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

In re: ZACHRY HOLDINGS, INC., *et al.*, Debtors.	Chapter 11 Case No. 24-90377 (MI) (Jointly Administered)
AVIS LAMOTTE, *on behalf of herself and those similarly situated,* Plaintiff, v. ZACHRY INDUSTRIAL, INC., Defendant.	Adv. Pro. No. 24-03122 (MI) CLASS ACTION **DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT** Date: January 9, 2025 Time: 1:30 PM CT Dept: Courtroom 404 The Hon. Marvin Isgur

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC ("Kroll"),[1] the Settlement Administrator appointed in the above-captioned case, whose principal office is located at One World Trade Center, 285 Fulton Street, 31st Floor, New York, NY 10007. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the Settlement.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Settlement Administrator to provide notification and administration services in connection with the Settlement and Release Agreement (the "Settlement Agreement") entered into pursuant to and in connection with this Class Action. Kroll's duties in connection with the Settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class Member Spreadsheet data from Defendant's counsel; (c) creating a Settlement website; (d) establishing a toll-free telephone number and fielding inquiries and requests; (e) establishing a post office box for the receipt of mail; (f) preparing and sending the Settlement Class Notice via first-class mail; (g) receiving and processing mail from the United States Postal Service ("USPS") with forwarding addresses; (h) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (i) receiving and processing Opt-Out requests; and (j) such other tasks as counsel for the Parties or the Court request Kroll to perform.

NOTICE PROGRAM

The CAFA Mailing

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §1715(b) ("the CAFA Notice"). At Defendant's counsel's direction, on October 4, 2024, Kroll sent the CAFA Notice identifying the documents required, a true and correct copy of which is attached hereto as **Exhibit A**, via first-class certified mail, to (a) the Attorney General of the United States, (b) the fifty-five (55) state and territorial Attorneys General and the fifty (50) state and territorial Secretaries of State identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**, and (c) via email to the Nevada Attorney General. The CAFA Notice directed the Attorneys General and the Secretaries of State to the website

www.CAFANotice.com, a site that contains all the documents relating to the Settlement referenced in the CAFA Notice.

Data and Case Setup

5. On September 30, 2024, Kroll established a toll-free telephone number, (833) 739-0854, for Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response ("IVR") system. As of December 17, 2024, the IVR system has received 259 calls.

6. On September 30, 2024, Kroll designated a post office box with the mailing address *Lamotte v. Zachry Industrial*, c/o Kroll Settlement Administration LLC, PO Box 225391, New York, NY 10150-5391, in order to receive requests to Opt-Out requests and correspondence from Class Members.

7. On October 8, 2024, Kroll created a dedicated Settlement website entitled www.warnactsettlement.com (the "Settlement Website"). The Settlement Website "went live" on October 29, 2024, and contains a summary of the Settlement, important dates and deadlines including the Final Fairness Hearing date, the Opt-Out Deadline, and the deadline to object, contact information for the Settlement Administrator, answers to frequently asked questions, and downloadable copies of relevant documents, including the Preliminary Approval Order, Settlement Agreement, and long-form Settlement Class Notice.

8. By October 16, 2024, Kroll received two (2) data file(s) from the Defendant's counsel. The first file was received on October 2, 2024, and contained 3,492 names and physical addresses for Class Members. The second file was received on October 16, 2024, and contained a list of award amounts for each of these 3,492 Class Members. Kroll undertook several steps to reconcile the two lists and compile the eventual "Class List" for the mailing of the Settlement Class Notice and "Estimated Individual Recovery Notice". This included merging the award amounts from the second file into the first file and reviewing the data for any duplicates. Additionally, in an effort to ensure that Settlement Class Notices would be deliverable to Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

The Notice Program

9. On October 29, 2024, Kroll caused 3,492 Settlement Class Notices to be mailed via first-class mail. A true and correct copy of the Settlement Class Notice, along with the Estimated Individual Recovery Notice, are attached hereto as **Exhibits C and D,** respectively.

