Docket #0064 Date Filed: 6/6/2025

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 24-90377
	Chapter 11
ZACHRY HOLDINGS, INC., et al.,	
Debtors.	
	Adv. No. 25-03025
ZACHRY HOLDINGS, INC.,	
Plaintiff,	
v.	515 Rusk Street
	Houston, TX 77002
OMAHA PUBLIC POWER DISTRICT,	
	Monday, June 2, 2025
Defendant.	8:45 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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(Proceedings commence at 8:45 a.m.)

THE COURT: All right. Good morning. It's 8:45 a.m. on Monday, June 2nd, 2025. We're here on a status conference in Adversary Proceeding Number 25-03025, Zachry Holdings, Inc. v. Omaha Public Power District. Obviously, this matter had been handled from the outset by Judge Isgur. It's my understanding that he will be out for a few weeks, such so -- so such, Judge Lopez and I will be handling some of the complex matters during that time.

When I learned I would be handling these hearings, I issued the order setting the status conference, so that you wouldn't be spending your weekend preparing for the hearings today, since I obviously wasn't going to be prepared. I have reviewed the motions at, you know, Dockets 12, 13, 34, 37, and then the motion to seal at 45, and I believe that I could be ready to hear these probably in two to three weeks' time

But the main reason for the call today, I -- and before we delve into a schedule, I wanted to address any potential issue of disqualification. As many of you are aware, I retired from the practice of law at the end of 2023. I practiced at Weil Gotshal for a long period of time. In connection with my work there, I represented Zachry Industrial in a few discrete matters unrelated to this adversary proceeding.

That -- this included making an appearance in January

of 2020 in the McDermott International case, at Docket Number 20-30336, and working on that matter as well as others. Although I do not have access to my Weil emails, based on a review of my Weil calendar for 2023, which I do have, it appears that the last substantive Zoom meeting, with respect to the matters Weil handled, was in February of 2023. It's also my understanding that the then-general counsel, who had been my primary contact at Zachry, left Zachry sometime in May 2023.

Under 28 U.S.C. 455(a), "Any judge shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned." Under 28 U.S.C. 455(b), "He shall also disqualify himself in the following circumstances. One, for the personal bias or prejudice concerning the party, or personal knowledge of the disputed evidentiary facts concerning the proceeding" -- I'm sorry -- "where he has personal knowledge -- has a personal bias or prejudice or personal knowledge of the disputed evidentiary facts. Two, where, in private practice, he served as a lawyer in the matter in controversy or a lawyer with whom he previously practiced served during such association."

28 U.S.C. 455(e) provides, "No judge shall accept from the parties to a proceeding a waiver of any ground for disqualification enumerated in Subsection B. Where the ground for disqualification arises only under Subsection A, waiver may be accepted provided it is preceded by a full disclosure on the

record of the basis for the disqualification."

And in 3(D) of the Code of Conduct for United States Judges provides the mechanism for the remittal of disqualification under Section 455(e). The relevant part of the section states, "The judge may participate in the proceeding if, after the disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and then the judge is willing to participate. The agreement should be incorporated into the record of the proceeding."

I do not believe that 455(b) is applicable. I don't have a personal bias or prejudice with respect to any of the parties, and have no personal knowledge of any of the disputed evidentiary facts. Further, when I was in private practice, I did not serve as a lawyer with respect to the matter in, controversy, and Weil is not involved. Therefore, Section 455(a) is the only potential applicable section if my impartiality might be reasonably questioned.

Let me say for the record that I am impartial. Nevertheless, under Canon 3(D), I'm going to recess this status conference, so that you can confer outside of my presence to determine whether you agree I should be -- I should not be disqualified. So my calendar, at this point, is flexible. And what I would like to do is reconvene at some time later today,

but obviously take all the time you need to, you know, discuss your position with respect to that.

So I'm sure this is probably catching you all a little bit by surprise, but we can come back after lunch or we can come back later in the day. I mean, I'm pretty open all afternoon, so let me know what you think.

MR. ZAKIA: So, Your Honor, can you hear me? This is Jason Zakia.

THE COURT: Yes, I can hear you.

MR. ZAKIA: Apologize. I was trying to turn my camera on, but it seems to not be working. So, Your Honor, for the reorganized debtor, I think -- and I think we can make this afternoon work.

THE COURT: All right. All right.

MR. SCANNELL: Good morning, Your Honor. Tom Scannell for OPPD. This afternoon works for OPPD as well. We had planned to be in court all day, or at least traveling anyway, so this entire day has been blocked off.

THE COURT: Obviously, you're going to need time to discuss it among yourselves, to discuss it with your clients, and then talk to the other side. So what time do you think? Do you think three o'clock is reasonable?

MR. ZAKIA: Works for us, Your Honor. This is Jason Zakia.

MR. SCANNELL: Tom Scannell, Your Honor. It does.

THE COURT: Okay. All right. I'll tell you what. I forgot to ask for appearances of counsel. Why don't we make appearances of counsel, and then we'll reconvene at three o'clock. I had my script ready to go, so I just delved right into it.

MR. KOSTER: So, Your Honor, for the reorganized debtors --

THE COURT: (Indiscernible) why don't you go first -- or Mr. Koster.

UNIDENTIFIED: Thank you, Your Honor.

MR. KOSTER: Thank you, Your Honor. Charles Koster, White & Case, for the reorganized debtors. Looking around the screen, Mr. Zakia, Ms. Garr, and John Thomas and Eric Grant from Hicks Thomas (indiscernible) for the reorganized debtors.

THE COURT: All right. All right.

MR. ZAKIA: Your Honor.

THE COURT: And Mr. Thomas I know.

MR. ZAKIA: Sorry.

THE COURT: The other Mr. Thomas.

