they were made in May. Yes, they could have done that, your Honor.

They could have asked Justice Belen, in fact, to stop, if they were running out of time -- they were not running out of time because they wanted to try these issues in the arbitration, that's what they wanted to do -- they could have asked him to stop. If he didn't stop, they could have moved to stay the arbitration. There was a great deal they could have done.

What they were not permitted to do is to try to have their cake and eat it, when Justice Belen, who has final authority over how to read his rules, said to them, listen, you can do this or you can do that, but you cannot do both, now make a decision. They made a decision and they doubled down on the claims, the BOL claims that they wanted tried.

THE COURT: You are telling me that I should read Justice Belen's decision to say, you can either object to jurisdiction -- you can either assert your claims here or, if

you object to jurisdiction, assert them in London, see how you do there, if you don't do okay, you can come back here, that's how I should read Justice Belen's decision?

MR. SOLOMON: That's one of the ways that they could have --

THE COURT: But that's the way you say I should read Justice Belen's decision? Is that your point?

MR. SOLOMON: I'm trying to answer your Honor's question, I'm so sorry.

Your Honor should not read Justice Belen's decision that way because Levona did not want that. Levona asserted the claims that they wanted to assert. They did not want to get a ruling from some other court. They did not use the CPLR to get clarity on what was arbitrable and what was not. They did not go to London. They asserted the claims in the arbitration. At the end of the arbitration --

THE COURT: I've got your point.

MR. SOLOMON: Okay.

At the end of the arbitration, your Honor, they never objected at the end of the arbitration, your Honor will look, I believe, in vain, to try to find where they objected to the claims that they were asking him to decide under the BOL. They did not.

The point that I was making about the rules is that the JAMS rules permit the arbitrator to decide who the proper

parties are, that's JAMS Rule 11(b). They allow him to say how claims should be asserted, when claims should be asserted, what kind of discovery is available, the whole panoply and they give really broad authority to the arbitrator to do that.

And in a case like this, we not only have the JAMS rules that he invoked and I think invoked properly, but we also have a stipulation, a stipulation by Levona, that the proceeding was fair. And this was after we asserted the -- and I'm going to get to when we asserted the claim concerning the nominees -- it was after that, after we said relief should go to the nominees. They never asked to be let out of that stipulation. They got something for the stipulation. It was a quid pro quo by the parties, approved by the arbitrator, and they stipulated to the fairness. They don't have a 10(a)(3) claim here, your Honor, seeking vacatur. It's the very narrow question of whether there was any exercise of authority by Justice Belen that was both outside the agreement and that they didn't participate voluntarily themselves.

And your Honor has then raised the third one that we're going to have to get to that is, what if you really violate some independent law. And I understand what your Honor is saying.

But our argument is that your Honor should confirm, unless they carry their heavy burden of showing that fairness is out. They raised a claim late, out. It has no role here.

It has no role here because Justice Belen found that the parties acted in a timely way. When Justice Belen finds that the parties agree to produce documents as late as April and May, and they did, it is not Levona's province right now to say, well, that was unfair. That was the deal that they made. That was the agreement that they made.

And they indeed produced documents very late. They produced documents to us, the key documents in the case, by the way, your Honor, after our witnesses were off the stand. Our fact witnesses were off the stand at the time that they produced those Murchinson documents.

The point I'm making is that none of that is properly before your Honor, none of those driveby fairness issues that they raised, claims they raised. If the arbitrator made a determination with respect to them, then that is the end of the issue. And if they had the right to raise those claims and they did not raise those claims, then they have waived them. And the result is confirmation of the award, not more than that, because that's the only thing we are here to do.

Not only do JAMS rules give him wide authority to all of those procedural issues, but with respect to remedy, it's even broader. And with respect to remedy, rule 24 of the JAMS rules, specifically says that he may grant any remedy or relief that is just and equitable, okay, within the parties' agreement, including, but not limited to, specific performance

of a contract or any other equitable or legal remedy.

THE COURT: I've read it.

MR. SOLOMON: The second circuit confirms it and even gives -- even in the absence of that, gives an arbitrator that kind of very broad --

THE COURT: What case do you want me to read for that proposition?

MR. SOLOMON: Yes, thank you, your Honor. It's so important, your Honor. Forgive me, I apologize. With the Court's indulgence, I need a moment.

THE COURT: You can give it to me later. Maybe Mr. Underwood or your other colleague will find it.

MR. SOLOMON: It's there.

Even in the absence of the JAMS rules. When Levona is asking your Honor to parse cases not in the Second Circuit, where we don't even know what the rules are that they're operating under -- in a couple of the cases that they do cite we do know they are not Convention cases, they are collective bargaining cases, which have a completely different set of rules. They are not limited to the kind of narrow analysis that the Convention and the FAA Section 10 are about, right. They have fundamental justice or they're much more -- there's much more leeway there for the court to do that.

With your Honor's permission, let me turn to the issue of --

THE COURT: Do you want to address the issue of standing?

MR. SOLOMON: Standing, yes, your Honor.

We continue to assert we have a single claim. It is a single claim for confirmation of the award.

The kind of analysis that Levona is asking your Honor to get into would not be permitted even in a court, but it will wreak such havoc under the Convention, it is completely, I think, outside the bounds.

What the Second Circuit has said is, look, there might be cases where we have to say to other countries, even if you come and seek relief here under the Convention, there's still something that cannot allow us to act because of the kind of court that we are. So if your claim is utterly moot, if the claim -- if the award has been paid in full, if there's no motion to vacate -- I'm quoting from Stafford, right --

THE COURT: How do I think about the question that you have raised, which is that an award is a unitary item and not to be dissected; is there a body of law that I borrow from to look at it?

MR. SOLOMON: Your Honor asked that question, and I'm trying to be as helpful as we can. I think the reason you do not see more cases on that is because we can find for your Honor awards that have lots of different kinds of relief that are given, and they are brought to this federal court and they

are looked at and there is standing and they are confirmed with lots of different things, but I do not have a case --

THE COURT: I understand that. But I am looking for a body of law that I can analogize from, that would support you or the other side. That's the reason why I raise the point.

MR. SOLOMON: I understand your Honor's point completely.

I start with the statute. And the statute says that any party to the arbitration may move for an order confirming the award as against any other party. That's what the statute says that we can do. And so in that respect, it is a single claim and so your Honor is to look to see, do we have an interest in this claim, not in all of this aggregated parts of it -- although I believe we have standing on every single thing that Justice Belen did, and I'm prepared to tell your Honor why -- but I don't think that's proper, I don't think that's the right way for the Court to look at standing. I believe Levona has no case to support it. The only thing they have are the extreme cases, where the Second Circuit has said, if you completely assign your claim and you are a stranger, you have nothing here. Not that you have things here, but not everything, but you have nothing here. Or if IBM pays the award and they don't move to vacate -- the Second Circuit said that also, I think it's very telling, your Honor -- what the Second Circuit says in Stafford is that IBM paid the award in

full and did not seek to invoke the court's jurisdiction moving to vacate. Levona has invoked this court's jurisdiction by moving to vacate. I believe that's the end of the standing argument.

THE COURT: Do you happen to know the answer to the question I was posing, if an appellate court dealing with a judgment entered by a lower court and whether the appellate court would have the authority to direct the judgment to be vacated in its entirety, even if some portion of it didn't continue to affect the parties?

The reason why I have drawn that analogy -- it may seem obvious -- but it seems to me that the flip side of confirming an award is vacating an award, the point that you are making, and that if I have the authority to vacate portions of an award that don't affect you, to which you don't have standing, if the Court has the power to do that, then your point should follow.

MR. SOLOMON: I want to be cautious, because I do not have a case on point. I think it's a fortiori in the arbitration context because it's a single claim under the Convention. But I don't think there's any -- in my mind, there's no question that the court, the appellate court is not going to parse every part of that, they are going to treat is as a judgment and then they're going to look at the judgment, and they may reverse part of the judgment and they're not going

to say, we're not going to vacate this part because you don't have any standing and there's no Article III jurisdiction over that. I'm only practicing 40 years, but I've never seen a case like that. We can certainly look.

To get back to what's actually happening is that somehow Levona believes that there's a whole new way of approaching arbitral awards and that they have to be parsed with a microscope on the subject of standing, not on the issue of whether they raised specific issues. And that, your Honor, is correct. Your Honor raised specific issues under 10(a)(4), your Honor is going to look at those questions under 10(a)(4). But to go through an award, there are thousands of awards and thousands of subsections in thousands of awards and the courts are not looking at them, are not parsing them. And I know the reason why in the Convention context at least, I know because Congress has said, you do not have to do that. And no court has said in the Convention context that you have to do that.

And the Second Circuit was very clear that, under the logic of the cases, a petition to confirm is moot, it's a mootness case, it's not a standing case, it is moot, when there is no longer any issue over payment or ongoing compliance with a prospective award.

Here, Levona has paid nothing. Here, Levona is not honoring a single part of what Justice Belen did. They have asserted in the Bankruptcy Court a $252 million claim because

of the deal with Unigas, exactly the issue that Justice Belen resolved. They are not following a single part of it. And I think the language of the Second Circuit is very clear that, when you have ongoing compliance issues, when you do have an issue over payment, then you're entitled to get your award confirmed. That's what they said. And as I said before, they went out of their way to say, and by the way, IBM did not move to vacate.

There was a little bit of argument, and I think maybe some confusion about a standing issue before Justice Belen and the standing issue here. Justice Belen found -- page 88 of his award, your Honor -- that Levona never objected to Eletson having standing to enforce the terms of the BOL even though, if successful, relief would be awarded as expressly set forth in the BOL to Eletson gas or its nominee. So there's no question that the standing issue is a very different one in an arbitration. Looking for declaratory relief is often done in an arbitration and that's because, your Honor -- and that's why I wanted to answer your Honor's question about the functus officio, it's all related -- arbitration awards, a great many of them, don't get appealed, there's no confirmation; parties honor them. And the award says, I want you to do this and I want you to do that and I want you to do this, it's absolutely ubiquitous that awards do that and have ongoing obligations. And that's what Justice Belen here did. And the parties had

every right to ask for that.

They asked for it too in the relief that they sought in the arbitration. They wanted us to continue to vote their way and to not take any fundamental actions and they wanted to circumscribe what would happen at the board level, if they want -- this is in the record before your Honor -- they did the same thing. And the parties agreed that the arbitrator would have the authority to do that.

Now, what Justice Belen did -- let me answer your Honor's question about whether he was functus officio. To go back to him, he is functus officio. He said that, he's ruled that. So there's no issue of going back to him.

There are other remedies that we're entitled to have. But the ongoing --

THE COURT: I mean, it's not -- it may not be particularly before me -- but how does any court's injunction bind parties to -- other than before that tribunal?

I mean, what's the notion that he's got an order in place -- I take it you are not arguing that if they violate his order that you're entitled to any relief at this point.

MR. SOLOMON: I believe that we were entitled to relief in this court. We are not entitled --

THE COURT: From his --

MR. SOLOMON: From your --

THE COURT: From Justice Belen's order?

MR. SOLOMON: Yes, your Honor. Because what he said, as arbitration awards always say --

THE COURT: It's not actually part of his award.

MR. SOLOMON: Well, what he says at the end of his award is that, I want the parties to maintain the status quo until the district court has the opportunity to look at this. And when the district court entered a judgment, a final judgment, is what it says --

THE COURT: If you want that kind of relief and you really want it from me, then you're going to have to apply to me for an injunction against them. But right now, I'm not particularly inclined to say that I'm going to enforce an injunction issued by an arbitrator.

MR. SOLOMON: Your Honor, if we want an injunction from your Honor, we have to bring a motion before your Honor and we have to satisfy the requirements under Rule 65 in this court, and we know that.

All he said is, as between the parties, I want you to continue to maintain the status quo, okay, until some district court tells you otherwise. I do think he had the authority to do that. He had the power to do that. The parties invested him under the JAMS rules and under their LLCA agreement.

THE COURT: There's no current issue before me with respect to that.

MR. SOLOMON: Fair enough.

But what he -- if we're going to have to get into the issue of whether Corp. or Holdings has standing or has an interest in every single item of the award, I am prepared to do that.

THE COURT: Why don't you move on to the nonparties.

MR. SOLOMON: Okay, your Honor. We have briefed that, but not as extensively as the argument indicated today, but I will move on, your Honor.

THE COURT: And I hope you both appreciate that I ask questions just to tease out the logical implications of your positions.

MR. SOLOMON: We're here to help as best we can, your Honor.

I did want to call the Court's attention to two parts of Justice Belen's award. You were read, I think, the wrong part of Justice Belen's award. With respect to $12 million, that that's not enough to give standing, Justice Belen says that Levona, Murchinson and Pach Shemen as alter egos jointly and severally shall pay, so Levona -- that's what we're here for -- Levona shall pay attorneys' fees, costs and expenses to claimants, to claimants. It's page 100, (d)(1) of his award. So he awards $12 million to the claimants. They are not paying it. We are here to try to get it confirmed so we can get it enforced. He says the same thing on page 90.

THE COURT: I guess this goes to the question of what

confirmation of the award means. The case that I have been focused on is a case called Diapulse in the Second Circuit. And what Diapulse seems to indicate is that the effect of a confirmation would be to reduce an award to a judgment, such that any party that is the beneficiary of that judgment would be able to, in an enforcement proceeding, enforce it. So as I postulate the law, it would mean that if you win, not just Levona, but the nominees in Eletson Gas would be able to bring enforcement action.

Do you disagree with that?

MR. SOLOMON: As against Levona, your Honor?

THE COURT: Let's start with as against Levona.

MR. SOLOMON: I do not disagree with that. I agree with that. As to Murchinson --

THE COURT: And then the legal question would be whether the requirements for enforcement have been satisfied, they wouldn't raise the questions under the New York Convention or the FAA.

MR. SOLOMON: Exactly. That's precisely it, your Honor.

THE COURT: I just want to be sure I'm understanding.

MR. SOLOMON: And the Second Circuit and the Supreme Court has identified the kinds of questions that you ask when you do that.

THE COURT: So let me ask the further question, which

is whether Levona can assert against -- if I confirm the award -- could assert against Pach Shemen and Murchinson what I would include in the confirmed award, which is the requirement that they pay to Eletson Gas or to preferred -- let me ask the question again, make the question more precise.

If I confirm the award, would Gas or the nominees be able to bring an enforcement action against Pach Shemen or Murchinson?

MR. SOLOMON: They would, your Honor. But they would have to make the same showing that we have to make, that Eletson has to make in that enforcement proceeding.

THE COURT: Got it.

MR. SOLOMON: That is Orion --

THE COURT: But they would be limited to the arguments that you make in the enforcement proceedings. They would not have the opportunity to make the arguments under the FAA or the New York Convention.

MR. SOLOMON: Justice Belen found --

THE COURT: Just answer my question.

MR. SOLOMON: That is correct, your Honor. And the reason is because Justice Belen found that they stipulated to be bound, not only by this award, but by any judgment entered hereon.

THE COURT: No, no. But Pach Shemen and Murchinson didn't make that stipulation.

MR. SOLOMON: Pach Shemen and Murchinson did not. We would have to make the showing that Orion says we have to make, and there's another Second Circuit case and then a couple district court cases --

THE COURT: I take it they would not be able -- in those proceedings that you presumably will bring if I confirm the award -- I say you, but I'm speaking colloquially; Eletson Gas or the nominees -- they would be in the form of an enforcement proceeding and not a confirmation proceeding; correct?

MR. SOLOMON: That is correct, your Honor.

THE COURT: And so in that context, they would not be able to bring a motion to vacate the arbitral award, the arbitral award would already have been reduced to a judgment. At best, what they would be able to do is come back to me and make a Rule 60 motion; isn't that how the law would work?

MR. SOLOMON: I'm not prepared to say that the law is monolithic when it comes to going around the world and trying to enforce judgments. Your Honor will find that, in those enforcement proceedings, a lot gets argued in those enforcement proceedings.

But what I do know is that as between Eletson and Levona, Levona would be bound by that judgment. And they would get the benefit. When they pay the judgment, they would get a satisfaction of judgment. They would not have to pay --

THE COURT: But presumably, they're not all that interested in paying the judgment, because they think that -- at least as to Pach Shemen and Murchinson -- that Pach Shemen and Murchinson shouldn't be held liable, that the arbitrator acted in excess of his jurisdiction. So I take it that in that proceeding, they might be able to argue things like whether they were an alter ego, whether their due process rights were violated, but they wouldn't be able to argue manifest disregard or excess of authority or unfair procedures or any of the New York Convention arguments.

MR. SOLOMON: Your Honor, I believe that is Supreme Court law and that is Second Circuit law.

THE COURT: I just want to make sure I understand your arguments.

MR. SOLOMON: That is our position. I can take that up and then get to the nominees, which I think your Honor was more interested in, but GE Transportation, the Judge Engelmayer case --

THE COURT: It's actually quite instructive, because what that case tells me is that if you wanted to hold Murchinson or Pach Shemen responsible, what you should do is get a confirmed award that simply says that Levona has to pay, doesn't say anything about Pach Shemen or Murchinson. And then you go to a district court and the district court makes the findings with respect to alter ego in a proceeding in which

Pach Shemen and Murchinson get to defend themselves. That's what Judge Engelmayer said.

MR. SOLOMON: But I largely agree with your Honor, and with respect, I would modify ever so slightly what happens in that proceeding, because we learn, I think, from Orion, we learn from Productos, the Second Circuit case, 23 F.3d 41. We also learn from the GE Transport case. We learn from those cases what happens when you try to enforce against an alter ego. And there's some differences in the cases, because in some cases there were no findings made below about alter ego; in some cases there were findings made as to alter ego. And what the cases have done is they have looked at the five -- I believe five grounds -- the six grounds the United States Supreme Court has set out, six categories upon which a nonparty can be bound by a judgment. They also look at the five categories that the Second Circuit has identified, incorporation by reference, assumption, agency, veil piercing, alter ego, estoppel, that is exactly -- in that respect, we agree with your Honor that although --

THE COURT: Then if you agree with me, then what I should be doing is excising from the award those portions that require Murchinson and Pach Shemen to pay and telling you, come back to me or to Judge Engelmayer or somebody else and prove up your case.

MR. SOLOMON: I do not believe that that is the law,

your Honor. Even Judge Engelmayer says he confirms the arbitration award. He confirmed it in its entirety.

THE COURT: Yup, yup, yup.

MR. SOLOMON: Enters judgment in favor of GET against A Power in the amount specified --

THE COURT: They were the parties to the arbitration.

MR. SOLOMON: Yes, your Honor. Grant GET a permanent injunction, blah, blah, blah, right. However, the Court finds it cannot reach in this proceeding the issue of whether the arbitration award should be enforced against the other parties specified by GET under the alter ego theory. The award is confirmed.

THE COURT: But in that award -- tell me if I'm wrong -- but my understanding is that, in that award, the form of the award did not say that the alter egos had to pay. The award that he confirmed was simply an award against the party to the arbitration agreement.

MR. SOLOMON: In that case, the alter egos, I believe, were not named below. In this case, Justice Belen does make findings against those. The difference of opinion, your Honor, is very slight.

THE COURT: Well, I think it's actually huge.

MR. SOLOMON: Let me try to explain what I mean. And of course, you're the judge.

There are cases where alter ego findings are made.

Those do not go away. They don't go away as against Levona, because Levona is jointly and severally liable, as it says in the award.

THE COURT: That, I credit.

MR. SOLOMON: Okay. Now, when we go and bring the -- let's suppose we don't get satisfaction of our judgment against Levona and we want to try to enforce against Pach Shemen and Murchinson, I acknowledge that, at that point, Pach Shemen and Murchinson are allowed to say that one of these grounds that the Supreme Court has recognized -- none of the grounds that the Supreme Court has recognized, none of the grounds that the Second Circuit has recognized apply and you cannot hold it against us. But if we do prove that they were alter egos and we do prove that they were essentially there, as Justice Belen finds, then they do not get to relitigate how much they're going to pay and what the damages are. That is all done.

If we lose and they are not found to be alter egos, then we have to bring a case against them. That's at least I believe what our position is.

THE COURT: Okay.

MR. SOLOMON: And I think we have been clear since our petition that we are not seeking -- we are not seeking enforcement against them because we have to go back to the Bankruptcy Court. But I do believe that we are -- we are seeking confirmation of the award, including the findings in

that award. We cannot enforce those findings where --

THE COURT: So tell me -- because the way I read Diapulse is the thing that is confirmed is the award, and that's the way I read the Circuit's law and just the general law, including from the statement about arbitral findings, is that what I do when I confirm is I reduce the relief to a judgment, but that I don't confirm findings. You have said that more than once, and so I assume that there's a case that you want me to look at.

MR. SOLOMON: And we will get it to your Honor, because I do believe that those findings made against Levona will be entered as part of a judgment, should be entered as part of a judgment of this court, entitled to all the preclusive effect that the law permits and no more if the law doesn't permit it. I'm not taking a position on parties who are not there or anything else. But as relates to Levona, I think the jig is up. I think those are the findings that get made and that get confirmed.

THE COURT: So I guess that brings us to the question of the preferred interest and the monetary award to the nominees and the question of intrusion into the Bankruptcy Court's authority and if I confirm the award, what's left to the Bankruptcy Court. Can the Bankruptcy Court claw it all back and say, all of that goes to Eletson Gas and, therefore, through the -- out through the Holdings bankruptcy to the

benefit of the creditors of Holdings?

MR. SOLOMON: I'd like to take those in separate pieces, because one was argued to Justice Belen and one is a new argument made for the first time here.

I believe that the sole question is whether Justice Belen exceeded his powers in deciding that the articulation, the identification of the preferred nominees by name was -- somehow he exceeded his authority by doing that. And then as part of the relief that he gave awarding damages to them and to Gas. And what Justice Belen finds and his findings are what's entitled to deference here, your Honor, not just his ruling, as between us and Levona, his findings are entitled to deference, because he says -- because one, the parties knew from the outset, in seeking to enforce the BOL -- and yes, we asked for specific enforcement, and yes, we did it early, and yes, we incorporated it late, but it doesn't matter because I read --

THE COURT: What he says in his relief is the preferred interest in the company were transferred to the preferred nominees effective as of March 11, 2022. And the preferred nominees are permitted transferees under the LLCA.

So my question to you is whether any of that would preclude the Bankruptcy Court from determining that the transfer was a fraud on the creditors of Holdings.

MR. SOLOMON: This has been raised with the bankruptcy judge, with Judge Mastando, and each time he said, I would like

to figure out if this award is going to get confirmed and then --

THE COURT: Right, because I raised my preliminary views, which is that I would think, at most, all you're going to get from me is that the preferred -- that the nominees were transferees under the BOL, but not that what Eletson Gas did wasn't fraudulent or that it shouldn't all be clawed back. In other words, leaving it to the Bankruptcy Court to address those issues or in the -- under the Bankruptcy Code and the law of fraudulent conveyance and not the law of confirmation.

MR. SOLOMON: I believe there is a role, and the Bankruptcy Court feels there is a role for it with respect to even a confirmed award, before that award gets enforced, and so to that extent --

THE COURT: No, but the question is how I should interpret what -- how one would interpret what it is that you want to have enforced. Is it limited to just, it was transferred to them, whether it's transferred in a fraudulent conveyance or not is totally up to the Bankruptcy Court?

MR. SOLOMON: We're not asking for anything other from your Honor than confirmation of the award. We're not asking for additional rulings to be made.

But I call your Honor's attention to the fact that Levona claims that it is a creditor of Holdings. And Levona has asserted a $252 million claim against Eletson in the

bankruptcy.

THE COURT: They are creditors, and Pach Shemen bought a bunch of bonds. They loaned money to your client.

MR. SOLOMON: They -- Pach Shemen is a -- we don't agree with that, your Honor, but this is not the place to address that. They bought bonds in violation of a standstill agreement -- not Justice Belen's -- they bought bonds in violation of the status quo injunction. We never gave up any of those defenses. We haven't today given up those defenses. We intend to assert them. The bankruptcy was converted from an involuntary to a voluntary because the client, Eletson Holdings, was being strangled. It had no choice. And so that is what Levona has done to us.

THE COURT: Isn't that typically what happens in a bankruptcy, is that the entity that can't pay its creditors is strangled unless it puts together a plan of its own?

MR. SOLOMON: Your Honor, Eletson was paying its debts as they came due. Eletson was not insolvent.

And so with respect, I think we should probably not -- I don't think it -- I don't think there's any proof that we should make any of those assumptions.

What I do say and what your Honor can and should understand is what Justice Belen said and what Justice Belen said is that it had been in the case from the outset. To quote him, Eletson witnesses testified that, from the outset of the

time the parties began discussing the buyout, Eletson intended the preferred units to go to nominees of the company and that it told Levona of its intention. That's page 27 of the award. That is a finding that your Honor should credit.

What he says is, from the start of the arbitration -- this is on page 87 and 88 of his award -- from the start of the arbitration, the claims and the counterclaims all related to who held the preferred interests. A primary question to be answered is whether Eletson exercised the option thereby transferring the preferred, the express terms of the BOL -- as your Honor said earlier today -- said that those preferred would be transferred by Levona to Gas or to a nominee of Gas. Now, to be clear, neither Gas nor a nominee of Gas is part of the bankruptcy estate. Neither was and neither is; not the nominees and not Gas. And what happened was, in violation of Justice Belen's status quo injunction and in violation --

THE COURT: Wouldn't at least the common interest of Holdings -- that Holdings has in Gas be an asset of the estate?

MR. SOLOMON: The value of the common stock?

THE COURT: Yes.

MR. SOLOMON: Yes, yes.

But from the beginning, everybody knew that the preferred wasn't going to go back, wasn't going to go to Holdings. First of all, there's no going back.

Counsel told your Honor many times during his

presentation that -- well, it was all going to go to Holdings and then they switched it up. False. And Justice Belen finds that it's false. And your Honor should refer to those findings.

THE COURT: It sounds like you are knowledgeable about what's happening in the Bankruptcy Court, so just educate me.

If the preferred go back to Gas rather than to the nominees, the preferred go to Gas, then I assume that that's going to increase the value of the common interest, effectively what's happening is that Gas is retiring its senior level of equity, increasing the value of the common; right? I mean, it buys back its -- it's taking back the preferred leaving the common as the only equity; is that right?

MR. SOLOMON: Do you mean, if Gas were to extinguish the preferred, then the common --

THE COURT: If the arbitrator had awarded the preferred to Gas -- you were of the view, you expressed it to the arbitrator that basically what Levona was trying to do was to protect its downside in the arbitration and get the preferred one way or the other; they would be able to either get it by winning the arbitration or they would be able to get it through the bankruptcy, you expressed a view to that effect?

MR. SOLOMON: That's at the Holdings level, your Honor, not at Gas.

THE COURT: Explain to me what your logic was at the

Holdings level.

MR. SOLOMON: Your Honor, it's not just my logic. There are findings in the arbitral award expressly on point.

THE COURT: What was your logic when you made that argument? What were you concerned about would happen if the preferred went to Gas?

MR. SOLOMON: I did not have a concern if the preferred went to Gas, your Honor. I had a --

THE COURT: So you would be fine if I ultimately come to the conclusion that the preferred shouldn't belong to Gas?

MR. SOLOMON: With respect, I don't believe your Honor has that authority under the Convention.

I believe that your Honor has findings from an arbitrator that there was an agreement. Gas couldn't pay any money. The nominees agreed to pay 3 million Euro, and the nominees agreed to backstop the legal fees. At the time, Levona was trying to strangle Eletson's ability to carry out the arbitration, so they --

THE COURT: Help me out again with the bankruptcy. If the preferred go goes to Eletson Gas, doesn't that increase the value of Eletson Gas and thereby increase the value of the common units?

MR. SOLOMON: I do apologize, your Honor, I cannot answer your Honor's question in the context of the bankruptcy. I am sorry.

I do know that there was never any interest in getting the preferred, moving the preferred to Gas. Gas had no money, that's why we went to get nominees.

THE COURT: Wasn't there an interest in getting the preferred away from Gas?

MR. SOLOMON: No, your Honor.

The interest was to have Gas or a nominee buy it. That was from January 2022, before this all started, 2022, Justice Belen finds -- I'm not speculating anything, I'm reading from his opinion -- that he finds that Levona knew that the company's intention to transfer the interest to nominees -- this is on page 27 of his award -- was confirmed in a January 10, 2022 email. The second thing he says is that Eletson intended the preferred units to go to nominees of the company and that it told Levona of this intention, also on page 27. On page 29, he says, Eletson had told Levona, before the BOL was executed, that the preferred units would go to nominees of Eletson Gas.

If the preferred went -- your Honor, if the preferred went -- I do know this -- if the preferred went to Gas, who is going to pay any money for that? Just like Blackstone was independent, just like Levona was independent and capital is being put into the company by those parties, so too Eletson decided that it would sell the preferred interest to the nominees. It sold that for good value. We have every right to

have that enforced now, at a minimum, at a minimum. The idea that this was somehow a late add, it was not a late add. That has been the case from the beginning. And what Justice Belen finds --

THE COURT: You may end up having to litigate that in another court.

MR. SOLOMON: I understand what your Honor is saying.

But Justice Belen finds on the way to finding what he finds on page 31, that there was absolutely no prejudice to identifying the names of the nominees. Page 31 of his award, no prejudice, he finds that. And his finding is entitled to respect.

What he says is that what happened was late in the proceeding, it wasn't Eletson that changed its argument; it was Levona that changed its argument, it was Levona who brought the involuntary bankruptcy and made statements like, Eletson was always going to send this preferred to Holdings. And Justice Belen addresses that. And he says that's wrong. He makes specific findings that there was never any admission by us and there was never any intention to send the preferred to Holdings. That's what he says.

And since this happened in March and in April, the issue of whether the preferred went to Gas or to the nominees had always been in the case. What he allowed to come into the case was we identified the names of the preferred. And that's

what he finds. He says -- he says, you raised the issue of those nominees. Not the fact that it was going to nominees, because I just read your Honor three findings, three specific findings where he says, Levona knew that the preferred was going to the nominees as early as January of 2022, that's the stuff on page 27 and 29 that I read to your Honor. But in light of the fact that Levona then changed its position and said, oh, by the way, it all goes to Holdings, we said, that's not right, that's never been the case, and here we want to identify these three nominees, which, at the time, I confess I didn't even know about, I didn't know about, that's true. The deal had been done more than a year before any of this had happened, the deal had been done.

And then what Justice Belen allowed them to do is, we asserted that these claims, that these interests were going to go to the preferred nominees from the beginning. We identified the preferred nominees, when we produced documents in April, before then, before Levona was finished making its production. That's the agreement that the parties made. And we then put in our 20(b) statements. We put in our 20(b) statements. They put in their 20(b) statement, by the way, your Honor, and said, there's a recent claim by us that these preferred are going to nominees. They knew that long before the trial. They knew that before they stipulated to the fairness of the entire proceeding. They knew that.

We then went and tried the case. And Justice Belen said, well, why didn't you -- I mean, if you really -- they didn't even object then, your Honor. They moved to strike allegations, not claims. There were no new claims. The allegations were, and they went to these preferred nominees. That's true. We then found the documents, we produced the documents.

Justice Belen finds as a fact that we made a fulsome production, that we did not hold anything back, that they had plenty of time to decide how to try their case. And they tried the case that they wanted to try. They not only tried it, your Honor, but they closed on it. And what we identified to your Honor are the slides from their closing in the arbitration. This is Exhibit 51, where there are two slides. And it says, timeline of Levona/Eletson communications. And this is the narrative that they closed on. They said, here, one possibility, the one they asserted, is Levona did not exercise option, Levona retains preferred shares. And then on the right side is the proof that we adduced, and it says, Eletson option exercised and nominee purchases preferred shares. They knew that, they didn't argue about it, they didn't object to it. They did lose.

And it was only then that they decided that, oh, there was something wrong with it. And Justice Belen -- not me, your Honor -- Justice Belen makes that finding on page -- the bottom

of 88 and the top of 89. This is after he makes his findings. He's now in the fee section. It's only then that they apparently got new counsel and wanted to make some new argument. It was too late. And Justice Belen finds it is Eletson that substantially prevailed on its claims in this arbitration and any attempts by Levona to undermine previous findings in this arbitration based on new arguments that the relief was inappropriately granted to Eletson Gas or a nominee of Eletson Gas are summarily rejected.

So we go back to what the Second Circuit says the law is, and that is did the parties address this issue. If they addressed this issue and they tried this issue, it was not beyond his authority. He did not exceed his authority. That's what T. Co Metals holds.

I still -- your Honor, the one case that I do know exists, yes, it's -- that's because I couldn't pronounce it, that's why. It's Reliastar v. EMC. And what Reliastar says is a broad arbitration provision like this gives as much leeway in the terms of relief -- I want to quote it, your Honor -- can I just have the quote.

THE COURT: I have Reliastar.

MR. SOLOMON: Okay.

When Levona was busy litigating this issue -- before it decided to object after the fact -- when it was busy litigating this issue, on of the things it says is, we don't

have the nominees agreeing to be bound, and so we went and got the nominees to agree to be bound. And Justice Belen finds twice that they agreed to be bound; page 31 and page 96, they have stipulated to be bound by this award and any judgment entered thereon. That, I don't believe there was any issue even before this. I believe that the parties litigated an issue and findings were made and those findings are entitled to deference. But even if that's not right, at the time that these preferred nominees stipulated to be bound, they had all of the rights and all of the obligations of parties. There was no objection from Levona after that. And as I showed your Honor, they went through the rest -- they went through the hearing and they put in their post trial brief, and they then argued in closing. And then Justice Belen made the findings.

And so the stipulation to be bound is exactly the kind of case that the Second Circuit says --

THE COURT: So let me ask you to argue the point with respect to the damages for filing the bankruptcy petition and anything else that you want. Why don't you finish it up in about 15 minutes because the hour is getting late, and I need to give them some time to respond.

MR. SOLOMON: I apologize, your Honor. But yes, I'll do that as fast as I can. I don't think I've taken more than my share, but I do want to be responsive to what your Honor is asking.

Your Honor is aware that Gas also agreed that -- Gas couldn't bring the claim. When Eletson thought that Levona had been bought out and sought to do something with Gas, Levona threatened suit and then sued the individual directors who were Eletson directors on the Gas board. They sued them individually, all right. And they said, you cannot have meetings, and they threatened them with all manner of things. Eletson could not do anything. But what we did do and what they also did was brought the effectively derivative claims. Those claims were in. Nobody ever objected to those claims.

(Continued on next page)

MR. SOLOMON: Nobody ever objected to those claims. And what we said is that we will turn any money that's derivative over to Gas, and that has been in the case from the beginning. And so there's no issue of power. The arbitrator had the power. They made a several-hundred-million-dollar claim, essentially a derivative claim, on behalf of Gas, and we made claims on behalf of Gas. It's very important for your Honor——I believe this is responsive, I believe this is responsive. The fact that the damages were going to be paid to the parties who were injured was well known long before the hearing. Long before the hearing. We offered an expert. Justice Belen discusses it on pages 63 and 64 of his award.

THE COURT: What really is the justification for money going to the nominees? Because their only interest would have been as holders of the preferred. If the party that was injured was Eletson Gas, how would the preferred, who are not even stockholders of Eletson Gas at the relevant time, injured?

MR. SOLOMON: What Justice Belen finds——and those findings I believe are entitled to deference——is that the preferred nominees bought the right, title, and interest to the preferred interests. Those preferred interests were supposed to transfer on March 11, 2022. Levona did not transfer those. So our expert——

THE COURT: Still, so wouldn't the damages have all flowed to Eletson Gas?

MR. SOLOMON: No, your Honor. The damages to Eletson Gas arose from the unlawful arrests.

THE COURT: Right.

MR. SOLOMON: Gas was hurt, and the arbitrator said Gas is hurt, send the money to the party injured.

THE COURT: What were the direct damages to the preferred?

MR. SOLOMON: The direct damages to the preferred was that, as Justice Belen finds on page 64, because they held all right, title, and interest to the preferred. By not getting it, they did not get the economic benefit. The money being paid to the preferred was——were the monies that Levona earned by improperly not transferring the preferred. That is what our expert——our expert did that in detail, without objection from them, and he was always——he always said that the party injured should be the party receiving the damages. So that had been in the case——

THE COURT: I get it. I'm not sure that I would have come to the same conclusion with respect to findings, but I understand that that's not my issue.

MR. SOLOMON: Okay. All right.

THE COURT: The filing of the bankruptcy petition.

MR. SOLOMON: Right. So the filing of the bankruptcy petition. On March——I think Levona makes two arguments. The first is that Justice Belen somehow didn't have authority to

protect his own order, his own status quo injunction.

THE COURT: So why don't I frame the question very precisely. There is authority, as you know, that parties can seek an injunction from a court in aid of arbitration. It's found in the restatement, and there are many cases that follow that. If the legal proposition that you're urging on me is correct, which I take it to mean that the arbitrator can enjoin a party from filing litigation in order to preserve the arbitrator's jurisdiction, what is left of the whole body of law that talks about injunctions in aid of arbitration, and has limits on when injunctions in aid of arbitration can be issued?

MR. SOLOMON: I believe that the law seeking injunctions is good law. I believe that Justice Belen was not limited to that. Rule 29 of the JAMS rules allows him to protect the orders that he entered. He never enjoined Levona from doing anything, but what he said was, by violating my orders, by violating my status quo injunctions, you have caused damage. Not fees——

THE COURT: I know, but you're not quite answering the question I'm asking, which is: The form of his order, as he interpreted it, was to preclude a party before him from participating in litigation in a court and to preclude people who were not named parties from filing lawsuits in a court, and you seem to be urging the proposition, which the arbitrator accepted, that the arbitrator has that authority. My question

is: If in fact the arbitrator has that kind of authority, is there ever going to be an instance where somebody goes to a court asking for an injunction in aid of arbitration? You're always going to be able to get it from the arbitrator.

MR. SOLOMON: No, your Honor. You would go to a court every time you want an injunction.

THE COURT: Isn't that what you got from him?

MR. SOLOMON: No, your Honor, no. The status quo injunctions, the injunctions that they violated by buying the bonds when they weren't supposed to and by giving an upside, those had nothing to do——there's no order by Justice Belen that says thou shalt not file a bankruptcy. What it says is that thou shalt maintain the status quo and not undermine my ability to make rulings here. Levona could have gone to Justice Belen and said, you know what, we'd like to bring a bankruptcy petition.

THE COURT: All right. What the arbitrator said was that the respondent Pach Shemen violated the status quo injunction by purchasing the controlling interest in the face value of the bonds, by directing the trustee to commence litigation, and by directing the commencement of the involuntary bankruptcy petition. Is it your view that those acts were not covered by the injunction?

MR. SOLOMON: Those acts were covered by his status quo injunctions, yes, your Honor.

THE COURT: Okay. So didn't he in fact interpret his injunction to preclude respondent and Pach Shemen from directing the commencement of litigation in a court?

MR. SOLOMON: I believe that Levona could have gone to him and said, we wish to do this and we don't want to violate your order. But I——

THE COURT: My point is: Why did they have to? I mean, where does an arbitrator get that kind of power?

MR. SOLOMON: We cite those cases that——the parties by agreement gave JAMS the right to control this proceeding. JAMS has a Rule 29 that says the arbitrator may order appropriate sanctions for failure to comply with any obligations under its rules or with any order of the arbitrator. He had authority to do that. He did not stop them from filing. What he said was, the fact that you filed violated my orders. I'm entitled to protect my orders.

THE COURT: Right. But Mr. Solomon, you're basically just repeating what I said, which is that basically what he did was he said, if you want to file litigation, you have to come back to me for permission.

MR. SOLOMON: I——

THE COURT: And where does an arbitrator have that kind of authority? I haven't been able to find a case that says that an arbitrator has the power to preclude a party before it from commencing litigation. Ordinarily somebody in

your position, if the other side is filing litigation that undermines the arbitration, goes to a court and says don't do it. You don't go to the arbitrator and say don't do it.

MR. SOLOMON: I'm not sure that I have another answer to your Honor's question. I believe he was vested with authority under Rule 29. I believe he was——I believe he was vested with inherent authority to protect his own orders. The case that we cite in our brief from the Second Circuit does say that an arbitrator is entitled to protect his orders. And I'm going to have as much trouble finding that as——actually, I now found Reliastar. And how else do you want the arbitrator to maintain the status quo? What we had here was a company that was being suffocated by a party that we now know had absolutely no right to do that. How is he going to stop that from happening? The company, Levona, says to him, we're not going to comply with any of your orders. That's what they said, right? We're going to go and start the bankruptcy, and you in fact have to stop it, is what they said. Never making the showing that we couldn't bring our claims; never making the showing that Corp. couldn't bring its claims or that Levona couldn't bring its claims against Corp. They never did that. They bullied Justice Belen, who in his award said, the reason I stopped it was because I did not believe Levona was going to comply with its obligations. And so we then had to go to the bankruptcy court; we then asked for the stay to be lifted. The

stay itself did not apply to us, but the stay did say that if and to the extent the stay applies, then any claim that is being——that the claim should then go and be tried. Go and try the claims, or the things related to the claims. And that is what we did. Levona's principal argument here is that that lift-stay prevented us from giving the names of those nominees. The claim had been in the suit from the beginning, as your Honor said, as your Honor noted. The BOL never intended——never had it as part of it that those preferred would go to Holdings. Yet you have Levona telling the bankruptcy court and telling Justice Belen that, by the way, those preferred have to go to Levona. I believe that Justice Belen had the authority to reject that. I believe he was fully within his power to find that those claims——that's the language I read to your Honor before——had been in the case from the outset, from the start. That was his language. There was no new claim asserted. And so there was not even an arguable violation of the lift-stay order.

Now in terms of whether the preferred are part of the estate, they're not part of the estate, they were never part of the estate, and it was only a bad-faith argument that Levona made to start an involuntary bankruptcy that made it part of that. Those claims, his findings, which I believe are going to be--should be binding on Levona, have found that the preferred interests were never part of Holdings. That is what the

parties were arguing about. And I cannot answer your Honor's question about the difference between Gas and nominees, although I do think, as an economic matter, it was obvious. The company needed money. The nominees were willing to put up money. Gas couldn't put up money because Gas was being strangled. Gas couldn't pay even its legal fees. Gas had to go outside of Gas in order to get its own legal fees because Levona wouldn't let Gas do that.

Now I did want to quote from page 86 of the Reliastar case, your Honor. "Where an arbitration clause is broad, arbitrators have the discretion to order such remedies as they deem appropriate. This is because it is not the role of courts to undermine the comprehensive grant of authority to arbitrators by prohibiting them from fashioning awards or remedies to ensure a meaningful award." That's 564 F.3d at 81.

And so our argument with respect to the lift stay is, first of all, when it comes to enforcing this, I don't think any of this is an issue on confirmation. I believe that the statute says, here's what we're supposed to look at on confirmation, confirm the award, we're not going to enforce it until we go to the bankruptcy court. The bankruptcy court is going to be right there. The bankruptcy court is going to see your Honor's order, and we are going to argue that it has whatever preclusive effect the law permits us to and not what the law does not permit us to, but he's going to be able to

then decide that. What they're asking you to do is to weigh in on an issue that they never raised to Justice Belen. They never said to Justice Belen that, oh, this lift-stay order prohibits you from giving any relief to the nominees. They never said that this lift-stay order prohibits you from granting damages. You'll see it in their brief, your Honor. We have specific FO——we have specific Rule 56.1 statements that said, you never asserted it, you never asserted it, and they agree with every one of those. They have to, because they never asserted it. So they're trying to get your Honor now to weigh in on an issue that they never even raised with the arbitrator, that the arbitrator clearly had the authority to, the power to enforce, because the parties went and tried the issue before him.

Now your Honor is aware that both in April and in May, we were before the bankruptcy court. And everybody knew that the issue of transfers and nominees——everybody knew that was on the table. Everybody knew that. The bankruptcy court did not stop the arbitration. It did not say that, oh, my order prevents that from happening. He said nothing of the sort. What he said——

THE COURT: I've read your papers.

MR. SOLOMON: Okay. All right. Under the JAMS rules, written notice can be by letter. When they filed the improper litigation that preceded the bankruptcy, we wrote to Justice

Belen and we said, they're violating your orders, we are going to seek all remedies that we can when they——when they file the involuntary bankruptcy on May 8.

I'd like to read to your Honor just a couple of things, and then I will——

THE COURT: You've cited and they've cited the letters of May 8th and May 10th, so I'm aware of those.

MR. SOLOMON: Fine. Fine, your Honor. That's correct.

Okay. I would normally now just take a minute to look at my notes, but let me just make sure that I've answered any questions that your Honor has.

I have nothing further, your Honor. Thank you.

THE COURT: Maybe 15 minutes, and we need to call it a day.

And I'm going to hold you to 15 minutes, so wherever you are after 15 minutes, you're going to stop.

(Discussion off the record)

MR. NESSER: Your Honor, number one, earlier your Honor asked for a cite on the special member issue. That's Exhibit 2, which is the BOL——I'm sorry——which is the LLCA agreement, at page 32, Section 2.1, and then at page 83.

Number two, your Honor, your Honor asked earlier whether there's a distinction between Gas and the Cypriots on the issue of whether we care, whether it matters for the

bankruptcy. And the answer is, your Honor, that the Cypriots clearly are outside the bankruptcy, but Gas, as I said, is a nondebtor. What that means is that assets that go to Gas are first available to the creditors of Gas before they become available to Holdings. So it would not be a matter that the estate——ultimately, the estate is indifferent.

Number three, your Honor, on standing, in response to your Honor's question to counsel, to Mr. Solomon, Mr. Solomon said——and I'm quoting here——he said, "The money would always go to the parties that were injured," which is to say the preferred nominees is who he's——and Gas is who he's saying are the parties that were injured. Your Honor, that's what he said. That's an admission that the petitioners were not injured. I don't know how else you can interpret that comment. And we think that that defeats their Article III argument. And I really want to emphasize, your Honor, we talked a lot earlier about standing with respect to the declaratory judgment, about exercise of the option, and as to the transfer of the shares. But as to the $90 million in damages, we don't think that's——we think the standing analysis there is pretty clear, respectfully. The petitioners are seeking a payment of $90 million to entities other than petitioners who they just said——in a context where they just said that they themselves were not injured.

Number three——or number four, your Honor, counsel in

his presentation questioned whether the Sixth Circuit cases were governed by the FAA. The answer is, Nationwide is an FAA case; NCR is an FAA case. Armco was a labor arbitration case, but it explicitly relied on Nationwide and on NCR for the relevant holding.

Number five, your Honor, counsel said, "We have a single claim, and it's a single claim to confirm the award." Your Honor, that's just wrong as a matter of law. Hall Street——Supreme Court decision in Hall Street, 2008, said a petition to confirm is not in the nature of a claim, like damages. It's just, quote, a mechanism for enforcing an arbitration award. So if a petition to confirm is not a claim, then what do you do with respect to the standing analysis? And the answer is provided by Town of Chester, 2017, which held, standing must be assessed as to "each claim and each form of relief."

So your Honor, in their brief, petitioners say they have standing as to——and I'm quoting here——they have standing as to each claim and each form of relief. They say that at pages 6 and 7. If their position——I'm sorry. They say they have standing as to each claim and each form of relief because they have standing——because they have interest in confirmation. So your Honor, the interest in confirmation, as I just showed, doesn't confer standing because confirmation is not a claim, and then what we're left with is an assertion by them that

there are in fact multiple claims and multiple issues as to which they're seeking confirmation. That's an admission at page 7 of their brief.

Number six, counsel went on and on about how Levona purportedly waived its objection to arbitrating the BOL issues, and we did that by asserting counterclaims. I touched on this earlier, but I do want to underscore. Opals on Ice, which is the Second Circuit's decision in 2003, explicitly addressed the situation where there was an argument that the party waived its objection to arbitrability by proceeding with an arbitration and submitting the issue of arbitrability to the arbitrator, and participating actively in arbitration, and what the court said is, the court said that was not sufficient, that was not a waiver. It quoted the Seventh Circuit's decision in AGCO Corp., which held, quote, if a party clearly and explicitly reserved the right to object to arbitrability, his participation in the arbitration does not preclude him from challenging the arbitrator's authority in court. And here there can be no serious question that we preserved our objections. Levona moved to strike the claims at the beginning of the arbitration——Exhibit 18; we objected again in the counterclaim——that's Exhibit 17; we objected in our post-hearing brief——that's Exhibit 48; and your Honor, even the arbitrator in procedural order No. 6——which is Exhibit 39——even the arbitrator said, "The parties disagree as to the

arbitrability before JAMS of some of the claims." That's page 4. So the notion that there is a waiver, or that everybody understood there had been a waiver, is just false.

Number seven, counsel made an argument about when the Cypriot claim was asserted, and counsel was arguing that, well, it was in play from the beginning of the arbitration. Your Honor, the problem with that is, we heard a lot from counsel about how the findings of the award need to be confirmed and the findings of the award are entitled to deference. So your Honor, one of the findings of the award at page 31 was, "It is undisputed that Eletson raised the contingent transfer to Cypriot nominees for the first time in its Rule 20(b) submission on May 5, 2023." That's what the arbitrator said. That is a finding they are asking your Honor to confirm. And so the notion that it was actually pending before May 5 just doesn't withstand scrutiny.

Number eight——and I'm getting to the end, your Honor——counsel said that——I believe counsel said that they asserted claims in the arbitration on behalf of Gas. Your Honor, their post-hearing brief, Exhibit 50 at page 24, said, quote, claimants do not believe there are derivative claims, derivative damages in this case. So we think it was very clear they did not argue that there was claims on behalf of Gas. What they said was: We are asserting the claim. If we get money and it belongs to Gas, we will turn it over to Gas. But

that was a concession, your Honor. That's an admission that Gas was not a party on its own and that derivative claims had not been asserted on its behalf.

And then last, your Honor, I believe——yes——is a small point, but your Honor asked counsel in the discussion of how to reconcile the BOL arbitration clause with the position that all the BOL issues were before the JAMS arbitrator, and your Honor asked counsel, should we read the arbitrator's ruling as requiring us to go litigate first in London and then come back to the JAMS arbitration, and Mr. Solomon said, well, yeah, maybe that's one way of reading it. I just want to point out for the Court, the arbitrator considered and rejected that exact argument. That's Exhibit 18 at page 15. I'll quote. He says: Respondent's position would mandate reading the two arbitration provisions to require that the parties arbitrate their disputes in two steps——first, go to London to adjudicate performance under the transaction documents; and then second, come to JAMS to determine breaches under the LLC agreement. Reading the LLC agreement's arbitration provision as respondent proposes would render impossible the intent of the arbitration provision in the LLC agreement, which contemplates that the party use best efforts to arbitrate to completion disputes within 150 days from the selection of the arbitrator." So the arbitrator himself rejected that notion, and we really——we do emphatically agree with your Honor's questions to Mr. Solomon

to the effect that if the BO——if the LLC agreement's arbitration clause really meant what the arbitrator said, then there would have been literally nothing left of the BOL clause. And you heard counsel and counsel's colleagues try to dream up some theory consistent with the arbitrator's holding here that would preserve something of the BOL arbitration clause, and they just couldn't do it, and the reason why is because you can't.

THE COURT: Wouldn't something that would be left of it is, if there was a claim that was purely one under the BOL but didn't assert any damages but just simply asserted specific performance for the transfer of the preferred interests or something like that? You know, here the claim was for money damages for breach of the LLCA, and there was this issue wrapped up in it, but the claims were broader than that.

MR. NESSER: No, your Honor. The very first declaratory judgment holding——award is a freestanding sentence, and it says that the award, the option under the BOL was exercised.

THE COURT: But as the arbitrator recognized, you had to reach that preliminary question in order to determine the question of money damages under the LLCA.

MR. NESSER: I suppose so, but the theory that the arbitrator offered in the decision denying Levona's motion to strike the BOL claims, if your Honor looks at that——by the way,

I should note, it's interesting the order in which that decision proceeds. First, it discusses this consent waiver issue; and only then afterwards it sort of touches on this point about, well, everything is inside the LLCA. But if you read the text of that order, literally anything that touches on the operation of the company would impact——would somehow be related to the LLCA.

So for example, what we're talking about here is specific performance for transfer of the shares——transfer of the shares of the company. So on the arbitrator's theory, as long as it has anything to do with the company, therefore now it's suddenly within the four corners of the LLCA agreement.

THE COURT: All right. I understand the argument.

MR. NESSER: I can't recall whether I made this point, your Honor, but we really do——on the standing as to damages, we think it's really important that there's $90 million of damages here being awarded to people who apparently did not incur any damages and who would not be receiving the benefit of that payment. And I do want to underscore that half of that is punitives. Punitives——punitives, which are necessarily attached to the compensatory, so they certainly have nothing to do with the nonparties. And then there's, you know, attorney's fees, which I want to make clear that if the substantive damages awards go away, if the declaratory judgments go away, then the 10 or $12 million of attorney's fees have to go away

too.

THE COURT: All right. The argument has been very helpful. I would like some supplemental briefing on I think it's really just three issues. Maybe it's limited to two of them. One of them goes to the question raised about whether an order confirming an award includes within it the factual findings that support the award or is limited to making into a judgment the relief that the arbitrator awarded. The case that I direct the parties' attention to is Diapulse in the Second Circuit, 626 F.2d 1108. But there may be others. And the question of collateral estoppel, which is addressed in the restatement, either of judgments of or commercial arbitration, but I think restatement of judgments also may bear on the question.