NOTICE PROGRAM REACH

10. As of December 17, 2024, thirty (30) Settlement Class Notices were returned by the USPS with a forwarding address. All thirty (30) Settlement Class Notices were automatically re-mailed to the updated addresses provided by the USPS.

11. As of December 17, 2024, 227 Settlement Class Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll has run 226 of the undeliverable records through an advanced address search. The advanced address search produced 157 updated addresses. Kroll is in the process of re-mailing Settlement Class Notices to the updated addresses obtained from the advanced address search. Kroll is continuing to process and respond to Settlement Class Notices returned by USPS as undeliverable and will continue to process and respond to all remailings up to the Final Approval Hearing.

12. Based on the foregoing, following all Settlement Class Notice re-mailings, Kroll has reason to believe that Settlement Class Notice likely will reach 3,422 of the 3,492 persons to whom Settlement Class Notice was mailed, which equates to a reach rate of the direct mail notice of approximately 98.0%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches[2] over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign.[3] The table below provides an overview of dissemination results for the Direct Notice Program.

[2] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%.

[3] Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

Direct Notice Program Dissemination & Reach		
Description	**Volume of Class Members**	**Percentage of Class Members**
Class Members	3,492	100.0%
Initial Notice Mailing		
(+) Class Notices Mailed (Initial Campaign)	3,492	100.0%
(-) Total Class Notices returned as undeliverable	(227)	6.5%
Supplemental Notice Mailing		
(+) Total Unique Class Notices to be Re-mailed	157	4.5%
(-) Total Undeliverable (Re-Mailed) Class Notices	(0)	0%
Direct Notice Program Reach		
(=) Likely to Receive Direct Notice	3,422	97.8%

EXCLUSIONS AND OBJECTIONS

13. The Opt-Out Deadline and last day to submit objections was December 13, 2024.

14. Kroll has received no timely requests to Opt-Out. Class Members were not instructed to submit their objection to the Settlement Administrator, and none have been received by Kroll.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on December 17, 2024, in Inver Grove Heights, Minnesota.

Scott M. Fenwick

Exhibit A

CONFIDENTIAL

WHITE & CASE

October 4, 2024

REGISTERED U.S. MAIL, RETURN RECEIPT REQUESTED

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T +1 312 881 5400

whitecase.com

Name Name
Address Address
Address Address
City, US 12345-6789

***Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (Bankr. S.D. Tex.):**
Notice Pursuant to Class Action Fairness Act of 2005, 28 U.S.C.A. § 1715

Dear Sir/Madam:

We write on behalf of defendant Zachry Industrial, Inc. ("Zachry") regarding the above-referenced action (the "Class Action") currently pending in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") before the Honorable Marvin Isgur.

As more fully described in the Exhibits, which are available for download at www.CAFANotice.com under the folder entitled ***Lamotte v. Zachry Industrial, Inc.***, the Class Action relates to alleged violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the "WARN Act") from January 1, 2024, through August 8, 2024, after Zachry voluntarily filed a petition for relief under chapter 11 of Title 11 of the United States in the Bankruptcy Court and was unfortunately no longer able to employ much of the work force at a certain project site (the "Golden Pass Project"). The Class Action allegations were brought by former employee Avis Lamotte ("Plaintiff"), on behalf of herself and other similarly situated terminated employees (for settlement purposes only, and, collectively with Ms. Lamotte, the "Settlement Class").

Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.A. § 1715 ("CAFA"), Zachry hereby provides notice that it has filed a motion for preliminary and, subsequently, final approval of a settlement (the "Settlement") between Zachry and the proposed Settlement Class on September 26, 2024 (D.I. No. 1030) (the "Motion"), in accordance with the proposed Settlement Agreement (the "Settlement Agreement"). Pursuant to CAFA, Zachry provides the following information and supporting documents, which are enclosed herein.

