Docket #0079 Date Filed: 7/10/2025

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

In re:	§	Chapter 11
COMPUTER SIMULATION & ANALYSIS, INC.,[1]	§	Case No. 24-90377 (MI)
Debtor.	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.,	§	
Plaintiff,	§	Adversary No.: 25-03025 (MI)
v.	§	
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

NOTICE OF FILING OF
JULY 9, 2025 HEARING PRESENTATION

PLEASE TAKE NOTICE that attached hereto as **Exhibit A** is a copy of the presentation that was presented by the Defendant at the hearing on July 9, 2025, at 4:00 p.m. (prevailing Central Time) in the above-captioned adversary proceeding.

[Signature page to follow]

[1] The last four digits of the federal tax identification number for Computer Simulation & Analysis, Inc. are 4097. The location of the Reorganized Debtor's service address in this chapter 11 case is: P.O. Box 240130, San Antonio, Texas 78224. On June 27, 2025, the Bankruptcy Court entered the Final Decree Closing Certain of the Chapter 11 Cases (Case No. 24-90377 (MI), Docket No. 3178) closing the chapter 11 cases for Zachry Holdings, Inc., Zachry EPC Holdings, Inc., Zachry Engineering Corporation, ZEC New York, Inc., Zachry High Voltage Solutions, LLC, UE Properties, Inc., ZEC Michigan, Inc., Zachry Constructors, LLC, Zachry Industrial, Inc., Zachry Enterprise Solutions, LLC, Moss Point Properties, LLC, Zachry Nuclear Construction Inc., Zachry Nuclear, Inc., Zachry Nuclear Engineering, Inc., Zachry Plant Services Holdings, Inc., JVIC Fabrication, LLC, Zachry Industrial Americas, Inc., Zachry Maintenance Services, LLC, J.V. Industrial Companies, LLC, Madison Industrial Services Team, LLC (with Computer Simulation & Analysis, Inc., the "**Reorganized Debtors**").

24903772507110000000000003

Dated: July 101, 2025

Respectfully submitted by:

/s/ Thomas C. Scannell

Thomas C. Scannell (TX 24070559)
Robert T. Slovak (TX 24013523)
J. Michael Thomas (TX 24066812)
Zachary C. Zahn (TX 24137675)
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ATTORNEYS FOR OMAHA PUBLIC POWER DISTRICT

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be filed on July 10, 2025, using the Court's CM/ECF System which caused it to be served upon those parties registered in the system to receive such service.

/s/ Zachary C. Zahn
Zachary C. Zahn

Exhibit A

FOLEY

FOLEY & LARDNER LLP

Zachry Holdings, Inc. v. Omaha Public Power

July 9, 2025

Case No. 25-03025 (MI)

In The United States Bankruptcy Court
For The Southern District Of Texas, Houston Division



