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

In re:	)	**Chapter 11**
ZACHRY HOLDINGS, INC., *et al.*[1]	)	**Case No. 24-90377 (MI)**
Reorganized Debtors.	)	**(Jointly Administered)**

SURETIES' JOINT RESPONSE IN SUPPORT OF THE REORGANIZED DEBTORS' EMERGENCY MOTION TO ENFORCE THE CONFIRMED FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES WITH RESPECT TO THE NEBRASKA LITIGATION

COMES NOW Travelers Casualty and Surety Company ("***Travelers***") and Pacific Indemnity Company ("***Pacific***") (collectively, the "***Sureties***" and each a "***Surety***"), by and through their undersigned counsel, to respond in support of Zachry Holdings, Inc.'s and its affiliates' (collectively, the "***Reorganized Debtors***") *Motion to Enforce the Confirmed Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates with Respect to the Nebraska Litigation* [Dkt. No. 2797] (the "***Motion to Enforce***"). In furtherance of this response in support (the "***Response in Support***"), the Sureties respectively state as follows:

PRELIMINARY STATEMENT

1. The Sureties fully support the arguments and the relief sought by the Reorganized Debtors in their *Motion to Enforce* and incorporate such here as if fully stated herein.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Reorganized 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 Reorganized Debtors' claims and noticing agent at www.veritaglobal.net/ZHI. The location of the Reorganized Debtors' service address in these chapter 11 cases is P.O. Box 240130, San Antonio, Texas 78224.

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2. The Nebraska Litigation[2] commenced by Commonwealth Electric is nothing more than its attempt to avoid the bankruptcy claims reconciliation process -- a process it voluntarily submitted to by filing its Claim in the Bankruptcy Case. Such an end round should not be allowed to stand and only serves to waste judicial resources and create the likelihood of competing and inconsistent rulings. It is clear that the claims adjudication process is part of the core jurisdiction of this Court. The Nebraska Litigation should therefore not be allowed to continue while the Claim and Claims Objection remain pending as a contested matter before this Court. As argued below, the following propositions further support enforcing the Plan and staying the Nebraska Litigation: (a) the Sureties' liability is derivative of ZII's and the Reorganized Debtors, (b) the Nebraska Litigation is simply a disguised suit against ZII and the Reorganized Debtors, and (c) the Plan discharges, enjoins, and/or provides this Court with exclusive jurisdiction over the Nebraska Litigation.

BACKGROUND

Suretyship and the Bonds

3. The Sureties, as co-sureties, issued that certain *Payment and Performance Bond* dated September 21, 2021, bearing no. 107261753 with respect to Travelers and no. 82455022 with respect to Pacific (the "***Bond***") on behalf or on the request of the Reorganized Debtors, specifically, Zachry Industrial, Inc. ("***ZII***"), as principal.

4. The Bond assures (a) ZII's obligations to the Board of Directors of the Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska (the "***OPPD***"), as obligee, under that certain *Engineer, Procure, and Construct the District's Standing Bear Lake and Turtle Creek Generating Stations*, contract no. 263406 (the "***Bonded Contract***") as

[2] All capitalized terms in this paragraph shall have the meaning ascribed to them as provided elsewhere in this Response in Support.

well as (b) ZII's obligations to subcontractors and suppliers, as beneficiaries, in relation to the Bonded Contract.

5. To secure ZII's obligations under the Bond, as well as obligations of principals under bonds issued to other Reorganized Debtors, certain of the Reorganized Debtors, including ZII separately executed indemnity agreements in favor of Travelers and Pacific.

6. The Sureties are each entitled (a) to common law indemnity from ZII as principal under the Bond and contractual indemnity from ZII and other undersigned indemnitors to the indemnity agreements for any loss by the Sureties with respect to the Bond, including legal fees for any defense against claims on the Bond, as well as (b) subrogation to the claims of Commonwealth Electric to the extent the Sureties pay Commonwealth Electric under the Bond.