28 U.S.C. § 1715(b)(1): Complaints

- Plaintiff's Class Action Adversary Complaint and Jury Demand (D.I. No. 1, filed June 17, 2024) has been made available for download as **Exhibit 1**. There have been no subsequent amended complaints.

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28 U.S.C. § 1715(b)(2): Notices of Hearings

- A hearing on the final approval of the Settlement Agreement (the "Final Fairness Hearing") is scheduled on January 9, 2025, at 1:30 PM CST.

28 U.S.C. § 1715(b)(3): Notifications to Class Members

- On September 26, 2024, in connection with the Motion and proposed Settlement Agreement, Zachry filed a proposed Form of Settlement Class and Opt-Out Notice ("Settlement Class Notice," D.I. No. 1030-1 at 36), which addresses any putative Class Member's right to request exclusion from the Class Action. This document has been made available for download as **Exhibit 2**.

- On October 2, 2024, pursuant to the Parties' September 30, 2024, hearing seeking preliminary approval of the Settlement with the Court, Zachry filed a Revised Form of Settlement Class and Opt-Out Notice ("Revised Settlement Class Notice," D.I. No. 1073-1 at 36), which provides *inter alia* for an approximate Settlement Award amount to be given to putative Class Members at the Notice stage and revises Settlement Administrator contact information. This document has been made available for download as **Exhibit 3**.

- On October 3, 2024, an identical copy of the Revised Settlement Class Notice was filed in connection with Judge Isgur's executed "Interim Order […] Approving the Settlement By and Between Avis Lamotte, On Her Own Behalf and On Behalf Of Others Similarly Situated, and the Debtors […]" ("Executed Interim Approval Order," D.I. No. 1080 at 36).

- The proposed Settlement Agreement § 10 (see below) provides further details regarding how and when the Settlement Class Notices are to be distributed to putative Class Members.

28 U.S.C. § 1715(b)(4): Proposed Settlement Agreement

- A copy of the Motion (D.I. No. 1030, filed September 26, 2024) has been made available for download as **Exhibit 4**.

- A copy of the unsigned proposed Settlement Agreement, which was attached to the as-filed Proposed Interim Approval Order as Exhibit 1, has been made available for download as **Exhibit 5**. Note that the Settlement Agreement's own attached Exhibits A and B—the original Settlement Class Notice, which is incorporated as a part of this CAFA Notice as Exhibit 2, and the original as-filed confidential list of Settlement Class Members, respectively—are not here incorporated into Exhibit 5.

- A copy of the executed proposed Settlement Agreement (D.I. No. 1037, filed September 27, 2024), which is otherwise unchanged from the proposed Settlement Agreement referenced above, has been made available for download as **Exhibit 6**. Again, the Settlement Agreement's own attached Exhibits are not here incorporated into Exhibit 6.

- On October 2, 2024, an identical copy of the executed proposed Settlement Agreement was filed in connection with the Revised Interim Approval Order (D.I. No. 1073-1 at 9).

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- A copy of the Declaration of Mohsin Y. Meghji in support of the Motion (D.I. No. 1031, filed September 26, 2024) has been made available for download as **Exhibit 7**.

- A copy of the Executed Interim Approval Order (D.I. No. 1080, filed October 3, 2024) preliminarily approving the settlement has been made available for download as **Exhibit 8**.

28 U.S.C. § 1715(b)(5): Other Contemporaneous Agreements

- Zachry and Plaintiff have not contemporaneously entered into any other settlements or agreements related to the Class Action or proposed Settlement Agreement.

28 U.S.C. § 1715(b)(6): Dismissals

- No final judgments or notices of dismissal related to the Class Action or proposed Settlement Agreement have been entered in this action.

28 U.S.C. § 1715(b)(7): Class Members

- The names and locations (by state) for each putative Class Member are enclosed herein as **Exhibit 9**. The identities and locations of the putative Class Members are based on Zachry's employment records. The names and locations of the putative Class Members are confidential and were filed under seal in the Bankruptcy Court. Accordingly, Exhibit 9 has been enclosed with this letter in lieu of making it available for public download on www.CAFANotice.com. This document should not be made public.