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Issues

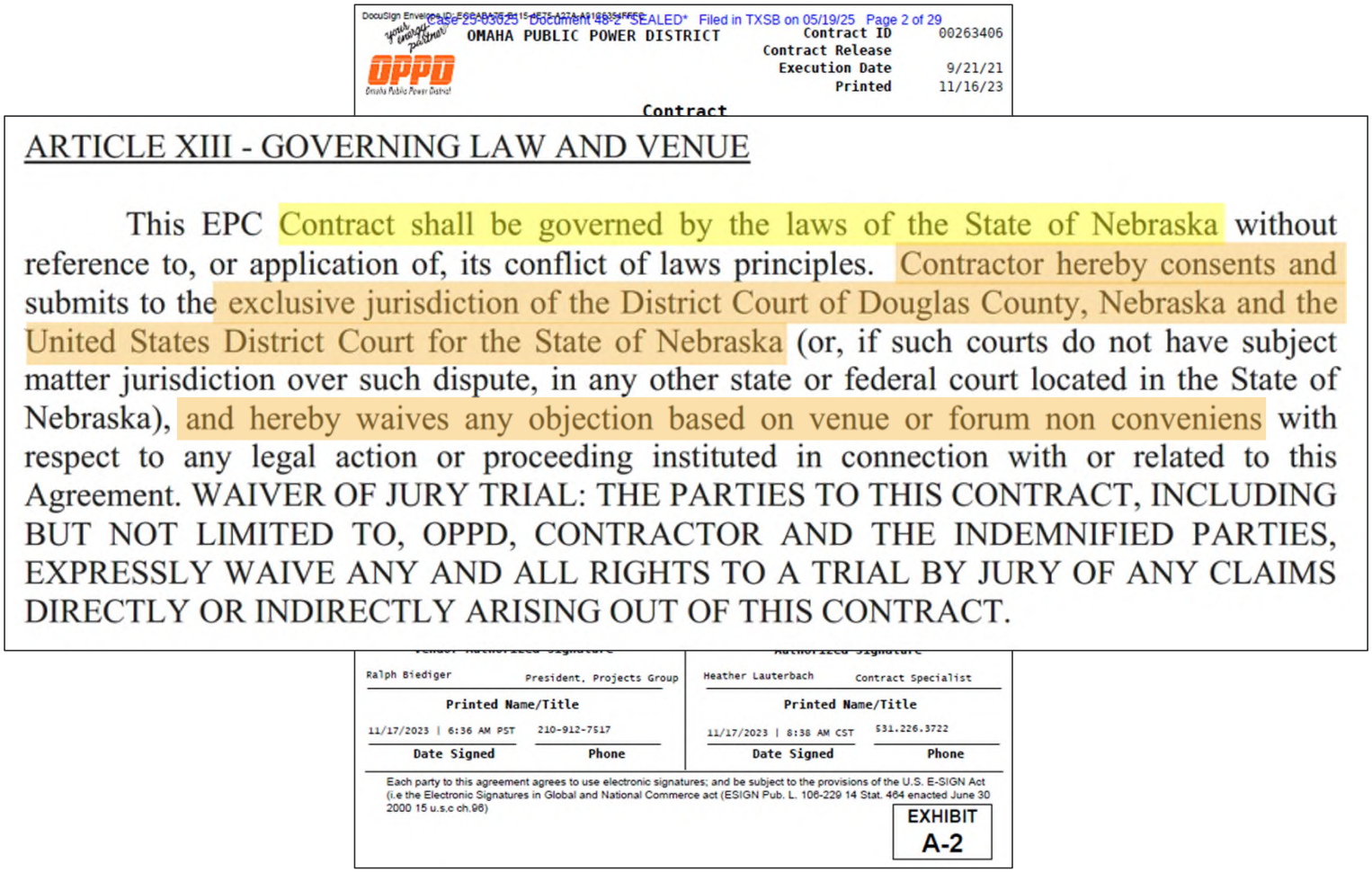
1. Can you ignore the Forum Selection Clause?

2. Can you ignore the Liquidated Damages Clause?

Issue #1

Can you ignore the Forum Selection Clause?

NO



OMAHA PUBLIC POWER DISTRICT

Contract ID 00263406
Contract Release
Execution Date 9/21/21
Printed 11/16/23

Contract

ARTICLE XIII - GOVERNING LAW AND VENUE

This EPC Contract shall be governed by the laws of the State of Nebraska without reference to, or application of, its conflict of laws principles. Contractor hereby consents and submits to the exclusive jurisdiction of the District Court of Douglas County, Nebraska and the United States District Court for the State of Nebraska (or, if such courts do not have subject matter jurisdiction over such dispute, in any other state or federal court located in the State of Nebraska), and hereby waives any objection based on venue or forum non conveniens with respect to any legal action or proceeding instituted in connection with or related to this Agreement. WAIVER OF JURY TRIAL: THE PARTIES TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, OPPD, CONTRACTOR AND THE INDEMNIFIED PARTIES, EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF THIS CONTRACT.

Ralph Biediger	President, Projects Group	Heather Lauterbach	Contract Specialist
Printed Name/Title		Printed Name/Title	
11/17/2023 | 6:36 AM PST	210-912-7517	11/17/2023 | 8:38 AM CST	531.226.3722
Date Signed	Phone	Date Signed	Phone

Each party to this agreement agrees to use electronic signatures; and be subject to the provisions of the U.S. E-SIGN Act (i.e the Electronic Signatures in Global and National Commerce act (ESIGN Pub. L. 106-229 14 Stat. 464 enacted June 30 2000 15 u.s.c ch.96)

EXHIBIT A-2

Standard

"***According to the Fifth Circuit***, a 'forum selection provision in a written contract is ***prima facie valid and enforceable unless*** the ***opposing party*** shows that ***enforcement would be unreasonable***.'"