7. As incorporated into the *Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Dkt. No. 2431] (the "***Plan***") via the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement on a Final Basis and (II) Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Dkt. No. 2431] (the "***Confirmation Order***"), the Reorganized Debtors, through the Plan, assumed the Bond, the other bonds, and other surety agreements, reaffirming the rights, claims, defenses, and obligations thereunder ***as between the Sureties and the Reorganized Debtors***, stating, in relevant part:

> No provision of the Plan Documents shall bar, release, impair, expand, alter, modify, amend, transfer, limit, enjoin, prime, or subordinate the rights, claims, and defenses of Travelers Casualty & Surety Company of America, Pacific Indemnity Company, or any of the foregoing's parent companies, affiliates, and/or successors (each a "Surety", and collectively, the "Sureties") under (1) any surety bonds by the Sureties (collectively, the "Existing Surety Bonds"), (2) any indemnity agreements or other agreements between any Surety and any Debtor in these bankruptcy cases related to the Existing Surety Bonds (the "Prepetition Indemnity Agreements"), or (3) the terms, conditions, rights, claims, defenses, and/or obligations of the Sureties or of the Debtors under the Existing Surety Bonds or the

> Prepetition Indemnity Agreements. The Reorganized Debtors have and are hereby deemed to assume *cum onere* the Existing Surety Bonds and Prepetition Indemnity Agreements, and any and all obligations thereunder, without regard to and without the necessity of any determination as to whether the Existing Surety Bonds or the Surety Indemnity Agreements are executory contracts or whether such agreements are financial accommodations, as those terms are defined or used in the Bankruptcy Code, and the Sureties are hereby deemed to have consented to the Debtors' assumption of the Existing Surety Bonds and Prepetition Indemnity Agreements. All obligations of the Debtors and the Sureties under the Existing Surety Bonds and Prepetition Indemnity Agreements shall be satisfied by the Debtors and the Sureties, as applicable, in the normal course of business in accordance with the terms of the applicable agreements. The Reorganized Debtors shall execute new indemnity agreements in favor of, and in a form acceptable to, in their sole discretion, each of the Sureties (the "Post-Confirmation Indemnity Agreements") in forms substantially the same as the Prepetition Indemnity Agreements; provided, however, that (1) the execution of the Post-Confirmation Indemnity Agreements shall be deemed cumulative relief and any failure to execute the same shall not impact the liability of the Reorganized Debtors under the Existing Surety Bonds or the Prepetition Indemnity Agreements, and (2) nothing shall obligate the Sureties to issue new surety bonds or renew any Existing Surety Bonds or bar, enjoin, or stay the Sureties from demanding collateral or exercising any other of the Sureties' rights, claims, and defenses, in each case subject in all respects to the terms and conditions of the Existing Surety Bonds, Prepetition Indemnity Agreements, and Post-Confirmation Indemnity Agreements, as applicable. The Sureties shall be deemed to have opted out of the Third-Party Release provided in Article VIII.D of the Plan, and such Third-Party Release shall not be applicable to the Sureties. Notwithstanding any other provision of the Plan Documents, the Sureties shall not be enjoined from enforcing any rights under the Existing Surety Bonds and the Prepetition Indemnity Agreements. . . . ***For the avoidance of doubt, the Debtors and the Sureties reserve all rights, defenses, and claims under the Existing Surety Bonds and Prepetition Indemnity Agreements, which are preserved notwithstanding anything to the contrary in the Plan Documents.***

[Dkt. No. 2431, Confirmation Order, at 79-80, ¶ 166] (emphasis added).

8. Additionally, the Reorganized Debtors clearly assumed and reinstated all indemnification obligations owed to the Sureties under the Plan, which states in relevant part:

> All indemnification provisions in place as of the Effective Date . . . for . . . the Sureties . . . shall be reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such . . . Sureties, as provided under the indemnification obligations in place prior to the Effective Date; provided, however, nothing herein shall expand any of the Debtors' indemnification obligations in place as of the Petition Date.

Plan, Art. IV.M.

The Claim Objection and Nebraska Litigation

9. On August 27, 2024, Commonwealth Electric Company of the Midwest ("***Commonwealth Electric***"), a subcontractor on the Bonded Contract project and beneficiary of the Bond, filed a proof of claim [Claim No. 1003] against ZII, alleging a total claim against ZII in the amount of $5,359,030.62 (the "***Claim***") in relation to services, labor, and/or materials supplied for the Bonded Contract project, of which Commonwealth Electric alleges $1,038,339.54 is entitled to priority as a section 503(b)(9) administrative expense with the remainder constituting a general unsecured claim.

10. On February 20, 2025, the Reorganized Debtors filed their *Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003)* [Dkt. No. 2336] (the "***Claim Objection***"), asserting Commonwealth Electric performed incomplete, defective, and duplicative work on the Bonded Contract project and disputing amounts owed to Commonwealth Electric on its Claim. More specifically, the Claim Objection seeks to offset the Claim by $2,651,982.00 and reduce the Claim to $2,707,048.62 with only $110,275.93 of that constituting a section 503(b)(9) administrative expense.