- The percentage of putative Class Members residing in each state and the estimated proportion of the Settlement Award that those Class Members will receive are found in the chart that has been made available for download as **Exhibit 10**.

28 U.S.C. § 1715(b)(8): Any Written Judicial Opinion Relating to the Materials Described Under Subparagraphs (3) through (6)

- There are no written judicial opinions issued in this action to date relating to the materials described above in connection to 28 U.S.C. §§ 1715(b)(3)-(6).

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If you have any questions about this notice, the Class Action, or the materials available for download at www.CAFANotice.com under the folder entitled ***Lamotte v. Zachry Industrial, Inc***, please contact the undersigned below.

Best regards,

Michael Andolina
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Enclosure

Exhibit B

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October 4, 2024

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Exhibit C

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)
AVIS LAMOTTE, *on behalf of herself and those similarly situated*	)	
Plaintiff	)	
v.	)	Adv. Pro. No. 24-03122 (MI)
ZACHRY INDUSTRIAL, INC.,	)	
Defendants.	)	

SETTLEMENT CLASS NOTICE OF PROPOSED SETTLEMENT AND FINAL FAIRNESS HEARING

TO: CERTAIN FORMER EMPLOYEES OF ZACHRY INDUSTRIAL, INC.

There is currently pending a lawsuit titled *Avis Lamotte v. Zachry Holdings, Inc.*, Adv. Proc. No. 24-03122 (MI) (the "Adversary Proceeding") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Plaintiff, Avis Lamotte ("Plaintiff"), sued Defendant Zachry Industrial, Inc. ("Defendant" or "Zachry") for having terminated her and certain other employees without 60 days' advanced written notice in alleged violation of the federal WARN Act (the "WARN Action").

Plaintiff and Defendant (collectively, the "Parties") have reached a proposed Settlement of the WARN Action (the "Settlement") in which money would be distributed to the Class Members, Ms. Lamotte, as the Class Representative, and Class Counsel (each defined below). The Bankruptcy Court has authorized the sending of this Settlement Class Notice to you as a Class Member (defined below).

YOU ARE NOT BEING SUED. You should review this Settlement Class Notice carefully as you may be entitled to receive money from the Settlement and your rights may be affected by the Settlement. This Settlement Class Notice advises you that Class Members who do not opt out of the Settlement can receive an award consisting of a share of the Settlement Fund, and advises you of the date, time, and place of the hearing to approve the Settlement.

[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' proposed claims and noticing agent at https://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.

DEFINITION OF THE CLASS

The Bankruptcy Court has, for Settlement purposes only, certified a Settlement Class (defined below), appointed Plaintiff as the Class Representative (defined below), and appointed Plaintiff's lawyers, J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP , as Class Counsel ("Class Counsel"). The Bankruptcy Court has also preliminarily approved the Settlement, approved this Settlement Class Notice, and set a date for a final hearing for approval of the Settlement (the "Final Fairness Hearing").

The "Settlement Class" is defined as: Plaintiff and other similarly situated employees of Defendant: who (i) worked at and/or received assignments from the facilities located at 3901 Twin City Hwy, Port Arthur, TX 77642; the Zachry Human Resources/Recruiting office at Port Arthur, Texas; Sabine Pass, Texas; Baytown, Texas; Orange, Texas; and Beaumont, Texas, all of which constitute a single site of employment (the "Golden Pass Project"); (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024; (iii) are affected employees within the meaning of 29 U.S.C. § 2101(a)(5), and (iv) have not filed a timely request to Opt-Out of the Settlement Class.

"Class Members" are defined as a member of the Settlement Class. You have been identified as a Class Member who is eligible to participate in the Settlement.

The "Class Representative" is Avis Lamotte, a former employee who initiated this lawsuit.

BACKGROUND

Between January 1, 2024, and August 8, 2024, Plaintiff and other employees of Zachry who worked at or reported to the Golden Pass Project were laid off by Zachry.

