Docket #0004 Date Filed: 7/19/2024

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

In re:	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	
Debtor.	Case No. 24-90377
ZACHRY HOLDINGS, INC.,	
Plaintiff,	
v.	Adv. Pro. No. 24-3146
TIMMY BRIGNAC AND SHONDA BRIGNAC,	
Defendants.	

DEBTORS' EMERGENCY MOTION FOR AN ORDER (A) DECLARING THAT THE AUTOMATIC STAY EXTENDS TO APPLY TO AFFILIATED NON-DEBTOR DEFENDANT IN *BRIGNAC V. 3M COMPANY ET AL.*, 127-046 (LA. 10/15/2019) AND, ADDITIONALLY OR IN THE ALTERNATIVE, (B) GRANTING PRELIMINARY INJUNCTIVE RELIEF AND A TEMPORARY RESTRAINING ORDER ENJOINING THE CONTINUED PROSECUTION OF OR EXPANSION OF THE SAME

Emergency relief has been requested. Relief is requested not later than 5:00 p.m. (prevailing Central Time) on July 24, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the court may treat the pleading as unopposed and grant the relief requested.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224

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1. Zachry Holdings, Inc. ("**ZHI**") and its debtor affiliates (collectively, the "**Debtors**") seek entry of two orders substantially in the forms attached hereto as **Exhibit A** (the "**TRO Order**") and **Exhibit B** (the "**Preliminary Injunction Order**"). The TRO Order grants a temporary restraining order halting the continued prosecution of or expansion of the Louisiana state court matter styled *Brignac v. 3M Company, Shell Catalysts & Technologies LP; Cat Tech, LLC; Turner Industries Group, LLC; Brock Services, LLC; Anco Insulations, Inc.*, 127-046 (La. 10/15/2019) ("***Brignac***") against the Debtors' non-debtor affiliate, JVIC Catalyst Services, LLC (the "**Non-Debtor Defendant**" or "**JVIC Catalyst**"), on an emergency basis. The Preliminary Injunction Order (a) extends the automatic stay to prohibit the prosecution of the *Brignac* against JVIC Catalyst, and, additionally or in the alternative, (b) grants a preliminary injunction pursuant to § 105 of title 11 of the United States Code (the "**Bankruptcy Code**") halting the continued prosecution of or expansion of *Brignac* against JVIC Catalyst during the pendency of the Debtors' chapter 11 cases. This Motion is filed contemporaneously with *Debtors' Adversary Complaint for Declaratory and Injunctive Relief* and the *Declaration of Jeffrie Lewis in Support of the Stay Extension Motion* (the "**Lewis Declaration**") and the *Declaration of Anthony Barraza in Support of the Stay Extension Motion* (the "**Barraza Declaration**"). In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

2. The Debtors file this Motion to achieve the intended effect of the automatic stay with respect to *Brignac*. Because JVIC Catalyst is a non-operational subsidiary of the Debtors that sold substantially all of its assets in 2021, and Debtor ZHI is an indirect owner of JVIC Catalyst and responsible for payment and satisfaction of potential liability and damages related to *Brignac*, the continued prosecution of *Brignac* will directly impact property of the estates and impede the

Debtors' chapter 11 efforts and obligations. Like other litigation in which the Debtors are named parties, the Debtors need the breathing spell provided by the automatic stay applied to *Brignac* to allow them to focus on critical aspects of their chapter 11 cases and preserve estate property for all stakeholders. Extending the automatic stay as requested in this Motion will benefit their estates and all creditors and should by approved.

3. The Debtors seek this relief on an emergency basis because trial in *Brignac* is set to begin on **August 5, 2024**. Despite the Debtors' attempts to reach a consensual stay of *Brignac* to reflect what the Debtors believe is the intended scope of the automatic stay, the plaintiffs in that matter, Timmy Brignac and Shonda Brignac (the "**Brignac Plaintiffs**"), have refused and the state court in which *Brignac* was filed has indicated it will only stay the matter if relief is granted by the Bankruptcy Court.