The second set of questions, which really are in two parts, goes to the standing issue. I raised earlier the question of a contractual party's ability to enforce a provision of a contract that benefits a third-party beneficiary. There is law to that effect. And that law includes the language from the restatement. Restatement of Contracts, Section 305, says, "The promisee of a promise for the benefit of a beneficiary has the same rights of performance as any other promisee, whether the promise is binding because part of a bargain, because of his reliance, or because of its formal characteristics." That same notion is supported by

Corbin on Contracts, Volume 9, at Section 46.2, which says, "Currently, there is no longer any doubt that a promisee has the same right to performance in a contract for the benefit of a third party as any other contract promise." The question that I raised, first of all, the parties are free to address that.

The second question that I raised is whether the vindication of a contractual right, whether that right inures to the benefit of the promisee or the third-party beneficiary in and of itself is a concrete interest that is redressable in a court proceeding sufficient to give rise to standing. There is language from Justice Thomas concurring in the Spokeo case that would tend to support that proposition, 578 U.S. at 344. The parties can address that question and the extent to which it assists in the standing analysis.

And then somewhat related to that is any further education that the parties can give me with respect to whether a claim in an arbitration should be considered a singular unit or be divisible. The analogy I thought of, without knowing precisely which way it plays out——which is always the benefit of raising a question, you get educated——is the way in which a judgment might be treated when a party that is affected by a portion of the judgment but not all of it seeks relief from the judgment. Does the court then break the judgment in part, retaining some and getting rid of others, or does the court

have it within its authority to vacate the judgment in its entirety even as to portions of the judgment as to which no concrete interest is affected by either the moving party, if you're talking about Rule 60, or the appealing party if it's a case on appeal?

It would be useful to get the letter briefs quickly. It's now Tuesday. Is it possible by the end of this week, by Friday?

MR. NESSER: Yes, your Honor.

MR. SOLOMON: Of course.

THE COURT: Okay. Maybe just to set a time on it, 7 p.m. on Friday. And why don't you limit yourselves to five single-spaced pages. That means that you're just going to be hopefully limiting yourself to whatever authority you're able to find and leaving it to me to read the cases.

So is there anything else from petitioner?

MR. SOLOMON: No. With our thanks, your Honor.

THE COURT: From respondent?

MR. NESSER: Nothing other than to thank the Court, and in particular the court reporter for bearing with us.

THE COURT: Yes, many thanks to the court reporter, and thank you all for really a helpful argument. I know that I pushed back at both of you at various points. That's just my way of trying to figure out legal propositions.

I'm going to take all of this under advisement. Your

thoughts and your argument have been extremely helpful, so thank you.

MR. NESSER: Thank you.

THE DEPUTY CLERK: All rise.

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EXHIBIT “4”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION,

Petitioners,

-v-

LEVONA HOLDINGS LTD.,

Respondent.

23-cv-7331 (LJL)

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Respondent and Cross-Petitioner Levona Holdings, Ltd. ("Levona" or "Respondent"), moves for leave to file an amended answer to the operative petition of Eletson Holdings Inc. ("Holdings") and Eletson Corporation ("Corp" and, together with Holdings, "Eletson" or "Petitioners") to confirm the final arbitration award (the "Award") issued by the Honorable Ariel Belen of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") on September 29, 2023, and an amended cross-petition to vacate the Award. Dkt. No. 123. Eletson has opposed the motion. Dkt. No. 147.

For the following reasons, Levona's motion is granted.

BACKGROUND

The Court has detailed the factual allegations underlying this matter at length in its prior Amended Opinion and Order, dated April 19, 2024. Dkt. No. 104. The Court recounts here only a brief background and those facts pertinent to the current motion.[1]

[1] In discussing the facts in this Opinion, the Court draws inferences in favor of Levona. It does not engage in ultimate factfinding.

I. Background of the Parties and Dispute

The underlying dispute in this case relates to control over a joint venture, non-party Eletson Gas LLC ("Eletson Gas" or the "Company"). Eletson Gas, formed in 2013 under the laws of the Republic of the Marshall Islands, is a limited liability company that specializes in liquified petroleum gas ("LPG") shipping. Dkt. No. 67-58 ("Final Award") at 6; Dkt. No. 62 ¶ 2.[2] Eletson Gas has historically owned a large fleet of medium and long-range product tankers and has been a leader in the transportation of oil products and gas cargoes. Final Award at 7. At the time that the events giving rise to this case occurred, the Company owned and operated fourteen LPG vessels, making its fleet the second largest on the market. *Id.*

Eletson is an international shipping group. Final Award at 6. Holdings owns the common shares of the Company while Corp provides management services in exchange for a management fee. Dkt. No. 62. Levona is a special purpose entity formed under the laws of the British Virgin Islands on October 20, 2021. *Id.* Levona is a subsidiary of two hedge funds, Nomis Bay and BPY, that have both engaged the same alternative management company Murchinson Ltd. ("Murchinson") to act as their investment sub-advisor. *Id.*; Dkt. No. 50 at 7 n.2.

Eletson and Levona were parties to a Third Amended and Restated LLC Agreement ("LLCA"), effective on August 16, 2019, that governs the relationship among the holders of the membership interests in the Company. Final Award at 7. Under the LLCA, Holdings was to own the common stock in the Company while Levona was to hold the preferred shares (the "Preferred Interests"). *Id*. at 6–7; Dkt. No. 67-50 ¶¶ 91–92. The LLCA affords holders of Preferred Interests managerial control over the Company. Dkt. No. 67-2 §§ 3.1, 3.3.

[2] All page numbers refer to the ECF pagination unless otherwise noted.

The Company was plagued with financial problems, and by early 2022 five of the Company's ships—over a third of its fleet—had been arrested by various creditors for non-payment of the Company's liabilities. Final Award at 55. Multiple arrested ships were scheduled to be sold at auction to compensate creditors, but before the auction, Eletson and Levona entered into a Binding Offer Letter ("BOL") and related agreements through which Levona provided much-needed cash in the form of a loan to avoid the Company's loss of most of its fleet. Dkt. No. 67-10. As part of those agreements, Levona granted the Company an option to buy out Levona's Preferred Interests in the Company. *Id*.

Several months later, Levona—purporting to act on behalf of the Company—signed a non-binding Letter of Intent to sell nine of the Company's twelve remaining vessels to its primary competitor, Unigas. Final Award at 9. A dispute arose about whether Levona had the authority to do this, which turned in large part on whether Eletson had in fact exercised the option to buy the Preferred Interests.

II. The Issues in the Arbitration

Eletson made a demand for arbitration on July 29, 2022. Final Award at 4. It claimed that Levona had breached the LLCA by purporting to act on behalf of the Company and by "strip[ping]" the Company of its assets for less than fair market value. Dkt. No. 67-16. Eletson argued that because it had effectuated a buyout of the Preferred Interests, Levona had no power to act on behalf of the Company. Eletson also included allegations that Levona had improperly purported to call a meeting of the Company's Board of Directors to circumvent the Eletson-appointed directors of the Company. *Id*. Levona responded to the claim on August 19, 2022. It counterclaimed, alleging that Eletson had mismanaged the Company, including by preventing refinancing of certain vessels, in violation of its obligations under the LLCA, BOL and related agreements. Dkt. No. 67-17. It also alleged that Eletson had failed to comply with the provision

of the BOL under which it was required to agree to certain "fundamental actions" directed by Levona while the loan remained outstanding. *Id*. Finally, Levona alleged that Eletson interfered with Levona's sale of two of the Company's ships and with Levona's right to sell vessels to Unigas. *Id*.

A pivotal question in the arbitration was whether Eletson had properly exercised the right granted it in the BOL to purchase Levona's Preferred Interests in the Company. Through the BOL and related documents, the Company had transferred two ships to Levona—the Symi and the Telendos. In exchange, it received working capital of up to $10,000,000 (the "Loan") and a limited option to buy Levona out of its Preferred Interests in the Company (the "Purchase Option"). The Purchase Option was exercisable only during a limited time period and under limited circumstances. It expired if not exercised within thirty days of the February 22, 2022 date of the BOL. Dkt. No. 67-10 § 2.3. It could only be exercised if either (a) the Loan and any Interest accrued thereon was fully repaid; or (b) adequate security and/or collateral was provided for the Loan, with the adequacy of the security to be at the sole discretion of Levona. *Id*. § 2.2. To exercise the Purchase Option, Eletson had to pay Levona $23 million, with the value of the two vessels to be credited against this amount. If the value of the vessels exceeded $23 million, the excess would be applied to reduce the amount outstanding on Levona's loan to the Company. *Id*. § 3.2. Under the terms of the BOL, if the Purchase Option was not exercised Levona was entitled to retain the two vessels as consideration for the right to exercise the option.

The parties hotly disputed whether the Purchase Option had been timely and properly exercised. Eletson claimed that the Purchase Option was exercised on March 11, 2022, when it executed a series of documents to sell its interests in the Symi and Telendos to Levona. It further claimed that it need not have either repaid the Loan or provided adequate security for the

repayment of the Loan. It claimed that it only needed to have provided collateral—which it did when it transferred Corp's claims against the Company to Levona—despite the fact that the BOL, independent of any collateral, required Eletson to transfer Corp's claims against the Company until the Loan was paid off in full and that, in any event, Levona's rights under the Loan were senior to those of Corp. Levona claimed that the Purchase Option was not exercised. It argued that Eletson never provided adequate security or collateral to Levona, nor did Eletson provide notice of the exercise of the Purchase Option. Levona's argument was that the transfer of the vessels was consideration for the Purchase Option itself rather than consideration paid for the Preferred Interests in exercise of the Purchase Option.

As the arbitrator recognized in the Award, the question of whether the Purchase Option had been properly and timely exercised was critical. Final Award at 9. If the Purchase Option had not been exercised, then Levona's counterclaims against Eletson had force—among other things, it had the right to sell the ships on behalf of the Company and Eletson may have violated its obligations towards Levona by refusing to engage in due diligence relating to that sale. If, on the other hand, the Purchase Option was properly exercised, then Levona was no longer a member of the Company and had violated Eletson's rights by purporting to sell the ships on behalf of the Company.

The arbitrator ultimately sided with Eletson. He concluded that the transfer of the two vessels was consideration for the exercise of the Purchase Option and not for the grant of the Purchase Option itself (thus concluding that Eletson paid no additional consideration for the Purchase Option). Final Award at 35–43. He further concluded that the transfer of the vessels was adequate consideration because their value exceeded $23 million. *Id.* He also found that the assignment of Corp's claims against the Company to Levona constituted collateral and that

Levona had no right to reject the collateral on grounds it was inadequate. *Id.* Finally, notwithstanding that no formal notice was provided to Levona of the exercise of the Purchase Option, he concluded that the notice provision of the BOL was satisfied because Levona was on actual notice of the fact of the Purchase Option's exercise. *Id.*

In support of its position, Levona had presented a July 13, 2022 email from Eletson CFO Peter Kanelos with an attachment entitled "Murchinson Buyout Steps." Dkt. No. 67-14. The email was addressed to Adam Spears of Levona and copied Vassilis Kertsikoff of Eletson, among others. It refers to the interests held by Murchinson through Levona. It attached a buyout proposal which Kanelos stated that Kerstikoff would want to discuss with Spears. *Id.* The attached document had a section entitled "Murchinson exits from Eletson Gas." *Id.* It stated, in pertinent part, "As per the agreement dated February 22, 2022, Murchinson transfers all membership interest to Eletson Gas LLC after: Receipt of $23 million net clear proceeds and, Repayment of $12.85 million Levona W.C facility and any interest outstanding," and contained a proposal for how the "Exit Proceeds" would be funded. On its face, the document appeared to support Levona's position that the Purchase Option had not been exercised in March 2022. It would make little sense for Kertsikoff to want to discuss with Spears in July 2022 the next steps for Eletson to buy out Levona's Preferred Interests if Eletson had already purchased those interests in March 2022.

Eletson fought that interpretation of the email. Eletson submitted a declaration of Kertsikoff that stated that the July 13, 2022 document was not a new offer and plan to buyout Levona's Preferred Interests but simply documents the steps that Eletson previously had put in place "to finalize residual outstanding issues of the buyout effectuated in March 2022" and "to

capture the fundamental elements of the parties' agreement to buy out Levona's interest in the Company pursuant to the BOL and Transaction Documents." Dkt. No. 127-12 ¶ 14.

In the Final Award, the arbitrator accepted Eletson's interpretation of the evidence. He discounted the email on the grounds that "it was drafted by Mr. Kanelos who was being bribed by Murchinson and had every incentive to muddy the waters." Final Award at 45 n. 6 He also found that "at most, this memo is an inaccurate checklist of items needed to complete Levona's exit from the Company pursuant to the terms of the BOL." *Id.*

III. Levona's Efforts to Obtain the Newly-Produced Documents and Roadblocks Created by Eletson

Levona's motion is based on four documents that Eletson was compelled to produce in a bankruptcy proceeding in which Holdings is the debtor and Levona is a creditor.[3] The documents were produced on March 18, 2024 subject to a protective order, but Levona was given leave to disclose the documents to this Court only on June 18, 2024. Levona's efforts to obtain these documents began during the arbitration and continued uninterrupted thereafter. Its demands were repeatedly rebuffed by Eletson.

During the arbitration, Levona asked for, among other things: 1) "Any communications and/or documents related to Eletson's preparation of, negotiations to, and/or related to the final

[3] On March 7, 2023, while the arbitration was pending, Pach Shemen and two other creditors of Holdings filed involuntarily petitions for relief under Section 303 of Title 11 of the Bankruptcy Code, commencing involuntary Chapter 7 proceedings against Holdings and two of its affiliates in the Bankruptcy Court for the Southern District of New York. Dkt. No. 67-30. Eletson accused Pach Shemen, as an affiliate of Levona, of filing the bankruptcy petition to disrupt the arbitration. Dkt. No. 67-33. On April 17, 2023, the bankruptcy court signed a stipulation by the petitioning creditors and the debtors permitting the existing claims then pending in the arbitration to proceed. Dkt. No. 67-35. Ultimately, Holdings and the other debtors agreed to convert the bankruptcy to a voluntary Chapter 11 case, which occurred on September 25, 2023. They also agreed to withdraw their allegations that the involuntary bankruptcy had been filed in bad faith and not to object to payment of attorneys' fees to the petitioning creditors, including Pach Shemen, who had prosecuted the involuntary bankruptcy. Dkt. No. 65.

offer of the 'Murchinson Buyout Steps', attached to Counterclaim as Exhibit E."; 2) "[a]ny and all communications concerning actions undertaken by Eletson to obtain independent investors to purchase an interest in Eletson or [Eletson Gas] from March 11, 2022 through present"; 3) "[a]ny documents . . . as to the determinations of the value of the [Symi and Telendos] in 2022" and 4) "[a]ny communications related to any attempt to refinance any debt of [Eletson Gas] and secure new debt/credit for [Eletson Gas] from January 1, 2022 through present." Dkt. No. 136 at 10–11; Dkt. No. 127-10; Dkt. No. 127-11. JAMS, which oversaw the arbitration, requires parties to "cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ('ESI')) relevant to the dispute or claim immediately after commencement of the Arbitration." JAMS Rule 17(a).

Shortly after testimony concluded in the arbitration in June 2023 and before the arbitrator had issued any award, Levona learned of the existence of a document that Eletson purportedly had produced to the petitioning creditors in Eletson's bankruptcy case, *see* Case No. 23-cv-10322, United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Proceeding"), and that allegedly contradicted Eletson's position during the arbitration that it had exercised the Purchase Option. Dkt. No. 136 at 12–13. Levona did not receive the document itself and was not told what it said. At the time, Levona had not filed a claim in the Bankruptcy Proceeding and it had no right of access to the document. Levona learned of the document's existence through non-confidential information shared with it by an individual who is both a representative of a petitioning creditor in the Bankruptcy Proceeding and a representative of Levona and who informed Levona about the document's existence. *Id.* at 13 n.6. The petitioning creditor had no right or ability to share the document or its contents with Levona. The document was a subject of a protective order (the "Protective Order") in place in the

Bankruptcy Proceeding that Eletson vigorously enforced and that required documents designated as confidential to be used "solely for the purposes of the Contested Bankruptcy Proceedings, the Chapter 11 Cases or any related Disputes, and not for any other purpose." Dkt. No. 127-34 ¶ 10.[4] Notably, despite the request made by Levona for documents in the arbitration, the document was not produced during the arbitration.

In July 2023, before the award was issued, Levona's counsel reached out to Eletson's counsel about this document. Dkt. No. 148-6. Eletson's counsel responded with accusations. Counsel stated that, "[a]pparently you and others have been violating the Protective Order entered in the Bankruptcy Court. After the fuss you made about confidentiality and the respect for confidentiality orders, your violation is doubly unpardonable." *Id*. Eletson's counsel also made threats. It stated that Eletson "do[es] not consent to your reviewing whatever document you identified. Indeed, we strenuously object, and we intend to seek all available remedies if you, once again, try to delay or derail the arbitration process . . . In the meantime, it is time for you to tell your client that you want no more part in its illegal schemes." *Id*.

Levona proceeded to ask the arbitrator to order Eletson to produce the document. *Id.*; Dkt. No. 67-52. In its request, Levona noted that once Levona's counsel reviewed the document, it would determine whether it was appropriate to seek reopening of the arbitration based on that new evidence. *Id*. In opposition, Eletson noted that the document was within the scope of the Protective Order, and Eletson's counsel again made accusations against Levona. Counsel wrote that "Levona has never really understood that there needs to be an end to argument – unless

[4] Disclosure of material subject to the Protective Order not in accordance with the Protective Order's terms subjects the disclosing person to the potential for sanctions or other remedies the bankruptcy court may deem appropriate. *Id*. ¶ 22. The Protective Order also requires parties to take reasonable steps to destroy or return confidential material at the conclusion of the bankruptcy and remains in force after final resolution of the bankruptcy. *Id*. ¶¶ 27–28.

one's goal is to delay – and that Levona does not always have to get both the first and last word," and complained that Levona only knew that the document existed because its client was willfully and repeatedly violating the Protective Order. Dkt. No. 67-52 (emphasis in original). The arbitrator denied the request and later denied reconsideration. *Id.*; Dkt. No. 67-54. The arbitrator stated that Levona had not proffered any legal basis supporting the notion that the arbitrator had the authority to order Eletson to violate the Protective Order. The arbitrator also relied on the fact that Levona was not able to proffer the contents of the document. He stated that the conclusory assertions by "interested agents" of Levona that these documents were relevant did not amount to good cause to bypass the Protective Order. Dkt. No. 67-52.

Levona continued to pursue the document. Even though it was not a creditor but a mere third party, it wrote a letter to the bankruptcy court on July 26, 2023 identifying itself as the respondent in a pending arbitration in which the hearing had concluded but no decision had been issued. It stated that a representative of Pach Shemen had advised Levona that Eletson produced a document in the Bankruptcy Proceeding that was material to and should have been produced in the arbitration, that Levona had tried to resolve the issue without the court's intervention by asking Eletson to produce the document, and that Justice Belen had also refused Levona's request in the arbitration to order Eletson to produce the document at issue. It accordingly requested that the bankruptcy court grant relief under the Protective Order to allow counsel for Levona to view the document to potentially reopen the arbitration. *See* Bankruptcy Proceeding Dkt. No. 144. Eletson never responded. Dkt. No. 147 at 15. The issue was not adjudicated by the bankruptcy court because the arbitrator issued an interim award two days later, on July 28, 2023, in favor of Eletson. A corrected interim award was issued on August 15, 2023, Dkt. No. 67-55, and the Final Award on September 29, 2023. Dkt. No. 67-58.

Levona continued to pursue the evidence notwithstanding that the arbitration had concluded. In October 2023, Levona moved the bankruptcy court to modify its Protective Order to allow Levona to access what, by that point, Levona thought were four documents produced in the Bankruptcy Proceeding that should have been produced in the arbitration proceeding, which Levona still had not seen. Dkt. Nos. 127-14; 127-15. Eletson once again resisted Levona's requests. In opposition, Eletson argued that Levona was not entitled to the documents because it was not a party in the Bankruptcy Proceeding. It also argued that Levona was impermissibly seeking to attack the Award and that the arbitrator had already rejected Levona's attempt to reopen the evidentiary record. Notably, Eletson was silent about the fact that Levona had a right to attack the Award or to seek in this Court to make the argument that the record was impermissibly restricted. Dkt. No. 127-30. Taking advantage of the fact that it alone knew what the documents said, Eletson further represented that there was no "cognizable argument as to why the Documents can or should have any relevance whatsoever to the issue whether that Award should be confirmed" in part because there is "no provision for discovery" in the district court. *Id*. at 3. Eletson also relied on the Protective Order, arguing that it was improper for Levona to seek modification of the Protective Order for the purpose of using the documents in an entirely separate proceeding that had nothing to do with the Bankruptcy Proceeding and that granting such a request would be render the Protective Order meaningless. *Id*. at 7. Eletson also again made the accusation that a representative of Pach Shemen had apparently "improperly disclosed to Levona's counsel information concerning a document covered by the Protective Order." *Id*. at 9. Finally, Eletson submitted an affidavit of Eletson principal Vassilis Kertsikoff stating that Levona's understanding of the documents was incorrect and the documents were "of a piece with, and the same subject matter as, the corrupt doings of Levona and Peter Kanelos"

because they were created "by or for that bribed former employee." *Id*. at 10; *see also* Dkt. No. 127-31.

Levona responded accurately that the district court was, in fact, empowered to decide whether the Award was procured by fraud and that Levona could still press additional grounds for vacatur. Dkt. No. 127-15 at 3–4. Levona also pointed out that neither it, nor its counsel, nor the district court could test Eletson's assertions about what the documents say without seeing them. *Id*. at 4.

On November 8, the bankruptcy court held a hearing on the motion. At the hearing, counsel for Levona explained that it wanted the bankruptcy court to modify the Protective Order so that Levona could review the four documents, which it believed were relevant to this Court's consideration of the pending petition to confirm the arbitral award and cross-petition to vacate the arbitral award, which were then *sub judice*. Dkt. No. 127-16 at 35. Levona stated to the bankruptcy court that it believed there was misconduct in the arbitration because the documents were not produced there. *Id*.

Eletson vigorously opposed the motion. It once again asserted that Levona's efforts were simply a "fishing expedition" and an effort to "misuse the offices of this Court." *Id*. at 39. Eletson stated that the document Levona had previously presented to the arbitrator was not responsive to any arbitration discovery request and that the arbitrator had decided not to consider the document because it was allegedly dated after the last relevant event in the arbitration in March 2022, not because it was subject to the Protective Order. *Id*. at 40. It did not explain why the documents could not be relevant if they were dated after March 2022. Reading this Court's jurisdiction narrowly, Eletson went on to tell the bankruptcy court that the issue in this Court was not whether the documents were responsive in or relevant to the arbitration, but only the limited

question of whether the arbitrator had erred under a very narrow set of standards. *Id*. at 41. Eletson stated that there is no discovery in this Court, that Levona never sought discovery in this Court, and that Levona had not moved to vacate in this Court based on omitted evidence or fraud. *Id*. at 41–42. Eletson also argued that there would be no protective order in District Court. *Id*. at 42. The bankruptcy court denied the motion to modify the Protective Order. *Id*. at 51.

Levona persisted in its efforts and Eletson persisted in its steadfast opposition. In December 2023, Levona filed a proof of claim in the Bankruptcy Proceeding, but Eletson objected. Dkt. No. 127-17. In its objection, Eletson argued that Levona's claim was essentially duplicative of what it had argued in arbitration and that the bankruptcy court should give the Award preclusive effect. Dkt. No. 127-17 at 10–12.[5] Eletson continued to seek to delay in the Bankruptcy Proceeding, arguing that the bankruptcy court should stay the adjudication of Levona's claim until the Award was confirmed by the district court. *Id*.

On February 8, 2024, Levona served discovery requests on Eletson related to its proof of claim, including for documents regarding "(a) any interest Eletson Holdings or others ever held in the [Preferred Interests]; and (b) Eletson Holdings' knowledge as to whether Eletson Gas exercised the [Purchase Option]." Dkt. No. 136 at 14. On February 22, 2024, Eletson objected and did not produce any documents.[6] Dkt. No. 136 at 14; Dkt. No. 127-20.

[5] As the Court stated in its prior Opinion and Order, the Court does not confirm factual findings of an arbitrator. Dkt. No. 104 at 82; *cf. id.* at 87–88 (noting limits of claim preclusive effect of arbitration awards).

[6] In May 2024, in connection with Levona's proof of claim, Levona also served subpoenas on third parties to obtain documents regarding "(a) potential financing or re-financing of Eletson or related entities; (b) purchase of Levona's preferred shares in Eletson Gas by any entity; and (c) transfer of preferred interests in Eletson Gas to the Cypriot nominees or related entities," but Eletson had obtained a stay of discovery from the bankruptcy court and Levona has not received any third-party discovery. Dkt. No. 136 at 14; *see also* Bankruptcy Dkt. No. 811 (noting at a

Separately from the discovery it sought related to its proof of claim, on February 15, 2024, Levona wrote to the bankruptcy court "regarding [Eletson's] baseless effort to obstruct Levona from viewing documents" that had already been produced in the Bankruptcy Proceeding notwithstanding the fact that Levona had now signed the Protective Order. Dkt. No. 127-21. Eletson was objecting to Levona's viewing of documents on the basis that Levona was "not a party to the [P]rotective [O]rder," including because Levona's claims were precluded by the arbitration and it was therefore not a creditor. *Id*. However, in its previously filed objection, Eletson had acknowledged that some of Levona's claims were "distinguishable" from the claims in the arbitration. Dkt. No. 127-17 at 7, 12–13. Levona prevailed at a hearing on the issue, when the bankruptcy court held that Levona was entitled to view certain documents filed under seal. Dkt. No. 127-22 at 11–12. Eletson thereafter continued to complain that it had no evidence that Levona had signed the Protective Order, even though under the Protective Order it was not entitled to such evidence. *Id*. at 12–13. Following the bankruptcy court's order, Levona was able to review some documents that had previously been under seal for the first time on March 18, 2024. *Id*. However, those documents remained under the Protective Order.

In April 2024, Levona asked the bankruptcy court for another discovery conference regarding Eletson's continued refusal to produce the additional discovery that Levona requested regarding its proof of claim. Dkt. No. 136 at 15; Dkt. Nos. 127-23, 127-24. Levona was permitted to and did move to compel production of that additional evidence in May 2024. Dkt. No. 136 at 15; *see also* 127-26 (noting that "many months after Levona issued the discovery,

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hearing on May 31, 2024, that discovery regarding the Levona claim is stayed and the evidentiary hearing on the claim objection is adjourned to a date to be determined).

[Eletson] [has] refused to produce any documents or witnesses" and describing the willful withholding of certain material documents from the arbitrator).

Eletson again sought to delay in the Bankruptcy Proceeding, requesting a stay of discovery. Dkt. Nos. 127-28, 127-27; Bankruptcy Proceeding Dkt. No. 715. In opposing Levona's motion to compel, Eletson argued that Levona was impermissibly seeking to collaterally attack the Award "as subsequently confirmed by Judge Liman" and that Levona's "'new' alleged claims are even more obvious collateral attacks on Judge Liman." Dkt. No. 127-27 at 2. It made those statements even though this Court did not confirm any of the findings of the arbitrator, but concluded only that the Award was not in manifest disregard of the law and was within the scope of the arbitration agreement. *Id*. The Court did not address any of the issues that Levona now raises. Eletson further argued that Levona's discovery efforts were irrelevant and a waste of resources because arguments for vacatur under 10(a) of the FAA needed to be raised with the district court and in any event had been waived by Levona. *Id*. at 3.

The bankruptcy court held a hearing on June 18 regarding the discovery issues and . "why [the bankruptcy court] should not modify [its] [P]rotective [O]rder to allow the district court to see [the newly-discovered evidence]." Dkt. No. 136 at 15. Eletson again resisted production. It argued that Levona was seeking to improperly collaterally attack the Award as confirmed by Judge Liman. Bankruptcy Proceeding Dkt. No. 779. Eletson described Levona as having "been blustering about these Documents for nearly a full year, repeatedly claiming they show fraud in the Arbitration." *Id*. ¶ 3. Eletson took issue with the fact that Levona was seeking to modify the Protective Order when it had never raised its fraud claim with the district court, all the while taking the position that Levona was not entitled to the documents necessary to raise the issue of fraud with this Court. *Id*. Eletson's position was that before asking the bankruptcy court

for discovery that it might use in the district court, Levona needed to have the district court first reopen its confirmation proceedings. *Id*. ¶ 4.

The bankruptcy court ruled in Levona's favor and modified its Protective Order for the limited purpose of allowing Levona to use the documents in this Court, finding that "extraordinary circumstances" and "compelling need" existed to justify the modification. *Id*; *see also* Dkt. No. 128-1. And on July 11, 2024, a London-based arbitrator presiding over a separate arbitration between the parties permitted Levona to disclose another email both in this Court and in the Bankruptcy Proceedings. *Id*. at 16.

IV. The Newly-Produced Documents

Crediting the inferences for which Levona argues, the newly-produced documents put the lie to Eletson's suggestion that these documents would be irrelevant. The documents are highly relevant both to the arbitration and to the proceedings before this Court. They tend to show fraud in the arbitration proceeding. As it turns out, Levona was not just blustering.

The newly-produced documents include a July 25, 2022 email from Marina Orfanoudaki, Corp's Group Financial Controller, to Kanelos concerning the "Buyout of Murchinson." Dkt. No. 127-4. The communication addresses the financing necessary to fund the repayment of the loan and to purchase the Murchinson partnership share. *Id.* The email reflects that Eletson was considering purchasing the Preferred Interests of Levona for $36.2 million—far in excess of the amount under the BOL if the Purchase Option had been exercised in March 2022. *Id.* The documents also include (1) a second July 25, 2022 email also from the Group Financial Controller describing the procedures for a Murchinson buyout and containing an updated cashflow model, Dkt. No. 127-5; (2) an August 12, 2022 email from Kanelos to Kertsikoff with the subject line "Investor Model for Murchinson Buyout" that contemplated an additional $12.5 million to be used "in negotiations with Murchinson for acquisition of preferred shares," in

addition to $23 million net sale proceeds from the sale of the vessels "to be applied towards Murchinson," Dkt. No. 127-8; (3) an August 18, 2022 email from Corp's Treasury and Corporate Finance Manager to Kanelos containing a "revised model" that contemplated that Eletson would repay the working capital facility and provide $23 million from the sale of the two vessels and a residual $2.2 million from other funding for the Murchinson's Exit Payment, Dkt. No. 127-9; and (4) a detailed model sent by Eletson's CFO, and copying Kertsikoff, to financial advisory firm Castalia Partners and to an individual at private equity firm Austen Grove Capital, for a minority investment in Eletson Gas that contains an entry for "Murchinson's Exit Payment" that contemplates repayment of the working capital, $23 million from the sale of the vessels and a residual amount of $2.2 million, Dkt. No. 137-1 at 7. The documents also refer to an August 13 engagement letter between Kertsikoff and Castalia Partners "in regards to capital raising for Eletson Gas." Dkt. No. 137-1 at 5.

The story that Eletson told, which was accepted by the arbitrator, was that by March 2022, Eletson had already bought out Murchinson's Preferred Interests and all that remained was the repayment of the working capital. In that version of events, there would have been no need after March 2022 for Eletson to raise money for the purchase of the Preferred Interests or for Eletson to have sold the vessels. Eletson already had the Preferred Interests and Levona had the right to the vessels, which it obtained in exchange for the Preferred Interests.

According to the documents which Eletson was compelled to produce during the bankruptcy proceeding, the story told by Eletson to the arbitrator was untrue. As late as August 2022, after Eletson had filed the arbitration, Eletson was trying to raise funds in order to purchase the Preferred Interests and was contemplating that it would have to pay more for those interests than contemplated under the Purchase Option. And unlike the email the arbitrator

considered during the arbitration, not all of these emails were written by the bribed Kanelos. It is easy to imagine that an arbitrator, confronted with these documents, would have reached a contrary decision to that reached by the arbitrator here and would have ruled for Levona on its counterclaims rather than for Eletson on its claims.

PROCEDURAL HISTORY

On July 28, 2023, the arbitrator issued an interim award, and on August 15, 2023, the arbitrator issued a corrected interim award. Dkt. Nos. 67-55, 67-58.

On August 18, 2023, Eletson filed its petition to confirm what was then an interim arbitral award, which was ordered unsealed on September 13, 2023. Dkt. Nos. 1, 11, 14. On September 22, 2023, Levona moved to dismiss the Petition and cross-petitioned to vacate the arbitral award. Dkt. Nos. 28–31.

On October 6, 2023, Levona requested that this Court refer the confirmation/vacatur proceeding regarding the arbitral award to the bankruptcy court as related. Dkt. No. 34. Eletson objected to the motion. Dkt. No. 35.[7] The Court denied the motion and reconsideration, reasoning that, as the body with original jurisdiction of the Petition under the New York Convention and the Federal Arbitration Act, it was the proper entity to decide whether to confirm or vacate the arbitral award. Dkt. No. 136 at 13; *see also* Dkt. Nos. 36, 39.

On October 19, 2023, with leave from the Court, Eletson filed their Supplemental Amended Petition, which reflected that the arbitrator had rendered a Final Award. Dkt. Nos. 46–47. Levona amended its response and moved to dismiss the Amended Petition on October 24. Dkt. Nos. 48–51. One week later, Petitioners filed their reply in support of the Amended Petition and further opposition to Respondent's cross-petition to vacate. Dkt. Nos. 54–55. Respondent

[7] Levona filed a Related Case Statement on October 4, 2023. Dkt. No. 32.

filed its own reply in support of its motion to dismiss the Amended Petition on November 14, 2023. Dkt. Nos. 59–60.[8]

On February 9, 2024, the Court issued an Opinion and Order granting in part and denying in part Eletson's petition to confirm and granting in part and denying in part Levona's cross-petition to vacate the arbitral award. The Court denied confirmation of those parts of the award that purported to provide relief: 1) against Murchinson and Pach Shemen (affiliates of Levona), 2) based upon violations of the status quo injunction issued by the arbitrator, and 3) of attorneys' fees related to the involuntary bankruptcy petition and other related litigation between the parties. Dkt. No. 83 at 123–24. The parties submitted proposed judgments on February 23, 2024. Dkt. Nos. 94, 96. The Court issued an Amended Opinion and Order correcting typographical errors on April 19, 2024. Dkt. Nos. 104–105.

Also on April 19, 2024, the Court issued a Memorandum and Order accepting Eletson's suggestion and remanding the Award to the arbitrator for further clarification regarding the relationship between the arbitrator's punitive damages award and his finding that the status quo injunction was violated. Dkt. No. 106.[9]

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[8] On November 15, the Court held a conference, at which it instructed the parties to each submit statements of undisputed fact pursuant to Federal Rule of Civil Procedure 56.1. That same day, Petitioners filed a Corrected Amended and Supplemental Petition to Confirm the Arbitral Award, reflecting that Petitioners sought only confirmation and not enforcement of the Award. Dkt. No. 62. Petitioners and Respondent filed their respective statements and corresponding exhibits over the following 45 days. Dkt. Nos. 65–68. On January 2, 2024, the Court held oral argument on the Petition. The Court received supplemental letter briefs on January 5, 2024. Dkt. Nos. 73, 74. By letter motion on January 11, 2024, Respondent moved to amend its motion to vacate the Award and for discovery. Dkt. No. 75. After hearing oral argument, the Court denied that motion by memorandum and order dated January 23, 2024 because Levona could have raised the arguments it made there during the arbitration itself or had otherwise waived them. Dkt. No. 80.

[9] Levona moved for reconsideration of the Court's remand order. Dkt. No. 107. On June 12, 2024, the Court granted in part and denied in part Levona's motion for reconsideration and clarified the question it was remanding to the arbitrator, explaining that the remand was meant to limit the arbitrator to the question of identification of what portion of the lump-sum punitive

On July 3, 2024, Levona filed the current motion for leave to file an amended answer to the operative petition. Dkt. No. 123. Eletson opposed the motion on July 23, 2024. Dkt. No. 147. Levona filed a reply memorandum of law on July 30, 2024. Dkt. No. 149.[10]

No judgment has issued in this case.

The Court announced its decision from the bench on September 3, 2024. This Opinion and Order explains the Court's reasoning.

DISCUSSION

Eletson opposes Levona's amendment principally on the grounds that it is time-barred. Dkt. No. 147 at 18–24. Section 12 of the FAA provides that "[n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. The Corrected Interim Award was issued on August 15, 2023, but the Final Award was issued on September 29, 2023. Dkt. Nos. 67-55; 67-58. Accordingly, the three months under the FAA expired on December 29, 2023. Levona responds that the three-month period does not apply because: (1) the time limit does not apply to affirmative defenses under the New York Convention, Dkt. No. 149 at 5; (2) the amendment relates back to the date of the filing of Levona's original motion to vacate on September 22, 2023, under Federal Rule of Civil Procedure 15, *id.* at 5–7, Dkt. No. 138 at 23; and (3) equitable tolling applies in all events, Dkt. No. 149 at 7–9. According to Eletson, neither

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damages award, if any, was based upon the conduct violating the injunction. Dkt. No. 121.

[10] On August 22, 2024, the Court raised that Levona had argued that amendment was proper under Federal Rule of Civil Procedure 15, but that Eletson had responded that Rule 15 applies only to pleadings, not motions, and vacatur of an arbitration award is available only by motion. Dkt. No. 152. The Court noted that the Second Circuit has found Rule 15 applicable to motions made by a prisoner in federal custody to vacate, set aside or correct his sentence under 28 U.S.C. § 2255, despite the fact that such proceedings are by motion and are not "pleadings," and issued an Order directing the parties to submit letter briefs on this issue. *Id*. Both parties submitted briefs on August 28, 2024. *See* Dkt. Nos. 156, 157.

Federal Rule of Civil Procedure 15 nor equitable tolling are available to extend the three-month time frame for motions to vacate arbitral awards set forth in 9 U.S.C. § 12 or allow Levona to amend its motion after the three-month period has expired. Eletson further argues that even if equitable tolling or Rule 15 were procedurally available here, Levona has not satisfied the requisite standards to permit its proposed amendment under either framework.[11]

I. Equitable Tolling

Levona argues that the time-limit for filing the amended motion was equitably tolled because it acted with diligence in pursuing its claim of fraud and extraordinary circumstances prevented it from filing earlier. Eletson resists that conclusion on the grounds that (1) equitable tolling is not permissible under the FAA; and (2) Levona has not established a basis for equitable tolling. Levona has the better of the argument.

A. The FAA Does Not Foreclose Equitable Tolling

"Equitable tolling is a doctrine that permits courts to extend a statute of limitations on a case-by-case basis to prevent inequity." *Doe v. United States*, 76 F.4th 64, 71 (2d Cir. 2023) (citing *Warren v. Garvin*, 219 F.3d 111, 113 (2d Cir. 2000)). It is "a background principle against which Congress drafts limitation periods." *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 209 (2022). Congress need not explicitly state that a statutory time limit can be equitably tolled for a court to conclude that the statute is subject to equitable tolling. *See Holland v. Florida*, 560 U.S. 631, 647 (2010). The Supreme Court has long presumed that in federal statutes, "nonjurisdictional deadlines can be equitably tolled." *Boechler*, 596 U.S. at 209;

[11] Levona's argument that the FAA's three-month time limit applies only to motions to vacate and not to affirmative defenses under the New York Convention is not fully developed in the parties' briefing. Because the Court is permitting Levona to amend, the Court does not discuss that argument. The Court's permission for Levona to amend is without prejudice to Eletson moving to dismiss or otherwise contesting any affirmative defenses.

see also Holland, 560 U.S. at 645–46 (2010) ("We have previously made clear that a nonjurisdictional federal statute of limitations is normally subject to a rebuttable presumption in favor of equitable tolling." (internal citation and quotations omitted)); *Young v. United States,* 535 U.S. 43, 49 (2002); *Rotella v. Wood*, 528 U.S. 549, 561 (2000); *John R. Sand & Gravel Co. v. U.S.*, 552 U.S. 130, 133 (2008); *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990). In determining whether a statute is subject to equitable tolling, the court considers whether the statute at issue "(1) set[s] forth its time limitations in unusually emphatic form"; (2) uses "highly detailed" and "technical" language "that, linguistically speaking, cannot easily be read as containing implicit exceptions"; (3) "reiterate[s] its limitations several times in several different ways"; (4) relates to an "underlying subject matter . . . with respect to which the practical consequences of permitting tolling would [be] substantial"; and (5) "would, if tolled, require tolling, not only procedural limitations, but also substantive limitations on the amount of recovery." *Holland*, 560 U.S. at 646–47 (internal citation and quotations omitted).

The Supreme Court has found the presumption of equitable tolling to be rebutted in only few circumstances. In *United States v. Brockamp*, 519 U.S. 347 (1997), the Court found that "several distinctive features of that statutory deadline," *Boechler*, 596 U.S. at 209, sufficed to rebut the presumption in favor of equitable tolling. The tax statute there set forth its time limitations in unusually emphatic form, in detailed and technical language, and reiterated those limitations several times. *Brockamp*, 519 U.S. at 350–52. Moreover, applying equitable tolling would have required tolling substantive limitations on the amount of recovery available. *Id.* "The 'nature of the underlying subject matter—tax collection—underscore[d] the linguistic point' . . . because of the 'administrative problem' of allowing equitable tolling when the 'IRS processe[d] more than 200 million tax returns' and 'issue[d] more than 90 million refunds' each

year." *Boechler*, 596 U.S. at 209–10 (quoting *Brockamp*, 519 U.S. at 352). In *United States v. Beggerly*, 524 U.S. 38, 48–49 (1998), the presumption was rebutted because the statute effectively already provided for equitable tolling by stating that the limitations period would not begin to run until the plaintiff knew or should have known about the relevant claim, and because it was already unusually generous in providing twelve years from the point of that knowledge. 524 U.S. at 48–49.

The FAA contains none of the features that the Supreme Court has found sufficient to rebut the presumption in favor of equitable tolling. The language used to set forth the time period is neither particularly emphatic nor highly technical—Section 12 provides that notice of a motion to vacate "must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. Save for the use of the word "motion" instead of "complaint," the language is indistinguishable from that customarily used for statutes of limitations. *See, e.g.*, N.Y. C.P.L.R. § 213 (describing types of actions that "must be commenced within six years"); 5 U.S.C. § 7703 (describing cases that "must be filed within 30 days"); 28 U.S.C. § 2244 ("A 1-year period of limitation shall apply […]"). The word "must" is less emphatic than the language of the Federal Tort Claims Act ("FTCA"), which states that claims are "forever barred" after a certain time period, and yet the Supreme Court has found the FTCA subject to equitable tolling. *See U.S. v. Wong*, 575 U.S. 402, 420 (2015).

The three-month limitation is not unusually generous. In *Beggerly*, the court found that the presumption in favor of equitable tolling was rebutted because Congress already provided a twelve-year limitations period for quiet title actions and a further extension of the limitations period "would throw a cloud of uncertainty" over land rights incompatible with the Quiet Title Act. *Beggerly*, 524 U.S. at 48–49. The three-month limitations period is one of the shortest, if

not the shortest, in the federal code; there is nothing about it that suggests Congress intended to preclude equitable tolling. The limitation is also not repeated elsewhere in the FAA.

Finally, allowing tolling in the limited circumstances in which the bar for tolling is met would not have significant practical consequences nor would it require tolling substantive limitations on the amount of recovery. Eletson hints that equitable tolling is inconsistent with the "expedited and summary" nature of proceedings under the FAA. Dkt. No. 147 at 1; *see also* Dkt. No. 153 (arguing that confirmation of an award is intended to be expedited). That argument misunderstands the expedited nature of proceedings under the FAA.

The requirement that applications to vacate an arbitration award be made by motion is "important, for the nature of the proceeding affects the burdens of the various parties as well as the rule of decision to be applied by the district court." *O.R. Sec., Inc. v. Pro. Plan. Assocs., Inc.*, 857 F.2d 742, 745 (11th Cir. 1988). If "the application to vacate the award may be brought in the form of a complaint, then the burden of dismissing the complaint would be on the party defending the arbitration award [and] [t]he defending party would be forced to show that the movant could not prove any facts that would entitle him to relief from the arbitration award." *Id.* "If the defending party did not prevail on its motion to dismiss, the proceeding to vacate the arbitration award would develop into full scale litigation, with the attendant discovery, motions, and perhaps trial." *Id.* The fact that the action is initiated by way of motion ensures that it will be adjudicated in a more summary fashion.

However, the provision that the FAA makes for confirmation of an award and the summary nature of that proceeding is what suffices to protect settled expectations and to do so on a summary basis. It is black letter law that until an arbitration award is confirmed, the prevailing party has a mere contract right. *See Trustees of N.Y. State Nurses Assoc. Pension Plan v. White*

Oak Global Advisors, LLC, 102 F.4th 572, 595–96 (2d Cir. 2024) ("[A]n award has legal force only because the parties have elsewhere promised to be bound by it."); *Stafford v. Int'l Business Machines Corp.*, 78 F.4th 62, 68 (2d Cir. 2023) ("An unconfirmed award is a contract right . . . "). The losing party may disregard the award subject only to a claim for breach of contract. In an action for breach of contract, it would have available to it the full range of contract defenses. An innovation of the FAA is that a party may bring an action to confirm the award under Section 9 even if the other side has not yet failed to comply, allowing the party to convert its arbitration award into a judgment in an expedited and summary manner. *See LiveWire Ergogenics, Inc. v. JS Barkats PLLC*, 645 F. Supp. 3d 290, 297 (S.D.N.Y. 2002) ("'[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'") (quoting *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)); *cf. Fotochrome, Inc. v. Copal Co.*, Ltd., 517 F.2d 512, 516 ("The [arbitration] award itself is inchoate until enforced by judgment.").

Thus, the expedited and summary nature of FAA proceedings is not inconsistent with, but rather is consistent with, applying equitable tolling to motions to vacate. A party wishing to avoid a plenary action for breach of contract, and wishing to avoid the risk of the application of equitable tolling to a claim that an award was procured by fraud, may do so, but it must do so through an application to confirm. In that way, the award, now reduced to a judgment, may be upset, only—and if at all—by a Rule 60 motion for relief from the judgment. *But see Arrowood Indem. Co. v. Equitas Ins. Ltd.*, 2015 WL 2258260, at *3–4 (S.D.N.Y. May 14, 2015) (holding that a Rule 60(b)(3) motion seeking relief from a final judgment confirming an arbitration award was an improper means to address alleged fraud that had occurred during the arbitration itself).[12]

[12] Rule 60's time limits have been interpreted strictly and the Circuit Courts that have considered

The Court need not read into the Section 12 right to move to vacate a limitation against the application of equitable estoppel. The work is done by the effect of a successful motion to confirm. To the extent Eletson argues that recognition of equitable tolling disturbs settled expectations and exposes the prevailing party to the risk that an award could be upset for an indeterminate time into the future, it expresses an understandable concern but it offers the wrong answer. The answer is not that the person who is a victim of a fraud on the arbitrator and then confronted with exceptional circumstances that prevent it from discovering that fraud must remain silent in the face of efforts to enforce the award. The answer is that the party who wishes to cut off the right to equitable tolling can do so through a successful application to confirm.

As the Ninth Circuit has observed, despite the FAA's interest in swift and limited judicial review of arbitral awards, "the arbitral process will not be disrupted if parties are permitted to satisfy the high bar of equitable tolling in limited circumstances." *See Move, Inc. v. Citigroup Global Markets, Inc.*, 840 F.3d 1152, 1155 (9th Cir. 2016).

Eletson additionally argues that equitable tolling does not apply because the FAA's limitations period is "jurisdictional." *See* Dkt. No. 147 at 19. However, the courts "treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is." *Boechler,* 596 U.S. at 203 (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515 (2006)). Although Congress need not "incant magic words," *Auburn*, 568 U.S. at 153, the "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences," *id.* at 203–04 (quoting *Wong*, 575 U.S. at 410). It is not sufficient that a time bar

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the issue have generally found that Rule 60 does not itself allow for equitable tolling. *See, e.g.*, *United States v. Williams*, 56 F.4th 366, 368 (4th Cir. 2023); *In re Cook Med., Inc.*, 27 F.4th 539, 543 (7th Cir. 2022); *In re Rumsey Land Co., LLC*, 944 F.3d 1259, 1277 (10th Cir. 2019); *see also Warren v. Garvin*, 219 F.3d at 114 (describing Rule 60(b)'s time limit as "absolute"); *Beggerly*, 524 U.S. at 46 (describing Rule 60(b)'s time limitation as "strict").

is mandatory and emphatic. *Wong*, 575 U.S. at 411; *see also Harrow v. Dep't of Def.*, 601 U.S. 480, 485 (2024). And "most time bars are nonjurisdictional." *Wong*, 575 U.S. at 410. The Supreme Court has clarified that "what matters . . . is whether a time bar speaks to a court's authority to hear a case." *Harrow*, 601 U.S. at 485. Here, as in *Harrow*, Section 12 of the FAA makes no mention of the court's authority to hear the case nor is it a statute the Supreme Court has previously defined as jurisdictional. *Compare John R. Sand & Gravel*, 552 U.S. at 132, 137. Nor does the FAA fall under the "exception" to the general presumption of the availability of equitable tolling for statutes that involve an appeal from one Article III court to another. *Id*. at 489 (citing *Bowles v. Russell*, 551 U.S. 205 (2007)). And as described above, there is nothing in the text, structure, or purpose of the FAA that would indicate Congress intended the time limit not to be subject to equitable tolling.

Eletson also suggests that the Second Circuit in *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, has foreclosed the Court from applying principles of equitable tolling. Eletson relies on the language from *Florasynth* that:

> [T]here is no common law exception to the three month limitations period on the motion to vacate . . . The action to enforce an arbitration award is a creature of statute and was unknown in the common law [and] [i]t is settled that where by statute a right of action is given which did not exist by the common law, and the statute giving the right fixes the time period within which the right may be enforced, the time so fixed becomes a limitation on that right.

Florasynth, 750 F.2d at 175; *see* Dkt. No. 147 at 18–19. Several courts in this District have held based on *Florasynth* that equitable tolling is not permissible under the FAA. *See Milberg LLP v. HWB*, 2020 WL 3833829, *4 (S.D.N.Y. July 8, 2020), *aff'd sub nom. Milberg, LLP v. Drawrah Ltd.*, 844 F. App'x 397 (2d Cir. 2021); *Marshak v. Original Drifters, Inc.*, 2020 WL 1151564, *6 (S.D.N.Y. Mar. 9, 2020); *Triomphe Partners, Inc. v. Realogy Corp.*, 2011 WL 3586161, *3 (S.D.N.Y. Aug. 15, 2011).

The Court respectfully disagrees. The Second Circuit has not itself understood *Florasynth* as deciding the question whether equitable tolling is permissible under the FAA. In *Milberg*, in 2021, the Second Circuit explicitly left open the question "whether there are any exceptions to the rule of strict compliance with the FAA's three-month deadline," 844 F. App'x at 400, a statement that would be incomprehensible if *Florasynth* had already decided the question for the court. In fact, the question in *Florasynth* was far different from that presented here. *Florasynth* addressed the question of whether, notwithstanding the explicit three-month time period in the FAA, a motion to vacate an arbitral award could be brought as an affirmative defense to an application to confirm an arbitral award brought within the one-year period for such actions. 750 F.2d at 175. The court held that the longer limitations period did not apply. The Circuit considered Congress's decision to impose a three-month period for motions to vacate an award and a one-year period for an application to confirm an award. "When the three month limitation period has run without vacation of the arbitration award, the successful party has a right to assume the award is valid and untainted, and to obtain its confirmation in a summary proceeding." *Id.* at 177. That right, and "the mechanism for speedy dispute resolution" that is carried with it, would be frustrated if, after a party with grounds to move to vacate an award sits on its right to do so, it suddenly invokes the basis for vacatur only after an application to confirm is made. *Florasynth*, 750 F.2d at 176. Indeed, the cases cited by the Circuit in support of the proposition that "there is no common law exception to the three month limitations period on the motion to vacate," *Id.* at 175 (citing *Chauffers Local 364 v. Ruan Transportation Corp.*, 473 F. Supp. 298, 302 (N.D. Ind. 1979) and *Chauffers Local 135 v. Jefferson Trucking Co.*, 628 F.2d 1023, 1027 (7th Cir. 1980)), both addressed the question whether a motion to vacate could be brought as an affirmative defense to an application to confirm after the three-month time period

for motions to vacate had expired. The court in *Florasynth* said nothing about whether the assumption of validity that would apply to an award if no motion to vacate is made within three months could be overcome if, notwithstanding the efforts made by the losing party in an arbitration to challenge the award, some extraordinary circumstance stood in its way. *See Bartlett v. Baasiri*, 81 F.4th 28, 35 (2d Cir. 2023) ("[G]eneral language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering.").

