

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 24-90377
	.	Chapter 11
ZACHRY HOLDINGS, INC., et al.	.	
	.	
	.	
Debtors.	.	
.	
	.	
FLNG LIQUEFACTION LLC,	.	Adv. No. 24-03195
et al.,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
CB&I INC., et al.,	.	
	.	
Defendants.	.	
.	
	.	
FLNG LIQUEFACTION LLC,	.	Adv. No. 24-03189
et al.,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
ZACHRY INDUSTRIAL, INC.,	.	
et al.,	.	
	.	
Defendants.	.	
.	
	.	
ALLIANZ GLOBAL RISKS US	.	Adv. No. 24-03190
INSURANCE CO., et al.,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
ZACHRY INDUSTRIAL, INC.,	.	515 Rusk Street
et al.,	.	Houston, Texas 77002
	.	
Defendants.	.	Tuesday, November 12, 2024
. . . . .	.	1:28 p.m.



TRANSCRIPT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) SCHEDULING A COMBINED DISCLOSURE STATEMENT APPROVAL AND
PLAN CONFIRMATION HEARING, (II) CONDITIONALLY APPROVING THE
DISCLOSURE STATEMENT, (III) APPROVING THE CONFIRMATION
TIMELINE, SOLICITATION PROCEDURES, SOLICITATION PACKAGE, AND
NOTICES, (IV) ESTABLISHING PROCEDURES FOR OBJECTING TO THE PLAN
AND FINAL APPROVAL OF THE DISCLOSURE STATEMENT, AND
(V) GRANTING RELATED RELIEF [1322];
STATUS CONFERENCE
BEFORE THE HONORABLE JUDGE MARVIN P. ISGUR
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor:

White & Case LLP
By: BOJAN GUZINA, ESQ.
MICHAEL C. ANDOLINA, ESQ.
ADAM SWINGLE, ESQ.
111 South Wacker Drive, Suite 5100
Chicago, IL 60606
(312) 881-5400

White & Case LLP
By: CHARLES R. KOSTER, ESQ.
609 Main Street, Suite 2900
Houston, TX 77002
(713) 496-9700

For CB&I LLC:

Kirkland & Ellis LLP
By: JOHN R. LUZE, ESQ.
333 West Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000

APPEARANCES CONTINUED.

Audio Operator:

Courtroom ECRO Personnel

Transcription Company:

Access Transcripts, LLC
10110 Youngwood Lane
Fishers, IN 46048
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.



TELEPHONIC APPEARANCES (Continued):

For FLNG Liquefaction
2, LLC, FLNG
Liquefaction 3, LLC,
FLNG Liquefaction,
LLC:

King & Spalding LLP
By: MICHAEL FISHEL, ESQ.
1100 Louisiana Street, #4100
Houston, TX 77002
(713) 751-3200

Bonds Ellis Eppich Schafer Jones LLP
By: KENNETH GREEN, ESQ.
BRIAN PRENTICE, ESQ.
420 Throckmorton Street, Suite 1000
Fort Worth, TX 76102
(817) 405-6900

Zabel Freeman
By: KEVIN HOOD, ESQ.
1135 Heights Boulevard
Houston, TX 77008
(713) 802-9117

For Chiyoda
International
Corporation:

Haynes and Boone, LLP
By: CHARLES A. BECKHAM, JR., ESQ.
1221 McKinney Street, Suite 4000
Houston, TX 77010
(713) 547-2000

For Chiyoda
International
Corporation:

Haynes and Boone, LLP
By: CHARLES M. JONES, ESQ.
2801 North Harwood Street
Suite 2300
Dallas, TX 75201
(214) 651-5000

For United States
Trustee:

Office of United States Trustee
By: JANA SMITH WHITWORTH, ESQ.
515 Rusk Street, Suite 3516
Houston, TX 77002
(713) 718-4650

For Golden Pass LNG
Terminal LLC

Norton Rose Fulbright US LLP
By: ROBERT BERNARD BRUNER, ESQ.
1550 Lamar, Suite 2000
Houston, TX 77010
(713) 651-5216

For Statutory
Unsecured
Claimholders'
Committee:

Proskauer
By: DANIEL DESATNIK, ESQ.
Eleven Times Square
New York, NY 10036
(212) 969-3000



1 (Proceedings commence at 1:28 p.m.)