On May 21, 2024, Zachry and certain of its affiliated entities each filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court (the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under Case No. 24- 90377 (MI).

On June 17, 2024, Plaintiff commenced the Adversary Proceeding and filed Plaintiff's Class Action Complaint [Adv. D.I. 1] (the "Complaint") against Zachry. The Complaint asserts that Zachry is liable to Plaintiff and the Class Members for damages they are entitled to receive in accordance with the WARN Act as a result of Zachry's alleged violation of the WARN Act.

On July 22, 2024, Zachry filed an Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint.

Zachry has continued to deny all liability, and no court has made any finding related to liability. The Parties have concluded that it is in their best interests to settle this lawsuit to avoid the risk, expense, and uncertain outcome associated with continued litigation. The proposed Settlement was reached through extensive arm's-length negotiations and a mediation between the Parties.

Pursuant to an order dated October 3, 2024, the Bankruptcy Court (i) preliminarily approved the Settlement Agreement dated September 26, 2024, by and between Plaintiff on her own behalf and on behalf of others Class Members and Defendant (the "Settlement Agreement"); (ii) approved this Settlement Class Notice, and (iii) scheduled the Final Fairness Hearing for final approval of the Settlement.

COUNSEL TO THE PARTIES

Any questions you may have concerning the proposed Settlement should be directed to Class Counsel:

STRANCH, JENNINGS, & GARVEY, PLLC 223 Rosa Parks Ave., Suite 200 Nashville, TN 37203 Telephone: 615-254-8801 Attention: J. Gerard Stranch, IV, Esq., gstranch@stranchlaw.com	OKIN ADAMS BARTLETT CURRY LLP 1113 Vine St., Suite 240 Houston, Texas 77002 Telephone: 713-228-4101 Attention: Matthew S. Okin, Esq., mokin@okinadams.com
STRAUSS BORRELLI, PLLC 613 Williamson St., Suite 201 Madison, WI 53703 Telephone: 872-263-1100 Facsimile: 872-263-1109 Attention: Samuel J. Strauss, Esq., sam@straussborrelli.com	COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, Indiana 46204 Telephone: 317-636-6481 Facsimile: 317-636-2593 Attention: Lynn A. Toops, Esq., ltoops@cohenandmalad.com

Questions concerning the proposed Settlement should **NOT** be directed to counsel for Zachry.

THE PROPOSED SETTLEMENT

The terms of the Settlement are set forth in the Settlement Agreement. The following description of the proposed Settlement is only a summary, and any inconsistency shall be governed by the terms of the Settlement Agreement. You may request the complete text of the Settlement Agreement from Class Counsel. A copy of the Settlement Agreement is also available on the Debtors' claims and notice agent's website: https://www.veritaglobal.net/ZHI.

The terms of the Settlement Agreement are summarized as follows:

a) **Settlement Amount:** In full and final Settlement of the Class Action and Released Claims, the Parties agree that Debtors shall fund the Settlement by making a payment to Kroll Settlement Administration LLC (the "Settlement Administrator") in the total amount of $7,000,000 USD (the "Settlement Amount"), which includes: (i) a Service Payment to the Class Representative (see below), (ii) the Settlement distributions to be made to individual Class Members (each individual payment to an individual Class Member, a "Settlement Award"), (iii) Class Counsel Fees and Expenses (see below), and (iv) all taxes and withholdings Class Members are required to make arising out of, or based on, Settlement payments to the Settlement Class (see below).

b) **Distribution of the Settlement Amount:** The Settlement Administrator and Class Counsel shall be responsible for determining the share of each individual Class Member and the preparation and mailing of the individual checks to each Class Member for his or her share under this Settlement Agreement (including the Service Payment). Individual Settlement Award payments shall be administered to Class Members by the Settlement Administrator. The Settlement Administrator shall cause the individual checks to be mailed to each Class Member as soon as reasonably practicable, but no more than thirty (30) days following the Effective Date.

