Docket #0062 Date Filed: 12/2/2024

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

In re:	Chapter 11
ZACHRY HOLDINGS, INC., *et al.*[1]	Case No. 24-90377 (MI)
Debtors.	(Jointly Administered)
FLNG LIQUEFACTION, LLC; FLNG LIQUEFACTION 2, LLC; and FLNG LIQUEFACTION 3, LLC,	Adv. Pro. No. 24-03189 (MI)
Plaintiffs,	
v.	
ZACHRY INDUSTRIAL, INC.; ZACHRY INDUSTRIES, INC.; JVIC DEMERGER FABRICATION, INC.; ZACHRY ENTERPRISE SOLUTIONS DEMERGER, INC.; CB&I LLC n/k/a; MCDERMOTT INTERNATIONAL LTD.; CHIYODA INTERNATIONAL CORPORATION; and PSRG, INC.,	
Defendants.	

[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' claims and noticing agent at 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.

24903772412040000000000028

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 Plaintiffs, v. ZACHRY INDUSTRIAL, INC.; ZACHRY INDUSTRIES, INC.; JVIC DEMERGER FABRICATION, INC.; ZACHRY ENTERPRISE SOLUTIONS DEMERGER, INC.; CB&I LLC n/k/a; MCDERMOTT INTERNATIONAL LTD.; CHIYODA INTERNATIONAL CORPORATION; and PSRG, INC., Defendants.	Adv. Pro. No. 24-03190 (MI)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Appellants FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; FLNG Liquefaction 3, LLC, 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 the "Appellants"), by and

through their undersigned counsel; file this Notice of Appeal pursuant to 28 U.S.C. § 158(a)(1) and Rule 8003 of the Federal Rules of Bankruptcy Procedure.

Appellants appeal to the United States District Court for the Southern District of Texas the Order on (I) Motions to Dismiss the Subrogation Actions and (II) Related Claim Objection [Bankruptcy Case Docket No. 1469; Adv. Pro. No. 24-03189 Docket No. 65; and Adv. Pro. No. 24-03190 Docket No. 58] (the "Final Order", attached hereto as **Exhibit A** and incorporated herein by reference). *See also* the transcript of the November 18, 2024 hearing attached hereto as **Exhibit B** and incorporated herein by reference, at pp. 58-65.

PART 1: IDENTIFY THE APPELLANT

1. **Names of the Appellants:**

FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC

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Insurance Company, as subrogees of FLNG Policy Procurement LLC; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC

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2. **Positions of the appellants in the adversary proceeding or bankruptcy case that is the subject of this appeal:**

Creditors

PART 2: IDENTIFY THE SUBJECT OF THIS APPEAL

1. **Describe the judgment, order, or decree appealed from:**

The Order on (I) Motions to Dismiss the Subrogation Actions and (II) Related Claim Objection [Bankruptcy Case Docket No. 1469; Adv. Pro. No. 24-03189 Docket No. 65; and Adv. Pro. No. 24-03190 Docket No. 58]

2. **State the date on which the judgment, order, or decree was entered:**

The Final Order was entered on November 20, 2024 in Adv. Pro. No. 24-03189 and on November 21, 2024 in the Bankruptcy Case and Adv. Pro. No. 24-03190.

PART 3: IDENTIFY THE OTHER PARTIES TO THIS APPEAL

1. **Party:**

Debtors and Debtors in Possession

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Zachry Industrial, Inc.; Zachry Industries, Inc.; JVIC Demerger Fabrication, Inc.; and Zachry Enterprise Solutions Demerger, Inc.

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2. Non-Parties that May Have an Interest in the Outcome of this Appeal:

All Other Unsecured Creditors of Debtors.

