

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

In re: § Chapter 11
ZACHRY HOLDINGS, INC., *et al.* §
§ Case No. 24-90377 (MI)
§
Debtors.¹ § (Jointly Administered)
§ (Emergency Relief Requested)

**EMERGENCY MOTION OF CHIYODA INTERNATIONAL CORPORATION
TO FILE EXHIBIT UNDER SEAL**
Ref. Docket Nos. 871 & 872

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY.

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN SEPTEMBER 5, 2024. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO: THE HONORABLE JUDGE MARVIN ISGUR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Chiyoda International Corporation (“CIC”) hereby files this emergency motion (this “Motion”) to file under seal the Mediation Statement (defined below) which is listed as Exhibit 7 [Docket No. 872] on the *Chiyoda International Corporation’s and CB&I LLC’s Witness and Exhibit List for Hearing on September 5, 2024, at 4:00 P.M. (Prevailing Central Time)* [Docket

¹ The debtors in these chapter 11 cases (the “Debtors”), along with the last four digits of each Debtor’s federal tax identification number, may be obtained on the website of the Debtors’ claims and noticing agent at <https://veritaglobal.net/zhi>. The Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



No. 871] (the “Witness and Exhibit List”). In support of the Motion, CIC respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these chapter 11 cases (the “Chapter 11 Cases”) and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended or modified, the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 1075-1, 9013-1, and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

BACKGROUND

3. CIC, CB&I, LLC (“CB&I”), and Zachry Industrial Inc. (“Zachry,” and collectively, the “JV Parties”) are parties to the Hybrid Joint Venture Agreement, dated January 30, 2019 (as amended, the “JV Agreement”). The JV Agreement governs the relationship of the JV Parties and establishes a joint venture called the “CCZJV”. The JV Parties created the CCZJV to provide engineering, procurement, and construction services (the “EPC Services”) for a liquified natural gas facility in Sabine Pass, Texas (the “GPX Project”) pursuant to Contract No. GPP-EPC1 dated January 30, 2019, between Golden Pass LNG Terminal LLC and the CCZJV.

4. On August 20, 2024, the Debtors filed their *Motion to Interpret and Enforce the Golden Pass Settlement Agreement* [Docket No. 792] (the “Motion to Interpret”). Contemporaneously herewith, CIC and CB&I filed a reply to the Motion to Interpret (the “Reply”).

Through the Motion to Interpret, the Debtors seek certain of the CCZJV's property, including the Levee Insurance Proceeds, defined below. CIC and CB&I object to this relief.

5. As part of the EPC Services, the CCZJV constructed a levee that surrounds the GPX Project. Later, issues with the levee arose that required remediation.² To obtain reimbursement for the remediation work, the CCZJV submitted a claim under its applicable insurance policy (the "Levee Insurance Claim"). The CCZJV has not resolved the Levee Insurance Claim with its insurer and has not received any insurance proceeds (the "Levee Insurance Proceeds").

6. In connection with the Levee Insurance Claim, on March 6, 2024, the CCZJV submitted a mediation statement to mediator, Steve Nelson, with Markel / Suretec (the "Mediation Statement"), who was appointed to mediate disputes between the CCZJV and the relevant insurance carriers regarding the Levee Insurance Claim. Attached to the Witness and Exhibit List as Exhibit 7 is a true and correct copy of the Mediation Statement.

7. CIC previously sought to seal the Mediation Statement pursuant to the *Emergency Motion of Chiyoda International Corporation to File Exhibit Under Seal* [Docket No. 819].

RELIEF REQUESTED

8. CIC requests entry of an order, substantially in the form attached hereto: (a) authorizing CIC to file the (i) Mediation Statement listed on the Witness and Exhibit List under seal, and (b) directing that the Mediation Statement not be made available to anyone except (i) the Court, (ii) the U.S. Trustee, (iii) counsel to the Unsecured Creditors' Committee, and (iv) other persons upon further order of the Court, or as agreed by the JV Parties, in each case subject to

² CIC strongly rejects any implication that it is responsible for any issues with the levee.

confidentiality agreements or other arrangements reasonably satisfactory to CIC (collectively, the “Disclosure Parties”).

BASIS FOR RELIEF REQUESTED

I. Legal Standard

15. Section 107(b) of the Bankruptcy Code mandates that the Court protect confidential information upon request of a party in interest. 11 U.S.C. § 107(b) (“On request of a party in interest, the bankruptcy court *shall*, and on the bankruptcy court’s own motion, the bankruptcy court may (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information.”) (emphasis added); *see also Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (“[I]f the information fits any of the specified categories, the court is *required* to protect a requesting interested party and has no discretion to deny the application.”) (citation omitted) (emphasis in original); *see also In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.”); *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute, on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.”).