c) **Estimated Individual Recovery Under Settlement:** Enclosed with this Settlement Class Notice, you will find your individual ***estimated*** recovery under the Settlement. This estimated recovery amount does not include any deductions for applicable taxes and withholdings as required by federal, state, and local law. However, this estimated recovery amount has already deducted Service Payments, Class Counsel Fees, and Administration Costs. Exact recovery amounts remain subject to, among other things, approval of Service Payments and Class Counsel Fees, the number and identity of Opt-Outs, and the number and amount of unclaimed distributions.

d) **Responsibilities of Defendant:** Zachry shall, within five (5) days of the Effective Date (defined below), fund the Settlement Administrator with the Settlement Amount.

e) **Responsibilities of Class Counsel:** Class Counsel shall be responsible for responding to Class Members' questions arising from or related to the Settlement Agreement.

f) **Class Representative Service Payment:** Subject to the Bankruptcy Court's approval, Plaintiff Avis Lamotte, as the Class Representative, shall be entitled to a one-time payment of $2,000 (the "Class Representative Service Payment"), for her services on behalf of the Settlement Class, payable from the Settlement Amount in addition to her share of the Settlement Amount.

g) **Class Counsel's Fees and Expenses:** Subject to the Court's approval, Class Counsel shall receive attorneys' fees and costs in the maximum amount of $2,333,333.34, plus reasonable and actual incurred expenses ("Class Counsel's Fees and Expenses").

h) **Effective Date:** The Settlement Agreement shall only become effective on the date on which the order approving the Settlement Agreement becomes a "final order" (the "Effective Date"). The final Settlement order shall become a final order when (a) the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the Bankruptcy Court's Final Approval Order with no right to pursue further remedies or relief. Upon the Effective Date, the Settlement Agreement shall be effective as to all Class Members.

i) **Release:** Upon the Effective Date, except for any rights arising out of, provided for, or reserved in this Settlement Agreement, the Class Representative and each Class Member, for, and on behalf of themselves and their respective agents, attorneys, heirs, representatives, or assigns (the "Releasing Parties"), will fully and forever release and discharge the Debtors and their affiliates, and the Debtors' estates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, professionals, partners, members, insurers, accountants, attorneys, representatives, and other agents, as well as their respective predecessors, successors, and assigns (the "Released Parties"), of, and from, any, and all, claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees, and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, anticipated, suspected, or disclosed, that the Releasing Parties may have had, now have, or hereafter may have against the Released Parties, which were asserted in the Complaint, Class Proof of Claim on behalf of the Settlement Class, the Proofs of Claim by Class Members, or which materially relate to, or arise from, the violations of the WARN Act alleged in the Class Action (the "Released Claims"). On the Effective Date, all Released Claims are deemed settled, released, withdrawn, and dismissed in their entirety, on the merits, with prejudice. The Releasing Parties expressly waive and release, to the fullest extent that the law permits, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which provides:

> Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims that the creditor or Releasing Party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the Debtor or Released Party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

j) **Taxation of Each Class Member's Share of the Settlement**: The Settlement Administrator shall pay and report each individual Settlement Award as wages. The Settlement Administrator will report each individual Settlement Award to the appropriate taxing authorities on a Form W-2 issued to the Class Member with their individual taxpayer identification number. Each individual Settlement Award shall be subject to deductions for applicable taxes and withholdings as required by federal, state, and local law. Neither the Debtors, nor Class Counsel, will calculate, withhold, or pay any taxes from the distributions paid to Class Members under this Settlement Agreement. Each Class Member shall be responsible for calculating and paying all applicable federal, state, and local income taxes, as well as statutory taxes including, without limitation, Federal Insurance Contribution Act ("FICA") and federal and state unemployment insurance amounts ("UI"), associated with the individual fund distribution that the Class Member has received. Neither shall the Debtors nor Class Counsel be responsible for fulfilling any requisite reporting requirements. Neither the Debtors nor Class Counsel believe that any FICA or UI tax liabilities exist with respect to distributions made in respect of this Settlement Agreement and shall provide a statement with each payment expressing same. Plaintiff and the Class Members acknowledge that neither the Released Parties nor Defendant's counsel has provided or will provide any tax advice. Moreover, Plaintiff and the Class Members acknowledge they are solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may, at any time, be found to be due upon or as a result of any amount that is paid to them under this Settlement Agreement. Plaintiff and the Class Members agree to indemnify, defend, and hold the Released Parties from any claim or liability, or for any taxes and related penalties and/or interest, asserted against the Released Parties relating to the manner in which payments under this Settlement Agreement are allocated and paid.

