UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

ZACHRY HOLDINGS, INC., et al., Debtors.	Case No. 24-90377-mi Chapter 11
FLNG LIQUEFACTION, LLC, et al., Plaintiffs, v. CB&I INC, et al., Defendants.	Adv. Pro. No. 24-03195-mi 515 Rusk Street Houston, Texas 77002 Monday, December 9, 2024 1:29 p.m.

TRANSCRIPT OF ZACHRY INDUSTRIAL, INC.'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFFS' CLAIM FOR CONSEQUENTIAL DAMAGES
[ADV. PRO. NO. 24-03195, DOCKET NO. 39]
BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES DISTRICT COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commence 1:29 p.m.)

THE COURT: All right. Good afternoon. We're here on Case 24-90377, Zachry Holdings. If you have -- wish to appear in that case, you'll need to file an electronic notice of appearance. If you haven't done so yet, please do so shortly, by the -- after the hearing concludes.

If you wish to speak at today's hearing and you're on the phone, please press "five star." If you're in court, please make yourself known here in court.

MR. THOMAS: Good afternoon, Your Honor. John Thomas from Hicks Thomas LLP, special litigation counsel for the debtor.

THE COURT: Thank you, Mr. Thomas.

MR. TAYLOR: Your Honor, Chris Taylor from King & Spalding on behalf of the FLNG plaintiffs.

THE COURT: Thank you, Mr. Taylor.

Mr. Jones? Mr. Jones?

MR. JONES: Good afternoon, Your Honor. Charlie Jones, law firm of Haynes and Boone, on behalf of Chiyoda International Corporation. Thank you.

THE COURT: Thank you. Have you all discussed how you all want to proceed? Mr. Taylor and Mr. Thomas?

MR. THOMAS: Your Honor, we haven't specifically discussed that. The only reason we're here today is for the motion to dismiss. I assumed that I would proceed with our

motion followed by Mr. Taylor's presentation.

THE COURT: Mr. Taylor?

MR. TAYLOR: I think that would make sense.

THE COURT: Okay, thank you.

Mr. Thomas?

MR. THOMAS: Yes, Your Honor. As the Court's aware, we're here on this adversary to review the sole issue of whether or not the first amended complaint states the cause of action for gross negligence under Texas law. I have a brief PowerPoint. I'd like to guide our discussion. Our presenter is Zachry litigation support.

THE COURT: All right. I've activated. And Mr. Presenter? Give me just a second to -- all right.

MR. THOMAS: There we go, Your Honor.

THE COURT: Hold on one second. 214-236-9108, who do we have on the phone?

MR. STRUBECK: Good morning, Your Honor. It's Louis Strubeck, O'Melveny & Myers, on behalf of Golden Pass. I don't think I'm going to have anything to say, but apologies for raising my hand. I'll be quiet, just watch.

THE COURT: You won't, but that's okay.

Go ahead, please, Mr. Thomas.

MR. STRUBECK: Thank you.

MR. THOMAS: Your Honor, where I'd like to start out is what this case is now not about. And I'd like to take you

back to the hearing that we had last time, in the transcript, where the Court ask whether or not FLNG alleged this was an installation defect or a defect within the motor itself. Counsel said it's both.

Further in that hearing, in talking about the conscious indifference in the complaint, he said we don't allege or isolate one of those two defects in workmanship and quality assurance. He says, what they allege is that all three motors suffered from the same repeated multiple defects in workmanship, installation, and quality assurance by the contractors.

We allege that they failed to use locking washers, and lug nuts, as a result of these two-foot-long bolts, fell out of the motor and it ended up in the lining, further damaging the motors. We allege they disregarded manufacturer instructions.

Also, we allege that they inadequately torqued the bolts as part of the installation of the motors.

Now, after this hearing, I consulted with Mr. Taylor, and we conferred, and he agreed that this isn't a question or a case about installation. I advised him that I thought we ought to correct the record, and I believe now that the record's corrected with the filing of the first amended complaint.

And in Paragraph 64 of that first amended complaint, FLNG confirms that the motors were fabricated off-site by GE

and delivered to the project site as intact units. The motor casings were not scheduled to be opened for the motors to be serviced until approximately nine years after installation. So the question about the bolts inside this unit is all on GE, not a question of installation.

We have the amended complaint, Your Honor, and at Paragraphs 54 to 67 is the entirety of the allegations related to gross negligence. It's conveniently titled "Gross Negligence Allegations Related to Motor Defect Claims". I have a redline for the Court, if it would like one at the conclusion, but I don't necessarily think that it's necessary.

Let me take the Court just to a brief image here. On the right-hand side of the screen is a picture from the complaint itself showing the inside of the motor housing. On the left is a graphic depiction. Those little yellow square connectors are what's depicted on the right-hand side where the failures allegedly occurred. All of this is inside the contained unit. The contractors had nothing to do with these bolts, the torquing of the bolts, or the like.

THE COURT: Well, the complaint alleges that your client had a duty to supervise GE's work in manufacturing the motor and that it did not do so, I believe is the way I would characterize what they have alleged.

MR. THOMAS: That is a fair characterization, but let me focus in on the GE conduct. They allege that GE acted with

gross indifference with a bad design, use of defective nut-and-bolt assemblies, lack of the proper torquing, improper use of specified materials.

So the affirmative conduct here is purely GE. The allegation with regard to our client and the contractors here is we failed to detect what they did wrong.

THE COURT: I would go one step further in terms of what the allegation is, just -- and you're welcome to correct me on this. I think it includes that you had a duty to detect. You didn't even try to detect is what they're saying. You didn't supervise it at all.

MR. THOMAS: Your Honor --

THE COURT: Is that fair or is that an unfair characterization of what they're telling me?

MR. THOMAS: I think, Your Honor, it doesn't matter for purposes of gross negligence. And let me focus the Court in on perhaps the most important case for the Court's decision, the Diamond Shamrock Refining v. Hall, authored by Justice Hecht who, by the way, just heard his final oral argument after 43 years on the Supreme Court last week. And what Justice Hecht quotes here is, "What separates ordinary negligence from gross negligence is the defendants' state of mind; in other words, the plaintiff must show that the defendant knew about the peril, but its acts or omissions demonstrate that he did not care."

So let's focus in on the facts of Diamond Shamrock for a second, Your Honor. It was an explosion that killed somebody at a refinery. The allegation was prior incidents and explosions should have put Diamond Shamrock on notice that there was a potential for this to happen. And the court concluded that when viewing the record in light most favorable to the plaintiff, there's no clear and convincing evidence that Diamond Shamrock knew of the risk of the compressor explosion that resulted in Hall's death and yet did not care.