2 THE COURT: All right. It's 1:30. We're going to go
3 ahead and start on the Zachry Holdings case. The main case is
4 24-90377. We have two related or three related adversary
5 proceedings. One is 24-3189, one is 24-3190, and one is 24-
6 3195. Appearances should've been made electronically in the
7 main case. We'll go ahead and let Mr. Koster take the lead and
8 tell us where he thinks we should go today and in what order.

9 MR. KOSTER: Good afternoon, Your Honor, Charles
10 Koster, White & Case, for the debtors. I'm joined by
11 Mr. Guzina, Mr. Swingle, John Thomas, for the Hicks Thomas
12 firm, and the company's general counsel, Jay Old. Two items on
13 the agenda, the conditional approval of our disclosure
14 statement motion and a status conference related to the FLNG
15 adversary proceedings. If it's okay with Your Honor, I'd like
16 to start with the status conferences and proceed to the
17 disclosure statement motion --

18 THE COURT: Sure.

19 MR. KOSTER: -- after that. Your Honor, for
20 context -- and I know the Court is familiar with the three
21 adversary proceedings. The first, filed by the FLNG entities,
22 seeks damages related to a defective motor installed at the
23 Freeport project. And the plaintiffs are seeking damages
24 related to the defective motor as well as consequential damages
25 for business interruption. The debtors have filed a motion to
26 dismiss, seeking to dismiss the claims for consequential

1 damages. FLNG responded and replies will be filed this week,
2 likely as early as this afternoon, for Zachry. That is set for
3 hearing on Monday, which is November 18th.

4 Relatedly, there are two separate subrogation
5 actions, two separate adversary proceedings filed by two groups
6 of plaintiffs effectively raising the same claims, same issues,
7 seeking damages related to an explosion at the Freeport project
8 site. Zachry, CB&I, and Chiyoda filed motions to dismiss. The
9 plaintiffs had filed their responses and each of the movants
10 have replied. Surreplies, if any, from the subrogation
11 plaintiffs will be due tomorrow. And that matter is also set
12 for hearing on November 18th.

13 The debtors, Your Honor, are confident in our
14 position on these motions dismiss. We are, nevertheless,
15 closely coordinating with our joint venture partners and the
16 plaintiffs on potential consensual resolutions and settlement
17 terms of each of these matters. Those conversations,
18 unfortunately, have not advanced as far as we would like, the
19 primary reason being that our carriers, which are necessary
20 parties to any settlement conversations, have yet to make a
21 coverage determination decision. So we are, unfortunately, for
22 the time being, at an impasse, and ready to dispute the
23 relevant issues on Monday, and potentially thereafter,
24 continuing to hope, of course, that we get engagement from the
25 carriers and can advance those discussions.

1 In this context, Your Honor, we were surprised by the
2 statement filed last night by our joint venture partners. They
3 are keenly aware of the issues and the status. We've gone out
4 of our way to proceed in total lockstep with them. They,
5 nevertheless, want disclosure about what would potentially be a
6 material obligation on a count of meritless claims. My
7 colleagues will address that statement in the context of the
8 disclosure statement motion.

9 We've also filed objections, as Your Honor is aware,
10 to the claims filed by the FLNG plaintiffs and subrogation
11 plaintiffs. Those objections are set for preliminary hearing
12 on Monday, November 18th, as well. We anticipate that that
13 hearing will be used to establish process and timing for the
14 adjudication of those claims which will overlap largely with
15 the issues in the adversary proceeding, to the extent that
16 those claims remain following Your Honor's decision on motion
17 to dismiss.

18 Our joint venture partners have also filed contingent
19 claims for contribution and indemnification against the
20 debtors. We will address those contingent claims in the
21 context of our claims reconciliation and objection process,
22 which is ongoing and based on the changes to the plan, which
23 Your Honor has likely reviewed prior to this hearing, with the
24 aim to complete prior to the effective date of the plan, which,
25 as we've mentioned in previous hearings, we would hope to be

1 prior to year end.

2 So before I cede the podium, Your Honor, I'll note
3 that the debtors look forward to resuming our coordinated
4 efforts with our joint venture partners. And, no doubt, Your
5 Honor will observe a completely unified front in connection
6 with the motion to dismiss hearing on Monday, which makes it
7 all the more surprising, the context and the substance of the
8 statement that was filed last night in connection with
9 disclosure. With that, I will cede the podium to the other
10 parties in the adversary proceedings for their perspective on
11 these matters.