4. The requested relief will allow the Debtors to pursue their objective of efficiently concluding the chapter 11 cases (without the distraction, costs, and potential liability related to this prepetition litigation), so that they can emerge from bankruptcy and continue doing what they do best: delivering high quality engineering, construction, maintenance, turnaround, and fabrication services to their customers safely and with the degree of quality that makes Zachry a trusted name in the industries it serves.

RELIEF REQUESTED

5. The Debtors have commenced this adversary proceeding to seek declaratory and injunctive relief pursuant to Rules 7001(7), 7001(9), and 7065 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and sections 105(a) and 362(a) of the Bankruptcy Code. By virtue of the Debtors' voluntary petitions under chapter 11 of the Bankruptcy Code having been filed in this Court, *Brignac* is stayed against the Debtors pursuant to Section 362 of the Bankruptcy

Code. To realize the intended benefit of the stay and enable the Debtors to pursue their reorganization objectives for the chapter 11 cases, the Debtors need and therefore seek additional relief.

6. By this Motion, the Debtors first seek a temporary restraining order on an emergency basis enjoining the continued prosecution of or expansion of *Brignac* against the JVIC Catalyst for 120 days. The Debtors further seek an order declaring that the automatic stay applies and extends to prohibit the continued prosecution of *Brignac* against JVIC Catalyst during the pendency of these chapter 11 cases. Finally, the Debtors seek an injunction pursuant to Bankruptcy Code § 105 enjoining the continued prosecution of or expansion of *Brignac* against JVIC Catalyst during the pendency of these chapter 11 cases.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this adversary proceeding and this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157. Pursuant to Bankruptcy Rule 7008, the Debtors consent to the entry of final orders or a final judgment by this Court in this adversary proceeding.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested herein are Bankruptcy Code §§ 105 and 362, Federal Rules of Civil Procedure, Rule 65 (as applicable under Federal Rules of Bankruptcy Procedure, Rule 7065), and Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**").

BACKGROUND

A. Overview of Chapter 11 Cases

10. On May 21, 2024 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the chapter 11 cases. The Debtors

continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). On June 4, 2024, the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") appointed the Official Committee of Unsecured Creditors pursuant to sections 1102(a)(1) and 1102(b)(1) of the Bankruptcy Code (the "**Committee**") [Case No. 24-90377; Docket No. 176]. No trustee or examiner has been appointed in these chapter 11 cases.

11. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to these chapter 11 cases, is set forth in the *Declaration of Mohsin Y. Meghji in Support of Debtors' Petitions and Requests for First Day Relief* in *In Re: Zachry Holdings, Inc., et al.* (Bankr. S.D. Tex. May 21, 2024) [Case No. 24-90377; Docket No. 7].

B. Impact of Brignac on the Debtors

12. Potential liabilities for the Debtors and certain of their non-debtor affiliates may arise because of the *Brignac* matter. The Brignac Plaintiffs seek damages from the JVIC Catalyst and co-defendants—Clean Harbors, Inc. and various other Clean Harbors entities (collectively, "**Clean Harbors**")[2] and Brock Services, LLC—related to injuries allegedly incurred during Mr. Brignac's employment at the Geismar Chemical Plant in Gesimar, Louisiana (the "**Plant**"). Mr. Brignac was an employee at the Plant from 1987 until 2019 in the Ethylene Oxide-Ethylene Glycols ("**EO-EG**") department, and alleges he participated in most, if not all, turnaround outages of EO-EG units. JVIC Catalyst and other contractors performed turnaround services and catalyst changes at the Plant. The Brignac Plaintiffs allege that the loading, unloading, cleaning, and sandblasting activities involved in these turnaround services and catalyst changes exposed Mr. Brignac to

[2] Although the Brignac Plaintiffs named additional defendants in the *Brignac* matter—(i) 3M Company, (ii) Shell Catalysts & Technologies LP, (iii) Saint-Gobain Norpro Corporation, (iv) Cat Tech, LLC, (v) Cat Tech Inc. (vi) Turner Industries Group, LLC, (iv) Brock Services LLC, and (v) Anco Insulations, Inc.—all defendants other than JVIC Catalyst and Clean Harbors previously settled with the Brignac Plaintiffs.

dangerous levels of respirable toxins (including silica from ceramic support balls and dry catalyst components) and caused Mr. Brignac's eventual pneumoconiosis diagnosis. JVIC Catalyst denies any liability related to the Brignac Plaintiffs.

