

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

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In re:)	Chapter 11	
)		
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹)	Case No. 24-90377 (MI)	
)		
Debtors.)	(Jointly Administered)	
)		

**DEBTORS' EMERGENCY MOTION TO INTERPRET AND ENFORCE THE GOLDEN
PASS SETTLEMENT AGREEMENT**

Emergency relief has been requested. Relief is requested not later than 4:00 p.m. (prevailing Central Time) on September 5, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph.² Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on September 5, 2024 at 4:00 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "electronic appearance" link on Judge Isgur's home page. Select the case name, complete the required fields and click "submit" to complete your appearance.

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 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.

² Notwithstanding the foregoing, the *Stipulation and Agreed Scheduling Order* [Docket No. 770] (the "**Scheduling Order**") governs response deadlines for the parties thereto.



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) state as follows in support of this motion (this “**Motion**”):

Preliminary Statement

1. The global settlement among the Debtors, Golden Pass, CB&I, Chiyoda and CCZJV was a watershed event in these chapter 11 cases. It resolves disputes related to the Golden Pass project that plagued the parties for years, facilitates completion of the project, and creates a path for the Debtors to emerge from bankruptcy. The settlement is an exceptional result.

2. The Debtors and their former joint venture partners, CB&I and Chiyoda, nevertheless disagree on two discrete matters related to the settlement: (1) the Debtors’ entitlement to proceeds of first-party professional liability insurance claim for losses in connection with repairing the Golden Pass levee, and (2) the Debtors’ entitlement to funds in the joint venture receiving account for work they completed and invoiced prior to these chapter 11 cases. The settlement required the Debtors and Golden Pass to resolve several gating issues before the Debtors and their former joint venture partners could focus on intra-joint venture issues. Rather than delay approval of the broader settlement and jeopardize its many benefits, the Debtors and their former joint venture partners agreed to ask the Court to decide these matters on an agreed schedule and without an adversary proceeding.

3. The Debtors’ entitlement to insurance proceeds related to the Golden Pass levee repair is set forth in a 2022 memorandum of understanding among the joint venture partners. The Debtors and their joint venture partners incurred substantial costs repairing the levee in 2020 and 2021. The Debtors performed the majority of this work and incurred the majority of the costs, despite having no responsibility for the engineering problems that caused the levee to fail. The parties agreed to advance joint venture funds to reimburse each party for a portion of its actual costs, with the understanding that each party would receive additional amounts owed on account of

the levee repair from insurance proceeds. This future insurance recovery was an indispensable term of the Debtors' agreement to advance funds to their partners before the Debtors were compensated for the majority of total losses in connection with the levee repair. That term is not altered by the settlement, which explicitly "does not modify or otherwise affect the Debtors' entitlement to insurance coverage provided by any insurance carrier with respect to claims made or related to the time period prior to rejection" of the joint venture agreement. The Debtors' proportional share of all losses related to the levee repair is 71.2%, based on undisputed invoices at agreed rates, and the settlement does not change the fact that the Debtors are entitled to that share of insurance proceeds. The insurance claim is for \$37,694,108, and the Debtors are entitled to 71.2% of any recoveries until compensated in full for their levee repair work—up to \$8,185,140, plus the cost of pursuing the insurance claim.

4. The Debtors' entitlement to funds in the joint venture receiving account is likewise unaltered by the settlement. That account was established for the limited purposes of receiving proceeds from Golden Pass and paying joint venture partner invoices. At the time of the settlement, the joint venture had obligations to the Debtors for the execution of their own portion of work on the Golden Pass project. Neither the Debtors nor their joint venture partners agreed to forgo amounts owed for the completion of their own scope of work. The settlement is silent with respect to funds in the receiving account, but that silence should not be interpreted as a waiver of the Debtors' (or any party's) right to those funds. The parties expressly agreed to exclude amounts owed to the Debtors and their affiliates from the obligations Golden Pass is required to pay under the settlement, and the parties could have easily excluded amounts owed to the Debtors from the receiving account as well. They did not do so. The Debtors' share of funds in the receiving account based on all outstanding invoices payable from that account is \$1,737,377.