12 THE COURT: Thank you.

13 MR. FISHEL: Good afternoon, Your Honor, Michael
14 Fishel, from King & Spalding, on behalf of FLNG. Largely agree
15 with Mr. Koster. Obviously, disagree whether the claims are
16 meritless, of course. We'll leave that for another day. I
17 think, since our last hearing, we made considerable efforts
18 in -- I mean, shortly after that hearing, that afternoon, to
19 set up a process to make sure everyone's involved. We did
20 engage in some negotiations. I agree with Mr. Koster, that we
21 reached an impasse, not necessarily because of, you know, the
22 debtor. But we need the carrier involved.

23 I want to, with respect to the motion to dismiss,
24 we'll obviously be ready to argue it on Monday. But I do want
25 to confirm that the claim objection, itself, which is different

1 from the motion to dismiss, because it involves additional
2 issues, the motion to dismiss is just consequential damages, to
3 set expectations for what the Monday hearing should look like.
4 I am assuming it's not a -- it's obviously not an evidentiary
5 hearing. But whether Your Honor wants us to preview the
6 issues, whether you expect any argument, just to make sure we
7 set expectations accordingly.

8 THE COURT: So I'm not prepared for Monday. It's --
9 or I would tell you. But it's not scheduled for an evidentiary
10 hearing. It is just scheduled for a status conference. But
11 it's not an -- and I'm just -- I'm not prepared for it. It's
12 not uncommon that I may ask questions on merits at a hearing
13 like that. But I'm not going to decide it at that hearing.

14 MR. FISHEL: Understood. And that --

15 THE COURT: I hope that's --

16 MR. FISHEL: -- that was our understanding. And I
17 just wanted to make sure we're all on the same page.

18 THE COURT: Yeah, I don't prepare -- I can't prepare
19 that far in advance, because everything then settles out from
20 under me, and I've wasted all my time so --

21 MR. FISHEL: Understood. All right. Thank you very
22 much, Your Honor.

23 THE COURT: Thank you.

24 MR. GREEN: Good afternoon.

25 THE COURT: Good afternoon.

1 MR. GREEN: Ken Green, Bonds Ellis, on behalf of the
2 FLNG subrogation plaintiffs, in adversary 24-3189 and 3190.
3 I'm also joined in the courtroom by Brian Prentice with my firm
4 and Kevin Hood from Zabel Freeman. He's lead counsel for the
5 subrogation claims in the 3189 adversary. He'll be arguing the
6 motion to dismiss on Monday. And I should have an attorney on
7 video from Denenberg Tuffley. They are lead counsel for the
8 subrogation plaintiffs in the 3190 adversary. Those adversary
9 proceedings are essentially the same. It's just two separate
10 sets of subrogated insurers. Ultimately, the Court may
11 determine that those two matters should consolidated, and that
12 would make sense. The Court may also decide that those two
13 adversaries should be consolidated with the claim objection
14 because they are essentially all the exact same issues, in
15 terms of the defenses on the merits as well as establishing
16 the -- and a determination of the amount of the claim. The
17 damages aren't liquidated. That's the nature of a subrogation
18 suit. It's based on 1.3 billion liquidated damages.

19 We understand that the liability is contested. We
20 certainly take issue with the characterization as meritless,
21 but we acknowledge the liability is contested. The Court will
22 have certain legal issues in front of it on Monday, the 18th,
23 on that hearing. We would anticipate we would get some sort of
24 a scheduling order that would address the remaining issues.
25 And again, it is the exact same issues teed up in the claim

1 objection as well as in the two adversary proceedings. So --

2 THE COURT: Great.

3 MR. GREEN: -- unless you have any other questions,
4 that's all I have for today.

5 THE COURT: No. Am I going to hear from the insurers
6 today? All right. I don't know if they're here or not. Do we
7 have any insurers on the phone?

8 So -- and I don't mean to direct this to you,
9 necessarily. You just are, sir, the third in line, where I
10 don't really see how parties are going to make settlement
11 progress until we get the insurer around this issue clarified.

12 MR. GREEN: Agreed.

13 THE COURT: And what are we doing? And we can have
14 people come back up that have already spoken, to be sure that,
15 if I'm correct about that, to be sure that we have the insurers
16 engaged in the process, even if it's -- is defining whether
17 they're going to provide coverage or not. What can we do to be
18 sure that that occurs by Monday?