k) **Unclaimed Funds:** Any checks for a Class Member's Settlement Award which are not deposited, endorsed, or negotiated within 120 calendar days of their date of issuance shall be deemed Unclaimed Funds (the "Unclaimed Funds") on the 121st day following the date of such issuance and treated as described below. The same is true of funds for those who decide to Opt-Out of the Settlement Class.

The proposed Settlement will be presented to the Bankruptcy Court for final approval at the Final Fairness Hearing to be held on **January 9, 2025**, **at 1:30 p.m. (prevailing Central Time) at 515 Rusk, Courtroom 404, Houston, TX 77002.**

The Bankruptcy Court will, at that time, decide whether the Settlement is fair, reasonable, and adequate to the Class Members and whether the request of Class Counsel for attorneys' fees and expenses should be approved. As explained below, you have the right to object to the proposed Settlement including the Class Counsel's request for attorneys' fees and expenses and to appear in person at the Final Fairness Hearing to be heard, or to engage counsel to do so on your behalf.

WHAT TO DO IF YOU WANT TO RECEIVE A SHARE OF THE SETTLEMENT

To receive your share of the Settlement, there is nothing you need to do. Your check will be mailed to you following the final approval of the Settlement by the Bankruptcy Court. If the name or address information provided on this form is incorrect, please update your information with the Settlement Administrator by contacting:

Lamotte v. Zachry Industrial
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391
T: **1-833-739-0854**
W: **www.warnactsettlement.com**

WHAT HAPPENS IF YOU DO NOTHING IN RESPONSE TO THIS SETTLEMENT CLASS NOTICE

If you do nothing in response to this Settlement Class Notice, you will receive your share of the Settlement and you will be bound by the terms of the Settlement, including the release, described above. Therefore, you will not have the right to pursue any claims covered by the release against Zachry or the Released Parties and will be forever barred from doing so.

WHAT TO DO IF YOU WANT TO EXCLUDE YOURSELF FROM THE SETTLEMENT

You may preserve your right to pursue any claims you may have separately from the Adversary Case by choosing to "Opt Out" of the Settlement. If you choose not to participate in the Settlement and do not want to receive your Settlement Award, you must fill out the "Opt-Out" Form ("Opt-Out Form") and sign and mail it as directed on the form.

The Opt-Out Form must be postmarked no later than **December 13, 2024**. All Opt-Out Forms postmarked after that date will be disregarded, and any person who sends a late Opt-Out Form will be bound by the terms of the Settlement and not be able to pursue any claims separately from this lawsuit.

If you choose to Opt-Out, you will not receive any money from the Settlement, and you will not have any right to object to the Settlement.

If you choose to Opt-Out, unless you timely filed by September 16, 2024, an individual Proof of Claim in the Chapter 11 Cases asserting claims arising from the allegations set forth in the Complaint, you will be barred from any recovery in connection with the allegations set forth in the Complaint.

If you choose not to Opt-Out, your individual Proof of Claim will be disallowed, and your individual claims arising from the allegations set forth in the Complaint will be forever waived and released, with your sole entitlement to relief being the Settlement.