5. The Debtors' interest in the insurance proceeds and receiving account funds are assets of the estates that the Debtors never agreed to abandon. The Debtors' interests in these assets are governed by prior agreements among the parties that are not altered by the settlement. Handing them to CB&I and Chiyoda without compensation would expand the settlement beyond the parties' intent and unjustly enrich the Debtors' former joint venture partners. It would also penalize the Debtors for the costs they incurred repairing the levee and pursuing recoveries under the professional liability insurance policy, despite having no fault or responsibility for the levee failure. The Court should grant the Motion and declare that the Debtors are entitled to their proportional share of insurance proceeds and receiving account funds.

Relief Requested

6. The Debtors seek entry of an order, substantially in the form attached hereto, declaring that the Debtors are entitled to their proportional share of (i) insurance proceeds from the rectification claim related to the Golden Pass levee repair and (ii) funds held in the joint venture receiving account at the time of the settlement, in each case consistent with the *Final Order (I) Approving the Settlement by and among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, and (III) Granting Related Relief* [Docket No. 744] (the "**Final Order**").

7. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Greg Stachurski in Support of the Debtors' Emergency Motion to Interpret and Enforce the Golden Pass Settlement Agreement* (the "**Stachurski Declaration**"), filed contemporaneously herewith.

Jurisdiction, Venue, and Predicates for Relief

8. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Parties confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The predicates for the relief requested are section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rule 2002, rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and applicable non-bankruptcy law.

Background

I. The Joint Venture

11. In 2019, Golden Pass LNG Terminal LLC (“**Golden Pass**”) contracted to build a new, three-train liquefied natural gas export facility to be built in Sabine Pass, Texas (the “**GPX Project**”). Pursuant to the Hybrid Joint Venture Agreement dated January 30, 2019 (the “**HJVA**”), attached (omitting exhibits thereto, except relevant sections of Exhibit 16) as **Exhibit 1** to the Stachurski Declaration, Zachry Industrial, Inc. (“**ZII**”), CB&I, LLC (“**CB&I**”), and Chiyoda International Corporation (“**Chiyoda**”) formed CCZJV, an unincorporated hybrid joint venture, to jointly serve as “Contractor” on the GPX Project. On January 30, 2019, Golden Pass and CCZJV also executed the contract for the design and construction of the GPX Project (the “**EPC Contract**”). ZII served as the lead contractor for the overall construction of the GPX Project with primary responsibility for approximately 52% of the total scope of work. CB&I had primary responsibility for approximately 28% of the total scope of work, and Chiyoda had primary

responsibility for approximately 20% of the total scope of work. Each party's scope consists of both its "Own Work" for which such party is individually responsible (ZII's and CB&I's Own Work includes equal responsibility for a separate pool of "MZJV" construction subcontract work) and "Joint Venture Common Pool Work" for which the three parties are equally responsible.

12. Under the HJVA, each party's compensation reflects its percentage of the total scope of work. Stachurski Decl., Ex. 1, HJVA §§ 3.2; 6.1. Each party has an equal one-third interest in profits earned by the joint venture in the performance of Joint Venture Common Pool Work, which does not include a party's profits for its Own Work. *Id.* at § 6.4. A party that is in material breach of the HJVA, fails to timely contribute its share of working capital, or files a bankruptcy or insolvency proceeding, will have its right to profit distributions suspended, but such defaulting party is still entitled to payment for its completed Own Work, including profits. *Id.* at § 13.1.A.

13. In accordance with the HJVA, the parties opened several bank accounts, including the joint venture receiving account at Bank of America – San Antonio (the "**Receiving Account**"). *Id.* at Ex. 16, § B.1.1. The Receiving Account was established for the limited purposes of receiving proceeds under the EPC Contract and making disbursements to the joint venture partners. *Id.*

II. The Levee Failure

14. The GPX Project site is surrounded by a storm protection levee system approximately 6.5 miles in length. The levee was designed by Chiyoda engineers to protect the site from severe weather that routinely impacts the Texas coast. In May 2020, certain sections of the levee failed and needed urgent repair. The repair required the parties to demolish, re-engineer, and rebuild failed portions of the levee, including installing substantial amounts of concrete to stabilize the soil beneath the failed sections.