19 MR. GREEN: I would like to speak to what we have
20 done. So we sent a letter -- the only policy that we've been
21 provided by Zachry is the Zurich primary policy. It has a
22 \$4 million limit. We've been told that there are excess
23 policies that provide coverage up to 150 billion. We
24 provided --

25 THE COURT: And they're all Zurich, or they're --

1 MR. GREEN: I do not believe they're all Zurich.

2 THE COURT: They're not all Zurich.

3 MR. GREEN: But we haven't been -- that's part of the
4 issue is we haven't been provided with those other policies in
5 the insurance tower. And so, we don't even know, for sure, the
6 names of the other insurers that are in that excess tower. But
7 what we did was we sent a letter -- the Court's probably
8 familiar with this, generally, with a Stowers settlement offer.
9 And we directed that letter to Zachry as well as to Zurich,
10 directly. What -- and the response we received back from
11 Zurich, part of their response was we only provide the first 4
12 million of coverage, so we don't provide all of the 150
13 billion. So we've taken it as far as we can until we -- I
14 mean, we don't -- we would like to know the names of the other
15 insurers so we can engage them and make sure that our Stowers
16 letter gets to all the right carriers in the tower. But we
17 don't have that information.

18 THE COURT: Okay. Thank you. Sorry. Did not mean
19 to not hear from you. Go ahead. Thank you.

20 MR. GREEN: Is there any other questions for me,
21 Your Honor?

22 THE COURT: No. I do want to hear -- we'll do
23 another round and we'll get back to that, but did you have
24 something you wanted to add to that today?

25 MR. JONES: Good afternoon, Your Honor, Charlie



1 Jones, Haynes and Boone, on behalf of Chiyoda International.
2 Agree with Mr. Koster on the state of the litigation with
3 accord to the motions to dismiss. We have been, as a joint
4 defense group, controlling the insurers, having weekly calls
5 with a number of them, and asking repeatedly for, you know,
6 coverage determinations. We don't have -- as part of what was
7 in our statement that we filed, just to inform the Court, the
8 status --

9 THE COURT: Right.

10 MR. JONES: -- of our negotiations with the insurers
11 is we absolutely agree the insurers are critical participants
12 in this.

13 THE COURT: But in the status report that you filed
14 you didn't ask me to do anything to encourage them to provide
15 that, those coverage determinations. And I was a little
16 surprised that, as frustrating as it sounds like everybody is,
17 that everyone is sort of not pulling that plug, to force a
18 determination either.

19 MR. JONES: At this moment, Your Honor, I'm not
20 sure -- haven't thought it all the way through -- but I'm not
21 sure they're in front of you, so to speak.

22 THE COURT: Yes, I -- my point is I -- there's little
23 I can do. And all that I hear are -- and I don't mean this
24 negatively, but people are telling me it isn't occurring, but
25 they're not asking for any relief --

1 MR. JONES: Right.

2 THE COURT: -- about it occurring.

3 MR. JONES: I think we -- as -- I don't mean to speak
4 for the defense group. But I can say that Chiyoda, we've been
5 patient and we have provided the information requested, that we
6 have been incredibly direct in our demands for coverage
7 positions, which should be -- you know, issued promptly, under
8 Texas law. These lawsuits were filed, I believe, May and June.
9 They were promptly tendered and we still don't have coverage
10 determinations. And I will just say, to those insurers out
11 there, our patience is running thin. We don't want to be rash,
12 but at some point, we do need to know where they stand.

13 THE COURT: So my patience is running thin with you,
14 right? Because --

15 MR. JONES: Yes, sir.

16 THE COURT: -- you're not bringing it to me. And
17 telling me it isn't happening and not asking me to do anything
18 is frustrating, for somebody like me.

19 MR. JONES: Heard, Your Honor.

20 THE COURT: But I'm --

21 MR. JONES: Understood.

22 THE COURT: -- not upset at the insurers. I mean,
23 nobody's forcing them to do anything. I maybe should be upset
24 at them because they may have some duty they haven't met. But,
25 at this point, it's not teed up for me to be upset at anybody,

1 other than sort of your side of the ledger, of we got a big
2 issue and it's not moving ahead, like I think it needs to move
3 ahead --

4 MR. JONES: I understand, Your Honor. Heard --

5 THE COURT: -- so --

6 MR. JONES: -- loud and clear. I know my joint
7 venture partner is here, and we will discuss, and we will see
8 what we can do.

