Docket #2334 Date Filed: 02/20/2025

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

IN THE MATTER OF:	)	BK NO. 24-90377 (MI)
	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al.*,	)	
	)	
Debtors.	)	

OBJECTION TO MODIFIED FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION

COMES NOW the secured creditor, Integrated Power Co. (hereinafter "IPC") and for its Objection to the Debtor, Zachry Industrial, Inc.'s (hereinafter "Zachry") proposed Modified First Amended Chapter 11 Plan of Reorganization ("Objection").

Factual Background

1. This Objection relates to the Modified First Amended Chapter 11 Plan of Reorganization of Zachry and its Debtor Affiliates ("Plan).

2. IPC was subcontracted by Zachary to provide labor and materials for the construction of two power substations.

3. The claims asserted by IPC against Zachary includes work done on a project with the Omaha Public Power District ("OPPD"). IPC has provided labor and materials to Zachary in connection with the OPPD Project ("OPPD Project") pursuant to a Subcontract Agreement. IPC's pre-petition claim relating to the OPPD Project is reflected in amended Proof of Claim no. 45-2 in the amount of $9,674,014.28. A significant portion of IPC's Claim, approximately $4.1 million, is retainage, that upon information and belief has been escrowed by OPPD. IPC has not received any notification that any of the work performed or materials provided was not acceptable.

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4. Travelers Casualty and Insurance Company of America and Pacific Indemnity Company (collectively, the "Sureties") have issued performance and payment bond no. 107261753/824555022 ("Bond") which relates to the OPPD Project. IPC assets that it is entitled to recourse against the Bond to the extent it is not fully paid in full by Zachary for labor and materials furnished to Zachary in connection with the OPPD Project.

5. Debtor's Twenty-Third Omnibus Objection to Certain Proofs of Claim currently provides that IPC is a secured creditor for the full amount of the amended claim filed. Zachary and IPC are in continued discussions regarding the final treatment of IPC's claim. A hearing is scheduled for March 17, 2025 regarding treatment of IPC's claim.

Plan – Third Party Release

6. By this Objection, IPC hereby opts out of the Third-Party Releases contained in Article VIII.D of the Plan.

7. The discharge provision (Article VIII.A) includes the following provision:

> *For the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder of any Claims against any of the Holders of any Claim to file, assert, levy, or attach any Liens or initiate any claim against any bonds or the Sureties on account of any Claims against any of the Debtors that are discharged or released pursuant to this Plan, or otherwise enforce, collect, or recover on account of any such Claims, Liens, or bonds.*

Said provision of the Plan appears to seek to remove any remedy creditors may have to file a claim and pursue payment of balances due from the posted bond.

Specifically, since creditors have not been identified as to whether they are secured, priority, partially secured or unsecured in the Plan, it is impossible to determine which creditors this provision may affect.

8. Pursuant to Article I.A.138 of the Plan, the term "Sureties" is defined to mean Travelers Casualty and Insurance Company of America and Pacific Indemnity Company. The above provision purports to discharge IPC's Claim against the Sureties on the Bond.

Objection to the Plan

9. Section 524(e) provides that, in the circumstances here applicable, "the discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." In *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071, 219 L. Ed. 29 721, 740 (2024), the U.S. Supreme Court held that "the bankruptcy code does not authorize a release and injunction that, as a part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of the affected claimants."

10. IPC objects to the Plan to the extent it proposes in the Third-Party Release, the discharge provision, or the plan injunction to release, impair, or affect the rights, claims and remedies relating to any portion of the IPC Claim against any non-debtor, including with regard to the Sureties.

11. By this Objection, IPC hereby elects to opt out of the Third-Party Releases.

12. IPC objects to the discharge provision (Article VIII.A) and the plan injunction (Article VIII.F) to the extent that these provisions purport to discharge, release, impair, or enjoin any portion of the IPC Claim against any non-debtor, or enjoin IPC from pursuing

its rights, claims, or remedies against any non-debtors, or otherwise impairs, affects, or releases IPC's rights, claims and remedies against any non-debtors, including as against the Sureties.

13. IPC has proposed the language reflected in the attached Exhibit "A" to resolve this Objection.

14. IPC requests that its Objection be sustained and that no provision of the Plan or to the Confirmation Order may release, impair, or affect its rights, claims and remedies against any non-debtor, including the Sureties.

Prayer for Relief

WHEREFORE, IPC prays that its Objection above be sustained, and for such other and further relief as the Court deems just and proper.

Dated February 20, 2025.

INTEGRATED POWER CO.,
Secured Creditor,

By: */s/ Frederick D. Stehlik*

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2025, I caused the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Frederick D. Stehlik

EXHIBIT "A"

ZACHARY CONFIRMATION ORDER

Provisions regarding IPC. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, the Plan Supplement, the Restructuring Transactions, or any related documents (the "Plan Documents"), (i) Integrated Power Co. ("IPC") is hereby deemed, as of the Effective Date, to have affirmatively opted out of the Third-Party Release provisions of the plan and is not bound by the Third-Party Release; (ii) confirmation of the Plan shall not release, discharge, impair or enjoin IPC's rights, Claims, or remedies against any non-debtor, including the Sureties (Travelers Casualty and Surety Company of America and Pacific Indemnity Company); (iii) as set forth in Article II.A of the Plan, any Administrative Claims of IPC that accrued in the ordinary course of business after the Petition Date may be paid by the Debtors or Reorganized Debtors, as applicable, in the ordinary course of business, to the extent not otherwise paid as Cure Claims on the Effective Date; and (iv) confirmation of the Plan shall not release, discharge, impair, or enjoin IPC's rights, claims, or remedies against any Person accruing on or after the Effective Date. On the Effective Date, as a Cure Claim, the Debtors shall pay to IPC the sum of $9,674,014.28 which payment shall be deemed to fully satisfy: (a) Proof of Claim No. 45-2 filed by IPC, and (b) any Claim which IPC may have or asset against the Sureties, whether based on the Claim reflected in Proof of Claim no. 45-2 or otherwise.