15. Starting in late 2020, the joint venture partners undertook the significant and time sensitive levee repair work. The parties performed the work in accordance with their division of

responsibilities under the HJVA, with Chiyoda responsible for the re-engineering work, CB&I responsible for half of certain construction subcontract work, and ZII responsible for direct construction work and half of certain construction subcontract work. ZII performed the majority of the work and incurred the majority of costs – approximately \$21.7 million (60%) of the approximately \$37.7 million total cost submitted to the insurer for the total cost of the levee repair, calculated at each party’s agreed change order rates under the EPC Contract (and in the case of certain personnel, rates set by separate agreement among the parties).

16. Pending resolution of the insurance claim, the parties agreed to make \$26.2 million in provisional distributions from the joint venture to partially compensate the parties for their ongoing levee repair costs. As set forth in the February 28, 2022 Memorandum of Understanding (the “**MOU**”), attached (omitting attachments thereto, which are not relevant to this Motion) as **Exhibit 2** to the Stachurski Declaration, ZII received \$13.5 million, CB&I received \$7.7 million, and Chiyoda received \$5 million. These sums were proposed by Chiyoda to provide partial and provisional relief to the parties and did not reflect the total cost of the levee repair or the amount of the insurance claim. ZII agreed to the partial and provisional payment from joint venture funds to expedite payment of its costs at such time. The parties also agreed to reconcile amounts owed to the parties for the levee repair after all costs (including the cost of pursuing insurance claim) were finalized. In other words, the provisional distributions were made and accepted in reliance on insurance proceeds being available to compensate the parties for the full extent of their levee repair work.

17. The parties have been pursuing recovery under their professional liability policy (the costs of which the Debtors fronted) since the levee repairs began. The parties have retained subject matter experts and outside counsel to develop their claim. The Debtors have coordinated these

efforts and fronted these costs as well. The parties and the insurer participated in mediation in March 2024, but were unable to reach a consensual resolution. The parties remain actively engaged with the insurer, and the Debtors continue to devote significant resources to the claim.

18. The parties' costs for the levee repair are set forth on **Exhibit 3** to the Stachurski Declaration. The total amount of the claim submitted to the insurer, split between each party's Own Work, Joint Venture Common Pool Work, and MZJV construction subcontract work, is set forth in the row titled "Insurance Claim," with the column titled "JVCPW" divided equally among the parties based on their equal share of Joint Venture Common Pool Work (as reflected in the row titled "CCZJV Allocation") and the column titled "MZJV" divided equally between ZII and CB&I for their equal share of construction subcontract work (as reflected in the row titled "MZJV Allocation"). The total amounts are then reduced by the amounts advanced under the MOU in the row titled "Adjustment for MOU Payments." The unpaid amount to each party is reflected in the row titled "Total Loss," and each party's ratable share of total unpaid amounts is set forth in the row titled "Party Share of Total Loss." These amounts do not include additional costs incurred in pursuing the insurance claim, most of which have been paid by the Debtors. As set forth in the chart, the Debtors are entitled to 71.2% of any recoveries until compensated in full for their unpaid losses, or up to \$8,185,140, plus the cost of pursuing the insurance claim.

III. The Chapter 11 Cases

19. On May 21, 2024 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the chapter 11 cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are jointly administered pursuant to Bankruptcy Rule 1015(b). On June 4, 2024, the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") appointed the Official Committee of Unsecured Creditors pursuant to sections

1102(a)(1) and 1102(b)(1) of the Bankruptcy Code [Docket No. 176]. No trustee or examiner has been appointed in these chapter 11 cases. A detailed description of the Debtors and their businesses is set forth in the *Declaration of Mohsin Y. Meghji in Support of Debtors' Petitions and Requests for First Day Relief* [Docket No. 7].

IV. The GPX Settlement

20. On July 25, 2024, the Court entered the *Interim Order (I) Approving the Settlement by and among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 625] (the “**Interim Order**”), approving on an interim basis the settlement (the “**Settlement**”) by and among the Debtors, Golden Pass, CB&I, Chiyoda, and CCZJV on the terms and conditions set forth in the term sheet filed at Docket No. 610 as Exhibit A (the “**Settlement Term Sheet**”).

21. As of the entry of the Interim Order, \$2,260,457.94 was available in the Receiving Account. The Debtors had \$1,737,377.64 in unpaid invoices, CB&I had \$123,725.50 in unpaid invoices, and Chiyoda had \$399,354.80 in unpaid invoices, in each case on account of such party’s Own Work and Joint Venture Common Pool Work. It is not a coincidence that the unpaid invoices equal the amount of funds in the Receiving Account, as it is intended to be a zero-balance account, funded in the amount necessary to pay joint venture partner invoices. In this case, the Debtors’ former joint venture partners declined to release funds in the ordinary course. As of the time of this filing, the Debtors’ former joint venture partners still have not disputed the Debtors’ invoices or explained the basis of their interference with payment of joint venture partner invoices.

22. On August 12, 2024, the Court entered the Final Order, approving the Settlement on a final basis on the terms and conditions set forth in the settlement agreement attached as Exhibit

A thereto (the “**Settlement Agreement**”). The Settlement Agreement attaches the Settlement Term Sheet, which remains the operative settlement document, except with respect to releases among the Debtors, CB&I and Chiyoda and the Debtors’ entitlement to levee repair insurance proceeds and funds in the Receiving Account, for which the Settlement Agreement controls. The Settlement resolves all disputes, controversies, claims, and causes of action arising out of or otherwise related to the GPX Project, the EPC Contract, and the HJVA, with the exception of the two issues that are addressed in this Motion.

23. The Settlement expressly preserves the Debtors’ interest in the levee repair insurance proceeds. The Debtors’ rejection of their interests in the HJVA became effective upon entry of the Final Order, and the Settlement Term Sheet provides that:

The Debtors’ rejection of their interests in the . . . HJVA *shall not modify or otherwise affect the Debtors’ entitlement to insurance coverage provided by any insurance carrier with respect to any claims made or related to the time period prior to rejection*, or the rights of any other parties with respect to any such insurance.

Settlement Term Sheet at 2 (emphasis added). The Debtors have not waived any rights with respect to the levee repair insurance proceeds, and the Debtors’ release of their former joint venture partners carves out these insurance assets:

Release of CB&I and Chiyoda by the Debtors. Upon the Effective Date, the Debtors and their Related Parties shall RELEASE, ACQUIT, and FOREVER DISCHARGE CB&I, Chiyoda, and their Related Parties from all Claims other than Claims arising from any breaches or enforcement of this Agreement, including, for the avoidance of any doubt, Claims arising under or in connection with the parent company guarantees provided by affiliates of CB&I and/or Chiyoda in connection with the HJVA. *The foregoing releases shall not modify or otherwise affect Zachry’s entitlement to proceeds of applicable existing insurance policies or funds held in CCZJV accounts, to the extent set forth in paragraphs 12 and 13 of this Agreement [stating that the Debtors’ entitlement to insurance proceeds and funds in the Receiving Account are subject to subsequent order of this Court].*

Final Order ¶ 7 (emphasis added). CB&I and Chiyoda, on the other hand, have expressly waived and released “all claims against the Debtors in connection with the Debtors’ rejection of their interests in . . . the HJVA.” Settlement Term Sheet at 2. The Settlement does nothing to undermine the Debtors’ entitlement to participate in the reconciliation related to the levee repair costs and advances, as set forth in the MOU.

24. The Settlement does not expressly address the funds in the Receiving Account. The only limitation in the Settlement on the Debtors’ right to participate in profits of proceeds of the joint venture take effect following entry of the Interim Order:

The Debtors’ rejection of their interests in the EPC Contract and the HJVA shall not terminate the EPC Contract or the HJVA; *provided* that Zachry shall conditionally withdraw as a member of CCZJV, with Zachry immediately agreeing that it shall have no further Project Directorate member, and have no further right to participate in profits or proceeds, make a claim or object to any action taken by the Project Directorate, Project Sponsors, Steering Committee or Financial Committee (as such terms are defined in the HJVA) in the management of CCZJV, effective immediately upon entry of the Interim Order. Zachry shall be withdrawn as a member of CCZJV on a final basis as of entry of the Final Order.

Id. The Debtors’ entitlement to funds in the Receiving Account is based on invoices for their completed work, submitted long before entry of the Interim Order, and to which their former joint venture partners have not articulated any objection.