9 THE COURT: Good. Is there any problem giving the
10 insurance stack information to the subrogated parties?

11 MR. JONES: You need to talk with the joint venture
12 members. But I don't believe there is. Nothing that comes to
13 mind but --

14 THE COURT: I wouldn't think there would be.
15 Mr. Green is saying he's asked for it and hasn't gotten it.
16 Let me ask you --

17 MR. JONES: Go ahead.

18 THE COURT: I'm going to encourage you to give them
19 that insurance stack information. I'm not compelling it.
20 Again, I don't have that from him, either. But at least I have
21 you both here, that I can look at. I think he ought to get
22 that. If there's a reason he shouldn't, it's maybe because it
23 hasn't been teed up yet. But if there isn't any reason, other
24 than sort of inertia, let's get it to him.

25 MR. JONES: Understood, Your Honor. No further

1 questions for Chiyoda on this matter?

2 THE COURT: No.

3 MR. JONES: Thank you.

4 THE COURT: Thank you. Anybody else want to address
5 anything? Okay. I appreciate all the status reports. And,
6 hopefully, we'll get some more information.

7 Mr. Koster, let's go to the disclosure statement
8 issue or -- and one of the issues in the disclosure statement,
9 by the way, is, apparently, notwithstanding that your joint
10 venture partners have raised an issue, they've also said they
11 provided you with some language that will resolve it. I
12 haven't seen that language. So I would like to carry that into
13 the conversation, more about that.

14 MR. GUZINA: Understood, Your Honor. Good afternoon,
15 Bojan Guzina, of White & Case, on behalf of the debtors. It's
16 good to see you again.

17 THE COURT: Good to see you.

18 MR. GUZINA: You previously reserved this time for us
19 for conditional approval of a disclosure statement, to the
20 extent we were able to get it on file at least seven days
21 (indiscernible). Good news is we were able to do that. We are
22 seeking conditional approval of our disclosure statement and we
23 will reconsider the fairly standard notice and the solicitation
24 procedures. We filed that motion on November 5th, under Docket
25 Number 1322. Last night, we filed a modified version of our

1 proposed form of order. That can be found under Docket Number
2 1376-1. Those modifications reflect the productive discussions
3 we have had with the creditors' committee, first and foremost,
4 but also comments that we received from other parties.

5 Your Honor, we are asked -- and, by the way, the
6 committee did file a letter in support of the plan. We filed
7 that prior to today's hearing.

8 THE COURT: I saw that.

9 MR. GUZINA: Your Honor, we are asking you to
10 schedule our confirmation hearing for December 12th. That will
11 be a combined hearing on the plan of approval of the disclosure
12 statement and confirmation of the plan. That's a little over a
13 month from now. It will allow us to give no less than 28 days'
14 notice of the confirmation hearing. We have a set of related
15 dates and I'll (indiscernible) them to the confirmation
16 timeline, the most important of which is, on our voting and
17 objection deadline, would be December 10th.

18 THE COURT: So U.S. Trustee is objected about the
19 shorting -- the short amount of time, even if it's within the
20 rules. We do have Thanksgiving coming up. I was wondering,
21 and this is a question, whether we shouldn't move the 12th to
22 the 16th. It adds four working -- four days. It may include
23 some weekend time. But, given Thanksgiving, may be going out a
24 little bit longer, and then extending some of your other
25 proposed deadlines out. Take some of that pressure off from

1 Thanksgiving. And I'm sensitive to their position. I don't
2 know if you're sensitive to that. I think it's only three
3 business days. But, still, it's time for people to get things
4 done.

5 MR. GUZINA: Your Honor, we're sensitive to the
6 passage of time, but three business days will not make a
7 material difference. So we can certainly --

8 THE COURT: Okay.

9 MR. GUZINA: -- incorporate that and address it
10 but --

11 THE COURT: Well, we'll see what -- whether that --
12 if the U.S. Trustee says that's not an improvement, then I'll
13 deal with what we need to do. But I wanted to at least throw
14 that out as something that might give a little more breathing
15 room.

16 MR. GUZINA: Understood, Your Honor. With your
17 permission, I'd like to start by giving a kind of overview of
18 the bigger picture of where we are in the case and how it is
19 that we came to be before you seeking approval of this
20 disclosure statement on a conditional basis. It may seem like
21 it was only yesterday that we filed these cases, but it's been
22 almost six months. And we do not have an RSA in this case, we
23 don't have DIP milestones, we don't have milestones in our cash
24 collateral order. So you may wonder why are we in a rush to
25 confirm a plan. And the answer is straightforward.

