Docket #2110 Date Filed: 09/09/2026

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

REED SMITH LLP'S OBJECTION TO MOTION PURSUANT TO BANKRUPTCY RULE 2004 FOR AN ORDER AUTHORIZING THE ISSUANCE OF SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND DEPOSITION TESTIMONY

Reed Smith LLP ("Reed Smith"), by and through its undersigned counsel, respectfully submits this objection to Eletson Holdings Inc.'s ("Reorganized Holdings") *Motion Pursuant to Bankruptcy Rule 2004 for an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Deposition Testimony* (Dkt. No. 2109, or the "Motion"). The Motion seeks authority to obtain certain documents and testimony from Proskauer Rose LLP (defined in the Motion as "Proskauer" or the "Examination Parties"). Reed Smith respectfully submits this objection solely because the Motion seeks information relating to Reed Smith and the adversary proceeding Reorganized Holdings has filed against it, and Reed Smith would therefore be prejudiced by an order granting the Motion.

PRELIMINARY STATEMENT

1. The Motion seeks information regarding subjects that are already at issue in a pending adversary proceeding, making the use of Rule 2004 improper. Any inquiry on these subjects should be conducted pursuant to the discovery rules applicable in the adversary proceeding. The Motion compounds this problem by expressly seeking information about Reed Smith's communications with Proskauer on those topics, despite the Court having *stayed* discovery

[1] The Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC.

as to Reed Smith in the adversary proceeding.

2. Reed Smith also respectfully requests that, should the Court grant the Motion, any such order expressly exclude: (a) Document Request No. 4, Examination Topic No. 4, and any other information concerning Reed Smith that overlaps with or relates to the pending adversary proceeding, where discovery against Reed Smith is stayed; and (b) privileged communications between Reed Smith and Proskauer involving Proskauer's representation of Reed Smith.

RELEVANT BACKGROUND

I. Proskauer's Connection to Reed Smith

3. The connection between Proskauer and Reed Smith is two-fold: Proskauer has served as co-counsel with Reed Smith in appellate proceedings concerning the Vacatur Proceeding, and separately as counsel to Reed Smith itself in a related appeal.

4. In September 2025, Proskauer entered appearances "alongside Reed Smith" in Appeal No. 25-1313, on behalf of Holdings and Eletson Corp., in connection with an appeal to the Second Circuit from the district court's dismissal of the petition to confirm the arbitration award in *Eletson Holdings Inc. v. Levona Holdings Ltd.*, No. 23-cv-7331 (LJL) (the "Vacatur Proceeding"). Motion ¶¶ 11, 13–14.

5. Proskauer has separately represented Reed Smith itself in Appeal No. 25-445, Reed Smith's appeal from the district court's order requiring turnover of the Eletson client file. *See, e.g.*, *Eletson Holdings Inc., et al. v. Levona Holdings Ltd.*, Case No. 25-445 (2d Cir.) (the "Turnover Order Appeal"), Dkt. No. 100.1.

II. Reorganized Holdings' Adversary Proceeding, Discovery Requests, and this Court's Stay.

6. Reorganized Holdings and its affiliates have sued Reed Smith and one of its partners, Louis M. Solomon, in *Eletson Holdings Inc., et al. v. Kertsikoff, et al.*, Adv. Pro. No. 25-

01120-JPM (Bankr. S.D.N.Y.) (the "Holdings Adversary Proceeding"). The First Amended Complaint asserts numerous claims against Reed Smith based, in part, on allegations that it has improperly continued to represent Eletson Holdings and Eletson Corp. ("Corp.") on appeal and take positions adverse to them, notwithstanding the effectiveness of Holdings Plan. *Id.*, Dkt. No. 59 ¶¶ 352–53, 379. Reorganized Holdings' allegations in that adversary proceeding specifically assert that "Reed Smith has filed briefs purportedly on behalf of Holdings and Corp., but which take positions directly against their interests. On information and belief, *Reed Smith has directed other firms to make similar filings*." *Id.* ¶ 379 (emphasis added).

7. Reorganized Holdings then served Reed Smith with merits discovery directed to those same subjects. Among other things, its July 22, 2026 requests for production seek "[a]ll Documents sufficient to show any written authorization, engagement, communication or instruction from any person or entity purporting to authorize Reed Smith to act on behalf of Holdings or Corp. on or after the Effective Date," "[a]ll Communications concerning the Purported Provisional Board," and broadly Reed Smith's communications with third parties concerning Eletson, the Defendants, or the Purported Provisional Board. *See* Ex. A, Plaintiffs' First Set of Requests for Production to Reed Smith LLP, Requests Nos. 1, 2, 5 ("Reed Smith RFPs").

