UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: ZACHARY INDUSTRIAL, INC.,	§	
	§	**Case No. 24-90377 (MI)**
Debtor.	§	**Chapter 11**
FLNG LIQUEFACTION, LLC, et al.	§	
	§	
	§	
	§	**(Jointly Administered)**
	§	
	§	**Adversary No. 24-03189**
Plaintiffs,	§	
	§	
v.	§	
	§	
Zachry Industrial, Inc., et al.	§	
	§	
Defendants.	§	Ref. Adv. P. Docket Nos. 13, 20, 31, 33

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, certain of the Subrogated Insurers [1] for *FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3 LLC* (collectively, "Plaintiffs") by and through their undersigned counsel, file this Response to Defendant CB&I LLC's Rule 12(B)(6) Motion to Dismiss.[2]

[1] The subset of Insurers represented in this filing by Zabel Freeman are AIG, AEGIS, Starr Tech, Swiss Re, Liberty, Validus, Canopius (Samsung), SCOR, Helvetia, Convex, Sompo, Markel and Inigo. The other property Insurers not listed are represented by other legal counsel and are not part of this filing.

[2] This response is identical to that filed by the Allianz, *et. al.* subrogated insurers.

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, exhibits, and defenses raised in its previously filed Response to CB&I's Motion [Adv. P. Doc. No. 19] 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. 19]. 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. 19]. 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 23, 2024

Respectfully submitted,

/s/ Ken Green

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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 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