Docket #0050 Date Filed: 11/13/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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 Administered)**
	§	**Adversary No. 24-03190**
Plaintiffs,	§	
v.	§	
Zachry Industrial, Inc., et al.	§	
Defendants.	§	

PLAINTIFFS' SUR-REPLY TO DEFENDANT ZACHRY INDUSTRIAL INC.'S RULE 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 Sur-Reply to Defendant Zachry Industrial, Inc.'s Rule 12(b)(6) Motion to Dismiss.

I. SUMMARY

Although not briefed in its initial motion, Zachry now argues that the Defect Correction Period (including the contractual subrogation waiver) for the entire Train 3 project was extended by a October 20, 2020 letter agreement ("Letter").[1] In the alternative, it points out that the Letter addresses pressure safety valves ("PSV") as part of the Corrective Work and then states that the Train 3 PSV's "…are a **component involved in the** explosion at the facility."[2] Based on its misreading of the Petition and misunderstanding of the events leading up to the explosion, Zachry believes the allegations in this case somehow involved the Train 3 PSV's and should, once again, extend the subrogation waiver period. They do not.

The allegations in this case are that the Joint Venture, including Zachry, decided that the piping instrumentation, process data trending, and process alarms designed to keep the pressure and pressure trending in a safe process operating zone were no longer needed and the JV "eliminated noticeable and audible alarm(s) and data trending that would have warned operators and allowed them to address what could be and ultimately was a dangerous condition."[3] There are no allegations about a defective, malfunctioning, or inoperable PSV anywhere in the Petition or the Certificate of Merit. Zachry's attempt to extend the subrogation waiver period based on Corrective Work that has nothing to do with the cause of the explosion is baseless and should be denied.

II. ARGUMENT AND AUTHORITIES

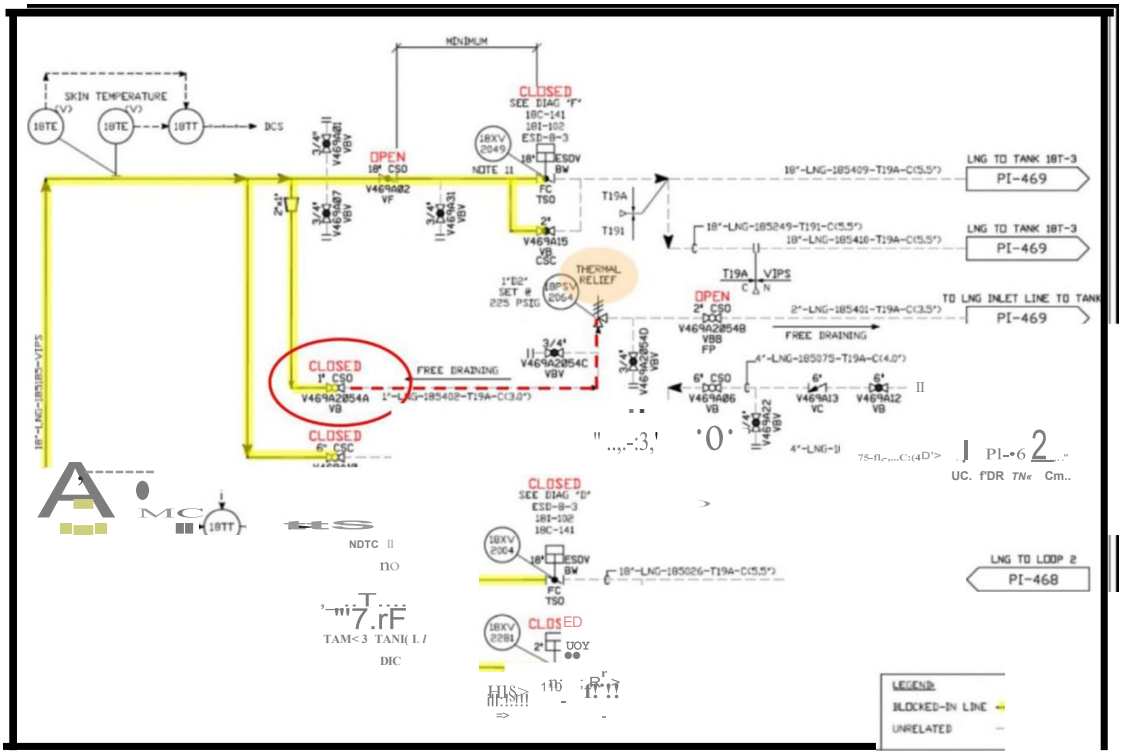
1. The Cause of The Explosion Has Nothing to Do with Corrective Work.