16. Sealing documents related to mediation is consistent with the protections section 107(b) of the Bankruptcy Code provides. *Cf. In re Anthracite Capital, Inc.*, 492 B.R. 162, 180 (Bankr. S.D.N.Y. 2013) (“Confidential documents exchanged in the course of discovery, negotiation, and mediation need not be disclosed to the public.”) (citation omitted); *In re Barretts Minerals, Inc.*, Case No. 23-90734, March 4, 2024 Hr’g Tr. 17:9–11 (finding that parties could not discover “what occurred in mediation”).

17. Moreover, pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Bankruptcy Rule 9018, “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information. . . .” FED. R. BANKR. P. 9018.

II. Sealing the Mediation Statement is Appropriate Under the Circumstances

9. Here, the Debtors assert a right to the Levee Insurance Proceeds, which is the CCZJV’s property, as more fully explained in the Reply. In support of its assertion that the Levee Insurance Proceeds are the CCZJV’s property, CIC relies on the Mediation Statement. The CCZJV made the Mediation Statement through the CCZJV’s agent (its attorney) at a time that Zachry was still part of the CCZJV.

10. The JV Parties, however, have not resolved the Levee Insurance Claim. The dispute with the relevant insurance carriers is pending, and the Mediation Statement includes strategy regarding the CCZJV’s mediation positions which should not be disclosed publicly. To maintain the confidentiality, CIC seeks to seal the Mediation Statement.³

11. No party will be prejudiced if the Mediation Statement is filed under seal given that: (i) the JV Parties each already have a copy, (ii) the proposed order allows the Disclosure Parties to receive an unredacted copy, and (iii) the proposed order is without prejudice to any party-in-interest to seek to unseal the document. Any third party that needs to review the Mediation Statement may seek permission from CIC directly or may otherwise seek authorization from the

³ “Commercial information” in this context need not rise to the level of a trade secret in order to warrant protection. *See In re Orion Pictures Corp.*, 21 F.3d at 27–28 (finding that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party must show only that the information it wishes to seal is “confidential” and “commercial” in nature).

Court. Accordingly, CIC files the Mediation Statement as restricted documents pursuant to Local Rule 9037-1 and the Court's CM/ECF procedures.

EMERGENCY CONSIDERATION

12. Pursuant to rule 9013-1 of the Local Rules, CIC respectfully requests emergency consideration of this Motion because CIC may rely on the Mediation Statement at the hearing on the Motion to Interpret which is scheduled for September 5, 2024 at 4:00 p.m. (CT).

[Remainder of page intentionally left blank.]

CONCLUSION

WHEREFORE, CIC respectfully requests that the Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Respectfully submitted this 3rd day of September 2024.

/s/ Charles A. Beckham, Jr.

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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 Local Rule 9013-1(i).

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, I caused a copy of the foregoing document to be served by electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

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

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

**ORDER GRANTING EMERGENCY MOTION OF CHIYODA INTERNATIONAL
CORPORATION TO FILE EXHIBIT UNDER SEAL**
Ref. Docket Nos. 871 & 872

Upon the motion (the “Motion”)² of CIC for entry of an order (this “Order”) pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rules 1075-1, 9013-1 and 9037-1 authorizing CIC to file the Mediation Statement, listed as Exhibit 7 on the Witness and Exhibit List [Docket Nos. 871 & 872], under seal, all as more fully set forth in the Motion; and this Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice being adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having determined, after notice and a hearing, as defined in section 102 of the Bankruptcy Code, that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order; and upon all the proceedings had before this Court and after due deliberation

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² Capitalized terms used but not defined in this Order have the meanings ascribed to them in the Motion.

and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9037-1, CIC is authorized to file the Mediation Statement, listed as Exhibit 7 on the Witness and Exhibit List [Docket Nos. 871 & 872], under seal.

2. The Mediation Statement shall remain under seal and shall not be made available to anyone; *except* that CIC shall provide electronic copies of the Mediation Statement on a strictly confidential basis to (i) the Court, (ii) the U.S. Trustee, (iii) the Committee's professionals, and (iv) other persons upon further order of the Court or as agreed by CIC and CB&I, in each case subject to confidentiality agreements or other arrangements reasonably satisfactory to CIC.

3. Any person or entity that receives the Mediation Statement in accordance with this Order shall not disclose or otherwise disseminate the Mediation Statement to any other person or entity.

4. Notwithstanding any provision of the Bankruptcy Rules or Local Rules, this Order shall be immediately effective and enforceable upon its entry.

5. This Order is without prejudice to the rights of any party in interest or the U.S. Trustee to seek to unseal the Mediation Agreement or any part thereof.

6. CIC and its agents are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

7. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____, 2024
Houston, Texas

THE HONORABLE MARVIN P. ISGUR
UNITED STATES BANKRUPTCY JUDGE