13. JVIC Catalyst is an indirect subsidiary of Debtor ZHI. *See* Lewis Decl., ¶ 4

14. On November 23, 2021, JVIC Catalyst, and certain other selling entities (the "**Sellers**"), entered into an asset purchase agreement (the "**APA**") to sell substantially all of their assets to certain purchasers (the "**Buyers**"). Barraza Decl., ¶ 3. ZHI was covenantor to that agreement. *Id.* After completion of the sale contemplated in the APA in 2021, JVIC Catalyst ceased all operations. *Id.*, ¶ 4.

15. ZHI as covenantor is jointly and severally liable with JVIC Catalyst for certain indemnification obligations (the "**Indemnification Obligations**") to the Buyers pursuant to the APA, including the claims asserted in the *Brignac* matter. Specifically, pursuant to Section 8.1(d) of the APA, ZHI, as covenantor, is jointly and severally liable with the Sellers (including JVIC Catalyst) to indemnify, defend, and hold harmless the Buyers (and their affiliates) for certain "Excluded Liabilities," which expressly include the *Brignac* matter.[3] *Id.*, ¶¶ 6-8.

16. Because JVIC Catalyst sold substantially all of its assets and has had no operations since the close of the APA, and because ZHI is jointly and severally liable with the JVIC Catalyst for liability and damages related to the *Brignac* matter, ZHI has borne the full cost of defending the matter and would bear the full cost of damages awarded in the matter against JVIC Catalyst, if any.

[3] Pursuant to Section 1.4 of the APA, Sellers are required to (and ZHI, as Covenantor, shall cause the Sellers to) pay and satisfy certain excluded liabilities ("**Excluded Liabilities**"), including but not limited to "any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets . . . including the Seller Actions set forth on Schedule 2.9." In turn, Schedule 2.9 of the APA lists legal proceedings and potential claims, including the *Brignac* matter. The *Brignac* matter, therefore, is an Excluded Liability for which ZHI, as covenantor, are required to pay and satisfy.

In effect, the *Brignac* matter being pursued against a non-operational subsidiary of the Debtors is an action against the Debtors.

17. On June 12, 2024, the Brignac Plaintiffs' counsel informed the Debtors' counsel that the Brignac Plaintiffs are unwilling to stay the matter. Lewis Decl., ¶ 4. On July 11, 2024, the court overseeing the *Brignac* matter informed the Debtors that it would not stay the matter absent an order from the Bankruptcy Court. *Id.*, ¶ 6.

18. Trial in *Brignac* is imminent, with a scheduled start date of August 5, 2024 in Louisiana State Court (the 23rd Judicial District court for the Parish of Ascension). *Id.*, ¶ 7. The Brignac Plaintiffs have indicated that they intend to seek up to $5 million in damages from the JVIC Catalyst and Clean Harbors at trial.

19. If the *Brignac* matter is not stayed the Debtors will continue to incur litigation costs and would be responsible for damages awarded to the Brignac Plaintiffs.

ARGUMENT

C. The Court May—and Should—Extend the Bankruptcy Code § 362 Automatic Stay to JVIC Catalyst.

20. The automatic stay is "one of the ***fundamental debtor protections*** provided by the bankruptcy laws." *In re Halo Wireless, Inc.*, 684 F.3d 581, 586 (5th Cir. 2012) (internal citation omitted) (emphasis added). The purpose of the automatic stay is to "give the debtor a 'breathing spell' from his creditors, and also, to protect creditors by preventing a race for the debtor's assets." *In re Commonwealth Oil Refining Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986).