Finally, the only two Circuits to have considered whether the FAA permits equitable tolling in a published opinion after *Holland* have concluded that it does. *See Move, Inc.*, 840 F.3d at 1155; *Nuvasive, Inc. v. Absolute Med., LLC*, 71 F.4th 861, 877 (11th Cir. 2023).[13] In *Move, Inc.*, the Ninth Circuit concluded that none of the *Holland* factors weighed in favor of foreclosing equitable tolling under the FAA and that equitable tolling would not undermine the FAA's purposes. *Move*, 840 F.3d at 1157. The Ninth Circuit explained that the FAA's text did not foreclose equitable tolling under *Holland* because the three-month limitation period was not unusually generous or unusually emphatic, nor was it detailed, technical, or reiterated elsewhere in the statute. *Id*. Further, the Ninth Circuit noted that the FAA was enacted to "make valid and enforceable written provisions or agreements for arbitration of disputes," and "reflects the national policy favoring arbitration with just the limited review necessary to maintain finality in

[13] The Fifth Circuit has held in an unpublished opinion that there is no equitable tolling available with respect to the three-month time limit in Section 12 of the FAA. *See Cigna Ins. Co. v. Huddleston*, 1993 WL 58742, at *11 (5th Cir. Feb. 16, 1993). The Fourth Circuit has assumed for the sake of argument that a tolling exception might be applicable to the FAA's three-month bar, although it has observed that the assumption is "questionable." *See Choice Hotels*, 491 F.3d 171, 177 n.6 (4th Cir. 2007) (citing *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986)). Both cases predated *Holland*.

arbitral proceedings," but explained that the "general pro-arbitration policy relies on the assumption that the forum is fair" and the limited grounds for review are still designed to serve due process. *Id*. at 1157–58. Thus, the Ninth Circuit concluded that the FAA would not be undermined by balancing the needs for finality and due process by allowing parties to satisfy the high bar of equitable tolling in limited circumstances, which will "enhance the accuracy and fairness of arbitral outcomes." *Id*. at 1158. The Eleventh Circuit adopted the same reasoning as the Ninth Circuit, and added that there was no indication that the limitations period in the FAA was jurisdictional because there was no clear intent from Congress to make it jurisdictional. *Nuvasive*, 71 F.4th at 874–75.

This Court agrees.

B. Application of Equitable Tolling

Eletson further argues that the conditions for equitable tolling have not been satisfied. Levona argues that it diligently pursued its rights and was unable to present the evidence of Eletson's fraud to the Court only because Eletson concealed that fraud, failed to produce relevant, responsive documents to Levona or the arbitral tribunal, and then repeatedly imposed roadblocks to Levona's ability to access the documents when they were produced in the Bankruptcy Proceedings.

A statute of limitations is equitably tolled only when the party seeking to avoid its effect shows that it has been pursuing its rights diligently and some extraordinary circumstance stood in his way to prevent timely filing. *Holland*, 560 U.S. at 649; *see also A.Q.C. ex rel. Castillo v. U.S.*, 656 F.3d 135, 144 (2d Cir. 2011) (equitable tolling is a drastic remedy applicable only in rare and exceptional circumstances). "The term 'extraordinary' refers not to the uniqueness of a party's circumstances, but rather to the severity of the obstacle impeding compliance with a limitations period." *Harper v. Ercole*, 648 F.3d 132, 137 (2d Cir. 2011). The term

"extraordinary circumstances" thus is not easily defined or limited. A wide variety of circumstances can be "extraordinary" and where the plaintiff has exercised due diligence, can excuse timely filing, ranging from "medical conditions," *Harper*, 648 F.3d at 137, to the state court's prolonged delay in notifying the petitioner of the facts triggering the right to seek federal relief, *see Favourite v. Colvin*, 758 Fed. App'x 68, 70 (2d Cir. 2018), to the concealment by the defendant of the plaintiff's cause of action, *see State of N.Y. v. Hendrickson Bros., Inc.*, 840 F.2d 1065, 1083–85 (2d Cir. 1988); *Sykes v. Mel Harris and Assocs., LLC*, 757 F. Supp. 2d 413, 422 (S.D.N.Y. 2010).

With respect to diligence, a party must act "as diligently as reasonably could have been expected *under the circumstances*" and "*throughout the period he seeks to toll*." *Harper*, 648 F.3d at 139 (internal citations omitted) (emphases in original). For instance, reasonable diligence means that a party did not inexplicably wait to investigate. *See, e.g.*, *Koch v. Christie's Intern. PLC*, 699 F.3d 141, 157 (2d Cir. 2012) (no equitable tolling where plaintiff could have begun investigation sooner). Equitable tolling means that a time bar is suspended and then begins to run again upon a later event and the time remaining is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped. *Harper*, 648 F.3d at 139–40.

To withstand a motion to dismiss based on a statute of limitations where the lapse of the limitations period is apparent on its face, a plaintiff need only plead facts plausibly suggesting equitable tolling should apply. *Roeder v. JP Morgan Chase*, 523 F. Supp. 3d 601, 618 (S.D.N.Y. 2021); *Edner v. NYCTA-MTA*, 134 F. Supp. 3d 657, 666 (E.D.N.Y. 2015); *cf. Thea v. Kleinhandler*, 807 F.3d 492, 501 (2d Cir. 2015). "Equitable tolling often raises fact-specific issues premature for resolution" on the pleadings. *Clark v. Hanley*, 89 F.4th 78, 94 (2d Cir. 2023). Where the district court is "the ultimate factfinder on the issue of equitable tolling," it is

appropriate for the court to hold an evidentiary hearing after discovery to "weig[h] competing inferences or resolv[e] contested factual issues." *Id.* at 95–96.[14]

Establishing "extraordinary circumstances" to warrant equitable tolling under the FAA is not a low bar. To establish a basis to vacate an award on grounds that it was "procured by corruption, fraud, or undue means," 9 U.S.C. § 10(a)(1), the movant must show "that (1) respondent engaged in fraudulent activity; (2) even with the exercise of due diligence, petitioner could not have discovered the fraud prior to the award issuing; and (3) the fraud materially related to an issue in the arbitration." *Odeon Cap. Grp. LLC v. Ackerman*, 864 F.3d 191, 196 (2d Cir. 2017). Thus, it is not sufficient to invoke equitable tolling that the respondent engaged in fraudulent activity that materially affected the award. That showing would be necessary in every case in which a movant seeks relief under Section 10(a)(1), making the three-month time limit for motions based on Section 10(a)(1) largely illusory. On the other hand, one of the purposes of equitable tolling is not to reward a party who intentionally frustrates the ability of its adversary to timely make a claim. *See Bowers v. Transportacion Maritima Mexicana, S.A.*, 901 F.2d 258, 264 (2d Cir. 1990) ("The doctrine [of equitable tolling] was developed to address situations in which fraudulent or other conduct concealed the existence of a claim."); *see also Hendrickson Bros.*, 840 F.2d at 1083 ("The doctrine of fraudulent concealment was designed to prevent a party from concealing a fraud, or committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it."

[14] Courts have permitted discovery before determining whether equitable tolling might apply. *See, e.g.*, *Statler v. Dell, Inc.*, 775 F. Supp. 2d 474, 483 (E.D.N.Y. 2011) (declining to rule on equitable tolling because it was too earlier to make factual findings about the defendant's conduct or whether plaintiff had enough information earlier to commence its lawsuit); see also *Barrett v. U.S.*, 689 F.2d 324, 330 (2d Cir. 1982) (summary judgment on the basis of a statute of limitations was precluded where factual issues existed as to the extent of the defendant's concealment and the diligence exercised by the plaintiff).

(internal citations omitted)). It would undermine a central and historical function of equitable tolling if the doctrine did not apply where the defendant engaged in efforts to conceal its own wrongdoing frustrating its adversary's right to bring a timely claim.

Levona has identified sufficient facts to establish at this stage both an extraordinary circumstance and due diligence. Levona argues that Eletson committed fraud during the arbitral proceeding when it withheld critical evidence on the pivotal issue in that proceeding, that its principal lied under oath about the facts to which that evidence related, and that it then constructed extraordinary barriers to prevent Levona from uncovering the evidence of that fraud until after the limitations period for moving to vacate had expired. Dkt. No. 136 at 20, 26; Dkt. No. 149 at 13–14. In particular, during the arbitration, when Levona presented evidence that the Purchase Option had not been exercised in the form of a July 13 email where Eletson CFO Kanelos sent a "buyout proposal," Eletson lied about it. Dkt. No. 136 at 7; *see also* Dkt. No 67-58 at 40, 45–46 n.6. Eletson claimed that this email related to the Murchinson exit in terms of the loan repayment and did not suggest that the Purchase Option had not been exercised. *See* Dkt. No. 147 at 10–13. Eletson also withheld the documents necessary to establish that the Purchase Option had not been exercised and that Eletson principal and witness Vassily Kertsikoff had lied. Eletson did this even though it was meant to engage in "voluntary and informal exchange of all non-privileged documents and other information . . . relevant to the dispute or claim," JAMS Rule 17(a), and it had agreed to produce all documents responsive to Levona's request for "[a]ny communications and/or documents related to Eletson's preparation of, negotiations to, and/or related to the final offer of the 'Murchinson Buyout Steps,'" Dkt. No. 136 at 10–11.

Eletson constructed extraordinary obstacles to prevent Levona from uncovering its fraud. Levona time and again asked for the documents that might show that Eletson had withheld material evidence from the arbitrator. And Eletson time and again engaged in efforts to frustrate Levona from obtaining that evidence. It initially argued that Levona was not entitled to the documents because it was not a party to the Bankruptcy Proceedings. When Levona submitted a claim in the Bankruptcy Proceeding and signed the Protective Order, which would enable it to receive the documents that had been produced in that matter, Eletson then raised an objection to Levona's right to participate as a creditor. It objected to Levona viewing the documents and objected to the production of additional documents. It objected to Levona presenting the documents to this Court. Throughout the proceedings, it made threats that Levona was in breach of the Protective Order and that it would be in further breach of that order (and subject to sanctions) if it revealed the contents of the documents to this Court. *See* Dkt. No. 67-52; Dkt. No. 127-16 at 41. Throughout, it also made meritless and arguably frivolous arguments that the documents were not relevant to these proceedings. While Eletson was urging this Court to speed its efforts to confirm the arbitral award, it engaged in a process of stalling and delay in the Bankruptcy Court, repeatedly frustrating Levona's attempts to view the additional documents and objecting at every turn both before and after the Award was issued and before and after Levona filed a claim in the Bankruptcy Proceeding.

Eletson suggests that Levona did not need the ultimately six withheld documents that Levona now raises to bring a claim to vacate the award based on fraud. Dkt. No. 147 at 14, 25–26. According to Eletson, Levona was aware of the possibility that the award was infected by fraud but negligently failed to bring a claim of fraud until after the Court had ruled on its initial motion to vacate. But that suggestion is fatuous. The evidence supports that Levona did not

bring a claim for fraud because based on Eletson's actions it was prevented from doing so. From July 2023—when Levona first learned that there was at least one document produced in the bankruptcy court that was relevant and responsive in the arbitration but had not been produced in the arbitration—until March 2024, Levona fought to get access to the documents. During this time, Levona only had its affiliate's view that the documents were relevant and critical to the arbitration, not access to the documents or their content or the right to see or use them. From March 2024 until June 2024, Levona—now armed with knowledge of what was in the documents—fought for relief from the Protective Order so that they could present the documents to this Court. Absent such relief, it arguably would have been in contempt for disclosing the documents to the Court. Dkt. No. 127-34 ¶ 22. By the terms of the Protective Order, Levona would have been required to destroy the documents upon the conclusion of the bankruptcy. *Id.* ¶¶ 27-28. Eletson fought tooth and nail to prevent Levona from obtaining relief from the Protective Order.

To be sure, Levona was aware as early as July 2023 that evidence might exist that would show that there was a fraud. But the law does not require, and might not even permit, a party to bring a claim for fraud when it has some inkling that there might be a fraud. The allegation must have "evidentiary support" or be one that is likely to have evidentiary support. Fed. R. Civ. P. 11(b)(3). Levona does not merely claim that Eletson concealed information that would have made Levona's case to vacate the arbitral award based on fraud stronger. Levona had no basis to vacate the arbitral award based on fraud until it learned of Eletson's alleged fraud. In this way, Levona is correct to point out that while it may have had a recording that was corroborative of the evidence Levona ultimately uncovered that Eletson allegedly fraudulently withheld during

the arbitration, that has no bearing on whether Levona knew that Eletson committed fraud during the arbitration. *See* Dkt. No. 149 at 13.[15]

Finally, Levona was reasonably diligent. Diligence and extraordinary circumstances are related in that a plaintiff's pursuit of their claims with reasonable diligence establishes the causal link between the extraordinary circumstances and the late filing. *See Li by Musso v. Multicultural Radio Broadcasting, Inc.*, 2023 WL 7902890, at *4 (S.D.N.Y. Nov. 16, 2023) (citing *Valverde v. Stinson*, 224 F.3d 129, 134 (2d Cir. 2000)). Unlike cases in which there is an inexplicable delay between the end of the extraordinary circumstances and the late filing, *see, e.g.*, *Hizbullahankhamon v. Walker*, 255 F.3d 65, 76 (2d Cir. 2001), Levona here vigorously and without interruption pursued the newly-produced documents and filed its motion to amend approximately two weeks after the bankruptcy court ruled that the Protective Order was modified to permit Levona to use the documents in this Court. Dkt. No. 136 at 15. As discussed above, Levona fought for a year across multiple tribunals to get access to the documents and permission to use them here. It is not clear what more Levona could have done save move to amend based on evidence it either did not have or could not lawfully use. It was in fact Eletson's efforts to oppose Levona's receipt and use of the documents that prevented Levona from filing any earlier. The extraordinary circumstances caused Levona's late motion and Levona filed its motion as soon as those circumstances lifted.

[15] The court in *Montomgery v. West*, 2023 WL 2975723, at *3–4 (D. Nevada Apr. 17, 2023), *aff'd* 2024 WL 2843637 (9th Cir. June 5, 2024) considered a similar argument that a protective order in another case prevented the plaintiff from timely filing. The court rejected that argument because the plaintiff had, in fact, used the information purportedly subject to the "gag order" in other, related civil litigation. However, no similar circumstances are present here to suggest that Levona could have gotten around the Protective Order. To the contrary, Levona engaged in persistent efforts to be able to present the documents to this Court despite Eletson's strenuous objections. Dkt. No. 136 at 12–16.

II. Rule 15

Levona argues as an alternative ground that its motion to vacate can be amended pursuant to Federal Rule of Civil Procedure 15. For its part, Eletson argues that Levona's motion to vacate is not a pleading and therefore Federal Rule of Civil Procedure 15, which applies only to pleadings, is inapplicable, that the amendment does not relate back to the date of the filing of the original motion, and that the conditions for amendment under Rule 15 have not been satisfied. Dkt. No. 147 at 22–31. The Court's ruling on equitable tolling makes it unnecessary for the Court to rule definitively on this alternative ground at this stage. For purposes of completeness, the Court nonetheless addresses the arguments of the parties.

A. Applicability of Rule 15 to FAA Motions to Vacate

The Second Circuit has not explicitly addressed whether Rule 15 applies to a motion to vacate an arbitral award under the FAA. However, a panel of the Second Circuit has expressed "doubt" that "the generous Rule 15(a) standards for amending pleadings" apply to a "motion to vacate the arbitration award, which . . . is not a pleading." *Loch View LLC v. Seneca Ins. Co. Inc.*, No. 21-1008, 2022 WL 1210664, at *2 (2d Cir. Apr. 25, 2022).

By contrast, the Eleventh Circuit has held that Rule 15 applies to motions to vacate an arbitral award, despite the fact that there are no "pleadings." *See Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378 (11th Cir. 1988); *see* Dkt. No. 149 at 10–11; *see also* 94 Am. Jur. Trials 211, § 36 ("[I]f a motion for vacatur is timely filed and later amended . . . then that amendment—even though filed after the three month vacatur window has closed—relates back to . . . the original vacatur motion."). Other courts have come to a contrary conclusion. *See Chelmowski v. AT & T Mobility*, LLC, 615 Fed. App'x 380, 381 (7th Cir. 2015); *Indep. Lab. Emples. Union, Inc. v. ExxonMobil Research & Eng'g Co.*, 2019 WL 3416897, *7 (D.N.J. July 29, 2019), *aff'd*, 11 F.4th 210 (3d Cir. 2021)).

Although the question is close, the better view appears to be that Rule 15 does not apply to motions to vacate.

The Court interprets the Federal Rules of Civil Procedure and the FAA according to their plain language. *See In re Edelman*, 295 F.3d 171, 177 (2d Cir. 2000) ("When interpreting the meaning of a statute . . . the starting point of inquiry is of course the language of the statute itself.") (internal citations omitted); *Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc*., 498 U.S. 533, 540 (1991) (federal rules of civil procedure are interpreted according to plain language).

The Federal Rules of Civil Procedure explicitly provide that they govern FAA proceedings "to the extent applicable […] except as [the FAA] provide[s] other procedures." Fed. R. Civ. P. 81(a)(6)(B). The relevant Rule of Civil Procedure here is Rule 15, which provides that "[a] party may amend its pleading once as a matter of course" either within 21 days after serving it or after service of a responsive pleading or a motion under Rules 12(b), (e), or (f). Fed. R. Civ. P. 15. It otherwise provides for amendment with consent or the court's leave, which shall be granted freely "when justice so requires." Fed. R. Civ. P. 15.

By its terms, Rule 15 is limited to "pleadings." Federal Rule of Civil Procedure 7 distinguishes between pleadings and motions. Fed. R. Civ. P. 7. And a proceeding to vacate, modify, or correct an award under the FAA is commenced by motion. 9 U.S.C. § 12 ("Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered."). It is not commenced by a pleading. *See Kruse v. Sands Bros. & Co.*, 226 F. Supp. 2d 484, 485 (S.D.N.Y. 2002) (a party seeking to vacate an arbitral award must proceed by motion). Moreover, Section 6 of the FAA

provides: "Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions." 9 U.S.C. § 6.

The Federal Rules of Civil Procedure "draw a clear and consistent distinction between pleadings and motions." *ISC Holding AG v. Nobel Biocare Finance AG*, 688 F.3d 98, 112 (2d Cir. 2012). "Rule 7(a) exhaustively enumerates the different 'pleadings' available under the civil rules; motions, not appearing in that enumeration, are discussed in Rule 7(b)." *Id.* Thus, the Second Circuit consistently has held that Federal Rules which, by their terms, contemplate a pleading, do not apply to "motions" or "applications" under the FAA. In *ISC Holding*, the Circuit held that Federal Rule of Civil Procedure 41(a)(1)(A)(i) does not apply to petitions to compel arbitration under 9 U.S.C. §§ 4 and 206 because the federal rule presupposes an "answer," which can be filed only in response to a pleading and not in response to a motion. *Id.* at 113. The court cited with approval to its prior decision in *Productos Mercantiles E Industralies S.A. v. Faberge USA*, 23 F.3d 31, 36 (2d Cir. 1994), in which the court held that Rule 12(b)'s pleading requirements did not apply to a petition to modify and then confirm an arbitration award, as well as to the Eleventh Circuit's holding in *O.R. Sec., Inc.*, 857 F.2d 747, in which that court held that Rule 8's notice pleading requirements did not apply in a proceeding to vacate an arbitration award. *ISC Holding*, 688 F.3d at 113. In *D.H. Blair & Co. v. Gottdiener*, the court also stated that Federal Rule of Civil Procedure 55 "does not operate well in the context of a motion to confirm or vacate an arbitration award" because such proceeding is a motion "rather than a complaint initiating a plenary action." 462 F.3d 95, 107–08 (2d Cir. 2006).

ISC Holding and *Productos Mercantiles* suggest that Rule 15 does not apply to motions to vacate an arbitral award. If such motions need not satisfy the pleading standards of Rule 8 because they are not pleadings and if they cannot be dismissed under Rule 41 because they do

not permit a responsive pleading, it would seem to follow that they also are not pleadings which can be amended under Rule 15. Thus, even assuming that the FAA did not provide other conflicting procedures for amendment, Rule 15 on its face would not be applicable to a motion to vacate.

Moreover, Rule 15 fits uncomfortably with Section 12 motions to vacate. Rule 15(a) provides that amendments may be made once as a matter of course 21 days after service of a responsive "pleading" or after service of a Rule 12 motion. However, the response to a motion to vacate is not a pleading or a Rule 12 motion. It is an opposition to the motion. More importantly, the notion of granting amendment "freely . . . when justice so requires" and the law under Rule 15(a)(2) sits uneasily with the objective under the FAA that arbitration awards be confirmed or vacated in an expedited manner. Courts routinely grant amendments in non-FAA cases absent a showing by nonmovant of prejudice or bad faith. *See AEP Energy Servs. Gas Holding Co. v. Bank of Am.*, 626 F.3d 699, 725 (2d Cir. 2010) ("The rule in this Circuit has been to allow a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith." (internal quotation omitted)); *Nerney v. Valente & Sons Repair Shop*, 66 F.3d 25, 28 (2d Cir. 1995) (amendments should normally be permitted). "Denial of leave to amend is disfavored," and a "liberal, pro-amendment ethos dominates the intent and judicial construction of Rule 15(a)(2)." 3 Moore's Federal Practice § 15.14 (3d ed. 2024). Indeed, because the text of Rule 15 "unequivocally requires the court to grant leave to amend liberally, a court faces limits on its ability to deny leave to amend [and] denying leave may amount to an abuse of discretion." *Id*. Courts frequently grant amendment before there has been discovery and substantial resources devoted by the other side. *See, e.g.*, *Champion v. Kirkpatrick*, 2019 WL 4451255, at *3–4 (N.D.N.Y. Sept. 17, 2019) (amendment not unduly delayed or prejudicial

when it occurred early in the litigation before substantial discovery); *Fastiggi v. Waterview Hills Nursing Ctr., Inc.*, 6 F. Supp. 2d 242, 243 (S.D.N.Y. 1998) (same). The delay caused by adjournment is not enough to show that the party opposing amendment will be prejudiced. *See Rachman Bag Co. v. Liberty Mut. Ins. Co.*, 46 F.3d 230, 234–35 (2d Cir. 1995) (delay alone generally does not warrant denial). If those notions were applied to FAA motions to vacate, amendments would be routine.

The Eleventh Circuit came to the contrary conclusion in *Bonar*. The court concluded that Rule 15 could apply to motions to vacate a judgment because "although technically called a 'motion,' the papers filed by a party seeking to confirm or vacate an arbitration award function as initial pleadings in post-arbitration proceedings in the district court." 835 F.2d at 1382. The court also concluded that "[s]ince the Arbitration Act provides only that notice of a motion to vacate, modify or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered, and contains no provisions governing amendments to timely motions, the Federal Rules of Civil Procedure apply to this issue." *Id.*

Bonar has not been followed by any Circuit court.[16] The court's conclusion in *Bonar* appears to have been driven by the nature of the amended claim in that case—that a witness committed perjury which could not have been detected with reasonable diligence during the arbitration—and by the view that the application of Rule 15 would not be inconsistent with the procedure under the FAA. But the Eleventh Circuit's ruling in *Bonar*, if adopted here, could not be confined to claims of fraud that could not have been discovered during the arbitration. It

[16] *Bonar* has been found persuasive only by several district courts. *See, e.g.*, *BBVA Secs. of Puerto Rico v. Cintron*, 2012 WL 2002304, at *2 (D.P.R. June 4, 2012); *Passa v. City of Columbus*, 2008 WL 687168, at *6 (S.D. Ohio Mar. 11, 2008); *Riddle v. Wachovia Secs, LLC*, 2005 WL 8175938, at *2–3 (D. Neb. June 29, 2005).

would also extend to claims that the award should be vacated or amended on other grounds, including that there was evidence of partiality or corruption in any of the arbitrators, that the arbitrators improperly refused to postpone the hearing or to hear evidence pertinent and material to the controversy, or that they exceeded their powers, 9 U.S.C. § 10, or that there was an evident material miscalculation of figures or an evident material mistake in the award, 9 U.S.C. § 11. Under *Bonar*, a party seeking to vacate or correct an arbitral award arguably could add such new grounds to its application well after the three-month period provided for under the FAA so long as it satisfied the generous standards under Rule 15. Moreover, as set forth above, *supra* Section I, a construction of Rule 15 that would make a "motion" into a "pleading" is not necessary to capture those cases in which a party to an arbitration commits a fraud on the arbitrator and then conceals the evidence of the fraud from its adversary. Such cases would be captured by concepts of equitable tolling, so long as the motion is brought before the arbitration award is converted into a judgment through a motion to confirm.

Finally, Levona's concerns regarding judicial administration if a motion could not be amended through Rule 15, Dkt. No. 157 at 2–3, are also readily addressed. While the notice of motion filed within three months must contain all of the grounds upon which a party seeks an award vacating or correcting an award, Fed. R. Civ. Proc. 7(b) ("An application to the court for an order shall be made by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought."), a foot fault will not doom an otherwise meritorious motion. A court has discretion to permit a party to elaborate on its grounds for vacatur, so long as those grounds are fairly encompassed within its timely-filed motion. *See* 2 Moore's Federal Practice §7.03[4][a] (3d ed. 2024) (particularity requirement in Rule 7 is flexible and has been interpreted liberally by

courts); *id*. at § 7.03[4][b] ("Actual notice of the issues raised by a conclusory assertion in a motion may be contained in other litigation papers. A court may consider other closely filed documents . . . [and] if the other documents, when read in conjunction with the motion, set forth the particular grounds for the motion and relief sought, courts often consider Rule 7(b) met.") *id*. at § 7.03[4][c] ("District judges may also require particularity on an individual basis by ordering briefs or by scheduling oral arguments on pending motions."); *see also Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 761 (1st Cir. 1996) (courts routinely take into consideration other closely filed pleadings to determine whether sufficient notice of the grounds for a motion are given and the opposing party has a fair opportunity to respond).

The Second Circuit has held a motion to vacate or set aside an unconstitutional or unlawful sentence could be amended under Rule 15 at any time while the action was pending. *Ching v. U.S.*, 298 F.3d 174, 180 (2d Cir. 2002) (Sotomayor, J.). An argument can be made that if Section 2255 motions to vacate can be amended under Rule 15, so too should FAA motions to vacate be amendable through Rule 15. Section 2255 proceedings are, in some ways, similar to Section 12 proceedings to vacate an arbitration award. They are commenced by motion rather than by complaint. In fact, Rule 2 of the Rules Governing Section 2255 Proceedings has similar language to 9 U.S.C. § 6: "The application must be in the form of a motion to vacate, set aside, or correct the sentence." Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 2 (1977) (amended 2019). And Rule 12 of the Rules Governing Section 2255 Proceedings provides, in language similar to Rule 81 of the Federal Rules of Civil Procedure, that: "The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." Rules Governing Section 2255 Proceedings,

Rule 12; *compare* Fed. R. Civ. P. 81(a)(6)(B) (the Federal Rules "to the extent applicable, govern proceedings under [the FAA], except as these laws provide other procedures"). The Second Circuit was not troubled by the fact that the document that initiated the 2255 proceeding was denominated a motion and not a complaint. It presumed that the motion would be treated as a complaint and proceeded to consider whether application of Rule 15 would be inconsistent with the statute at issue (the Antiterrorism and Effective Death Penalty Act ("AEDPA")). It concluded that it would not be because the district court retained tools to "thwart tactics that [we]re dilatory, unfairly prejudicial, or otherwise abusive." *Id.* at 180. The same could be said about the application of Rule 15 to motions to amend. The district court still would retain the authority under Rule 15 to prevent dilatory or unfairly prejudicial amendments. *See, e.g.*, *Trump v. Vance*, 480 F. Supp. 3d 460, 506 (S.D.N.Y. 2020).

However, *Ching* does not control the issue here. As Eletson point outs, Dkt. No. 156 at 2, the Court need not give the same or similar language in two different statutes the same interpretation and application. *Yates v. U.S.*, 574 U.S. 528, 537–38 (2015) ("identical language may convey varying content when used in different statutes") (collecting cases); *Env't Def. v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007) ("most words have different shades of meaning and consequently may be variously construed" when they occur in different statutes). Context matters. *See Gundy v. United States*, 588 U.S. 128, 140–41 (2019). The court based its conclusion in *Ching* on a view that Section 2255 should be interpreted *in pari materia* with Section 2254 of Title 28, under which (by statute) amendments are permitted, *see* 28 U.S.C. § 2241; *Ching*, 298 F.3d at 177, and on the peculiar history of the AEDPA. Congress intended that persons challenging their sentence have "an opportunity for a full adjudication of their claims." *Id.* at 177. Although Section 2255 motions must be brought soon after a conviction becomes

final, there is no deadline for a conviction to become final, *see Clay v. U.S.*, 537 U.S. 522, 525 (2003) (judgment becomes final when the time expires for filing a petition for certiorari), and there is no dictate that Section 2255 motions be expeditiously considered and either granted or denied. The Second Circuit viewed Congress's concern to be with the abuse of the writ, that the movant would engage in "needless or piecemeal litigation." *Ching*, 298 F.3d at 180. There is no other statute with which to compare the FAA *in pari materia*, as there was with Section 2255. And there is no evidence that the concerns that animated *Ching* and that the court there imputed to Congress—that a person held in custody allegedly in violation of the Constitution have one full chance to assert all possible bases to challenge his sentence—would also apply to a person who voluntarily agreed to arbitration and then complained of the award entered by the arbitrator.

Thus, analyzing all of the relevant case law, the Court concludes that the safety valve that Levona seeks in the FAA's time limits is found by application of the doctrine of equitable tolling, not by reading Rule 15 to apply when on its face it does not.

B. Rule 15 Discretionary Factors

Eletson argues that an amendment is not permissible because Levona is guilty of undue delay and has acted in bad faith, that an amendment would be futile, and that Eletson would be prejudiced by an amendment. Were Rule 15 applicable, the Court would reject each of these arguments.

The Court's conclusions with respect to diligence and the materiality of the documents dispose of Eletson's arguments regarding delay and bad faith. Absent a showing of bad faith or undue prejudice, mere delay is insufficient for a court to deny the right to amend. *See Tarr v. ACTO Technologies, Inc.*, 2020 WL 13842913, at *3 (S.D.N.Y. Dec. 29, 2020) (internal citations omitted); *see also Sherman v. Fivesky, LLC*, 2020 WL 5105164, at *3 (S.D.N.Y. Aug. 31, 2020) (no undue delay where defendants spent some time investigating and developing potential

counterclaims to satisfy Rule 11 rather than rushing to file a counterclaim on the first suspicion). "Few cases deny leave to amend on grounds of bad faith," and cases where this has occurred involve, for example, drastically changing position after 25 years, waiting to move to amend until after summary judgment to avoid dismissal on forum selection clause or forum non conveniens grounds, or waiting to introduce new theories until after summary judgment despite knowing about them from the commencement of the suit. *ACTO Technologies*, 2020 WL 13842913, at *3; *see also SEC v. Rayat*. 2022 WL 3656314, at *11 ("Bad faith as used with respect to a motion to amend does not serve as an invitation for the party opposing amendment to raise every generalized grievance it has with respect to the litigation tactics and style of the movant. It refers to the objective with which the motion to amend is made, including whether, on the one hand, based on the motion's timing and content, the movant intended solely to gain a tactical advantage" (internal citations omitted)). Eletson should not be heard to complain about delay. It frustrated Levona's ability to bring this motion earlier through its persistent and aggressive arguments in the Bankruptcy Court, which ultimately were rejected, including an argument that the Court finds to be incredible that the documents were not relevant to the arbitration proceedings. Those conclusions also address prejudice—Eletson complains that the proceedings in this Court will affect the rights of the creditors in the Bankruptcy Proceeding, but Eletson itself is responsible for the issues raised by Levona not having been addressed by this Court earlier.

The motion also is not futile. To establish a basis to vacate an award on grounds that it was "procured by corruption, fraud, or undue means," 9 U.S.C. § 10(a)(1), the movant must show "that (1) respondent engaged in fraudulent activity; (2) even with the exercise of due diligence, petitioner could not have discovered the fraud prior to the award issuing; and (3) the

fraud materially related to an issue in the arbitration." *Odeon*, 864 F.3d at 196. Levona has presented evidence that, if credited, would show that Eletson engaged in fraudulent activity that Levona could not have discovered and that went to a pivotal issue in the arbitration.

III. Discovery

Levona also asks for discovery on its new claims. Dkt. No. 136 at 27–29. Eletson resists that request. Dkt. No. 147 at 32.

The Court will permit discovery on facts relevant to equitable tolling and to whether the award was procured by fraud or undue means. "[D]iscovery in a post-arbitration judicial proceeding to confirm or vacate is governed by the Federal Rules of Civil Procedure" and is available "in limited circumstances, where relevant and necessary to the determination of an issue raised by such an application." *Frere v. Orthofix, Inc.*, 2000 WL 1789641, at *4 (S.D.N.Y. Dec. 6, 2000). Eletson's sole argument against discovery is that "[d]iscovery is unwarranted given the glaring legal deficiencies in this Motion, and particularly into the irrelevant and cumulative matters Levona apparently seeks to explore." Dkt. No. 147 at 24. But the Court concludes that the motion does not have legal deficiencies and the matters Levona seeks to explore are highly relevant and not cumulative. Levona has proffered evidence that would suggest that the four documents at issue may be just the tip of the iceberg and that there may be other relevant documents that would support its claims that extraordinary circumstances prevented it from filing earlier and that fraud was committed in the arbitration.

CONCLUSION

The motion to amend is GRANTED.

The Clerk of Court is respectfully directed to close Dkt. No. 123.

SO ORDERED.

Dated: September 6, 2024
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT “5”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

KITHNOS SPECIAL MARITIME ENTERPRISE, ELETSON HOLDINGS INC., ELETSON CORPORATION, ELETSON GAS LLC,	§	
***Plaintiffs*,**	§	
v.	§	
M/V KITHNOS (IMO 9711523), her engines, tackle, equipment, and appurtenances, *in rem*,	§	**C.A. No. 2:25-cv-00042**
and	§	**In Admiralty, Rule 9(h)**
FAMILY UNITY TRUST COMPANY, GLAFKOS TRUST COMPANY, LASSIA INVESTMENT COMPANY, ELAFONISSOS SHIPPING CORPORATION, KEROS SHIPPING CORPORATION, VASSILIS HADJIELEFTHERIADIS, LASKARINA KARASTAMATI, VASSILIS E. KERTSIKOFF, VASILEIOS CHATZIELEFTHERIADIS, KONSTANTINOS CHATZIELEFTHERIADIS, IOANNIS ZILAKOS, ELENI KARASTAMATI, PANAGIOTIS KONSTANTARAS, EMMANOUIL ANDREOULAKIS, ELENI VANDOROU, *in personam*	§	
***Defendants*.**	§	

KITHNOS SPECIAL MARITIME ENTERPRISE'S
RESPONSE TO PLAINTIFFS' MOTION TO RELEASE THE VESSEL
PURSUANT TO SUPPLEMENTAL RULE E(5)(d)

Kithnos Special Maritime Enterprise, on the authority of its lawful directors ("Claimant" or "Kithnos SME"), as Claimant of the LPG/C KITHNOS ("Vessel"), and as a restricted appearance under Supplemental Rule E(8), files this Response to Plaintiffs' Motion to Release the

Vessel Pursuant to Supplemental Rule E(5)(d) (Doc. 72), and, in support of same, provides as follows[1]:

I.
INTRODUCTION

The Murchinson Plaintiffs' motion is just a continuation of their brazen and baseless attempt to grab control of a ship that is not theirs, directly or indirectly. They brought the LPG/C KITHNOS (the "Vessel") to a complete standstill over two months ago, when they made their *ex parte* request to arrest the Vessel under false pretenses. Specifically, they falsely alleged that, as the holders of the common shares in Eletson Gas, they are entitled to take possession of the Vessel. Tellingly, their Complaint makes no mention of the following:

1. The holders of the *Preferred Shares* of Eletson Gas control Eletson Gas, its wholly-owned subsidiary (Kithnos SME), and Kithnos SME's interest in the Vessel.

2. In accordance with the Eletson Gas Limited Liability Company Agreement (the "LLCA"), Murchinson participated in – and lost – a JAMS arbitration regarding possession of the Preferred Shares.

3. The arbitrator found that the Preferred Shares were transferred to Fentalon, Apargo, and Desimusco (the "Cypriot Nominees") in March 2022 (a year before the Eletson Holdings bankruptcy was commenced).

4. A United States District Judge in the Southern District of New York has confirmed the March 2022 transfer to the Cypriot Nominees.

5. Not a single order, award, or document (other than various false and self-serving corporate documents the Murchinson Plaintiffs created themselves in complete defiance of the LLCA) shows that they have any authority to bring this suit.

[1] Claimant will be brief in this initial response, which primarily addresses the items stated in the Murchinson Plaintiffs' motion. As additional issues were discussed during the April 24, 2025 conference with the Court, those further items and Claimant's specific proposed terms for the release of the Vessel will be addressed more fully within Claimant's proposed order and related briefing to be submitted to the Court on or before Friday, May 2, 2025 (*See* Dkt. 83).

Avoiding any mention of the above facts, the Murchinson Plaintiffs broadly and falsely told this Court via their *ex parte* pleadings that they obtained control of Eletson Gas through the Eletson Holdings bankruptcy, omitting any mention of the fact that the Preferred Shares were never part of the Eletson Holdings bankruptcy estate and misleadingly bringing this suit against five strawmen entities (Family Unity Trust Company, Glafkos Trust Company, Lassia Investment Company, Elafonissos Shipping Corporation, and Keros Shipping Corporation) that have nothing to do with Eletson Gas, Kithnos SME, or the Vessel. Rather than explicitly asking this Court to relitigate a battle that they already lost, the Murchinson Plaintiffs have concocted a new claim based on a bankruptcy proceeding that did not administer the assets of Eletson Gas, such as this Vessel—a claim that ignores the effect of arbitration findings about ownership of the Preferred Shares that neither the SDNY nor the bankruptcy court has changed or limited. At some point, Murchinson will have to compensate Claimant for the substantial damages that have been incurred due to this wrongful arrest.

After the Murchinson Plaintiffs obtained the arrest order, they continued with their brute-force effort to seize control of the Vessel. Specifically, in coordination with their appointed substitute custodian, another *ex parte* request was made to decapitate the Vessel's chain of command by replacing its captain with one of their own choosing. If that effort had succeeded, they quite possibly could have taken control of the Vessel, allowing them to simply dismiss the suit and let the Vessel depart the Court's jurisdiction under the command of their self-selected, complicit captain. Thankfully, that effort proved unsuccessful.

However, the Murchinson Plaintiffs' temerity knows no bounds, and their unabashed piracy continues by way of the subject motion, which requests that the Vessel's entire crew be replaced with their hand-picked selections to then operate the Vessel under their direction and control.

Additionally, under the Murchinson Plaintiffs' proposal, they seek to take over all other aspects of the Vessel's operation and commercial activities. The Murchinson Plaintiffs' motion amounts to a request for an interim award of possession/turnover of the Vessel. Even if the Murchinson Plaintiffs' arrest of the Vessel was supported by probable cause – which it is not – there is no factual or legal justification for their interim request to be handed the keys to the Vessel.

Moreover, and even looking past the fallacies and mistruths inherent in the Murchinson Plaintiffs' claims, their request introduces unnecessary, impractical, and unsafe changes to the operations of a sophisticated liquid petroleum gas carrier vessel engaged in international transport of dangerous/volatile cargo. Not surprisingly, the Murchinson Plaintiffs cannot point to a single case that has permitted such extraordinary interim relief to an arresting party (let alone, any authorities granting such relief to an arresting party with a baseless claim like the Murchinson Plaintiffs).

Although Claimant is certainly willing to develop a reasonable arrangement that allows the Vessel to continue operations during the pendency of this dispute (and mitigates Claimant's substantial damages arising from this wrongful arrest), the terms proposed by the Murchinson Plaintiffs' motion are untenable. The unprecedented, unjustified, and impractical relief requested in their motion must be denied.

II.
SUGGESTIONS THAT CLAIMANT SHOULD NOT CONTINUE TO OPERATE THE VESSEL ON AN INTERIM BASIS ARE UNFOUNDED

A. The Vessel Is Currently Manned by a Properly-Vetted and Proficient Crew That Has Fully Complied With the Orders of this Court – And Will Continue to Do So

The Vessel is a sophisticated, liquid petroleum gas carrier ship. The Vessel's 20-person crew is properly credentialed, trained, and well-acquainted with the Vessel's operational and safety requirements, and the current crew is immediately available and ready to return the Vessel to safe

and proper commercial operation, just as they were doing prior to the arrest. The current captain, as well as all the officers and subordinate crewmembers have fully complied with the Court's orders during the pendency of the arrest, and there is no valid reason to suggest that they will not continue to comply with this Court's orders should the Vessel be permitted to temporarily resume operations in order to mitigate Claimant's substantial damages arising from the wrongful arrest.

B. The Arrest Evasion Allegations Are Groundless

The Murchinson Plaintiffs make a series of unrelated allegations "on information and belief" in relation to two **non-Eletson Gas** vessels, the LPG/C KINAROS and the LPG/C KIMOLOS, but these baseless contentions are belied by the circumstances of the arrest of this Vessel and the arrests of the KITHIRA (Houston) and ITHACKI (Victoria). Prior to the arrests of these three vessels, the Murchinson Plaintiffs made their vessel seizure intentions clear to Claimant and its principals. Nevertheless, Claimant directed the Vessel to call at Corpus Christi (and for the KITHIRA to call at Houston and the ITHACKI to call at Point Comfort), fully aware that these unjustified and unlawful arrest actions certainly awaited. Claimant is not running from anything and is confident that the Murchinson Plaintiffs' wrongful arrests will be vacated, with Claimant having the opportunity to recover the substantial damages it has sustained due to the Murchinson Plaintiffs' willful misconduct.[2]

C. The Murchinson Plaintiffs' General Allegations Regarding Charter Hire Disputes for Non-Eletson Gas Vessels Do Not Justify Their Proposed Interim Turnover Order

[2] Furthermore, Claimant has fully complied with all orders of this Court regarding the Vessel. The same is true with respect to the court orders that have been issued in relation to the KITHIRA and the ITHACKI. For instance, pursuant to an agreed order, the ITHACKI was allowed to relocate from Point Comfort to Corpus Christi for resupply reasons. *See* No. 6:25-cv-00016, Dkt. 26. During the course of the transit, the ITHACKI was required to leave the District's territorial jurisdiction. However, consistent with the continuous history of full compliance with the court orders issued in these matters, the ITHACKI went to Corpus Christi without issue as promised. If Claimant is permitted to continue to operate the Vessel under the terms of a temporary release, Claimant will continue to adhere to the orders of this Court, as it has done throughout the pendency of this matter.

The Murchinson Plaintiffs generally reference an alleged charter hire payment dispute concerning two oil/chemical tankers (M/T FOURNI and M/T KASTOS) that are not part of the Eletson Gas fleet controlled by the Cypriot Nominees. They cite no court order or other authoritative finding that any of the alleged conduct took place or was otherwise improper. Moreover, as discussed below, if the Court agrees to allow Claimant to release the Vessel on an interim basis under Claimant's continued (and lawful) operative control, mechanisms can be put in place to ensure an accurate accounting and escrow during the pendency of this dispute. While Claimant is hopeful that its clear-cut presentation that Claimant is the lawful and proper operator of the Vessel (and that admiralty jurisdiction is lacking) will promptly secure the full release of the Vessel, to the extent that the Court requires additional time to review the parties' submissions before making a final determination, Claimant is confident that appropriate controls can be put in place that will allow Claimant to continue to operate the Vessel during the pendency of this matter and adequately protect the Murchinson Plaintiffs in the unlikely event that the Court finds possession should be awarded to the Murchinson Plaintiffs.

III.
CLAIMANT'S FORTHCOMING PROPOSAL FOR THE TEMPORARY RELEASE OF THE VESSEL

The Court is afforded significant discretion under Supplemental Rule E(5)(d) and is not limited to the prescribed security requirements for vessel arrests/attachments under Supplemental Rules B and C. Supplemental Rule D arrests are far less common than other arrests/attachments, so the caselaw guidance on security/pre-resolution release is fairly limited. *Fest Pacific Co., Ltd. v. Fredonia Shipping, Ltd.*, is likely the most instructive.[3] In *Fest Pacific*, the Fourth Circuit Court of Appeals looked to Supplemental Rule E(5)(a) for direction, finding that the appropriate remedy

[3] No. 86-2613 (4th Cir. Sept. 23, 1986).

was to allow the claimant in possession of the vessel prior to the arrest to continue to operate the vessel in the interim:

> In claims in admiralty commenced by warrant of arrest of a vessel, a natural advantage adheres to the plaintiff, but that is the nature of the proceeding. While this is a motion for stay pending appeal, I think the admiralty rules are persuasive, if not binding, and the provisions of Rule E(5)(a) should be followed. That rule provides that, **in a case commenced by arrest of a vessel, possession of the vessel should be delivered to the party having it before the warrant was served** upon the defendant giving a bond in the amount of plaintiff's claim fairly stated with accrued interest and costs, but the amount of the bond shall not exceed the value of the property.[4]

Claimant is keenly interested in seeing the Vessel's prompt return to its operational revenue generating activities. The arrest-related delays have already caused one sub-charterer to cancel its contract, and the Vessel's inability to trade during the pendency of this arrest has had a devastating financial impact upon Claimant. Claimant will follow up with its proposed terms for the temporary release of the Vessel on or before the Court's May 2, 2025 deadline. As discussed during the April 24, 2025 hearing, Claimant is confident that sufficient terms and assurances can be put in place to allow Claimant to continue to operate the Vessel with its current crew. This is the most efficient and prudent way to ensure that the Vessel promptly returns to revenue-generating activities.

IV.
CONCLUSION

As set forth above, a temporary release of the Vessel during the pendency of these proceedings can be most safely, efficiently, and fairly accomplished under Claimant's continued operation. While Claimant agrees that, for the purposes of mitigating the substantial damages that continue to accrue, it is best for the Vessel to return to service, the interim possession/turnover-type relief that the Murchinson Plaintiffs seek is unwarranted and unprecedented. Accordingly,

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[4] *See* William A. Durham, "We Just Want Our Ship Back"-Action for Possession in Admiralty, 15 Tul. Mar. L.J. 47, 53 (1990) (citing No. 86-2613 (4th Cir. Sept. 23, 1986) (order granting release of vessel, conditioned upon posting of additional bond)) (emphasis added).

Claimant respectfully requests that, if appropriate, an interim release framework be put in place with Claimant continuing to oversee the safe and proper operation of the Vessel during the pendency of these proceedings. Again, Claimant will provide more specifics regarding Claimant's proposed terms in accordance with the Court's order that such proposal be submitted on or before May 2, 2025.

Respectfully submitted,

By: */s/ Dimitri P. Georgantas*

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on the 25th day of April 2025, I served a true and correct copy of the foregoing pursuant to Rule 5 of the Federal Rules of Civil Procedure and/or via the CM/ECF Filing System and/or by depositing the same in the United States Mail, postage prepaid and properly addressed to all known counsel of record.

/s/ Dimitri P. Georgantas
Dimitri P. Georgantas

EXHIBIT “6”

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Kithnos Special Maritime Enterprise, et al.	§	CASE NO. 2:25-cv-00042
	§	HOUSTON, TX
VERSUS	§	MONDAY,
	§	APRIL 24, 2025
M/V Kithnos, et al.	§	2:07 PM to 3:18 PM

BEFORE THE HONORABLE DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PARTIES: SEE NEXT PAGE

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HOUSTON, TEXAS; MONDAY, APRIL 24, 2025; 2:07 PM

THE CASE MANAGER: The Court calls civil action number 2:25-CV-00042, Kithnos Special Maritime Enterprise, et al. v. M/V Kithnos, et al.

May I have appearances from counsel, please?

MR. FLOYD: Yes. Good afternoon, Your Honor. This is Edward Floyd, from the Floyd Zadkovich firm, on for the Plaintiffs. And also on the line with me I have colleagues of mine, Luke Zadkovich and Augusto Garcia, as well as another associate, Abby Wagg in my office with me, and Eva-Maria Mayer listening in.

THE COURT: Okay.

MR. JORDAN: Good afternoon, Your Honor. Kendrick Jordan, on behalf of the Plaintiffs, as local counsel.

THE COURT: Okay. Mr. Jordan are you going to be speaking today, or just local counsel?

MR. JORDAN: Just local counsel, Your Honor.

THE COURT: Just to help me stay organized and focused, no offense to you, but would you mind turning your camera off? If you need to say anything, for anybody who's not visibly on the screen, you may turn your camera on if you have a need to participate verbally. But for now, Mr. Jordan, camera off. Let me stay focused on the -- This case is complicated enough.

Continue with your --

MR. JORDAN: Understood, Your Honor.

THE COURT: Very good. Continue with your appearances.

MR. GEORGANTAS: Dimitri Georgantas. Can you hear me, Your Honor?

THE COURT: (indiscernible)

MR. GEORGANTAS: Dmitri Georgantas, Eugene Barr, Bruce Ruzinsky, and Victoria Argeroplos, on behalf of the Claimant. Good afternoon, Your Honor.

THE COURT: Okay. Thank you. Good afternoon.

MS. HAAS: And Your Honor, Kelly Haas, on behalf of National Maritime Services. I will turn my camera off, though, because I don't anticipate speaking today.

THE COURT: Okay. All right. Thank you for being here.

MR. HART: Good afternoon, Your Honor. Chris Hart for OCM Maritime Gas 4, LLC (indiscernible)

THE COURT: Okay. And I guess I should begin by saying my apologies to you in the last order that I did, because I -- I think I had words to the effect that your client doesn't really have a dog in the fight. But they really do because they want to get paid, and I am aware of that, and we'll -- Don't let me --

Everybody, we are here today to talk about the potential release of the vessel. And Mr. Hart, I am directing

you not to let me finish these proceedings, to -- if I do get to make a ruling without considering the issue that you raised in your response, about how to get your client paid. And I'll hear from everybody on that issue, but don't let me shut this down without at least giving you your cents, your two cents. Okay.

MR. HART: Yes, Your Honor. Sounds good.

THE COURT: All right.

Now, in my last order, I told you all that the first order of business at the hearing will be you all reporting to me about your conference, about your meeting, and how that went, and if you've come up with a joint proposal for the release of the vessel.

But anyway, with regard to the conference, did that happen, Mr. Floyd?

MR. FLOYD: Yes, Your Honor, the conference did happen. It was quite a fulsome, solid one-hour conference, maybe pushing on to the two-hour mark there amongst a number of us from all the interested parties, including for the custodian, I believe Ms. Haas was on, and certainly Mr. Hart was on as well, and obviously, counsel for the Claimant-purported entity. And we had that conference. Unfortunately, I would say that we have not reached a landing that's mutually agreeable. My impression coming away from the conference was that, speaking here regarding the Claimant and the Plaintiff,

that both parts would like to see the vessel released under appropriate protections, but that on the details of how that would work, there was not mutuality.

There would also be an acceptance I think on both sides of some form of an escrow account for the vessel revenues, be it freight earned on a voyage charter, or hire earned from time chartering, to be paid into escrow. But even on the details at that level (indiscernible) step back, and also for that escrow account then be utilized to pay the so-called op-ex, or operating expenses of the vessel, and I think that everybody accepts that that would likewise include higher due to OCM under the bareboat, and certainly crew wages for the appropriate crew. But beyond that, there is a general lack of mutuality on topics such as trading limits, other protections that might be necessary, and certainly the most important being who would be in control (indiscernible)

THE COURT: Okay. We're going to get into all of these issues. But Mr. Georgantas, I'm going to give everybody a chance to talk. You may not agree with everything Mr. Floyd said, but I take it you agree that you all conferred, and really talked about some issues, but just were unable to come up with an agreement with regard to the release of the vessel. Is that correct, Mr. Georgantas?

MR. GEORGANTAS: That is correct, Your Honor.

THE COURT: Okay. So now, the issue that I'd like to

address today, and hopefully we can come to some agreement, or I can make a decision on this, is whether or not to release the vessel. And I know that the Plaintiff has filed this motion for the release of the vessel, and I don't think -- I know that the owner of the vessel, OCM, filed a response. I don't think that the Claimant, Mr. Georgantas' clients, has filed a written response to that. But you all are on notice what we're to be talking about today, but before I really get too much further in this today, Mr. Georgantas, were your clients intending on filing a response to the Plaintiff's motion to release the vessel? I think under the local rules, it's technically not due until tomorrow.

MR. GEORGANTAS: Yeah, absolutely, Your Honor. It will be filed tomorrow, and it will elaborate in more detail some of the things that we will no doubt discuss today. But the answer is yes.

THE COURT: Okay. Then I am not going to make a ruling from the bench on this motion, but I'm going to make some inquiries. And I think, Mr. Georgantas, you should be able to argue your respective position, because I basically put everybody on notice what we're going to be talking about in my order, dated April 11th, 2025. So that's what we're doing today. I think everybody knows it.

You all are aware of what I'm interested in, whether or not to release the vessel. I think the vessel should be

released, if possible. Who the vessel should be released to, what the conditions are, whether or not there should be some form of financial security. If I order the crew to be replaced, how as a practical matter that would occur, how they would be replaced, how they might get back to their countries, who pays for it, those types of things. If the crew is not replaced, what conditions could be in place to make sure the vessel is not going to abscond, and other concerns.

And then finally, whether or not the vessel could be placed into the custody of a third party for operating the vessel. And that would be the safest way to go, I think, putting a neutral party, but it may not be the most economical way, and there may be other reasons not for doing it.