So what is completely devoid of the first amended complaint is any allegation that we were aware of the defective bolts and proceeded and did not care. That's the missing element. Whether or not we inspected or failed to inspect, that's ordinary negligence. They must allege that we had knowledge of the defect to satisfy the standards of conscious indifference and subjective awareness under the Civil Practice and Remedies Code, Your Honor, because as we pointed out in the brief, there's an objective and a subjective requirement, the subjective being that the actor had actual subjective awareness of the risk involved but nevertheless proceeds with conscious indifference. And as case law talks about it, it's -- we have -- you have to have an allegation of actual knowledge of the defect.

THE COURT: Yeah, but I -- and I'm not sure I buy their argument, but I want to make sure we're confronting their

argument. I think their argument is this was one of the largest motors ever made in the world, or maybe the largest motor at the time ever made in the world. And it's not that you tried to supervise it and failed. It's that you didn't try to supervise the manufacture of the motor at all.

I will tell you, I'm not sure that failing to supervise the manufacture of the motor at all is gross negligence. I'm not suggesting one way or the other. I want to hear Mr. Taylor's argument, if I'm reading it right. But I want to confront that question, which is different than the one you're asking me to confront: not did they know that the bolts weren't torqued, but did they ignore any responsibility that they might have had to have supervised what he was doing.

And again, I don't know if that's gross negligence, but I want to focus on his argument and not on a weakened version of his argument, I think.

MR. THOMAS: Well, let's focus on that and, of course, put it in the context, Your Honor, that this was their decision to use GE.

THE COURT: Right.

MR. THOMAS: And let's put an analogy in here to what was going on in Diamond Shamrock. The allegation was this is a dangerous place. You've had explosions before. You should've been aware of this, and you failed to detect the problem.

Similarly here, Your Honor, big motors? Yes.

Allegation that you failed to go to the shop and inspect and do what they -- find out the problem before they were installed? If -- it's not gross negligence. It may be negligence, but it's not gross negligence. It doesn't rise to the issue of gross negligence.

THE COURT: I'm going to go one step further than you. I'm not even sure there was a duty to do it at all, and I'm going to talk to Mr. Taylor about what that duty was.

MR. THOMAS: Well --

THE COURT: If there is a duty and you don't attempt to undertake that duty, are you telling me that can't be gross negligence?

MR. THOMAS: That cannot, Your Honor. Absolutely not. It's longstanding Texas law with regard to subcontractors and people. Do you have a duty to supervise and were you aware of the risk. You have to have both for gross negligence.

We've cited several cases in that regard, Your Honor. You take a look at the -- in the brief, it's Lee Lewis, LLC. There, there was a duty to supervise the subcontractor, and there, the question was whether or not there was sufficient lifelines for high construction at a ten-story level. The contractor is -- the contractor was aware that the subcontractor was using substandard equipment and was aware that their employees had the proper equipment. So that, coupled with the duty, gave rise to gross negligence.

The awareness is what is missing here, Your Honor, and that is fatal to any claim of gross negligence under Texas law.

Now, I would expect that they're going to argue that the contract puts that burden on, but of course, as we've cited, Your Honor, the gross negligence in the contract requires involvement of supervisory management personnel. There's no allegation of that, either.

So it's just -- it begins and ends with the allegations regarding the subjective awareness and the lack thereof. There simply isn't any in the first amended complaint on which to base an allegation of gross negligence. It does not state a claim.

THE COURT: All right. I hear you.

MR. THOMAS: And I think that they are advocating for a standard that is not recognized by Texas law, and that is that you can be liable for gross negligence in Texas for failure to identify somebody else's negligence, and that is simply not the law.

THE COURT: All right, thank you.

MR. THOMAS: So --

THE COURT: I'm sorry.

MR. THOMAS: -- and based on that, Your Honor, we ask the Court -- it's really -- I went to the cut-through argument here. The other arguments are in the brief, for example the

objective piece. We say what happened here, Your Honor, was we had a bolt that fell inside the motor and it tripped the motor and the motor shut down and wouldn't turn back on. It's not the type of magnitude of potential harm that is required for the objective piece under the Civil Practices and Remedies Code.

So there's multiple bases here, but Your Honor, the most simple one to dismiss this claim is based on the absence of any subjective awareness. It's fatal. And we ask the Court to dismiss any claim of gross negligence and the corresponding damages for -- extra-contractual damages for consequential and lost profits.

THE COURT: All right. Thank you.

Mr. Taylor?

MR. TAYLOR: Yes, Your Honor, we have a PowerPoint prepared, but for some reason, our firm's firewall won't let us in to GoTo Meeting. Is there an option to plug in directly?

THE COURT: Sure.

MR. TAYLOR: Okay. This cord here, will that work?

THE COURT: Yeah. The people on the phone won't be able to see this, but I can see it in the courtroom. There's an HDMI plug that you'll need which might be -- Mr. Jackson's getting it for you.

(Pause)

THE COURT: All right. You should be connected up at

this point.

It's not picking up the HDMI?

MR. TAYLOR: I don't think so, Your Honor.

Is there a USB port option? Or no?

THE COURT: I don't think it'll pick up the USB. But let's try a different HDMI cable. There's one up here, as well, I think.

Is it on a flash drive? Or can you --

MR. TAYLOR: No, it's just on hard --

THE COURT: Can you email it to me?

MR. TAYLOR: Certainly.

THE COURT: Do you mind if I show it for you?

MR. TAYLOR: No, that's great. I appreciate it.

THE COURT: But you all can't get to GoTo Meeting through the firewall?

MR. TAYLOR: No, Your Honor, it's --

THE COURT: Okay.

MR. TAYLOR: Spoke with our technical support earlier, and they were -- had to try out some --

THE COURT: No problem. I'm happy to just put it up on there for you.

MR. JONES: Your Honor, Charlie Jones of Haynes and Boone. I wanted to make a few remarks after Mr. Thomas. I'm happy to wait until after the plaintiffs present their case, too.

THE COURT: Thank you.

Just tell me when you're ready for my email address.

MR. TAYLOR: Yes, I'm ready.

THE COURT: It's Marvin_Isgur@txs.uscourts -- that's plural -- .gov.

MR. TAYLOR: All right. It should be on the way. I appreciate the Court's indulgence.

THE COURT: All right. It's got to go through our security system. It'll take it a second. One of the great lessons of COVID was, to me, be patient when you have a technology problem. So don't worry about this. We'll work through it.

MR. TAYLOR: Thank you. I appreciate it.

THE COURT: We'll get there. There's about eight different ways to cross this, and we will not deprive you of the PowerPoint.

MR. TAYLOR: Thank you. I've got hard copies, but they're just not as pretty.

THE COURT: Nah. You should be able to make your presentation the way you planned to make it.

(Pause)

THE COURT: The other thing you might want to do is make sure it hasn't bounced back from an incorrect email address or something.

MR. TAYLOR: Okay. You should have it by now.

Apologize for that.

THE COURT: Oh, did it bounce back?

MR. TAYLOR: Yeah, it did.