21. It is indisputable that Bankruptcy Code § 362 may apply to non-debtors. *See, e.g.*, *In re HSMKennewick, L.P.*, 347 B.R. 569, 571 (Bankr. N.D. Tex. 2006) ("Section 362(a)(3) implements a stay of any action, whether against the debtor or third parties, that seeks to obtain or exercise control over the property of the debtor."). In certain situations, such as a subsidiary/parent

relationship or because of an indemnification agreement, a lawsuit against one entity necessarily implicates another. Accordingly, applying § 362 to non-debtor third parties when such relationships exist aligns with the statute's fundamental purpose of protecting the debtor because it shields the debtor from litigation where a "judgment against the third-party defendant will in effect be a judgment or finding against the debtor.'" *Reliant Energy Servs., Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003) (quoting *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir.1986)); *see also Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001); *Beran v. World Telemetry, Inc.*, 747 F. Supp. 2d 719, 723 (S.D. Tex. 2010) (recognizing that, in the Fifth Circuit, the automatic stay should be extended "when there is a formal or contractual relationship between the debtor and nondebtors such that a judgment against one would in effect be a judgment against the other"); *Nat'l Oilwell Varco, L.P. v. Mud King Prod., Inc.*, 2013 WL 1948766, at *2 (S.D. Tex. May 9, 2013) (same).

22. The stay extension is necessary here because prosecution of *Brignac* implicates and ultimately aims to exercise control over the estate's property via the costs of litigation and potential damages, which one of the Debtors would be required to satisfy pursuant to its joint and several indemnification obligations with JVIC Catalyst and because JVIC Catalyst is Debtor ZHI's non-operational subsidiary. *See A.H. Robins Co., Inc.*, 788 F.2d at 1002 (holding that section 362(a)(3) "directs stays of any action, whether against the debtor or third-parties, to obtain possession or to exercise control over property of the debtor"). In addition, continued prosecution of *Brignac* will necessarily strain the Debtors' time, resources, personnel, and property at this critical juncture in the Chapter 11 Cases, effectively eliminating the benefits provided by § 362. *See, e.g.*, *In re The Fairchild Corp.*, No. 09-10899 CSS, 2009 WL 4546581, at *6 (Bankr. D. Del. Dec. 1, 2009) (denying a request to modify the stay to allow state court prosecution of a debtor because of the

distraction it would cause to the debtor's management and professionals); *In re Calpine Corp.,* 354 B.R. 45, 48 (Bankr. S.D.N.Y. 2006) *aff'd*, 365 B.R. 401 (S.D.N.Y. 2007) (holding that injunctive relief is appropriate if "enjoined would burden, delay or otherwise impede the reorganization proceedings or if the stay is necessary to preserve or protect the debtor's estate or reorganization prospects"). And given the Debtors' organizational structure and joint and several liability with JVIC Catalyst (a non-operational entity that sold substantially all of its assets in 2021), the financial obligations between Debtors and JVIC Catalyst cannot be severed. *See, e.g.*, *Reliant Energy Servs.*, 349 F.3d at 825 (holding that applying § 362 to non-debtor third parties when a close relationship exists aligns with the statute's fundamental purpose of protecting the debtor, because it shields the debtor from litigations where a "judgment against the third-party defendant will in effect be a judgment or finding against the debtor") (quoting *A.H. Robins Co.*, 788 F.2d at 999).

23. The intended breathing spell for debtors offered by the automatic stay of section 362 of the Bankruptcy Code has already been interrupted by *Brignac*. *In re Commonwealth Oil Refining Co., Inc.*, 805 F.2d at 1182 (stating that the purpose of the automatic stay is to "give the debtor a 'breathing spell' from his creditors, and also, to protect creditors by preventing a race for the debtor's assets."). Since the Petition Date only two months ago, court hearings, briefing schedules, coordination of joint defenses, deposition scheduling and preparation, motion practice, and review of discovery and evidence in preparation for the upcoming trial have required the Debtors to expend resources. Lewis Decl., ¶ 8. Moreover, the Debtors' small legal staff, who are focused on advising the Debtors on the chapter 11 cases, are the same employees who must address *Brignac* should it continue. *Brignac* is a distraction from the obligations and issues arising under the Debtors' chapter 11 cases, and the Debtors' resources must be focused on maximizing recoveries for the benefit of all creditors. *Id.*, ¶ 9.