11. On March 21, 2025, Commonwealth Electric filed its *Response to Debtors' Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003)* [Dkt. No. 2602] (the "***Claim Objection Response***") and later filed, but subsequently withdrew, its *Supplemental Response to Debtors' Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003)* [Dkt. Nos. 2652 and 2689].

12. The Claim and Claim Objection remain pending as an open contested matter before this Court.

13. During the course of the contested matter regarding the Claim and Claim Objection, Commonwealth Electric simultaneously pursued litigation against the Sureties by commencing an action on August 23, 2024, in the United States District Court for the District of Nebraska, civil action no. 4:24-cv-03149-SMB-JMD (the "***Nebraska Litigation***"), seeking a recovery in the same amount as the Claim against the Sureties. The Nebraska Litigation is centered on Commonwealth Electric's claim relating to the Reorganized Debtors obligations under the Bonded Contract, which is the exact same basis for the Claim asserted by Commonwealth Electric against the Reorganized Debtors that is subject to the Claim Objection.

14. On March 26, 2025, the Sureties filed their *Motion to Stay* in the Nebraska Litigation, moving to stay the duplicative Nebraska Litigation pending resolution of the contested matter regarding the Claim and Claim Objection. [Nebraska Litigation Dkt. No. 31]. Commonwealth Electric opposed the Motion to Stay by filing its *Brief in Opposition to Defendant's Motion to Stay*, and the Sureties subsequently filed their *Reply Brief in Support of Their Motion to Stay*. [Nebraska Litigation Dkt. Nos. 34 and 40].

ARGUMENT AND RESPONSE IN SUPPORT

15. While the Reorganized Debtors are not named parties to the Nebraska Litigation, make no mistake that the Nebraska Litigation is nonetheless a suit against the Reorganized Debtors to adjudicate Commonwealth Electric's Claim as an improper end run around the claim allowance process, for which this Court maintains exclusive jurisdiction. Allowing the Nebraska Litigation to move forward while the Claim Objection is still pending would not only cede this Court's important core jurisdiction and power to determine the claims reconciliation process but also would result in expensive, duplicative litigation and possibly incongruous results.

I. Commonwealth Electric's Claim Against the Sureties Is Not Independent of Commonwealth's Claim Against the Reorganized Debtors.

16. The claims asserted by Commonwealth Electric against the Sureties in the Nebraska litigation are clearly and unequivocally dependent upon the liability of the Reorganized Debtors that will be determined by this Court in conjunction with the claims allowance process. Commonwealth's apparent argument that the Sureties are liable under the Bond even if Commonwealth's claims against the Debtors are deemed invalid simply defies logic and common sense.

17. First, Commonwealth Electric's argument that "general surety principles" are not applicable to statutory bonds in Nebraska is simply unsupported by any case law and is not the law. What is the law is that general common law surety principles apply to statutory bonds except to the extent that the applicable statute provides otherwise. In this case, the statute at issue merely provides that the bond is to be issued for the benefit of materialmen and suppliers to provide security to them. Specifically, Section 52-118 of the Nebraska Code provides in relevant part:

> (1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

Neb. Code 52-118. There is no conflict with the application of common law surety principles to this Bond.

18. Commonwealth Electric's reliance on *Stock v. Meissner*, 217 Neb. 56, 57-58, 348 N.W.2d 426, 427-28 (Neb. 1984), is misplaced. *Meissner* does not stand for the proposition that a surety's liability on a surety bond is independent of the validity of the underlying claim against the bond principal. Rather, *Meissner* stands only for the proposition that, where a statute of limitations for claims against a principal on the bonded obligation is shorter than the statute of limitations for claims on the bond, the surety cannot rely on the statute of limitations having run against its bond principal to disclaim liability for payment under the bond. *Meissner*, 217 Neb. at 59-60, 348 N.W.2d at 428. This makes sense because, as the *Meissner* court pointed out, "[s]tatutes of limitations . . . generally . . . do not impair existing substantive rights, but merely affect the procedure by which such rights may be enforced." *Id.*

19. In fact, the *Meissner* court strongly implies that, had the principal's liability been litigated and determined null on the merits, the surety's liability would have been determined null as well, as follows:

> The record does show that [principal]'s application alleged defenses of (1) the bar of the statute of limitations, (2) issue preclusion, and (3) the laws of the case, which were not substantive issues. The execution of the bond was admitted in the pleadings, and the summary judgment did not litigate the merits of [surety]'s liability on the bond.