THE COURT: Okay.

(Pause)

THE COURT: It's here.

(Pause)

THE COURT: And it's up on the web, as well. You're in control.

MR. TAYLOR: Thank you very much. I appreciate it, Your Honor, and again, apologies for the technical difficulties.

THE COURT: No problem.

MR. TAYLOR: Certainly didn't mean to put you to work in this hearing.

But I'd like to start essentially on the next line with the standard. Obviously, the Court's very aware of the dismissal standard, but the Court must accept all factual allegations as true, view them in the light most favorable to the plaintiffs, and resolve all these little inferences in favor of the plaintiffs.

And the reason I started here is because while Zachry asked the Court to dismiss the claim for consequential damages at the pleading stage, they haven't cited a single reason. So all but one of the cases they cited were after a pre-trial when

it was put up on appeal when all the evidence was in. And the only other case that they cite was after summary judgment.

So while they're asking the Court to dismiss at the pleading stage alone, they don't have a single court -- single case that supports that. In fact, all the cases they cite didn't make it past the pleading stage.

On the next slide, I want to focus on the objective risk factor of gross negligence. Obviously, the risk, when viewed objectively, must pose an extreme risk of danger -- extreme degree of risk for potential harm to others. Now, all of the cases that they've cited in their supplemental pleading are death or injury cases. But that's not at issue here, and that's not the standard.

The standard, as you can see from the language of the statute itself is it just requires an extreme degree of risk. And down in B, in the subjective prong, it not only includes safety and welfare but also of rights. And the cases bear this out. But the preliminary one, Your Honor, is Zachry v. The Houston Port of Authority (sic) which, we mentioned in a previous hearing there was -- there were allegation -- there was a provision in the contract that precluded delayed damages, and Zachry successfully advocated for a Supreme Court authority that allowed them to assert a claim for delayed damages, consequential damages, and the instance of gross negligence.

It's actually remarkable, Your Honor, that we've had

three rounds of briefing and two hearings, and Zachry hasn't even mentioned, much less attempted to distinguish the Zachry case. In that case, there weren't -- it was delayed damages. We're not talking about extreme risk of harm of personal injuries.

So we believe that the standard is clear that, on the objective prong, you look at the risk. Is it an extreme risk? And we believe -- on the next slide -- that we've alleged an extreme risk. As Your Honor pointed out, we've alleged that these were -- that each of the three trains had 30 to, I believe, 70 megawatt motors. They were some of the largest motors ever manufactured at the time. We've alleged damages, actual damage, repair costs of $50 million and then consequential damages of about $400 million.

So we believe that we've alleged the objective risk of potential harm or damages or the motor defect that actually occurred and resulted in this lawsuit.

On the next slide, subjective awareness, I think Mr. Thomas said that there was awareness of what was missing. Your Honor, under the second prong, all that's required is the subjective awareness of the risk. It doesn't have to necessarily be subjective awareness of the ultimate outcome but that there is a risk.

And if you go to the next slide, it focuses on our allegations of subjective awareness. These aren't allegations

that are made on information or belief. They're not on speculation. These are quotes from defendants entering evaluation of the motors at -- during the project, before the motors were even constructed. And they identified that these -- again, these motors would be among the largest ever built. And they subjectively acknowledged that there was a possibility that problems would occur during the manufacturing or testing, which is exactly what happened. Problems occurred during the manufacturing of these motors. And they go on to say that these present serious power system challenges, again, another issue that arose when the motors shorted and were no longer able to operate.

Again, we've got additional -- on the next slide, we've got more quotes from this entering evaluation. They acknowledged at the time, before the motors were even manufactured, that this was a job of complexity, first risk -- and it offered first of its kind challenges. It must be executed carefully and with more technical due diligence than is typical of a project.

So they knew before going in that this was an extremely risky project. They were going to have to have even more due diligence than they otherwise would have.

And in the next paragraph, they acknowledge that there were serious considerations that must be carefully managed in an aggressive and disciplined way and it had to be

supported by the joint ventures of the management.

So we believe that the allegations in the amended complaint unequivocally allege that they were subjectively aware of the risk of potential problems in the manufacture of these one-of-a-kind largest-ever motors before they were ever manufactured.

They have also alleged in their supplemental pleading on the next slide that -- they allege that we have failed to tie the defendant's alleged omissions to the objective and subjective prongs of gross negligence. I couldn't disagree --

THE COURT: So as I read your complaint and as I listened to him, was -- I understand there was a duty to manage, for example, the installation, to be sure. I think one of the examples was coordinating the center point. There's going to be huge amount of power here. I don't think that's where you're alleging the problem occurred.

I think you're alleging the problem occurred with GE's manufacturing and their failure to supervise the manufacture.

I'm trying to find in the contract where the had a duty to supervise the manufacturing. I didn't really see that. But I don't know that when I look at the language that your quoting that that includes -- I'm trying to figure out what should they have done. If these are unique motors which have never existed before, and they sent an employee in to watch

them build them, how do you know when he was looking at them? What were they supposed to do? Because there has to be an alternative that they should have followed before they can be grossly negligent.

So under what provision of the contract, and what is it that you wanted them to have done? I mean, they did hire a world-class or the world-class manufacturer of the motors that supposedly would've done this kind of thing, right? So -- but apparently they didn't. But now, what are the -- what were they supposed to have done about that risk, and where under the contract were they supposed to do that?

MR. TAYLOR: Sure, Your Honor. On Slide 17, Section 2.3 --

THE COURT: If you want to wait, we can wait and get --

MR. TAYLOR: No, I'm happy to -- I mean, this is obviously an issue that you're interested in, so I --

THE COURT: Okay.

MR. TAYLOR: -- want to address it as we're -- contemporaneously.

So Section 2.3 of the EPC contract provides that the contractor shall be fully responsible to the owner for the acts or omissions of the subcontractors as if the contractor -- essentially, as if they were their own employees. So their --

THE COURT: Yeah, so if somebody else commits gross

negligence, they may be liable for the gross negligence, but that doesn't mean they committed gross negligence. And my question is, what did you want them to do?

What were they supposed to do? This had never been built before. You couldn't go hire somebody to watch what GE was doing to be sure they did it like they did it on the last project. What were they supposed to do?

MR. TAYLOR: Two slides ahead are screenshots of --

THE COURT: Yeah.

MR. TAYLOR: -- what we believe are some of the contract requirements on Slide 19. One more. One more ahead, Your Honor. Thank you.

So 3.3, "Contractor shall perform or cause to be performed all design, engineering work in accordance with the agreement." So they're on the hook for design and engineering. They're trying to wash their hands and say we hired GE; it's GE's responsibility.

We believe that under the contract, they were required to ensure that all design and engineering, which includes the design and engineering of these motors, were performed in accordance with the contract.

