Docket #0040 Date Filed: 10/23/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

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.	§	

PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING PLAINTIFFS TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

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, respectfully submit *Plaintiffs' Motion for Entry of an Order Authorizing Plaintiffs to File Confidential Documents Under Seal* (the "Motion") and respectfully represent as follows:

BACKGROUND FACTS

1. Plaintiffs are filing contemporaneously herewith their *Response to Defendant Zachry Industrial Inc.'s Rule 12(b)(6) Motion to Dismiss and Incorporation of Response to CB&I LLC's 12(b)(6) Motion to Dismiss* (the "Response").

2. Certain exhibits attached to the Response contain confidential material that must be filed under seal.

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 107(b) of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9037-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules").

[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.

RELIEF REQUESTED

5. By this Motion, the Plaintiffs request: (i) authority to file under seal Exhibits 2 and 3 of the Response (the "Confidential Documents"), (ii) direction hat the Confidential Documents remain under seal and shall only be served on the Defendants in this Adversary Proceeding, and (iii) related relief.

6. A proposed form of order granting the relief requested herein is attached hereto (the "Proposed Order").

The Relief Requested Should Be Granted

7. Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Moreover, pursuant to section 107(b)(1) of the Bankruptcy Code, the Court may authorize the Plaintiffs to file the Confidential Documents under seal by permitting the issuance of an order that protects entities from potential harm that may result from the disclosure of confidential information. See 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, that:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or a confidential research, development, or commercial information.

11 U.S.C. § 107(b); *In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) ("The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.").

8. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that "[o]n motion, or on its own initiative, with or without notice, the court may

make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information." FED. R. BANKR. P. 9018.

9. Local Rule 9037-1(c) provides that "[a] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal."

10. The Plaintiffs submit that the Confidential Documents fall within the scope of commercial information that may be protected by the Court pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which would result in "an unfair advantage to competitors by providing them information as to the commercial operations of the debtor." *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing In re Orion Pictures Corp., 21 F.3d at 27). Confidential commercial information need not rise to the level of a "trade secret" to be protected under section 107(b) of the Bankruptcy Code. *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) ("A bankruptcy court is required documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity's competitors."). Rather, section 107(b)'s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *In re Orion Pictures Corp.*, 21 F.3d at 27–28. Once a court determines that a party in interest is seeking to protect "commercial information," the court "is required to protect a requesting interested party and has no discretion to deny the application." *Id*. at 27.

11. The text of the Confidential Documents attached to the Response consists of and contains information which has been designated as Confidential Material that requires the Plaintiffs to file the Confidential Documents under seal. Specifically, the confidential commercial information includes the Plaintiffs' confidential plans, and other internal sensitive business information that could be used by competitors to gain an advantage. Therefore, the Plaintiffs request authority to file the Confidential Documents under seal. Redacted versions of the Confidential Documents have not been filed.

Notice

12. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Local Rule 9013-1(d).

No Previous Request

13. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

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	§	**Case No. 24-90377 (MI)**
Debtor.	§	**Chapter 11**
FLNG LIQUEFACTION, LLC, et al.	§	
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	§	**Adversary No. 24-03189**
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	§	
Zachry Industrial, Inc., et al.	§	
	§	
Defendants.	§	

ORDER AUTHORIZING PLAINTIFFS TO FILE CONFIDENTIAL DOCUMENTS UNDER SEAL

Upon the motion dated October 23, 2024 (the "Motion")[1] for entry of an order pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9037-1 (i) authorizing the Plaintiffs to file under seal Exhibits 2 and 3 (the "Confidential Documents") of Plaintiffs' *Response to Defendant Zachry Industrial Inc.'s Rule 12(b)(6) Motion to Dismiss and Incorporation of Response to CB&I LLC's 12(b)(6) Motion to Dismiss*, and (ii) directing the Confidential Documents remain under seal and shall only be served on the Defendants in this

[1] Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the motion.

Adversary Proceeding; all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Plaintiffs and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Plaintiffs are authorized, but not directed, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9037-1, to file the Confidential Documents under seal.

2. The Confidential Documents are confidential and shall remain under seal and shall only be served on the Defendants in this Adversary Proceeding.

3. Any party who receives the sealed versions of the Confidential Documents in accordance with this Order shall not disclose or otherwise disseminate them, or the information contained therein, to any other person or entity without the prior written consent of the Plaintiffs.

4. The Plaintiffs are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

5. This Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE