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)
ZACHRY HOLDINGS, INC.,	)	
Plaintiff,	)	Adv. Pro. No. 25-03025 (MI)
v.	)	
OMAHA PUBLIC POWER DISTRICT,	)	
Defendant.	)	

JOINT DISCOVERY/CASE MANAGEMENT PLAN UNDER
FEDERAL RULE OF CIVIL PROCEDURE 26(f)

1. State where and when the meeting of the parties required by Rule 26(f) was held and identify the counsel who attended for each party.

On April 7, 2025, via videoconference ("Rule 26(f) Conference") between Laura Garr and John Deis, counsel for the Plaintiff, and Thomas Scannell, counsel for the Defendant.

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

***In re Zachry Holdings, Inc., et al.*; 24-90377-MI (jointly administered); United States Bankruptcy Court for the Southern District of Texas, Houston Division; the Honorable Marvin Isgur presiding (the "Bankruptcy Cases").**

[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.veritaglobal.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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3. Briefly state the nature of this action and the positions of the parties.

This case concerns a dispute over the delayed completion of the Standing Bear Lake ("SBLS") and Turtle Creek ("TCS") powerplants (collectively, the "Powerplants") located in the Omaha, Nebraska area.

Plaintiff filed this action seeking declaratory relief that Plaintiff is not liable for failure to timely complete construction on the Powerplants and the Second Amended EPC's liquidated damages provision (the "Liquidated Damages Provision") is unenforceable.

Defendant disputes Plaintiff's allegations. Defendant asserts that Plaintiff is responsible for the project delays, which have harmed Defendant. Defendant asserts that Plaintiff is liable to Defendant under the Liquidated Damages Provision.

4. Specify the allegation of federal jurisdiction. State the parties' respective positions concerning this adversary proceeding as a "core" proceeding under 28 U.S.C. 157(b)(2). State the parties' respective positions concerning the Court's entry of final orders or a final judgment in this adversary proceeding.

28 U.S.C. § 1334(b).

As the Plaintiff will argue in its forthcoming objection to the Defendant's Motion to Withdraw Reference [Docket No. 12] and the Defendant's Motion to Transfer Venue [Docket No. 13], the Plaintiff believes this is a core proceeding because it asserts claims arising out of the administration of the Plaintiff's bankruptcy estate, 28 U.S.C. § 157(b)(2)(A), and because those claims must necessarily be resolved as part of the bankruptcy claims allowance process that the Defendant initiated by filing its administrative expense application under 28 U.S.C. § 157(b)(2)(B) and (C).

The Defendant disagrees with the Plaintiff's positions stated above. The Defendant believes this dispute is not a core proceeding for the reasons set forth in the Defendant's Motion to Withdraw Reference [Docket No. 12] (including, without limitation, this action asserts state law claims concerning a contract governed by Nebraska law).

The Plaintiff consents to the entry of final orders or a final judgment by this Court in this adversary proceeding and believes that this Court has authority to enter final orders or a final judgment in this adversary proceeding irrespective of the Defendant's consent.

The Defendant does not consent to the entry of final orders or a final judgment by this Court in this adversary proceeding.

5. Name the parties who dispute the Court's federal jurisdiction or venue and the reasons.

Defendant disputes that the bankruptcy court has subject matter jurisdiction over this dispute because the Bankruptcy Plan proposed by the Debtor has been confirmed and the dispute is not a core proceeding.

The parties do not dispute that, assuming no joinder or intervention of additional parties, a federal district court would have diversity jurisdiction over this dispute.

Defendant disputes that venue is proper. The Defendant has filed a motion to withdraw the reference to the district court. The Defendant has filed a motion to transfer venue based on the venue selection clause contained in the parties' contract.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

Additional parties interested in this litigation include:

Travelers Casualty and Surety Company;

Pacific Indemnity Company;

Wartsila North America, Inc.; and

Siemens Energy, Inc.

One or more of these parties could be added within 60 days after the entry of a Scheduling Order in this case. Plaintiff and Defendant both reserve the right to join any one or more of the parties listed above. Plaintiff does not consent to the joinder of Travelers Casualty and Surety Company or Pacific Indemnity Company and does not contemplate the joinder of any other parties.

7. List anticipated interventions.

It remains possible that any one or more of the parties listed in Section 6 hereinabove could seek to intervene in this litigation.

8. Describe class-action issues.

The parties do not presently anticipate any class-action issues.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

The parties agree to exchange initial disclosures within 14 days after the Rule 26(f) Conference.

10. Pursuant to Paragraph 11 of the Court's Order entered at Docket Number 5 in this Adversary Proceeding, the parties propose the following protocol to resolve any future discovery disputes.

