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)
	§	

YELINA MARTINEZ (INDIVIDUALLY AND AS ESTATE REP.), SINDY MARTINEZ, SIDNEY MARTINEZ, YELINA MARTINEZ FOR JM, AND URSULA ANDRES' OBJECTION TO CONFIRMATION OF MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN
[Relates to Dkt. 1978]

Objecting Creditors Yelina Martinez (individually and as Estate representative), Sindy Martinez, Sidney Martinez, Yelina Martinez for J.M., and Ursula Andres ("Claimants") file this objection (Objection) to confirmation of the *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* (the "Plan") [Dkt. 1978], as it may be amended through the hearing on confirmation, and, in support, state as follows:

I. BACKGROUND

1. Claimants hold personal injury claims (Claims) against Zachry Industrial, Inc. (Debtor) and other non-debtor defendants. These Claims arose from two separate incidents involving Zachry Industrial, Inc. and are more

[1] 1. The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/zhi. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

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particularly described in the pleading(s) attached as exhibits to the proofs of claim filed by each Claimant.

2. On May 21, 2024, the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the Bankruptcy Code) in the United States Bankruptcy Court for the Southern District of Texas (the Bankruptcy Court), which are being jointly administered in the above-captioned case (Bankruptcy Case).

3. Claimants timely filed proofs of claims in the Bankruptcy Case in order to preserve their claims against Zachry Industrial, Inc. (one of the Debtors), as Debtor, as follows:

J.M. Claim, No. 55-1, for $2,500,000.00

Sidney Martinez Claim No. 56-1, for $2,500,000.00

Sindy Martinez Claim No. 57-1, for $2,500,000.00

Yelina Martinez as Estate Representative Claim No. 58-1, for $2,500,000.00

Yelina Martinez Claim No. 59-1, for $2,500,000.00

Ursula Andres Clam No. 49-1, for $450,000.00.

4. Claimants have timely voted to reject the Plan and have opted out of the Third Party Release provisions of the Plan. Claimants expressly opt out of the Third Party Release provisions of the Plan.

5. For address purposes, all of Claimant's addresses as reflected by the filed proofs of claim are:

c/o Tommy Lee Yeates
Moore Landrey. LLP
905 Orleans Street
Beaumont, Texas 77701

6. The hearing on confirmation of Debtors' proposed plan is set for February 26, 2025, at 1:30 p.m., and objections to confirmation are due on or before February 20, 2025 at 4:00 p.m. [Dkt. 1991].

7. The Debtors' Plan seems to allow for the recovery of personal injury claims against applicable liability insurance policies outside the administration of the Bankruptcy Case, while limiting recovery against Debtors to certain self-insured retention (SIR) amounts in the Bankruptcy Case. *See* Plan at § VI(J)(3)-(4). However, the Plan does not provide mechanics or adequate information regarding the means by which personal injury claimants would adjudicate their claims for purposes of collection against third-party resources, such as insurers or under applicable indemnity agreements, or in the administration of the Bankruptcy Case. *See* Plan at § VIII(F) (Plan Injunction).

8. The injunction, release, discharge and interest limitation provisions of the Plan would, or could be interpreted to, prohibit Claimants from proceeding with their respective actions to recover their claims from third parties who would otherwise be responsible for satisfying such claims. These provisions are inconsistent with the effects of the two stipulations for modification of the automatic stay previously made between Claimants and the Debtors that have been approved by the Court. See Stipulations under Dkt. 960 and 1844.

9. Claimants have reason to believe Debtors maintained or caused to be maintained insurance coverage and/or is or are the beneficiary of indemnity agreements by third parties applicable to their Claims. Claimants have conferred with Debtors counsel regarding the above issues and will continue to work with Debtors to resolve these issues.

10. Claimants and Debtors counsel have communicated and reached an agreement for a provision to be included in the confirmation order that would resolve this objection.

II. ARGUMENT AND AUTHORITIES

11. Section 1129(a)(1) of the Bankruptcy Code authorizes confirmation of a plan only where "[t]he plan complies with the applicable provisions of this title." 28 U.S.C. Section 1411, provides that the Bankruptcy Code (Title 11) does "not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim."

12. The Plan does not purport to preserve or grant Claimants the right to trial by jury of their Claims with respect to third party resources, contradicting the requirements of Section 1129(a) and 28 U.S.C. Section 1411.

13. Further, Section 1129(a)(7)(A)(ii) of the Bankruptcy Code requires with respect to impaired claims, such as that of Claimants, such claimants must:

> receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

14. The Plan fails to satisfy Section 1129(a) by limiting, or failing to permit Claimants to pursue Debtor, even in name only, the recovery of Claimants' Claims, while providing that such Claims will not be paid "until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy." See Plan at § VI, J.3

A. The Plan does not address third party resources other than "Debtors' insurance"

B. At the same time that the proposed plan requires Claimants to exhaust all remedies with respect to insurance coverage, the proposed Plan enjoins Claimants from proceeding against the Debtor, *see* Plan at § VIII. F (Plan Injunction), and purports to discharge the claims against the Debtor, *see* Plan at § VIII. A (Plan Discharge) The discharge and injunction provisions prohibit Claimants from pursuing their remedies against insurance and third party resources and render the provision for payment after exhaustion of remedies to be illusory, or contradictory at best.