But with those things that I want to hear about -- And just so everybody knows, I do not want to argue the merits of the case. I don't want to hear anything about preferred shares, or the arbitration award. I don't want to hear anything about that. I have stacks of documents that I've read, I've read bankruptcy proceedings, and it's not really that complicated. I think I have a good handle of this. But I think what I -- I'm not saying I'm going to do this, but you all are pushing me to make a decision on the final resolution of this case. I would really like to see the Bankruptcy Judge, the District Judge, and the Second Circuit give me some guidance on how to proceed, and I would like to slow walk this

case until I get an answer from those courts. I don't necessarily know that I have to. I don't know that we have to, and at some point you all are entitled to have an answer on this case. But for now, I want to focus today on whether or not to release the vessel. So stay away from the merits of the case, and let's talk about getting this ship back to work.

Mr. Floyd, the floor is yours.

MR. FLOYD: Yes, Your Honor.

Getting the ship back to work, I think it's helpful to give a little bit of background on the context of the meet and confer just so the Court can understand what progress was or was not made. As I said beforehand, there's general agreement, I think it's fair to say, on having some type of an escrow account and that the escrow account could be used to fund op-ex. I have no doubt that parties would need to sit down a little bit further to precisely ink out what counts as op-ex from an accounting perspective and so forth. But I'd be shocked if anybody on this call were going to contest that the bareboat charterer's hire needs to be paid, that the crew on a released vessel (indiscernible)

THE COURT: Could you say that again? That sounds important -- that sounds important. Say that again. I want to make sure I'm tracking.

MR. FLOYD: The bareboat charterer -- excuse me, the bareboat -- the owner under the bareboat charter is Mr. Hart's

client, OCM. In OCM's response to the release motion filed yesterday, or the day prior, OCM made clear that they want to get paid their hire under the bareboat. Mr. Hart had also raised that during the meet and confer that occurred a week or so ago. Nobody's contesting that, as far as I know. We're certainly not doing that. That's recognized. Whether that comes before or after the crew gets paid, I don't know, but I suspect reasonable minds could come to a landing on that. And I'm not trying to be contentious on that at all, I just don't know off the top of my head what makes sense there.

But for the escrow issue, my sense is that it doesn't make too much sense to dwell on that, because it's a subsidiary consideration. Certainly, we all have comments and thoughts on it, but that can get worked out. It's the bareboat charter, it's the crew wages, it's port disbursements and so forth, insurance, importantly, things of that nature that, at least from a lay, non-financial perspective, I would think of as being kind of like op-ex, operating expenses.

Where there was disagreement was on a number of different topics, but I'd like to -- and that included whether or not there should be trading limits. Our take was that if the vessel was released, there should be trading limits, namely the Caribbean, Mexico, so that she's not going too far afield, halfway around the world, and trading between countries on the other side of the world, in which case all of the risks

attended to any type of absconding, or other funny business that could go on would become all the more prevalent.

But the real crux of the matter is who, as between Claimant and Plaintiff, would be in control of that vessel during the lease for voyages. And going into the meet and confer, as well as in our motion papers, our position has been emphatically that the Plaintiff should be in control. Mr. Georgantas, on behalf of the so-called Claimants, and I will add just that we don't really know who the Claimants are, but that may or may not be a merits-based issue, so I'll stay away from it. But Mr. Georgantas' position on control of the vessel was that the Claimants should be providing the crew, same crew, same master that they currently have. That is absolutely unacceptable.

MR. GEORGANTAS: I'm sorry, Your Honor, I never said the Plaintiffs. I said the Claimants.

THE COURT: For the Claimants.

MR. FLOYD: (indiscernible)

THE COURT: I understand. I'm tracking. Mr. Floyd, I'm going to allow you to continue, but I meant to mention this at the beginning. And I don't want anybody to respond to this now, but I want you to think about it, because before the end of the hearing I'm going to ask you if either side has a person that they would like to sign off on as being responsible, a physical human being that's subjecting themselves to the

jurisdiction of this Court, that would be willing to go to jail by an order from me in a contempt proceeding if this vessel takes off. I want to know if you all have a person, a live person that I could have sign some form of document. In the criminal context, it may be called a third-party custodian. But a human being who is willing to say, Judge, I'll make sure this vessel is here. And if it takes off, I'm willing to sit in jail until we can get it, get it back. Think about that. And I'm not saying I'm going to do that, but think about it.

Mr. Floyd, you may continue with your argument.

MR. FLOYD: Thank you, Your Honor. And that, I know, has also been one of the questions that I've posed to Mr. Georgantas during various discussions, is precisely, well, who goes to jail if it absconds?

Moving on, though, the crux of the issue is, though, who remains in control? And from the Plaintiff's perspective and position, it is absolutely unacceptable to have any situation in which the Claimants would continue to man the vessel with its top four officers and crew. The situation currently is that those top four officers and crew should be taking their instructions from our clients, but they are not doing so, which gives us considerable concern in that situation.

During the meet and confer, we proposed a compromise, moving away from full replacement of all personnel on the

vessel, the full complement of the crew, and instead going with a replacement of the top four officers, the master, the chief engineer, and another two, or something similar to that. That was rejected.

We went back to the drawing board on the Plaintiff's side and gave further thought to how to propose a compromise that would seem reasonable. And we went across to Mr. Georgantas, to the Claimants earlier this week, I believe it was about 48 hours ago. It might have been either yesterday or the day prior, it was two days ago, and proposed a third-party approach by which a technical manager would be put in place that would be an independent third-party technical manager, and that another management company would be put in place that would be the commercial manager. We put names to those. I'm sure there's others out there that could do the job as well, but these are two big, well-known participants in the gas market, namely Anglo-Eastern and BWEK. That was likewise (indiscernible)

THE COURT: And explain that to me again. Those companies, would they provide a captain? Or what would their role be again?

MR. FLOYD: They would -- So the -- And I'm a non-mariner myself, Your Honor. A maritime attorney, but not at sea. But the technical manager would provide, the essence of it would be the technical management company, which would be

Anglo-Eastern, would provide the crew, and also carry the DOC, or Documents of Compliance, which is essentially the license to trade under the flag state (indiscernible)

THE COURT: When you say the crew, are you proposing the entire crew, or is this the compromise where there would be a partial replacement?

MR. FLOYD: The concept here would have been the entire crew. Because I imagine here, and maybe there is some room for flexibility, but I would imagine if Anglo-Eastern came on in, or any similar large scale technical management company, they would want to put their own people on the ship, and know that they are trained, etc. Now, some of those names might be the same, talking at the crew member levels. I'd expect (indiscernible)

THE COURT: Well, I understand. Your perspective is they would need to make the decision if they're going to take over the ship, and they may find crew members who are suitable to them.

MR. FLOYD: That's correct, Your Honor.

THE COURT: And they may hire some of those persons because they're on the ship, familiar with the ship, ready to work. But you're not promising that, and it's just, it may work out that way. You may continue.

MR. FLOYD: Correct, Your Honor. And I would be surprised if that would -- and I don't think it would be

acceptable if that included the officers, given the situation here. But if some of the crew members remained on board, maybe that happens, but that's beyond my bailiwick.

For the commercial management, those are the folks who would go out to the market to find cargos, either for a voyage charter, a time charter, a trip time charter, whatever it might be, and take bids and cut the deals, etc. There's more to a commercial management situation, but that's the essence of it.

Our initial proposal for commercial management, or for obtaining cargos and getting some business was to set up a panel, be it two or four, split evenly between the Claimant and the Plaintiff, who would go out to the market as brokers, try to get cargos, and then just take the best bid. But given that that was not acceptable during the meet and confer, we reverted with the concept of just going with the independent commercial management company here, the concept being BWEK, that would run the commercial aspects of the ship, financial aspects.

And unfortunately, that has not been accepted. I think that if we can get over that hump, it takes away a lot of the other concerns. Because if there's an independent big party commercial management company in the driving seat, there's a lot less concern about having precise visibility on every single aspect of when $10 gets paid on a court disbursement. And I'm being facetious there. Or more

importantly, there's no concern that a freight rate for the Kithnos, the vessel at issue here, might be artificially reduced, which is a real risk, in order to elevate a freight rate on a different vessel that's also under the erstwhile control of the Claimants in this situation, and effectively shift money around and play a little game of three-card Monte. That's the concern, those types of concerns, but probably also the trading limits go away if we've got a highly respected independent commercial manager, and highly respected independent technical manager coming into play ball.

The other concerns they float away. I think all the other details would get sorted at that point.

THE COURT: All right. Let me turn it over to Mr. Georgantas. You may proceed.

MR. GEORGANTAS: Thank you, Your Honor. I appreciate the Court does not want argument on the merits, and I think there will be --

THE COURT: Proceed on my own risk.

MR. GEORGANTAS: I will proceed air my own risk. Thank you.

But just as a big picture item, I do want to respectfully remind the Court that the burden is on the Plaintiffs to establish that they have probable cause to arrest this vessel in the first place, and maintain the arrest. And we do not think they have met that burden at this point. And

nevertheless, they come to you before and with certain inaccuracies in what was presented that I will explain And they're basically asking for what we think amounts to some kind of an interim award whereby they're asking the Court to give control possession of the vessel to the Plaintiffs, or to some, by way of compromise, third-party manager. And yes, Your Honor, for the reasons I will explain, we vigorously oppose that, because we don't even think they're going to be able to carry the day -- to maintain the arrest at the end of the day. But I won't go any further on the merits, but it is something you need to consider, that they're asking you to give them the keys not only prematurely, but as I would point out, without precedent. There is no legal precedent for what they're asking.

So let me just get to some of the points that took place at the meet and confer.

THE COURT: Okay. Very good.

MR. GEORGANTAS: First of all, let's talk about the officers, their so-called compromise to just replace the top officers. Your Honor, that is not a compromise. That is control of the ship. They are suggesting that the vessels master and chief officer would be the deck personnel, and the chief engineer and the second engineer who control the engine room be appointed by Plaintiffs, that that's somehow a compromise, and the rest of the crew would, you know,

presumably be the Claimant. That is not a compromise. That is a red herring, and it is not a correct, or even accurate or truthful representation to the Court.

These top officers control the vessel. So when Mr. Floyd suggests that we wouldn't even agree to that compromise, that is not a compromise. That is just a different way of them asking for the control of the vessel. Which by the way, if I may add, they already took a (indiscernible) early on when they tried to replace our captain with allegations that he was not cooperating, or there were unsafe conditions on the ship, none of which was proven. And of course, as you know, your order has been complied with without question since that day. That includes documents, reporting procedures, and everything that was in that order, including an email to the captain, with a copy of the order. So this so-called compromise, we reject that.

I appreciate from a sort of high point of view that this other next "compromise" that they're suggesting with respect to some neutral party or third-party management has some initial appeal. I respect that. But it does not, and should not persuade the Court. First of all, one of the entities that they recommended, BW, and it's not the full name, but it's BW, that is a direct competitor of the Claimant. A direct competitor. So by giving control of vessels that are controlled by the Claimant, this vessel and potentially other

vessels, they're exposing the Claimant's operational details to a direct competitor in a situation that they have not even proved that they're entitled to arrest the vessel, in our view. So it's again, not a good solution.

In addition to that, the logistics of having a third-party manager, in terms of safety systems that are in place, insurance policies, vetting procedures that are in place for these vessels to trade with various companies, meaning that they are approved and sea-worthy to carry the cargoes they are supposed to carry, the training of the crew, all that we have right now for these vessels would presumably go away into some kind of an unknown area. And we urge the Court to reject that.

So this is just another way of the Plaintiffs telling the Court that, okay, Judge, if you don't give me the vessel, don't give it to the Claimant, but let's give it to a neutral party. But in the process, they're dispossessing us from the vessel on an interim basis without any legal precedent. And that part, Your Honor, will be in our response. Because I can tell you right now, they cannot point to a single case -- I'm not talking about the merits of the case, I'm talking about what they're proposing. They cannot point to a single case that a court approved this type of release that they're suggesting. The only case that we could find, and we're trying to get a copy of it, because it's an older case from the '80s, is a case that the vessel was in fact released to the Claimant,

not to the Plaintiff for a short period of time.

With respect to the panel of brokers that they suggested that we rejected, not true. They proposed a panel of four brokers, two and two. We suggested that's a recipe for confusion, and that maybe one and one would be a better way to go about it.

We did discuss the escrow account, and we were amenable to that. Revenue goes into the account, expenses are paid, obviously the owner gets paid, Mr. Hart's client. We are in agreement on that. I agree we have to work out some details on that, and we're here to work on those, and to the extent that we couldn't agree, the Court could intervene and provide some guidance.

Furthermore, in connection with the security that the vessel would not abscond, if I can address that issue, an important part of the meet and confer was left out. And we think this is a very important part. We suggested -- we offered to Mr. Floyd that if they wanted to, we would certainly be amenable to keep a representative of the custodian on board the vessel. The custodian, or the representative would basically ride with the vessel, or some arrangement in that context. And in fact, Ms. Haas, who is here with us today, asked whether, you know, somebody from NMS could be that person, and we responded, you know, we didn't have an objection. So that, we think, is a huge protection, because if

the vessel were to abscond, so to speak, which is not going to happen, Your Honor, then we get into kidnapping here, in areas like that. So that's just -- You know, we're starting to get in some kind of twilight zone here, with Mr. Floyd's requests and all that, and concerns about absconding.

To further respond to your question, we had a hearing last week before Judge Ellison, and the release and conditions, potential conditions was also discussed. And I'm here to tell you, Judge Ellison asked me point blank, he said, "Mr. Georgantas, if I tell you to bring this ship back, will you bring it back?" And I immediately responded, "Yes, we would, Your Honor." And of course, any other teeth that the Court, Judge Ellison or you would want to put in an order.

I appreciate you asked about the person that basically we would nominate, and I'm happy to go back to our client and respond to that request very quickly, Your Honor, in terms of a violation of the order, that somebody physically would agree to come and go to jail if your order to presumably bring the ship back, I assume, was violated, and the ship did not come back, you know, within reasonable travel time to get back to your jurisdiction. So that is something that, you know, we can certainly discuss with our client, and get back to you.

The presence of a custodian on board I think is huge, because that would ensure that not only is the custodian on

board, but presumably in communication with the Plaintiffs and/or the Court as necessary, because as you know, the custodian is basically a substitute for the U.S. Marshal.

With respect to the meet and confer, we also offered to report to them twice a month where the ship would be going. And by the way, these offers, Your Honor, would be made across for the other two vessels that are under arrest in this district. We offered to report to them where the vessels would be going twice a month. We told them, confirmed to them that the vessels' AIS would always be on, because that is a requirement in any event, and they could track the vessel with the AIS signal, electronically. Just about anybody could do that, that has the software.

So we further offered for the escrow account to be set in an account that will be within the jurisdiction of the Court. So whatever escrow account is set up, it would be within the jurisdiction of the Court, so the money that goes into the escrow would be within your jurisdiction.

With respect to replacing the crew, as things currently stand, there could be logistical problems. Right now, we have two or three crew members on one of the vessels that their contracts have expired, they want to go home, we want to send them home, we want to replace them, but we have had issues with immigration in terms of allowing them to get off the ship. And we're trying to work with the port director

in Corpus, and see if we can make some exemption for these crew members to go home, and be replaced. So there will be huge logistical problems with wholesale replacement of the crews, in addition to basically removing crews that know the vessel, they're fully trained, and they have been on board and training on these vessels.

With respect to the training limits, Your Honor, it's a little bit of a gray area, and let me express to the Court what our position was on the meet and confer. They want a trading limit, U.S.-Mexico, which by the way, one or two of the vessels have been on what we call a milk run between Texas and Mexico, but that was only because of that particular charter party, or the contract with the shipper of the cargo. But they want a trading limit, Caribbean, sort of Mexico and no further, because then we get into other parts of the world. Again, there's some sort of initial appeal to that because they're close, they're in the Caribbean or the U.S. Gulf. But what remains unassailable is that whether it's the Caribbean or Singapore, they're still out of the jurisdiction.

So the concept of limiting the trading pattern or range, if you will, of these ships could affect their profitability. Because you know, we may be able to fix a charter, or book some cargo to go to somewhere other than the Caribbean, but it could be very profitable. Whereas a booking to go back to Mexico, or some other place within a trading

restriction would be less profitable. So the trading restriction presents, potentially, a commercial adverse impact in terms of the vessel's ability to gain maximum revenue, as opposed to trying to be safe and stay close, but still well out of the jurisdiction.

I'm trying to see here what other proposals we made to them.

THE COURT: Can I interrupt? And I'll allow you to go back to your presentation in a minute.

MR. GEORGANTAS: Of course.

THE COURT: But in many of these types of cases, I see an application for a bond to release the vessel under certain financial security. I haven't seen anything like that presented. Can you address that, about whether or not that's a possibility? If not, why not? Why it hasn't been done, if it's viable? That type of thing.

MR. GEORGANTAS: Yes, Your Honor, you're right. In these cases, it's either a bond, or some other type of security that typically, in the maritime world, the vessel's P&I club, the Marine insurer, puts up what we call a Letter of Undertaking. This is in cases where you have an arrest under Rules B and C of the Maritime Rules, where somebody has a claim, or for instance, somebody made a repair on a vessel and they didn't get paid. That gives them a maritime lien to arrest the vessel to get paid. If there's a dispute, the

owner, or the P&I club puts up security for the claim, and the vessel is released.

Rule D is a little bit of a different animal because we're talking about a possessory interest here that they are claiming, which we don't think they have. So we're talking about, basically, the value of the vessel, and these are going to be significant amounts.

With respect to releasing the vessel to the Plaintiffs, it will be the claimant that's exposed. Because if they abscond, we have nothing. And if we prevail, and I think we will on the wrongful arrest, there's going to be significant damages here, and we will not have any recourse against the Plaintiff. And so I think that's a good question that you posed. Whereas if the vessel remains with the Claimant, we do have the escrow account in place that we have proposed, and we can sort out the rest later on, when the Court decides on our motion to vacate.

THE COURT: I should have asked this, and I'm sorry about this for both of you, but this agreement with the vessel, this chartering agreement, when does it end? And would it likely be re-upped? That type of thing? Is there --

MR. FLOYD: Your Honor --

MR. GEORGANTAS: I would like to check, but probably -- I'm guessing maybe another two or three years -- I'm sorry (indiscernible)

THE COURT: On the charter agreement, is it set to --

MR. GEORGANTAS: (indiscernible)

MR. FLOYD: (indiscernible) the bareboat charter, and Mr. Hart would be in the best position to answer that question, and I think that's why he just came on the screen.

THE COURT: Okay.

MR. HART: Yes. Your Honor, I believe the bareboat charter party will check the terms, but from my memory, it has a five-year term --

THE COURT: That's right.

MR. HART: -- a date in February 2022, so it would run through roughly February of 2027.

THE COURT: Okay.

MR. FLOYD: And Your Honor, I believe (indiscernible)

THE COURT: And so it's kind of technical, and it doesn't sound like either side's really pushing for a bond. But it's not really the value of the vessel that we're talking about the bond might be for, because neither the Plaintiff or the Claimant own the vessel. You're really talking about the right to use the vessel, and the process in the vessel.

Mr. Floyd, I might have --

MR. FLOYD: (indiscernible)

THE COURT: Go ahead.

MR. FLOYD: Your Honor, I know none of us have the exhibit up on the screen or anything at this moment, but I

believe that in the bareboat charter, there's also a purchase option on the backend.

THE COURT: Okay. Okay. All right.

MR. FLOYD: And if I can, on a couple of (indiscernible)

THE COURT: Let me -- Before I turn it over to you, Mr. Floyd, just a second. I'm going to let Mr. Georgantas just finish his thoughts, and then I'm going to give each of you just a brief rebuttal, just a very brief rebuttal.

But Mr. Hart, can you just give me a general, if you know, an idea about how much -- you know, I don't know if I want to say gross profits, but how much money does this vessel generate over the course of a year? Like, I'm just trying to get my sense of, like, the dollar figures that we're dealing with here, and how much money it's costing to just have this vessel not working. I'm just trying to get a handle on the finances.

MR. HART: Well, from the owner's perspective, Your Honor, I can say that off the top of my head, I think the current monthly bareboat charter hire payments are, I think, $130,000 per month (indiscernible)

THE COURT: Does that apply whether or not the ship is working or not? It's not a percentage of the cargo, you all get paid $130,000 a month whether it's working or sitting in dock?

MR. HART: Yes, Your Honor. Yes, that is correct.

THE COURT: Okay.

MR. HART: It is not contingent on the vessel (indiscernible) bareboat charter.

THE COURT: And I'm sorry, did I hear you correctly, it's a month?

MR. HART: Yes.

THE COURT: Okay. All right. That's important.

MR. HART: So that's --

THE COURT: For some --

MR. FLOYD: Your Honor --

MR. GEORGANTAS: Just if I may, I'm sorry, I was going to supplement Mr. Hart's comment, if I may be allowed.

THE COURT: You may. You may, and then -- But Mr. Hart, I'm going to go back to Mr. Georgantas after you, but anything else on this kind of profit, or anything else that you want to say before we move back to the adversary parties?

MR. HART: Just I can say my calculator does tell me an annual amount of that charter hire would be roughly in the neighborhood of $1,560,000. Which again, the terms of the charter party may differ. But that provides an approximate range for just the bareboat charter hire. The vessel, while it's in operation, of course has other expenses. But that's one of them.

THE COURT: Okay. Understood.

All right, Mr. Georgantas, we cut you off in your presentation. I'm going to let you finish that up, and I'll turn it back to Mr. Floyd, and then, Mr. Georgantas, I'm going to give you the last word before I check in with Mr. Hart. So Mr. Georgantas, you may wrap your thoughts up.

MR. GEORGANTAS: Right. So I know what the Court is trying to get, so Mr. Hart's client gets his fixed $130,000 a month. But that is not the gross revenue of the vessel, Your Honor.

THE COURT: Understood.

MR. GEORGANTAS: That is -- yeah, that is what we pay Mr. Hart. We turn around, and we go out in the market, we carry cargoes, so those revenues are, you know, well in multiple seven figures over a year period. And depending on what the market is doing, you know, did you get a, you know, a good trip or not a good trip -- A little bit of what I was talking about earlier was limiting the vessels trading range with respect to getting a good picture that will pay more money than something else. So we just don't have the number, but it's a significant number, Your Honor.

THE COURT: Okay.

MR. GEORGANTAS: The other item in the bareboat is this option purchase that we currently have. We are the rightful Claimant, and again, not getting into the merits. And if we're dispossessed of this vessel, whether by the Plaintiffs

or by the third-party manager in an interim sort of award, then potentially, if they disappear, and it could happen, then we lose that option that we can exercise. That is our option right now. They have not proven otherwise. They're just coming in here on an interim basis, and in our view on very shaky grounds, but that's for later, for you to decide. But there is an option purchase there that we need to protect on our part with respect to, you know, an interest in the vessel. So just to address that.

So as a concluding remark, Your Honor, I just want to conclude kind of the way I started. There is no precedent for what they're asking in this interim kind of manner. We all agree that it would be best for the vessel to gain some revenue, and mitigate losses. And I think the best way to do that is for the vessels to reach -- or this particular vessel to be allowed to continue under the present situation of the Claimant, with the commercial management that we have, the technical management, our crews, and the money to go into an escrow account, and any other precautions that the Court might want to put in place.

But we do respectfully request that their suggestion for the Plaintiffs to take over the vessel, or a third-manager, should be rejected, and we will be elaborating further in our response to the motion to release that you can, you know, review at your convenience.

THE COURT: Okay.

MR. GEORGANTAS: Thank you, Your Honor.

THE COURT: All right. Mr. Floyd, I'm going to let you wrap up your comments, and as I said before, then I'll give Mr. Georgantas his final word, and then I'll hear from Mr. Hart.

MR. FLOYD: Thank you, Your Honor. And to begin with, I'd like to go to the bond issue, which is somewhat discreet from the other topics here. My rough sense, having looked at a few charter parties over the time and everything, and obviously the rates fluctuate, they're indexed and so forth, is that the value of that ship in the hands of somebody holding, being the charterer under the bareboat, and thereby having the ability to go out and charter it in the market, would be in the range of perhaps $20,000 per day. So we're talking about a very, very valuable asset with a purchase option on the back end of that 2027 end date for the current bareboat. So it is a very valuable asset in the hands of the rightful holder of that asset.

And that somewhat parlays into the next topic, but just underscores from our perspective if the Court has any consideration whatsoever of sending this ship back to sea with any part of the current crew on there, we absolutely believe that the value of a bond to be posted by the so-called Claimants, again don't know who they are, which is another

concern, and a very legitimate one, is that it needs to at least be in the value of the ship. And if the Court would like supplemental briefing from any of the parties on that particular issue of what the value of the vessel is, we'd be happy to do so on a bonding topic there. But from our perspective, that ship is never coming back to the U.S. If it gets underway with the so-called Claimant's officers and crew aboard, it's gone.

That shifts to the next topic there, of why we have all that concern, and I think that's really where this goes to. I'd like to go to a comment that Mr. Georgantas had during the penultimate, or second penultimate sentence that he was concluding with. He just said, "We want to use the technical management we have in place." Your Honor, the technical management for the Kithnos is Alexin Corporation. Alexin Corporation is a wholly owned subsidiary of Alexin Holdings. Alexin Holdings is our client, it is indisputably our client. That is what Judge Mastando of the United States Bankruptcy Court has said, that is what Judge Lyman has said. They have both underscored that there are not two Alexin Holdings out there, there's just one, and that is our client. There's no dispute about that. And its fully-owned subsidiary, Alexin Corp., is supposed to be the technical manager of this ship right now, but this ship has been effectively, and I'm not being facetious or over the top here, it's been pirated, Your

Honor.

And Mr. Georgantas earlier in his dialogue, in his argument said that they're going to pull up some precedent from the 1980s about a similar situation. I'm willing -- Judge, you wanted somebody who will go to jail? I'm willing to say right now that Mr. Georgantas finds a precedent from the 1980s holding that pirates got their ship back on a release order, and were able to sail off as the pirates, with their parrots on their shoulders and everything else, after stealing the ship. I'll be the one to go to jail, Your Honor. I'm not confident he doesn't have that case there from a United States court. I think we all know that.

But that piracy situation, with no over-the-top discussion, is what's going on here. These ships are owned by the -- the ships are owned by the registered owners, but are supposed to be under the control and operation and revenue earning service of our clients. Yet, despite pumping $53 million, plus a full debt for equity swap into the Bankruptcy Court to bail out a company that had been run into the ground, our clients have yet to get a single penny of freight for hire revenue from any of these ships, including the Kithnos. And that consideration goes to all of the hallmarks that give us considerable extreme concern that the Kithnos is gone if she's allowed to sail with Mr. Georgantas' Claimant crew aboard.

Mr. Georgantas proposed, oh, it's all right. They've

got AIS, they can track her around the world. Well, that's coming from the same people who down in Panama have a ship called, that we now have under arrest in Panama, but the Kimolos, K-I-M-O-L-O-S, for a corporate reporter needing that. Kimolos is under arrest. Kimolos is the one that -- and I'm not a tech person, but spoofed her AIS system so that she looked like she was on the west coast of the Panama Canal when she was supposed to be, and actually on the east coast, in order to try and avoid an arrest. That's a safety issue right there. Take the people who perpetrated that safety issue, and get rid of them. They shouldn't be anywhere near a ship. That's a danger to everybody, and it's certainly a danger to my client's financial interests. That's a problem right there.

Off the coast of Texas, another ship. Two, three months ago, the Kinaros, K-I-N-A-R-O-S (indiscernible)

THE COURT: Mr. Floyd, I'm so sorry, I only have a limited amount of time today. But the arguments that you're making about some of the alleged conduct has been presented to me in motions and pleadings with affidavits, and I'm familiar with that. So I don't want to cut you off, but if I give you another 15 minutes, I'm going to need to give it to Mr. Georgantas. So I'll give you just a few more minutes to --

MR. FLOYD: (indiscernible) understood.

Mr. Georgantas has said that the idea of putting a custodian rep aboard is somehow a cure-all. It's not. There's

plenty of little games that could be easily played to get the guy off, guy or woman off the boat in some other port. Steps off, goes to use the port-a-john, not coming back aboard, police situation, all little things that could happen. That is no cure-all. And on top of that, what is a custodian going to do to turn a ship around? That's not their role. There's a master on the ship. It's a ridiculous proposition that goes absolutely nowhere.

And Your Honor, I do believe that everything's been fully briefed in the papers here. Just to sum it up, we came to the table last week with reasonable proposals. As I said earlier on, we started off with one proposal, which was on the commercial side to have a panel of four. They said, why not just one, oh, go to one to one. We negotiated, we tried to make different proposals. We said initially, a full crew replacement, then we said top four, then we said go with an independent commercial manager. We have not seen any compromise, any movement whatsoever from the other side. They come back saying that BWEK is a competitor? Okay. Well, BWEK as the commercial manager would be going on out, and marketing the vessel, getting trades, getting cargos, and utilizing the asset to earn revenue. There's no commercial competition there. It's a fanciful argument.

All of that goes to they can't be trusted. And this whole idea that they might provide somebody who says that

they'll go to jail? They're all over in Greece and Cyprus. And these people have repeatedly ignored, violated, etc., orders from Judge Lyman and Judge Mastando. They cannot be trusted, and they don't care about United States law.

That's all I have, Your Honor.

THE COURT: Okay. Mr. Georgantas, last word? If you have --

MR. GEORGANTAS: Yeah, Your Honor, I have -- Regrettably, you know, Mr. Floyd elected to get into some mud-slinging here, and I have to make a couple of comments.

Number one, the comments about us being not to be trusted, or we're bad actors, these comments are coming from a group of people, and I'll be brief here, that basically bribed our CFO. This is in evidence, Your Honor. This is not allegations, like Mr. Floyd is making here in his desperate attempts, and hysterical attempts to paint us in a bad light. This is a finding by the arbitrator, together with evidence of a wire transfer of $100,000 from Mr. Floyd's clients, bribing our CFO in order to obtain information that would give them an edge in the arbitration, with promises of additional compensation if things both went well. These are the people that Justice Bell and the arbitrator, having seen witnesses, documents in a full arbitration, determined they were immoral and corrupt. Those are his words, not mine. So what you're hearing today, please consider the source of, you know, who's

talking here.

With respect to having the custodian on board, I would not dismiss that so easily in terms of Mr. Floyd's what could he do. A custodian would be on board, it would be a representative of the U.S. Marshal, from a Federal Court of the United States, and I cannot even begin to think that anything bad would happen to such a custodian. There is no history of this vessel, or the other two vessels that would indicate that, not complying with orders.

And in fact, all courts that issued orders with these three vessels all have been complying with. And in particular, the other vessel that is also in your division, the (indiscernible) at some point had to move from Point Comfort to Corpus Christi in order to make the supplying of the vessel easier, and she had to go to port. In order to do that, we had to get a court order, and in order for the vessel to safely navigate from Point Comfort to Corpus Christi with the custodian on board, she had to temporarily leave the U.S. jurisdictional waters. She had to go outside the jurisdiction. She did, she went to Corpus Christi, and per the court order, went back out to the anchorage, as ordered to do, where she remained.

So I would ask the Court to completely discard all the hysterical allegations coming from Mr. Floyd, that are not based in fact or any reality of what's going on here, in their

attempts to do some sort of interim dispossession, hoping against hope that they might prevail.

One last comment (indiscernible)

MR. FLOYD: Your Honor, not to interrupt, but I will ask that I have a chance to respond to that. (indiscernible)

THE COURT: Just a second.

MR. GEORGANTAS: One last item, Your Honor. He may mention again about their investment, and the bankruptcy, and the $53 million. There were other vessels involved in this fleet. He makes it sound like his client did not receive any value. What they've done here, in big picture, is they've taken the bankruptcy banner that has nothing to do with what we call the gas vessels, and they tried to involve the entire fleet, whereas the bankruptcy involved other vessels that were tankers, and they got value for that. In fact, they already got two vessels worth of value earlier on, and now they're taking the broad brush out and trying to suggest that they paid all this money, or traded for equity, and they didn't get value, and as such confusing other vessels with the gas vessels that are at issue right now.

THE COURT: Okay.

MR. GEORGANTAS: Thank you, Your Honor.

THE COURT: All right. And Mr. Floyd, I'm not going to let you respond, because we'll be here all afternoon. But we're going to -- I'm not going to make a decision for --

MR. FLOYD: (indiscernible) false statement that he made, Your Honor (indiscernible)

THE COURT: You can file something for the record. Put it on the record, to clear the record up if you need to.

MR. FLOYD: I'll do so, Your Honor.

THE COURT: You can do a statement for record. But I'm going to keep control of my proceeding, and keep moving forward.

MR. FLOYD: (indiscernible)

THE COURT: Before I turn it over to Mr. Hart, limited to my question, Mr. Floyd, and I'll ask Mr. Georgantas the same thing, you can't speak for the Second Circuit, the Bankruptcy Judge in the Southern District of New York, or the District Judge. But if you were going to anticipate when we would hear something in the form of a ruling that might provide the Court -- And I know there have been some rulings, and I know there have been some orders, okay, but I'm talking about something dispositive. When would you anticipate there might be an order coming? Just as a practitioner.

MR. FLOYD: Your Honor, you're talking about an underlying ruling (indiscernible)

THE COURT: I know there are a lot of issues, there are a lot of issues out there. But just to give me an idea, if you think that this is something that will come out this summer, or if it could be 18 months or 12 months before this

matter gets cleaned up --

MR. FLOYD: (indiscernible) I think that there -- The only projection that I can make there, Your Honor, is that I believe last week, there was another sanctions motion filed the week before the Bankruptcy Court regarding appearances being made around the world on behalf of parties that (indiscernible)

THE COURT: Okay. All right. So you're just basically -- You're not certain. There's not, necessarily, something that's imminent.

Mr. Georgantas, do you just generally agree with that? Because I really would be -- I'd be remiss if I made --

MR. GEORGANTAS: (indiscernible)

THE COURT: I'd just be, I'd be making a mistake if I come out with this decision -- Somebody's going to be unhappy with the decision that I make, and if I make a decision, and then a week later we get some guidance, you know, from one of these courts, that was imminent, then I may have been premature. But right now, I'm not inclined to wait.

Mr. Georgantas, you may be heard on that.

MR. GEORGANTAS: Your Honor, I would like -- I would like to answer. Thank you.

First of all, no, no -- The references to sanctions against the lawyer, these are just bully tactics from the Plaintiffs, trying to scare lawyers off, not to represent their clients. But that's all I'm going to say on that.

But in response to your question about an order, as far as I'm concerned, all the orders from the Bankruptcy Court or the District Court in New York that pertain to this case have been issued. And (indiscernible)

THE COURT: I'm familiar with your position. All right, that's all I need to hear. You're --

MR. GEORGANTAS: -- but I do -- Here is my comment, though. They cannot point to a single order, award, or document, other than their invalid documents that they prepared by themselves, without authority, from Eletron Gas, the owner of the Kithnos SME, that shows they have any authority to act on behalf of Eletron Gas, Kithnos SME or the vessel. Not one.

THE COURT: All right.

MR. GEORGANTAS: The only statement that's correct is in their complaint. I'll conclude with this, and I ask you to look at it, Your Honor --

MR. FLOYD: Your Honor, this is all going to the merits.

THE COURT: Understood. Understood.

MR. GEORGANTAS: (indiscernible) subject, one last comment, Your Honor. Please read their complaint. That was the only verified document that they have filed. And in that complaint, because it was verified, they have admitted that all they control is the common shares of Eletron. It's in their complaint. And they had to say that. That is correct. But

those are not the controlling shares, and (indiscernible)

THE COURT: Understood. Understood. Understood.

MR. GEORGANTAS: (indiscernible) thank you, Your Honor.

THE COURT: Mr. Georgantas, I'm cutting you off. There's a lot more to it than that. I understand, there's a lot more to it than that.

MR. GEORGANTAS: (indiscernible) I agree.

THE COURT: All right. Mr. Hart, anything, before I tell the lawyers what I'm going to direct them to do? I think you're on mute, or --

MR. HART: Sorry. Your Honor, I would just like to comment that I'm very glad to be in a case where all the other parties are agreeing that my client should be paid. Otherwise, we're neutral on these other points, Your Honor.

THE COURT: Okay. And I don't want to put you in a position of having to get sideways with one of the parties, and I'm not asking you to choose which is your preferred plan. But I'm about to order the lawyers to present orders, their proposed orders on the release of the vessel. Those orders, I'm requiring that they confer with you with regard to how your client will be paid. And so important to me is whether or not their proposed order, with regard to your client being paid, is satisfactory. I'm not asking you to pick which one is more favorable for you, but if the proposed method in these orders

that they're both going to submit, if that's agreeable to your client, that's all I really want to know. If it's not agreeable, you can file something, saying why. If it is, the lawyers will just say in their order, this is agreeable to OCM, having conferred with the other side.

Generally, these are my marching orders from the lawyers. I wish you could have come up with an agreement amongst yourselves, but that just doesn't happen. And it may not ever happen in a case like this. So the vessel hasn't been released yet. I haven't decided that I'm going to release the vessel, but I really would like to release the vessel. So what I'm ordering both of you all to do, Mr. Floyd on behalf of your clients, and Mr. Georgantas, on behalf of your clients, I'm directing that you file proposed orders to release the vessel. I know you kind of have one, Mr. Floyd, attached to your motion, but that's not really -- it doesn't provide me with enough information.

And just so you know, I'm not going to just sign off on a proposed order like I'm granting a continuance. I'm going to do my own order. But I would like you to prepare the order as though you were sitting in my position, answering the questions that we have addressed, about what is going to happen with the crew, what the escrow account is, and whatever your proposed plan is. And I would ask you to do your best to moderate your proposed order. Because if your order -- and if

your order is on the extreme side, I might just pick the order on the other side. So I would ask you to come to the middle, and give some ground in your proposed order, understanding that you really might like me to take a different action. But if you want any chance of your order being approved, you know, try to moderate your request in something that me, sitting as someone trying to be impartial, might be willing to sign off on.

I'm not going to give you a lot of further instructions. I'm just going to leave it to you to present these proposed orders. Present a nice, clean proposed order. You can submit a brief if you want to with it about -- filling in some details, you know, because the order you probably don't want congested with explanations about it. You can put that in a brief. But have a real nice, clean order for me, because the truth of the matter is that I'm going to use some of the language on the order, assuming I do release the vessel, whosever order I choose to be a guide or framework for releasing the vessel.

And I was somewhat jesting about someone being thrown in jail, but to the extent that there is someone who is willing to be responsible for the vessel, and have to come to the Court and answer it, you know, that could be in a proposed order, and you're invited to submit a statement or an affidavit on someone who's willing to submit to the jurisdiction of the Court. I

don't even know if that's necessary. But present your best proposed order that you think I might be inclined to grant.

And how much time would you like to present your proposed order, Mr. Georgantas? I'm only starting with you because I've been starting with Mr. Floyd.

MR. GEORGANTAS: Thank you, Your Honor. We have some responses coming your way in the next day or two, so that's going to be quick. And obviously, we would like for you to at least have those for, you know, further consideration, as they relate to the issues, particularly the motion to release.

Could we ask maybe to have something proposed to you by next Friday?

THE COURT: I think that's fair. That's pretty quick. That's going to have some associates working on the weekends, but it's not too long.

MR. GEORGANTAS: Okay. Okay (indiscernible)

THE COURT: I think a week -- I think a week is fine, but I think we need to get the vessel back to work sooner than later.

Does a week work for you, Mr. Floyd?

MR. FLOYD: That it does, Your Honor.

THE COURT: Okay. All right. And so you can file your proposed orders --

Mr. Georgantas --

MR. GEORGANTAS: (indiscernible) next Friday

(indiscernible)

THE COURT: A week from Friday. A week from Friday.

.MR. IVANOV: Yeah, thanks. That's what I meant. Sorry, Your Honor.

THE COURT: Yes, understood. And then, Mr. Georgantas --

MR. FLOYD: (indiscernible) a week from next Friday, next Friday being May 2nd, Your Honor?

THE COURT: I think I'm thinking a week from tomorrow.

MR. FLOYD: A week from tomorrow? Okay, that sounds correct, Your Honor.

MR. GEORGANTAS: (indiscernible) that's correct.

THE COURT: Okay. A week from tomorrow. And Mr. Georgantas, I also recognize that you have a response that is going to be filed to this motion to release the vessel, and I'll be getting some additional briefing on that. I also note that there's currently, technically not a motion -- there's a motion to vacate the arrest. There's technically not a motion to release the vessel under conditions of release filed by your clients. If I remember this docket correctly, Mr. Floyd's clients have a motion to release the vessel to them. Mr. Georgantas, your clients currently do not have a motion to release the vessel to you all. I'm directing you to file this motion, so you don't necessarily have to file a motion to

release the vessel. I will consider your proposed order that you're submitting, essentially, a motion to release the vessel.

And I haven't made any decisions on this. I'm really going to look at what you file, and address all of the things that I have to in making a decision. And I look forward to getting your orders.

And does anybody --

MR. GEORGANTAS: Thank you, Your Honor. If I may explain, the reason you didn't get a motion to release from us is because we filed a motion to vacate, which is basically (indiscernible)

THE COURT: And I'm not I'm not criticizing you. But I was just thinking procedurally, I'm ordering you to file a proposed order for relief that you have not sought. But I'm just doing it that way because I think it's the most efficient way, than making you file a motion, and getting everybody back and forth with their responses. If you feel that there's a better procedural way to do it, you may file an appropriate motion. I don't think that there is. I think my idea is a good one. Get your proposed orders, and let me make a decision.

MR. GEORGANTAS: (indiscernible) we're going to file a motion to release.

THE COURT: Okay. That's fine.

MR. GEORGANTAS: (indiscernible)

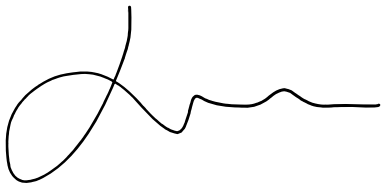
THE COURT: And both sides, just so you know, both sides can -- I don't want your orders, again, congested with arguments and rationale and case law. File me a nice, neat, clean order, and then you can submit a brief along with it on why, filling in some of the gaps, and we'll make a decision. Hopefully, I'll get that decision entered relatively quickly.

And just so you all know, that's it for today. If anybody has anything further for today, speak now, or forever hold your peace. Hearing nothing from the lawyers, thank you for your appearances. And you all may not believe this, but I find this case very interesting, and I'm glad that I have had an opportunity to hear from both sides. We'll see you next time.

(Hearing adjourned at 3:18 p.m.)

C E R T I F I C A T I O N

I, Lindsay Peacock, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



Lindsay Peacock

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Date: April 25, 2025

EXHIBIT “7”

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

KITHIRA GAS SHIPPING COMPANY, ELETSON HOLDINGS, INC., ELETSON CORPORATION, ELETSON GAS, LLC,	)	
Plaintiffs,	)	CIVIL ACTION NO. 4:25-cv-00755
VS.	)	
M/V KITHIRA (IMO 9788978), her engines, tackle, equipment, and appurtenances, in rem,	)	
and	)	
FAMILY UNITY TRUST COMPANY, GLAFKOS TRUST COMPANY, LASSIA INVESTMENT COMPANY, ELAFONISSOS SHIPPING CORPORATION, KEROS SHIPPING CORPORATION LASKARINA KARASTAMATI, VASSILIS E. KERTSIKOFF, VASILEIOS CHATZIELEFTHERIADIS, KONSTANTINOS CHATZIELEFTHERIADIS, IOANNIS ZILAKOS, ELENI KARASTAMATI, PANAGIOTIS KONSTANTARAS, EMMANOUIL ANDREOULAKIS, ELENI VANDOROU, in personam,	)	3:00 P.M.
Defendants.	)	**VIA ZOOM**

MOTION HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE
April 17, 2025

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THE COURT: Good afternoon. Welcome. This is Keith Ellison. We're on the record in Kithira Gas Shipping Company v. the Claimant.

We'll take appearances, Counsel, please. What I want is just the people who plan to speak. I know you've been through the roll call with the court reporter. I just want the people who plan to speak on behalf of Plaintiffs and Claimant.

MR. FLOYD: Yes, Your Honor, good afternoon. This is Edward Floyd from the Floyd Zadkovich Firm on for the Plaintiffs.

THE COURT: Thank you.

MR. BARR: Eugene Barr, Royston Rayzor, for the Claimant. And also with us is Bruce Ruzinsky of Jackson Walker for the Claimant as well.

MR. RUZINSKY: Good afternoon, Your Honor.

THE COURT: Good afternoon to both of you.

Thank you for your writings. They've been very helpful. Have you discussed how you wish to proceed this afternoon?

MR. FLOYD: We have not, Your Honor.

THE COURT: Who is that speaking?

MR. FLOYD: Your Honor, I apologize. That was Edward Floyd for the Plaintiffs who first said, "We have not."

MR. BARR: Your Honor, Eugene Barr. We agree, we have not discussed.

THE COURT: Okay. We have Claimant's motion to vacate the arrest, and Plaintiff's motion to release the vessel. We will start with Claimant's motion to vacate the arrest. In the course of your presentations, I want both parties to give a capsule summary of what you think the effects of the bankruptcy has been upon ownership issues. I'm beginning to think that if it is that unclear, we might want to return to the bankruptcy court and get a clarification. I mean, normally, if there's anything at all that's clear after bankruptcy it's ownership, but there seems to be quite a lot of disagreement about that in this instance.

Okay. Mr. Barr and Mr. Ruzinsky.

MR. BARR: Your Honor, Eugene Barr. Just the way that Mr. Ruzinsky and I are going to handle this, Royston is going to discuss the jurisdictional aspect of our argument as well as the time charter aspect, and then Mr. Ruzinsky will cover the bankruptcy-related items.

THE COURT: Okay.

MR. BARR: And so just, you know, from a 20,000-foot view, you know, this is a complex and ongoing shareholder dispute hinging on control of the company Eletson Gas. Eletson Gas was originally a joint venture between Eletson and a private equity fund Blackstone. Blackstone made a substantial investment in Eletson Gas, and in return for that investment, Blackstone received the preferred shares in Eletson Gas. Under

the framework of the company agreement for Eletson Gas, preferred shareholders controlled the Eletson Gas board, and that control trickled down to each of Eletson Gas' wholly-owned subsidiaries. There's about a dozen of those subsidiary companies that pertain to a vessel in Eletson Gas' fleet. So, basically, about 12 vessels. Kithira Gas is one of those subsidiary companies.

After Blackstone had gotten involved in this JV, they decided to exit the company, and Blackstone sold its shares to another private equity fund Murchinson. And Murchinson in turn headed those preferred shares to its affiliate Levona. Levona is not a party to this case. The Eletson-Murchinson relationship did not go well, and Eletson took the opportunity in March of 2022 to make arrangements for Murchinson's exit from Eletson Gas. And as part of that, two LPG ships were handed to Levona in exchange for the Eletson Gas preferred shares. And then in turn those preferred shares were transferred to three separate entities, Fentalon, Desimusco, and Apargo in March of 2022. And those three companies are what we have referred to as the Cypriot Nominees in our briefing, and on whose ultimate authority and instructions we have appeared in this case.

Levona, apparently, disagreed with the effect of the transfer of the two vessels, and a dispute arose under the company agreement for Eletson Gas. That dispute was referred to a JAMS arbitration in New York as per the terms of the company

agreement. As that arbitration proceeded, things were not going well for Levona and Murchinson. They hedged their bets and cheaply bought up some of Eletson Holdings' debt, and put the company into involuntary bankruptcy in March of 2023. And with the apparent hedge, you know, they lost arbitration. You know, they could -- them being -- turning up as the reorganized Eletson Holdings, and then, you know, perhaps have a favorable position upon, you know, that switch. But Murchinson and Levona not only lost the arbitrations, the hedge didn't work either because the arbitrator had found a year before this bankruptcy the preferred shares were already transferred to the Cypriot Nominees in March of 2022. The arbitration is now the subject of confirmation proceedings in the Southern District of New York, but the arbitrator's findings with respect to the March 2022 transfers of preferred shares to Cypriot Nominees has remained undisturbed to date.

There was also a stay relief order that the parties to the arbitration could not do anything to impair the property subject to that arbitration, and this would include Kithira Gas' time charter interested in the Kithira. So that pretty well explains why Levona is not here. But the way that the Murchinson Plaintiffs have couched this lawsuit is that they have emerged as the victors of this bankruptcy and that that's entitled to take over Eletson Gas and its interest in this Kithira vessel. We would -- our briefing, of course, has

covered that. You know, we certainly disagree with that. We don't think there's any order or award that's consistent with that. The preferred shares were never part of the bankruptcy estate whenever that bankruptcy action was initiated about a year after the --

THE COURT: That's the part that puzzles me. Normally in a reorganization -- I know this is a creditor-induced bankruptcy; it got converted by Chapter 11 reorganization -- there are some reordering of rights and priorities. And I thought what happened in this creditor-initiated plan was that equity is wiped out and shareholders -- and various creditors became shareholders, which is a very common transformation in a bankruptcy. There's no money to pay the creditors, much less anything left for equity, so equity gets wiped out to be replaced by new equity.

Is that not what happened here?

MR. BARR: Your Honor, if it's okay with the Court, I'll defer that to Mr. Ruzinsky since he's got the bankruptcy expertise.

THE COURT: Mr. Bruce, how are you?

MR. RUZINSKY: I'm fine, Judge. Thank you very much. This is Bruce Ruzinsky with Jackson Walker for the Claimant. So, you know, my reading of the confirmed plan is that the shares in the debtor, principal debtor here at Eletson Holdings, were wiped out and new shares were issued and creditors of

Eletson Holdings got those at distributions under the confirmed plan. But there was nothing I see in the confirmed plan that changed, got rid of, substituted the ownership interest in Eletson Gas, which is the entity that controls the -- this SME and this vessel. So while there was a change or conversion from, you know, canceling stock and paying creditors in stock, that was not -- those were not ownership interest in Eletson Gas or in the SME, which owns the vessel in dispute here.

THE COURT: So you're saying the defect in Plaintiffs' argument is that the ownership interests of the vessel were never anticipated in the bankruptcy?

MR. RUZINSKY: That's correct, Your Honor.

THE COURT: Because normally common shares and preferred shares are part of -- I mean, they're prioritized, but they're both equity of a different company. It seems odd to me common shares of a company would be in bankruptcy and preferred shares would not be.

MR. RUZINSKY: So in this case, Your Honor, you had the common shares in --

THE COURT: Hold on just a second. Hold on a second. We got some interference.

Does the court reporter need anything repeated?

THE COURT REPORTER: No, Judge. Thank you.

THE COURT: Okay. Carry on, Mr. Ruzinsky.

MR. RUZINSKY: Thank you, Your Honor. In this case,

the common shares in Eletson Gas were owned by this company Levona. And pursuant to the arbitration, those preferred shares were found to be transferred to the Cypriot Nominees as of March 11th, 2022. The common shares in Eletson Gas were the property of Eletson Holdings. And you can see that in the bankruptcy schedules that were filed.

THE COURT: But the preferred shareholders knew about the pendency of the bankruptcy. Wasn't it their -- was it their obligation to come forward and set forth their arguments as to why the preferred shareholders aren't retaining control?

MR. RUZINSKY: Well, Your Honor, you're referring to control of a non-debtor entity of which the debtor was a minority interest owner in. And under those facts and circumstances, I don't think there was an obligation on the part of the preferred shareholders to go to the bankruptcy court and clear up anything because the corporate governance was clear. The common shares in Eletson Gas rode through the bankruptcy. Eletson Holdings started with those shares; they ended with those shares; they didn't get any more or less than they had going into it.

THE COURT: Okay. Well, that's helpful that your argument has some transactional history in the bankruptcy.

Let me hear from the other side on that set of related points.

MR. FLOYD: Thank you, Your Honor. It's Edward Floyd

speaking for the Plaintiffs. Of course, we disagree with the description here. I will address that background, but I think as a preliminary point I should note that our position is, and I think it's quite clear, that the claimants are interjecting the preferred shares issue into this proceeding because they want to try and cast this proceeding as being a shareholder dispute. It is not a shareholder dispute in any way, shape, or form. The fact of the matter is, and the reason for that, is that the status quo is that the ownership of Eletson Gas, which then in turn has the entire ownership of Kithira Gas, the ownership of Eletson Gas is currently that the common shares are held by Eletson Holdings, and that the preferred shares are held not by the so-called Cypriot Nominees. And I'll walk through how that works, with the key consideration to keep in mind with respect to that are that the arbitration, the JAMS arbitration award, has not been confirmed. There is no judgment from the Southern District of New York confirming that award, and confirmation of an award is how it becomes enforced. That simply does not exist. And in the S.D.N.Y. confirmation, slash, vacatur proceedings before Judge Liman, the issue that has been raised for vacatur of the underlying award is that there has been fraud before the arbitrator. And so that goes back to the narrative that was in part just described by the claimants' attorneys. What was left out is what has come to light.