In re Manchester, Inc., 417 B.R. 377, 384 (Bankr. N.D. Tex. 2009) (quoting *Kevlin Servs., Inc. v. Lexington State Bank*, 46 F.3d 13, 15 (5th Cir. 1995) (emphasis added).

Factors Considered

- Product of fraud or overreaching;
- Enforcement deprives party of "day in court";
- Application of forum law is fundamentally unfair; or
- Enforcement contravenes strong public policy.

Weber v. PACT XPP Techs., 811 F.3d 758, 773 (5th Cir. 2016)

Factors Considered

- Product of fraud or overreaching;
- Enforcement deprives party of "day in court";
- Application of forum law is fundamentally unfair; or
- Enforcement contravenes strong public policy.

Weber v. PACT XPP Techs., 811 F.3d 758, 773 (5th Cir. 2016)

Zachry's Position

"***In the absence of an enforceable forum selection clause***, OPPD bears the burden of showing that venue transfer is appropriate."

Zachry's Omnibus Objection [Docket No. 24, at ¶ 56]

Zachry's Burden

"***According to the Fifth Circuit***, a 'forum selection provision in a written contract is ***prima facie valid and enforceable unless*** the ***opposing party*** shows that ***enforcement would be unreasonable***.'"

In re Manchester, Inc., 417 B.R. 377, 384 (Bankr. N.D. Tex. 2009) (quoting *Kevlin Servs., Inc. v. Lexington State Bank*, 46 F.3d 13, 15 (5th Cir. 1995) (emphasis added).

Enforcement of Forum Selection Clauses

"[T]he mere fact that Debtor/Plaintiff is in bankruptcy ***is not sufficient*** to prevent enforcement of a contractual forum selection clause."

In re Manchester, Inc., 417 B.R. 377, 384 (Bankr. N.D. Tex. 2009) (emphasis added).

Zachry's Plan Confirmation

"While there is a public policy consideration that may be impaired when core proceedings are transferred, the ***public policy consideration is only one factor*** and ***should not be given controlling weight*** in light of the permissive nature of bankruptcy jurisdiction. Moreover, in a case such as the one at bar—***where the debtor was able to obtain confirmation of its reorganization plan long before the contract claims covered by the forum selection clause were tried to the court—any policy concern 'must be lessened***.'"

In re Manchester, Inc., 417 B.R. 377, 385 (Bankr. N.D. Tex. 2009) (quoting *In re D.E. Frey Grp., Inc.*, 387 B.R. 799, 807 (D. Colo. 2008)) (emphasis added).

