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Litigators of the Week: Federal Judge Tosses $102M Award After Finding Perjury in Underlying Arbitration

By Ross Todd

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It is rare for a federal judge to take the extraordinary step of vacating an arbitration award, especially one for $102 million in damages.

It is rarer still for that to happen in a case where a judge has previously largely confirmed the award.

But there's plenty that's rare about the case that our Litigators of the Week, **Isaac Nesser** and **William Adams** of **Quinn Emanuel Urquhart & Sullivan**, have been handling for Levona Holdings in a dispute involving the preferred shares in natural gas shipping company Eletson Gas.

After Nesser and Adams presented documents that had surfaced in Eletson's parallel bankruptcy case that had been withheld by their opponents in the underlying arbitration, U.S. District Judge Lewis Liman in Manhattan this week found some fact witnesses perjured themselves by claiming that they had exercised an option to purchase the preferred shares at issue. Aside from vacating the arbitration award, the judge also granted Levona's motion for discovery sanctions.

Courtesy photos

Isaac Nesser, left, and William Adams, right, of Quinn Emanuel.

Liman also allowed certain communications Levona's opponents had with outside counsel at **Reed Smith** into the case under the crime-fraud exception. The judge, however, stopped short of sanctioning the firm. "The court need not decide here whether Reed Smith was complicit in its clients' perjury either directly or through a wink and a nod," the judge wrote. "At a minimum, it was the vehicle through which a fraud was committed."

(A Reed Smith spokesperson said in an email statement that the firm "was neither a party nor counsel to any party to this *vacatur* proceeding." The spokesperson added: "While the court made no findings of culpability as to Reed Smith, it made observations regarding Reed Smith's advocacy that Reed Smith disputes and will address in the appropriate forum.")

Litigation Daily: Who is your client and what was at stake here?

Isaac Nesser: Our client is Levona Holdings, which is owned by two hedge funds advised by Murchinson Ltd., an investment management fund run by Marc Bistricer. In 2021, Levona acquired the preferred shares in Eletson Gas, a natural gas shipping company, from alternative asset manager Blackstone. In 2022, a dispute arose when the other owner, Eletson Holdings, claimed that it had exercised an option to buy Levona's shares, which were worth approximately $100 million. A JAMS arbitration ensued. The arbitrator awarded the shares to companies controlled by Eletson Holdings' then-management and ordered Levona to pay another $100 million in damages. The decision was scathing—in fact, half of the awarded damages were punitive. We were hired shortly afterward, for the purpose of trying to get the arbitration award vacated.

So, the stakes were high—more than $200 million in value, day-to-day control of the shipping company, plus all the reputational damage to our client, in a context where it is notoriously difficult to persuade a court to vacate any arbitration award. We are gratified that the court here ultimately did so, finding that we developed clear and convincing evidence that Eletson defrauded the arbitrator by "purposefully present[ing] false testimony at the arbitration and with[holding] … the documents necessary to show that such testimony was false."

How did this matter come to you and your firm?

William Adams: A former counsel at our firm, **Brian Shaughnessy**, who is now a partner at **HSF Kramer**, recommended us to Levona after the arbitration award was issued. Brian, along with Kyle Ortiz**,** who is also now a partner at HSF Kramer, were representing one of the petitioning creditors in a parallel bankruptcy case. I had worked closely with Brian on several appeals while he was at the firm, so he knew about the unique synergies generated by our top-tier appellate and trial practices and recognized that we were well situated to try to turn around what at the time seemed like a nearly impossible case.

I quickly reached out to Isaac—whom I have known since we shared an office as junior associates twenty years ago—to see if he would be willing to co-lead the case with me, and he immediately agreed. It turned out that Isaac had successfully represented a company with which our client had a relationship, and the general counsel there put in a good word for him and the firm as well.

Who is on your team and how have you divided the work?

Adams: Isaac and I co-led our exceptional team, working collaboratively on strategy, fact development, and legal arguments. Our core team included a mix of trial and appellate associates, with **Daniel M. Kelly** expertly coordinating the day-to-day effort as our seniormost associate, **Alex Van Dyke** contributing his masterful writing to nearly every brief, **Matthew Roznovak** working tirelessly on fact development, **Jingfei Lu** taking her first deposition while handling other important

work across the case and **Annie Goodman** recently joining the team to help on critical legal issues.Our partner **Matthew Scheck** pitched in on technical bankruptcy issues whenever they arose, regardless of how busy he was on other matters.And two former associates played key roles: **Michael Wittmann** skillfully prepared and first-chaired all of our defensive depositions, despite them being his first depositions, and **John Super** had his first oral argument while providing invaluable contributions to early briefing and strategy. We also were fortunate to work with and learn from the incomparable **Michael B. Weiss**, who recently started his own advisory firm after retiring from **Cahill Gordon**.

A result like this doesn't happen without a strong partnership between inside and outside counsel, and here we were lucky to work with Levona's talented and creative general counsel, **Mark Lichtenstein**.

During the arbitration, were there suspicions that your opponents had withheld evidence about whether they exercised their purchase option by March 2022?

Nesser: We weren't counsel in the arbitration, so can't speak to that issue directly other than to note that Levona's arbitration counsel repeatedly moved to compel production of documents concerning the exercise of the purchase option. That said, we became increasingly suspicious about the adequacy of Eletson's document production as we saw how hard Eletson's counsel was fighting to keep us from seeing the documents it had produced in the bankruptcy case. If the documents were truly innocuous, as they were insisting, then there should have been no concern about Levona seeing them. The energy opposing counsel expended in trying to keep us from seeing the documents only made us more convinced that the documents were as damning as we now know they were and more intent on getting hold of them.