Circa 2020, Eletson Gas was owned by Eletson Holdings

having the common shares and Blackstone entity having the preferred shares. As of April of 2021, maybe a bit earlier, maybe a bit later, Eletson Gas, and the group in general, had financial difficulties. Shifting forward into 2022, Levona purchased the preferred shares from Blackstone, and subsequently a while later, Levona and Eletson Holdings entered into a so-called binding offer letter, a BOL, as they termed it, by which part of the function there was to enable Eletson Holdings, at that time under different ownership, to receive a $10M loan from Levona. In exchange, Eletson Holdings/Eletson Gas had to transfer some ships, I believe it was two vessels, to Levona, and there was an option, a purchase option. The dispute that went to arbitration was over whether or not that purchase option was exercised. And from the start of the arbitration in July of 2022, well into 2023, and I'll get to that in a moment, Eletson Holdings, again still under the old ownership, same people as who are now standing behind Cypriot Nominees, Eletson Holdings' position was that the preferred shares had to be transferred to it, to the entity Eletson Holdings, however, after the bankruptcy proceeding was commenced, and subsequently converted into a voluntary Chapter 11 by Eletson Holdings. So it was not involuntary as things moved forward. After commencement of the bankruptcy proceeding, Eletson Holdings, again, same people as the current Cypriot Nominees, sought a so-called stay relief order from Judge Mastando in bankruptcy court so that the

arbitration could proceed. And that stay relief order, from what I understand, I wasn't a part of it, was negotiated on a joint basis. And that stay relief order allowed the arbitration to continue to an award, but very, very expressly said, no enforcement whatsoever. And the exact language is, of course, quoted in our papers and exhibits are annexed. No enforcement, whatsoever, of the award until going back to the bankruptcy court to get an ensuing order. Eventually, the award came on out. And soon thereafter the old Eletson interests took it to the Southern District of New York for confirmation proceedings before Judge Liman. And Judge Liman, while not issuing a judgment to confirm the award, agreed with certain provisions in it, but sent it back on, further procedural matters had to be addressed.

But in early 2025, it came to light, and was raised by reorganized Eletson, and the other interests on the other side, that there was very strong indicia of fraud during the arbitration, undertaken by the old Eletson interests. And what that fraud entailed is quite -- alleged fraud, to be clear, entailed is quite important to keep in mind. The essential position, again of the old Eletson Group, had been that the shares, the preferred shares, needed to be transferred to them. And they maintain that position from the start of the arbitration up until nine days after the stay relief order. After the stay relief order went into effect, the old Eletson

Group completely shifted their position, and they suddenly invented that the shares needed to go to the so-called Cypriot Nominees. And they have been expressed that the reason they took that change of position, and, again, the language is quoted in our briefing, was that they wanted to effect essentially a "Heads you win, tails you lose" situation. I think I got that analogy wrong there, but basically a problem for the other side. They contended that they had sold that option right to the Cypriot Nominees for 3 million euro, which is far, far less. Talking a fraction of the value of these assets. And there's also zero evidence that a payment of 3 million euro was ever made, and that this was all done pursuant to an oral agreement amongst three Greek families. But, again, no payment made, or anything like that, where this issue that came to light only after the stay relief order was entered.

On top of that, it came to light that after commencement of the arbitration, at a point in time when the old Eletson Group was still contending that they had effected the purchase option, they were out there trying to raise money so that they could buy the fleet, which completely undermines that they had ever actually effected the purchase option. So Judge Liman is now dealing in the S.D.N.Y. with a vacatur application on the basis of fraud in the arbitration. Where does that leave us currently? It means that there is zero effect at present to the award. Number one, if it goes back to -- if it's sent back to

the arbitrator, I don't know how that would work procedurally, but if it were, then the award needs to be revisited. There's currently no confirmation of it. And even if Judge Liman were to confirm some or all of the award, which we think is highly, highly unlikely, any resulting confirmed award would still have to go over to the bankruptcy court before enforcement by virtue of the still in effect stay relief order. And even if relief were granted to allow enforcement by bankruptcy court, Judge Mastando, then we go back to the plan. And I realize that my adversaries here, my colleagues, that this plan does not deal with the preferred shares; however, at Section 5.2(c) and 5.15(a) of the plan, which has been in effect -- the effective date was November 19th of last year, those two sections, and again quoted and annexed to our briefing, do address the preferred shares. They talk about reserved actions that are owned by Eletson Holdings, and that the scope of reserved actions, meaning the right to bring any sort of preference claim or fraudulent transfer claim or voidable transaction claim, whatever one wants to call it and whatever rule or statute one might use, but those are reserved actions and so that Eletson Holdings and the other debtors could still bring those types of fallback claims with respect to the supposed transfer for a 3 million euro sum that was never paid to the Cypriot Nominees, who popped out of nowhere to try to throw more sand in the workings here.

So the current status quo -- that's redundant -- but the status quo is that the Cypriot Nominees do not own the preferred shares. And anyone and everyone who actually does have a right to claim those preferred shares has sanctioned, has approved, and reorganized Eletson Plaintiffs going forward with the seizure of this vessel because the fact of the matter is they injected $53.5M worth of new cash into the group, and did an exchange of debt, the range of debt was quite substantial, an exchange of debt for equity, yet they have not received a single penny or revenue from the fleet that they have effectively purchased. That's a fleet of 16 vessels. They haven't gotten a penny from it because all the freight revenue is going to unknown persons and unknown -- largely unknown bank accounts under the control of the so-called Cypriot Nominees and the persons hiding behind them.

THE COURT: Okay. The thing that puzzles me is how any plaintiff could go forward and not include preferred shares. Was it just not argued? Was it not known? Why were preferred shares not dealt with in the bankruptcy?

MR. FLOYD: Your Honor, our take is that preferred shares are addressed in the bankruptcy plan by way of the reserve action provisions in 5.2(c) and 5.15(a), which reserve that issue so that if in the unlikely event the Cypriot Nominees were to prevail in the arbitration confirmation process, those shares can still -- the preferred shares could still be clawed

back to the Eletson Holdings Group, meaning reorganized holdings, reorganized Eletson, because they weren't purchased for anything, best anyone can tell. And even if some cash was exchanged, it was a fraction of the actual value of the assets.

MR. RUZINSKY: Your Honor, may I respond?

MR. FLOYD: Pardon me, Your Honor.

THE COURT: Just a second, let me stay with Mr. Floyd for a minute.

So you're saying it was a part of the conveyance?

MR. FLOYD: Yes, Your Honor, that the reserved actions provision in the plan preserved as part -- essentially as part of the estate. And I use the word "estate," knowing that this is post-effective date. But the provision in the plan says that it's preserved regardless of -- if the issue is raised after the effective date, that right to fraudulent conveyance was preserved.

THE COURT: But what puzzles me is why would anybody put in new money and take common share ownership if they were doing it to preferred shares?

MR. FLOYD: Their view is that they were getting the entirety of everything, Your Honor. Nobody would put in this sort of money not to get the entirety.

THE COURT: Okay. I think Mr. Ruzinsky wanted to say something?

MR. RUZINSKY: Thank you, Your Honor. This is Bruce

Ruzinsky with Jackson Walker for the Claimant. There are retained causes of action in the plan. It's just a cause of action, right. It's not self-effectuating anything. We have an arbitration that found, and it can't be disputed, but the arbitrator found that the preferred shares are owned by the Cypriot Nominees as of March 11th, 2022. I understand that folks on the other side don't like that, but it is a finding by the arbitrator. And there have been multiple orders of the S.D.N.Y. that have, you know, affirmed or accepted in part the arbitration award, and none of those orders have changed the finding, vacated or changed the finding, that the preferred shares are owned by the Cypriot Nominees as of March 11th, 2022. And, you know, just having a cause of action to go sue somebody, doesn't change the ownership of the shares. And --

THE COURT: I still don't understand. And I'm sorry I'm being remedial on this point, but why would anybody put in new money and get the common shares if someone else had the preferred shares?

MR. RUZINSKY: I don't know the answer to that question.

MR. GEORGANTAS: Your Honor, if I may. This is Dimitri Georgantas, Your Honor. I think a partial explanation for your question --

THE COURT: Who's speaking? Who's speaking?

MR. GEORGANTAS: Dimitri Georgantas, Your Honor. Good

afternoon. There were more than -- the vessels in the fleet were more than just the Eletson Gas vessels. And I think that detail may have been, you know, left out in the presentation.

THE COURT: Did the preferred shares give acquiescence to the other holdings, including other ships?

MR. RUZINSKY: Your Honor, this is Bruce Ruzinsky.

THE COURT: Let me get an answer from Mr. Georgantas, please.

MR. GEORGANTAS: The preferred shares that are at issue that we discussed today, Your Honor, refer to the gas vessels that are under the Eletson Gas structure and the SMEs. Those are the vessels that are being, you know, discussed today, or at least, you know, three of those vessels -- or today one of those vessels. Three of them are in the district under arrest.

THE COURT: Okay.

MR. FLOYD: Your Honor, this is Edward Floyd. Thank you, Your Honor.

MR. GEORGANTAS: What I'm trying to say, Your Honor, is that the Eletson Holdings was a larger fleet beyond the vessels that we're discussing today that -- beyond the gas vessel. There were other vessels as well.

MR. FLOYD: Your Honor, if I may. Two considerations to keep in mind here. Number one, the stay relief order that was entered by the bankruptcy court remains in effect. And while it's described as being a stay relief order, the relief

means relief from the automatic stay. But it also stayed any enforcement, whatsoever, of an arbitral award. And so that includes any enforcement based upon findings in the award, or so-called findings in the award. Point number two -- and I actually apologize, I have three. Point number two is old Eletson's attorneys have referred to the award having findings and that they can rely upon that, but I think everybody on this call knows that an arbitral award is just a piece of paper until it's been confirmed, and here it has not been confirmed. And those two first considerations come together with a third one, which is that earlier this year, not very long ago at all, when Judge Liman in the District Court vacatur, slash, confirmation proceedings learned that the old Eletson Group persons had gone off to Greece and on their own, circa February, maybe March, it was February of 2024, and engaged in purported self-help to stealthily, undisclosed try and change the share register and trying and exchange the directorships at Eletson Gas. That was one of the points that was noted by Judge Liman when earlier this year he said, and I'm not precisely quoting, but the old Eletson folks have been going about and making misrepresentations or inaccurate descriptions of what this Court has held and stating that they have the power to do things, such as changing share registers. All of that needs to stop. Everything is getting decided together so that, whether it's confirmation or vacatur, it all goes up to the Second Circuit

collectively. And that's where the matter stands right now. No award has been confirmed, therefore, as a matter of law, under U.S. law, the old Eletson people, the Cypriot Nominees, cannot say that they have ownership of the preferred shares. They just don't have it at present. We don't think they'll get it in the future, but they don't have it right now, and that means they lose.

MR. RUZINSKY: Your Honor, may I respond to that?

THE COURT: Who's speaking please?

MR. RUZINSKY: This is Bruce Ruzinsky.

THE COURT: Yes. Go ahead, Mr. Ruzinsky.

MR. RUZINSKY: Thank you, sir. I think we cited in our papers that, you know, an unconfirmed arbitration award is still a contract between the parties who agreed to binding arbitration, and cited Second Circuit case law to that effect. Also, the provision from the stay order that was referred to, which I think is number paragraph four, three or four -- number paragraph four that talks about a stay. In Docket No. 67-3, at page 37, I believe the bankruptcy judge was asked to interpret this language, and stated that it -- that that means the parties are prohibited from executing on these. It says there that in addition the Court finds that any potential harm to the debtors' estate is ameliorated by the terms of the stay relief stipulation, which requires the arbitration parties to abstain from executing on the final award absent further order of the

Court. We have a very different view of the effect of the arbitration award at this point in time. We don't believe that it goes away, that the findings of that Court go away, and are just to be totally ignored pending the entry of a final arbitration award.

And in Docket No. 55-4, on page 90, which was the first S.N.D.Y. order partially confirming the award, the District Judge, Judge Liman, interpreted this paragraph in the stay relief order. And I believe he said there that the stay relief order by its terms does not purport to expand the scope of the automatic stay. And so, you know, the preferred shareholders relying upon a finding of the arbitration, the arbitrator in the arbitration award, they should be able to rely upon that unless and until it's changed; they've got a contractual right, an enforceable contractual right, before there is a final award. And, you know, ultimately the final award will say. But pending the entry of a final award, we believe strongly that you just can't ignore the conclusion of the arbitrator as to who owns the preferred share.

MR. FLOYD: Your Honor, it's Edward Floyd. If I may speak.

THE COURT: Yes, you may.

MR. FLOYD: Thank you, Your Honor. First and foremost, even if that were the law with respect to unconfirmed arbitral awards, that assuredly would not be the situation when

there are well-particularized grounds to allege that the award itself was procured by fraud. I mean, that just goes to fundamental law there. A contract that's entered into on a fraudulent basis is not going to be enforceable on any number of different grounds. And here we have a situation where, last minute, they shifted their pleadings and said, hey, these shares, the preferred shares, should be going to the Cypriot Nominees, not to Eletson Holdings because we don't want Eletson Holdings to get them anymore. That's bogus. That is fraud and especially when it comes to light afterwards that they hadn't purchased them; that they were still trying to raise money to purchase them, or at least there's documentation that's been shown to the District Court supporting that. That looks an awful lot like fraud. And no award, even if the law supported what we just said, would be enforceable when there's indicia of fraud.

On top of that, the fact of the matter is that whether we're looking at Chapter One or Chapter Two of the Federal Arbitration Act, the way that an arbitral award is enforced is by having it converted into a judgment. Once somebody gets the judgment, then they can use judgment enforcement procedures and hold themself out as entitled to the relief provided in the award as confirmed by a court judgment. That, of course, being subject to whether or not there's a stay, which there is a stay here by virtue of the stay relief order. But what was just

described is simply not the law. An arbitral award on its own is a piece of paper, and is not enforceable until it's reduced. It's not enforced until it has become a judgment and, thereafter, judgment enforcement procedures can be utilized. That was laid out clearly. I know Second Circuit law on this, but in VRG Aéreas -- I apologize. I don't have the full name of that case, but it's from circa 2016, 2017 in the Second Circuit, and explaining how awards are confirmed, and what the proper terminology should be for doing so. And enforcement of an award is getting a judgment. Then you enforce the judgment. Before that, it's just a piece of paper.

THE COURT: But how could this issue have been missed in the bankruptcy reorganization? It's such a huge issue who owns the shares of that company. Did the parties agree to defer it to the arbitration? Or was it just ignored? Or -- help me on that, would you, Mr. Floyd?

MR. FLOYD: Your Honor, I was not bankruptcy counsel, so I can't pretend to be intimately familiar with it. But my understanding is that it's because of 5.2(c) and 5.15(a) there was recognition at the time that the plan went into effect that the stay relief order was still effective. And the timeline for continuing effectiveness of the stay relief order ran onwards. It was very clear that nothing could be done with respect to the preferred shares at the heart of the arbitration until somebody went on back to the bankruptcy court and got an order from the

bankruptcy court allowing something to be done.

THE COURT: Well, that makes no sense given -- given the new cash that's been put in by the common shareholders. That makes no sense at all that the common shareholders would put in substantial new cash knowing that they might not even get control of the company for their investment.

MR. FLOYD: Your Honor, it was not that they wouldn't get control of the company. The arbitration was between -- the arbitration was meant pre-bankruptcy, and was by old Eletson, but prior to reorganization, and under the control of its old owners at that time against Levona. And Levona, in conjunction with the stay relief order -- excuse me, in conjunction with the bankruptcy and putting in its cash to the bankruptcy plan, was getting all of the rights of old Eletson. So even if old Eletson had prevailed in the underlying arbitration, that would have included the preferred shares. What I'm trying to say there, and I recognize it's a complex situation, and we can certainly readdress this if it would please the Court in papers, but the preferred share dispute in the arbitration was between old Eletson, Eletson Holdings, and Eletson Corp pre-bankruptcy, and Levona.

THE COURT: Okay.

MR. FLOYD: Old Eletson --

THE COURT: All right. Go ahead.

MR. FLOYD: Old Eletson's position up until the stay

relief order was that it was entitled to the preferred shares. And so the position is -- the expectation was that those preferred shares were a part of the bankruptcy estate. That may be an issue. It looks like it's an issue for the bankruptcy court ultimately, but as of today, the Cypriot Nominees do not own those shares, and that's all that matters for this case here, is that the Cypriot Nominees don't own the shares at present.

THE COURT: Okay. All right. Let's go back to the things y'all do want to talk about. Claimant's motion to vacate the arrest. We'll go back to -- Mr. Barr, do you want to talk about that further?

MR. BARR: Yes, Your Honor. And so I think a lot of the commentary we've had here during this hearing speaks to the heart of our jurisdiction arguments here that, you know, how is this a maritime case? At its heart, it is a shareholder dispute. We're hearing discussions of needing to go back to Judge Liman, needing to go back to the bankruptcy court. You know, we've cited a number of cases that show that, you know, an agreement to enter into a business to operate a vessel is not a maritime agreement. That is precisely what this Eletson Gas Limited Liability Company Agreement is, and that's currently in dispute in New York. They put the cart before the horse, if they even prevail on this by arresting this ship and the two others ones. It's a half baked suit that they're not entitled

to bring. And it certainly does not fall under the Court's admiralty jurisdiction. The grasp that -- you know, it goes beyond just their claims on the surface, but also they have a conversion right cause of action, but, again, that emanates from this partnership or this shareholder dispute. This is a land base contract that does not fall within the Court's jurisdiction. And, you know, on top of it, this is a time charter. And the case law is clear that in a Rule D context, a Rule D arrest is available to either an owner or a bareboat charter. Kithira is neither. Kithira, while the charter party does speak to crewing and, you know, responsibilities with relation to where the vessel can and cannot go, owners retained responsibility for the maintenance, inspection, repairs, and insuring of this vessel. This was not a complete handover, as what you would see in a bareboat charter party agreement. In addition, there are a couple of instances, at least within the charter party, where it's clearly stated, this is not a bareboat; it is a time charter. And it was just not a complete handover. And without that, this time charter interest is not even sufficient to invoke Rule D.

THE COURT: Thank you.

Back to Mr. Floyd.

MR. FLOYD: Yes, Your Honor. I think I've said enough regarding the argument that this is a shareholder dispute. But just to recap there, it simply is not a shareholder dispute.

The Claimant's assertion of their claim, effectively a defense of some sort to the converging claim against them, is what tried to interject a purported shareholder dispute into this matter here, but it doesn't have anything to do with it in reality. They can argue that all they want as a defense to the converging claim, but the reality is current status quo Kithira Gas owns -- excuse me, Kithira Gas is the charterer; Kithira Gas is wholly owned by Eletson Gas, and Eletson Gas is split between common shares with Eletson Holdings, and the preferred shares with Levona. That's the current status quo under U.S. law. Nothing changes that. This is not a shareholder dispute.

On top of that, as far as the jurisdictional argument goes, adverse counsel just mentioned that we have a converging claim too. I don't think that that's at all a crazy converging claim to make when one management company, here Eletson Corp, is the vessel management company. Eletson Corp was a debtor in the bankruptcy court proceedings. Eletson Corp is owned by our clients now. Eletson Corp is one of the plaintiffs. And it's supposed to be the manager of the Kithira, but the Kithira's crew, from the master on down, are not taking orders from Eletson Corp. So whoever they are taking orders from, or the crew themselves, has converted that vessel. We cannot -- I should correct myself. Eletson Corp was not a debtor in the bankruptcy proceeding, but is wholly owned by the debtor, Eletson Holdings. But Eletson Corp is the manager, and it's not

able to give instructions, not able to manage the vessel because somebody else had converted it, and that somebody else are the Claimants here. That's a pure maritime claim. There is no legitimate dispute about that.

On top of that, Rule D is for petitory and possessory actions. We are seeking -- our clients are seeking possession of this vessel. I think that that is clear as day. And we have a charter that talks about possession, and it talks about -- has clauses by which claimants' counsel just mentioned, allocate responsibility and power for crew control and selection to Eletson Corp. That is not an ordinary time charter by any means whatsoever. Time charters, ordinarily the owner under the time charter, maintains the crew, provides the crew, the charterer -- the time charterer does not. Here, there are numerous provisions -- they're all addressed in our papers; I think pages 14 through 17 or 18 -- but numerous provisions in this so-called time charter, all of which look an awful like a bareboat charter because it really is a bareboat charter at the end of the day. And even if it were not a bareboat charter, it's a so-called concealed security interest for sale of the vessel. The vessel was originally owned by one entity, sold on back, and then transferred possession via the chartering arrangement. All of those considerations though are within the scope of Rule D. And most importantly, the time charter talks about possession of the vessel and the charterer having possession, as well as

appointing the crew, which is how one possesses a vessel. There's no other way to do it, other than arrest. And so this dispute is about -- well, the assertion of rights via Rule D is about Kithira Gas reobtaining, asserting its right possession of this vessel via the crew, which needs to be replaced.

THE COURT: Okay. Thank you very much.

Back to Mr. Barr.

MR. BARR: Your Honor, back to the jurisdictional aspect of this. I mean, these sorts of arguments have been addressed in cases before the Fifth Circuit, the Dredge La Choncha, and then also the Lady Lucille. And, you know, the gist of it is that, you know, merely characterizing a dispute as possessory or petitory, as the Plaintiffs are doing here, is not enough to turn the case into a maritime matter. I mean, whenever there's a pre-existing business relationship, and there's a dispute pending, such as arbitration, which was also an issue in the Lady Lucille, you know, the Court doesn't just jump in and assert maritime jurisdiction. The parties need to play it out with -- you know, where their shareholder dispute is pending. It doesn't occur just because they're saying we want to take the ship this has automatically become a maritime case. At its heart, it is a land-based business dispute over control of Eletson Gas, and that's already pending in New York. They're basically asking for a third forum here to potentially supplant or usurp what's going on up in New York. And we respectfully

believe that Eletson jurisdiction should not be invoked to basically interfere with what's going on already in New York.

THE COURT: Thank you.

MR. FLOYD: Your Honor, if may.

THE COURT: Is this Mr. Floyd?

MR. FLOYD: Yes. Thank you, Your Honor. A couple of quick things there. The Lucille matter that was just referred to was a ship building dispute. This matter here is about vessel and navigation, or at least which was in navigation and commerce. Ship building disputes, obviously -- I don't think anybody is going to argue that a ship building dispute, just like a vessel sail agreement is not a maritime contract. Likewise, the Dredge La Choncha was a ship sail dispute. This is not like that. This is also not a situation where Mr. Barr referred to there being a pre-existing business dispute. No, there's not. There's no pre-existing business relationship here. There is only -- as Judge Mastando and Judge Liman had said repeatedly, there is only one Eletson Holdings, and on down the chain. Two entities don't come into existence merely because old ownership interest, old equity behind a debtor are dissatisfied with the way a bankruptcy turns on out. There's only one for each of these entities. There is no pre-existing business dispute. What this is about is people who should not be able to appoint crew and have no right to appoint crew, have inserted themselves and usurped the right, the power, to do so.

And whatever happens in a bankruptcy proceeding, and the arbitration vacatur proceedings, and so forth, there's one thing that everybody can be very, very certain of, these folks on the other side are going to sail that ship, if they ever get their hands back on it, around the world and keep it as far away from the reach of anyone, other than themselves, who would prevail. And we also believe that we will ultimately prevail in whatever is going on up here in New York.

They're never bringing that ship back. We've gone through in our papers and pointed to the various instances where they have gone to great lengths and unsafe lengths, to be clear, to prevent arrests. Down in Panama, with a ship called the Kimolos, they tampered with the AIS system and had the ship's AIS, the satellite system that shows where a ship is, and is part of the whole safety management program, IMS code --ISM code, excuse me, they projected it on the other side of the Panama Canal just to try to avoid an arrest. And up here in the U.S., another ship, Kinaros, was scheduled to come on in and pick up 300,000 barrels of crude. And what did they do when they saw minutes after, maybe an hour after an arrest application was filed? They turned the ship around and she sailed off, and she's floating around the Caribbean. First floating in the direction of Jamaica, and now it's just floating around doing nothing. I don't know what happened to that charter revenue. It's quite concerning considering that we own

the vessel. This ship is never coming on back, and we need to hold onto it now; otherwise, the good things that the creditors in the bankruptcy proceeding did, injecting $53.5M in exchange in debt for equity to resuscitate a fleet, they're never getting any of those ships on back. And that would be a crying shame. It would be a travesty in this situation. It's not how anything in the U.S. is supposed to work.

THE COURT: Okay. Thank you. I've got to take a break to deal with my 4:00 docket. Don't go way. It will be about ten or fifteen minutes. Thank you.

(Whereupon, a pause was held in the proceedings.)

THE COURT: Okay. This is Ellison. I'm back.

Mr. Floyd, are you there?

MR. FLOYD: Yes, Your Honor, I am. Ed Floyd here.

THE COURT: Mr. Barr, are there?

MR. BARR: Yes, Your Honor.

THE COURT: Mr. Ruzinsky?

MR. RUZINSKY: Yes. Yes, Your Honor, I'm here.

THE COURT: Okay. Mr. Georgantas.

MR. BARR: I think he'll be back in a minute, but we're happy to proceed, Your Honor.

THE COURT: Okay. We haven't talked about Plaintiff's motion to release. It seems like both sides agree that we shouldn't release the vehicle, and sort of back and forth as to what we do with the crew and the proceeds of any money that the

ship earns while it's released.

But, anyway, it's Plaintiffs' motion. You could begin, Mr. Floyd.

MR. FLOYD: Your Honor, I apologize. I just couldn't hear the question there to me.

THE COURT: I said, it's your turn. You can go first.

MR. FLOYD: Oh, on the vessel release.

MR. RUZINSKY: Your Honor, and I apologize for interrupting. This is Bruce Ruzinsky. It's a question for the Court. Is the Court -- does the Court want to hear or will entertain any more input on, you know, what we were addressing before or does the Court consider that done and we're moving on to the next matter?

THE COURT: I want to go to the Plaintiff's motion for release, and we'll circle back at the end to whatever unfinished business there is.

MR. RUZINSKY: Thank you, Your Honor.

MR. FLOYD: Thank you, Your Honor. Yes, Your Honor, Edward Floyd speaking for the Plaintiffs. Motion to release, I don't think it's in dispute that the Court has the power to do so under Rule E(5). You're authorized to release under conditions that the vessels -- otherwise, this vessel is a wasting asset that is not in anybody's best interest. That does not appear to be in dispute that the Court has the power to do so. Our approach to making that, and the reason that we have

made that motion, is to prevent ongoing waste. But in order for there to be a release, there needs to be substantial mechanisms in place to protect the Plaintiff's position. And given these slew of instances, which are just some of the circumstances that are out there that I just recently described, the actions messing around with AIS system down in Panama, turning a vessel that was supposed to pick up crude in Texas around to avoid an arrest, and also even with the three vessels that have been arrested, seized under Rule D in Texas already, waiting until odd hours of the night to then come on in to berth, and that all being supplemented with things that have occurred elsewhere in the world with the old Eletson interests, the so-called Cypriot Nominees, going around and telling other forum that they have the right to do various things, such as reappoint directors and change shareholder registers. We have very, very substantial concerns. Indeed, we don't expect that the ship would ever come back if crew loyal -- either loyal to our clients or completely neutral; we're not on there. And that's why our motion proposes protective considerations, but I won't reiterate them all here right now. They're obviously in the papers. But first and foremost, the crew, from the master on down, needs to be replaced so that the vessel is loyal to the management company that is actually the management company, that being Eletson Gas -- excuse me, Eletson Corp.

Likewise, as far as revenue goes, the vessel is going

to earn revenue. We have proposed that that revenue come on into some type of an escrow arrangement, which can then be used to pay actual operating costs (OPEX). And I'm sure some details will need to be worked out on the OPEX, what's in, what's out, and so forth, but that would seem very, very doable. And then in terms of how to agree upon -- I mean, how to choose what voyages, what charters the vessel should undertake. The proposition proposal that we've made in our papers was a commercial -- what we think is a commercially reasonable one. We thought about, you know, how do you figure out what's the best charter to take; what's the best voyage to do from a revenue perspective when you have potentially competing interests out there. And the proposal I put forward was to have a panel of four respectively appointed by the competing parties, four brokers, and essentially choose whatever would be the best rate. Frankly, if it was a single broker from one of the big shops out there, if there's any -- well, there's a handful of them. But one of the large major brokerage houses, that would likely be acceptable as well. And then we do think it's important to have trading restrictions on this ship. But that's kind of the four prongs of what we see as precautions to make sure that the ship doesn't abscond from an arrest. Obviously, it's quite concerning to get a ship back underway when it's under arrest and you expect it won't ever come back if you don't have protections in there. That's why she had to be arrested in

the first place. We think the proposal is quite a reasonable one. And given the circumstances, and the way that the so-called Cypriot Nominees, and people behind them who have been sanctioned, subjected to sanctions in the bankruptcy court, have conducted themselves, it's exceedingly reasonable to make those types of proposals and have those concerns.

THE COURT: Thank you very much.

MR. FLOYD: Thank you, Your Honor.

THE COURT: Mr. Barr.

MR. GEORGANTAS: Your Honor, Dimitri Georgantas, if I may respond.

THE COURT: Yes, you may.

MR. GEORGANTAS: So a lot of wild and unfounded allegations from Mr. Floyd. And these are coming from, number one, the folks that arrested the vessel and vessels, the other two, in the first place, and now describing it as a wasting asset. So having created the situation in the first place and having prolonged this process, they're now coming and offering to release the vessel, but it's an obvious and faintly failed total suggestion. What they're really asking is a backdoor way to take possession of the vessels or take the keys to these vessels by basically putting their own crew and all the other things that they are suggesting.

First of all, I would respectfully remind the Court that these allegations about the wrongdoing that our folks have

been doing with these vessels, they're coming from a group of people that the arbitrator described, and this is the arbitrator that actually heard and saw witnesses, described them as acting in bad faith, deceitful, wanton, and in a corrupt manner in which Levona treated the Claimant. That's a pretty close quote from what the arbitrator said. So these allegations and mudslinging, that's where they're coming from.

Beyond that, and with respect to the three vessels being here at the anchorage in the middle of the night, and whatever other conspiracy theories they're throwing, there's a number of reasons why vessels aren't at the anchorage: Cargo is not available; the terminal is not available because there's another vessel waiting; vessels come and go at all times of the night subject to availability to come in and load. None of that was explained. It was conveniently omitted from counsel's presentation. What is undisputed though in this district is three orders have been issued, one by Your Honor, the other two by magistrate judges in Corpus Christi with respect to these vessels, and they were in line with producing documents, sending regular reports to the custodian in terms of, you know, safety concerns. And on one occasion, the vessel, Ithacki, which was arrested off the coast of Point Comfort, had to physically move to Corpus Christi in order to be able to be supplied easier from logistics. There was an agreed order that was signed, but in order to make this journey of whatever it was, four or five

hours, safely, she had to leave the jurisdiction of the court necessarily just because of the distance. Nonetheless, she left, and she went into Corpus just as promised. Bottom line is that all three court orders that were actually issued in this district were complied with by the claimant with respect to all three vessels.

This is not the first time that they've tried to replace the crew. Their initial attempts, including in this court, were to replace the master with allegations or non-cooperation, and all kinds of other issues that they were throwing out. And, of course, all three requests were denied by the Courts, including yourself. That was some time ago. No problems have taken place since then. So in terms of our credibility here, we find it a bit - it's not a lot disingenuous on the position that somehow the people that have done what was described by the arbitrator are now trying to, you know, paint us in that picture.

With respect to some of the proposals that have been made, while we agree the Court has discretion in terms of the -- the terms of the vessel release, what they're requesting, Your Honor, is without precedent. And, of course, there were no cases that they could really point out to or have this what amounts to an interim award that they take possession of the vessel or vessels with their own crew, and they basically get to operate them while a decision is made. The only case that

remotely addresses this, the vessel was released back to the claimant, albeit not in exact circumstances, for the claimant to operate. So to the extent the Court wants to entertain some discussion with respect to releasing the vessels with certain provisions, we are here to discuss those. A preliminary discussion in fact took place a couple of days ago. But what they're proposing is just sort of outrageous in terms of basically taking possession of the vessels in an interim manner and displacing us when we believe we are the rightful possessor at this point and all these are wrongful arrests.

That's sort of the short version of our response to what they're requesting and, you know, highlighting the points or the three court orders that were all complied with in this district. Some of the comments that they've made about geographic limits, that would not really make any sense. Once the vessel is out of the jurisdiction, she's out of the jurisdiction, whether she is in the Caribbean or in Rotterdam, I'm not sure what difference that would make. Presumably, the vessel should go to maximize profit, so if a charter party shows up that that's the best and more profitable, that would be the consideration. The change in the crew, of course, is tantamount to giving them possession, Your Honor. That is without precedent, and we would respectfully ask the Court not to start this sort of dangerous precedent.

THE COURT: Mr. Georgantas, do you have a

counterproposal to make?

MR. GEORGANTAS: We have put in our response a rough counterproposal, whereby, potentially the Court would entertain that the vessel would operate under the existing crew or, in event, our crew and whatever replacements are made; that we would agree to an escrow account that would be maintained in the District so that funds would be within the jurisdiction of the Court; we have also suggested that we will provide them with reports of the vessels' location, I think maybe once every two weeks, so they know where all the vessels are going or sailing. We have also made the proposal that this escrow -- from this escrow account, there should be an escrow agent or trustee, or whatever will end up following this person, the shipping veteran that knows about shipping. And from those revenues that the vessel or vessels will generate, of course, the first thing that would be paying is the charter hire, and then the vessels' OPEX, which is basically the acronym for operation of expenses for the vessel. And then all this, of course, would be documented to the trustee. And then whatever remains after all the OPEX expenses are paid, presumably we would stay pending resolution. By way of further commitments, we have even offered that they can keep a representative of a custodian on board the vessel. But I don't know if that would give them any extra, you know, comfort, but certainly that is something that we have offered to them with respect to all these wild allegations that we're going

to abscond with a vessel and disappear. Those are roughly the counterproposals that we made to them. And, again, there was a preliminary discussion, I think a couple days ago, which is in the very early stages. But, again, we see that as sort of a last resort solution, Your Honor. We think that proper arguments have been made with respect to the lack of maritime jurisdiction, and also with the ownership, what I think is the current ownership of the Eletson Gas preferred shares.

THE COURT: Your client has no intent to keep the vessel currently beyond the jurisdiction of this Court, right?

MR. GEORGANTAS: What is being proposed, Your Honor, is for the vessel to be allowed to trade. And in order to do so, they would necessarily leave the jurisdiction of this Court.

THE COURT: No, I know that but will you undertake that your -- the vessel will never be kept out of the jurisdiction of the Court permanently in order to defeat the orders of the Court?

MR. GEORGANTAS: No. I mean, I think, if I'm understanding what you're saying, if you issue an order and you say, come back, then, yes, we -- subject to, you know, cargo obligations, as soon as practicable, then the vessels would return.

Did I understand your question correctly?

THE COURT: Okay. That's what I needed to hear. Thank you very much, Mr. Georgantas.

Do you want to respond, Mr. Floyd?

MR. FLOYD: Yeah, I absolutely do, Your Honor. There's a number of points to hit on here. First, if I heard things correctly, I believe Mr. Georgantas said that Eletson Corp would be managing the vessel. And I know that they're going around the world telling some people, as I believe it's happening in Panama, that they're Eletson Corp, but there is absolutely zero question about who Eletson Corp is. We are. Eletson Corp is 100 percent owned by Eletson Holdings. Eletson Holdings was one of the debtors in the bankruptcy. And the bankruptcy plan is expressed, that all interests of Eletson Holdings and its subsidiary vested in reorganized Eletson Holdings. We are Eletson Corp. That argument alone, if I heard it correctly, underscores the very real concerns that we have that this ship is never coming back. If it is set sail, allowed to set sail, with the current crew under the control and taking instructions from people who we don't even know who they are, it's never coming on back.

On top of that, as far as suggesting that because they allowed that there was an agreement to allow the Ithacki to move from Victoria over to Corpus Christi to be able to get supplies, number one, that was a very short move; number two, it was at the request of the custodian, who had a representative on board as well. And one of the reasons why it needed to be done was the vessel was very, very low, as in hours remaining, of fuel.

So the vessel couldn't go really anywhere or get bunkered offshore because it didn't have anywhere to go; it didn't have enough fuel. So that's not a good argument there.

To suggest that it's just plain and ordinary for ships to undertake the types of maneuvers and twistings that the Kimolos, in Panama, and the Kinaros, who was the ship off of Texas that ran the arrest order, undertook is preposterous. Nobody with good intention turns off their AIS, let alone somehow spoofs -- I'm not a tech person, but make an AIS show the ship as being on the west coast to Panama, when she's supposed to be on the east coast, or vice versa. That's just plain unsafe, and it's done with bad faith and nothing else. That's the sort of stuff ships do when they want to engage in an illegal ship-to-ship transfer of sanction cargo. It's bad stuff. And it is indicative of the type of people who are on the other side standing behind the so-called Cypriot Nominees.

What was to critique us, the Plaintiffs here, for making an application to get this ship underway back into trading is preposterous. It's perfectly ordinary and logical this ship is under arrest. We contend that we own the ship -- excuse me, we contend that we are the proper charterers of the ship and want to get her back into service so that she can trade, make money, and the money goes into a safe spot. I thought that it was extremely interesting that Mr. Georgantas described his client as being in, quote, rightful possession of

the ship. That language "rightful possession" harks back to and undermines each and every argument that they have made in support of their vacatur motion contending that this not a proper Rule D, a Delta. It is because it's about possession. We're the ones who are entitled to possession under the time charter. We just heard Mr. Barr saying that the time charter doesn't give possession, or something like that. This is all about possession. Rule D is proper. That needed to be pointed out, the same way when Mr. Georgantas said that changing the crew equaled possession. Both of those points hark back to this thing about possession, and possession is the fundamental part of a petitory or possessory action.

The last thing is just to close that up pretty quickly here, Your Honor. We don't take their words. I don't think the word of Mr. Georgantas' client or Mr. Georgantas saying, subject to cargo obligations, and subject to being as soon as possible, and a bunch of other things, is sufficient in any way shape or form to satisfy the concerns that are out there, and very real concerns. They're all subject to this, that, and the other thing. And they are coming, not from Mr. Georgantas, of course, but any such representations by his clients, are coming from people who have been sanctioned for not following orders in the S.D.N.Y. And they've gone around the world and done all types of different things that have led to functions, including $5,000 a day sanctions against them. Their word is worthless and

should not be trusted.

Our clients, I expect, actually I'm quite certain, would be open to an independent manager being appointed to come on in and manage the ship. We believe it should have been, and should be, Eletson Corp, and down the road we'll be back in proper possession of the ship. But if not, we do not want their crew and their master, and anyone who has their ear, or whose ear they have, being in possession of that vessel. An independent, completely respectable third-party management company could be put in possession of the ship and appoint the crew, that would be acceptable. We think that Eletson Corp and our clients would be perfectly fine to do that as well. But if it needs to be an independent third party, so be it. And as far as an escrow account, I don't think that there's huge divergence there. The parties would probably talk on through the parameters, so I won't waste the Court's time with that.

THE COURT: Okay. Thank you very much.

Mr. Georgantas, do you want another turn?

MR. GEORGANTAS: Yes, Judge, a response. First of all, I don't believe I ever used the word "Eletson Corp," so I think Mr. Floyd may have misstated what I said just initially. In addition to that, the -- his argument about possession, I think, is being misconstrued. It is beyond dispute that the claimant right now is controlling the vessel and is the possessor of the -- of the vessel by way of the time charter.

So to try to twist that around as some kind of an admission that the Rule -- that somehow that validates the Rule D is beyond description. They're the ones that are asserting the Rule D proceeding, and we're the ones that are saying that they're not entitled to that. We are already, as Claimant, the time charter of the vessel. So that argument that Mr. Floyd just presented should just be discarded outright. You know, they have not met the Rule D standards for the maritime jurisdiction with respect to the underlying dispute, the underlying agreement.

The suggestion, again, of trying to paint the Claimant here in a negative light in terms of where we might go or what we might not do, again, playing with words. When I told Your Honor if we were told to come back subject to cargo, you may issue an order and you're going to say, you know, I want this ship back here, Mr. Georgantas, by such and such date. If we're discharging cargo somewhere, we would have to finish operations before we were able to return. That was a logistic comment; it was not to be taken the way Mr. Floyd tried to kind of twist it around that we would use that as an excuse.

With respect to the sort of, quote, independent manager, these are highly, highly sophisticated vessels, Your Honor, in terms of their operation. And we do not believe that there's anyone out there that is as capable of operating these vessels as the Claimant is right now. And I'm talking about this vessel, but, by extension, the other vessels as well. They

have all the proper certificates, all the management systems in place, all the proper insurances. It is evident with all the documents we have produced to the custodian. And we think what their request amounts to, again just to really emphasize that point, is another backdoor attempt to take control and possession of the vessel by way of, you know, putting in their own crew and basically asking you to give them the keys to this vessel and presumably by extension the other vessels as well. We think our proposal makes sense. It's credible. And any court order by a Federal Court will have plenty of teeth in terms of any potential violation.

THE COURT: Okay. Thank you very much.

MR. GEORGANTAS: Thank you, Your Honor.

THE COURT: I think we've ventilated that subject pretty well.

Mr. Ruzinsky, do you have something else you want to say about bankruptcy?

MR. RUZINSKY: Yes, Your Honor. Thank you. This is Bruce Ruzinsky with Jackson Walker. A few things. First of all, Your Honor had asked the question about, folks could have invested under the present circumstances, I think, with the arbitration award. And, you know, the plan was filed a year after the arbitration award or confirmed a year after the arbitration award. And so the folks who invested money pursuant to the plan knew of the findings of the arbitrator, the very

clear findings, that the preferred shares were owned by the Cypriot Nominees as of March 11th, 2022. And I don't know what was in their mind at the time, but it seems like they -- that they may have made some assumptions or may have made an economic choice and a bet, and without knowing what the outcome was going to be, but knowing what the arbitrator had already found. And, you know, time will tell whether or not that was a poor choice or a better choice. They'll find out later.

Eletson Holdings did not control Eletson Gas, but Eletson Gas controls the SME and this vessel. The plan in the disclosure statement does not mention this vessel or this SME. There was a -- there was a comment from opposing counsel earlier about retained causes of action and a fraudulent transfer claim. I don't understand and appreciate how there would be a fraudulent transfer claim for something that was never owned by the debtor. Eletson Holdings never owned, ever owned these preferred shares. And under a fraudulent transfer claim, I think you've got to have either a transfer of an interest of the debtor and property or you got to have the incurrence of an obligation by the debtor. And I don't think we've got those here, so I'm having trouble understanding how there's a belief on the other side that there's some fraudulent transfer claim that is going to bring back these shares or transfer these shares into Eletson Holdings when it never owned any of these preferred shares to begin with.

And lastly I want to, you know, comment on the -- I think it was a statement made by opposing counsel that an unconfirmed arbitration award is just a piece of paper. And that's not correct. And as I had mentioned, I think in at least one case earlier, and -- along the Second Circuit, an arbitration award has legal force only because the parties have elsewhere promised to be bound by it. That is in *New York State Nurses Association Pension Plan v. White Oaks Global Advisors, LLC.*, 102 F.4th 572, at pages 595-96; it's a (2024), Second Circuit case. Also an unconfirmed arbitration award is a contract right. That is *Stafford v. International Business Machines*, 78 F.4th 62, at page 68 (2023), Second Circuit. Section 12.14 of the LLC Agreement, which is Docket No. 55-1, at page 74, provides for binding arbitration to resolve all disputes. The parties agree that the arbitration as provided in this Section 12.2 shall be the exclusive and binding method for resolving any such dispute and will be used instead -- used instead of any court action, which is hereby expressly waived, except for any action to compel arbitration or obtain judgment on an arbitration award pursuant to Section 12.14. And the S.D.N.Y. acknowledged this when confirming the award in part in Exhibit 55-4, pages 51 through 53, citing to an older Second circuit case in *FloraSynth*, F-L-O-R-A-S-Y-N-T-H, *Inc. v. Pickholz*, P-I-C-K-H-O-L-Z, 750 F.2d 171, at page 176, (1984), Second Circuit case, for the proposition that an unconfirmed

award is a contract right, and found that the parties to the LLC Agreement were entitled enforce the arbitration provision and any award obtained through it. So to say that an unconfirmed arbitration award is just a piece of paper is not consistent with the controlling law on this issue. Thank you, Judge.

THE COURT: Thank you.

Anything more, Mr. Floyd?

MR. FLOYD: Yes, please, Your Honor. And I will try to keep it brief. On the issue of an arbitration award as a contract right, none of that contradicts the basic proposition, and it is consistent with everything since Federal Arbitration Act came into existence, that the way that right, whatever one wants to call it, an award or a contract right, the way it gets enforced is by confirmation, and that's the distinction there. Here, and I think it's helpful to quote, there was -- it's paragraph four of the stay relief order, which is in our papers. But stay relief order from the bankruptcy proceeding, April something from 2023, states, quote, any arbitration award, whether in favor of any arbitration party, shall be stayed pending further order of the bankruptcy court on a motion noticed following the issuance of the arbitration award. So avoidance of doubt, no arbitration party shall transfer, dispose of, transact in, hypothecate, encumber, impair, or otherwise use any such arbitration award or any asset or property related thereto, absent a further order of this Court, end quote. There

is no further order of the bankruptcy court authorizing the Cypriot Nominees or the old Eletson people to use the arbitration award, which is precisely what they're trying to do here. That award is stayed for all purposes until it goes back to the bankruptcy court.

That also explains what was going on with confirmation of the plan. The creditors with whom Levona is affiliated, the creditors knew that whatever happened in the bankruptcy -- in the arbitration proceeding, there was the ultimate backstop of a stay, somebody had to go back to the bankruptcy court to get a new order regarding anything use of the arbitral award. On top of that, Mr. Ruzinsky says he doesn't understand how there might be a fraudulent transfer involved here. You know, that's down the road, and in a different court, and everything like that, but it does harking back to the arbitration award and needing to go -- excuse me, to the stay order and more importantly to the provisions of the plan in dealing with the reserve causes of action, the reserved action. There most definitely would be a claim for fraudulent transfer or fraudulent conveyance or preference action.

Eletson Holdings' initial position in the arbitration running up until March or April of 2023, when the stay relief order was issued, was that Eletson Holdings had exercised the option to purchase the preferred shares. Those preferred shares would therefore be a part of the estate. That representation is

consistent with an affidavit that Mr. Kertsikoff, which is one of the many people associated with the old Eletson team, put in in the arbitration and said, quote, in paragraph nine from a Kertsikoff arbitration, quote, prior to March 11th, 2022, Eletson Holdings was a common unit holder. As of March 11th, 2022, Eletson Holdings became the sole unit holder of the company by reason of the transaction that respondent Levona Holding Ltd appears to be challenging. So Mr. Kertsikoff, and I think he signed some of the verifications in this proceeding, or the others, was contending that Eletson Holdings held the preferred shares. If those preferred shares or the rights to take them was transferred to the so-called Cypriot Nominees, either for undervalue or for no actual value, despite an oral agreement supposedly to pay 3 million euro, which is a fraction of what the value was, that does sound an awful lot like a fraudulent conveyance or a fraudulent transfer, in fact I think it sounds --

THE COURT: Okay. Okay. I've heard enough. Thank you.

Gentlemen, I'll work on this dutifully, and I'll reach a decision eventually, as quickly as I can. It would make a lot more sense in the interim for you to try and agree on what we're going to do with this ship, than my trying to craft a short-term solution. It makes more sense to the issues of the vessel and much more sense to the issues of personnel than I would ever be.

I really urge you to try to get together on that. I do agree that it's crazy to have the ship, pay them, and then port because lawyers can't agree, but I can't force you into an agreement. I will -- I will work on this. And I may in fact send out written questions asking for further clarification or even convene another hearing. But thank you for your advocacy today. I've learned from everybody who's spoken, and I appreciate it. Thank you very much.

MR. BARR: Thank you, Your Honor.

MR. GEORGANTAS: Thank you, Your Honor.

MR. FLOYD: Thank you.

MR. RUZINSKY: Thank you.

(Whereupon, the Court adjourned at 4:51 p.m.)

* * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: April 21, 2025

/S/ Monica Walker-Bailey, MS, RPR, CSR
Signature of Court Reporter

D

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EXHIBIT “8”

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

KITHIRA GAS SHIPPING COMPANY, et al,	)	
Plaintiff,	)	Civil Case No. 4:25-cv-00755
vs.	)	
FAMILY UNITY TRUST COMPANY, et al,	)	Tuesday, February 25, 2025
Defendant,	)	
NATIONAL MARITIME SERVICES,	)	
Interested Party.	)	

TRANSCRIPT OF TELEPHONIC MOTION HEARING
HONORABLE KEITH P. ELLISON PRESIDING
UNITED STATES DISTRICT COURT

Official Court Reporter: Donna Prather
515 Rusk St., #8004
Houston, TX 77002

Proceedings taken by Certified Stenographic Reporter; transcribed using Computer-Assisted Translation

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HAYLEY STANCIL

Also Present:
ALAN SCHWIMER
Substitute Custodian

DENIS MCGRACH

(Proceedings commenced at 3:33 PM.)

THE COURT: Good afternoon and welcome. This is Keith Ellison. We're on the record in our 3:30 docket. I know you just did the appearances of counsel for the court reporter; I want to short circuit that a bit, let's get appearances of those who intend to speak during this hearing, starting with plaintiff.

MR. FLOYD: Your Honor, good afternoon. This is Edward Floyd from the law firm Floyd Zadkovich. I will be speaking for the plaintiff. Also on line with me, though, are Mr. Luke Zadkovich and I believe Abigail Laag.

THE COURT: And your name again, sir?

MR. FLOYD: Edward Floyd, Your Honor.

THE COURT: Thank you and welcome. Welcome to all of you.

Okay. For the defendant.

MR. GEORGANTAS: Dimitri Georgantas, as the responding parties to the motion of Royston Rayzor, together with my colleagues Eugene Barr and Blake Bachtel. Good afternoon, Your Honor.

THE COURT: Good afternoon and welcome to all of you.

MR. GEORGANTAS: Thank you.

THE COURT: Okay. Sorry. Go ahead.

MS. HAAS: Your Honor -- yeah, I'm sorry,

Your Honor. I just want to clarify. This is a little bit -- technically no one has appeared for any of the named defendants --

THE COURT: Who's speaking?

MS. HAAS: -- made the appearance for the vessel.

THE COURT: Who's speaking?

MS. HAAS: This is Kelly Haas, counsel for National Maritime Services. If you notice, it's a bit confusing because the Kithira Gas Shipping Company that Mr. Georgantas has made the appearance for, it's the same name as the plaintiff; so I just wanted to bring that to the Court's attention because there is an issue about the rightful directors for the plaintiff.

THE COURT: That's a big issue, yeah.

MR. GEORGANTAS: Your Honor, that is an underlying issue for a later time. We have appeared to represent the vessel in rem, and we have filed a notice of appearance and a verified statement of interest or right pursuant to the rules.

THE COURT: Okay. I feel like I don't understand the facts very well yet. I know there's some dispute as to what the facts are. But when we received this original filing, which I think was February 11, I don't think we were told about the Corpus Christi proceeding, were we?

Please identify yourself when you speak.

MR. GEORGANTAS: Your Honor, Dimitri Georgantas. I

checked the civil cover sheet. I did not see a related case designation. But I don't have it in front of me, so that might have to be checked.

MR. FLOYD: Your Honor, this is Edward --

THE COURT: Wait a minute. Wait a minute. One at a time. Who is speaking, please?

MR. NASH: Well, Your Honor, this is Andrew Nash. I'm local counsel for plaintiff. Before we got too far down the road, I wanted to make sure my appearance was noted as well. But I think Mr. Floyd is about to speak.

THE COURT: What's your name again?

MR. NASH: My name is Andrew Nash.

THE COURT: Mr. Nash. Thank you.

Okay. Mr. Floyd, you want to say something?

MR. FLOYD: Your Honor, I was just going to say that we can also check, and I can do that as we're on the hearing here, whether or not a related proceeding marking was provided in connection with this matter. My recollection is that Mr. Nash, our local counsel, did appear at the courthouse in connection with the -- or one of his colleagues -- in connection with the application. And beyond that, I do not know the details on that answer but can check.

MR. NASH: This is Andy Nash. I can address that question, Your Honor. When the -- when this case regarding the vessel Kithira was commenced on February 11th, it was

commenced after hours. It was commenced under seal and the initial motions for arrest and the appointment of substitute custodian were addressed by Magistrate Judge Peter Bray on the miscellaneous docket. The case was then subsequent -- that miscellaneous docket number was subsequently assigned to Judge Eskridge. And further to that, when we filed a motion to unseal the case and have the case transferred to the civil docket, that's how the case ultimately ended up in your court, Your Honor.

At the time of the original filing, the plaintiffs did not indicate that this proceeding was related to the separate proceeding in Corpus Christi against the vessel Kithnos. We did not indicate that that was -- that they were related. I mean, as the filing attorney, I was, like, these are two separate cases against two separate vessels, although they are related in the global sense that a lot of the parties share some common -- there's commonality on some of the parties, but we did not file them as -- designate them as related cases at the time of filing.

THE COURT: We don't really need two lawsuits, do we?

MR. NASH: I'm sorry, Your Honor, what was that?

THE COURT: Just a second. Let me state my question. We don't really need two lawsuits, do we?