Core v. Non-Core – It doesn't matter

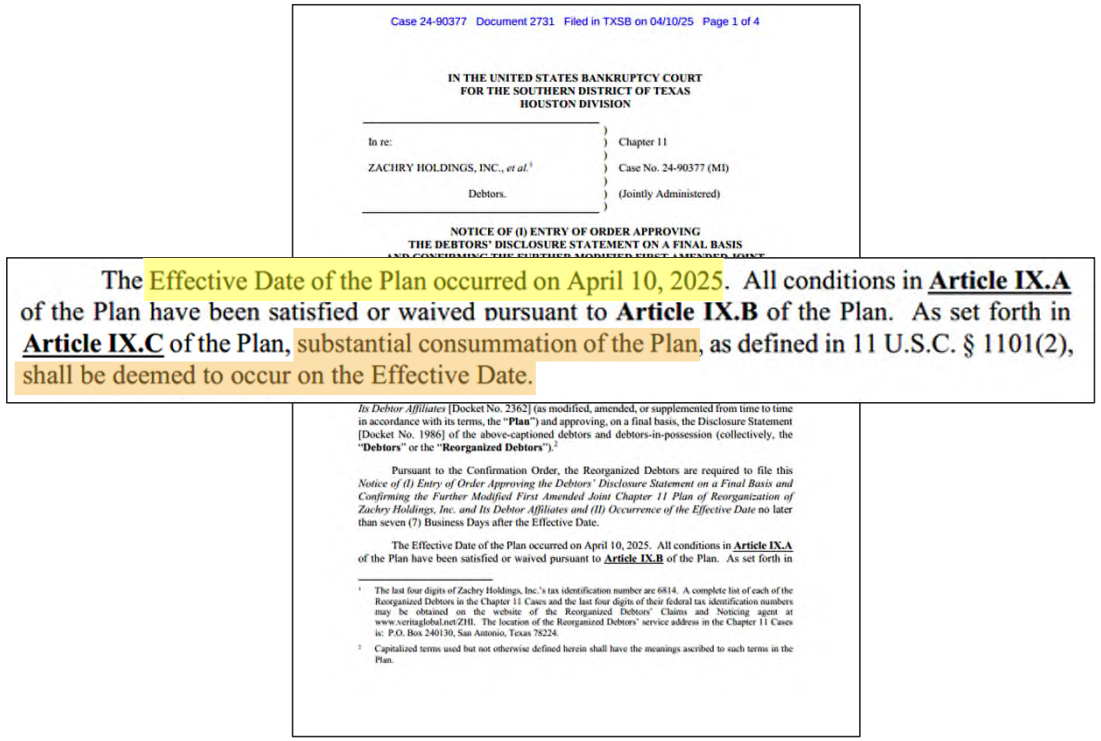
"[E]ven in 'core' matters, the language of 28 U.S.C. § 1334, which provides for bankruptcy jurisdiction, ***is permissive, not mandatory***."

In re Manchester, Inc., 417 B.R. 377, 385 (Bankr. N.D. Tex. 2009).

Zachry's Plan Confirmation

"[A]ny 'presumption in favor of maintaining venue of an adversary proceeding in the forum where the bankruptcy case is pending . . . . [is] ***significantly weakened, if not entirely destroyed, by the circumstance that this is now post-confirmation litigation***.'"

In re Manchester, Inc., 417 B.R. 377, 387 n.8 (Bankr. N.D. Tex. 2009) (quoting *In re Mirant*, 337 B.R. 107, 124 (N.D. Tex. 2006)) (emphasis added).



Case 24-90377 Document 2731 Filed in TXSB on 04/10/25 Page 1 of 4

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)

NOTICE OF (I) ENTRY OF ORDER APPROVING
THE DEBTORS' DISCLOSURE STATEMENT ON A FINAL BASIS

The Effective Date of the Plan occurred on April 10, 2025. All conditions in **Article IX.A** of the Plan have been satisfied or waived pursuant to **Article IX.B** of the Plan. As set forth in **Article IX.C** of the Plan, substantial consumption of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

Its Debtor Affiliates [Docket No. 2362] (as modified, amended, or supplemented from time to time in accordance with its terms, the "**Plan**") and approving, on a final basis, the Disclosure Statement [Docket No. 1986] of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or the "**Reorganized Debtors**").[2]

Pursuant to the Confirmation Order, the Reorganized Debtors are required to file this *Notice of (I) Entry of Order Approving the Debtors' Disclosure Statement on a Final Basis and Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates and (II) Occurrence of the Effective Date* no later than seven (7) Business Days after the Effective Date.

The Effective Date of the Plan occurred on April 10, 2025. All conditions in **Article IX.A** of the Plan have been satisfied or waived pursuant to **Article IX.B** of the Plan. As set forth in

[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 the 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 the Chapter 11 Cases is: P.O. Box 240130, San Antonio, Texas 78224.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

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Justice Requires Enforcement

"Given the validity of the forum selection clause agreed upon by the parties in the Purchase Agreements and the other circumstances just discussed, ***justice requires the transfer of the Adversary Proceeding*** . . . ."

In re Manchester, Inc., 417 B.R. 377, 388 (Bankr. N.D. Tex. 2009) (emphasis added).

Justice Requires Enforcement

Transfer case to the Nebraska Bankruptcy Court.