How did you first learn that documents had been produced in the parallel bankruptcy proceeding that were critical to that issue in your case?

Adams: Eletson produced the first key document to creditors in the bankruptcy case in late June 2023, a few weeks after the arbitration parties had filed their post-hearing briefs but before the arbitrator had issued an award. Because the document was subject to the bankruptcy court's protective order, it could not be and was not disclosed to Levona, and Levona could not have used it in the arbitration. Levona was merely told that a document had been produced in the bankruptcy case that was seemingly "highly responsive and critical to th[e] Arbitration." Levona's arbitration counsel immediately asked Eletson to produce the document, and then asked the arbitrator to compel production, but those efforts were unsuccessful—in part because Levona was being forced to ask for a document without having seen the document or knowing what it said, in a context where Eletson was vigorously representing to the arbitrator that the document was irrelevant and unimportant.

Walk me through the effort it took to ultimately get access to those documents. How were you able to use them once you had them?

Nesser: We fought tooth and nail in multiple courts for over a year to get access to the documents. We first asked Judge Liman to refer the entire proceeding to the bankruptcy court, which would have allowed us to view and use the documents. Eletson opposed that request,

and Judge Liman denied it. We next moved the bankruptcy court to modify its protective order to exempt the relevant documents. Eletson opposed that request too, and it was denied. We then filed a proof of claim for Levona in the bankruptcy court and twice served discovery requests, but Eletson stonewalled for months. Eletson objected to Levona's request to see the documents even after we had signed the bankruptcy court's protective order, which the court ultimately permitted over Eletson's objections. Even then, we remained unable to use the documents outside of the bankruptcy court, so we asked that court to further modify the protective order to allow Levona to use the documents in seeking vacatur before Judge Liman. Eletson again opposed the request, but the bankruptcy court granted it based on the existence of "extraordinary circumstances" and "compelling need."

Now able to view and use several documents that had been produced in the bankruptcy case but withheld in the arbitration, we sought permission from Judge Liman to raise fraud on the arbitrator as an additional ground for vacatur and for discovery into that fraud. (Over the many months that we were seeking permission to see and use the withheld documents, we raised other grounds for vacatur—several of which were successful but did not result in vacatur of the entire award.) Judge Liman granted that motion, concluding on a preliminary basis that the newly produced documents were inconsistent with Eletson's testimony in the arbitration and overall narrative to the arbitrator and that Eletson's former management and its counsel had imposed "extraordinary obstacles" to Levona's discovery of the fraud.

Once that door was opened, we battled to get additional documents in discovery, including through the crime-fraud exception to attorney-client privilege. That, too, was a challenge, as Judge Liman recognized by sanctioning our adversaries for "egregious" and "flagrant" discovery misconduct. Despite those challenges, and with the benefit of certain documents that Eletson's new owners were able to obtain directly from Microsoft (through their very able counsel **Jennifer Furey** at **Goulston & Storrs** and **Kyle Ortiz** at HSF Kramer), we were able to unearth dozens of documents that Judge Liman ultimately ruled had been "fraudulently withheld" in the arbitration as part of a "fraudulent document production."Judge Liman cited those documents in finding that Eletson's position in the arbitration had been a sham and that Eletson had "concocted" a "fabricated backstory" that was an "after-the-fact contrivance," a "ruse," and an "invention."

Who on the team deposed Reed Smith lawyer Louis Solomon? What were you able to accomplish with that deposition?

Nesser: I did, supported by a stellar associate team.

One notable moment in the deposition was when Mr. Solomon testified, "I do not know what the … word 'true' means" in the context of attorney argument and insisted that "arguments with lawyers don't fall into the true and false category." Judge Liman disagreed, finding that certain statements in Reed Smith's letter to the arbitrator were not true.

The deposition also addressed important matters relating to Eletson's discovery process in the arbitration, including that counsel did not

"ever see the word searches that Eletson ran" and was "not involved in the [document] collection."

What can others take from what you and your clients were able to accomplish here?

Adams: The value of persistence even in the face of seemingly impossible odds. The entire team worked relentlessly to get access to the withheld documents that turned the case around, even as Eletson and its counsel resisted with every possible legal maneuver. That kind of persistence is a hallmark of our firm.

There's also a powerful lesson about the value of patience. Some might have gone straight to the district court to raise fraud and seek discovery at the first inkling of any falsehood. But, as Judge Liman explained, he would have "speedily" denied relief without discovery in that circumstance, which could have spelled the end of our vacatur effort. As Judge Liman rightly concluded, without seeing the documents at issue, we did not have sufficient information to form a belief that fraud had been committed.

What will you remember most about this matter?

Nesser: My working relationship with William. William and I were officemates as very junior associates 20 years ago shortly after we each joined Quinn Emanuel, and we've been friends since. There's a profound sense of trust and partnership—in the truest sense of the word—that arises from knowing and working with someone that long, and I'm sure it's part of the reason we were able to find some success here. And that's to say nothing about the joy of thinking through issues on a daily basis with someone as smart and talented as William.

Adams: I also will always remember and cherish working with Isaac on this matter. We've been colleagues and friends for a long time, and I have such respect for him, but we hadn't previously had the opportunity to work together so closely. I knew after the initial pitch meeting, though, that Isaac would be the perfect fit for this matter, and he truly was. I just hope it doesn't take another 20 years for us to work together again.

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