And then below that, in Section 12.1(b), they were obligated to -- in fact, they warranted that all work would be in accordance with the requirements of this agreement, including generally accepted commercial practices and free from

designs -- defects in design, material, and workmanship. So they were -- they're on the hook for defects in design, materials, or workmanship, we believe.

And as far as what we believe they should have -- what they should have done and didn't do, what they failed to do which results in gross negligence is back on Slide 9.

So the defect here -- one of the defects here was there weren't locking nuts on both sides of the bolt assembly. There should've been locking nuts on both sides of the assembly. And what we've alleged here, that the manufacturer recommended that these locking nuts be on both sides of the bolt assembly, they should've reviewed -- we allege here that they should've reviewed the design to identify that defect.

THE COURT: How? What -- who should they have hired? Who would've known that? How could it be figured out such that this is gross negligence?

MR. TAYLOR: You see a bolt, and it's got to have a lock on -- locking nut on both sides to make sure it stays in place. They could've done it in-house.

THE COURT: I know this is a simple question because of maybe my simplicity in the area. How are they going to know, by looking at the fact that there was a bolt, that it was supposed to have a Nord-Lock washer on it?

MR. TAYLOR: Because these are detailed designs. They look at the design, and you see a locking nut on one side

and not a locking nut on the other side. That should -- we believe and we've alleged, that that should have clued them in that they -- that there was -- by there only being the locking nut on one side instead of both sides --

THE COURT: So tell me, what -- literally, what should they have done? I mean, you're telling me if they -- I understand you're telling me if they had realized that there should've been a locking nut on both sides, they should've done something about it.

Did you want them to hire someone to go watch what was being done? Did you want them -- or did they have a right to go watch GE manufacture? Did you want them to look at how the internals of the motor were constructed and revisit that? What did you want them to do?

MR. TAYLOR: Because they're responsible for all the work of the subcontractors, we believe that they should -- and we allege this in this slide and the following slides -- that they should've reviewed the design before they were manufactured and identified it was missing a locking nut on one side.

THE COURT: So this isn't the design of how it was going to fit into the project. This is -- you think they had to review the design of the internal of the motor?

MR. TAYLOR: Yes, Your Honor. And in addition to that, the following slides --

THE COURT: How were they to review the design of it?

MR. TAYLOR: They get a copy of the design, they look at it, they see, oh, there's a lock on a lock --

THE COURT: You say "they" would look at it. I mean, if I looked at it, I wouldn't know, right?

MR. TAYLOR: Right, but we hired --

THE COURT: Who's supposed to look at it that it -- for a motor that's never been built before?

MR. TAYLOR: It hadn't been built to this size, but you know that when you've got motors and you need bolts -- two foot-long bolts to stay in place, you've got to have locking nuts on both sides. I mean, they could have -- could and should have looked at and reviewed the design, see that it's missing a locking nut on one side of the bolt assembly, and realize that that's a design defect and that needs to be corrected before the motors are even manufactured. That's what we've alleged.

THE COURT: Yeah, I'm just -- who should have done that review? Literally.

MR. TAYLOR: One of the defendants or their -- one of their employees.

THE COURT: You don't mean the chairman of the board. Who is going to do --

MR. TAYLOR: Probably --

THE COURT: Who's going to figure this out? Are they

going to hire a subcontractor to do it?

MR. TAYLOR: They could have done that.

THE COURT: Are they going to do it themselves?

MR. TAYLOR: They could have done any of that. I mean, we hired --

THE COURT: Well, they hired GE to do it.

MR. TAYLOR: We hired who we thought was the preeminent general contractor for these types of --

THE COURT: And they hired GE.

MR. TAYLOR: Right.

THE COURT: Right? And presumably, they told GE, build the motor right.

MR. TAYLOR: Right, and they should have been involved in that process. They were responsible for quality assurance, quality controls. We've alleged they should have performed shop inspections during the (indiscernible) and during the manufacture of the motors, too.

THE COURT: Is there anything in the contract that says that they're to look at the internals of the motor as part of their review? It's different to say that they're liable if there's a problem. But we're dealing with gross negligence here. What in the contract imposed on them a duty to look at the internals of this motor, however any parts -- there are a million parts to the motor, right, if you think of every washer and nut, which is what we're talking about. They really had

the duty to do that? And where?

MR. TAYLOR: Yeah, we believe that they did because they were responsible for all the work of the subcontractors. You can't outsource the --

THE COURT: Well, the subcontractor was to give them a motor, right?

MR. TAYLOR: Right.

THE COURT: They gave them a motor. You're telling me they had to look at the internals of every piece they bought at this power plant?

MR. TAYLOR: If you know that this is one of the most important parts of these expansion trains, if you know that there are three of them that operate each of the trains, and without them, they cannot operate --

THE COURT: Right.

MR. TAYLOR: -- then yes, I believe that they -- we've alleged that they should have examined the design of the motors, particularly how it was going to be connected to the project itself and identify the --

THE COURT: But this isn't part of how it's connected to the project itself, right?

MR. TAYLOR: This is --

THE COURT: This is internal to the motor.

MR. TAYLOR: It's how the motor is attached to the housing of the motor. So again, it's the bolt -- I don't have

a picture on this.

THE COURT: Yeah, I probably do want -- this is something I need to understand because I think that Mr. Thomas is telling me they were not dealing with the installation, so this isn't attachment to the site. This is the unitary motor that we're looking at.

And I understand how if it's attaching to another piece that they built, that supervision, to me, would be different than looking at the internals, the motor, looking at the filament that might go into a lightbulb. Right?

I'm trying to understand -- can you take me to the contract and show me where they had a duty to look at the internals of the equipment --

MR. TAYLOR: There's --

THE COURT: -- as opposed to being liable for it. Where do they have a duty to do that?

MR. TAYLOR: It's not spelled out in that detail, that level of detail. But we believe, as alleged in the amended complaint, that because they had an obligation -- they had an obligation for -- to be responsible for all design and engineering. You know? If that doesn't include the engineering of the most -- to the most important component pieces of equipment of the entire expansion trains, then I don't know what it does.

THE COURT: So I want to literally open the contract

and have you take me there. And I'm going to -- this is sealed. What do I do about that? I can shut off the view to the outside world, but does this need to remain sealed?

MR. TAYLOR: I don't think it does, Your Honor.

THE COURT: You don't think it needs to remain sealed?

MR. TAYLOR: No, I think there may be copies of the contract elsewhere in the record. The contract itself is not required to be confidential. And we've quoted a lot of it.

THE COURT: So you're okay if I just put the contract up?

MR. TAYLOR: So yeah -- yeah, no problem.

THE COURT: Okay, let me put it up. It's opening right now.

It's big.

MR. TAYLOR: Um-hum.

THE COURT: I think it's 150 pages. It's taking it a minute to open.

(Pause)

THE COURT: Here's the contract, I think. You can confirm this, but --

MR. TAYLOR: Yes.