In the event the parties encounter any dispute regarding any discovery matter, the parties are required to conduct an in-person meeting (videoconference is acceptable) within seven (7) calendar days to resolve the dispute in good faith. During the parties' good faith efforts to resolve any such discovery dispute, the parties are required to be mindful of the code of ethical conduct and standards for civility in litigation, as described in *Dondi Properties Corp., et al. v. Commerce Sav. and Loan Ass'n, et al.*, 121 F.R.D. 284 (N.D. Tex. July 14, 1988). The parties shall also remain mindful of the Court's strong preference to resolve any discovery disputes in good faith without the Court's required intervention. If the parties cannot resolve any discovery dispute after their mandatory good faith conference, then one or both parties may file a motion to compel (or other appropriate procedural device) seeking the Court's intervention to resolve any remaining disputes. Prior to filing any motion to compel (or other appropriate procedural device), the parties shall endeavor to resolve as many issues as possible so that the scope of disputed discovery issues presented for the Court's intervention is as narrow and limited as possible. All aspects of any discovery related proceedings before the Court shall be governed by the applicable rules of civil procedure and the Local Rules of this Court. The parties agree to conform to the provisions of Paragraph 12 of the Court's Order entered at Docket 5 in this Adversary Proceeding.

11. Discovery Plan. The parties disagree on the discovery plan for this Adversary Proceeding.

The Defendant proposes the following discovery plan:

A. All parties to complete service of written discovery on any and all topics, including interrogatories, no later than January 30, 2026.

B. All parties to complete fact witness depositions, including a corporate designee deposition under Rule 30(b)(6), no later than March 31, 2026.

C. The party bearing the burden of proof on any specific issue shall provide an expert's report conforming to Rule 26(a)(2) no later than February 27, 2026. Rebuttal expert reports conforming to Rule 26(a)(2) shall be provided no later than May 29, 2026.

D. The deadline for each party to produce any expert for deposition will be July 31, 2026.

E. Motions to limit or exclude expert testimony on *Daubert* and related grounds shall be filed at least 30 calendar days prior to trial docket call.

F. Motions in limine or any other pretrial motions shall be filed at least 30 calendar days prior to trial docket call.

The Plaintiff disagrees with this proposal.

The Plaintiff proposes the following discovery plan:

To promote judicial economy and the efficient use of the parties' resources, the Plaintiff proposes to split the case into three phrases. In the first phase ("Phase I"), the Court will address the threshold issue of the enforceability of the Liquidated Damages Provision. In the second phase, the parties will engage in mediation ("Phase II"). If the mediation is unsuccessful, in the third phase of this proceeding ("Phase III"), the parties will meet and confer on setting a schedule for the remainder of the case deadlines in this action and submit for court approval such a schedule no later than 14 days following the reported result of the parties' mediation.

Phase I: Enforceability of the Liquidated Damages Provision

The following deadlines will apply to Phase I of the proceedings, which shall exclusively pertain to the adjudication of the enforceability of the Liquidated Damages Provision:

A. Parties shall serve written discovery, including interrogatories, no later than April 25, 2025. Responses to any such discovery shall be due no later than May 16, 2025.

B. Parties shall take depositions, including corporate designee depositions under Rule 30(b)(6), no later than June 15, 2025.

C. The party bearing the burden of proof on any specific issue shall provide an expert's report conforming to Rule 26(a)(2) no later than June 25, 2025. Rebuttal expert reports conforming to Rule 26(a)(2) shall be provided no later than July 9, 2025.

D. Motions to limit or exclude expert testimony on *Daubert* and related grounds for the Phase I hearing shall be considered at the Phase I hearing on the enforceability of the liquidated damages provision (the "Phase I Hearing").

E. The deadline for each party to produce any expert for deposition will be July 18, 2025.

F. Any pre-Phase I Hearing motions shall be filed at least seven (7) calendar days prior to the Phase I Hearing.

The Defendant disagrees with this proposal.

Phase II: Mediation

The Plaintiff believes that the adjudication of the enforceability of the Liquidated Damages Provision will have a significant impact on the probability of a successful negotiated resolution in this action. Accordingly, the Plaintiff believes a mediation scheduled two (2) weeks after the issuance of the Court's ruling on Phase I of these proceedings will provide a favorable opportunity to explore the possibility of a mediated resolution. Mediation statements will be due seven (7) days in advance of the scheduled mediation.

The Defendant disagrees with this proposal.