25. While the Settlement does not limit the Debtors’ right to joint venture funds on account of their completed work, it expressly excludes obligations to Debtor affiliates serving as vendors or subcontractors on the GPX Project from the universe of Debtor obligations that Golden Pass has agreed to pay directly. Settlement Agreement at 4 (“Upon entry of the Interim Order, Golden Pass shall pay Zachry obligations to vendors and subcontractors (including Zachry’s share of Pool A and Pool B obligations, but excluding obligations to Zachry and its affiliates) for amounts

validly due for goods and/or services in respect of the GPX Project”). The parties did not similarly carve out the Debtors’ right to receive funds in the Receiving Account for their previously completed work, but instead specifically deferred the issue for the Court’s consideration. The Final Order provides that:

Zachry shall not be entitled to receive funds held in the CCZJV receiving account (x6655) as of the date of the Interim Order unless agreed among Zachry, CB&I and Chiyoda or ordered by this Court; *provided* that this sentence shall not be construed against any Party or its entitlement to (i) any relief or (ii) assert any claims or defenses regarding the matters set forth in this paragraph.

Final Order ¶ 11. The Final Order includes substantially identical language regarding the parties’ entitlement to receive insurance proceeds.

Basis for Relief

I. The Final Order Does Not Alter the Debtors’ Contractual Entitlement to Levee Insurance Proceeds or Receiving Account Funds

26. It is axiomatic that a federal court has the power and jurisdiction to interpret and enforce its own orders. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (stating that a bankruptcy court “plainly ha[s] jurisdiction to interpret and enforce its own prior orders.”); *Rodriguez v. EMC Mortg. Corp. (In re Rodriguez)*, No. 00-50657, 2001 U.S. App. LEXIS 30564, at *6 (5th Cir. Mar. 15, 2001) (“When an estate is in administration, a bankruptcy court retains jurisdiction to interpret and enforce its own orders to ensure their proper execution.”); *In re Parkway Sales & Leasing, Inc.*, 411 B.R. 337, 350 (Bankr. E.D. Tex. 2009) (denying trustee’s request to prevent a party from raising an argument based on a prior court order; stating court had “inherent authority to interpret and enforce its own orders”); *Aspen Specialty Ins. Co. v. Muniz Eng’g, Inc.*, No. H-05-0277 (MH), 2006 U.S. Dist. LEXIS 39800, at *7 (S.D. Tex. Jun. 15, 2006) (stating in denying motion for summary judgment that movant may be entitled to relief based on its

“plausible” interpretation of the court’s prior order, but holding that “a court retains the power to interpret or clarify its own orders”).

27. Section 105(a) of the Bankruptcy Code also authorizes the Court to interpret and clarify its orders. *See In re Palmaz Sci. Inc.*, 562 B.R. 331, 335 (Bankr. W.D. Tex. 2016) (citing section 105(a) of the Bankruptcy Code for the proposition that a court “always has jurisdiction to clarify and enforce its own order”); *Pompa v. Wells Fargo Home Mortg., Inc. (In re Pompa)*, No. 06-31759 (MI), 2012 Bankr. LEXIS 3051, at *13 (Bankr. S.D. Tex. June 29, 2012) (stating that a court has “the power granted by § 105(a) to enforce its own orders”); *Padilla v. Wells Fargo Home Mortg., Inc. (In re Padilla)*, 379 B.R. 643, 667 (Bankr. S.D. Tex. 2007) (“Section 105(a) gives bankruptcy courts broad authority to take actions necessary and appropriate for administering and enforcing the Bankruptcy Code and enforcing a court’s orders.”).

28. The Court should exercise these powers to give full force to agreed settlement terms without imposing new or inconsistent terms upon the parties. The Settlement expressly preserves the Debtors’ interests in insurance coverage, including coverage related to claims made or related to the time period prior to rejection, like the claim that the parties have pursued since 2022 to recover levee repair costs. As set forth in the MOU, the parties agreed to use these proceeds to compensate for additional costs and lost profits, and the Debtors incurred 71.2% of the total uncompensated losses among the parties, not including the cost of pursuing the insurance claim, largely fronted by the Debtors. The Settlement does not modify or even reference the MOU, and there is no reasonable interpretation of the Settlement by which the Debtors waived or released their proportional interest in these insurance proceeds. To the contrary, the Debtors specifically preserved these rights.