15. The changes Claimants propose to the Plan to satisfy Claimants' objections are:

a. Add "Third Party Resources" as a Defined Term in Article I, Section A, of the Plan:

"Third Party Resources" includes applicable insurance policies and/or indemnity agreements or similar resources from any non-Debtor.

b. Change Article VI, Section J, paragraphs 3 and 4, Plan references for applicable insurance, insurance coverage, and/or insurance policies to "applicable Third Party Resources" and change references to insurers to "insurers and/or obligors under applicable Third Party Resources."

c. At the end of the first paragraph of such paragraph 3, add an exception to the scope of the discharge, release, and injunction and interest provisions of the Plan as follows:

As an exception to the limitations on interest on Claims under Section VI.F. of this Plan, Claims payable by Third Party Resources shall include interest under applicable law but only to the extent of such Third Party Resources.

> As an exception to the discharge, release, and injunction provisions under Article VIII, any Claims for which there is or may be applicable Third Party Resources are not released, discharged or enjoined under Article VIII; this exception applies only to the extent that, such Claims may be pursued against the Debtors in name only and pursued, enforced and/or preserved by such claimants against applicable Third Party Resources. Any amounts not recovered by such claimants against such Third Party Resources are addressed by the following paragraph of this paragraph 3.

16. Alternatively, Claimants propose the provision attached as Exhibit "A" to this Objection to be included in the confirmation order.

III. PRAYER

WHEREFORE, Yelina Martinez (individually and as estate representative), Sindy Martinez, Sidney Martinez, Yelina Martinez for J.M., and Ursula Andres respectfully request the Court deny confirmation of the Plan or require amendment to such Plan or inclusion of the provision reflected by Exhibit "A" to this Objection, to satisfy the foregoing objections, and grant Claimants such other and further relief as may be just and proper.

Respectfully submitted February 19, 2025.

/s/ Robert B. Dunham
Robert B. Dunham
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Objection has been served upon all parties via the Court's electronic case filing system (ECF) on February 19, 2025.

/s/ Robert B. Dunham
Robert B. Dunham

EXHIBIT "A"

Proposed Order Provision Regarding Personal Injury Claims. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, the Plan Supplement, the Restructuring Transactions, or any related documents (the "**Plan Documents**"), the Plan Documents shall not impair any right of the Adams Plaintiffs,[2] Andres Plaintiffs,[3] or Martinez Plaintiffs[4] to litigate any timely filed, personal injury General Unsecured Claim to final judgment or settlement against the Debtors in name only, and, if successful, to recover on such Claim from any third-party that provides insurance coverage or indemnification to the Debtors, subject to applicable non-bankruptcy law and any applicable agreements governing such insurance coverage or indemnification between such third-parties and the Debtors; *provided*, *however*, the foregoing shall not apply to any Claim released pursuant to the Third-Party Release set forth in the Plan to the extent any Holder of a Claim elects not to opt-out of the Third-Party Release. To the extent any such insurance coverage or indemnification is insufficient to provide the treatment to an Allowed Claim required by **Article III** of the Plan, the Holder of such Allowed Claim shall have an Allowed General Unsecured Claim against the applicable Debtor's estate for the deficiency.

[2] The "**Adams Plaintiffs**" means any plaintiffs in the litigation styled as *Adams, et al. v. Zachry Industrial, Inc.*, Case No. 5:23-cv-01437-XR in the United States District Court for the Western District of Texas.

[3] The "**Andres Plaintiffs**" means any plaintiffs in the litigation styled as *Ursula Andres v. Zachry Industrial, Inc., et al.*, Case No. E-0210871 in the 172nd Judicial District Court of Jefferson County, Texas.

[4] The "**Martinez Plaintiffs**" means any plaintiffs in the litigation styled as *Yelina Martinez, Individually, and as the Estate Representative of Jaime Martinez, Deceased, et al, v. Zachry Industrial, Inc., et al.*, Case No. 23DCCV0129 in the 172nd Judicial District Court of Jefferson County, Texas.

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ZACHRY HOLDINGS, INC., et. al.[1]	§	Case No. 24-90377 (MI)
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Debtors	§	(Jointly Administered)
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ORDER DENYING CONFIRMATION OF JOINT CHAPTER 11 PLAN
[Relates to ECF 1978]

On February 26, 2025, the Court considered the proposed confirmation of the *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* (the "Plan") [Dkt. 1978]. Having considered the arguments of counsel for the parties, the Plan, the evidenced introduced at the hearing, and having considered all timely filed objections to the Plan, the Court finds that confirmation of the Plan should be DENIED.

It is THEREFORE ORDERED that confirmation of the Plan is DENIED.

Signed:_____, 2025

_____
Marvin Isgur
United States Bankruptcy Judge

[1] 1. The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/zhi. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.