UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Zachry Holdings, Inc. Plaintiff,	)	CASE NO: 25-3025
	)	Houston, Texas
v.	)	
	)	Monday,
Omaha Public Power District Defendant.	)	October 27, 2025

EMERGENCY HEARING ON A MOTION FOR A CHANGE OF VENUE

BEFORE THE HONORABLE MARVIN P. ISGUR

UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Omaha Public Power District
THOMAS C. SCANNELL, JR
JONATHAN MICHAEL THOMAS
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201

For Zachry Holdings, Inc.
CHARLES R. KOSTER
White & Case LLP
609 Main Street, Suite 2900
Houston, TX 77002

WITNESSES:

Court Reporter:

Courtroom Deputy:

Transcribed by: Veritext Legal Solutions
330 Old Country Road, Suite 300
Mineola, NY 11501
Tel: 800-727-6396

Proceedings recorded by electronic sound recording; Transcript produced by transcription service.

HOUSTON, TEXAS; MONDAY, OCTOBER 27, 2025

(Call to Order)

COURT DEPUTY: Good afternoon. Please proceed.

THE COURT: All right. We are here in Zachry Holdings v. Omaha Public Power District. It is adversary proceeding 25-3025.

If you wish to appear in the Court, please come forward and announce. If you're on the phone and wish to appear, please press 5* one time on the phone.

MR. SCANNELL: Good afternoon, Your Honor. Tom Scannell and Michael Thomas of Foley & Lardner for OPPD.

THE COURT: Thank you.

Do we have anybody on the phone that wishes to appear? You'll need to press 5* one time, please.

All right. Mr. Koster, nobody's pressing their 5*. I'm going to pick you, and we'll see what you have to say. Good afternoon.

MR. KOSTER: Good afternoon, Your Honor. Charles Koster, White & Case. Counsel with the reorganized debtors, and the Plaintiffs in this adversary proceeding. I'm trying to get my camera to work, but it does not appear that I can see you or you can see me.

THE COURT: Hold on. I'm not sure what that's about, but I'm going to restart it to be sure that you can. Because I've got plenty of people on the phone and nobody is

on the camera. So I'm just going to end that meeting. If you'll reconnect, then we'll restart it.

MR. KOSTER: Yes.

THE COURT: Yeah. Everybody's (indiscernible). I don't know what went wrong. So obviously, something went wrong with the system. I still have you as the only person requesting to speak. Back to, Mr. Koster, waiting for your camera literally to connect. I can see it's working to get there.

MR. KOSTER: This may be a camera issue on my end, Your Honor. If you're happy for me to proceed, the video is coming in and out for me.

THE COURT: Can you see if the witness camera will connect in?

Mr. Koster, would you try your camera one more time, please?

MR. KOSTER: Yes.

THE COURT: Okay. I'm going to disconnect you and ask you to reconnect in one more time.

MR. KOSTER: Your Honor, I suspect the tech issue is entirely on my end. I'm getting the video coming in and out, and then I'm seeing three dots. I'm happy to proceed, if Your Honor is amenable to that?

THE COURT: That's fine. If you want, we'll fix the problem. I don't think it really matters. And I just

want to give everybody the chance to be here if you want to be. Can you see me all right?

MR. KOSTER: I cannot.

THE COURT: Okay. Go ahead, Mr. Koster. It's your motion in any event.

MR. KOSTER: Thank you, Your Honor. We filed a motion last week seeking a status conference before Your Honor's decision on the pending venue dispute, and we did so on an emergency basis because we had fewer than 21 days before the anticipated date of Your Honor's decision. We asked for the status in hopes of rejuvenating discussions between the parties. Productive discussions had started after Your Honor encouraged the parties' senior executives to meet. And as the parties told Your Honor in their joint stipulation filed on September 2nd, those conversations resulted in agreement to explore additional steps to expedite completion of the projects and to continue negotiating to resolve the dispute.

After the completion of the projects, progress toward an ultimate resolution had stalled. And while OPPD indicated that it was willing to continue speaking, we had hoped to obtain the benefit of Your Honor's further guidance before reengaging to ensure that the process would be productive and capable of facilitating a consensual resolution.

Based on OPPD's response filed late last week, it appears that we may have been naive. OPPD has now indicated that further discussions would not be fruitful. That's unfortunate, but it may be correct. The parties may ultimately need a court, whether Your Honor or the District of Nebraska, to rule on the enforceability of liquidated damages before they can discuss a settlement. OPPD, as Your Honor I believe is aware, has an elected board, and they may be incapable of making any concessions until they have a court order that changes the playing field. And we may have learned that lesson the hard way, unfortunately, after incurring significant costs in delivering completed projects.

So I thank Your Honor for scheduling this status, and I apologize if it served no purpose. If that's the case, we look forward to Your Honor's decision on venue, at which time we can reengage on the merits with OPPD, either here or in Nebraska. To the extent that OPPD may be willing to reconsider, or if Your Honor can convince them to do so, we're ready, willing, and able to meet at any time and place of their choosing, provided they do not impose any artificial conditions on that conversation.