29. Nor is there any reasonable interpretation of the Settlement by which the Debtors waived or released their interest in the Receiving Account funds. These funds were paid by Golden Pass under the EPC Contract, and they are held in the Receiving Account for the sole purpose of paying documented amounts to the joint venture partners for their completed work. The Debtors agreed in the Settlement that they have no right to share in profits or proceeds of the joint venture after entry of the Interim Order, but never agreed to waive claims for their completed work. The Debtors also agreed in the Settlement that their own obligations to affiliates serving as subcontractors on the GPX Project will not become Golden Pass obligations. But the parties never agreed that the joint venture is no longer responsible for satisfying unpaid obligations to the joint venture partners from the Receiving Account. The Settlement in fact states that the Debtors' rejection of their interests in the HJVA shall not terminate the HJVA, which remains effective except as otherwise agreed. The Debtors and their former joint venture partners alike are entitled to the payment of their prepetition invoices from the Receiving Account.

II. The Debtors' Entitlement to Levee Insurance Proceeds is Unambiguous, and the Court Can Infer the Debtors' Right to Funds in the Receiving Account

30. The Settlement Agreement is governed by Texas law, and contract interpretation under Texas law proceeds in two steps. Courts first consider whether the contract is ambiguous as to the parties' intent. "In Texas, 'objective intent is the alpha and omega of contract interpretation.' If determinable from the text, the parties' unambiguous expression of objective intent governs." *In re Sanchez Energy Corp.*, No. 19-34508 (MI), 2022 Bankr. LEXIS 2019, at *15 (Bankr. S.D. Tex. July 22, 2022) (citing *Harris Cnty. Water Control & Improvement Dist. No. 89 v. Phila. Indem. Ins. Co.*, 31 F.4th 305, 310 (5th Cir. 2022)). When analyzing the text at this stage, courts interpret each term in accordance with "their plain, ordinary meaning." *Am. Nat. Gen. Ins. Co. v. Ryan*, 274 F.3d 319, 323 (5th Cir. 2001). A contract is not rendered ambiguous simply

because “the parties interpret an agreement differently . . . ambiguity exists only if both parties’ interpretations are reasonable.” *Croze v. Humana Ins. Co.*, 823 F.3d 344, 348 (5th Cir. 2016). Moreover, [i]t is inappropriate to use contract interpretation principles to *create* an ambiguity when no ambiguity exists.” *In re Sanchez*, 2022 Bankr. LEXIS at *16 (emphasis in original). If, after analyzing the plain text of the contract, a court determines that the parties’ intent is unambiguous, then “contract interpretation principles are never brought to bear.” *Id.*

31. If, however, after examining the plain text of the contract, the parties’ intent remains ambiguous, then the court may “consider[] parol evidence or consider[] canons of construction beyond looking to the plain meaning of the language to inform its interpretation of the contract.” *Carnero G&P v. SN EF UnSub, LP*, 648 B.R. 592, 611 (Bankr. S.D. Tex. 2023) (citing *DeWitt Cnty. Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 100 (Tex. 1999)). Among other accepted canons of contract construction under Texas law, specific provisions of a contract control over general. *Fox v. Parker*, 98 S.W.3d 713, 723 (Tex. App. 2003) (“In contract construction, specific provisions control over general provisions.”). And “when certain language is omitted from a provision but placed in other provisions, it must be assumed that the omission was intentional.” *1701 Commerce Acquisition, LLC v. Macquarie US Trading, LLC*, 2022 Tex. App. LEXIS 6697, at *24-25 (Tex. App. Aug. 31, 2022) (citing *Sterling Inv. Servs, Inc. v. 1155 Nobo Assocs., LLC*, 30 A.D.3d 579, 281 (N.Y.S.C. App. Div. 2006) (collecting cases)).

32. There is no ambiguity with respect to the Debtors’ right to receive insurance proceeds related to the levee repair claim. As discussed above, the Settlement expressly preserves the Debtors’ interests in insurance coverage for claims made or related to the time period prior to rejection, like the levee repair claim. The Debtors’ former joint venture parties’ denial of the plain meaning of that term does not create an ambiguity where none exists. The Debtors negotiated for,

and their former joint venture partners agreed to, the preservations of the parties' rights and interest in these insurance proceeds. Even if there were any ambiguity (there is not), the specific provision of the Settlement preserving the Debtors' entitlement to insurance proceeds necessarily controls over the more general waiver of future right to participate in profits or proceeds (i.e., future payments from Golden Pass, not the insurance carrier) of the joint venture. The Court can also infer the parties' intent on this point from the Settlement Agreement, which does not even reference the MOU, let alone alter the parties' agreement in that document on the use of insurance proceeds. The Court can consider parol evidence to determine the parties' intent, including the MOU.