MR. THOMAS: Yes, Your Honor. Good to see you again. Well, since I'm talking, I'll go ahead and introduce OPPD, Michael Thomas. And with me, I have Zach Zahn, Rob Slovak, who you also know, Your Honor, and Tom Scannell. We will confer with our client, per the Court's order, and talk with opposing counsel and be back with you this afternoon.

THE COURT: All right. So we will -- we'll be in recess till three o'clock. And then --

MR. ZAKIA: Your Honor.

THE COURT: -- you know, depending on the situation, then we'll talk about scheduling and -- at that point. But I didn't want to --

MR. ZAKIA: Your Honor.

THE COURT: -- get into anything substantive. Yes?

MR. ZAKIA: Your Honor, before we break -- this is Jason Zakia. Can I ask one question, to the extent the Court's able to enlighten us? Would Plan B --

THE COURT: Right.

MR. ZAKIA: -- is this a temporary reassignment or a permanent reassignment? Is the expectation that Judge Isgur will return in the future, or is this case being permanently reassigned?

THE COURT: So I don't know the answer to the question of whether the case is permanently being reassigned. I don't believe that it is. And I do anticipate that Judge Isgur will be back at some point. I don't know exactly when.

MR. ZAKIA: Thank you, Your Honor.

THE COURT: So -- all right. So we're in recess till three o'clock.

UNIDENTIFIED: Thank you, Judge.

MR. ZAKIA: Thank you, Your Honor.

(Recess taken at 8:54 a.m.)

(Proceedings resumed at 3:00 p.m.)

THE COURT: Continued status conference in Case Number 25-03025, Zachry Holdings, Inc. v. Omaha Public Power District. So why don't we get the appearances of counsel first, and then we'll hear from the parties.

MR. KOSTER: Good afternoon, Your Honor. Charles Koster, White & Case, for the reorganized debtors, joined by Jason Zakia and Laura Garr, as well as John Thomas, Eric Grant, and John Deis from the Hicks Thomas firm, and the company's general counsel, (audio interference) Old, is on the line as well.

MR. SCANNELL: Good afternoon, Your Honor. Tom Scannell from Foley & Lardner for Omaha Public Power District. I'm joined by Rob Slovak and Zach Zahn of Foley as well.

THE COURT: All right. So where are we?

MR. KOSTER: Your Honor, if we could start with that one question of clarification, and it -- perhaps you may not have the answer to that, and we appreciate that. But to the extent you can tell us, to your understanding, what is being reassigned from Judge Isgur to Your Honor? Is it the entire adversary proceeding involving OPPD? Is it the pending motion to dismiss, transfer, withdraw the reference, and the partial motion for summary judgment, or is it all of those plus the main Chapter 11 cases?

THE COURT: So I don't know that I can fully answer your question, but what I was asked to do was to handle the matters that were on the docket for this week. And that's the extent of it. I obviously found out about it on Thursday at the time that I issued the order, so there's no way that I could be prepared to have a realistic argument. So as far as I know, that's where it stands right now. There's been no formal order assigning the case to me, to my knowledge. I'm sure there hasn't been.

So it was really trying to address what was on the docket today. And I'm handling, you know, another matter tomorrow and another matter on Wednesday. And so -- you know, and, realistically, I think that if you all wanted to go forward, we could have a hearing on these motions probably about three weeks from today. So that's about as good an answer as I can give you.

MR. KOSTER: And it's very helpful. I think that clarifies a lot. We've had an opportunity to speak with the reorganized debtors. We also spoke briefly with counsel at OPPD at Foley & Lardner. From the reorganized debtors' perspective, we are more than happy to proceed with Your Honor, whether it's just for these motions or whether it's for the adversary proceeding as a whole. I will allow counsel at Foley & Lardner to speak, as they may have a difference coming from their client on these points.

THE COURT: Go ahead, Mr. Scannell.

MR. SCANNELL: Thank you, Judge. We have conferred with OPPD and also spoken with counsel for Zachry. And with the absolute utmost respect, Your Honor, OPPD is simply not comfortable, at this time, with Your Honor's prior representation of Zachry. OPPD respectfully requests that Your Honor recuse under 28 U.S.C. 455(a).

THE COURT: All right. I will likely -- I will do that. So I don't know exactly where that leads us. I will talk to Judge Lopez. And so this may or may not get reassigned to him. But, I mean, that's your prerogative, and that's why I said, you know, it is -- I think it's a really close call, but I'm not going to second-guess you. Well -- all right. So we're in recess --

MR. SCANNELL: Thank you for providing the opportunity, Your Honor.

THE COURT: Yeah, so we're in recess, and I will let Judge Lopez know. I know he is at a conference through Thursday -- that's part -- and we've kind of divided the workload. So it may need to get some reshuffling, so that I get some of the stuff that he was going to do and vice versa. So we will get back in touch with the parties as soon as I have something further. It'll likely come from Judge Lopez. All right. So based on --

MR. SCANNELL: Thank you, Judge.

THE COURT: -- the statements by the defendant, I will go ahead and recuse under 455(a).

MR. KOSTER: All right. Thanks.

UNIDENTIFIED: Thank you, Your Honor.

MR. SCANNELL: Thank you, Judge.

THE COURT: We're in recess. All right. Thank you.

(Proceedings concluded at 3:06 p.m.)

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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Alicia J. Jarrett

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ALICIA JARRETT, AAERT NO. 428 DATE: June 6, 2025

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In Re:	Zachry Holdings, Inc. and Statutory Unsecured Claimholders' Committee Debtor	Case No.: 24−90377 Chapter: 11

Zachry Holdings, Inc.,
Plaintiff(s),
vs.
Omaha Public Power District,
Defendant(s).

Adversary No.: 25−03025

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