OBJECTIONS

If you believe the proposed Settlement is unfair or you otherwise wish to object to the proposed Settlement, including Class Counsel's Fees and Expenses, you must do so either in person or through counsel at the Final Fairness Hearing. You may object by mailing a written statement bearing the caption of this case that appears on the first page of this Settlement Class Notice setting forth the reason(s) for your objection to the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk, Houston, TX 77902.

Objections must be **RECEIVED** by the Bankruptcy Court no later than **December 13, 2024,** and must include the case name and number, your name, address, and telephone number together with the basis for your objection.

You also have the right, but are not required, to retain counsel to appear for you, to object on your behalf and be heard at the Final Fairness Hearing at which the Bankruptcy Court will consider whether to finally approve the Settlement. If you do, then you will be responsible for your personal attorney's fees and costs. You or your counsel may also appear at the Final Fairness Hearing when the Bankruptcy Court considers your objection and final approval of the Settlement. If your objection is overruled or rejected by the Court, then you will be bound by the Settlement just as if you had not objected.

If you elect to engage counsel, your counsel must file a notice of appearance with the Bankruptcy Court no later than **December 13, 2024**, and at that time also file a statement setting forth any objections on your behalf.

OTHER INFORMATION

Providing you with this Settlement Class Notice does not mean that the Bankruptcy Court has any opinion as to the claims or defenses of the Parties.

Requests for more information should be made by phone, email, or first-class mail to Class Counsel as identified above.

If you have any questions, please do not write or call the Bankruptcy Court or counsel for Zachry.

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OPT-OUT FORM

Lamotte v. Zachry Industrial, Inc.
United States Bankruptcy Court for the Southern District of Texas Adversary Proceeding No. 24-03122 (MI)

I, the undersigned, have read the foregoing Settlement Class Notice and understand its contents. I, the undersigned, **do not** want to be part of the WARN Action or receive any benefits from the WARN Action and do not wish to be bound by the outcome of the WARN Action.

_____ Signature

_____ Address

_____ Name (printed or type)

(___ ___ ___) ___ ___ ___ - ___ ___ ___ ___ Telephone:

Date ___ ___/___ ___/___ ___ ___ ___

If you do NOT wish to be included, send this completed form to:

Lamotte v. Zachry Industrial
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391
T: **1-833-739-0854**
W: **www.warnactsettlement.com**

Exhibit D

***Avis Lamotte v. Zachry Industrial, Inc.*,**
Adversary No. 4:24-AP-03122

ESTIMATED INDVIDUAL RECOVERY AMOUNT MEMORANDUM

RECIPIENT CLASS MEMBER: <<FIRST NAME>> <<LAST NAME>>
ADDRESS: <<ADDRESS 1>> <<ADDRESS 2>> <<CITY>> <<STATE>> <<ZIP>>
DATE: <<DATE>>

READ CAREFULLY: Below you will find your ***estimated*** individual recovery amount. This estimated recovery amount does not include any deductions for applicable taxes and withholdings as required by federal, state, and local law. However, this estimated individual recovery amount has already deducted Service Payments, Class Counsel Fees, and Administration Costs as those terms are defined in the Settlement Class Notice. Exact recovery amounts remain subject to, among other things, approval of Service Payments and Class Counsel Fees, the number and identity of Opt-Outs, and the number and amount of unclaimed distributions.

Lamotte v. Zachry Industrial
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY, 10150-5391
Telephone: **1-833-739-0854**
Website: **www.warnactsettlement.com**

Your ***estimated*** individual recovery amount under the Settlement is <<**ESTIMATED INDIVIUDAL RECOVERY AMOUNT**>>.

It is **your responsibility** to keep a current address on file with the Settlement Administrator. Please make sure to notify the Settlement Administrator of any change of address. Please provide your Class Member ID, both your previous and current address, to update your record on file and mail it to the address above.

Your estimated individual recovery noted above is subject to the terms of the Settlement Class Notice provided with this Memorandum, as well as the Settlement Agreement. If you have not received a Settlement Class Notice, please promptly contact Kroll Settlement Administration via the contact information provided above.