Docket #2315 Date Filed: 02/19/2025

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al.*,	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)

ENCINA DEVELOPMENT GROUP LLC'S OBJECTION TO CONFIRMATION OF MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES

Encina Development Group, LLC ("**Encina**"), a Class 6 General Unsecured Creditor, hereby objects to the Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates, and in support of its objection states as follows:

BACKGROUND

1. On May 21, 2024 (the "**Petition Date**"), Zachry Holdings, Inc. and its debtor affiliates (the "**Debtors**") filed a voluntary petition for relief under 11 U.S.C. Ch. 11.

2. Zachry Engineering Corporation is one of the debtor affiliates.

3. Encina is a creditor of Zachry Engineering Corporation.

4. Encina filed its proof of claim on December 10, 2024, after the Bar Date passed.

5. Encina's Emergency Motion to Permit Filing Proof of Claim After Bar Date [Docket No. 2120] is pending and set for hearing on February 26, 2025.

6. On January 23, 2025, the Debtors filed the Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates [Docket No. 1978] (the "**Plan**").

7. The Plan states that:

> Except as otherwise agreed to by the Debtors or the Reorganized Debtors, as applicable, **any and all Proofs of Claim filed after the Bar Date shall be deemed Disallowed** and expunged as of the Effective Date without any further notice to or action, Order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless the Bankruptcy Court shall have determined by a Final Order, on or before the Confirmation Hearing, that cause exists to extend the Claims Bar Date as to such Proof of Claim **on the basis of excusable neglect**.

Docket No. 1978 at 41.

PLAN OBJECTION

8. Encina respectfully objects to the Plan proposed by the Debtors to the extent that it purports to disallow proofs of claim filed after the Bar Date without an objection by the Debtors and a ruling thereon. That procedure violates due process and is inconsistent with the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and the Local Rules of Bankruptcy Procedure.

9. The Bankruptcy Rules set forth a framework where a debtor must object to a proof of claim for the claim to be disallowed. The Plan seeks to shift that framework to relieve the Debtors of their burden.

10. "A proof of claim signed and filed in accordance with [the Bankruptcy Rules] is prima facie evidence of the claim's validity and amount." Fed. R. Bankr. P. 3001(f).

11. A debtor may then contest the claim's validity and amount by filing an objection as set forth in Bankruptcy Rule 3007. Rule 3007 "prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant." *Id.* at Advisory Committee Notes ¶ 1.

12. Following a ruling on an objection, any party in interest may move for reconsideration. Fed. R. Bankr. P. 3008.

13. The procedure proposed in the Plan flouts Rule 3001's automatic allowance of a claim to which no objection is made, and removes the due process protections afforded by Rules 3007 and 3008.

14. The fact that a proof of claim is filed after the Bar Date does not remove it from the application of the Bankruptcy Rules.

15. The Bankruptcy Rules permit a court to extend the time for a creditor to file a proof of claim if the creditor failed to file before the Bar Date due to excusable neglect. Fed. R. Bankr. P. 9006(b)(1)(B).

16. The Bankruptcy Rules also permit a court to extend the time for a creditor to file a proof of claim in some circumstances, including upon a showing that "notice was insufficient to give the creditor a reasonable time to file." Fed. R. Bankr. P. 3002(c)(7).

17. The Bankruptcy Local Rules similarly permit a court to extend the time to file a proof of claim upon a finding that the creditor had insufficient notice of the case. BLR 3003-1(4).

18. Bankruptcy Rule 3002(c)(7) and Bankruptcy Local Rule 3003-1(4) permit late-filed proofs of claim when reasons other than excusable neglect caused the delay. But the Plan only excepts orders determining "that cause exists to extend the Claims Bar Date as to such Proof of Claim on the basis of excusable neglect" from its purported automatic disallowance of proofs of claims filed after the Bar Date.

19. The Plan's purported automatic disallowance of late-filed claims, whether or not due to excusable neglect, deprives creditors of the protections afforded by the Bankruptcy Rules, which require debtors to object to disputed claims, even if the claims are filed after the Bar Date.

CONCLUSION

WHEREFORE, for the foregoing reasons, Movant respectfully requests that (i) the paragraph of the Plan purporting to disallow all late-filed claims [Docket 1978 at 41] be stricken; (ii) alternatively, that confirmation of the Plan be denied; and (iii) for such other relief as this Court deems proper.

Dated: February 19, 2025

Respectfully submitted,

By: */s/ Kathryn Skagerberg*

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CERTIFICATE OF SERVICE

I certify that on February 19, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all parties registered to receive such service.

s/ Kathryn Skagerberg

Kathryn Skagerberg