33. To the extent that the Settlement Agreement's silence with respect to funds in the Receiving Account creates ambiguity (it does not), the Court can infer the parties' intent from other provisions specifically excluding obligations to the Debtors. As discussed above, the parties excluded amounts owed to the Debtors and their affiliates from the obligations Golden Pass is required to pay under the Settlement. The parties therefore contemplated the treatment of certain Debtor claims and knew how to draft an exclusion where they intended. The absence of such an exclusion related to the Receiving Account should not be interpreted to deprive the Debtors of their interest in those funds. The Debtors agreed that they have no further rights to participate in profits or proceeds of the joint venture or make a claim against the joint venture, and the Debtors are not doing so by this Motion. The Debtors are simply requesting their share of funds in the Receiving Account as of entry of the Interim Order, on account of work completed and invoices submitted prepetition.

III. The Debtors are Entitled to Levee Insurance Proceeds and Receiving Account Funds Under Applicable Law

34. A joint venture is a legal entity in the nature of a partnership, and substantially the same rules apply to both relationships. *See* 57 Tex Jur Partnership § 10; *see also Carlyle Joint*

Venture v. H.B. Zachry Co., 802 S.W.2d 814, 816 (Tex. App. 1990) (“It is universally held that partnerships and joint ventures are so similar in nature that the rights as to the members of a joint venture are governed by substantially the same rules that govern partnerships.”). The HJVA is governed by Texas law, which provides that a joint venture agreement governs the rights of the parties to the agreement. *In re CorrLine Int'l, LLC*, 516 B.R. 106, 139 (Bankr. S.D. Tex. 2014). In the absence of some clear violation of public policy, the agreement will govern the rights of the parties, with statutes only consulted where the agreement is silent. *See Hoagland v. Finholt*, 773 S.W.2d 740, 742 n.4 (Tex. App. 1989). Under Texas law, breach of a joint venture or partnership agreement does not result in the forfeiture of the breaching partner’s interest. *See Truly v. Austin*, 744 S.W.2d 934, 939 (Tex. 1988) (“Notwithstanding defaults and omissions, each has an interest in such assets as have been preserved or accumulated. Thus, default by a member of a joint venture will not justify the other members in excluding him from participation in the accrued assets.”).

35. The Debtors are not seeking to share in profits of the joint venture, to the extent any such profits exist. To the contrary, the Debtors are seeking compensation for their completed work, solely to the extent contemplated under the HJVA and the MOU and not otherwise waived or released under the Settlement. There is no legitimate dispute as to the Debtors’ right to compensation for this work. Even a party in material breach or default under the HJVA is entitled to payment for its completed Own Work for which the joint venture has received payment from the owner. Stachurski Decl. Ex. 1, HJVA § 13.1.A. Regardless, the Debtors’ former joint venture partners have waived and released all claims against the Debtors in connection with the rejection of their interests in the HJVA. Settlement Term Sheet at 2. The Settlement Agreement does not modify the Debtors’ right to payment for their completed work, and the Debtors are entitled to a portion of the insurance proceeds and funds in the Receiving Account for such work.

IV. Depriving the Debtors of Insurance Proceeds and Receiving Account Funds Would Unjustly Enrich CB&I and Chiyoda

36. The Fifth Circuit has recognized that bankruptcy courts have broad equitable powers. *Thomas v. United States (In re Thomas)*, 223 F. App'x 310, 313 (5th Cir. 2007) (“Bankruptcy courts are courts of equity, and a court of equity is enabled to frustrate fraud and work complete justice.”); *In re Franco’s Paving, LLC*, 654 B.R. 107, 109 (Bankr. S.D. Tex. 2023) (stating that “a bankruptcy court is a court of equity”) (internal quotation omitted); *In re Brown*, No. 09-32480-H4-13 (JB), 2010 Bankr. LEXIS 6315, at *6 (Bankr. S.D. Tex. Mar. 23, 2010) (“[T]he bankruptcy court is one of equity and thus has broad equitable . . . powers.”).