THE COURT: Okay.

MR. TAYLOR: And this is for the train free (phonetic), but for all intents and purposes, all the pertinent

provisions are on there. And I apologize. I don't have page numbers, but I do have section numbers.

THE COURT: That'd be great.

MR. TAYLOR: So Section 3.1(a).

THE COURT: The scope of work?

MR. TAYLOR: Yes.

(Pause)

THE COURT: I thought it would be faster, but I guess I'm slower.

MR. TAYLOR: It should be on PDF Page 40, I believe.

THE COURT: I didn't hear you.

MR. TAYLOR: PDF Page 40.

THE COURT: Great.

(Pause)

THE COURT: I think I'm just going to -- I told it to scan, but I'm going to have to wait for it to finish scanning before it's going to work. Sorry.

(Pause)

MR. TAYLOR: No problem.

THE COURT: Scope of work.

MR. TAYLOR: Yes, Your Honor. So under here, 3.1(a), so that first line says, "Work shall be performed on a turnkey basis. It shall include all engineering, procurement, construction," et cetera. And then skipping down, "which includes" -- fifth line down -- "workmanship, inspection,

manufacture, fabrication, installation". So in broad terms, they're responsible on a turnkey basis to do everything on the project.

You asked specifically about inspections and review. If you go to 3.2(b), which should be on the next page.

THE COURT: So this is the specific stuff?

MR. TAYLOR: Correct.

THE COURT: They're supposed to procure the equipment.

MR. TAYLOR: Correct. And on the next --

THE COURT: Which they did.

MR. TAYLOR: Correct. And on the next --

THE COURT: But they didn't inspect the equipment during manufacture?

MR. TAYLOR: Right. And if they're responsible for making sure that equipment, it works as required in the agreement, then we believe that under Section 3.2(b), that they're required, as it says here, "instrumentation, field design, inspection, and quality control services required to ensure that the work is performed in accordance with the contract."

THE COURT: I did not look at this, but did the GE contract authorize them to do that?

MR. TAYLOR: It did. They're the ones that entered into the contract with GE.

THE COURT: Right.

MR. TAYLOR: I believe it did. If it didn't, then that was certainly their failing. They're responsible for the work --

THE COURT: Well, but they say you picked GE, so I'm not sure they had control over the contract once you picked who they had to contract with, but --

MR. TAYLOR: Well, I can address that in a minute, Your Honor, but --

THE COURT: Okay, and I've not looked at that. It may very well have it, though.

MR. TAYLOR: So under 2.3, which should be on PDF Page 32 --

THE COURT: Page 32?

MR. TAYLOR: Yes.

THE COURT: Okay.

MR. TAYLOR: Oh, I apologize. I -- we need to go back to PDF Page 41, back in the section we were just a minute ago, briefly.

THE COURT: Okay.

MR. TAYLOR: Okay. Then we go to the next point, 3.2(d). They're required to "perform shop and other inspections of the work of subcontractors and sub-subcontractors to ensure that all such work meets all the requirements of the agreement." So we believe that that

unambiguously required them to actually go to the shop, perform inspections, and make sure that the work that the subcontractors and their subcontractors, that they do, complies with the requirements of the agreement.

THE COURT: And was GE considered a subcontractor, as opposed to a supplier? I don't know if they're -- how things are defined in there.

MR. TAYLOR: They were. GE was an approved subcontractor under the EPC agreement.

THE COURT: All right.

MR. TAYLOR: Though they're -- I think that's as clear as we can get that they were required to perform the shop inspections, actually go on-site and perform shop inspections. I mean, I'm happy to go through some of the rest of these, but it's sort of cumulative of that obligation. We've got them all alleged in our amended complaint in Paragraphs 30 through 44.

THE COURT: Okay. So back to your PowerPoint, then.

MR. TAYLOR: Yeah, back to the PowerPoint.

So this is where -- so we've just gone through what I believe are the contract obligations for them to go actually and do -- perform -- review the designs, perform the shop inspections to make sure that all the work, all equipment was in accordance with the agreement.

What we allege here in Paragraph 9 -- I think I already addressed this -- is they should have reviewed the

design and identified the lack of a locking nut on the other side.

On the next page, Slide 10, we allege they failed to implement adequate quality assurance and quality control. You asked how could they have known? The bolts, themselves, had torquing marks on them when they were adequately torqued. There were bolts -- the bolts that fell out had no torquing marks. And we believe that had they performed the shop inspections, as they were required to do under the contract, they could have identified that, and they failed to do so.

On Slide 11, again, the manufacture of these motors used shim washers, instead of the actual proper materials in tightening the bolts to secure the motors. And we've alleged that if defendants had performed shop inspections during fabrication, they could have identified and prevented those defects before the motors were even delivered to on-site to be installed.

In Paragraph -- on Slide 12, we've alleged that, again, these motors were shipped to the site essentially in their casing. So really, the only opportunity -- and they weren't scheduled for maintenance for another nine years. So the only opportunity to identify these defects and prevent them before these motors were delivered to site were these shop inspections and review of the designs that we've alleged they didn't do.

THE COURT: Do you allege in here that they didn't conduct shop inspections? Or that the ones they conducted were inadequate?

MR. TAYLOR: Based on Mr. Thomas' argument, they -- I don't think they performed any. But certainly, any they did perform were not adequate. We've alleged that they did not perform adequate shop inspections, and I don't think --

THE COURT: But do you know whether they performed any?

MR. TAYLOR: I don't because we haven't had a chance to dig into discovery.

THE COURT: Okay.

MR. TAYLOR: If we can skip to Slide -- well, I'll address this at 13. So they've alleged that -- they've argued that we haven't alleged gross negligence by vice principals of Zachry and the other defendants. Well, first of all, the cases that they cite aren't -- don't go to consequential damages. They go to exemplary damages. The U-Haul case --

THE COURT: I think your contract says that the gross negligence has to be by the supervising manager or some words to that effect. I can find it, but it's in the contract, right?

MR. TAYLOR: Right, but I think that that's a separate section. We're -- they're relying on the waiver of consequential damages, and our argument is based on the Zachry

case and all the cases that come after that that in instances of gross negligence, regardless of what the contract says, it is against public policy to essentially exempt yourself from liability from gross negligence.

THE COURT: No, but they're saying that gross negligence -- that their liability would only exceed $1 million under the contract.

MR. TAYLOR: Right, that's a different section, and that's not part of the motion today. Their argument only is that we don't consequential damages based only on the waiver of consequential damages.

THE COURT: Okay.

MR. TAYLOR: So under the -- on the next slide, Slide 14, again, this is their own engineering evaluation. They make clear that to avoid these risks that they have the subjective awareness of, it was going to require the support of the joint ventures, the defendants' upper management. And we believe that that alleges that the vice principals should have known and didn't make sure that the quality assurance, shop inspections, and design review were performed in accordance with the contract.

