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)
	§	

CHEYANNE ADAMS, WENDY ADAMS AND JAMES ADAMS'S RESERVATION OF RIGHTS TO THE MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES
[Relates to Dkt. 1978]

Cheyanne Adams, Wendy Adams and James Adams (Claimants), file this reservation of rights (Reservation of Rights) to the *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* (Plan) [Dkt. 1978] and in support, state as follows.

1. Claimants have personal injury claims pending against Debtor Zachry Industrial, Inc. and other non-debtor defendants in Cause No. 5:23-cv-01437-XR in the United States District Court for the Western District of Texas, San Antonio Division, styled as *Cheyanne Adams, James Adams, and Wendy Adams v. Zachry Industrial, Inc.* (Adams Action).

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

[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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Bankruptcy Court for the Southern District of Texas (the Bankruptcy Court), which are jointly administered in the above-captioned case (Bankruptcy Case).

3. Claimants timely filed proofs of claims in the Bankruptcy Case to preserve their claims against Debtor Zachry Industrial, Inc. POC Nos. 1181, 1182, 1185. Claimants also reserved their rights to adjudicate their claims outside the Bankruptcy Case and by jury trial.

4. On January 23, 2025, Debtors filed their Plan, which includes terms allowing for the recovery of personal injury claims against applicable liability insurance policies outside the administration of the Bankruptcy Case. *See* Plan at § VI(J)(3). However, the Plan currently does not provide for the adjudication of unliquidated personal injury claims outside of the Bankruptcy Case. Instead, the terms of the Plan are limited to releasing and enjoining all claims arising before the Effective Date of the Plan. *See* Plan, §§ VIII(A), (D), (F).

5. To resolve this issue, Claimants opted-out of any Third-Party Releases and incorporate that opt out herein. Additionally, Claimants and Debtors have agreed to include language in the Confirmation Order that would preserve Claimants' rights to adjudicate their claims outside the Bankruptcy Case for purposes of collection against applicable liability insurance policies while reserving collection against Debtors within the administration of the Bankruptcy Case. Claimants file this Reservation of Rights subject to entry of the Confirmation Order.

I. ARGUMENTS AND AUTHORITIES

6. For confirmation of the Plan, Debtors must demonstrate by a preponderance of the evidence that the Plan complies with section 1129 of the Bankruptcy Code. *See In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993)

(finding "preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009) (finding debtor as the proponent of the plan has the burden of proving all elements of section 1129 are met); *In re J T Thorpe Co.*, 308 B.R. 782, 785 (Bankr. S.D. Tex. 2003) (same). Section 1129 requires the Debtors to establish their Plan complies with all applicable provisions of the Bankruptcy Code, is proposed in good faith, and is not proposed by any means forbidden by law. *See* 11 U.S.C. § 1129(a)(1), (3).

7. While the Plan includes terms allowing for the recovery of personal injury claims against applicable liability insurance policies outside the administration of the Bankruptcy Case, it does not provide terms to adjudicate those claims. Instead, the Plan terms are limited to releasing and enjoining pending claims and reserving the adjudication of such claims to the Bankruptcy Case. *See* Plan, §§ VIII(A) (Discharge of Claims and Termination of Interests), VIII(D) (Releases by Third Parties), VIII(F) (Injunction), XI (1) & (13) (Retention of Jurisdiction). As personal injury claimants, the liquidation of Claimants' claims is expressly excluded from core proceedings arising under title 11. *See* 28 U.S.C. § 157(b)(2)(B), (b)(5) & (c). Claimants timely opted out of the Plan releases and object to any release of their claims herein. Claimants have reserved their rights to adjudication and a jury trial outside of the Bankruptcy Case. *See* 28 U.S.C. § 1411. Currently, the Plan does not provide for this adjudication. *See* 11 U.S.C. § 1129(a)(1), (3). However, Claimants and Debtors have agreed to include language in the Confirmation Order preserving Claimants' rights to adjudicate their claims outside the Bankruptcy Case. Claimants file this Reservation of Rights subject to entry of the Confirmation Order.

II. PRAYER

WHEREFORE, Cheyanne Adams, Wendy Adams and James Adams respectfully request that the Court enter the Confirmation Order preserving Claimants' rights to adjudicate their claims outside the Bankruptcy Case and grant Claimants such other and further relief as the Court deems just and proper.

Respectfully submitted this 20th day of February 2025.

/s/ Ryan E. Chapple

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reservation of Rights has been served on counsel for Debtors, Debtors, the U.S. Trustee, and all parties receiving or entitled to notice through CM/ECF on this 20th day of February 2025.

/s/ Ryan E. Chapple
Ryan E. Chapple