Dated: December 2, 2024
Houston, Texas

Respectfully submitted,

/s/ Ken Green

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Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 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

Exhibit A

United States Bankruptcy Court
Southern District of Texas
ENTERED
November 21, 2024
Nathan Ochsner, Clerk

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

In re:	Chapter 11
ZACHRY HOLDINGS, INC., *et al.*[1]	Case No. 24-90377 (MI)
Debtors.	(Jointly Administered)
FLNG LIQUEFACTION, LLC; FLNG LIQUEFACTION 2, LLC; and FLNG LIQUEFACTION 3, LLC,	Adv. Pro. No. 24-03189 (MI)
Plaintiffs,	
v.	
ZACHRY INDUSTRIAL, INC.; ZACHRY INDUSTRIES, INC.; JVIC DEMERGER FABRICATION, INC.; ZACHRY ENTERPRISE SOLUTIONS DEMERGER, INC.; CB&I LLC n/k/a; MCDERMOTT INTERNATIONAL LTD.; CHIYODA INTERNATIONAL CORPORATION; and PSRG, INC.,	
Defendants.	

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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 Plaintiffs, v. ZACHRY INDUSTRIAL, INC.; ZACHRY INDUSTRIES, INC.; JVIC DEMERGER FABRICATION, INC.; ZACHRY ENTERPRISE SOLUTIONS DEMERGER, INC.; CB&I LLC n/k/a; MCDERMOTT INTERNATIONAL LTD.; CHIYODA INTERNATIONAL CORPORATION; and PSRG, INC., Defendants.	Adv. Pro. No. 24-03190 (MI)

ORDER ON (I) MOTIONS TO DISMISS THE SUBROGATION ACTIONS AND (II) RELATED CLAIM OBJECTION

For the reasons stated on the record at the hearing held before this Court on November 18, 2024, **IT IS HEREBY ORDERED THAT**:

1. All claims asserted in the adversary proceeding number 24-03189 and the adversary proceeding number 24-03190 are dismissed.

2. Proofs of Claim numbers 1562, 1564, and 1579 are disallowed.

3. This single order concerns the two adversary proceedings and the main case. The Court recommends that any appellate court consolidate these matters for appeal.

4. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Signed: November 20, 2024



Marvin Isgur
United States Bankruptcy Judge

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ZACHRY HOLDINGS, INC., Debtor.	CASE NO: 24-90377-mi Houston, Texas Monday, November 18, 2024 8:59 a.m. to 11:15 a.m.
FLNG LIQUEFACTION, LLC, ET AL., Plaintiffs, Vs. ZACHRY INDUSTRIAL INC., ET AL., Defendants.	CASE NO: 24-03189-mi ADVERSARY
ALLIANZ GLOBAL RISKS US INSURANCE CO. ET AL., Plaintiffs, Vs. ZACHRY INDUSTRIAL, INC., ET AL., Defendants.	CASE NO: 24-03190-mi ADVERSARY
FLNG LIQUEFACTION LLC, ET AL., Plaintiffs, Vs. CB&I INC. ET AL., Defendants.	CASE NO: 24-03195-mi ADVERSARY

HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	CHARLES R. KOSTER White & Case LLP 609 Main Street Houston, TX 77002
	JOHN THOMAS Hicks Thomas LLP 700 Louisiana Street, Houston, TX 77002
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For Pfs. in Adv. 3189:	KEVIN HOOD Zabel Freeman 1135 Heights Blvd. Houston, TX 77008
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For Chiyoda:	CHARLES JONES MARTHA WYRICK Haynes and Boone, LLP 2801 N. Harwood Street Dallas, TX 75201
For FLNG Plaintiffs:	MICHAEL FISHEL CHRIS TAYLOR King & Spalding LLP 1100 Louisiana Street Houston, TX 77002
For CB&I:	JACK MASSEY MATTHEW RAWLINSON Baker & McKenzie 800 Capitol Houston, TX 77002

Court Reporter:	UNKNOWN
Courtroom Deputy:	UNKNOWN
Transcribed by:	Veritext Legal Solutions 330 Old Country Road, Suite 300 Mineola, NY 11501 Tel: 800-727-6396

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

as a basis of what Zachry or any other joint venture required per a contract to cover the construction period and then any defective work that was corrected prior to. That's not what brings us here. That's not the basis of this lawsuit, and therefore plaintiffs argue that that waiver does not apply.