Id. And further:

> In the [trial court] case the 4-year statute of limitations was applied in favor of [principal] as a defense to the action on the oral contract; however, the summary judgment in that case did not litigate or impair [bond claimant]'s rights and separate cause of action against [surety] on the statutory bond. The issue of the applicability of the 10-year statute of limitations to a suit on the bond executed by [principal] and [surety] had never been resolved; therefore, the original summary judgment in favor of [principal] does not operate to bar the cause of action against [surety].

Id. Accordingly, even under *Meissner*, whether a bond is statutory does not divorce the extent of a surety's liability from that of its bond principal or eliminate available substantive rights and defenses, though it may mean the two defendants face different statute of limitations or other procedural timelines.

20. Furthermore, in subsequent case law, the Nebraska Supreme Court has clarified a principal's and surety's liability under a statutory bond contrary to Commonwealth Electric's arguments. Specifically, in *Sawyer v. State Surety Co.,* a case involving a statutory guardian bond decided approximately 13 years after *Meissner*, the Nebraska Supreme Court relied upon the general law of suretyship discussed above and ruled with respect to a statutory bond that "[i]nherent in the existence of any surety relationship is the requirement that the principal owe some obligation. 251 Neb. 440, 445, 558 N.W.2d 43, 47 (Neb. 1997).

II. The Nebraska Litigation Is Derivative and Duplicative of Commonwealth's Claim Against the Reorganized Debtors Under Established Common Law Surety Principles.

21. Applying common law principles, it is clear that "Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default, or miscarriage of another, the principal. A surety on a performance bond is bound in the manner and to the extent provided in the obligation." *Bakken Constr., LLC v. Venue at Werner Park, LLC*, Civil Action 8:21-cv-269, 2024 U.S. Dist. LEXIS 114158, at *38 (D. Neb. June 28, 2024) (quoting *State ex rel. Wagner v. Gilbane Bldg. Co.*, 276 Neb. 686, 757 N.W.2d 194, 200 (Neb. 2008)).

22. "The surety's obligation is not an original and direct one for the performance of his own act, but is accessory or collateral to the obligation contracted by the principal. It is of the essence of the surety's contract that there be a valid obligation." *Id.* (quoting *Rodehorst v. Gartner*,

266 Neb. 842, 669 N.W.2d 679, 686 (Neb. 2003) (quoting *Sawyer v. State Surety Co.*, 251 Neb. 440, 558 N.W.2d 43, 47 (Neb. 1997))).

23. Consequently, it is well settled law in Nebraska that "[t]he liability of the surety for the debt to the holder of the obligation is no greater and no less than that of the principal." *Id.* (quoting *N. Bank v. Dowd*, 352 Neb. 352, 562 N.W.2d 378, 379 (Neb. 1997) (quoting *Sawyer*, 558 N.W.2d at 47 (quoting *Niklaus v. Phoenix Indemnity Co.*, 166 Neb. 438, 445, 89 N.W.2d 258, 262-63 (Neb. 1958) (quoting *Kroncke v. Madsen*, 56 Neb. 609, 612, 77 N.W. 202, 203 (Neb. 1898))))).

24. The Bond itself provides that "if said principal herein shall in all respects fulfill this Contract, according to the terms and tenor thereof and shall faithfully discharge the duties and obligations therein assumed, then the above obligation is to be void and of no effect . . . ." This language makes clear that the obligation of the Sureties under the Bond is contingent upon the liability of the principal—i.e. the Reorganized Debtors.

25. It also follows, consistent with established common law surety principles, that the Sureties may rely upon ZII's rights and defenses in the Nebraska Litigation. *See Id.* at *41 ("a surety, like a contractor, may dispute whether the contractor has failed to perform before the surety must pay on the Bond"); *N. Bank*, 352 Neb. at 354, 562 N.W.2d at 379 (reversing on appeal by a guarantor on a promissory note summary judgment granted in favor of the bank obligee because summary judgment in favor of the bank obligee in a separate action involving the maker of the promissory note had been similarly reversed); *Niklaus*, 166 Neb. at 446, 450, 86 N.W.2d at 263, 265 (ruling in favor of the surety on grounds of *res judicata* on the surety's argument that "if the principal in whose behalf the appeal bond was given had a valid defense to the plaintiff's claim for nonpayment . . . the [surety], under such circumstances, would not be liable on the bond").

Accordingly, the Sureties rights and defenses under the Bond include all right and defenses that the Reorganized Debtors can assert with respect to the underlying Bonded Contract.