On the next slide, Your Honor mentioned that they recommended a different manufacturer other than GE. It's a little inconsistent for them, in their most recent pleading, to say GE was a world-class manufacturer of motors, had 125 years

of engineering experience, and therefore, they were reasonable in relying on them, and then try to say that they talked us out of it.

But this is the engineering evaluation here that's cited in our amended complaint. You can see in the highlighted language that the defendants determined that both vendors, both Siemens and GE, demonstrated overall technical acceptability. So they -- based on their review, they believe that both of the potential suppliers could meet the technical requirements. And they recommended Siemens for -- you see the three bullets at the bottom -- lower cost, experience with this size of motors, and approved annual electrical value (phonetic). So there's potentially a cost and a saving -- electrical savings issue.

And on the next slide, as we've alleged in the amended complaint, we entered into a change order, compensated them $6 million for using GE motors, and the change order's clear that it did not change or alter any of their other obligations under the agreement.

On slide -- the next slide, in addition to their own failures -- we talked about this a minute ago -- that we've alleged that they were obligated for the negligence and gross negligence of GE. They have countered in saying that this only applies to contract liability, but if you look at the provision, it doesn't -- it certainly is not limited to contract liability. It says, "They shall be fully responsible

for the owner's acts or omissions," and as a contractor -- in the same degree that the contractor is for the same acts or omissions.

And because they contractually agreed to be responsible for the acts or omissions of the subcontractors, their common law arguments, we don't believe apply. But I'll briefly address them on the next slide, 18. And this if from their supplemental brief. They say that the only exception is that if the general contractor retained some control over the manner in which the contractor's performance of the work caused the damage. They allege -- they argue, but we don't allege that here.

But if you go to the next couple slides, we actually do allege precisely that, and that is, on Slide 19, that they were obligated to -- they were essentially obligated to perform all design and engineering. They were obligated to provide equipment that springs from the effective design. These are some of their contract obligations.

And on the next slide, 19 -- I'm sorry, Slide 20, we've alleged that they've failed to prescriptively review the design of the motors and prevent the defect, and they failed to implement adequate quality assurance and quality control to prevent the poor workmanship that resulted in the ultimate design defect, the motor defects. So we believe they -- we've alleged they had control and failed to exhibit any control over

the manufacture and design of the motors.

So unless Your Honor has any questions, I'd like to conclude with -- again, we're here on the pleadings. They have not cited a single case to dismiss a claim for gross negligence on the pleadings. All of their cases pass the pleading stage, most of which are after trial. And we would ask, based on the arguments and the presentation today, that defendants' motion to dismiss the consequential damage claims be denied.

THE COURT: So under the contract, under the contract's terms, were they allowed to say to themselves, without being negligent or grossly negligent, we hired GE to do this. They know how to do it better than anyone that we could send to look at what they're doing. We have charged them and their subcontract with performing this work properly in accordance with all engineering requirements, and that satisfied our duty, which is to hire not somebody -- you know, some schlock operator. We hired GE. And I got it. They would've preferred to hire Siemens, but they hired one of the two best in the world to do it. Can they still have gross negligence if they entrusted that responsibility to GE?

MR. TAYLOR: I believe so, because they're shirking their responsibility. They had an obligation to perform spot shop inspections to make sure these motors were manufactured in accordance with the contract requirements. If they say, we know we had this obligation to do so, but we don't do it, that

is textbook gross -- conscious -- subconscious indifference in their obligations.

THE COURT: They can't subcontract somebody else to supervise the shop?

MR. TAYLOR: Sure, you can subcontract, but trust and verify. You hire what you think is one of the top two in the world, but you also have to make sure that you have reviewed the design, performed the shop inspections to make sure that the contract requirements are met.

THE COURT: How do I figure -- both arguments seem reasonable to me. How do I figure out what the law requires when you have someone that knows better than you do and better than anyone you can hire? What does the law impose as a duty to -- if that question -- I'm not -- if that question makes sense. I'm really trying to figure out how to do my job on this.

MR. TAYLOR: Understood. And I think that that's where experts come in. What would -- what should they have done, and what should the contractors have done in this situation? Sure, they hired GE. They relied on GE. But what -- because they have these clear contract requirements, should they have gone above and beyond?

We allege that they should have. We believe that those allegations push us beyond the pleading stage and get us to discovery.

THE COURT: Okay. Thank you.

Mr. Jones, go ahead, please.

MR. JONES: Thank you, Your Honor.

THE COURT: I think Mr. Jones wanted to speak, and then we're going to let you talk, Mr. Thomas.

Go ahead, Mr. Jones.

MR. JONES: Thank you, Your Honor. Charlie Jones on behalf of Chiyoda International. Of course, we join Zachry's motion, the debtor's motion. We support, acknowledge the facts and we support the arguments Mr. Thomas has made.

And I think what you've heard today and what is also pled in Paragraph 25 of the amended complaint, the first sentence, is that all of the duties alleged here are -- arise out of this contract and that there's only one cause of action, here and that's breach of contract. And there's, I don't think, any dispute that the consequential damages sought are for the business interruption, that is, the time that the plant was down when these motors weren't operable.

And under clear Texas Supreme Court authority, there can be no consequential purely economic damages when the positive actions found in a breach of contract, even if there's gross negligence. And so while I think Zachry and the defendants here, who are lumped together in this pleading, are right to focus on the gross negligence aspect, this is a motion to dismiss the consequential damages claim, and I don't think

they can survive under controlling Texas Supreme Court authority, given that this is a breach of contract claim, and those purely economic losses are not available to plaintiffs, even if they make the gross negligence claim.

THE COURT: And what case are you referring to for that, under the Supreme Court?

MR. JONES: I'm referring to -- I think it's well summarized in the Sharyland Water Supply, Corp. case -- v. City of Alton, 354 S.W.3d 416. It's Footnote 10, and I can read that to the Court. If you note -- we note that it supplanted another theory, was supplanted by Jim Walter Homes, Inc. v. Reed, 711 S.W.2d 617, 618 (Tex.1986), "in which we 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.'" And the Supreme Court went on to cite Houston Appellate Court, the 14th Court of Appeals, and then some secondary sources, including a law review from Texas Tech Law School.

THE COURT: All right.

MR. JONES: And I believe that's just a fundamentally independent reason to extinguish the consequential damages claim.

With that, Your Honor, I cede the podium to my colleague, Mr. Thomas.

THE COURT: Thank you, Mr. Jones.

Mr. Thomas?

MR. THOMAS: Yes, Your Honor. Let me follow up with Mr. Jones by giving you an additional case, Your Honor, from the Supreme Court. It's AEP v. Arredondo, 612 S.W.3d 289 cited in our brief. Your Honor, there, the court talks about and recites the general rule that "one who employs an independent contractor has no duty to ensure the contractor performs its work in a safe manner" with this exception. And in the rationale for that, Your Honor, is in evaluating whether a duty is owed under the Restatement of Torts, "we have explained that an employer 'must have some latitude to tell its independent contractors what to do, in general terms, ... without becoming subject to liability.'"

