Docket #0062 Date Filed: 12/5/2024

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,	§	
	§	
Plaintiffs,	§	
	§	**Adv. P. No. 24-03195**
V.	§	
	§	**Ref. Adv. P. Doc. No. 39, 44, & 61**
CB&I, INC.; ZACHRY INDUSTRIAL, INC.; and CHIYODA INTERNATIONAL CORPORATION,	§	
	§	
Defendants.	§	

CHIYODA INTERNATIONAL CORPORATION'S JOINDER TO ZACHRY INDUSTRIAL, INC.'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR CONSEQUENTIAL DAMAGES

Defendant Chiyoda International Corporation ("CIC") files this *Joinder to Zachry Industrial Inc.'s Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claim for Consequential Damages* and respectfully shows the following.

[1] The debtors in these chapter 11 cases (the "Debtors"), along with the last four digits of each Debtor's federal tax identification number, may be obtained on the website of the Debtors' claims and noticing agent at https://veritaglobal.net/zhi. The Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

JOINDER

1. CIC adopts and incorporates the factual background and legal arguments in *Zachry Industrial Inc.'s Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claim for Consequential Damages* [Adv. P. Doc. No. 39], *Zachry Industrial Inc.'s Reply in Support of Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claim for Consequential Damages* [Adv. P. Doc. No. 44], and *Zachry Industrial Inc.'s Supplemental Brief in Support of Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claim for Consequential Damages* [Adv. P. Doc. No. 61] (collectively, the "Zachry Motion to Dismiss") in their entirety, including all the asserted bases for dismissal of Plaintiffs' claims for gross negligence and consequential damages, including but not limited to alleged lost profits.[2]

CONCLUSION

2. CIC respectfully requests that the Court dismiss Plaintiffs' claim for gross negligence and related consequential damages, including but not limited to lost-profits damages, and grant CIC all further relief to which it is justly entitled.

[2] CIC also notes that Plaintiffs' assertions of gross negligence are entirely based in alleged breaches of the EPC Contract (as defined in the Zachry Motion to Dismiss). Indeed, Plaintiffs' Amended Complaint contains a single cause of action titled "Breach of the EPC Contracts." Am. Compl. § V.A. [Adv. P. Doc. No. 60.] The Texas Supreme Court has expressly barred the recovery of consequential damages based solely on breaches of contract. *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 416 n.10 (Tex. 2011) ("[W]e [have] held that even a gross negligence finding would not support the recovery of purely economic losses in a case that could 'only be characterized as a breach of contract.'") (citing *Jim Walter Homes, Inc. v. Reed*, 711 S.W.2d 617, 618 (Tex. 1986)).

Dated: December 5, 2024

Respectfully submitted,

/s/ Charles M. Jones II

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 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/ *Charles M. Jones II*
Charles M. Jones II

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	§	**Adv. P. No. 24-03195**
V.	§	
	§	
CB&I, INC.; ZACHRY INDUSTRIAL, INC.; and CHIYODA INTERNATIONAL CORPORATION,	§	
	§	
Defendants.	§	

ORDER GRANTING CHIYODA INTERNATIONAL CORPORATION'S JOINDER TO ZACHRY INDUSTRIAL, INC.'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR CONSEQUENTIAL DAMAGES

On this day, the Court considered Defendant Chiyoda International Corporation's ("CIC") *Joinder to Zachry Industrial Inc.'s Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claim for Consequential Damages* (the "Motion"), any responses and replies thereto, and the arguments of counsel. The Court finds that the Motion should be GRANTED.

[1] The debtors in these chapter 11 cases (the "Debtors"), along with the last four digits of each Debtor's federal tax identification number, may be obtained on the website of the Debtors' claims and noticing agent at https://veritaglobal.net/zhi. The Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

It is ORDERED that Plaintiffs' claims for consequential damages, including but not limited to lost-profit damages, based on theories of gross negligence, are dismissed.

UNITED STATES BANKRUPTCY JUDGE
MARVIN ISGUR