I believe that's where we are, Your Honor. But before I cede, I would like to respond to OPPD's objection ever so briefly so the record is abundantly clear. Contrary

to OPPD's statement that our motion exceeds the scope of what can be shared arising from the mediation, we did not disclose anything from the mediation beyond what the parties already disclosed in the September 2nd stipulation, which is that we agreed to steps about completion of the project and to continue negotiations. Our statement that OPPD changed course after Zachry delivered a completed project is not subject to any mediation privilege.

OPPD then says that we mischaracterized the interactions, but it doesn't say what we mischaracterized, and instead suggests that it would be inappropriate to do so. Of course, that type of unqualified attack on parties and their advisors' credibility has no place. And OPPD objects under Section 408 to our supposed attempt to inject settlement communications into the proceeding. But as I mentioned, Your Honor, we have not objected anything beyond what the parties have already agreed to disclose.

So in sum, I do hope that Your Honor is able to offer some guidance to the parties that may compel a rejuvenation of the previously productive discussions, but if not, we're certainly ready for your ruling toward the end of this week on the venue dispute. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Scannell?

MR. SCANNELL: Thank you, Judge. I'm trying to

keep the Court's attention and the parties' talk as a discussion on a productive path today. I don't think it's an appropriate use of the Court's time to be debating what was said or what happened or what didn't happen in mediation or be talking about what was characterized or mischaracterized. I don't think the Court should be presiding over the parties' negotiations. I don't think it's appropriate for the Court to preside over what happened or didn't happen in mediation.

I think what the Court should know is this. OPPD mediated in good faith on August 27th. There was a substantial amount of back and forth following mediation between the parties and the mediator. OPPD has participated in good faith at every step of the way with Zachry. Any implication to the contrary is just not true, and we greatly disagree with that mischaracterization. We have genuinely tried to settle this case, and it's as simple as this, the parties have just not been able to reach a settlement, yet. I don't think the settlement is completely unrealistic at any point in time. We're still trying to settle the case. I just think we're at an impasse right now.

I don't think further mediation, at this time, would be fruitful simply because the parties are so far apart, Judge, and not in horse-trading numbers. They're so far apart in that they're not even in the same universe of a

construct of how this case would be settled. I don't think further mediation, given where they are, would be helpful. I still remain hopeful that we'll get to a settlement at some point, but there's just not a path forward for that right now.

I think, as a suggestion of what would be most helpful, it would be for the Court to issue its ruling on the motion to transfer venue, and that may help break the stalemate and move us off-center.

THE COURT: Who's your mediator?

MR. SCANNELL: Steve Nelson.

THE COURT: From?

MR. SCANNELL: From Markel, I believe.

THE COURT: Okay. First of all, the parties have the right not to mediate. I'm not going to force people into mediation, so don't misread what I'm about to say. I would hope that whatever decision we make on the transfer of venue would not break things open, because I would hope that a court in Houston and a court in Nebraska would rule the same way on the substantive issues in the case. And so I think if people -- if one side is hoping that I'm going to keep the case and therefore, they're going to bend, or another side is hoping that I send the case to Nebraska so that they can bend, I think that's really a mistake by everybody, but people get to make mistakes.

But I wouldn't think you're going to get a substantive difference on something about whether liquidated damages are available that is going to be venue operative. I mean, one would not believe that to be that kind of an issue, but it could be. It could be that there's some opinion that I've written or that they've written that gives you some clue or something, but that's probably not what's happening.

MR. SCANNELL: It's just the only thing that I can think of as an affirmative step to move us off where we are. Because I think this case does need to move forward one way or another. And we've tried. We're at an impasse right now. And if the case moves forward, sometimes that tends to break parties loose a little bit and create space where there otherwise wasn't.

THE COURT: Okay. So I called off working on that opinion once you all filed your early September thing. It's probably not going to be this Friday any longer, but it won't be that far into the future, just so everybody knows. I'm terminating the mediation at this point. Parties are free to engage with a mediator. They're free not to engage with a mediator. They're free to talk directly. I'll get you a ruling out promptly on this, but I don't want people thinking, "Well, it's coming Friday." It might. But I definitely pulled back when it looked like you were going to

--

MR. SCANNELL: I had to refer to the Court.

THE COURT: -- get the case done.

All right. I actually don't, at all, mind holding the status conference. Mr. Koster, I appreciate you requesting it.

I continue to think that the parties are making a huge mistake to not get this resolved. But you know what? Parties get to do that. Parties get to win or lose in court. And we'll figure out what we're doing on the venue, and then we'll let whatever court has the case rule on the substantive issues in it. Thank you all for coming in.

MR. SCANNELL: Thank you, Judge.

THE COURT: Thank you.

MR. KOSTER: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings adjourned.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Nikole Nolan

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 31, 2025