Phase III: Proceeding to Trial

If mediation does not fully resolve the dispute with finality, the parties will meet and confer within seven (7) days of the date of the submission of a report by the mediator (the "Mediator's Report") notifying the court of the unsuccessful outcome of the mediation. Within fourteen (14) days of the issuance of the Mediator's Report, the parties will propose a schedule for the remainder of the case, subject to the Court's approval. For the avoidance of doubt, absent written agreement of the parties, the Mediator's Report will be issued not later than 48 hours following the conclusion of the mediation.

Subject to any agreed upon modifications following the aforementioned post-mediation meet and conferral of the parties, the Plaintiff proposes that all Phase III discovery (including third-party fact witnesses and experts) shall be completed no later than six (6) months following the entry of a scheduling order in this case. The Plaintiff respectfully reserves the right to seek extensions of the discovery period, subject to this Court's approval. Contested extensions of the discovery period shall be granted only for good cause shown.

The Defendant disagrees with this proposal.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

Plaintiff attempted to serve non-party subpoenas under Rule 45 to Wartsila North America, Inc. and Siemens Energy, Inc., respectively, on March 21, 2025. Per agreement of the parties, those subpoenas have been withdrawn without prejudice.

13. State the date the planned discovery can reasonably be completed.

The Defendant believes that all discovery (including third-party fact witnesses and experts) can be completed within eighteen (18) months after the entry of a scheduling order in this case. The Defendant respectfully reserves the right to seek extensions of the discovery period, subject to the Court's approval.

The Plaintiff believes that all Phase I discovery (including third-party fact witnesses and experts) can be completed by July 18, 2025 and that all Phase III discovery (including third-party fact witnesses and experts) can be completed within six (6) months following the entry of a scheduling order in this case. The Plaintiff respectfully reserves the right to seek extensions of these discovery periods, as applicable, subject to the Court's approval.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties have engaged in settlement discussions and both parties are currently open-minded with lines of communication remaining open to explore settlement at all times. The parties have not yet been able to reach an agreement to settle this case. Both parties will continue to work together in good faith to actively communicate on mutually acceptable terms to settle the claims and causes of action in this litigation.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

***See* Section 14 above.**

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable and state when such a technique may be effectively used in this case.

Plaintiff believes that mediation would be productive in this case at Phase II of these proceedings following the resolution of the enforceability of the Liquidated Damages Provision in Phase I. If the Court resolves the issue of the enforceability of the Liquidated Damages Provision, the likelihood of the parties reaching a successful mediated resolution would, in Plaintiff's view, substantially increase. However, prior to the resolution of this issue in Phase I, Plaintiff agrees with Defendant's position that mediation would be premature (albeit for different reasons) and that this Court's and the parties' time and resources would be more efficiently and effectively employed resolving this threshold issue prior to scheduling any such mediation.

The Defendant believes that mediation is premature due to factual predicates beyond the parties' control. Specifically, this case involves a central dispute over the causes for completion delay on two powerplant facilities located in the Omaha, Nebraska area. The analysis supporting the causes for such delays will likely require extensive third-party evaluation, which will inherently require a significant investment of time and resources (including potentially onsite inspections). As the projects remain unfinished and ongoing, onsite inspections would only cause further delays unproductive to the parties' primary mutual goal of completing construction as quickly as possible. The Defendant believes that mediation would not be a constructive use of the parties' time without a firm understanding and basis for the completion delays. The Defendant believes that mediation could potentially be a

constructive use of the parties' time after an opportunity to gain a meaningful understanding of the factual dispute.

17. State whether a jury demand has been made and if it was made on time.

No jury demand.

18. Specify the number of hours it will take to present the evidence in this case.

The Plaintiff expects that the Phase I Hearing adjudicating the enforceability of the Liquidated Damages Provision will last no more than six (6) hours. The Plaintiff expects that the Phase III trial, if necessary, will last approximately 40-50 hours.

The Defendant expects the trial to last approximately 40-50 hours.

19. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

No pending motions could be ruled on at the initial pretrial and scheduling conference. Defendant filed its Motion to Dismiss [Docket No. 11], Motion to Withdraw Reference [Docket No. 12], and Motion to Transfer Venue [Docket No. 13]. The Plaintiff's deadline to respond to those motions is April 11, 2025. The motions have not yet been set for a hearing and will not have been fully briefed prior to the Rule 7016 conference.

20. List other motions pending.

None.

21. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

None anticipated at this time.

22. List the names, bar numbers, addresses and telephone numbers of all counsel.

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RESPECTFULLY SUBMITTED THIS 7TH DAY OF APRIL, 2025:

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Counsel to Omaha Public Power District

CERTIFICATE OF SERVICE

I certify that on April 7, 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.

/s/ Charles R. Koster
Charles R. Koster