24. If *Brignac* proceeds, it will cause the Debtors to incur significant expenses, in particular because of the upcoming August 5, 2024, trial date. *See, e.g.*, *A.H. Robins Co., Inc.*, 788 F.2d at 1002 (holding that section 362(a)(3) "directs stays of any action, whether against the debtor or third-parties, to obtain possession or to exercise control over property of the debtor"). Moreover, all documents, information, and personnel relevant to the JVIC Catalyst's defense in *Brignac* are within the control of the Debtors, meaning the Debtors would necessarily have to devote their resources to *Brignac* at this critical chapter 11 juncture if it is not stayed.

25. Because the continued litigation of *Brignac* against JVIC Catalyst will impede the Debtors chapter 11 cases and subvert the intended effect of the automatic stay, the Debtors respectfully request that the Court extend the stay to JVIC Catalyst in *Brignac*.

D. The Court Should Enjoin *Brignac* Pursuant to Bankruptcy Code § 105 in Order to Ensure the Debtors Reap the Benefits of the Automatic Stay.

26. Bankruptcy Code § 105(a) empowers this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Bankruptcy Code § 105(a). The Fifth Circuit has confirmed that the Court has "broad discretionary powers" under this section, including the authority "to stay proceedings against nonbankrupt entities." *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1146 n.3 (5th Cir. 1987). These broad discretionary powers include issuing injunctions to stay lawsuits against non-debtors. *See In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995) (holding that an injunction is appropriate when "the nondebtor and the debtor enjoy such an identity of interests that the suit against the nondebtor is essentially a suit against the debtor" and "when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization").

27. Injunctive relief is appropriate here because the Debtors plainly satisfy each of the four factors required to obtain it: (1) a substantial likelihood of irreparable injury to the Debtors

absent an injunction; (2) a substantial likelihood that the Debtors will succeed on this adversary proceeding on the merits; (3) the balance of the equities favoring the the Debtors; and (4) the injunction would serve the public interest. *See, e.g.*, *In re Commonwealth Oil Refining Co., Inc.*, 805 F.2d at 1188–89; *In re FiberTower Network Sen's. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012).

1. If Brignac is allowed to continue, there is a substantial likelihood of irreparable injury to the Debtors.

28. If the Court does not enjoin the continued prosecution of or expansion of *Brignac* against JVIC Catalyst, the Debtors will suffer irreparable injury because the Debtors will bear the full burden of litigating the trial during the pendency of their chapter 11 proceedings. Indeed, court hearings, briefing schedules, coordination of joint defenses, deposition scheduling and preparation, motion practice, and review of discovery and evidence in preparation for the upcoming trial have and, absent an injunction, would continue to require the Debtors to divert valuable resources, and the attention of management and professionals, from focusing on the aim of their chapter 11 cases. Lewis Decl., ¶¶ 8-9. Moreover, as described above, any litigation costs or judgments would ultimately implicate the Debtors. Accordingly, absent an injunction, there is a high likelihood the Debtors and their estates would suffer irreparable injury. *See In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 525 (N.D. Tex. 2019), *aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021) (holding that bankruptcy courts are permitted to enjoin lawsuits where, as here, "the nondebtor and the debtor enjoy such an identity of interests that the suit against the nondebtor is essentially a suit against the debtor," and "when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization.") (quoting *In re Zale Corp.*, 62 F.3d at 761). Moreover, the continued litigation of *Brignac* would distract management and other key personnel when they should be focused on the chapter 11 proceedings and maximizing the benefits and value

for all parties in interest. *See, e.g.*, *In re The Fairchild Corp.*, 2009 WL 4546581, at *6 (declining to modify the stay in part because of the distraction it would cause to the debtor's management and professionals).