MR. GEORGANTAS: Your Honor, Dimitri Georgantas

here. That is -- I would suggest, respectfully, that that is something that needs to be discussed further between counsel because, as Mr. Nash stated, there is a lot of similarities in the underlying facts. Some of the parties are different, but there are a lot of similarities whereby there might be a useful discussion about some sort of, I don't know, joint management or something, but I don't know if this is something that we could determine today, again, with all due respect. But I understand the question.

MR. FLOYD: Your Honor, this is Edward Floyd speaking for the plaintiff.

THE COURT: Yes, sir.

MR. FLOYD: I, likewise, think that we could speak amongst counsel regarding that. However, at this point a fundamental consideration from the perspective of the plaintiff is that we actually do not have a good understanding of for whom Mr. Georgantas is actually appearing and taking instructions. That would certainly need to be clarified before any type of stipulation to relatedness and consolidation effectively could be made on our part.

THE COURT: Well, if that's not an issue for today, tell me what you think the issue is for today.

MR. GEORGANTAS: Judge, the issue for today is that the plaintiffs obtained an ex parte motion while the case was still under seal or, to put it in other words, one day before

the case was unsealed. And with that ex parte motion, they proposed to replace the captain of the vessel Kithira, which is currently off shore at the Galveston anchorage under arrest in charge of my client's crew, a full complement of a competent crew, together with a watch stander -- watch stander that is appointed as a substitute custodian on behalf of National Maritime.

So, therefore, the reasons that they have stated in their pleadings, they are asking the Court to take a rather drastic and dramatic step to remove the designated captain of the vessel, because apparently they don't like that we have not produced every single document that they're requesting -- and we can get into that in due course -- and we are opposing that, that there is no safety or any other reason that the master should be replaced.

Having said that, we've been down this road before before Judge Libby. And I should say initially, because I was going to bring that up anyway, that there was a hearing before Judge Libby. Judge Libby denied the motion to replace the master. She granted in part their motion for some production of documents, which actually included some documents that had not even been requested. We are working to produce those documents.

Interestingly, in their response today, Plaintiffs have failed to mention that the deadline to respond is

tomorrow noontime, but they keep repeating here that we just haven't provided any documents, I guess implying that we're violating Judge Libby's order, which is totally incorrect. We are working on the documents and intend to respond timely.

So with that as a background, we reached out to Plaintiff's attorneys, and more specifically, Ms. Haas, to see if we could come to some kind of agreement since there was an order --

MS. HAAS: Dimitri, I'm not an attorney for Plaintiff.

THE COURT: Just a second. Just a second. Let Mr. Georgantas speak, and you can have as long as you want after he's finished.

MR. GEORGANTAS: Sorry. I misspoke. The attorney for custodian, Your Honor, who is requesting these documents, the substitute custodian.

So anyway, we reached out on a couple of occasions to see if we could come up with an agreement in your case so we could avoid the hearing today and produce documents within a reasonable time. Judge Libby, after the hearing on Thursday, gave us until tomorrow noon. So something similar to that. But that was rejected. And now they're making assertions that, for no apparent reason, that even document production is not good enough for them. And we can get into that as much as they want during this hearing. But that's

what's in front of you today, and that's the background of the Corpus Christi hearing and the order by Judge Libby.

THE COURT: Ms. Haas wanted to say something, I believe.

MS. HAAS: Yes, Your Honor. And I do -- I did want to make that point clear. I am not affiliated with plaintiff or defendant. My client, National Maritime Services, is the court-appointed neutral substitute custodian. We have no skin in the game either way. And we're trying to abide by the order that was issued by the Court on February 11th ordering that my client stand in the shoes of the U.S. Marshals. And with that order, we have a lot of liability to the United States government, to the marshals, and all of their agents, for any and all claims that might arise. And my client takes that very seriously.

And Mr. Georgantas has really just skirted around a lot of issues. These two cases are similar in Corpus Christi and in your court, Your Honor. However, they're not identical, because the cargo on board these two vessels are not identical, and the situation with the cargo and the concerns for the cargo are not identical. And we have not asserted that the crew on board the Kithira is in any way inadequate. However, we are saying we have not been provided cooperation from the get-go with this master. And the arrest of this vessel is not something that's going to, in our

understanding, be dealt with and resolved quickly.

This is going to be an ongoing, lengthy arrest; so we have to set up procedures in place for us to be able to fulfill our duties indemnifying the government and the marshals for all claims that might arise. And so, one, yes, is that the cargo is safe and being maintained safely on the vessel. That's not the business of National Maritime Services. But in doing and carrying out their obligations as a substitute custodian, we retained MTB. And that's -- Mr. McGrach is an engineer with MTB. He has sailed on tankers just like this, gas tankers just like the one that's here at issue. He is the expert. And he has told us in order for him to confirm that the cargo is stable, the cargo is safe, it's being maintained, the vessel -- there's no apparent issues going to be arising, like, the cargo is very important that it be kept at certain temperatures, certain pressures. You know, is there an upcoming problem arising? We just need to be confirmed that everything is okay. We're not saying that it's not, but we've been provided with very little information for him to say, yes, everything is okay, or this might be a foreseeable problem and we need to think ahead because this vessel is in anchorage in a very busy port, one of the busiest ports in our country. And it's an obligation of National Maritime Services to confirm before there's an incident that everything is in working order.

We've -- the order by Judge Libby, Mr. Georgantas keeps saying that he just denied our motion to replace the master. He keeps leaving out a very, very, very important phrase. "Without prejudice." He said, you need to provide them with all of this information. All of it. Because he takes the safety of the environment in Corpus Christi -- if anything goes wrong with that vessel and the people on board and maritime commerce -- very seriously. So if we don't get a full response, we can go back to the Court, and he is going to entertain taking the master from that vessel. Because the master seems to be taking directions, I guess, from Mr. Georgantas and refusing to cooperate to provide even the most basic information to the neutral court-appointed substitute custodian that will tell us if there's crew changes, tell us if a launch that's coming to get the crew and bring the other crew on board has sufficient insurance.

As the judge, I'm sure, is well aware, personal injury lawsuits in the state of Texas are rampant, and especially for Jones Act. If we have a claim, my client is going to be on the hook for that based on this order. So we have asked for a broad range of information, not just regard to the cargo, but we can go down the list one by one if the Court would like us to do that.

THE COURT: No. Here's the position -- is this a position which your client often finds itself?

MS. HAAS: I'm sorry, Your Honor. I didn't catch all of that.

THE COURT: Is this a position that your client often finds itself in or is drawn in to help resolve a dispute between conflicting claims?

MS. HAAS: No. This is an unusual situation that we're being placed in. But is it unusual to replace a master? No. This is standard to be able to -- crew changes happen all the time. Mr. Georgantas has made it seem like this is extraordinary. We would never replace the master. And that's just simply not true. MTB, we've asked for a crew list, and we've also asked for a report that shows the qualifications of all of the crew so that MTB can sign off as part of their duty that there is adequate crew with experience and that they're capable of handling this situation. Because being at anchor offshore without any ability other than a launch to bring stuff back and forth is very different than actually sailing this vessel. So as part of our duties, we've asked for this information just to be able to confirm, yes, everything is okay.

And Mr. Georgantas is arguing that we're -- we've been asserting and claiming that they're not safe. That's not the situation at all. We are asserting that they're not cooperating with us at all so that we can do our job as ordered by the Court. There's a lot of liability for my

client if it's not done right, and we want it to be done correctly.

MR. GEORGANTAS: Your Honor, if I may respond briefly?

Ms. Haas started the conversation that she's not really challenging the competency of the crew, but concerns that the master, specifically, is not cooperating. Of course, the master is coming through us, and we are communicating with her as lawyers.

But let me get back to her statement that they're not really challenging the competency of the crew, which I can represent to Your Honor it is a competent crew, fully-manned vessel, and we have responded to certain requests.

She then said that their concerns are about cargo and cargo conditions to ensure that everything is safe. Okay. Fine. I would like to point the Court to one of her exhibits in the supplemental briefing that was filed about an hour and a half ago, and this is an email that she sent to me on February 18. And she basically tells me, hey, we sent the information you provided to Dennis McGrach, who is the gentleman that is with us today at MTB, and this information, Your Honor, was cargo related. We had a picture of cargo pressures and bars, technical stuff that Mr. McGrach understands. So she goes on and she says she has advised that she needs the following in order, and she comes up with three

items. Just three items. Number 1, crew list. Number 2, an officer's matrix, which is -- you know, I'm not even sure what that is. And then, Number 3, redacted bills of lading. So it seems to me when she's saying that they're not challenging whether it's a competent crew, but then she says master is not cooperating. She follows up with an email that she's asking for the crew list so Mr. McGrach, I suppose, can determine if that's a competent crew on board. I mean, there is some serious contradiction here of where they're coming from.

Let me just say, Your Honor --

MS. HAAS: Your Honor, I have --

MR. GEORGANTAS: One more thing, Kelly, please.

The safety of the vessel is of paramount concern to us as well, first and foremost. And we've given them information about the cargo condition, and we've also agreed to provide them with weekly updates, by the way. I forgot to mention that. We have offered to provide them weekly updates with certain pressures and readings on board the vessel. So this exercise of this hysteria that they are trying to create about unsafe conditions out at the anchorage where there's, like, another 40 vessels out there on any given day should not really carry any weight with the Court, respectfully.

Thank you.

MS. HAAS: Are you finished, Dimitri?

MR. GEORGANTAS: Yes.

MS. HAAS: Your Honor, thank you.

Mr. McGrach is on the call, and if you would like, he can tell you why. I didn't provide you with those three. I provided your very, very limited information that was given to me in the email on February 18th at 10:21 AM to Mr. McGrach. He came back and said this is not sufficient. But if this is all they're going to give, if I can get these three things, which he knows what an OCIMF officer's matrix is, and he's the one that asked me to get those three categories so that he could feel comfortable providing his expert opinion that everything is fine. As an engineer, he needs that information. He can't just say, oh, well, they told us it was safe, so that -- and then when something happens they will be asked what did you look at? Well, I just took Mr. Dimitri -- or Mr. Georgantas's word on it. And that's not good enough for him to sign off on that.

So, I take pause at you saying that I just provided this. I got this information and these requests from the engineer, the specialist that's been retained.

With regard to the cargo -- and just like you said, you and I don't know. We don't know about the cargo and how it should be maintained, because we aren't those experts. And that's why National Maritime Services has gone -- all we want is confirmation that everything is in place. And I think that you -- during our discussions, Dimitri, are very familiar with

Mr. McGrach. And you said, yes, he's very good. Yes, I've worked with him before.

And --

MR. GEORGANTAS: Your Honor, let me --

THE COURT: No. Quit interrupting each other.

Go ahead and finish, Ms. Haas.

MS. HAAS: Thank you, Judge.

You agreed with me that he is an expert in what he does. And if he's asking for this -- and we keep culling down the list. I mean, I think the first list was 12 or 14 things. So then in an order of trying to compromise, we went down to eight. Well, then, of the eight you objected to most of that and didn't really answer the questions. And so he said give me this basic information, and I'll try and make it work.

So, you know, Dimitri, am I wrong in saying that you think he's a credible independent engineer? I mean, I know that you agreed on our phone conversation.

So, I mean, Judge, we don't -- we have no skin in the game as to who is the rightful operators of these vessels. We just want to make sure that we are carrying out the order of the Court as a substitute custodian. And we just need this information to be able to -- to tell the Court, yes, we are keeping it in a safe manner, that the vessel is seaworthy. And just having the attorneys tell us it is is not enough.

MR. FLOYD: Your Honor, this is Edward Floyd for the

plaintiff. May I speak?

THE COURT: Yeah. Let Mr. Georgantas speak first and then you can speak next.

MR. FLOYD: Thank you, Your Honor.

MR. GEORGANTAS: Very quickly, Your Honor, just to clarify. We do know Mr. McGrach. We've worked with him. I don't know other comments that Ms. Haas went on and on about, but we do know Mr. McGrach. We respect his requests. And if you look at this, at the email that she attached, right below the follow-up email that she sent about the crew list and the matrix, you will see my email to her responding to all her points and providing details about her questions. So it is not fair to say that we, including the master, are not cooperating with them. That's all we have done from day one, within reason, to assure them that everything is safe.

There is one item that I think it's important that I do wish to bring to your attention very quickly. Very much like the vessel in Corpus Christi, this vessel, the Kithira, sometime in the middle of December last year underwent a very, very rigorous inspection by the United States Coast Guard, who is globally acknowledged for their very strict standards of inspection, in order to obtain what is referred to as a certificate of compliance. A certificate of compliance, or COC as it is referred to, is basically the document -- it is an annual inspection. And without this document, a vessel

cannot trade in the U.S. Period. So two months before the arrest, give or take a day, this exam took place on this vessel where the crew -- not only did they look at crew lists and equipment and fire safety equipment, they do drills as well with the crew, and it passed. So you can appreciate our concern when two months later we are facing all these sort of questions and challenges about the vessel being safe. The vessel is safe. And we've given them information, given them additional comfort, if I can put it like that.

And moreover, after Judge Libby's decision, order, we reached out again, and we even offered to come to a similar arrangement and to provide documents that were not even being requested in this case. And all that was rebuffed. And somehow, Ms. Haas now is trying to say that they don't have, you know, skin in the game, or they're being neutral. So you can appreciate, Your Honor, that, you know, we have some concerns about those representations.

And I think it is important that we did offer to follow the Judge Libby line and avoid what we're doing here today, and it was rejected. And now they're stating in the supplemental brief that even documents are not enough at this point.

Thank you, Your Honor.

THE COURT: Thank you.

MS. HAAS: Your Honor --

THE COURT: No. Not your turn. Not your turn.

Somebody else wanted to speak?

MR. FLOYD: Your Honor, I'll speak briefly so that Ms. Haas can come back to her points, because we're on plaintiffs --

THE COURT: Who's speaking?

MR. FLOYD: Your Honor, this is Edward Floyd for the plaintiff. And I will try and keep my comments brief so that Ms. Haas can continue with hers since it is the custodian's motion.

Mr. Georgantas, when he was speaking, repeatedly referred to his clients as "we" and "us." And in that, he seems to be referring to the entity for whom he purportedly made an appearance. And that appearance is notable in its language which states that, "Kithira Gas Shipping Company, on the authority of its lawful directors, was appearing and stating its -- making its statement of right or interest in the concerned vessel." The reality is that the plaintiffs include Kithira Gas Shipping Company. That is our client. It is not Mr. Georgantas's client.

And I'd like to just briefly give some quick background regarding structure and the bankruptcy proceeding in the Southern District of New York where we are not counsel, but I am familiar with it.

Kithira Gas Shipping Company is owned by Eletson

Gas, also a plaintiff here. And Eletson Gas is owned in turn by Eletson Holdings. Eletson Holdings was the debtor in what was initially commenced as an involuntary Chapter 11 bankruptcy proceeding in the Southern District of New York. But in October of 2024, Eletson Holdings, still owned by buyer interests, voluntarily chose to convert the involuntary proceeding into a voluntary proceeding. That was done. And then a short while later in November of 2024, the bankruptcy court confirmed the plan of reorganization. Eletson Holdings was reorganized and the bankruptcy court confirmed that new directors and new share issues were implemented. Those shares were implemented or issued to, essentially, investors, new equity interests who had invested something in the range of $53 million into Eletson Holdings. And the confirmation plan went on to confirm that Eletson Holdings had -- and its new shareholders and new directors had the equity interest all the way down in the chain of ownership down to subsidiaries and the assets of those subsidiaries.

Given the corporate organization structure that I just summarized a few moments ago, those step-down subsidiaries include Kithira Gas Shipping Company, which is the time charter of the vessel currently under arrest.

For Mr. Georgantas to show up and assert that his client is Kithira Gas Shipping Company is astounding. And he has not identified here from whom he is taking any

instructions, meaning the individuals who are actually giving him instructions. In the prior hearing before Judge Libby, Mr. Georgantas did identify one name, but he did indicate as well that there were many others. And we 100 percent expect that those many other names are some, if not all, of the former shareholders and former directors of the former organization Eletson Holdings mostly located in Greece.

And as recently as last week, on February 20th, the bankruptcy court judge stated, as he had previously stated, that the former directors do not have authority to speak or act in any way whatsoever for the so-called reorganized Eletson -- for the so-called reorganized Eletson Holdings group. And that has also been stated almost in the same language, the two courts have quoted one another before Judge Liman in the Southern District of New York District Court. The simple fact is that Mr. Georgantas's purported client is our client. He has not identified whom he is taking instructions from. And our client, which is the time charter of the vessel, had significant concerns that the crew and/or master are taking instructions as well from people who have absolutely no rights to the time charted vessel pursuant to United States law given the status of the bankruptcy hearing and with sanctions having been awarded by the United States Bankruptcy Court in New York and further sanctions to come.

I'll pass it there, Your Honor, to the actual movant

in this matter, but I do think that that background is very important.

MR. GEORGANTAS: Your Honor, I --

THE COURT: Is there a Chapter 11 trustee or a debtor in possession?

MR. GEORGANTAS: Your Honor, if I may --

MR. FLOYD: Your Honor --

THE COURT: No. I want to get the answer to my question. Is it Chapter 11 trustee or debtor in possession?

MR. FLOYD: Your Honor, Edward Floyd speaking. And off the top of my head, I do not know the answer to that question.

THE COURT: Okay. Mr. Georgantas.

MR. GEORGANTAS: Thank you, Your Honor.

Like Mr. Floyd, I'm not very familiar with the underlying litigation in New York and the bankruptcy. I can tell you that the authority of this company is at issue in this case. It is one of the crucial issues. Because our position is that the Kithira Gas that is one of the plaintiffs is not acting on lawful authority.

I don't know that this is an issue for the Court today. This is an underlying court issue that will probably go to both cases. We are trying to come up to speed with some of the previous decisions in New York and, more particular, who the actual debtors are and what orders bind what entities.

But that's for down the line.

In response to who I'm taking instructions, I am a little surprised, because I -- our statement, verified statement of interest, it has a verification. The name is right there. So I'm a little surprised that Mr. Floyd is saying that he doesn't know who is instructing me.

I would also like to correct the record that to the best of my knowledge, and we can certainly get a copy of the transcript, I don't know that I ever represented to Judge Libby that I'm also being instructed by, quote, many others. I simply do not recall making that comment. That fact can be clarified.

Having said all that, Your Honor, this is -- what Mr. Floyd has represented to the Court is not the issue before us today. Respectfully, I submit that in any event, it is a court issue in this case that will have to be fully briefed before the Court, both courts, actually, and the issue today is whether this ex parte order to remove a perfectly competent master from the vessel and what documents, if any -- I say what further documents and information we need to produce to the custodian so they can be satisfied that the vessel is, in fact, safe and she's not going to blow up at the anchorage. Thank you.

MR. FLOYD: Your Honor, this is Edward Floyd speaking. My recollection is that Mr. Georgantas had made

reference to receiving his instructions from some purported directors. And as I said when I spoke before, he gave the name of one of those purported former officers or directors with the pre-structure, the pre-existing structure of this group.

And just briefly, I think it helps to quote from the transcript of the February 20th hearing before Judge Mastando in the bankruptcy court where the Court stated -- and for the record, I'll note this is at page 97, line 14 through 18 of that transcript. "There is also no ambiguity regarding the new Board of Reorganized Eletson Holdings authority to act on behalf of Eletson Holdings, Inc., to direct the AOR that's referring to a person in Liberia to implement the Chapter 11 plan and confirmation order."

And then the Court went on to state that as of the effective date, and as previously ruled, quote, "This Court has independently reviewed the plan of confirmation ..." and with an ellipsis in there by me "-- the effective date has passed and all conditions precedent were waived." Another ellipsis by me. "As of the effective date, the authority of the prior managers of Eletson Holdings ended. The other two debtors no longer exist. The authority to manage Eletson Holdings vested in the new board."

That's the end of the quotation there, Your Honor, with a few ellipses thrown in by me.

I would just simply submit that what Mr. Georgantas is saying is a disputed issue is not validly a disputed issue. We are the plaintiffs. We are -- our client is Kithira Gas -- Kithira Gas, Plaintiff, and they are not represented by Mr. Georgantas.

THE COURT: Okay. So you're saying we don't have an admiralty issue here right now, we have a bankruptcy issue; is that right?

MR. FLOYD: In part, it may very much go that way, Your Honor. The admiralty issues are certainly that there's a Rule D possessory action. We are not seeking title. The time charterers of that vessel, there's a Rule D possessory action to actually implement that possession, which has been taken away from us by the prior group. And there's also the admiralty issue, I would describe it as an admiralty issue, of the custodian and its expert engineer being able to do what they see as necessary to keep that vessel safely maintained.

THE COURT: Well don't the other issues go away if we decide who is in charge of this vessel, who the Board of Directors and management is?

MR. FLOYD: I think it would go away quite quickly.

MR. GEORGANTAS: Your Honor, if I may. That is an underlying --

THE COURT: I want to hear the answer of Mr. Floyd first.

MR. GEORGANTAS: Sorry, Your Honor.

MR. FLOYD: Your Honor, I do believe that that is the fundamental underlying issue to be resolved. And whether that needs to be resolved in the bankruptcy court or in the admiralty court or a little bit of both.

THE COURT: I thought you told me it had been resolved in the bankruptcy court.

MR. FLOYD: Yes, Your Honor. It's clearly resolved with respect to the top of the ownership chain, which is Eletson Holdings. And then by virtue of the bankruptcy plan, which has been approved, Eletson Holdings has control and management over its step-down subsidiaries, including their assets, which ultimately include this vessel.

THE COURT: So the plan of reorganization has been confirmed.

MR. FLOYD: Yes, Your Honor.

MR. GEORGANTAS: Your Honor --

MR. FLOYD: -- that was early --

THE COURT: Wait. Let's hear Mr. Floyd, and then I'll give Mr. Georgantas as long as he wants.

MR. FLOYD: Yes, Your Honor, the plan was confirmed. Sorry if I'm not using the correct bankruptcy terminology, I'm not a bankruptcy attorney, but the plan was confirmed in early November 2024.

THE COURT: Then what are we arguing about?

MR. FLOYD: That's a very good question, Your Honor. The issue is that the vessel is not taking instructions. Prior to being seized and continuing through present, the vessel has not been taking instructions from the time charterers, our clients. Instead, we would presume --

THE COURT: Okay. Here's what I want you to do. Before noon tomorrow, send me the plan of reorganization and the order confirming it. Okay?

MR. FLOYD: Yes, Your Honor.

THE COURT: Okay. Mr. Georgantas.

MR. GEORGANTAS: Your Honor, if I may?

THE COURT: Yes, you may.

MR. GEORGANTAS: Certain parts were left out here in the description by Mr. Floyd, including the fact that we do not represent Eletson Holdings, which is a company and a name that he mentioned three or four times in his presentation. He also failed to mention that there was an arbitration award in New York which was affirmed in part by the district court. And in that arbitration award, certain rulings were made with respect to certain preferred sales and controlling sales of some of the plaintiffs that did not go their way, so to speak.

So with due respect, Your Honor, the issue is more complicated than that. There's been litigation in New York and arbitration for the last two or three years. And the picture that Mr. Floyd just painted about the bankruptcy court

does not address all the underlying issues, which includes an arbitration award that was partly affirmed or at least accepted by the district judge. And all those issues need to be fully briefed before Your Honor, because they do go to the core of the issue in terms of this whole Rule D proceeding that has been commenced.

And also raising some issues, as you've correctly pointed out a little while ago, about admiralty jurisdiction, because they have filed under admiralty the Rule D. So there are additional issues here of significant importance that would have to be fully briefed and addressed before the Court.

THE COURT: Did the arbitration come before or after the plan of reorganization was confirmed?

MR. GEORGANTAS: I'm sorry?

THE COURT: Did the arbitration proceeding come before or after the plan of reorganization was confirmed?

MR. GEORGANTAS: I believe it was before, Your Honor, but don't hold me to it. There is a lot of information with respect to the bankruptcy, the arbitration, the district court, that we're trying to get caught up on so we can present a fully briefed position before you.

MS. HAAS: Your Honor --

THE COURT: I already feel like I'm being asked to disregard what other courts have done. I mean, if we know who owns this subsidiary and who owns the parent, we know who is

in control of the boat. You know, I don't think it's in my jurisdiction to ignore any of that, is it?

MR. GEORGANTAS: Well, Your Honor, that's what I'm -- we're trying to present to you, that it's not as simple as Mr. Floyd would like to present to you. And, you know, we do need the opportunity to fully brief the issue of what took place there and who is controlling these companies.

MS. HAAS: But, Your Honor, before the Court today is the motion to replace the master because he is not cooperating with National Maritime Services, which is -- again, I will say, we don't have skin in the game.

And Dimitri, we don't, with regard to which entity is going to win in the end I guess you might say.

We are being provided with inconsistent information. For instance, if you look at your motion, Document 31, at page 2 and page 12, you stated that there's no cargo on board the vessel. And Mr. McGrach, who is on the call and is ready to provide confirmation or testimony if the Court will allow -- the documents that we have -- that's just not true. There is actually approximately 65 metric tons of ethylene currently on board the vessel. So by you telling us and representing to the Court that there's no cargo on board is simply false.

And then further to that, that the vessel exclusively carried butadiene for the last few months. Well,

the cargo that was taken on prior to the arrest is ethylene. So all of these inconsistent representations in your pleadings even more so go to why we need this information for Mr. McGrach to confirm.

And while we're all trying to figure out who has the rightful directing of the vessel and whatnot, this master I guess is answering to Dimitri and his clients and is clearly not cooperating with the independent court-appointed custodian that has a separate and a side duty. I mean, I think that if one of these third-party vendors comes out, and we have a personal injury lawsuit at the end, if I go back to Dimitri, and I say, oh, Dimitri, you said everything was okay, aren't you going to pay for all this? I guarantee you he wouldn't do it.

And I also feel that if the marshals were the ones that were maintaining the custody of the vessel right now, he wouldn't be so argumentative and noncooperative. And he needs to remember that we have been ordered by the Court to serve in this exact same capacity as the marshals. And we're trying to carry out those duties and do it well. We need this information.

And there's -- if the Court would allow Mr. McGrach to answer one question for me as to whether or not he has sufficient information as Dimitri has represented to the Court. As of this morning when I spoke to Mr. McGrach, he

said, no, he did not have sufficient information to be able to make a finding as to whether everything was in working order on the vessel, that there was crew that had qualifications and experience with this type of vessel. We just need that confirmation. We're not saying that they're not, but we've not been provided with consistent information that says that they are.

THE COURT: Let me take a 15-minute break. I'll be back in touch.

MS. HAAS: Okay. Thank you, Judge.

(Break taken 4:24 PM to 4:34 PM.)

THE COURT: Okay. This is Judge Ellison. Are all the parties present?

Ms. Haas, are you there?

MS. HAAS: Yes, Your Honor. And I would like to make one more point --

THE COURT: Let me find out who's here first.

Mr. Georgantas, are you there?

MR. GEORGANTAS: We are here, Your Honor. Thank you.

THE COURT: And Floyd?

MR. FLOYD: Yes, Your Honor, this is Edward Floyd.

THE COURT: Mr. Nash?

MR. NASH: I'm here, Your Honor. Thank you.

THE COURT: Thank you.

Do I need to ask about anybody else?

Okay. Let's proceed. Go ahead, Ms. Haas.

MS. HAAS: Thank you, Your Honor.

Mr. Georgantas stated that after the hearing in the Corpus matter that his partner, Eugene Barr, contacted me asking if we would just abide by the same order from that court. And that's basically accurate. However, what he didn't say is that they have come back several times short of trying to change that order. One of the big things that they've asked about is that we enter into a confidentiality agreement that we're not going to share the documents and they're not going to go anywhere. We keep going back and saying we will abide by the order of the Court, which instructing us to enter into a confidentiality agreement was not part of the order. And so with them asking us to do exactly what was being done in the other court, it's a little disingenuous to say that we refuse to abide by any kind of an agreement with that.

MR. GEORGANTAS: Your Honor --

THE COURT: Just a second. Quit interrupting each other. Quit interrupting each other.

Go ahead, Ms. Haas.

MS. HAAS: We're just asking for an independent master to be placed on the vessel that's not going to hinder the duties of the substitute custodian. And we ask the Court

to allow that to take place. We'll have a crewing agency. And also, we didn't just agree to do the documents, because by the time that hearing is taking place, we've had the Court's order for several days; so we've already started the process of identifying a replacement master through a crewing agency. And we had one ready to go with the gas tanker endorsement, with everything that was necessary for a competent captain to come on board, which is a standard thing in our industry. The captains and crew change in and out on vessels all the time. It just simply seems like --

THE COURT: Okay. Thank you very much.

MS. HAAS: Thank you, Your Honor.

THE COURT: Mr. Georgantas.

MR. GEORGANTAS: Yeah, just a brief response. If I can just go back before the break because Ms. Haas made some comments that I want to respond to briefly. There's been no inconsistency in our position about the cargo. The vessel's previous cargo was butadiene, and she was now preparing to load ethylene for this particular voyage.

With respect to her comments that we have made false statements about no cargo being on board, there is currently 65 tons of a product that is used as a coolant for the cargo that is scheduled to go on board, which is about 6,000 or 6,500 metric tons. So I think it's a little disingenuous of her to sort of present that there's cargo on board where the

only thing that's on board is 65 tons of this coolant-type product that is used for the cargo that was scheduled to go on board. So that's our position on those comments that she made.

She keeps throwing around lack of cooperation. Again, Your Honor, not true. We have cooperated. And, in fact, even in her own exhibit, my email to her February 18 provides all kinds of information about her -- the eight questions that she had. So that's not correct what she's saying.

Coming back now to, you know, after the hearing -- I mean, I'm sorry, the break, it's a bit disingenuous to say the crew changes all the time. Crew changes take place. And, in fact, we were trying -- or maybe it was accomplished to have a crew change with this vessel. We alerted the custodian that there was a crew change coming. But what they're asking for here now is to replace the master by court order. This is not a scheduled crew change, Your Honor. So, you know, kind of mixing things up there a little bit and, you know, making those representations that vessels' masters or captains are routinely changed by court order. This is an extraordinary remedy that should not take place in the present circumstances.

I do have some other with respect to Mr. Floyd's representations, if I may, but that's my response to Ms. Haas.

We have reached out. We've asked twice about --

MS. HAAS: Well, I --

THE COURT: Quit interrupting each other. Quit interrupting each other.

MR. GEORGANTAS: We have requested confidentiality on at least two conversations, and she has rejected them. And we don't really understand why they would not agree as a neutral, no skin in the game, custodian to even have an order by the Court that basically says any information turned over to the custodian who is -- basically, answers to the court, to not go any further to any other parties. And yet, they're resisting it in view of all the details they're asking and operational procedures of the vessel.

That's my response to Ms. Haas.

I do have a response to Mr. Floyd with some of the bankruptcy comments that he made, if I may present that briefly, Your Honor.

THE COURT: Yeah, there's time.

MR. GEORGANTAS: I'm not going to represent to the Court that at this time we know every detail in the bankruptcy or who the parties were in the bankruptcy. We do not believe that Eletson Gas or Kithira Gas were in the bankruptcy as parties. And whether any binding orders, this is the stuff that will have to be fully briefed in due course.

I can represent to the Court, though, looking at the

Plaintiff's complaint and, more particularly, paragraph 19, tellingly -- well, let's start with 18. They're very short, Your Honor.

So they claim all shares of Plaintiff Kithira Gas are owned by Plaintiff Eletson Gas. And in the next paragraph, in turn, all of the common shares of Plaintiff Eletson Gas are owned by Plaintiff Eletson Holdings.

Your Honor, what is missing there, and it is crucial to the determination here, is the preferred shares of Eletson Gas, which we understand are the controlling shares. And our position is that the controlling shares are in the -- again, to repeat -- control of the people or the person that is instructing us. So I just wanted to put that in briefly, because I can appreciate that Mr. Floyd's suggestion of the reorganized plan and all that has in initial appeal. But I am here to represent to you, Your Honor, that there's a lot more going on in this case, which includes an arbitration award that didn't really go in their favor, including a district court order that apparently affirmed in part and denied in part the arbitration award. And we think the part that affirmed it is the part that's going to relay, and it's going to be lined up with our position. So I just wanted to put that out to you, Your Honor, that the issue of who is the authorized party here between the two entities is not as simple as it -- as Mr. Floyd makes it sound.

Thank you, Your Honor.

THE COURT: Why don't you provide a copy of the arbitration award and any court order that affirmed it to me, if you would, Mr. Georgantas.

MR. GEORGANTAS: Yes, sir. We'll start digging that stuff out. Is there some timetable that we could do all this, that we could try to get --

THE COURT: As soon as possible. Everybody seems to think that timing is critical, so I need the background.

It seems to me -- I'm going to take this under advisement. But it seems to me that we have a corporate fight here. It either has been or has not been resolved by the bankruptcy court, and that's where we need to start.

I'll issue my ruling after taking it under advisement. But if there has been a binding bankruptcy order entered, then the parties have -- what the fear for me of the bankruptcy court? Disregarding a bankruptcy confirmation order does put a party in contempt of court and could end up even with imprisonment. I don't know --

MR. GEORGANTAS: We understand --

THE COURT: I don't know if that's the kind of confirmation order we have here. But the fact that a party was not a participant in the bankruptcy normally makes no difference. Bankruptcy is publicized. All creditors are notified. And the time to make an objection to a proposed

plan of organization is before confirmation and in the bankruptcy court not another forum. So if I were anybody involved in the dispute here, what I'd be most concerned about is whether I was in defiance of a valid federal court order entered in the Southern District of New York.

I'll do my part here, once I figure out what piece of this dispute is mine. But it seems to me that the main event may have been the bankruptcy court.

MR. GEORGANTAS: Well, Your Honor, that was not the only event. It was an event, but there was also a significant arbitration. And there were findings by the arbitrator in New York that were recognized and affirmed by the district court in New York. And this is some of the information that needs to be brought to your attention, you know, before any final determination can be made.

THE COURT: Who were the parties to the arbitration?

MR. GEORGANTAS: I'm sorry?

THE COURT: Who were the parties to the arbitration?

MR. GEORGANTAS: Your Honor, if you just give us a second here. I believe one of the parties might have been an entity named Levona Holdings.

THE COURT: Spell it for the court reporter, please.

MR. GEORGANTAS: L-e-v-o-n-a.

Levona Holdings, LTD, I believe was one of the parties.

MR. ZADKOVICH: This is Luke Zadkovich, also for the Plaintiff's, co-counsel with Edward Floyd, the other parties, to my knowledge, of the Eletson Holding entity and Eletson Corps; so the entity the plaintiffs say seem to control now of our clients as per the bankruptcy plan that was approved.

THE COURT: What's the date of the arbitration award?

MR. ZADKOVICH: It was prior to confirmation of the bankruptcy plan. I don't have the date to hand, but it was well before the approved bankruptcy plan.

THE COURT: And what was the issue before the arbitration tribunal?

MR. GEORGANTAS: The issue, I believe, Your Honor, was the -- one of the main issues -- and, again, we've gone a little far afield with this, with all this stuff that was going on in New York -- but I think one of the issues in the arbitration that we believe is going to be relevant to the determination of the present case was who controlled the preferred shares of the entity that is Eletson Gas. And the arbitrator's award determined that those preferred shares had been transferred to entities that are under the direction of the people that are instructing me. That was a crucial determination because the preferred shares do control Eletson Gas, which is probably why there was no mention about the preferred shares in the plaintiff's complaint and only common

shares. That portion of the award was not overturned by the district judge to the best of my knowledge. So that issue will go, I believe, to the heart of this case in terms of the determination. And simply the parties are going to need some time to brief that issue, Your Honor.

MR. ZADKOVICH: This is Luke Zadkovich. My understanding is that part of the award was stayed. It wasn't that it was dismissed, it was -- the effect of it was stayed; so it did not proceed.

MR. GEORGANTAS: Well, even if that's correct, Your Honor, and not doubting what Mr. Zadkovich is saying here, because I don't know, but even if it was stayed, that would suggest that whatever the arbitrator decided basically freezes or, you know, is frozen in place, and that decision was that the preferred shares of Eletson Gas had been transferred to -- from our clients, if I can put it like that, for purposes of this discussion.

So even if that is correct, again, I don't doubt it that it was stayed, the arbitrator's award did decide that part in favor of our clients, which was the preferred shares and who controlled them.

THE COURT: Well, I need to see the arbitration award.

Is there anything else before we break?

MS. HAAS: Your Honor, this is Ms. Haas, just one

more time, of saying, again, that the issues as we see it at hand are that the custodian needs this information, and we need to have some direction on whether -- if we're not going to get a replacement master that will cooperate and provide us with the information, that Mr. Georgantas be ordered that he provide the information requested by a set time.

THE COURT: And I think the information -- the information or request was, as I understand it, was first made before Judge Libby and the deadline is tomorrow; right?

MS. HAAS: Well, that's for a different vessel and those were different document requests. They're a little bit different in this case because it's a different type of cargo that's being carried. So we need some sort of direction from the Court, if you don't mind, with regard to having this decided, because it's going to be a while to figure out that bankruptcy.

THE COURT: My written order will deal with that. My written order will deal with it.

MR. GEORGANTAS: Your Honor, as I understand it, listening to Ms. Haas, the outstanding documents as of today, and they are actually in her exhibit, she's asking for a crew list, an officer's matrix, and redacted bills of lading. That's what I have in front of me that she had requested.

MS. HAAS: Dimitri, that's correct as of when we were trying to compromise with everything. But that is not

what the Court ordered in Corpus. You said you would be willing to give everything the Court ordered in Corpus.

MR. GEORGANTAS: We offered that, and you rejected it, Kelly. We offered that two days ago to avoid the time today of taking the Court's time. We offered that two days ago, and you're aware of that.

MS. HAAS: That is not accurate. We rejected it because we were going -- we had already made -- retained a crewing agency, had already started the process. And we had no order in place to make sure that we get these documents.

And then on the flip side, you're saying you don't want to give what's ordered until we entered into some confidentiality agreement that we haven't been provided with and that the Court didn't order. So we just need this information.

MR. GEORGANTAS: Kelly, I can work -- we can reinstate the offer with some reasonable time on those documents that were in Judge Libby's. What is your concern about Judge Ellison entering an order that basically orders the custodian not to disclose any information to any other parties since you're, as you state, a neutral party? What is your concern about that, if I may ask?

MS. HAAS: Because we're -- you're not being provided -- you're not providing any commercial -- commercially sensitive information. You can redact whatever.

My client to have to certify that no documents ever going get into someone else's hand, that's a little bit too broad a duty to put onto them.

MR. GEORGANTAS: Well, how would they get on anybody's -- I'm sorry, Your Honor, we're engaging in dialogue here. I apologize. How would they get in anybody else's hands if you don't send them?

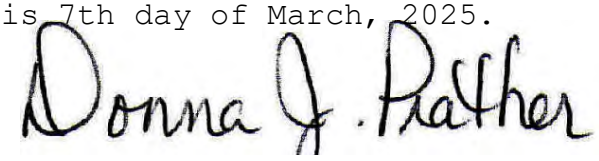
THE COURT: You need to have this conversation after we've hung up. I'm not going to try to arbitrate on the fly here. I'll have my order out shortly. And please provide the information you said you would provide: The arbitration award, any order confirming it, the plan reorganization and any order confirming it. Thank you very much.

(Proceedings concluded at 4:54 p.m.)

REPORTER'S CERTIFICATE

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 44 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated this 7th day of March, 2025.



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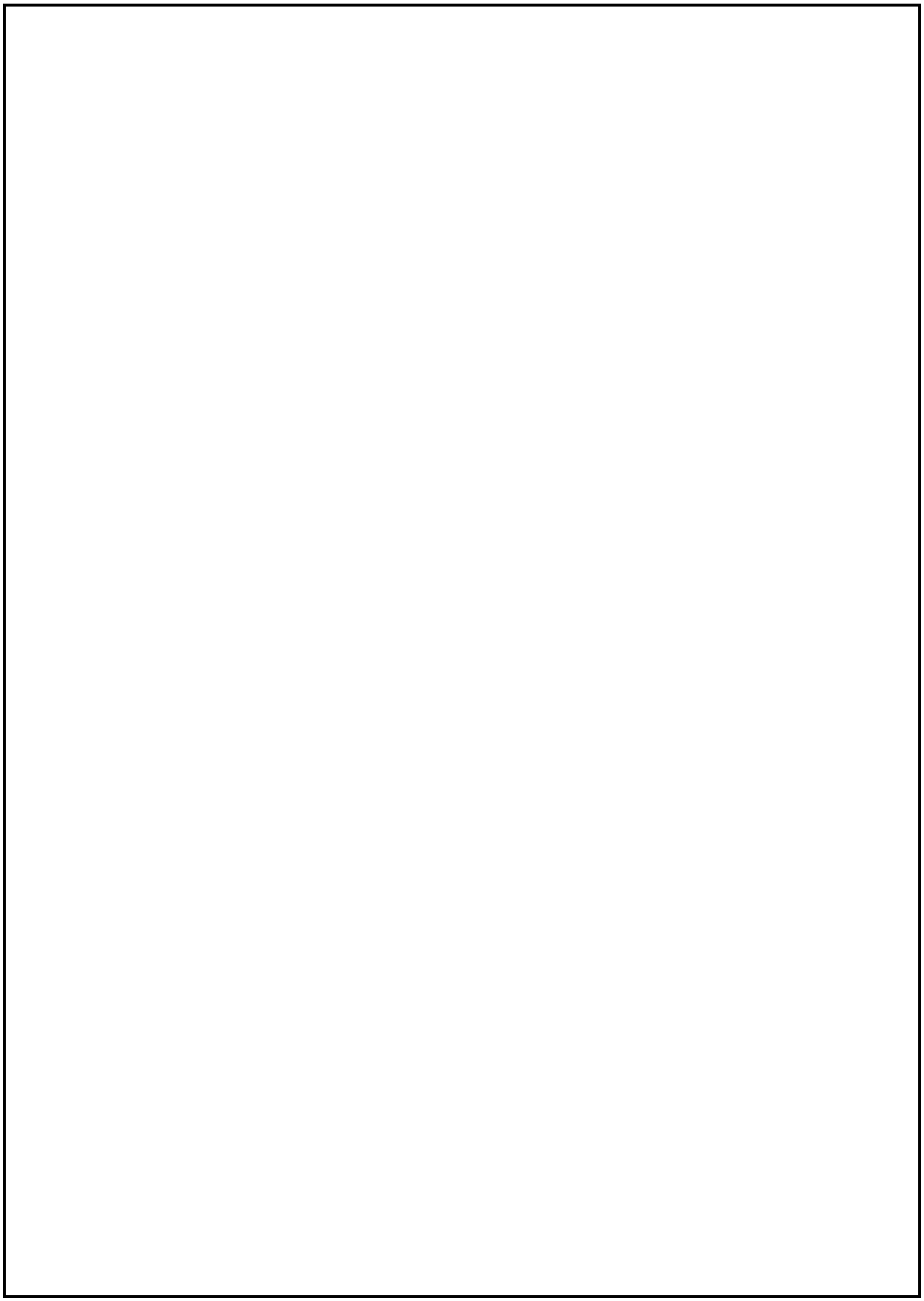

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EXHIBIT “9”

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

KITHNOS SPECIAL MARITIME ENTERPRISE, ET AL.	§	CASE NO. 2:25-cv-00042-jbl
	§	CORPUS CHRISTI, TX
	§	FRIDAY,
VERSUS	§	FEBRUARY 21, 2025
	§	10:03 AM TO 11:21 AM
M/V KITHNOS (IMO 9711523), ET AL.	§	
	§	

MOTION HEARING

BEFORE THE HONORABLE JASON B. LIBBY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PARTIES: SEE NEXT PAGE

ELECTRONIC RECORDING OFFICER: GRISELDA GREEN

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CORPUS CHRISTI, TEXAS; FRIDAY, FEBRUARY 21, 2025; 10:03 AM

CLERK: The Court calls case 2:25-cv-42, Kithnos (Indiscernible) Maritime Enterprises, et al v. M/V Kithnos, et al. May I have appearances please?

THE COURT: Let's do this -- I'm going to jump in here. I'd like to do this slowly so I can see where everybody is and who's representing who. Sorry about that, Jared. Let's start with Kithnos Special Maritime Enterprises. And I'm not talking about Mr. Georgantas' appearance on behalf of that entity. I guess it would be Mr. Floyd, but who is representing the plaintiffs for appearance purposes?

MR. FLOYD: Your Honor, this is Edward Floyd from the Floyd Zadkovich US LLP Law Firm. We are on with the plaintiff Kithnos Special Maritime Enterprises. And along with me today is counsel from Texas Mr. Andy Nash and some of his colleagues as well. Likewise on the call with me...

THE COURT: Go ahead.

MR. FLOYD: -- Your Honor, is my partner Luke Zadkovich as well as my associate Filipp Vagin.

THE COURT: Okay. Mr. Floyd, on behalf of your clients today, is there anyone else who's going to be chiming in or speaking? I'm going to -- what I'm planning on doing is having your associates and partners, and I'm going to ask those persons who may not be participating right now anyway to turn off their cameras so that they can clean up my screen a little

bit. And then I can -- if I need to hear anybody else, I'll of course allow them to turn their camera on. Is there any objection to that, Mr. Floyd?

MR. FLOYD: No, Your Honor. There's not. And we had anticipated that and planned on that beforehand anyhow. So no objection, Your Honor.

THE COURT: Okay. So those persons associated or affiliated with Mr. Floyd and his clients, just turn your cameras off. If I need to hear from you, turn it on and make your appearance more formally. Okay. So that's Mr. Floyd's clients. Let me just go down. And I don't believe, I could be wrong, but I don't anyone from the vessel or the named defendants has made a formal appearance. If I'm wrong, speak now. By your -- I'm sorry.

MS. HAAS: That's correct, Your Honor.

THE COURT: Okay. Ms. Haas is telling me --

MS. HAAS: That's correct.

THE COURT: -- that's correct. All right. Now let's just go down my list and see. There's a -- let's just do it this way. There is a special appearance that has been filed by, I believe, what has been characterized as the true lawful bare boat charter for Kithnos Special Maritime Enterprises. Who is making an appearance on behalf of that client or entity?

MR. GEORGANTAS: Good morning, Your Honor. Dimitri Georgantas. With me Eugene Barr and Blake Bachtel.

THE COURT: Mr. Barr and Mr. -- who else was it?

MR. GEORGANTAS: Blake Bachtel.

THE COURT: Okay. Very good. Mr. Georgantas, same question for you. Do you have any objection to your associates or partners or other lawyers turning off their cameras, or will they have a role today?

MR. GEORGANTAS: No objection. Mr. Barr might want to have a comment, he can raise his hand. But no objection.

THE COURT: Okay. All right. Then let's leave Mr. Georgantas on the screen and the other lawyers who are affiliated with him or his clients may turn their cameras off. Thank you. Now, interested party National Maritime Services. That's Ms. Haas. Do you have any -- and you're present on the video. Do you have anyone else from your firm or any other lawyers affiliated with you on the screen?

MS. HAAS: My associate Hayley Stancil is sitting with me on the same screen.

THE COURT: That's fine. Okay. Now do we have anybody from OCM Maritime Gas?

MR. HART: Good morning, Your Honor. I'm Chris Hart. I represent OCM Maritime Gas 4 LLC who is the registered owner, the title holder for the vessel, the Kithnos.

THE COURT: Registered owner. Okay. That's helpful. Mr. Hart, do you have any associates or other lawyers on the screen?

MR. HART: I do not, Your Honor.

THE COURT: Just you. Okay. Who else do we have on the screen?

MS. HAAS: Your Honor, I -- this is Kelly Haas, Your Honor. I would like to make the distinction that I have asked Alan Swimmer and a representative from MTD. They both provided affidavits or declarations for my motion in case you needed any testimony. Mr. Mannard and Mr. Swimmer are the other two, but neither are attorneys.

THE COURT: Okay. Gentlemen, good morning. Thank you for your appearances, but I'm going to ask you all to turn your cameras off. You can watch and if we need to hear from you, we will, but this just makes it so much easier for me. You all have a lot of experience in these maritime cases and they can be kind of confusing knowing who the appropriate parties are.

Before we get too far today, good morning. I'm Judge Libby. I'm a federal magistrate judge here in Corpus Christi. This case has been referred to me for case management for dealing with things such as this. Before we get too far, I just want to get some things clear in my mind. And I don't know how much we're going to get done today. If I need to hear testimony, I'm probably going to set an in-person hearing. But I just kind of want to get a feel for what the issues are and what I might be able to do to help you all work these things

out.

I want to first start with Mr. Georgantas. It's kind of an interesting special appearance that you have filed. And I want to start by figuring out who your clients are and who you represent and why you think you have the authority to make an appearance on behalf of the plaintiff. And of course I'll hear from Mr. Floyd in a minute. So Mr. Georgantas, we're going to hear from everybody on various related matters, but could you first tell me why you believe that you represent Kithnos Special Maritime Enterprises?

MR. GEORGANTAS: Your Honor, we have been authorized by (indiscernible) as being represented to us to be the lawful directors of that particular entity. The underlying dispute, which is the Rule B proceeding, is a dispute as to whether the actual plaintiffs are acting with corporate authority for what they have done. So there is that dispute at the heart of the case.

So our representation of the entity that is here today before you is the entity that is the current bare boat charter that is in possession of the vessel Kithnos.

THE COURT: Okay. I think I've got that.

MR. GEORGANTAS: And in that respect --

THE COURT: We'll get to a little bit of --

MR. GEORGANTAS: And in that respect --

THE COURT: -- that if necessary, but how many board

members are there that you believe you represent?

MR. GEORGANTAS: Your Honor, I believe we represent all the board members. If necessary, we can supplement the record with a certificate of incumbency. But that is where our authority comes from.

THE COURT: Okay. Let me just kind of get to the meat of this. Who is your client? Who is -- what's the name of the person that's giving you instructions as an attorney to make appearance today?

MR. GEORGANTAS: The actual individual name? Is that what --

THE COURT: Yes.

MR. GEORGANTAS: -- you're asking, Your Honor?

THE COURT: Yes. I'd like the name of your client who's --

MR. GEORGANTAS: It is -- yeah, it is a lawyer in Greece, and his name is Manolis Andreoulakis.

THE COURT: Manolis, what was it?

MR. GEORGANTAS: I will spell it for you. A-N-D-R-E-O-U-L-A-K-I-S.

THE COURT: Okay. And who is he?

MR. GEORGANTAS: He is the -- he's an attorney for a -- the company by the name of Eletson (Indiscernible).

THE COURT: I didn't understand the name. What was the name of the company?

MR. GEORGANTAS: Eletson, E-L-E-T-S-O-N, and they are the current managers of the vessel.

THE COURT: Was that Eletson, the Eletson Holding, or did I hear that wrong?

MR. GEORGANTAS: No, not Eletson Holdings. It's Eletson, the managers I believe, but not Eletson Holdings. No, Your Honor.

THE COURT: So there's a lawyer for Elegon Holdings that's giving you instructions. What is Elegon Holdings' I guess interest or role in this case?

MR. GEORGANTAS: I do not know, Your Honor, at this point. There is a lot of corporate structures involved in this case. There is, you know, multi-jurisdictional litigation going on that I'm generally aware of. And there are ongoing disputes in terms of the rightful representative of the very same entities.

THE COURT: Okay.

MR. GEORGANTAS: And I understand there is also a bankruptcy proceeding in New York so that there are a lot of moving pieces in the background of this, all of which will probably come to light in the main case.

THE COURT: Okay. All right. I'm not going to push you too hard on that. I will tell you that for purposes of today, I'll allow you to make this limited appearance. But quite frankly, if you're going to formally participate or your

client wants to formally participate, they're going to have make some formal appearance and I'll leave that to you and your expertise and what that should be, whether that's an interpleader action or intervention or whatever. But I'm not going to have two competing boards file appearances on behalf of the plaintiff. It needs to be clear who's representing who. Otherwise it can get confusing. That's all I need for right now from Mr. Georgantas. Let me turn to Mr. Floyd.

MR. GEORGANTAS: If I may, one last thing, Your Honor.

THE COURT: That's fine. Go ahead.

MR. GEORGANTAS: In our -- and I apologize. In our verified statement of interest that we filed with the court, there is an affidavit -- or a verification, I'm sorry, by one of the board members of the company. So I just wanted to mention that to you.

THE COURT: Okay. All right. Now, Mr. Floyd, you represent Kithnos Special Maritime Enterprises and apparently who you believe are the appropriate board members. Before I get too far in who you represent and who's calling the shots for you, what's the relationship between Kithnos Special Maritime Enterprises and the Eletson Holding entities?

MR. FLOYD: Yes, Your Honor. Fully understood on that. And the relationship is as follows. Eletson Holdings Inc. is the former debtor in the bankruptcy proceedings pending

in the SDNY. Eletson Holdings Inc. came out of those bankruptcy proceedings in a reorganized manner. Part of the plan, which was confirmed or approved in bankruptcy speak by the bankruptcy judge in the SDNY, included that the reorganized Eletson Holdings Inc. had control, ownership -- I don't have the precise language at the time of my tongue, but essentially held all of the subsidiaries and step-down subsidiaries and assets of step-down subsidiaries of the group that flowed below that chain.

Within that chain of ownership, it's quite complicated. There's a lot of different subsidiaries and step-downs, but pertinent to this matter are two immediate subsidiaries or direct and then one step-down subsidiary. The two immediate step-down subsidiaries are Eletson Corporation, Eletson Corp., and Eletson Gas. In turn, Eletson Gas owns Kithnos Special Maritime Enterprises, which along with the other two previously noted, are the plaintiffs in this action. Those are our clients.

And I should note that similar issues relating to who speaks on behalf of Eletson Holdings Inc. have surfaced in the bankruptcy proceeding and other proceedings in the SDNY. I believe that several of those were addressed in motions and papers, which the plaintiffs have filed. But we are prepared to show that it is absolutely clear as day that our clients are, for all purposes of U.S. law, and U.S. law is the forum in

which the bankruptcy proceedings were commenced initially as involuntary by creditors, and then converted by the so-called old Eletson into voluntary proceedings. For all purposes of U.S. law, our clients are Eletson. Eletson Group, Eletson Holdings Inc., Eletson Corp., and Kithnos Special Maritime Enterprises, SME.

And I would just note with that I don't want to be too long-winded, Your Honor, but we do obviously have significant concerns about the confusion and more so potential conflicts of interest that have surfaced by this recent appearance by Mr. Georgantas and his firm. That in part rises from the fact that Mr. Georgantas and/or his firm have previously represented our clients, and we will be addressing that in due course with a motion to disqualify most likely in the Southern District of Texas within this proceeding.

And likewise, we will be addressing the identity and/or standing issues, which the Court has seemingly pointed to as well, which are of great concern and seemed to be an ongoing recurrence in a series of proceedings where there have already been sanctions applications made and addressed in the bankruptcy court.

THE COURT: Okay Before we get too far down the road, just for purposes of treating everybody fairly and, you know, equally, Mr. Floyd, who is the person that you're dealing with that's giving you instructions on behalf of Kithnos or the

Eletson entities?

MR. FLOYD: Yes, Your Honor. We receive our instructions from several different people associated with that group. One is Mr. Adam Spears who is the CEO of Eletson Holdings Inc. He's also director of --

THE COURT: I saw a board --

MR. FLOYD: -- (indiscernible).

THE COURT: -- I think that's attached to the complaint. There is some corporate or partnership resolution that lists Mr. Spears as person within those entities. Tell me what is Mr. Spears' role within those companies or entities?

MR. FLOYD: He is the CEO of Eletson Holdings Inc., which is that entity up at the top of the parent subsidiary chain for purposes here. And then we also received instructions from a Mr. Len Hoskinson, who is a director at Eletson Holdings Corp. and likewise an authorized representative for Kithnos Special Maritime Enterprises.

THE COURT: All right. Where -- just to give me a sense of who we're dealing with, where is Mr. Spears located? Just geographically. Not an exact address, but --

MR. FLOYD: I believe --

THE COURT: -- on the planet.

MR. FLOYD: Your Honor, in the interest of not saying the wrong thing here, I'm quite certain that both Mr. Spears and Mr. Hoskinson are in North America. I believe one is in

Canada. The other one is in Florida.

THE COURT: Okay. That's good enough. All right.

MR. FLOYD: (Indiscernible).

THE COURT: All right. Let me see. That's enough for now from Mr. Floyd. Ms. Haas, it's your turn in the hot seat. Tell me just --

MS. HAAS: Thank you, Your Honor.

THE COURT: Tell me a little bit. You represent National Maritime Services. I've had vessel seizure cases in the past, quite a few actually, and sometimes there's a relationship between the custodian and one or both of the parties. Sometimes it's a completely, you know, disinterested entity. It kind of is important for me in this situation or it may be important. I'd like to get to the heart of that a little bit. But first off, what is your client National Maritime Services?

MS. HAAS: They are the substitute custodian, and that is the business that they're in. And they are a disinterested party here. I'll tell you I consider my client the gold standard if you need a substitute custodian. That -- that's my go-to company. And so they, under Document 7, were ordered to serve as the substitute custodian vessel the Kithnos, which is off -- at anchorage in Corpus Christi.

And this company really takes the order very seriously because, as the judge is aware, they have been

ordered to indemnify the marshals and the U.S. Government for any claims that may be filed. And this seizure is -- so often, vessel arrests are quickly resolved --

THE COURT: Okay. I'm so sorry.

MS. HAAS: -- that a bond is waived, security --

THE COURT: I'm so sorry for interrupting. You have some things you want to present to me, but before I get there, I just want to get some of my background information for my benefit. So just generally, what is the business of National Maritime Services? What do they do? Where are they located? Is that a local company out of here with, you know, business operations in Corpus Christi?

MS. HAAS: They're based -- no, sir. They're based in Fort Lauderdale.

THE COURT: Okay.

MS. HAAS: And they have numerous services that they provide, but the only one that I am familiar with is this -- is stepping into the shoes of the marshals and taking custody of the vessel as the custodian.

THE COURT: So --

MS. HAAS: And they will assist in, you know, any of the third-party services making sure that there's water and supplies.

THE COURT: So practically --

MS. HAAS: And --

THE COURT: I'm interrupting again, but practically, does that mean that this -- your client has to send personnel to come manage the vessel here in Corpus Christi to be on the vessel? Or do they have subcontractors? Or how is that actually done?

MS. HAAS: They have a watchman on board. They do have an assigned person on board, and they have an -- sometimes they're willing to send someone from National Maritime Services, but most often it's contracting with third-party vendors. And that's one of the concerns that my client had. Because this does appear to be -- it's going to be a long vessel arrest is my understanding.

I'm not privy to all of the bankruptcy proceedings and all that's going on, but it's my understanding that it's not going to be a quick resolution. So we need to get everything in place so that we feel comfortable that the cargo that's on board is being maintained, that the crew that's on board is -- when are their contracts up, that they're going to need to be going back home and replacement crew.

The weather has played a large role in this with regard to launches going back and forth out to the vessel. And again, that goes back to our order that we are indemnifying for any claims. And as we all know, personal injury lawsuits are out there.

THE COURT: Okay.

MS. HAAS: And so we want to make sure that --

THE COURT: I'm going to interrupt again.

MS. HAAS: -- there's a proper launch.

THE COURT: Where physically is the vessel right now? And I'm generally familiar with the Port of Corpus Christi, but there are also some other locations where vessels are docked and just basically maintained. So what is the exact location of the vessel right now?

MS. HAAS: My understanding is that it's seven miles -- seven nautical miles offshore at Port Aransas.

THE COURT: Okay. So it's one of those holding --

MS. HAAS: And --

THE COURT: -- if you're up early in the morning off the coast of Port Aransas you can look out over the gulf and see these vessels lined up. So --

MS. HAAS: That's correct, Your Honor.

THE COURT: Okay. All right. Because in sometimes these cases there are vessels that are parked within the port or at a place, and they basically need -- they need assistance to exist the Port of Corpus Christi to get out into the open ocean. That raises some concerns for me that it's seven nautical miles out. Just because I have some questions I'd like answered, Ms. Haas, it -- I'm not suggesting that there's anything improper about this, but how was National Maritime Services selected to be the custodian in this case?

MS. HAAS: Your Honor, I'm not privy to that. That would've been done during the initial arrest and I was not retained at that point.

THE COURT: Okay.

MS. HAAS: If you don't mind if I --

THE COURT: Mr. Floyd, do you know how --

MS. HAAS: I believe that Mr. Nash --

MR. FLOYD: Yes, Your Honor.

MS. HAAS: Mr. Nash has assisted with that.

MR. FLOYD: Yes, Your Honor. My firm working with Mr. Nash filed the arrest application papers or Rule D application papers to be correct. And in conjunction with those, sought appointment of a substitute custodian. And to be honest, I don't know of any other substitute custodian out there other than Mr. Swimmer and his colleagues at National Maritime Services. At least I've had --

THE COURT: Okay.

MR. FLOYD: -- this type of level we're dealing with --

THE COURT: Okay.

MR. FLOYD: -- large vessels.

THE COURT: Sometimes there's a relationship. This seems to be that from what I can see, unless someone can point me otherwise, National Maritime Services appears to be essentially an independent party. There may be some business

relationships with other third-party custodians, but doesn't appear to be, you know, a close tie between National Maritime Services and any of the parties. All right.

Now, finally, Mr. Hart, who is OCM Maritime Gas and why are you here?

MR. HART: Your Honor, my client OCM Maritime Gas is the registered owner who owns the title to the vessel. It is -- OCM Maritime Gas 4 is an LLC entity that is owned by the -- there's a person -- two persons who have signed the verification of the statement of interest that I filed for them and it shows the hierarchy of a couple of general partnership or limited partnership of another LLC that owns OCM Maritime Gas 4 LLC.

That -- they're -- effectively they are within the Oak Tree Capital group of companies that provide, in this instance as I understand it, to sort of financing. So they actually own the asset, the ship Kithnos. And they do not themselves operate ships and trade them. And so what they have done is bare-boat chartered the ship to a different entity. And the bare-boat charter party of that entity is named Kithnos Special Maritime Enterprise. And under a bare-boat charter party, the owner effectively turns over possession of the vessel and control and management and operation of the vessel to the bare-boat charter. So --

THE COURT: Okay.

MR. HART: -- they take a very passive role except that they certainly own the ship.

THE COURT: All right. That's all very interesting. What's good for the goose is good for the gander. We're -- who is your client? Who's calling the shots for this partnership that owns the vessel?

MR. HART: It is -- actually I'm working with our law firm HFW Piraeus, Greece office, and my instructions come directly from my HFW Piraeus, Greece office. And they're taking instructions from the gentleman who signed -- the two gentlemen who signed the verification for OCM's statement of interest that is filed here.

THE COURT: Okay. And are they --

MR. HART: (Indiscernible) --

THE COURT: -- in Greece?

MR. HART: -- within the Oak Tree Capital group of companies.

THE COURT: Where are the owners located?

MR. HART: I'm not certain, Your Honor. I know that Oak Tree has offices in several countries and cities. And --

THE COURT: That's --

MR. HART: -- I am not certain where.

THE COURT: I -- oftentimes in dealing with these maritime cases, I'm tasked with figuring out who's who and it can be complicated as you all are aware. But not that you --

MR. HART: I think so, Your Honor.

THE COURT: -- have any special authority or weight, Mr. Hart, but before I go too much further, who do you think -- as the lawyer representing the owners of the vessel, who do you think is the correct charterer for lack of better term? Who do you think? Which board do you think should be calling the shots?

MR. HART: Your Honor, my client OCM Maritime Gas does not have a position on that. Does not have a position on knowing which of these entities is the actual (indiscernible).

THE COURT: All right. So you're Switzerland essentially for purposes of this proceeding? Okay.

MR. HART: Yes. Neutral on this proceeding.

THE COURT: All right.

MR. HART: I could add that I am aware or I've learned that the two gentlemen who signed this verification, I think that they are located in California. I thought they were abroad, but they might with an Oak Tree --

THE COURT: Okay.

MR. HART: -- office in California.

THE COURT: All right. Well, there are some motions that are before me, and I just want to tell you where I am right now without having heard from any of the lawyers on this matter. What I would like to try to get accomplished -- well, first off, before I -- I had one other question. And I'll ask

you all to jump in as appropriate. I believe the master -- does the master basically mean captain? Let me ask Mr. Hart, Switzerland.

MR. HART: Yes, Your Honor.

MS. HAAS: Yes, Your Honor.

MR. GEORGANTAS: Yes, Your Honor.

THE COURT: Okay. The master's a captain. Okay. And his name is, the best I can say, you know, Captain Monolakis. Right now, this minute who is Captain Monolakis taking his instructions from, the board members associated with Mr. Georgantas or the board members associated with Mr. Floyd? Who is -- whose instructions are they following?

MR. GEORGANTAS: The --

MR. HART: Your Honor --

MR. GEORGANTAS: -- board members associated with my client, Your Honor.

THE COURT: Okay. So the captain is kind of aligned with Mr. Georgantas' client. Mr. Floyd, agree or disagree with that?

MR. GEORGANTAS: As -- if I may --

MR. FLOYD: Your Honor, I would --

MR. GEORGANTAS: -- if --

MR. FLOYD: Your Honor --

MR. GEORGANTAS: -- I have, Your Honor --

THE COURT: Let me intervene as the judge here. I'm

going to let Mr. Georgantas finish his thought and I'll come back to Mr. Floyd.

MR. GEORGANTAS: I was going to add as the bare-boat charter from Mr. Hart's client pursuant to that bare-boat charter party, it is our client that has the responsibility among other responsibilities under bare-boat to employ the crew of the vessel. So that is why the captain, to answer your question again, is currently in the employ of my client.

THE COURT: Okay. Mr. Floyd, let me hear your take on that.

MR. FLOYD: Yes, Your Honor. For practical purposes as far as from whom the master is currently talking, I expect that Mr. Georgantas is correct on the practical level. However, on the legal level and operational level, the master should without a doubt be taking instructions from the actual entity, which is in legal possession of the vessel, which is our client's.

Kithnos SME is the bare-boat charterer and I believe that Eletson Corp. is the managing agent that provides management services to the vessel. And both of those fall under umbrella of our client's interests. And so regardless of from whom the master is actually taking his instructions, our clients are the ones from whom he should be taking his instructions.

THE COURT: Okay. I understand. I kind of

understand the scope of this disagreement. While that's questionable -- before we turn over -- before I move onto some other matters is who's paying the captain and the crew? Like who is the -- or what is the entity or which board members are paying the salaries and other things for the captain and crew members?

MR. GEORGANTAS: We are, Your Honor.

MR. HART: And likewise, Your Honor, the revenue, which our clients paid $53 million. Ballparking that number, but upwards of $50 million to take the equity in the group and to receive the interest in all of the stepdown subsidiaries and their assets. And those assets of course include the revenues that are generated by time chartering and voyage charting vessels on out and not a penny of those revenues since the bankruptcy court plan was confirmed back in mid-November, not a penny of those revenues have come to our clients. So people who are out $53 million and getting stiffed are not enthused by the (indiscernible).

THE COURT: Your -- does that basically mean that your clients are -- right now are not paying the captain and the crew?

MR. HART: We are. As far as I know, we're not paying them --

THE COURT: Okay.

MR. HART: -- because we...

THE COURT: I understand the dispute a little bit. Still haven't of course made any decisions. Last thing, Mr. Floyd, what's happening right now in the bankruptcy? Any time there's a bankruptcy proceeding that's pending and matters come to my court or the district courts, there's I would say we're alert to deferring to the bankruptcy court in matters of bankruptcy. And what does the bankruptcy court say about this current dispute? Is there a motion that may or will be pending or an order that could give this court some direction on what to do with this dispute?

MR. FLOYD: I think there's certainly some great direction coming from the bankruptcy court, Your Honor. And at the risk of getting my date off by a day or two, I can give a brief summary here, which is that since the time of the bankruptcy plan's confirmation back in November 2024, there has been a brewing and then developing and then fully blown dispute over prior counsel to the debtor.

Recall that the debtor, or former debtor now, was initially pulled into an involuntary Chapter 11 proceeding that then was converted by Mr. Georgantas' clients or their ultimate interests into a voluntary proceeding back in September of 2024. And then it proceeded with the plan. And ever since the plan's been in place, Reed Smith had been, as I understand it secondhand here reading orders and memos, but Reed Smith had been running around saying that they were ongoing counsel for

Eletson Holdings Inc.

And that's been an issue there. That has been addressed actually outside of the bankruptcy proceeding in the SDNY district court before Judge Lyman where it was determined within the past week or two that Reed Smith did not have authority to act or speak on behalf of Eletson Holdings Inc. That situation is very similar to what we're facing here. And at present before the bankruptcy court, there's a pending motion coupled with the subsidiary orders, if you will, for the prior shareholders and directors, what we term sometimes old Eletson, the old interest in there, to support and take action forthwith to resolve any paperwork issues overseas that need to be resolved.

There was a deadline for earlier this week. From what I understand, that deadline was blown. Then yesterday there was another hearing before the bankruptcy court, which gave, as I understand it, a final deadline, a last chance to comply by this upcoming Monday. And so that's kind of the gist of where things are going before the bankruptcy court. and I think I'm safe in saying they're very much going our way.

THE COURT: They're very much what?

MR. FLOYD: Going in the direction of my clients and my client's interest, my firm's client's interest.

THE COURT: If anything happens in the bankruptcy court, any of the lawyers may file advisories or other

documents to get before me information which may help me make some decisions in this case. If there are decisions in the bankruptcy court that may give me some guidance, I'm inviting or maybe even instructing you to update the Court on those matters.

Ms. Haas, I think what I'd like to start with is -- I know it's in your motion, but I'd like kind of some help -- I think it's appropriate for the custodian to have documents that will allow the custodian to ensure the safety of the captain and the crew and our coastal waters. And I think I have an obligation to see that the custodian that's been appointed by the court has the documents that it needs to manage this vessel.

And it doesn't appear to me that this is a concealed attempt at early discovery or something else by any party. So Ms. Haas, let me find your motion here real quick among the many things that have been filed before me. Jared, could you print me the proposed order? For some reason I did not print that.

CLERK: Which document?

THE COURT: I'm sorry. Document 39.

CLERK: 39?

THE COURT: Ms. Haas, does your -- did you submit a proposed order with your --

MS. HAAS: Yes, Your Honor.

THE COURT: -- emergency --

MS. HAAS: The third attachment.

THE COURT: Okay. The -- I think at a minimum I could get to dealing with some document production today. I would think it may be premature to be dealing with a removal of the captain and the crew at this point.

But Mr. Georgantas, for purposes of hearing my message, if documents aren't produced as I'm about to order -- and I'm going to hear from you about what may or may not be reasonable, Mr. Georgantas, but if documents are not produced as I order, then this motion to replace the captain and the crew will have more urgency I guess is the way I would view it. But we're not there yet. Right now we're just --

MR. GEORGANTAS: Understood, Your Honor.

THE COURT: Right now we're just talking about getting the custodian some documents that are needed to make sure everybody in our coastal waters are safe. I have -- just as a citizen, I have an interest in making sure that our coastal waters are safe, but I have a particular affinity to our coastal waters and our wildlife. And that has -- I have some -- I have an important role in that matter. Let me see what you got, Jared.

CLERK: I've got it pulled up. I'm waiting for the printer.

THE COURT: Our printer's a little bit slow. All

right. So Ms. Haas, in your motion document -- Docket Entry 39, just to Paragraph 6 there's a list of one, two -- well, A through I of things that you've requested. And I --

MS. HAAS: Yes, Your Honor.

THE COURT: All right. Is that what your client wants or needs, or are there other documents?

MS. HAAS: This was the -- this is the complete list. And in a sense of compromise, we did submit a smaller list. But I mean, if we can get this --

THE COURT: Well --

MS. HAAS: -- this would be fantastic.

THE COURT: Let's start -- well, maybe we'll --

MS. HAAS: And also, Your Honor --

THE COURT: -- start with the smaller list. Is the smaller list in your proposed order, or was it...

MS. HAAS: It is not in the proposed order, Your Honor.

THE COURT: Let's go through A through I then --

MS. HAAS: But --

THE COURT: -- and identify for me the smaller list.

MS. HAAS: Okay. Okay. Well, we can go through this list because on A, Mr. Georgantas did provide us with written response to that since the filing.

THE COURT: Okay.

MS. HAAS: But we do still have additional questions

on that with regard to whether or not seawater -- there was two. Sorry. Let me get to the spot where this is laid out. It's seawater/R1270 propylene for ethaline cargo. And we need to -- our engineers need to know which is being used. So this is just --

THE COURT: Seawater or --

MS. HAAS: -- general information --

THE COURT: -- propylene?

MS. HAAS: -- that had been given -- yes, sir. Yes, Your Honor.

THE COURT: Okay.

MS. HAAS: So we have additional information needed for that. We have not received the general arrangement plan.

THE COURT: Okay. What is a general arrangement plan?

MS. HAAS: It's kind of like the blueprint for the vessel. Like where the tanks are, where the -- I mean, it's sort of like a schematic of the vessel.

THE COURT: Okay. Let's just do it this way.

MS. HAAS: Does Dimitri need --

THE COURT: Mr. Georgantas, I'm going to just --

MS. HAAS: I wouldn't (indiscernible) --

THE COURT: We're going to go through these items. Well, first let me hear from Ms. Haas and then -- go through the abbreviated list. Then I'm going to turn it over to Mr.

Georgantas to hear from him a little bit. So we've got those two things. There's an issue on seawater and the propylene, general arrangement plan, which is B. What else, Ms. Haas?

MS. HAAS: The certificates of note I believe are attached to his motion. Is that correct, Dimitri? You attached several different certificates.

THE COURT: The certificates of quality or analysis?

MR. GEORGANTAS: We attached the -- no, Your Honor. What we attached was the -- what is generally known in the industry as the COC document. That is -- that stands for certificate of compliance. And that document is required. It's an annual inspection for all vessels calling to United States ports. It is performed by the United States Coast Guard. It is an exhaustive inspection.

And by the way, as we mentioned in our response, the U.S. Coast Guard is globally recognized as one of the toughest standards when it comes to these types of annual vessel inspections.

THE COURT: Okay. I don't want to cut you off, but I'm going to.

MR. GEORGANTAS: It's a comprehensive inspection.

THE COURT: You've turned over the COCs.

MS. HAAS: We agree with -- yeah, it --

MR. GEORGANTAS: I'm sorry?

THE COURT: I'm sorry.

MS. HAAS: We agree -- oh, sorry. Go ahead, Your Honor.

THE COURT: Okay. So Mr. Georgantas, you're -- the captain has turned over the COCs. I don't want to spend a lot more time on that. I just want to hear from Ms. Haas about what we may need.

MS. HAAS: Okay.

MR. GEORGANTAS: No, Your Honor. I'm sorry. I don't mean to mislead you. The COC is issued by the Coast Guard, not by the captain.

THE COURT: But did you --

MR. GEORGANTAS: After the inspection is complete and approved, it is issued by the government authority. It is not issued by the captain.

THE COURT: What -- understand -- I understand that.

MR. GEORGANTAS: So it isn't --

THE COURT: But it's a document that has already been turned over or at least filed as an attachment in this case.

MR. GEORGANTAS: Yes.

THE COURT: Understood. Ms. Haas, back to you.

MS. HAAS: And so then the next thing are the bills of lading, and there's been a lot of discussion about that. We've asked for the bills of lading with the customers redacted. We don't need to know any of the commercial information. However, our engineers do need to know what type

of cargo has been loaded or offloaded with these bills of lading, the amounts, and the dates. Because there is a question, Mr. Georgantas, through his response to my motion, states that the vessel is imbalanced, that there is no cargo on board.

However, on the date that the vessel was arrested, we were provided with a stowage plan which clearly shows that there is cargo on board the vessel. So we need these documents to actually know what is true. Is there cargo or is there not cargo?

THE COURT: Okay.

MS. HAAS: So --

THE COURT: Let's turn that over to --

MS. HAAS: -- we're fine with the --

THE COURT: Mr. Georgantas, what --

MS. HAAS: We're fine with (indiscernible).

THE COURT: -- what say you about these bills of lading for the past four months?

MR. GEORGANTAS: The bills of lading -- and I agree there was a general agreement to redact the commercially sensitive information. The position, Your Honor, is that the bills of lading are irrelevant as to whether cargo is on board the vessel or not. That would be the stowage plan, and the custodian should be well aware of that.

The bill of lading is simply a commercial negotiable

document that reflects what type of cargo and quantity was on board the vessel that was carried between a shipper and a consignee. So we don't see where the relevance is for going four months back. But certainly I don't know what the relevance is to determine if there's cargo on board the vessel or not. That's from other documents like --

THE COURT: Okay.

MR. GEORGANTAS: -- the stowage plan. When a vessel discharges, surveyors issue a certificate that there is no cargo remaining on board. There are different documents that are related to that, not the bill of lading, Your Honor. That's just a negotiable instrument.

THE COURT: Well, I understand to the extent you're objecting to the production of the bills of lading for the past four months. I'm overruling that. I think it's appropriate. It's kind of a common sense, you know, document that will show what was on the vessel, you know, what the shipping history is, and what the cargo history is. That seems to be appropriate and not overly burdensome.

And Mr. Georgantas, you're -- the appropriate person to redact sensitive information but not information related to what the cargo is, what the exact contents were, what its, you know, specific, you know, quantity, quality, and substance, etcetera. All right, Ms. Haas back to you. Just --

MR. GEORGANTAS: Understood.

THE COURT: -- so -- my law clerk's kind of following along with this. So to make sure we're all on the same page, it sounds like, Ms. Haas, a description of the cargo ready qualification plant has been provided, but you still need information about seawater and propylene.

MS. HAAS: Yes, Your Honor.

THE COURT: Okay. What -- I'm going to -- I'm --

MS. HAAS: Which is actually --

THE COURT: Go ahead.

MS. HAAS: Oh, sorry. I just -- which is actually being utilized.

THE COURT: Which is actually being utilized? Seawater or propylene? I'm granting and ordering that to be produced. That's Number A with the added notation of seawater and propylene.

MR. GEORGANTAS: I'm sorry. Exactly what?

THE COURT: There's -- if you look --

MR. GEORGANTAS: What exactly is the inquiry, Kelly, under seawater and propylene?

MS. HAAS: Yeah, you -- the information you provided, Dimitri, with regard to the coolant type, it's just general. That I guess you could use seawater or you could use propylene for ethylene cargo. Which is the vessel using?

MR. GEORGANTAS: Are you talking about the reliquification plan?

MS. HAAS: Yes.

THE COURT: Which is being used, seawater or propylene?

MR. GEORGANTAS: Okay. I understand, Your Honor.

THE COURT: Okay.

MR. GEORGANTAS: I know what she's asking.

THE COURT: That's on A. And the B --

MR. GEORGANTAS: We'll see what document reflect that, but I understand what your order is.

THE COURT: Okay. All right. Very good. And then refresh my recollection, Ms. Haas, on the general arrangement plan. You have not received but you need that, right?

MS. HAAS: Yes, Your Honor.

THE COURT: All right. I'm ordering that to be produced. And Mr. Georgantas, to make this easy on you, I'm going down document or Docket Entry Number 39 on Page 3. There's a list of a number of things A through I. And so I'm ordering the first two to be produced. We've then skipped to D, which is the bills of lading. I'm ordering those to be produced. Ms. Haas, continuing down this list, what else?

MS. HAAS: The internation certificate for carriage of liquified gas. I think what was getting at, Dimitri, would be that that would have been reviewed as part of your COC. Is that correct?

MR. GEORGANTAS: Absolutely.

MS. HAAS: Yeah. So out of a sense of compromise, we now have the COC. So I -- that would've been reviewed by the Coast Guard in early February. So we'll then go onto the bills of lading, which, Your Honor, did you say you grant that request --

THE COURT: Yes.

MS. HAAS: -- with redaction of commercial --

THE COURT: And I'll put this in a short order.

MS. HAAS: -- information?

THE COURT: I'll put this in a short order.

MS. HAAS: The next request was the certificate of quality or analysis for all cargo carried for the past four months. Dimitri, what do you say for that one?

MR. GEORGANTAS: Your Honor, completely irrelevant. This is -- this goes to the quality of the cargo, what specifications, if there was some kind of contamination, you know, what the standard or the quality is. It has nothing to do with safety. It really is what it says. It's a quality issue, and goes to primarily the specification of the cargo that was carried on board.

MS. HAAS: Well, and again, Your Honor, keep in mind this list was provided to us by our engineers.

THE COURT: Okay.

MS. HAAS: (Indiscernible) --

THE COURT: I've heard enough argument. Ms. Haas is

the disinterested third party. If her engineers say that they need the certificates of air quality or analysis for all cargo, that's Number E, I'm ordering that to be produced as well. Number E is granted. Ms. Haas, next.

MR. GEORGANTAS: Your Honor, to the extent -- Your Honor, I'm sorry. When we say analysis, usually analysis relates if there's been a claim for contamination or something. You know, some sort of laboratory analysis. So I don't know if such a document exists, so I would like a footnote on that to the extent that such a document exists.

THE COURT: I guess what I'm going to do is, Mr. Georgantas, is I'm assisting you all in resolving this dispute. And there may be some details that I'm missing as the non-expert in these matters. But what I would expect is that Ms. Haas, Mr. Georgantas, the engineers, the captain can work together to comply with the court's order and resolve this like you would any other essentially discovery dispute.

And then if you can't get these matters resolved or if my order's not clear and you have a good faith dispute about what needs to be produced, some on back to court and tell me what I need to know and we'll -- I'll make a ruling from there. What I'm trying to do is narrow things down, give you some guidance, and kind of move onto the next, you know, part of this case. Ms. Haas, back to you. What else?

MR. GEORGANTAS: Understood, Your Honor. Thank you.

THE COURT: Okay.

MS. HAAS: The next were the particulars of tank cleaning, purging, and change of grade for any of the tanks. Again, that goes to what's actually on board and whether there's contamination or not contamination. Because the pressures and the temperatures in these are being assessed in each of the tanks by our engineers.

THE COURT: Okay. All right. Mr. Georgantas, any problem with the particulars of tank cleaning, purging, or change of grade in the past four months?

MR. GEORGANTAS: Your Honor, again, I don't know why it has to go back for four months, but I'm sure the vessel has some sort of standard procedure. We will ask and see what we have.

THE COURT: Okay. All right. Ms. Haas, what's next?

MS. HAAS: The compressor log sheets. Again, that goes to the pressure in the tanks and whatnot and --

THE COURT: Compressor --

MS. HAAS: -- Mr. Georgantas did give -- he did give this information for the past two months in a chart form. And if we can continue to have that information provided to us on a weekly basis, say on Mondays, that would be wonderful.

THE COURT: Okay. So two months is enough.

MR. GEORGANTAS: We have already told them that we would do that, Your Honor. We've already agreed to provide

that information on a weekly basis.

THE COURT: Okay. Very good. Very good.

MS. HAAS: And Dimitri, so Mondays, is that okay, Dimitri, that we'll get that information updated?

MR. GEORGANTAS: That's fine.

THE COURT: Weeklies on Mondays. I'm just going to put that in the order because it's pretty straightforward. Ms. Haas, what else?

MS. HAAS: And the next one goes with that, the cargo care logs.

THE COURT: Is that something that’s ongoing --

MS. HAAS: Compiling --

THE COURT: -- a weekly update?

MS. HAAS: Yes, Your Honor.

THE COURT: Any objection to that, Mr. Georgantas?

MR. GEORGANTAS: To the extent we have such a document, I'm not sure, but in terms of cargo care logs, again, the vessel does not have any cargo on board. But I -- we will work with the captain and Ms. Haas and try to figure this one out.

THE COURT: Okay. All right. Very good. Is I -- did we already cover I, Ms. Haas, or do we need to cover I, the compressor log sheets and cargo care logs? I think we just covered that on -- that was G.

MS. HAAS: Correct. Yes, Your Honor.

THE COURT: But then we already kind of covered that. Okay. All right. So --

MS. HAAS: And Your Honor, if I may, as part of our motion, we pointed out these were the issues we were having with the master, that the master wasn't cooperating and giving us this information. Because we are in a different type of a situation. This is a long-theming duration of arrest, that we made these requests almost a week after the vessel was first put under arrest by the marshals.

Because this is going to be an ongoing situation, we -- in addition, Mr. Georgantas pointed out in his response on Page 5 that we have asked for information with regard to insurance coverage, the employment contracts, and what not. That part wasn't in our motion, but since he brought it up, I will go ahead since we have the Court's attention today. These things are under the umbrella that we have been ordered for the safekeeping of the vessel. We need to make sure that there's proper insurance.

We need to know about the crew, whether they're going to be going off or going on. So if possible, if the Court can order, you know, those types of things as well --

THE COURT: Well, how many crew members --

MS. HAAS: -- so that we --

THE COURT: How many crew members there are and personnel-related matters.

MS. HAAS: Now, we also -- we --

MR. GEORGANTAS: Your Honor, if I may respond to that, we don't see where there is any relevancy to the employment contracts. The -- in terms of crew movement, the custodian has been alerted to crew changes. In fact, you know, Ms. Haas already sort of, you know, implicitly admitted that because of her references to rough weather and the launches. So we are working with the custodian to let him know when there are crew changes.

MS. HAAS: Dimitri, on that same ilk, though, we've been told that you guys are doing it. We are the ones that are held liable to the government if there is an injury going on and off that vessel. We need to make sure who are the launch companies that are being sent out. Because of the length of this arrest, we need that much detail and we take our responsibilities as the substitute custodian very seriously. And we need to make sure that there's proper insurance in place.

And I can appreciate that you think that we are being very thorough. We are because we are, like I said earlier, the gold standard in custodial services. And we want to make sure that --

MR. GEORGANTAS: Your Honor --

THE COURT: Ms. Haas --

MR. GEORGANTAS: -- we have provided information who

the launchers are. We've been -- we are the gold standard in ship management and employment of the crew. They're all qualified. So I don't know where this discussion is going.

THE COURT: I think my --

MR. GEORGANTAS: (Indiscernible) --

THE COURT: I know what I'm going to do. I'm going to find some middle ground here. The third -- the custodian works for the court. That's how I'm doing this matter. I'm going to order matters relating to insurance, the insurance contracts that may cover the personnel on the boat, the cargo, personal injury, all insurance matters turned over to the custodian so that the custodian can make sure that there is appropriate insurance.

And maybe if not, acquire appropriate insurance as necessary. I think that's an appropriate thing for -- I don’t think anything's going to happen, but if it does, then there may come a question of who's going to pay for it. And the custodian has an interest in having that information and making sure that the vessel and appropriate things are properly insured.

Regarding the personnel, I don't know that you need all of the personnel contracts, but I do believe that the custodian has a right to know who is on the vessel and what their role is on the vessel. And when there's a change of crew, the custodian just has a right know who is there.

Also, nobody's asking for this, but the custodian -- it may be clear from the order that was issued by, I think it was Judge Neurock, maybe not, but so that there's no confusion, the custodian has a right to access and inspect the vessel and you know, shall not be interfered with in that regard. And I'll put that in the order, although it may be redundant.

The custodian may already have that authority, but I -- my direction is that while the captain or master and the crew may not be employed by the custodian, they're directed to cooperate with the custodian with regard to the safe custody and management of this vessel. And I think that's all that I need to say about that. I'll put that in the order. Ms. Haas, I'd like -- I would like your -- the clients -- your clients from National Maritime Services to turn their cameras on briefly.

MS. HAAS: Mr. Swimmer, please turn your camera on.

THE COURT: Mr. Swimmer --

MR. SWIMMER: I'll also shut off my mute.

THE COURT: Okay. That's fine. Mr. Swimmer, good morning. I'm Judge Libby. Just tell me who you are, what your role is.

MR. SWIMMER: Good morning. I'm president and co-owner of National Maritime Services, Inc.

THE COURT: Do you have some --

MR. SWIMMER: And we are the --

THE COURT: -- technical expertise in what you need to -- from this vessel to properly safeguard it and the crew and the environment, etcetera?

MR. SWIMMER: I have access to resources that have provided me with what's required, yes.

THE COURT: But what I'm trying to get at is --

MR. SWIMMER: I myself am not (indiscernible). I am not personally a seafarer, but --

THE COURT: Okay.

MR. SWIMMER: -- I --

THE COURT: Do --

MR. SWIMMER: -- (indiscernible) --

THE COURT: What I'm trying to get at is --

MR. SWIMMER: -- know how to do --

THE COURT: -- if you've been listening to this proceeding, which I think you have and --

MR. SWIMMER: Yes.

THE COURT: -- you know the things that I have ordered --

MR. SWIMMER: Of course.

THE COURT: -- to be produced, is there anything else that I have missed that you think I need to order to be produced to safeguard the vessel? You or your -- not counterpart, but the other person who's with you today. Do I need to order production of anything else?

MR. SWIMMER: I would ask that you order that the master coordinate with us or through us whatever services he needs for his vessel.

THE COURT: Does that mean that if the master needs a product to properly safeguard the cargo, that they coordinate with you through you what's going to be coming on board or what they're doing with the operations of the vessel?

MR. SWIMMER: That's correct, particularly in light of the fact that the vessel is at anchorage. So everything will be delivered to the vessel by launch, which kind of ups the ante relative to safety, if you will.

THE COURT: So you just basically want to know what's being loaded on --

MR. GEORGANTAS: Your Honor --

THE COURT: -- what's being loaded off, who's coming on, who's coming off. Mr. Georgantas, there's no problem with that, is there?

MR. GEORGANTAS: Well, we've been doing it, Your Honor.

THE COURT: I --

MR. GEORGANTAS: As recently as this morning I believe we were -- they were advised that we're arranging for a delivery of potable fresh water.

THE COURT: Okay. I think that's great.

MR. GEORGANTAS: We've advised them of crew changes.

We've sent emails. Not me personally, but --

THE COURT: Understood.

MR. GEORGANTAS: -- emails have been sent. That includes (indiscernible). There's three or four emails that have been sent to them --

THE COURT: Okay.

MR. GEORGANTAS: -- to let them know what we're doing.

THE COURT: Got it.

MR. SWIMMER: Judge, I concur on that. At the risk of being argumentative, today is the first time we've had any of that correspondence.

THE COURT: Sometimes --

MR. SWIMMER: Meaning --

THE COURT: Let's let it go.

MR. SWIMMER: -- (indiscernible) for quite a while.

THE COURT: Let's let it go. We're kind of making some --

MR. GEORGANTAS: Your Honor, I --

THE COURT: What, Mr. Georgantas?

MR. GEORGANTAS: -- I'm sorry.

THE COURT: I don't want to get involved of a argument right here during my proceeding. I'm going to let the past be the past and we're moving forward. But I'll put it in my order that the master shall coordinate I guess all launches,

and I'm not sure what the other technical language is, but we'll figure it out, what's being offloaded onto to the boat in terms of cargo, equipment, supplies, personnel, and the master shall coordinate and keep the custodian informed about those matters. I don't think that there's going to be a problem with that as you all go forward. I think having this type of hearing kind of helps everybody understand.

Mr. Floyd, I've kind of kept you out of the fight here so far. Is there any input that you want to provide to me?

MR. FLOYD: Your Honor, you know, I certainly defer to the custodian. They are the gold standard of the go-to for custodial services on vessels. If there's anything else that Mr. Swimmer or his colleague Mr. Mannard or Mr. (Indiscernible), I'm not sure which, from the experts at MTD, (Indiscernible) Engineers and so forth, anything else that they think, I think it might useful to hear directly from MTD.

I'm not a technical person. I got C's in engineering in college, but if there's anything else they think might be helpful, I'd love to hear it. I wasn't fully tracking on the bills of lading and redaction of supposedly confidential information, and that didn't make sense to me because bills of lading aren't confidential. But in any event, all sounds good to me. I just think it would be helpful to hear from MTD.

THE COURT: Okay. Let me just take a moment. Go

ahead, Mr. Swimmer.

MR. SWIMMER: Okay. There were two other items I just wanted to bring to your attention. As custodians, we're concerned about the overall seaworthiness of the vessel, particularly in light of the fact that the vessel is out at anchorage. Certainly crew morale is a -- you know, is a factor in terms of seaworthiness. And I think it's important that we know what they're -- I don't need to know how much they're paid, but it would be helpful if I knew if they're paid current. Because certainly a crew that's not paid current --

THE COURT: Okay. That's --

MR. SWIMMER: -- that could (indiscernible) --

THE COURT: -- granted.

MR. SWIMMER: -- morale.

THE COURT: Granted. If you're not being paid by somebody, you're not -- why would you do your job? And you need to make sure that the crew --

MR. SWIMMER: Right.

THE COURT: -- are doing their job to make sure that the vessel is properly functioning. So Mr. Georgantas, I'm going to put that in the order.

MR. SWIMMER: Okay.

THE COURT: And we just need to provide information on a period basis that the crew is paid. And I'm leaving that for you right now because I've been told that your clients are

the ones who are paying them. Mr. Floyd, at some point, when we get to the bottom of this, your clients may be the ones who have to provide that information. Right now, though, it appears that Mr. Georgantas' clients are the ones who are paying the crew, and I think it's appropriate for the custodian to make sure that the crew is being paid. And so the information to make sure information about documentation verifying that the crew has been paid and is appropriately compensated shall be turned over on a period basis probably corresponding to when they're paid. Which basically, Mr. Georgantas --

MR. GEORGANTAS: Would that be in the form of a report from the captain? Because usually the captain pays the crew on board.

THE COURT: That's fine with me.

MR. GEORGANTAS: Something like that, that, you know, some attestation from the captain (indiscernible).

THE COURT: I'll leave the details to it. But also, if the custodian in the course of performing its duties wants to do a health and welfare check, you certainly may do that, Mr. Swimmer. You can put a man or a woman on the boat and --

MR. FLOYD: Your --

THE COURT: -- talk to the crew and ask how they're doing and if they're being paid. And I expect that would comply or --

MR. SWIMMER: Thank you.

MR. FLOYD: Your Honor --

THE COURT: -- that that's --

MR. FLOYD: Your Honor, may I raise just one (indiscernible) and concern --

THE COURT: Not --

MR. FLOYD: -- about that? I'm not sure what --

THE COURT: Go ahead.

MR. FLOYD: -- (indiscernible) and wait for the response there, Your Honor. I didn't catch what mechanism for payment Mr. Georgantas was referring to with respect to the master making the payments to the crew. But from the perspective of when we say are and actually are (indiscernible) a bankruptcy court the rightful owners of the vessel and rightful ship manager of the vessel, typically a vessel has petty cash and it's not that petty, petty cash aboard, and disbursements and all this money.

It is actually the money of the plaintiff's, Kithnos SME. And I'm not sure right now how comfortable I am -- certainly, crew needs to get paid. That's first and foremost always on a ship along with safety with taking care of your people. But I'm not sure how comfortable I am just getting a letter or whatever it might be that goes across to NMS saying that the crew's been paid, maybe how much it is by name, etcetera.

That is money that belongs to our client. I think we're going to need some real accounting records on there, and that begins with how are they getting paid.

THE COURT: Mr. --

MR. FLOYD: (Indiscernible) --

THE COURT: Mr. Floyd, that's a very reasonable request. I'm going to leave that to the litigation in this matter as we go forward. Right now I'm just trying to make sure that the vessel's safe. I'm not going to get involved in -- there are a lot of interesting issues that are coming up here. We'll leave that to you all to work out through discovery. I just want the custodian to be certain that they're being paid.

How they're being paid, very interesting issue. Where the money's coming from, all very interesting issues. Right now I just need the custodian to know that it's being done. At some point the court may get involved with working those issues out, but not right now. Okay. Mr. Swimmer, you said there were two other things.

MR. FLOYD: (Indiscernible).

THE COURT: You told me one --

MR. SWIMMER: Yes.

THE COURT: -- health and welfare --

MR. SWIMMER: Now we're down to one.

THE COURT: All right.

MR. SWIMMER: Yes, now we're down to one. We view a component of our role is to make certain that the vessel is being not only kept safe and seaworthy, but it's being done so efficiently as to costs. And as an example, this is why we moved the vessel from a very expensive berth out to anchorage. Much cheaper to keep a vessel at anchorage than it is at berth.

And so once it became apparent that it was likely the duration of this arrest could go on for some time, we asked the master to provide us with a potential list, not of individual names, but of individual positions. Recognize there's 20 crewmen onboard this vessel. She's not trading. She's not loading or offloading cargo. So we asked him to provide us with a list of positions that could potentially be eliminated and ultimately we would repatriate that crew. They have not been willing to provide us with that information.

MR. GEORGANTAS: Your Honor, if I may respond to this, that is an astonishing request to reduce the crew of the vessel from a company that is -- keep repeating to the court concerns about the safety of the vessel. And at the same time, they are suggesting that we should reduce the crew, particularly in a situation where the vessel is at the anchorage.

Any sort of inclement weather that might come along, and we all know it happens constantly here, we would be having a vessel that is undermanned. How is that possible that this

request is coming across to reduce the lawful makeup of the crew?

THE COURT: Okay. I'm going to (indiscernible) --

MR. GEORGANTAS: We would strenuously object to that.

THE COURT: Understood. Mr. Swimmer, I'm glad that your company is concerned about costs and efficiencies. Today I'm focusing on safety. And at an appropriate time in the future we may look at efficiencies, but right now today I'm focusing on safety. And so I -- I'm not going to get into those matters right now. But at an appropriate time, the Court may look into it.

I expect you all may come to some agreement because I think everybody has an interest in being efficient with resources while we get this case worked out. All right, Mr. Swimmer? But thank you for your information.

MR. SWIMMER: Okay. That's reasonable. Thank you, Your Honor.

THE COURT: Okay.

MR. SWIMMER: Thank you.

THE COURT: All right. So before I kind of sum up or terminate or finish our proceeding today, Ms. Haas, did you have anything else?

MS. HAAS: No, Your Honor. I appreciate everything you've done today.

THE COURT: Okay. Mr. Floyd, how about you?

MR. FLOYD: No, Your Honor. We'll -- we're mindful of what the Court said earlier on about providing interesting updates from the bankruptcy court, and we'll keep those flowing on through.

THE COURT: Okay. Mr. Georgantas, how about you?

MR. FLOYD: My understanding is --

MR. GEORGANTAS: No, Your Honor. I think I kept good notes of what we discussed and what you've ordered, but I will look forward to your order for the sake of clarity. But no further questions.

THE COURT: Okay. How about you, Mr. Hart?

MR. HART: No, nothing further from me, Your Honor.

THE COURT: Okay. So the record is clear on what we've done today, and I may not have stated this explicitly, but the motion to remove the master of the vessel is denied without prejudice, which means that it can be, you know, reurged if necessary or appropriate, especially if the master and the captain are not cooperating with the custodian.

I think you all have my attention on this, so I don't want anyone to draw any conclusions that I don't think that that is beyond my authority. But for what we're doing today, I don't think it's necessary yet. I've also -- I guess I'm granting the motion in part because I'm ordering -- specifically ordering the production of some documents. Mr. Georgantas and Mr. Floyd, whoever the appropriate entity is, it

sounds like many of these things have been worked out, but I'm just going to put it in an order so that there's -- so the Court can take corrective action in the future if necessary. Which I don't expect would be necessary.

The last thing I would just ask you all to do is -- cases are always contentious. Work together. Try to get these matters worked out before you come to me. But you kind of have an idea how I work through things. If we need to do this again, we can. You know where to find me. File appropriate motions after you've worked things out. And Mr. Hart, did I give you a last word? Did I give you a chance to anything else?

MR. HART: You did, Your Honor. Thank you. And there --

THE COURT: Okay.

MR. HART: -- I have nothing further.

THE COURT: That's it today for everybody. Enjoy your weekend and we'll see you next time. Interesting case. I'm glad that I'm your referral judge on the matter.

MS. HAAS: Thank you, Your Honor.

THE COURT: You're welcome.

MR. GEORGANTAS: Thank you, Your Honor. May we be excused?

THE COURT: Yes. Everyone may be excused.

(Hearing adjourned at 11:21 A.M.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, court-approved transcriber, certify that the foregoing is a correct transcript from the official 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: March 14, 2025

EXHIBIT “10”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KITHIRA GAS SHIPPING COMPANY, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	**CIVIL ACTION NO. 4:25-CV-0755**
	§	
FAMILY UNITY TRUST COMPANY, *et al.*,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Claimant Kithira Gas Shipping Company's Motion to Vacate the Arrest of the LPG/C KITHIRA (ECF No. 55) and Plaintiffs' Motion to Release the Vessel Pursuant to Supplemental Rule E(5)(d) (ECF No. 61). On April 17, 2025, the Court held a Motion Hearing on the two motions and took them under advisement.

Having considered the parties' arguments, Claimant's Motion to Vacate the Arrest of the LPG/C KITHIRA is **DENIED WITHOUT PREJUDICE**. The Court finds that Plaintiffs have satisfied their burden, under Supplemental Admiralty and Maritime Claims Rule E, to show by a preponderance of the evidence that they are entitled to attachment of the vessel. However, the Court recognizes that there are open questions about the ownership of the preferred shares of Eletson Gas that may impact the lawfulness of the arrest. Since the Court is not in the best position to resolve these questions, it will defer to Judge Liman's ruling on the confirmation or vacatur of the JAMS arbitration award. Claimant may file a new Motion to Vacate after Judge Liman enters final judgment as to the arbitration award.

At the April 17 Motion Hearing, the parties presented arguments on Plaintiffs' Motion to Release the Vessel Pursuant to Supplemental Rule E(5)(d). Although the parties did not agree on a plan for the Vessel's release, they both indicated support for releasing the vessel during the pendency of this proceeding. The Court encouraged the parties to confer on terms for the release of the Vessel. Now, the parties are **ORDERED** to confer and make all possible efforts to agree on the terms of a Joint Proposed Order regarding the release of the Vessel. Parties shall submit the Joint Proposed Order to the Court no later than **May 15, 2025**. If the parties are unable to agree on the terms of the order, they shall submit, no later than **May 15, 2025**, a Joint Proposed Order that outlines the points of disagreement.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 5th day of May, 2025.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

EXHIBIT “11”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELETSON HOLDINGS, INC. and ELETSON CORPORATION,

Petitioners,

-v-

LEVONA HOLDINGS LTD.,

Respondent.

23-cv-7331 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

For the reasons stated on the record during the hearing on February 14, 2025, the Court GRANTS IN PART the motion of Petitioners Eletson Holdings Inc. and Eletson Corp. at Dkt. No. 242. The request to displace Reed Smith LLP as counsel of record in this matter is granted. Reed Smith is ordered to turn over to Petitioners' counsel of record Reed Smith's Eletson client file as described in the oral ruling, on the schedule set forth on the record at the hearing. Any motion to stay the Court's order shall be filed by February 24, 2025. Any opposition to a stay is due March 3, 2025, and any reply by March 5, 2025.

The Clerk of Court is respectfully directed to close Dkt. No. 242.

SO ORDERED.

Dated: February 14, 2025
New York, New York

LEWIS J. LIMAN
United States District Judge

EXHIBIT “12”

goulston&storrs
counsellors at law

Jennifer B. Furey
jfurey@goulstonstorrs.com
(617) 574-3575 (tel)
(617) 574-4112 (fax)

April 2, 2025

VIA ECF

Ms. Catherine O'Hagan Wolfe, Clerk of the Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *In re: Eletson Holdings Inc.*, No. 25-176

Dear Ms. O'Hagan Wolfe,

We write on behalf of Eletson Holdings Inc. ("EHI") in the above-captioned appeal in response to the letter filed by Reed Smith LLP ("Reed Smith"), Dkt. Entry 28.1 (the "Letter").

The Court should strike Reed Smith's letter. As determined by both the Bankruptcy Court and District Court concerning EHI's unstayed bankruptcy plan of reorganization, Reed Smith and Rimon P.C lack authority to represent EHI. The District Court decisively ruled that Reed Smith's retention terminated in November 2024, and EHI's new board has not authorized either firm to act on its behalf.[1]

As Reed Smith acknowledged in its Letter, a fully executed "Joint Stipulation of Voluntary Dismissal" was appended to the "Motion to Strike Unauthorized Notice of Appeal and Dismiss the Appeal or, Alternatively, to Remand to the District Court." Dkt. Entry 27.1, Ex. 1. A copy of this Stipulation is attached hereto as **Exhibit A**. The rule is clear: where, as here, all parties to the appeal signed the stipulation, dismissal is mandatory. *See* F.R.A.P. 42(b)(1) ("The circuit clerk ***must dismiss*** a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.") (emphasis added).

[1] *See, e.g.*, Dkt. Entry 12.1, Ex. B at 95-96 ("The Court concludes that ***the notice of appeal should be stricken and the appeal should be dismissed***. The notice of appeal was filed by Eletson Holdings, through [attorneys] Reed Smith and Rimon. But as of the date that the [bankruptcy] plan was confirmed, the retention of Reed Smith was terminated. The only professionals permitted to act on behalf of Eletson Holdings after the effective date, November 19, 2024, were those who were engaged by Eletson Holdings after that date. And after that date, Eletson Holdings could act only through its new board. ***It is undisputed that Eletson Holdings has not retained the attorneys from Rimon, no longer retains Reed Smith, and has not authorized them to file a notice of appeal*** on behalf of Eletson Holdings or its affiliates. Spears declaration, docket number 29, paragraphs 4-8. ***Thus, the notice of appeal was plainly unauthorized***. Moreover, the stipulation of dismissal [of the Appeal], which is signed by authorized representatives of the appellant, Eletson Holdings, as well as the appellee, and which conforms in all other respects to Federal Rule of Appellate Procedure 42, ***is effective***.") (emphasis added).

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Jennifer B. Furey

Jennifer B. Furey

cc: All Counsel (via ECF)

Exhibit A

Case No. 25-176

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELETSON HOLDINGS INC., *Debtor-Appellant,*

v.

PACH SHEMEN LLC, VR GLOBAL PARTNERS, L.P., ALPINE PARTNERS (BVI), L.P., GENE B. GOLDSTEIN, In His Capacity as Trustee of the Gene B. Goldstein and Francine T. Goldstein Family Trust, MARK MILLET, In His Capacity as Trustee of the Mark E. Millet Living Trust and In His Capacity as Trustee of the Millet 2016 Irrevocable Trust, ROBERT LATTER, TRACY LEE GUSTAFSON, JASON CHAMNESS, RON PIKE, and FARRAGUT SQUARE GLOBAL MASTER FUND, L.P., *Appellees,*

v.