THE COURT: Thank you, sir. All right. I am granting the motion to dismiss the claims by the insurers. They have no standing to be here. They are not subrogated to any of the right to the debtor. I don't think that this is an ambiguous contract. The measure by which they were required to maintain insurance without subrogation rights ran through the end of the defect correction period. The argument that it also entailed what was covered in the defect correction misses the point.

The point is they were required to provide the insurance. It was required not to have subrogation provisions, and it was required to be provided through the end of the defect correction period. Any such insurance had to have the waiver of subrogation. I don't think the insurers, therefore, have standing to bring their lawsuits, and I am dismissing the subrogation lawsuits.

As to the motor suit, I want to go back and reread it frankly. I have difficult time imagining that if I read it not to include allegations sufficient to over gross

negligence that I would not give an opportunity to amend, frankly. But I want to go read it again before I decide whether it sufficiently pleads gross negligence. Go ahead, Mr. Thomas. You look like you need to talk to me pretty badly, but...

MR. THOMAS: No, Your Honor. No, Your Honor. Just before you finish I wanted to ask two things. One is may I give you a copy of this deck that summarizes those provisions that may be relevant to your review?

THE COURT: Yes, please do.

MR. THOMAS: I'll give opposing counsel copies as well.

THE COURT: Thank you. Mr. Jones?

MR. JONES: Your Honor, Charlie Jones, Haynes and Boone on behalf of Chiyoda International. I just want to clarify that your dismissal of the insurance subrogation (indiscernible), the 189 and the 190, applies to all defendants?

THE COURT: Yes.

MR. JONES: Okay. Thank you.

THE COURT: Yes. Absolutely. And it's a full dismissal. It's not a partial dismissal. I don't think they have standing to bring this lawsuit.

MR. JONES: Would you like us to prepare an order for Your Honor?

THE COURT: I'm going to just prepare a one-sentence order. It's going to say for the reasons set forth on the record, this case is dismissed.

MR. JONES: Thank you, Judge.

THE COURT: Thank you. All right. Let's go to the other matters that we have on the calendar in the main case. Mr. Koster?

MR. KOSTER: Your Honor, for the record, Charles Koster for the debtors. Turning the claims objections that were filed in the main case, Your Honor's ruling of a moment ago I think should make this much simpler. And recognizing that you'll be reviewing again the pleadings related to the motor defect case, I believe without rehashing any of the arguments made by counsel and recognizing that we're simply here on a scheduling conference, we've made it to these claims objections, that counsel had indicated at the (indiscernible) that all information related to the gross negligence allegations is set forth in the pleading and admitted that the installation issue is inseparable from the motor issues themselves.

And on that basis, at least my simple mind fails to understand how it could possibly gross negligence to get around to --

THE COURT: So I -- there is zero briefing before me about dual independent causes that would've caused the

failure. I definitely am not going to go out on a limb of guessing at what I think tort law ought to be without any briefing on that so that you know, Mr. Koster. I understand because I stated your argument for you, but he says I think, look, even if the motor had been defective, if it had been installed right, it wouldn't have caused these huge bolts to fall down and destroy the motor casing. And that's defective work.

That's not the defective motor. And so that's an independent cause where even if you had one defect, at least some of the damage from the other defect would've occurred. So how do I grapple with that without -- my tort expertise is limited, right?

MR. KOSTER: Understood entirely, Your Honor, and I think that your ruling and your comments just now make clear that this a far narrower dispute that was just an hour ago and the issues that we'll be taking up in connection with the claims objections and the discovery, if any, that may be needed that go to causation can presumably be done very quickly.

We had attempted in advance of this hearing to come up with an agreed schedule with the plaintiffs related to resolution of these issues through the claims objections. The debtors have no interest or intent of depriving any of the parties of all of the rights that they would have in

connection with the litigation of the issues on the merits in the adversary proceedings. That said, as Your Honor is well aware, we hope to resolve these issues entirely in connection with confirmation. And we think that there is no reason that the parties can't agree to a relatively fast schedule for all necessary --

THE COURT: So let me ask this. I hear what you're saying. I do think this landscape changes a bit today. Can we come back at 11 this morning after you have a chance to confer with opposing counsel and figure out what you all jointly propose that we do or separately propose? But I don't think I need to hear, you know, the back and forth. I think you all need to talk at this point.