26. In sum, the Nebraska Litigation is wholly duplicative of the claims process that is underway in this Court and that is part of this Court's core jurisdiction. Allowing the Nebraska Litigation to proceed while the identical claims are being adjudicated by this Court would be an extreme waste of resources. This effort by Commonwealth Electric to continue with the litigation in Nebraska is nothing more than an improper effort to deprive this Court of its ability to adjudicate the Claim in accordance with the core jurisdiction that has been vested in it by Congress.

III. Commonwealth Electric Voluntarily Submitted to the Jurisdiction of this Court with Respect to the Claim and This Court Has Core Jurisdiction over the Claim.

27. Finally, with respect to the bankruptcy claims reconciliation process and Disputed Claims (as defined in the Plan) subject to a claims objection, the Plan explicitly provides for this Court to retain exclusive jurisdiction for such determinations, stating:

> Unless otherwise specifically provided herein or in a prior Order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

Plan, Art.XI.

28. Commonwealth Electric voluntarily submitted to this Court's jurisdiction over the Claim and related matters by submitting the Claim in the Reorganized Debtors' bankruptcy case. Indeed, one of a "bankruptcy court's quintessential duties [is] to adjudicate proofs of claim and to provide a central forum for litigation, whenever feasible and jurisdictionally sound." *Acis Capital Mgmt., GP, LLC v. Highland Capital Mgmt., L.P. (In re Acis Capital Mgmt., L.P.)*, 600 B.R. 541, 560 (Bankr. N.D. Tex. 2019). And as the Fifth Circuit has noted, the "filing [of] a proof of claim under bankruptcy law invokes the special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the

proposed distribution." *Grandy v. Grandy (In re Grandy)*, 299 F.3d 489, 499 (5th Cir. 2002) (internal quotation marks omitted). "In this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy." *Id.* (internal quotation marks omitted). "The nature of [a] state proceeding becomes different from the nature of the proceeding following the filing of a proof of claim." *Id.* (internal quotation marks and brackets omitted).

29. Additionally, under the Plan, this Court retained jurisdiction to, among other things:

> Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or Allowance of Claims or Interests; [and]
>
> adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

Plan, Art.XI.

30. By submitting itself to the jurisdiction of this Court by filing a proof of claim, Commonwealth Electric's claim is subject to all of the relevant orders entered in this Case, including the Plan and Confirmation Order, and its claims under the Bonded Contract, including the claims under the Bonds that are an integral part of the Bonded Contract, should be determined by this Court.

IV. The Confirmed Plan in this Case Provides for the Discharge of and Enjoins Commonwealth Electric's Claims Against the Sureties.

31. The Plan contains a discharge provision that discharges Commonwealth Electric's right to suit against the Sureties, stating in relevant part:

> Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan, the Confirmation Order, or in any contract, instrument, or other agreement or document created or entered into pursuant to this Plan, the distributions, rights, and treatment that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the

> Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Interests, . . . ***in each case whether or not***: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; ***(2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code***; or (3) the Holder of such a Claim or Interest has accepted this Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.
>
> ***For the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder 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, satisfied, or released pursuant to this Plan, including on account of General Unsecured Claims that are satisfied in full under this Plan, or otherwise enforce, collect, or recover on account of any such Claims other than as expressly permitted under this Plan.***

Plan, Art. VIII.A (emphasis added).

32. The Plan also includes an injunction provision enjoining Commonwealth Electric from instituting suit ostensibly against the Sureties but certainly against the ZII and the Reorganized Debtors, which, as argued below, are substantively the real parties to the Nebraska Litigation. The Plan injunction states in relevant part:

> Upon entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and Affiliates, and each of their successors and assigns, shall be enjoined from taking any actions to interfere with the implementation or Consummation of this Plan in relation to any Claim or Interest that is extinguished, discharged, satisfied, or released pursuant to this Plan.

Plan, Art. VIII.F.

33. Accordingly, the claims asserted by Commonwealth Electric against the Sureties in defiance of the Plan and Confirmation Order should ultimately be dismissed.

WHEREFORE, the Sureties respectfully request this Court (a) grant the Reorganized Debtors Motion to Enforce, (b) enter an order in substantially the form submitted by the Reorganized Debtors, (c) enforce the Plan against Commonwealth Electric, (d) direct Commonwealth Electric to stay prosecution of the Nebraska Litigation, and grant such other and further relief as deemed necessary and appropriate.

Respectfully submitted,

Manier & Herod, P.C.

/s/ Michael E. Collins

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2025, a copy of the foregoing was served by this Court's CM/ECF system on all parties designated to receive electronic and/or mail service.

/s/ Michael E. Collins
Michael E. Collins