Official Committee of Unsecured Creditors, *Interested Party-Appellee.*

On Appeal from The United States District Court,
Southern District of New York, Case No. 1:24-CV-8672 (LJL)

JOINT STIPULATION OF VOLUNTARY DISMISSAL

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Counsel for Appellees

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(212) 698-3500

Counsel to the Official Committee of Unsecured Creditors

IT IS HEREBY STIPULATED AND AGREED by and between the parties that the above-captioned appeal is voluntarily dismissed pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Each party agrees to bear its own costs and fees in connection with this appeal.

Dated: March 31, 2025

Respectfully submitted,

GOULSTON & STORRS PC

By:_____

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Counsel for Interested Party-Appellee the Official Committee of Unsecured Creditors

IT IS HEREBY STIPULATED AND AGREED by and between the parties that the above-captioned appeal is voluntarily dismissed pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Each party agrees to bear its own costs and fees in connection with this appeal.

Dated: March 31, 2025

Respectfully submitted,

GOULSTON & STORRS PC

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EXHIBIT “13”

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Regional Court Hamburg
Chamber 3 for Commercial matters

Sievekingplatz 1
20355 Hamburg

phone (Extension): (040) 4 28 43 - 2605
phone (Central): (040) 4 28 28 - 0
fax (Office): (040) 4279-85248
Fax: {040) **4** 27 98- 3162 / 3163
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Rooms : B 248

Please at Answer specify : Business number:
403 HKO 20/25

Landgerlellll Hamburg, 403 HKO 20125
Pos ach 300121 , 20348Hamburg

John Berenberg, Gazelles & Co.
KG v . d . d.pers . haft.Ges .
Newer Jungfernstieg 20
20354 Hamburg

Hamburg, the April 24 , 2025

In the matter of
ELETSON CORPORATION v. Joh. Berenberg, Gassler & Co. KG
regarding the execution of a transfer order and damages

Dear Sir or Madam,
Please refer to the statement of claim attached to this letter as well as the certified copy of the court's order.

Please include the reference number listed above in all correspondence.

Unless expressly instructed or legally required to do so, please submit attachments only as copies and not as originals (Section 131 (1) of the Code of Civil Procedure). Paper documents can be destroyed six months after digitization if electronic filing is required. Should submission of the original be necessary in exceptional circumstances, please clearly mark the original and indicate a request for return.
Sincerely,
Gahr, Jang

Registrar of the Registry
This letter was created electronically and is valid without a signature. The barrier-free Access for the Building inquire She please in advance by telephone.

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DE 118509725

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Certified copy

Regional Court Hamburg Hamburg , April 23, 2025

403 HKO 20/25

ELETSON CORPORATION v. Joh. Berenberg, Gessler & Co. KG

I. Requests, Orders, and Instructions

1. A written preliminary procedure will be conducted.

2. The following requests are issued to the defendant pursuant to Section 276 of the Code of Civil Procedure:

2.1. The defendant must notify the defendant of its intention to defend itself in writing within a mandatory period of two weeks from service of the statement of claim by its attorney.

Instructions:
This deadline cannot be extended and is only met if the notification is received by the court within the deadline. Failure to do so may result in a loss of the case. The court may, upon application by the opposing party, issue a default judgment (Section 331 of the Code of Civil Procedure); in this case, the defaulting party must also bear the court costs and necessary expenses of the opposing party (Section 91 of the Code of Civil Procedure). The default judgment may be enforced by the defaulting party's opponent (Section 708 No. 2 of the Code of Civil Procedure).
If the defendant declares that it acknowledges the claim in whole or in part, it will be sentenced without a hearing in accordance with the acknowledgement.

2.2. If it wishes to defend itself against the action, it must respond in writing to the statement of claim within two weeks
after the expiration of the aforementioned deadline if it wishes to defend itself against the action.

Instruction pursuant to Sections 277 (2) and 296 (1) and (3) of the Code of Civil Procedure:

The deadline is only met if the response is received by the court before the expiration of the deadline. If it wishes to defend itself against the action, the defendant must respond to the statement of claim by the expiration of this deadline and, for example, raise defenses and objections, offers of evidence, and pleas to adduce evidence. A statement of defense that is received after the expiration of the set deadline, i.e., late, will only be admitted if it does not delay the legal dispute or if the party sufficiently excuses the delay. Late, waived objections concerning the admissibility of the action can only be admitted if the delay is sufficiently excused.

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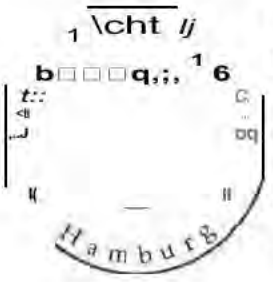
The case can therefore be lost solely due to a missed deadline.
The deadline set above may exceptionally be extended upon request if there are significant reasons. The written request for an extension must be received by the court before the deadline expires.

2.3. If the plaintiff wishes to defend itself against the action, it must appoint a lawyer or, in consultation with a lawyer, a German-speaking citizen of a Member State of the European Union or another state party to the Agreement on the European Economic Area who is authorized under Parts 1 and 5 of the Act on the Activities of European Lawyers in Germany (EuRAG) to temporarily practice as a lawyer before this court, as its legal representative.

Instructions:
At regional courts, representation by a lawyer is mandatory. Therefore, only a lawyer or a foreign lawyer specified above can effectively file a statement of defense (Section 2.1.) and a statement of defense (Section 2.2.), as well as submit motions and
submit further statements. Actions undertaken by a party themselves are ineffective under procedural law. If no lawyer or foreign lawyer as specified above acts for the opposing party, a default judgment may be issued against them (Sections 330 and 331 of the Code of Civil Procedure). In this case, the defaulting party must also bear the court costs and necessary expenses of the opposing party (Section 91 of the Code of Civil Procedure).

The opponent of the defaulting party may enforce the default judgment against them (Section 708 No. 2 of the Code of Civil Procedure).

Bottcher
Chairman Judge at the regional court



For the accuracy the Transcript
Hamburg, April 24, 2025

Gahr, JAng
Registrar the office
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- without Signature valid

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403HKO 2025

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Machine Translation of Pages 1-7 of Original German Document

LOHDE

Rechtsanwälte Partnerschaftsgesellschaft mbB

LOHOE Lawyers Rothenbaumchaussee 133 20149 Hamburg

Via beA

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20355 Hrutiburg

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THE insert Zcichcn· I U/24- 0 I

26. February 2025

Lawsuit

by **ELETSON CORPORATION,** represent by officers Laskarinu K.arastamati, Vasileio Chatzielcftheriadis and Vassilis Kertsikoff, 118, Knlokotroni Street, 18535 Piraeus, Greece

- **Plaintiff**

Attorney: LÖHDE Rechtsanwälte PartGmbB
Rothenbaumchaussee 133
20149 Hamburg

against

Joh. Berenberg, Gossler & Co. KG, represented by the personally liable partners Hendrik Riehmer, David Mortlock, and Christian Kühn, Neuer Jungfernstieg 20, 20354 Hamburg

- **defendant** -

for the execution of a transfer order and damages. Amount in dispute: provisionally estimated at EUR 784,620.00

We file suit on behalf of and by authority of the plaintiff. We request:

1. The defendant is ordered to execute the following transfer order from the plaintiff dated December 19, 2024:

• Plaintiff's account: 05-01537-005 (IBAN DE31 2012 0000 0501 5370 05)

• Recipient: REED SMITH LLP

• Recipient's IBAN: GB BARC 2000 0049 753111

• Amount: USD 500,000.00

• Purpose: Attorney's fees

2. The defendant is ordered to pay the plaintiff pre-trial attorney's fees in the amount of EUR 4,620.00 plus interest thereon at a rate of 9 percentage points above the applicable base interest rate since December 14, 2024.

3. It is determined that the defendant is obligated to compensate the plaintiff for all further damages that it has already incurred and will continue to incur as a result of the non-execution of the transfer order in accordance with section 1 above.

4. The defendant shall bear the costs of the legal action.

5. The judgment is provisionally enforceable, if necessary, against the provision of security.

Due to the particular urgency of the matter, we request that an early first hearing be scheduled as soon as possible.

Should the court nevertheless order written preliminary proceedings, we request, in the event of a failure to meet the deadline, that

the defendant be convicted by default without a hearing.

The plaintiff agrees to a decision by the presiding judge alone.

We suggest that this case be joined to the other cases "EMC Gas Corporation v. Joh. Berenberg, Gossler & Co. KG" and "EMC Investment Corporation v. Joh. Berenberg, Gossler & Co. KG."

gcmall § 147 Code of Civil Procedure to connect .

[Concludes Machine Translation of PDF Pages 1-7 of Original German Action]

Landgericht Hamburg
Kammer 3 für Handelssachen

Sievekingplatz 1
20355 Hamburg
Telefon (Durchwahl): (040) 4 28 43 - 2605
Telefon (Zentrale): (040) 4 28 28 - 0
Telefax (Geschäftsstelle): (040) 4279-85248
Telefax: (040) 4 27 98 – 3162 / 3163
SAFE-ID: safe-sp1-1425982792549-015792812

Zimmer: B 248

Landgericht Hamburg, 403 HKO 20/25
Postfach 300121, 20348 Hamburg

Joh. Berenberg, Gossler & Co. KG
v.d.d.pers.haft.Ges.
Neuer Jungfernstieg 20
20354 Hamburg

Bitte bei Antwort angeben:
Geschäftsnummer:
403 HKO 20/25

Hamburg, den 24.04.2025

In Sachen
ELETSON CORPORATION ./. Joh. Berenberg, Gossler & Co. KG
wg. Ausführung eines Überweisungsauftrags und Schadenersatz

Sehr geehrte Damen und Herren,

beachten Sie bitte die diesem Schreiben beigefügte Klageschrift sowie die beglaubigte Abschrift der Verfügung des Gerichts.

Geben Sie bitte bei allen Schreiben das vorstehend aufgeführte Geschäftszeichen an.

Bitte reichen Sie ohne ausdrückliche Anordnung oder gesetzliche Verpflichtung Anlagen nur in Abschrift und nicht im Original ein (§ 131 Abs. 1 ZPO). Papierdokumente können bei elektronischer Aktenführung sechs Monate nach der Digitalisierung vernichtet werden. Sollte eine Einreichung im Original ausnahmsweise notwendig sein, wird um eindeutige Kennzeichnung und Hinweis auf ein Rücksendungsbegehren gebeten.

Mit freundlichen Grüßen

Gahr, JAng
Urkundsbeamtin der Geschäftsstelle
Dieses Schreiben wurde elektronisch erstellt und ist ohne Unterschrift gültig.
Den barrierefreien Zugang zum Gebäude erfragen Sie bitte vorab telefonisch.

Beglaubigte Abschrift

Landgericht Hamburg Hamburg, 23.04.2025

403 HKO 20/25

Verfügung

In der Sache
ELETSON CORPORATION ./. Joh. Berenberg, Gossler & Co. KG

I. Aufforderungen, Anordnungen und Hinweise

1. Es wird ein schriftliches Vorverfahren durchgeführt.

2. **An die beklagte Partei ergehen gemäß § 276 ZPO folgende Aufforderungen:**

2.1. Die beklagte Partei hat die Absicht der Verteidigung binnen einer
Notfrist von zwei Wochen
ab Zustellung der Klageschrift durch ihren Rechtsanwalt schriftlich anzuzeigen.

Belehrungen:
Die Frist kann nicht verlängert werden und ist nur dann gewahrt, wenn die Anzeige innerhalb der Frist bei Gericht eingeht. Geht sie nicht innerhalb der Frist ein, kann dies zu einem Verlust des Prozesses führen. Das Gericht kann auf Antrag der Gegenpartei ein Versäumnisurteil erlassen (§ 331 ZPO); in diesem Fall hat die säumige Partei auch die Gerichtskosten und die notwendigen Auslagen der Gegenseite zu tragen (§ 91 ZPO). Aus dem Versäumnisurteil kann der Gegner der säumigen Partei gegen diese die Zwangsvollstreckung betreiben (§ 708 Nr. 2 ZPO).
Erklärt die Beklagtenpartei, dass sie den Klageanspruch ganz oder teilweise anerkenne, so wird sie ohne mündliche Verhandlung dem Anerkenntnis gemäß verurteilt werden.

2.2. Sie hat auf das **Klagevorbringen** innerhalb von
zwei Wochen
nach Ablauf der oben genannten Notfrist schriftlich zu erwidern, wenn sie sich gegen die Klage verteidigen will.

Belehrung gemäß §§ 277 Abs. 2, 296 Absätze 1 und 3 ZPO:
Die Frist ist nur dann gewahrt, wenn die Erwiderung vor Ablauf der Frist bei Gericht eingeht. Die beklagte Partei muss, wenn sie sich gegen die Klage verteidigen will, bis zum Ablauf dieser Frist auf die Klageschrift erwidern und zum Beispiel Einreden und Einwendungen, Beweisangebote und Beweiseinreden vorbringen. Die Klageerwiderung, die erst nach Ablauf der gesetzten Frist, also verspätet, eingeht, wird nur zugelassen, wenn sich dadurch der Rechtsstreit nicht verzögert oder wenn die Partei die Verspätung genügend entschuldigt. Verspätete verzichtbare Rügen, die die Zulässigkeit der Klage betreffen, können nur bei genügender Entschuldigung der Verspätung zugelassen werden.

Der Prozess kann also allein wegen einer Fristversäumnis verloren werden.
Die oben gesetzte Frist kann ausnahmsweise auf Antrag bei Vorliegen erheblicher Gründe verlängert werden. Der schriftliche Antrag auf Fristverlängerung muss vor Fristablauf bei Gericht eingehen.

2.3. Sie hat einen **Rechtsanwalt** oder im Einvernehmen mit einem Rechtsanwalt einen der deutschen Sprache mächtigen Staatsangehörigen eines Mitgliedstaates der Europäischen Union oder eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum, der nach den Teilen 1 und 5 des Gesetzes über die Tätigkeit europäischer Rechtsanwälte in Deutschland (EuRAG) berechtigt ist, vorübergehend die Tätigkeit eines Rechtsanwalts bei diesem Gericht auszuüben, zum Prozessbevollmächtigten zu bestellen, wenn sie sich gegen die Klage verteidigen will.

Belehrungen:
Vor den Landgerichten herrscht Anwaltszwang. Daher kann nur ein Rechtsanwalt oder ein vorstehend näher bezeichneter ausländischer Rechtsanwalt wirksam eine Verteidigungsanzeige (Ziff. 2.1.) und eine Klageerwiderung (Ziff. 2.2.) einreichen sowie Anträge stellen und weitere Erklärungen abgeben. Handlungen, die ein Beteiligter selbst vornimmt, sind prozessrechtlich unwirksam. Wird für die antragsgegnerische Beteiligtenseite kein Rechtsanwalt oder kein vorstehend näher bezeichneter ausländischer Rechtsanwalt tätig, kann gegen sie ein Versäumnisurteil ergehen (§§ 330, 331 ZPO); in diesem Fall hat der säumige Beteiligte auch die Gerichtskosten und die notwendigen Auslagen der Gegenseite zu tragen (§ 91 ZPO).

Aus dem Versäumnisurteil kann der Gegner des säumigen Beteiligten gegen diesen die Zwangsvollstreckung betreiben (§ 708 Nr. 2 ZPO).

Böttcher
Vorsitzender Richter am Landgericht

Für die Richtigkeit der Abschrift
Hamburg, 24.04.2025

Gahr, JAng
Urkundsbeamtin der Geschäftsstelle
Durch maschinelle Bearbeitung beglaubigt
- ohne Unterschrift gültig

RSH3

Prüfvermerk vom 26.02.2025, 17:28:42

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403HKO 2025

Angaben zur Nachricht:

Sicherer Übermittlungsweg aus einem besonderen Anwaltspostfach.

Eingangszeitpunkt:	26.02.2025, 17:26:17
Absender:	Axel Löhde
Nutzer-ID des Absenders:	DE.BRAK.732795a9-5db1-4c0d-b666-61d2a58a440e.c96b
Aktenzeichen des Absenders:	10/24-01
Empfänger:	Landgericht Hamburg
Aktenzeichen des Empfängers:	
Betreff der Nachricht:	
Text der Nachricht:	
Nachrichtenkennzeichen:	DP_Msg17405871726287f751df7-5b4b-4d64-95df-461bc955b9ee

Angaben zu den Dokumenten:

Dateiname	Format	Informationen zu(r) qualifizierten elektronischen Signatur(en)				
		Qualifiziert signiert nach ERVB?	durch	Berufsbezogenes Attribut	am	Prüfergebnis
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Eletson_Anlage_K_10.pdf	pdf	nein				
Eletson_Anlage_K_11.pdf	pdf	nein				
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LÖHDE
Rechtsanwälte Partnerschaftsgesellschaft mbB

LÖHDE Rechtsanwälte · Rothenbaumchaussee 133 · 20149 Hamburg

Per beA

Landgericht Hamburg
- Kammer für Handelssachen -
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Unser Zeichen: 10/24-01

Axel Löhde
Rechtsanwalt

Corinne Hauss-Löhde
Rechtsanwältin

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F +49 40 82211 7871
E mail@loehdepartners.com

loehdepartners.com

26. Februar 2025

Klage

der **ELETSON CORPORATION,** vertreten durch die Officers Laskarina Karastamati, Vasileios Chatzieleftheriadis und Vassilis Kertsikoff, 118, Kolokotroni Street, 18535 Piraeus, Griechenland

- Klägerin -

Prozessbevollmächtigte: LÖHDE Rechtsanwälte PartGmbB
Rothenbaumchaussee 133
20149 Hamburg

gegen

die **Joh. Berenberg, Gossler & Co. KG**, vertreten durch die persönlich haftenden Gesellschafter Hendrik Riehmer, David Mortlock, Christian Kühn, Neuer Jungfernstieg 20, 20354 Hamburg

- Beklagte -

wegen Ausführung eines Überweisungsauftrags und Schadensersatz

Streitwert: vorläufig geschätzt EUR 784.620,00

LÖHDE

Namens und in Vollmacht der Klägerin erheben wir Klage. Wir werden beantragen:

1. **Die Beklagte wird verurteilt, den folgenden Überweisungsauftrag der Klägerin vom 19. Dezember 2024 auszuführen:**

   - **Konto der Klägerin: 05-01537-005 (IBAN DE31 2012 0000 0501 5370 05)**
   - **Empfänger: REED SMITH LLP**
   - **IBAN des Empfängers: GB BARC 2000 0049 7531 11**
   - **Betrag: USD 500.000,00**
   - **Verwendungszweck: Anwaltshonorar**

2. **Die Beklagte wird verurteilt, an die Klägerin vorgerichtliche Rechtsanwaltskosten in Höhe von EUR 4.620,00 nebst Zinsen hierauf in Höhe von 9 Prozentpunkten über dem jeweiligen Basiszinssatz seit dem 14. Dezember 2024 zu zahlen.**

3. **Es wird festgestellt, dass die Beklagte verpflichtet ist, der Klägerin allen weiteren Schaden zu ersetzen, der ihr aus der Nichtausführung des Überweisungsauftrags gemäß vorstehend zu Ziffer 1. bereits entstanden ist und noch entsteht.**

4. **Die Beklagte trägt die Kosten des Rechtsstreits.**

5. **Das Urteil ist notfalls gegen Sicherheitsleistung vorläufig vollstreckbar.**

Wegen der besonderen Dringlichkeit der Sache bitten wir darum, einen möglichst zeitnahen frühen ersten Termin zu bestimmen.

Sollte das Gericht gleichwohl das schriftliche Vorverfahren anordnen, so beantragen wir für den Fall der Fristversäumnis,

die Beklagte durch Versäumnisurteil ohne mündliche Verhandlung zu verurteilen.

Mit einer Entscheidung durch den Vorsitzenden allein ist die Klägerin einverstanden.

Wir regen an, diesen Prozess mit den weiteren Prozessen „EMC Gas Corporation ./. Joh. Berenberg, Gossler & Co. KG“ sowie „EMC Investment Corporation ./. Joh. Berenberg, Gossler & Co. KG“

gemäß § 147 ZPO zu verbinden.

Die Klagen in diesen beiden Verfahren haben wir heute ebenfalls anhängig gemacht. Die Aktenzeichen sind uns noch nicht bekannt.

Begründung:

Mit der Klage verlangt die Klägerin (i) die Ausführung ihres benannten Überweisungsauftrags, die die Beklagte seit Wochen vertragswidrig verweigert, (ii) die Zahlung der ihr vorgerichtlich entstandenen Rechtsanwaltskosten sowie (iii) die Feststellung, dass die Beklagte verpflichtet ist, der Klägerin den ihr aus der Weigerung der Beklagten bereits entstandenen und noch entstehenden weiteren Schaden zu ersetzen.

Im Einzelnen:

I.

Zum Sachverhalt

1. Die Klägerin, eine Gesellschaft liberianischen Rechts mit Hauptsitz (center of main interest) in Piraeus, gehört zur Eletson Gruppe und erbringt die Managementleistungen für den Betrieb einer aus 4 Tankern und 12 Flüssiggastankern bestehenden Flotte, die unter griechischer und liberianischer Flagge fahren und über Tochtergesellschaften und verbundene Unternehmen der Konzernmutter Eletson Holdings Inc. gehören.

   Gesellschafter der Eletson Holdings Inc. sind drei liberianische Gesellschaften, die den drei griechischen Familien von Frau Laskarina Karastamati, Herrn Vasileios Chatzieleftheriadis und Herrn Vassilis Kertsikoff gehören.

   Die Eletson Flüssiggastanker bilden die zweitgrößte Flüssiggastanker-Flotte weltweit.

2. Die Beklagte ist gerichtsbekannt.

3. Die vorgenannten Frau Laskarina Karastamati, Herr Vasileios Chatzieleftheriadis und Herr Vassilis Kertsikoff sowie die Unternehmen der Eletson-Gruppe sind langjährige Kunden der Beklagten. Auch die Klägerin unterhält bei der Beklagten Konten, nämlich das EUR-Girokonto 00-01537-000, das USD-Girokonto 05-01537-005 und das GBP-Girokonto 05-01537-013. Mit Schreiben vom 20.Dezember 2022

Anlage K 1

bestätigte die Beklagte die Kontoneröffnung. Wie sich aus dem dort anliegenden Specimen Signatur Sheet ergibt, sind für die Konten zeichnungsberechtigt Frau Laskarina Karastamati, Herr Vasileios Chatzieleftheriadis und Herr Paschalis Radopoulos.

4. Die Geschäftsbeziehung der Parteien verlief bis zum 22. November vergangenen Jahres unproblematisch. An diesem Tag teilte die Beklagte der zentralen Finanzabteilung der Eletson-Gruppe in Piraeus mit, dass ab sofort nur noch ein Herr Mark Lichtenstein berechtigt sei, die Klägerin zu vertreten und ihr Überweisungsaufträge zu erteilen,

Anlage K 2.

Dies ergebe sich aus der dieser E-Mail gemäß Anlage K 2 beigefügten confirmation order des U.S. Bankruptcy Court Southern District of New York betreffend die Konzernmutter Eletson Holdings Inc.

Anlage K 3,

sowie aus dem der E-Mail gemäß Anlage K 2 ebenfalls beigefügten Schreiben eines Herrn Adam Spears vom 19. November 2024

Anlage K 4,

in dem Herr Spears behauptet, vertretungsberechtigt für die Klägerin gegenüber der Beklagten sei ab sofort nur noch ein Herr Mark Lichtenstein.

Sowohl Herrn Lichtenstein als auch Herrn Spears werden wir dem Gericht nachstehend zu Ziffer 8. noch näher vorstellen.

5. Bereits am darauffolgenden Tag, nämlich mit E-Mail vom 23. November 2024

Anlage K 5,

unterrichtete der griechische Rechtsanwalt der Klägerin, Herr John Markianos-Daniolos, die Beklagte, dass

(i) die beiden vorgenannten Herren in keiner Weise berechtigt sind, die Klägerin zu vertreten und dass sie sich bei der Beklagten unter einer betrügerisch angeeigneten E-Mailadresse gemeldet hatten, die nicht die E-Mailadresse der Klägerin ist, wie sie in den Kontoeröffnungsunterlagen vermerkt ist und wie sie von der Klägerin ausnahmslos benutzt wird,

(ii) die US-confirmation order gemäß Anlage K 3 weder in Liberia noch in Griechenland noch in Deutschland Rechtswirkung entfalten kann,

(iii) es darauf jedoch nicht einmal ankommt, weil die Klägerin an dem US-Verfahren überhaupt nicht beteiligt war.

Ferner brachte Herr Markianos-Daniolos zu Recht sein Unverständnis darüber zum Ausdruck, dass die Beklagte ohne jede Prüfung und Rücksprache „auf Zuruf" einfach die Konten der Klägerin sperrt und forderte die Beklagte auf, die Kontosperrungen umgehend aufzuheben.

6. Um eine einvernehmliche Lösung zu erzielen, schlug Herr Markianos-Daniolos der Beklagten im weiteren Verlauf sodann die Einholung einer unabhängigen gutachterlichen Stellungnahme zu der Frage vor, ob die US-confirmation order gemäß Anlage K 3 in Deutschland Rechtswirkungen entfalten kann. Die Beklagte stimmte zu und beauftragte mit dieser Stellungnahme Herrn Rechtsanwalt Dr. Jan Dreyer aus der Sozietät Arnecke Sibeth Dabelstein, Hamburg.

Herr Dr. Dreyer legte mit seiner E-Mail vom 4. Dezember 2024 zunächst seine vorläufige Stellungnahme vor

Anlage K 6.

Nachdem Herr Markianos-Daniolos mit E-Mail vom 5. Dezember 2024 wunschgemäß nachgewiesen hatte, dass der Center of Main Interest (Hauptsitz) der Eletson Holdings Inc. in Piraeus liegt

Anlage K 7,

bestätigte Herr Dr. Dreyer mit seiner weiteren E-Mail vom 6. Dezember 2024, dass die US-confirmation order (Anlage K 3) in Deutschland schon deswegen keine

Rechtswirkung entfalten kann, weil der US Bankruptcy Court nach deutschem Recht nicht zuständig ist

Anlage K 8.

7. Statt die Konten nunmehr freizugeben, erklärte die Beklagte mit ihrer E-Mail vom 9. Dezember 2024 dann freilich

> *„However, it is most relevant to us who is actually authorised to represent the various account holders at this time."*

Anlage K 9.

Zum Nachweis der Vertretungsmacht verlangte die Beklagte in einem gemeinsamen Telefonat zwischen ihrer Rechtsabteilung, Herrn Dr. Dreyer und Herrn Markianos-Daniolos sodann zusätzlich noch aktuelle Certificates of Election and Incumbency der für die Klägerin (und die anderen betroffenen Gesellschaften) handelnden Personen. Dann werde man die Konten freigeben.

Beweis: Zeugnis John Markianos-Daniolos, DANIOLOs, 13, Defteras Merachias Street, 185 35 Piraeus, Griechenland

Auch dieser weiteren Forderung der Beklagten kam Herr Markianos-Daniolos umgehend nach und übersandte der Beklagten mit E-Mail vom 13. Dezember 2024

Anlage K 10

die gewünschten aktuellen Certificates of Election and Incumbency für die Eletson Holdings Inc., die Klägerin, die EMC Gas Corporation und die EMC Investment Corporation.

Das aktuelle, soeben mit der Anlage K 10 vorgelegte Certificate of Election and Incumbency betreffend die für die Klägerin vertretungsberechtigten Directors and Officers weist die folgenden Personen aus:

Laskarina Karastamati
Vasileios Chatzieleftheriadis
Vassilis Kertsikoff

Frau Laskarina Karastamati und Herr Vasileios Chatzieleftheriadis sind gemäß Anlage K 1 auch zeichnungsberechtigt für die Konten der Klägerin und haben auch den streitgegenständlichen Überweisungsauftrag gezeichnet.

8. In dem Certificate of Election and Incumbency gemäß Anlage K 10 ersichtlich nicht als vertretungsberechtigt aufgeführt sind freilich die beiden oben bereits erwähnten Herren Adam Spears und Mark Lichtenstein.

Auch darüber, was es mit diesen beiden Herren auf sich hat, informierte Herr Markianos-Daniolos die Beklagte in seiner vorgenannten E-Mail gemäß Anlage K 10.

Wie sich aus dem dieser E-Mail beigefügten Schiedsspruch vom 29. September 2023

Anlage K 11

ergibt, begannen die Aktivitäten dieser beiden Herren mit der diesem Schiedsspruch zugrunde liegenden schiedsgerichtlichen Auseinandersetzung zwischen der dort klagenden Eletson Holdings Inc. und der hiesigen Klägerin einerseits und den gemeinsam handelnden Firmen Levona, Murchinson und Pach Shemen andererseits, für die wiederum die beiden Herren Adam Spears und Mark Lichtenstein handelten (Seite 20 Mitte des Schiedsspruchs).

Die Eletson Holdings Inc. und die hiesige Klägerin gewannen dieses Schiedsverfahren und die von den vorgenannten Herren vertretenen Firmen wurden zur Zahlung von Schadensersatz in Höhe von rund USD 100 Millionen verurteilt.

Hierzu stellt der Schiedsspruch nach Beweiserhebung zu den schadensbegründenden Handlungen fest, dass die beiden Herren bestochen, betrogen und gelogen haben und fasst deren Machenschaften auf den Seiten 96 unten bis 99 oben wie folgt zusammen:

> *„ 9. Levona breached its LLCA and related obligations, including without limitation common law and contractual duties to Claimants and the Company, in at least the following ways:*
>
> *i. Bribing an Eletson Corporation employee, and Company representative, Peter Kanelos, and causing him to disclose the Company's confidential information;*

ii. Violating confidentiality obligations by disclosing the Company's confidential information to third parties, failing to take steps to recover such information, and then deceiving Claimants and the Company concerning said breaches after it became a member of the Company;

iii. actively engaging in unlawful behavior by wrongfully influencing Company financiers to turn against the Company and Claimants, including without limitation by causing the arrest of five of the Company's vessels and not disclosing this misconduct to Eletson or the Company after it became a member of the Company;

iv. Failing to acknowledge that Eletson fully complied with the terms of the BOL Purchase Option, and failing to act in good faith by remaining silent about its purported belief that the Company would or might fail to meet its BOL terms;

v. Improperly purporting to act on behalf of the Company in its business dealings with third parties, including by attempting to sell the Company's assets to its primary competitor, Unigas, and concealing such misconduct from Claimants;

vi. Improperly threatening Eletson and affiliated officers and directors, including by pursuing litigation against them;

vii. Improperly purporting to seize control of the Company's board of directors post-March 11, 2022;

viii. Improperly purporting to direct the day-to-day operations of the Company post-March 11, 2022;

ix. Improperly purporting to assert control over the assets of the

Company post March 11, 2022;

x. Improperly purporting to call and hold meetings of the Board of the Company without following proper procedures and for unlawful and improper purposes of approving unlawful and improper conduct post March 11, 2022;

xi. Breaching its obligations under the LLCA, including without limitation by purporting to terminate management agreements that Eletson Corporation has with the Company's subsidiaries, purporting to change management of the Company's subsidiaries, precluding Eletson Corporation from communicating with the Company's financiers, all of which Levona knew was unlawful and in breach of the LLCA; and

10. Violating this arbitration's Status Quo Injunction by:

i. Wrongfully declaring the Company in default of the loan from Levona and wrongfully purporting to accelerate payment of the principal;
ii. Trying to sell vessels, including the Symi and Telendos, while the Status Quo Injunction was in effect; and
iii. Directing and/or causing Levona's affiliates to purchase a controlling position in securities of Eletson Holdings in January 2023 for the purpose of wrongfully commencing and then actually causing the commencement of litigation against Eletson Holdings and the filing an involuntary bankruptcy petition against Eletson Holdings."

In freier Übersetzung lautet diese Zusammenfassung:

" 9. Levona hat gegen ihre Verpflichtungen aus dem Gesellschaftsvertrag und ihre damit verbundenen Verpflichtungen, einschließlich, aber nicht beschränkt auf common law und vertragliche Pflichten gegenüber den

Schiedsklägerinnen und der „Company" [=Eletson Gas LLC] *verstoßen, zumindest auf folgende Weise:*

i. Bestechung eines Mitarbeiters der Eletson Corporation und Vertreters der „Company", Peter Kanelos, und dessen Verleitung, die vertraulichen Informationen der „Company" offenzulegen;

ii. Verletzung von Vertraulichkeitsverpflichtungen durch Offenlegung der vertraulichen Informationen der „Company" gegenüber Dritten, das Versäumnis, diese Informationen zurückzuerhalten und sodann die Täuschung der Schiedsklägerinnen und der „Company" über diese Verstöße, nachdem sie Gesellschafterin der „Company" geworden war;

iii. Aktive Beteiligung an rechtswidrigem Verhalten durch unrechtmäßige Beeinflussung von Finanziers der „Company", damit diese sich gegen die „Company" und die Schiedsklägerinnen wenden, einschließlich, aber nicht beschränkt auf die Veranlassung der Arretierung von fünf Schiffen der „Company" und die Nichtoffenlegung dieses Fehlverhaltens gegenüber Eletson oder der „Company", nachdem sie Gesellschafterin der „Company" war;

iv. Nichtanerkennung der Tatsache, dass Eletson die Bedingungen der BOL-Kaufoption vollständig erfüllt hat und das treuwidrige Schweigen über ihre behauptete Überzeugung, die „Company" würde oder könnte die BOL-Bedingungen nicht erfüllen;

v. Die unwahre Behauptung, im Namen der „Company" bei deren Geschäften mit Dritten zu handeln, einschließlich des Versuchs, die Vermögenswerte der „Company" an ihren Hauptkonkurrenten Unigas zu verkaufen, und das Verheimlichen eines solchen Fehlverhaltens vor den Schiedsklägerinnen;

vi. Sittenwidrige Bedrohung von Eletson und deren leitenden Angestellten und Direktoren, einschließlich der Einleitung von Prozessen gegen sie;

vii. Die unwahre Behauptung, die Kontrolle über den Vorstand der „Company" ab dem 11. März 2022 zu übernehmen;

viii. Die unwahre Behauptung, den täglichen Geschäftsbetrieb der „Company" ab dem 11. März 2022 zu leiten;

ix. Die unwahre Behauptung, die Kontrolle über das Vermögen der „Company" ab dem 11. März 2022 zu übernehmen;

x. Die unwahre Behauptung, Sitzungen der Geschäftsführung der „Company" ohne Einhaltung ordnungsgemäßer Verfahren einzuberufen und abzuhalten zu den rechtswidrigen und unzulässigen Zwecken, solches Verhalten ab dem 11. März 2022 zu genehmigen;

xi. Verstoß gegen ihre Verpflichtungen aus dem Gesellschaftsvertrag, einschließlich, aber nicht beschränkt auf die Behauptung, Managementvereinbarungen, die die Eletson Corporation mit den Tochtergesellschaften der „Company" abgeschlossen hat, zu kündigen, vorzugeben, das Management der Tochtergesellschaften der „Company" auszuwechseln, die Eletson Corporation daran zu hindern, mit den Finanziers der „Company" zu kommunizieren, obwohl Levona wusste, dass all dies rechtswidrig war und gegen den Gesellschaftsvertrag verstieß; und

10. Verstoß gegen die schiedsgerichtliche Status Quo-Verfügung durch:

i. die falsche Behauptung, die „Company" sei in Verzug mit der Rückzahlung des von Levona gewährten Darlehens und der falschen Behauptung, die Hauptforderung sei fällig;
ii. den Versuch, Schiffe, einschließlich der Symi und Telendos, zu verkaufen, während die schiedsgerichtliche Status Quo-Verfügung in Kraft war; und
iii. die Anweisung an und/oder die Veranlassung von mit Levona verbundenen Unternehmen, die Kontrolle über Sicherheiten der Eletson Holdings im Januar 2023 zu erwerben mit dem Ziel, rechtsmissbräuchlich einen Rechtsstreit gegen die Eletson

> *Holdings anzustreben und dann tatsächlich einzuleiten sowie sodann ein Insolvenzverfahren gegen die Eletson Holdings einzuleiten."*

Obwohl alle diese Handlungen der Herren Spears und Lichtenstein für das vorliegende Verfahren relevant sind, sei auf zwei bewiesene Feststellungen besonders hingewiesen:

- Zum einen stellt das Schiedsgericht vorstehend zu Ziffer 9.v. fest, dass Herr Spears gegenüber Dritten bereits mehrfach unwahr behauptet hat, er handele im Namen der Eletson Holdings Inc. Dies passt exakt zu seinem streitgegenständlichen Schreiben vom 19. November 2024 (Anlage K 4), in dem er nunmehr erneut unwahr behauptet, er handele im Namen der Klägerin.

- Zu anderen stellt das Schiedsgericht vorstehend zu Ziffer 10.iii. fest, dass die Herren Spears und Lichtenstein missbräuchlich die Kontrolle über Sicherheiten der Eletson Holdings Inc. erworben haben, um auf diese Weise die Eletson Holdings Inc. rechtsmissbräuchlich zu verklagen und das streitgegenständliche US-Insolvenzverfahren (Anlage K 3) zu inszenieren. Den Grund für dieses widerrechtliche Tun stellt das Schiedsgericht auf Seiten 61 unten/62 oben des Schiedsspruchs wie folgt fest:

> *"In other words, the Levona-related entities were looking to either strip this arbitration of its jurisdiction or hedge against a potential loss in this arbitration. They believed, at the time—although mistakenly—that if I ruled that Eletson had exercised the option and bought out Levona's interests, the preferred interests would pass to Holdings. Thus, by purchasing the bonds, it became a controlling creditor of Holdings with the ability to put Holdings into bankruptcy."*

In freier Übersetzung:

> *„Mit anderen Worten, die mit Levona verbundenen Unternehmen versuchten, diesem Schiedsgericht entweder seine Zuständigkeit zu entziehen oder sich gegen eine mögliche Niederlage in diesem Schiedsverfahren abzusichern. Sie glaubten damals – wenn auch fälschlicherweise –, dass, wenn ich entscheide, dass Eletson die Option ausgeübt und die Beteiligung von Levona aufgekauft hat, die Vorzugsanteile an die Holdings übergehen würden. So*

würden sie durch den Kauf der Anleihen zu einem kontrollierenden Gläubiger der Holdings mit der Möglichkeit werden, die Holdings in die Insolvenz zu treiben."

9. In Reaktion auf die vorgenannte E-Mail von Herrn Markianos-Daniolos (Anlage K 10) gab die Beklagte nun nicht etwa – wie zugesagt – die Konten frei, vielmehr verweigerte sie nunmehr jeden Kontakt. Anrufe der Klägerin nahm sie nicht mehr entgegen, E-Mails beantwortete sie nicht mehr und den im Klageantrag zu 1. benannten Überweisungsauftrag führte sie nicht aus.

10. Am 20. Dezember 2024 meldete sich dann schließlich Herr Rechtsanwalt Dr. Schommer als anwaltlicher Vertreter für die Beklagte mit seiner hier als

Anlage K 12

vorgelegten E-Mail, um mitzuteilen, dass er sich einarbeiten werde und dann auf die Sache zurückkommen wolle.

Nachdem er bis zum 30. Dezember 2024 – trotz der besonderen Dringlichkeit der Sache – noch immer nicht geantwortet hatte, forderte ihn der Unterzeichner mit seiner E-Mail vom 30. Dezember 2024

Anlage K 13

auf, nunmehr bis zum 3. Januar 2025 entweder die Konten freizugeben oder mindestens die Gründe für die Weigerung der Beklagten sowie die Möglichkeiten mitzuteilen, wie etwaige Fehler, die zur Weigerung geführt haben, beseitigt werden können, § 675 o BGB.

Seine mindestens erstaunliche Antwort gab Herr Dr. Schommer mit seiner hier als

Anlage K 14

vorgelegten E-Mail vom 2. Januar 2025, eingangs derer er zunächst vollmundig behauptet, der Unterzeichner sei von der Klägerin und/oder Herrn Markianos-Daniolos

nicht zutreffend unterrichtet worden, um dann seinerseits durchgängig unzutreffend auszuführen.

Im Einzelnen:

a) Soweit Herr Dr. Schommer behauptet, die Beklagte habe im Einzelnen dargelegt, warum sie die Überweisungsaufträge nicht ausführt, so ist bereits diese Behauptung unzutreffend. Die Beklagte hat – wie vorstehend dargelegt – die gutachterliche Stellungnahme von Herrn Dr. Dreyer verlangt und sodann die aktuellen Certificates of Election and Incumbency. Nach deren Vorlage sollten die Konten freigegeben werden. Beides liegt der Beklagten seit Wochen vor. Weitere Gründe für ihre Weigerung hat sie nicht mitgeteilt, vielmehr war sie sie seit dem 13. Dezember 2024 für die Klägerin dann nicht mehr erreichbar.

b) Soweit Herr Dr. Schommer weiter behauptet, die Klägerin wisse, dass die Beklagte mehrere, sich widersprechende Anweisungen von zahlreichen Personen erhalten habe, die behaupteten, vertretungsberechtigt zu sein, so ist auch dies unzutreffend. Die einzige „Anweisung", über die die Beklagte die Klägerin unterrichtet hat, ist das Schreiben des Herrn Adam Spears vom 19. November 2024 (Anlage K 4). Was von diesem Schreiben zu halten ist, ist vorstehend zu Ziffer 8. dargelegt und hatte Herr Markianos-Daniolos dies der Beklagten bereits vorprozessual mit seiner E-Mail vom 13. Dezember 2024 (Anlage K 10) mitgeteilt.

c) Soweit Herr Dr. Schommer die Klägerin „secondly" beschuldigt, dadurch treuwidrig zu handeln, dass sie der Beklagten in Griechenland und Liberia anhängige Insolvenzverfahren verschwiegen habe, so ist auch dieser Vorwurf gleichermaßen unverständlich wie unbegründet. Weder in Griechenland noch in Liberia ist ein Insolvenzverfahren gegen die Eletson Holdings Inc., geschweige denn gegen die Klägerin, anhängig. Anhängig sind lediglich Verfahren auf Anerkennung der US-confirmation order (Anlage K 3), die für das Rechtsverhältnis zwischen den Parteien indes völlig unerheblich sind. Denn zum einen ist an diesen Verfahren allein die Eletson Holdings Inc. und nicht etwa die Klägerin beteiligt. Und selbst wenn man unzutreffend unterstellen wollte, die Klägerin sei an diesen Verfahren ebenfalls beteiligt, so ist eine Anerkennung ausgeschlossen und entfaltete die US-confirmation order aus all den von Herrn Dr. Dreyer in seiner

gutachterlichen Stellungnahme gemäß Anlage K 6 zutreffend dargelegten Gründen in Deutschland keinerlei Rechtswirkung.

d) Soweit Herr Dr. Schommer „thirdly" schließlich behauptet, der US District Court of New York habe am 23. Dezember 2024 entschieden, dass nur noch die neue Geschäftsführung der Eletson Holdings Inc. vertretungsberechtigt sei, so ist auch dies unwahr. Eine solche Entscheidung gibt es nicht. Und selbst wenn es sie – wie nicht – gäbe, würde sie in Deutschland – wie vorstehend zu Ziffer 6. und ebenfalls von Herrn Dr. Dreyer in seiner gutachterlichen Stellungnahme gemäß Anlage K 6 zutreffend dargelegt – keinerlei Rechtswirkung entfalten, und zwar schon mit Blick auf die Eletson Holdings Inc. nicht, erst recht aber nicht mit Blick auf die auch an dem US-Verfahren überhaupt nicht beteiligte Klägerin.

11. Die einleitend und von dem Unterzeichner bereits vorprozessual am Ende seiner E-Mail vom 30. Dezember 2024 (Anlage K 13) dargelegte besondere Dringlichkeit der Ausführung des streitgegenständlichen Überweisungsauftrags folgt daraus, dass der streitgegenständliche Überweisungsauftrag das längst fällige Honorar der englischen Sozietät Reed Smith LLP für die Vertretung der Eletson Gruppe gegen die Machenschaften der Herren Spears und Lichtenstein mit ihren vorgenannten Firmen Levona, Murchinson und Pach Shemen betrifft, verbunden mit schwerwiegenden, derzeit noch nicht absehbaren Schäden im Falle einer Mandatsniederlegung wegen Nichtzahlung. Hinzu kommt der der Klägerin durch den Verzug bereits entstandene Reputationsschaden, der sich täglich weiter fortfrisst und die daraus resultierende fortgesetzte Beschädigung ihrer Kreditwürdigkeit.

II.

Rechtliche Würdigung

I. Der mit dem Klageantrag zu 1. verfolgte Anspruch folgt aus dem zwischen den Parteien bestehenden Girovertrag (Anlage K 1) i.V.m. § 675 f Abs. 2 BGB.

Hauptpflicht der Beklagte ist nach dem Prinzip der Auftragsstrenge die unverzügliche Ausführung des streitgegenständlichen, von der Klägerin erteilten (§ 665 Satz 1 BGB) Überweisungsauftrags. Der zwischen den Parteien bestehende Girovertrag ist auch nicht gemäß § 116 Satz 1, § 115 Abs. 1 InsO erloschen. Das US-Insolvenzverfahren entfaltet

schon gegenüber der an diesem Verfahren nicht beteiligten Klägerin keinerlei Rechtswirkung und darüber hinaus gemäß § 343 Abs. 1 Satz 2 Nr. 1 InsO auch in Deutschland nicht.

Die Beklagte kann sich für ihre Weigerung auch nicht auf etwaige Warn- und Hinweispflichten berufen. Die Banken werden nach ständiger Rechtsprechung des BGH und einhelliger Ansicht

> „[…] *nur zum Zwecke eines technisch einwandfreien, einfachen und schnellen Zahlungsverkehrs tätig und haben sich schon wegen dieses begrenzten Geschäftszwecks und der Massenhaftigkeit der Geschäftsvorgänge grundsätzlich nicht um die beteiligten Interessen ihrer Kunden zu kümmern.*"
>
> (Nobbe, Die neuere Rechtsprechung des Bundesgerichtshofs zum Überweisungsverkehr, WM Sonderbeil. Nr. 1 zu Heft 37/2012, Seite 8 mwN)

Eine Ausnahme gilt in Fällen wie dem vorliegenden ebenfalls nach ständiger Rechtsprechung des BGH und einhelliger Ansicht nur dann,

> „[…] *wenn sich der Verdacht des Missbrauchs der Vertretungsmacht durch einen Vertreter aufdrängen muss (BGH, WM 1976, 474).*
> *[…]*
> *Notwendig ist dabei eine massive Verdachtsmomente voraussetzende objektive Evidenz des Missbrauchs (Senat, BGHZ 127, 239 = NJW 1995, 250; NJW-RR 1992, 1135 = WM 1992, 1362 [1363]; NJW 1994, 2082 = WM 1994, 1204 [1206]; NJW 1999, 2883 = WM 199, 1617 [1618])*"
>
> (BGH NJW-RR 2004, 1637[1638])

Daran fehlt es hier offensichtlich.

Wenn (i) die der Beklagten seit vielen Jahren bekannten vertretungsberechtigten Organe der Klägerin der Beklagten einen Überweisungsauftrag erteilen, (ii) das in New York inszenierte Insolvenzverfahren schon für die Klägerin und darüber hinaus in Deutschland keinerlei Rechtswirkung entfaltet und (iii) die Klägerin der Beklagten auch noch wunschgemäß ihre Vertretungsmacht durch Vorlage aktueller Certificates of

Election and Incumbency (Anlage K 10) nachgewiesen hat und (iv) die Beklagte daraufhin die Ausführung des streitgegenständlichen Überweisungsauftrags sogar selbst zugesagt hat, so fehlt bereits jeder Anhaltspunkt für eine objektive Evidenz eines Missbrauchs der Vertretungsmacht durch die vertretungsberechtigten Organe der Klägerin.

Offenkundig missbräuchlich ist allein das dargelegte Tun des Herrn Spears.

Wenn die Beklagte sich hiernach „auf Zuruf" des Herrn Spears gleichwohl noch immer hartnäckig weigert, den streitgegenständlichen Überweisungsauftrag auszuführen, so verletzt sie damit ebenso offenkundig ihre Vertragspflichten gegenüber der Klägerin.

2. Der mit dem Klageantrag zu 2. geltend gemachte Anspruch steht der Klägerin gemäß §§ 280 Abs. 2, 286 BGB i.V.m. 2300, 1008 VV RVG i.V.m. §§ 2,13 RVG und Nrn. 7001, 7002 VV RVG als Verzugsschaden zu. Zum Zeitpunkt der vorgerichtlichen Aufforderung des Unterzeichners vom 30. Dezember 2024 (Anlage K 13) befand sich die Beklagte aufgrund der Mahnung der Klägerin über ihren griechischen Rechtsanwalt (Anlage K 10) bereits in Verzug.

3. Der mit dem Klageantrag zu 3. geltend gemachte Anspruch steht der Klägerin gemäß § 280 Abs. 1 BGB zu.

Wie dargelegt ist die Beklagte mit der Ausführung des streitgegenständlichen Überweisungsauftrags seit Wochen in Verzug und daher verpflichtet, der Klägerin auch den ihr hieraus entstehenden weiteren Schaden zu ersetzen.

Der Feststellungsantrag ist gemäß § 256 ZPO zulässig. Der der Klägerin durch die verhängte Kontosperre bereits entstandene und möglicherweise noch entstehende Schaden einschließlich ihres bereits entstandenen Reputationsschadens sowie die hierdurch verursachte Beeinträchtigung ihrer Kreditwürdigkeit ist dargelegt. Diese Beeinträchtigungen entwickeln sich ferner fort und sind damit erst nach Ablauf eines längeren Zeitraums feststellbar, sodass der hieraus weiter resultierende Schaden derzeit noch nicht bezifferbar ist. Vorläufig beziffert die Klägerin den Feststellungsantrag mit EUR 300.000, 00.

Der Feststellungsantrag ist nach der Rechtsprechung des BGH zulässig:

> *„Der Kl. hat jedoch darüber hinaus geltend gemacht, der Ausschließungsbeschluß habe in breiten Kreisen seinen Ruf geschädigt. Er müsse damit rechnen, daß diese Rufschädigung*

eine über den Zeitraum des formellen Bestandes des Ausschließungsbeschlusses hinausreichende Beeinträchtigung seiner Stellung am Markt zur Folge haben werde. Darauf ist das BerGer. nicht eingegangen. Es liegt nahe, daß Eintritt und Umfang der wirtschaftlichen Auswirkungen einer solchen jedenfalls möglichen wirtschaftlichen Beeinträchtigung erst nach Beobachtung eines längeren Zeitraums feststellbar sind, so daß ein darauf beruhender Schaden im maßgeblichen Zeitpunkt der Klageerhebung noch nicht bezifferbar war. Mindestens unter diesem Gesichtspunkt hätte das BerGer. das Feststellungsinteresse des Kl. nicht verneinen dürfen. Es besteht schon dann, wenn künftige Schadensfolgen auch nur entfernt möglich sind, mag ihre Art und ihr Umfang, sogar ihr Eintritt noch ungewiß sein (Zöller-Stephan, ZPO, 15. Aufl., § 256 Rdnr. 8; BGH, VersR 1974, 248; VersR 1972, 459 f.). Die Möglichkeit, daß der Ausschluß zu einer Rufschädigung des Betriebes des Kl. geführt haben könnte, der sich in Zukunft wirtschaftlich nachteilig auswirken wird, liegt nicht so entfernt, daß vom Kl. eine weitere Substantiierung seines Vortrages in dieser Richtung zu verlangen gewesen wäre. Denkbare Schwierigkeiten des Kl., einen solchen Schaden später zu konkretisieren, sowie nachzuweisen, daß die Rufschädigung und die aus ihr folgenden Verluste auf den Beschluß der Bekl. und nicht auf die ihm zugrundeliegenden Vorgänge im Verantwortungsbereich des Kl. zurückgehen, können der Bejahung des Feststellungsinteresses nicht entgegenstehen. Sie gehören ebenso wie die Frage, ob die übrigen tatbestandlichen Voraussetzungen für den Schadensersatzanspruch erfüllt sind, nicht zu den Prozeßvoraussetzungen, sondern in die Prüfung der Begründetheit des Anspruchs."

(BGH NJW-RR 1988, 445)

„2. Dementsprechend ist in der Rechtsprechung anerkannt, daß dann, wenn eine Schadensentwicklung noch nicht abgeschlossen ist, der Kl. in vollem Umfange Feststellung der Ersatzpflicht begehren kann. Der Kl. kann in einem solchen Falle nicht hinsichtlich des bereits entstandenen Schadens auf eine Leistungsklage verwiesen werden. Er braucht also sein Klagebegehren nicht in einen Leistungs- und einen

Feststellungsantrag aufzuspalten (RGZ 108, 201 (202); 113, 410 (412); BGH, VersR 1964, 1066 (1067); 1968, 648 (649); Rosenberg-Schwab, ZPR, 13. Aufl., § 94 III 1c, S. 530). Das hat das BerGer. verkannt. Es hat Zukunftsschäden für möglich gehalten und insoweit der Feststellungsklage stattgegeben. Dann durfte es aber nach den obigen Ausführungen hinsichtlich der bereits in der Vergangenheit entstandenen Schäden ein Feststellungsinteresse des Kl. nicht verneinen."

(BGH NVwZ 1987, 7331)

Axel Löhde
Rechtsanwalt

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