MR. KOSTER: That's a great suggestion from the debtor's perspective. 11 is absolutely fine.

THE COURT: Can you still meet at 11?

MAN: Yes, Your Honor.

THE COURT: Okay. We'll take a break and let you all come back at 11 on that issue. Hold on. We still have the 9:30 hearing on your emergency motion for an order authorizing expansion of the LLC. I figured we'd have everybody here and didn't need much notice. So the real issue is whether anybody's going to object to this. Do we have any objections at all to allowing the expansion of the letter of credit? Anyone on the phone please press 5 star.

I think this is ordinary course, frankly, and I appreciate your coming. I don't mean it that way. But it means I don't think I need any real time to think through this. It makes so much sense. It's a fairly nominal amount given the context of the case and I should have everybody here today because this is an essential hearing. So I want to know if anyone objects. If not, I'm going to grant 1426. Okay. I'm granting 1426. We'll get that done. We're in recess in this case until 11. We've got a -- Mr. Green?

MR. GREEN: If I might say one thing, Your Honor?

THE COURT: Yes, sir.

MR. GREEN: I would stick around until 11, but I believe your ruling on the adversary would also dispose of the FLNG subrogation claimants' proofs of claim --

THE COURT: I agree.

MR. GREEN: -- for the same reason.

THE COURT: You don't need to be here at 11 if you don't want to.

MR. GREEN: But there is one thing I want to say though. It may be unavoidable that if the subrogate insurers want to appeal, there may have to be two appeals.

THE COURT: Right.

MR. GREEN: It would be more efficient if there was a way to only have one appeal, but that was the only comment I wanted to make.

THE COURT: I'm not going to rule on all the other -- look, I think the policy and its interpretation is really complex, and it -- the subrogation is really obvious. So --

MR. GREEN: What I meant was you have a ruling in the adversary proceeding and there'll be a separate ruling in the main case on the claim objection.

THE COURT: Why don't I do one order then that we'll file in both that says this disposes of the claim objection and the claim is allowed at zero? I'm sorry. I misunderstood what you were saying. Yes. We'll make it a single -- yeah. What I don't want to end up ruling on are the complexities of the interpretation of the other provisions of the contract as to whether you might have a good liability claim, or whether it's waived, or all of that stuff.

So we'll deal with that. And then instead of a one-sentence order, it'll be a two-sentence order. Would you all rather just agree on that two-sentence order to be sure you get a unitary appeal? Because I do want to do that for you.

MR. GREEN: Okay. Thank you.

THE COURT: And just would you all upload an order that is consistent that would allow a single appeal for both? Does that work?

MR. GREEN: Yes, Your Honor.

THE COURT: Okay. Thank you all. We're in recess then until 11 in this case. I'm going to stay out here. I have a 10:30 hearing on another case. Thank you.

(Recess)

THE COURT: Now let's go back to the FLNG matters. Did you all reach an agreement on what to do?

MR. KOSTER: Good morning again, Your Honor. For the record, Charles Koster for the debtors. We appreciate the time that Your Honor afforded us to work on a schedule. At this time we would propose the following. We would like to continue the scheduling conference for a time ideally next Monday if that works for Your Honor.

THE COURT: Monday the 18th?

MR. KOSTER: Monday the 25th.

THE COURT: I'm sorry. The 25th. All right. What time?

MR. KOSTER: Whenever Your Honor has availability for us is just fine from the debtor's perspective.

THE COURT: I'm going to be out next week, so I would prefer this to be a phone-and-video-only hearing.

MR. KOSTER: Absolutely.

THE COURT: I could make it in if I need to be, but if it's just a scheduling conference I would prefer not to, to be frank about.

MAN 1: Remote is preferable for the debtors as