Crucially, Your Honor, "the duty arises where the right to control extends to 'the means, methods, or details of the independent contractor's work' such that the contractor 'is not entirely free to do the work in his own way.'" That's relevant here, Your Honor, because there's no such duty incorporated in the contract that gave us a right --

THE COURT: So he's telling me that you had --

MR. THOMAS: -- to control how GE did their work.

THE COURT: No, he's telling me that you had a field inspection duty --

MR. THOMAS: Well --

THE COURT: -- and that if you'd engaged in the field

inspection duty, you would have identified the problems. Right?

MR. THOMAS: Well, first of all, the allegation is "adequate", they failed to do adequate inspection, which means we allegedly failed to identify the problem. We keep talking in terms of ordinary negligence, not gross negligence, Your Honor, because as I cited to the Court, what separates ordinary negligence from gross negligence is the defendants' state of mind. In other words, the plaintiffs must show the defendant knew about the peril but his acts or omissions demonstrated that he did not care. Nothing that is in the pleading rises to that level of differentiating the allegations from what might be considered ordinary negligence to gross negligence.

THE COURT: Yeah, let's take a look at the complaint.

This is 3189, right? Just to make sure I got the right one coming up.

MR. THOMAS: Yes, that's correct, Your Honor. 95 -- I'm sorry. 3195.

THE COURT: I think the complaint's up on the screen.

So tell me where you're saying that he said they were inadequate inspections.

MR. THOMAS: For example, Your Honor, Paragraph 61, "The defendants failed to adequately review the design for the motors." Paragraph 65, third sentence, "Defendants failed to implement adequate inspections and quality assurance and

quality control procedures."

And then if you go down to Paragraph 66, what they're talking about is imputing what's alleged to be gross negligence of GE to the defendants in this case. That is not -- imputation of gross negligence is something that occurs by operation of the proposition that I discussed with you regarding Texas law. If we undertook to control the means by which they manufactured these motors, we may have a different case. But they don't allege that. They don't allege that we controlled GE's work, which would be a prerequisite to being responsible for gross negligence.

Now, keep in mind, Your Honor, all the discussion about the contract provisions relates directly to the question whether we're obligated for damages beyond a million bucks. For example, so we had a -- maybe we're contractually obligated to make sure that they had a motor that worked, and maybe we'll have future litigation here about actual damages and whether it's subject to the cap, but that doesn't convert this into gross negligence.

And I might add, Your Honor, there's been no discussion here today about whether the allegations against GE satisfy the requirements of gross negligence. There's no allegation that GE -- even if you were going to argue that they're imputed, there's no allegation that GE was aware of the defect and proceeded to produce these motors and allow Zachry

and its partners to install it at the FLNG facility, completely devoid, again, of any allegation required of conscious indifference, in other words, as said by Diamond Shamrock, that they were aware of the peril and proceeded and didn't care.

THE COURT: So his argument to me, in part, is that I shouldn't be doing this right now. We're at a pleading stage. There hasn't been discovery, and if he pleads that you inadequately reviewed or you inadequately conducted shop inspections, that that is sufficient from a pleading -- that is sufficient from a pleading point of view.

I've got Iqbal/Twombley that I've got to worry about, but beyond Iqbal/Twombley, is there anything I need to worry about on the pleading, or is simply saying it without giving me the specifics of what they did adequate?

MR. THOMAS: Your Honor, when we last met about this, I told you I was confident they couldn't plead it. I'm still confident that they have not satisfied the requirement of what is needed --

THE COURT: Of Rule 8?

MR. THOMAS: -- to plead gross negligence.

THE COURT: Of Rule 8?

MR. THOMAS: In other words, 8 -- and I want to go back to this -- that the specific peril -- all they allege is some vague reliability issue and the possibility of a problem. They don't allege a specific peril that we were aware of that

we knowingly ignored and proceeded in light of that. The adequate inspection and adequate -- allegations of failure to adequate review the design is at most merely ordinary negligence which the Supreme Court of Texas has repeatedly said, over and over again throughout the decades, that gross negligence is something more, and gross negligence requires --

THE COURT: But he's saying we're still at the pleading stage, and he ought to have the right to now take his pleadings and prove -- I believe he said with an expert testimony -- that, for example, a proper review of the plans would have led y'all to the conclusion that there weren't the proper locking washers on either side and that had you reviewed it right, we wouldn't have had a problem.

MR. THOMAS: Your Honor, you can take that as a given that is mere, at most, negligence. It does not rise to gross negligence under Texas law, I can assure you. All that's saying is you failed to find a problem; you're negligent. It doesn't say you were aware of the problem, ignored it, and proceeded anyway.

THE COURT: Well, he says you're aware that it was a unique, largest-of-its-kind machine and that should have heightened your awareness, right?

MR. THOMAS: All he alleges, Your Honor -- and let's take a look at the paragraph -- let's go to Paragraph 57, Your Honor, because this is crucial and fatal to the pleading.

57, "Moreover, as evidenced by the engineering evaluation, defendant had the subjective awareness of the potential for problems during manufacturing." Potential for problem does not get you there. Diamond Shamrock is an example of that, Your Honor, where the defendant even had knowledge of prior explosions.

THE COURT: Keep -- read that whole paragraph. "Defendants were subjectively aware that the size and complexity of the drive equipment presented first-of-a-kind challenges that must be carefully managed in an aggressive and disciplined way." I just want to put in the whole thing he said. Is that not gross negligence?

MR. THOMAS: No. It is not because it does not identify a specific peril. General knowledge that -- I mean, that's almost common knowledge that -- yeah, we could have problems if you don't do it right. But what's missing is that you didn't do it right, you were aware of it, and you proceeded regardless of knowing that risk of harm. There is nothing in this complaint that alleges that, Your Honor. Nothing.

THE COURT: All right. Thank you.

MR. THOMAS: Thank you, Your Honor.

THE COURT: Mr. Taylor, I'm going to let you give the last word.

MR. TAYLOR: Unless Your Honor has specific questions, I just want to highlight a couple things. One,

Mr. Jones mentioned the Sharyland case about contractor -- essentially, the Economic Loss Rule. And that's where if you don't have a contractual obligation, which we (indiscernible) out of damages, and you don't get out of (indiscernible) on damages. Obviously, we've got a contract with defendants, which -- pursuant to which contract, we're entitled to economic loss -- economic damages because we've alleged the gross negligence.

THE COURT: Just -- okay, but without gross negligence, you're not; with gross negligence, you are.

MR. TAYLOR: Well, all of our damages are economic damages. They're contract damages. The repair costs are economic damages.