Plaintiff's Petition and Certificate of Merit describe and identify the piping, valves and PSVs involved in and near the site of the explosion. 18PSV-2054[4] was identified as the only PSV near

[1] See Adv. P. Doc. No. 51, Zachry' s Reply Brief, Exhibit A.
[2] See Adv. P. Doc. No. 51, pg. 5.
[3] See Adv. P. Doc. 1-2, Plaintiffs' Original Petition.
[4] The PSV is labeled 18PSV-2064 on the diagram below.

the portion of the pipe that overheated and eventually exploded. However, the petition and associated diagram make clear that 18PSV-2054 has nothing to do with the actual explosion. The Petition includes the following explanation of the events leading up to the explosion.

> 24. Pressure Safety Valve 18PSV-2054 underwent annual testing in April 2022. To conduct the testing, the upstream PSV isolation valve was closed, and a third-party contractor performed the PSV testing.
>
> 25. On June 3, 2022, valves 18XV-2004 and 18XV-2049 were closed thereby blocking in the line to which the 18PSV-2054 valve served (see diagram below).
>
> 26. The pipeline section as highlighted in yellow in the consolidated line drawing terminated at 6 valves. The red circle and dashed lines have been added to the drawing to illustrate the manual valve and the path to the PSV 18PSV-2054. Following the Incident, the isolation valve to PSV 18PSV-2054 was found in the closed position.[5]



As indicated in the diagram above, 18PSV-2054 was not contained within the section of the pipe that was isolated and that eventually overheated and exploded (this section is highlighted in

[5] See Adv. P. Doc. No. 1-2, pg. 6-7.

yellow above). Accordingly, Plaintiffs do not argue that anything contained in the scope of the Letter as Corrective Work is a cause of the explosion. Without a causal connection between the Corrective Work and the explosion, there is no basis to find the twelve-month Defect Correction Period extension applies or that it acted to extend the subrogation waiver period. As such, the Motion to Dismiss based on a subrogation waiver should be denied.

2. The Defect Correction Period Extension Applies Only to the Corrective Work Being Performed.

Zachry's Motion seems to take the position that if any part of the Defect Correction Period is extended under Section 12.3, the entire Train 3 project is likewise extended, including the subrogation waiver period. This is incorrect.

Section 12.3 allows the parties to identify defective work during the aptly named Defect Correction Period.[6] When such defective work is identified, the Contractor must correct "such Defective Work at its own expense."[7] This is defined as "Corrective Work" and "[w]ith respect to **any** Corrective Work performed, the Defect Corrections Period for **such** Corrective Work shall be extended for an additional twelve months…".[8] By its very terms, 12.3B limits the extension of the Defect Correction Period to the actual Corrective Work being performed, not the project as a whole. Zachry must prove the specific Corrective Work and its involvement in the explosion for the 12.3B extension to apply.

3. The Letter Does Not Sufficiently Identify the PSV Corrective Work

The Letter refers generally to "Train 3 PSV's." There is no additional information available in the Letter to identify whether 18PSV-2054 is included in the Corrective Work. Without this

[6] See Adv. P. Doc. 41, at 119-20, §12.3.
[7] *Id.*
[8] (emphasis added).

information, there is no basis to determine whether the twelve-month extension applies or also extends the contractual subrogation waiver.

Assuming 18PSV-2054 is included in the Corrective Work, there is no evidence implicating it as a potential cause of the explosion. The facts, as currently known and alleged in the Petition, show that the 18PSV-2054 was not part of the isolated section of piping that ultimately overheated and exploded. Whether defective or not, the PSV's had nothing to do with the explosion and any extension to the Defect Correction Period based on the Train 3 PSV's is inapplicable to the facts of this case.

III. CONCLUSION

There is no basis to conclude that any of the Corrective Work listed in the Letter was involved in the events that led to the overheating and eventual explosion of the isolated pipe. Under the terms of the EPC, the subrogation waiver expired on November 21, 2021 and the Motion to Dismiss should be denied.

Dated: November 13, 2024

Respectfully submitted,

/s/ Ken Green

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 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