8. On February 4, 2026, Reed Smith moved to compel arbitration in the Holdings Adversary Proceeding or to dismiss the complaint, *id.*, Dkt. No. 68, and on June 15, 2026, moved for a stay of discovery pending resolution of the motion to compel arbitration or any appeal thereof, *id.*, Dkt. No. 98.

9. On August 3, 2026, the Court denied Reed Smith's motion to compel arbitration and its motion to dismiss, *id.*, Dkt. No. 130, but granted Reed Smith's motion to stay pending interlocutory appeal of the motion to compel arbitration, *id.*, Dkt. No. 131.

III. The Motion's Requests Relating to Reed Smith

10. Reorganized Holdings' current Motion repeats similar allegations of wrongdoing relating to appellate filings made on behalf of Holdings and Corp. as the purported justification for seeking Rule 2004 authorization. *See, e.g.,* Motion ¶ 14 ("Neither the notice of appeal, the appearances, nor the brief were authorized by Holdings or Corp."). In making those assertions, the Motion ignores that the Second Circuit has previously *denied* a motion to dismiss a related appeal in which Reorganized Holdings made precisely the same arguments. *See* Appeal No. 25-176, Dkt. No. 50.1 at 2 (June 25, 2025) ("the motion to dismiss or remand is DENIED, without prejudice to the parties raising their arguments regarding who controls Eletson Holdings, Inc., and what effect that control has on the appeal, before the merits panel"). The Motion also ignores previous statements by Reorganized Holdings' counsel, who told this Court: "We're not saying they cannot take an appeal in the United States. Of course they can." Dkt. No. 1564, at 49:9–11 (Transcript of March 12, 2025 hearing). Binding Second Circuit precedent is consistent with counsel's prior acknowledgment, and holds that a lower court may not impose sanctions on counsel for pursuing appeals. *See Schoenberg v. Shapolsky Publishers*, 971 F.2d 926, 935 (2d Cir. 1992) ("In any event, it is improper for a district court to impose sanctions for appeals taken to this Court."); *Cheng v. GAF Corp.*, 713 F.2d 886, 891–92 (2d Cir. 1983) ("We are also surprised by the district judge's willingness to sanction appellant's attorney, not for a motion made in the district court, but for appeals taken to [the Second Circuit] and the Supreme Court. A rule permitting a district court to sanction an attorney for appealing an adverse ruling might deter even a courageous lawyer from seeking the reversal of a district court decision.").

11. Reorganized Holdings' Motion repeatedly references Reed Smith, both explicitly and implicitly. Two of the requested Rule 2004 document and examination requests explicitly or implicitly seek information regarding Reed Smith relating to the issues in the Holdings Adversary

Proceeding.

12. First, Proposed Document Request No. 4 seeks from Proskauer: "All Communications with Reed Smith LLP concerning Proskauer's purported representation of Holdings or Eletson Corp. in the Vacatur Proceeding." Motion, Proposed Order Ex. A at 7 (Document Request No. 4).

13. Second, Proposed Examination Topic No. 4 seeks testimony regarding: "Proskauer's purported representation of Holdings and Corp., including any diligence, investigation, communications, corporate records, governance materials, engagement agreements, or other information reviewed or relied upon before making any filing on behalf of Holdings or Corp." Motion, Proposed Order Ex. A at 8 (Examination Topic No. 4).

ARGUMENT

I. Reorganized Holdings Cannot Use Rule 2004 To Obtain Through Proskauer Discovery That Is Governed By, And Stayed In, The Holdings Adversary Proceeding

14. Rule 2004 cannot be used to obtain discovery that relates to a pending adversary proceeding, particularly where that discovery is stayed. That is precisely what Document Request No. 4 and Examination Topic No. 4 seek to accomplish here.

15. Even setting aside the stay in the Holdings Adversary Proceeding, "[t]he well recognized rule is that once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to the [Federal Rule of Bankruptcy Procedure 7026], rather than by a [Rule 2004] examination." *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996) (internal citations omitted). Accordingly, parties "must look to [Rule 7026] after an adversary proceeding is commenced for discovery as to both **entities affected by the proceedin**g and **issues addressed in the proceeding**." *Id.* at 29 (denying trustee's Rule 2004 request after finding that the parties and subject matter of the Rule 2004 exam would be inseparable from the

pending adversary proceeding).

16. Courts have repeatedly affirmed that Rule 2004 requests should be denied or abandoned once an adversary proceeding involving the same subject matter has been filed. *See, e.g., In re Parikh*, 508 B.R. 572, 604 (Bankr. E.D.N.Y. 2014) ("[I]t is generally appropriate upon the filing of an adversary proceeding—on the same facts that are the subject of Rule 2004 subpoenas—to abandon enforcement of the Rule 2004 subpoena—which is generally very broad in scope—and defer to the discovery rules under the Federal Rules of Civil Procedure with all its procedural safeguards."); *In re Wilding*, 653 B.R. 48, 71 (Bankr. D.N.J. 2023) (finding that a subpoena under Rule 2004 was "no longer controlling" after the adversary proceeding was filed); *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 456 (Bankr. D.N.J. 1998) (similar).

17. Applying these principles, courts have also denied Rule 2004 examination requests when the proponent sought to use such requests to obtain discovery regarding matters "related to" the subject matter and/or parties in a stayed litigation. *See, e.g.*, *In re Kaiser Grp. Int'l, Inc.*, 400 B.R. 140 (D. Del. 2009) (declining to grant leave to appeal the bankruptcy court's denial of a Rule 2004 request to obtain discovery relating to a stayed adversary proceeding as "parties have been unable to locate any case law suggesting that discovery [under Rule 2004] should commence in an action that has been stayed pending arbitration").

18. *In re Enron Corp.* is on point. 281 B.R. 836, 841-45 (Bankr. S.D.N.Y. 2002). There, after discovery was stayed in a securities fraud action pending motions to dismiss, lead plaintiffs filed a motion for Rule 2004 discovery targeting the same defendants and the same subject matter at issue in the stayed securities fraud class action. 281 B.R. at 842. The bankruptcy court denied the request because it sought discovery relating "entirely" to the stayed litigation. *Id.*

19. So too here. The First Amended Complaint in the Holdings Adversary Proceeding

alleges, among other things, that Reed Smith is liable based in part on allegations that it continued to file briefs on behalf of Holdings and Corp., but adverse to Plaintiffs, took positions concerning whether the Plan had become effective, and "directed other firms to make similar filings." Adv. Pro. No. 25-01120, Dkt. No. 59 ¶¶ 352–53, 379. Reorganized Holdings then served Reed Smith with discovery seeking, among other things, the authorization for Reed Smith's post-Effective-Date representations, all communications concerning the Purported Provisional Board, and communications with third parties concerning those subjects. *See* Reed Smith RFPs Nos. 1, 2, 5. The Motion now seeks, through Proskauer, Reed Smith's communications with Proskauer concerning precisely that subject matter. Therefore, pursuant to *In re Enron* and the body of similar case law in this circuit, Reorganized Holdings' Rule 2004 motion should be denied.

20. Moreover, permitting that discovery through a subpoena to Proskauer here would substantially undermine the stay this Court entered as to Reed Smith. Before this Court granted the stay, *see* Adv. Pro. No. 25-01120, Dkt. No. 131, the Court questioned whether Reorganized Holdings could "seek third-party discovery to get around" the stay, recognizing that such discovery could make the stay "essentially meaningless," *id.*, Jul. 30 Hr'g Tr. at 17:9–14.

21. But that is precisely what Reorganized Holdings seems to be doing. After seeking from Reed Smith discovery concerning who authorized its post-Effective-Date representation, the Purported Provisional Board, and related third-party communications, Reorganized Holdings now seeks from Reed Smith's co-counsel the communications and information underlying that same representation. The stay would mean little if Reorganized Holdings could obtain from Reed Smith's co-counsel the same discovery that it is presently barred from obtaining from Reed Smith itself. Accordingly, Reorganized Holdings' Motion should be denied for this reason as well.

II. The Order Should Preserve Reed Smith's Privileged Communications with Its Counsel.

22. Document Request No. 4 also potentially sweeps in communications that may be protected by Reed Smith's own attorney-client privilege and work-product protections. Proskauer has represented Reed Smith in a related Second Circuit appeal arising from the Vacatur Proceeding, and communications concerning that representation may therefore be privileged or otherwise protected.

23. Accordingly, if the Court grants the Motion, Reed Smith respectfully requests that any order expressly exclude privileged communications between Reed Smith and Proskauer.

CONCLUSION

24. Reorganized Holdings' efforts to obtain Rule 2004 discovery should be rejected because of the pending Holdings Adversary Proceeding. If the Court grants the Motion, the resulting order should expressly exclude (a) Document Request No. 4, Examination Topic No. 4, and any other discovery seeking information concerning Reed Smith that overlaps with or relates to the stayed Holdings Adversary Proceeding, and (b) privileged or otherwise protected communications between Reed Smith and Proskauer involving Proskauer's representation of Reed Smith.

Dated: September 9, 2026

Respectfully submitted,

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