2. The Debtors have a substantial likelihood of success on the merits of this adversary proceeding.

29. Fifth Circuit courts have determined that the basis of the "substantial likelihood" element is on "the purpose of the requested injunction." *In re FiberTower Network Servs. Corp.*, 482 B.R. at 182 (internal citations omitted). Courts must determine whether they are both authorized and likely to grant the requested relief. *Id.* at 183. The Bankruptcy Court is authorized to issue a declaration extending the stay to JVIC Catalyst as well as an injunction halting *Brignac*. Moreover, for all the reasons explained herein, the Debtors are likely to prevail on the merits of their requests, including but not limited to because of the irreparable harm they will suffer absent a stay extension and injunction. *See* Bankruptcy Code § 105(a); *In re S.I. Acquisition, Inc.*, 817 F.2d at 1146 n.3; *In re Zale Corp.*, 62 F.3d at 761.

3. The irreparable harm to the Debtors far outweighs any risk of harm to the Brignac Plaintiffs.

30. As explained in detail herein, the Debtors will suffer irreparable harm if *Brignac* is not enjoined. The Brignac Plaintiffs, on the other hand, will suffer limited harm from pausing their litigation for a limited period of time while the chapter 11 cases proceed. *See, e.g.*, *In re Am. Film Techs., Inc.*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) (weighing this factor in favor of enjoining the litigation where non-debtor plaintiff was "not being asked to forego his prosecution against the individual defendants, only to delay it"). Moreover, any documents or information required by *Brignac* will be preserved during this waiting period, and none of the Brignac Plaintiffs' rights will be negatively affected in a material way because they will be free to prosecute their claims at a later date. Accordingly, the risk of harm to the Brignac Plaintiffs, if any, is small.

4. Enjoining Brignac serves the public interest by facilitating an efficient and expedient resolution to the chapter 11 cases.

31. Injunctive relief will facilitate the Debtors' expedient and successful conclusion of their bankruptcy proceedings, which is a benefit to all interested parties. There is a clear public interest in ensuring that bankruptcy proceedings go smoothly and that any negative outcomes are minimized. *See, e.g.*, *In re FiberTower Network Services Corp.*, 482 B.R. at 189 (holding that injunctions facilitate that public interest in chapter 11 cases); *Venzke Steel Corp. LLA, Inc. (In re Venzke Steel Corp.)*, 142 B.R. 183, 185 (Bankr. N.D. Ohio 1992) (same); *Lazarus Burman Assocs. v. Nat'l Westminster Bank U.S.A. (In re Lazarus Burman Assocs.)*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) (same); *SAS Overseas Consultants v. Benoit*, No. Civ. A. 99–1663, 2000 WL 140611, at *5 (E.D. La. Feb. 7, 2000) (same). Here, extending the stay to the *Brignac* matter will allow the Debtors to focus on moving towards a successful resolution of these cases.

32. Pursuant to the authority granted to this Court by Bankruptcy Code § 105(a), the Debtors respectfully request that the Court enjoin the continued prosecution of or expansion of *Brignac* during the pendency of the Debtors' chapter 11 cases.

E. The Court Should Issue a Temporary Restraining Order Enjoining *Brignac*.

33. "A [temporary restraining order] is a 'highly accelerated and temporary form of preliminary injunctive relief.'" *In re Ozcelebi*, No. 20-70295, 2022 WL 1529359, at *3 (Bankr. S.D. Tex. May 13, 2022) (quoting *Island Peak Grp., LLC v. Stark*, No. 3:22-CV-00838-N, 2022 WL 1265929, at *3 (N.D. Tex. Apr. 27, 2022)). "The standard for issuing a [temporary restraining order] is the same as the standard for issuing a preliminary injunction." *Id.* (citing *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987)). "However, TROs are generally restricted to 'preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.'" *Island Peak Grp., LLC*, 2022 WL 1265929, at *3 (quoting *Granny Goose*

Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty., 415 U.S. 423, 439 (1974)).

34. For the same reasons discussed herein that a preliminary injunction is warranted, the Debtors also request that, on an emergency basis, the Court issue a temporary restraining order prohibiting the continued prosecution of or expansion of *Brignac* against JVIC Catalyst. The Debtors need relief immediately because the *Brignac* trial date is set to begin on August 5, 2024. Moreover, on June 12, 2024, the Brignac Plaintiffs' counsel informed the Debtors' counsel that the Brignac Plaintiffs are unwilling to stay the matter. Lewis Decl., ¶ 5. On July 11, 2024, the court overseeing the *Brignac* matter informed the Debtors that it would not stay the matter absent an order from the Bankruptcy Court. *Id.*, ¶ 6. A temporary restraining order is necessary to prevent immediate and irreparable harm to the Debtors, their estates, and their stakeholders. The Debtors therefore respectfully request that this Court enter a temporary restraining order enjoining continued prosecution of or expansion of *Brignac* as against JVIC Catalyst.

BASIS FOR EMERGENCY RELIEF

35. The Debtors respectfully request emergency consideration of this motion in accordance with Bankruptcy Local Rule 9013-1(i). In particular, trial in *Brignac* is set to begin in Louisiana in only a few weeks, on August 5, 2024. To the extent practicable, the Debtors request that the Court enter the TRO Order to enjoin *Brignac* with respect to JVIC Catalyst **by 5:00 p.m. (prevailing Central Time) on July 24, 2024**. The relief requested in this Motion is critical to avoid the Debtors expending unnecessary costs and straining its resources; preserving the Debtors' estates; and maintaining the Debtors' operations during this crucial stage of the chapter 11 cases. Accordingly, the Debtors respectfully request that the Court approve the requested relief on an emergency basis.

NOTICE

36. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee for the Southern District of Texas; (b) the counsel to the Committee; (c) the United States Attorney's Office for the Southern District of Texas; (d) the state attorneys general for the states in which the Debtors operate; (e) the Internal Revenue Service; (f) the Prepetition Agent, (g) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d), (h) Clean Harbors, and (i) the Brignac Plaintiffs. In light of the nature of the relief requested, no other or further notice need be provided.

The Debtors respectfully request that the Court enter the TRO Order and the Preliminary Injunction Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: July 19, 2024
Houston, Texas

/s/ Charles R. Koster

WHITE & CASE LLP
Charles R. Koster (Texas Bar No. 24128278)
609 Main Street, Suite 2900
Houston, Texas 77002
Telephone: (713) 496-9700
Facsimile: (713) 496-9701
Email: charles.koster@whitecase.com

Bojan Guzina (admitted *pro hac vice*)
Andrew F. O'Neill (admitted *pro hac vice*)
RJ Szuba (admitted *pro hac vice*)
Barrett Lingle (admitted *pro hac vice*)
111 South Wacker Drive, Suite 5100
Chicago, Illinois 60606
Telephone: (312) 881-5400
Email: bojan.guzina@whitecase.com
aoneill@whitecase.com
rj.szuba@whitecase.com
barrett.lingle@whitecase.com

Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on July 19, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Charles R. Koster*
Charles R. Koster

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	
Debtor.	)	Case No. 24-90377
ZACHRY HOLDINGS, INC.,	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 24-3146
TIMMY BRIGNAC AND SHONDA BRIGNAC,	)	
Defendants.	)	

TEMPORARY RESTRAINING ORDER ENJOINING THE CONTINUED PROSECUTION OR EXPANSION OF *BRIGNAC V. 3M COMPANY ET AL.*, 127-046 (LA. 10/15/2019) AGAINST THE NON-DEBTOR DEFENDANT

Upon the emergency motion (the "**Motion**")[2] of Zachry Holdings, Inc. ("**ZHI**") and its debtor affiliates (collectively, the "**Debtors**"), for entry a temporary restraining order (the "TRO") temporarily enjoining the continued prosecution of or expansion of *Brignac v. 3M Company, Shell Catalysts & Technologies LP; Cat Tech, LLC; Turner Industries Group, LLC; Brock Services, LLC; Anco Insulations, Inc.*, 127-046 (La. 10/15/2019) ("***Brignac***") against the Non-Debtor Defendant, JVIC Catalyst; and this Court having jurisdiction over this matter pursuant to 28 U.S.C.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224

[2] Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	
Debtor.	)	Case No. 24-90377
ZACHRY HOLDINGS, INC.,	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 24-3146
TIMMY BRIGNAC AND SHONDA BRIGNAC,	)	
Defendants.	)	

ORDER EXTENDING THE AUTOMATIC STAY TO THE NON-DEBTOR DEFENDANT IN *BRIGNAC V. 3M COMPANY ET AL.*, 127-046 (LA. 10/15/2019) AND GRANTING PRELIMINARY INJUNCTIVE RELIEF

Upon the emergency motion (the "**Motion**")[2] of Zachry Holdings, Inc. ("**ZHI**") and its debtor affiliates (collectively, the "**Debtors**"), for entry of an order (this "**Order**") confirming that the automatic stay prohibits the prosecution of *Brignac v. 3M Company, Shell Catalysts & Technologies LP; Cat Tech, LLC; Turner Industries Group, LLC; Brock Services, LLC; Anco Insulations, Inc.*, 127-046 (La. 10/15/2019) ("***Brignac***") against the Non-Debtor Defendant, JVIC Catalyst, and preliminary injunctive relief pursuant to § 105 of title 11 of the United States Code

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224

[2] Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

(the "**Bankruptcy Code**") halting the continued prosecution of or expansion of *Brignac* against JVIC Catalyst during the pendency of the Debtors' chapter 11 cases, all as more fully set out in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interest of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court, and after due deliberation and sufficient case appearing therefore, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. Pursuant to Bankruptcy Code § 362, the automatic stay of the Bankruptcy Code prohibits the prosecution of *Brignac* against JVIC Catalyst.

3. Pursuant to Bankruptcy Code § 362, the automatic stay of the Bankruptcy Code is hereby extended to JVIC Catalyst during the pendency of the chapter 11 cases.

4. Pursuant to Bankruptcy Code § 105, the *Brignac* Plaintiffs are hereby enjoined from continuing *Brignac* against JVIC Catalyst and from continuing to prosecute or expand upon its

claims brought in *Brignac* against JVIC Catalyst therein during the pendency of the chapter 11 cases.

5. For the avoidance of doubt, the relief ordered herein shall apply to all claims asserted in *Brignac*, regardless of whether the identified action has been removed, remanded, transferred, dismissed and refiled under a different case number, or is on appeal.

6. This Order shall not affect the exceptions to the automatic stay contained in Bankruptcy Code § 362(b) or the right of any party in interest to seek relief from the automatic stay in accordance with Bankruptcy Code §§ 362(d) or 362(f).

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Order shall remain in full force and effect until further order of this Court.

9. Pursuant to Bankruptcy Rule 7065, the security requirements shall be waived.

10. Notwithstanding any provision to the contrary of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Bankruptcy Local Rules, this Order shall take immediate effect upon signature.

11. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Houston, Texas
Dated: _____, 2024

_____
UNITED STATES BANKRUPTCY JUDGE

§§ 157 and 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interest of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court, and after due deliberation and sufficient case appearing therefore, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The continued prosecution (including, for the avoidance of doubt, as it relates to any discovery or other pretrial motion practice or proceedings) of or the expansion of *Brignac* against JVIC Catalyst, is enjoined through and until _____ (120 days from entry of this Order), which date may be extended for good cause or consent of the parties.

3. For the avoidance of doubt, the relief ordered herein shall apply to all claims asserted in *Brignac*, regardless of whether the identified action has been removed, remanded, transferred, dismissed, and refiled under a different case number, or is on appeal.

4. This Order shall not affect the exceptions to the automatic stay contained in Bankruptcy Code § 362(b) or the right of any party in interest to seek relief from the automatic stay in accordance with Bankruptcy Code §§ 362(d) or 362(f).

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. Pursuant to Bankruptcy Rule 7065, the security requirements shall be waived.

7. Notwithstanding any provision to the contrary of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Bankruptcy Local Rules, this Order shall take immediate effect upon signature.

8. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Houston, Texas
Dated: _____, 2024

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UNITED STATES BANKRUPTCY JUDGE