THE COURT: Well --

MR. TAYLOR: It's the dollars that we spend.

THE COURT: Yeah, but I think that those paragraphs were talking about deal with consequentials, right, consequential economic damages.

MR. TAYLOR: So there's a couple versions of the contracts. There's one that -- the consequential damages waiver.

THE COURT: Right.

MR. TAYLOR: And that's the one we've alleged gross negligence. There's a second that's got the million-dollar cap, and there are multiple exceptions to that, one of which is

gross negligence, the other of which is if, essentially, one part -- one piece of equipment damages another piece of equipment which, obviously, we have here.

THE COURT: Right.

MR. TAYLOR: As far as the subjective awareness of the risk, the cases are clear that you don't have to be aware of the exact result, what's going to happen. You have to be aware of this extreme risk, and as we've alleged, they were aware of the extreme risk.

THE COURT: Can I tell you what bothers me about this? Why do we bother to put in a gross negligence paragraph if every kind of ordinary negligence should be converted to gross negligence because this was a big machine that had never been built before? Then we don't need to even say it has to be gross negligence. Just -- your argument, basically, is simple negligence on something this hard translates to gross negligence. And that seems to swallow the whole idea.

So what do I -- why does the contract bother even to refer to gross negligence if every act of negligence was gross because it was a big old motor?

MR. TAYLOR: I don't think that every act of negligence results in gross negligence. One is -- well, obviously, under the Zachry v. Houston Port Authority (sic) case, if there are allegations for evidence of gross negligence, then it's against public policy to enforce that

provision.

But what --

THE COURT: Yeah, but your reason why they should have -- why it's gross negligence is it was a big machine and it was complicated, and nobody knew what problems there might be. Therefore, everything is grossly negligent if there is simple negligence.

MR. TAYLOR: I don't think that's what's alleged. We've alleged that they were aware of the risk because this is a huge piece of equipment.

THE COURT: But the only risk they aware of, it was a huge piece of equipment and it had -- a million things could go wrong with it. That means every act of negligence we could call gross negligence, right?

MR. TAYLOR: No, that only gets to the subconscious -- or the subjective awareness of risk. They were aware of the risk. But if we stack negligent act upon negligent act upon negligent act, then that -- the case law has proven that rises to the level of gross negligence.

We've got the design defect because they didn't have -- they didn't have locking nuts on both sides of the bolt assembly. That's one piece. We have the actual manufacture itself, using dissimilar metal, using shim washers. When you stack negligence upon negligence, that's what rises to the level of gross negligence.

THE COURT: Okay.

MR. TAYLOR: Thank you. Happy to address any questions Your Honor has.

THE COURT: No. No, but anything else you want to talk to me about, feel free.

MR. TAYLOR: Thank you, Your Honor.

THE COURT: Mr. Thomas, go ahead. I'm going to let you all both go back and forth until no one wants to talk anymore, so.

MR. TAYLOR: Yeah, I -- I heard Judge Higginbotham say one time, Your Honor, in the Fifth Circuit, he said, counsel, when you're ahead, don't put the ball in the air. But I don't know if I'm ahead, but I do want to say a couple of things.

First is the Zachry case is not a gross negligence case, pure and simple. It refers to the gross negligence cases. I just wanted to say that.

Second, Your Honor, the senior supervisory requirement on gross negligence in the contract has to be applied here. There's no allegation of senior supervisory personnel being involved.

And finally, Your Honor, go read Diamond Shamrock. Read Diamond Shamrock because it will refute what Mr. Taylor said about you don't have to be knowledgeable about the specific peril involved. Read that case.

Thank you, Your Honor.

THE COURT: Thank you.

Anybody else want to make any other statements?

Okay. Thank you, all. I'm not going to rule from the bench. I need to go read. Y'all are both telling me that I haven't read cases right. I need to go read them right. I need to read Zachry. I need to read Diamond Shamrock. I need to read some other stuff, too. I'm going to read Sharyland, for example.

What I'm probably going to try and do, and I hate to put this on you all, is to do an oral ruling sometime on Thursday or Friday. Are you all in town, if it's short notice, to hear an oral ruling? Or does anybody object to doing it that way so that I can try to get this out promptly, but --

MR. THOMAS: No objection.

THE COURT: -- I may do it with just a few hours' notice to you that the hearing will be at X o'clock or something on such and such a day.

MR. THOMAS: Your Honor, that's fine with us. We'll be on standby.

MR. TAYLOR: I live and work in Austin. I -- we can have someone from our Houston office appear.

THE COURT: No one needs to be here. Why don't we just do it video only. That way nobody's going to feel -- I shouldn't say that. If people want to be here, they can be in

court, but it's just going to be me talking. I'm not going to ask y'all any questions, so.

MR. TAYLOR: If you have a specific time that you have in mind, I can certainly plan to be here.

THE COURT: I don't -- what I intend to do is to rule and not have any further closing arguments or any further input or ask any more questions. So I really don't want to impose on you to be here.

If you want to be, I will tell you what my goal is, but I hate to tell you all this because I'm not going to do this before I'm ready. My goal was an 8 a.m. Thursday morning hearing and to try and set that up by video and audio.

I'm not going to exclude people from the courtroom because I'm a big believer if people want to be here they should be here, but literally you aren't going to get a chance to talk. I'm just going to announce a ruling. So -- and you're not going to change my mind by smiling at me. I'm just going to announce a ruling. That's it.

And I don't know if I'll be able to get that done by Thursday morning. It may be Friday afternoon. But I'm going to get it done this week. I just need to read this stuff.

Will, generally, that work for you? I mean, I just -- if there's some emergency, y'all let me know, but you're okay with that?

MR. TAYLOR: Yeah, that works.

THE COURT: Okay.

MR. TAYLOR: And thanks again.

THE COURT: Mr. Jones, you okay with that?

MR. JONES: Yes, Your Honor.

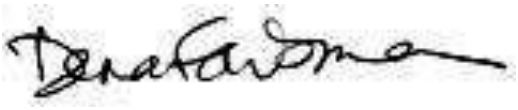
THE COURT: Okay. Thank you, all. I keep learning, so I appreciate it. We're in recess for the day. Thank you.

(Proceedings concluded at 2:49 p.m.)

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C E R T I F I C A T I O N

I, Dena Farbman, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



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DENA FARBMAN, AAERT NO. 629 DATE: 12/18/2024

ACCESS TRANSCRIPTS, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In Re:	Zachry Holdings, Inc. and Madison Industrial Services Team, LLC Debtor	Case No.: 24−90377 Chapter: 11

FLNG Liquefaction LLC,
Plaintiff(s),
vs.
CB&I Inc,
Defendant(s).

Adversary No.: 24−03195

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at https://www.txs.uscourts.gov/.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at https://www.txs.uscourts.gov/ or by calling (713) 250−5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner
Clerk of Court