37. These equitable powers can be used to prevent the unjust enrichment of one party at the expense of another. *In re Hudson Shipbuilders, Inc.*, 794 F.2d 1051, 1055-56 (5th Cir. 1986). “Unjust enrichment is defined as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.” *Conoco, Inc. v. Fortune Prod. Co.*, 35 S.W.3d 23, 31 (Tex. App. 1998), *rev'd on other grounds*, 52 S.W.3d 671 (Tex. 2000); *see also Texas Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367 (Tex. App. 2009) (“Unjust enrichment is an equitable principle holding that one who receives benefits unjustly should make restitution for those benefits.”).

38. It would be inequitable for the Debtors’ former joint venture partners to receive all of the insurance proceeds. The Debtors fronted the cost of relevant insurance policy, led the rectification claim on behalf of the joint venture, and incurred substantial additional costs pursuing the claim. The Debtors did so in contemplation of recovering their uncompensated losses related to the levee repairs from available insurance. As explained above, the Debtors incurred 71.2% of the total uncompensated losses in connection with the levee repair. Despite these disproportionate

losses, the Debtors agreed to allow their former joint venture partners to provisionally recover a portion of their own costs from joint venture contingency funds. The Debtors only agreed to this cost recovery arrangement because the parties agreed that insurance proceeds would be made available to compensate the parties for additional losses. CB&I and Chiyoda now seek to take advantage of the timing gap between the Settlement and the resolution of the insurance claim to keep for themselves the Debtors' share of cost recoveries. That is not contemplated by the Settlement, and implying such a result would unjustly enrich the Debtors' former joint venture partners.

39. Depriving the Debtors of their share of funds in the Receiving Account would also unjustly enrich their former joint venture partners. Funds in the Receiving Account are earmarked to pay documented obligations to the joint venture partners for their completed work. The Debtors have yet to be compensated for many invoices submitted to the joint venture long before these chapter 11 cases, payable from the Receiving Account. The Debtors' former joint venture partners are likewise entitled to be paid for their completed work. Allowing the Debtors' former joint venture partners to keep funds in the Receiving Account earned by the Debtors for their own benefit would enrich them to the detriment of the Debtors. The Court should interpret and enforce the Final Order to avoid that inequitable result.

Emergency Consideration

40. The Debtors request emergency consideration of this Motion, consistent with the Scheduling Order.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

41. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and

that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Conclusion

42. The Debtors respectfully request that the Court enter the proposed order and grant such other and further relief as the Court deems appropriate.

Dated: August 20, 2024
Houston, Texas

/s/ Charles R. Koster

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*Counsel to the Debtors and
Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Charles R. Koster
Charles R. Koster

Certificate of Service

I certify that on August 20, 2024, 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

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

In re:)	
)	Chapter 11
)	
ZACHRY HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 24-90377 (MI)
)	
Debtors.)	(Jointly Administered)
)	Re. Docket No. ____

**ORDER INTERPRETING AND ENFORCING
THE GOLDEN PASS SETTLEMENT AGREEMENT**

Upon the emergency motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) declaring that the Debtors are entitled to their proportional share of (i) insurance proceeds from the rectification claims related to the Golden Pass levee repair and (ii) funds held in the joint venture receiving account at the time of the settlement, in each case consistent with the *Final Order (I) Approving the Settlement by and among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, and (III) Granting Related Relief* [Docket No. 744] (the “**Final Order**”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and

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’ proposed claims and noticing agent at 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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of and in opposition, if any, to the relief requested therein at a hearing before this Court (the "**Hearing**"); and this Court having considered the *Declaration of Greg Stachurski in Support of the Debtors' Emergency Motion to Interpret and Enforce the Golden Pass Settlement Agreement*; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors shall be entitled to their proportional share of insurance proceeds from the rectification claim related to the Golden Pass levee repair, with such proportional share to be determined by the Debtors, CB&I and Chiyoda based upon each party's share of total losses related to the Golden Pass levee repair and the insurance claim.

2. The Debtors shall be entitled to funds held in the Receiving Account as of the date of entry of the Interim Order in an amount equal to their documented fees and expenses submitted to the joint venture prior to the Petition Date, to which CB&I or Chiyoda had not objected as of the Petition Date.

3. Notice of the Motion as provided therein shall be deemed good and sufficient notice and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. The Debtors, CB&I, and Chiyoda are authorized to take all actions necessary to effectuate the relief granted in this Order.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: __, 2024

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE