Docket #0034 Date Filed: 10/22/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: ZACHARY INDUSTRIAL, INC.,	§	
	§	**Case No. 24-90377 (MI)**
Debtor.	§	**Chapter 11**
Allianz Global Risks US Insurance Co., et al.	§	
	§	**(Jointly Adminstered)**
	§	**Adversary No. 24-03190**
Plaintiffs,	§	
v.	§	
Zachry Industrial, Inc., et al.	§	
Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANT CHIYODA INTERNATIONAL CORPORATION'S RULE 12(B)(6) MOTION TO DISMISS AND INCORPORATION OF RESPONSE TO CB&I LLC'S 12(B)(6) MOTION TO DISMISS

Plaintiffs, ALLIANZ GLOBAL RISKS US INSURANCE CO.; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. B0180ME2219036; GREAT LAKES INSURANCE SE; GUIDEONE NATIONAL INSURANCE COMPANY; and TOKIO MARINE AMERICA INSURANCE COMPANY, *as subrogees of FLNG Policy Procurement, LLC; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3 LLC* (collectively, "Plaintiff Insurers") by and through their undersigned counsel, file this Response to Defendant Chiyoda International Corporation's ("Chiyoda") Rule 12(B)(6) Motion to Dismiss.

I. INTRODUCTION

Defendant Chiyoda filed its instant motion to dismiss as an incorporation of the arguments brought forth in CB&I's Motion to dismiss [Adv. P. Doc. No. 13]. To save judicial resources, Plaintiffs incorporate all of the statements, responses, and defenses raised in its previously filed Response to CB&I's Motion [Adv. P. Doc. No. 20] into this response. Both Motions are premised on application of the Economic Loss Rule to the facts at hand. Chiyoda's instant motion should be denied for the same reasons previously outlined.

II. BACKGROUND FACTS

Plaintiffs incorporate the facts as laid out in their previous Response [Adv. P. Doc. No. 20]. Plaintiffs note that there are no substantive deviations from the previously filed motion that require additional response.

III. ARGUMENT

Plaintiffs incorporate the responsive arguments as laid out in their previous Response [Adv. P. Doc. No. 20]. Plaintiffs note that there are no new arguments presented within the instant motion that require additional response.

IV. CONCLUSION

The arguments advanced by Defendants in the instant motion to dismiss are not appropriate for a pleadings-based attack. At a minimum, discovery is needed on at least one issue of the ELR, and many issues are not appropriate statements of Texas law applied to the facts of the instant case, as plead. In short, Plaintiffs have stated a valid cause of action under Texas law, within the applicable statute of limitations, and request this Court DENY Defendants' instant motion in its entirety.

However, in the alternative, even if this Court determines that Plaintiffs have not properly plead a cause of action to satisfy Rule 12(b)(6) on the face of their pleading, Plaintiffs respectfully request leave to file an Amended Complaint to more specifically plead (above what is required under pleading standards) the damage to other property and duties owed to circumvent the ELR.

Dated: October 22, 2024.

Respectfully submitted,

/s/ Ken Green

Ken Green (Texas Bar No. 24050698)
BONDS ELLIS EPPICH SCHAFER JONES LLP
402 Heights Blvd.
Houston, Texas 77007
(713) 335-4990 telephone
(713) 335-4991 facsimile
Email: ken.green@bondsellis.com

-and-

EVAN J. MALINOWSKI, ESQ.
Texas Bar No. 24119454
PAUL B. HINES, ESQ.
Texas Bar No. 24104750
emalinowski@dt-law.com
phines@dt-law.com
Denenberg Tuffley, PLLC
28411 Northwestern Hwy., Ste. 600
Southfield, MI 48034
Phone: (248) 549-3900
Fax: (248) 593-5808

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2024, I caused a copy of the foregoing document to be served by electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case.

/s/ Ken Green
Ken Green