1 My client wants to get out of bankruptcy as
2 quickly as possible. They are focused on winning new business,
3 doing what they do best, which is building amazing things. And
4 they are keenly aware of the perceptions surrounding Chapter 11
5 that the customary lender community have. And the sooner they
6 can get out of Chapter 11, the better.

7 And so, with that goal in mind, we have negotiated a
8 plan construct that would result in payment in full of general
9 unsecured creditors, in cash, once their claims have been
10 allowed. The prepetition secured lenders would become party to
11 an amended and restated credit facility that would include
12 partial pay down of the existing exposure in an amount to be
13 determined. And all this is contingent on our ability to raise
14 exit financing in the form of junior debt of at least 175
15 million.

16 Now, the exit financing process is well underway.
17 It's being run by the debtor's professionals Lazard. Multiple
18 parties are engaged in that process with -- conducting due
19 diligence. And we are cautiously optimistic that we will get
20 favorable responses and that will work with our timeline.

21 THE COURT: And I think that you were going to file
22 the supplement by the 5th that would then have all that
23 information, which was another reason why I thought going out a
24 few extra days gave more opportunity for people to deal with
25 that.

1 MR. GUZINA: That's fair, Your Honor, absolutely.
2 But because what I was saying, the general unsecured creditors
3 are getting cash, a hundred cents. So I don't think they'll be
4 fairly concerned about what's in the plan supplement. We know
5 this plan goes effective and they get a hundred cents, or it
6 doesn't go effective. The real issue is with our prepetition
7 lenders. And Ms. Liggins is in in the courtroom today and we
8 have been in (indiscernible) to meet with her and her client.
9 We don't have an agreement yet. We've had discussions and
10 those discussions will continue.

11 But it's really about getting the terms of our deal
12 locked down in time for the lender (indiscernible) to make an
13 informed decision and get to a yes on this. And we're keenly
14 aware that we're putting them on a tight timeline to make that
15 happen. But that's driven by --

16 THE COURT: Yeah.

17 MR. GUZINA: -- business concerns.

18 THE COURT: They haven't complained but --

19 MR. GUZINA: Fair enough. But it's driven by
20 business concerns and management's desire to wrap up this
21 process as quickly as possible. And so, yes, we will file a
22 plan supplement five days before the voting deadline. We think
23 that would give the lender sufficient time to review the --

24 THE COURT: Well, what I'm thinking of is leave that
25 date where you have it, and then to move the other dates back,

1 so that they'll have that extra information, for that extra few
2 days, and not extend your plan supplement deadline.

3 MR. GUZINA: Got it. So it would be the --

4 THE COURT: At least, that's what I'm --

5 MR. GUZINA: -- the --

6 THE COURT: -- thinking of doing.

7 MR. GUZINA: It would be the voting and objection
8 deadline, and, of course, the hearing.

9 THE COURT: Right.

10 MR. GUZINA: Certainly, if that works for the U.S.
11 Trustee's Office, we will make that change. Your Honor, this
12 is a company with over 50,000 employees, many of whom listen to
13 these hearings very carefully. And so I know how important it
14 is for our leadership team, that we stick to this timeline the
15 best that we can. Certainly, it's not entirely in our control.
16 But we have very capable professionals working very hard to
17 make this happen and make sure that this all comes together.

18 I already mentioned who gets to vote on the plan. So
19 it's two impaired classes, general unsecured creditors and the
20 prepetition lenders. The topic of the form of consideration
21 and the timing of the payments that the unsecured creditors
22 would get or is something we discussed with the committee's
23 advisors (indiscernible) weeks.

24 THE COURT: So I think the new deal is, if you delay
25 somebody because of an objection that earns interest, but,

1 otherwise they don't earn interest, and have to be paid on the
2 effective date, I think, right?

3 MR. GUZINA: That is right, Your Honor. So that's a
4 compromise that we've reached with the creditors' committee.
5 There will be no post-petition interest on the general
6 unsecured claims. That's why they're impaired and entitled to
7 vote. But, to the extent that somebody's payment gets delayed,
8 because we objected, and the claim is ultimately allowed, we
9 will pay interest on the allowable portion for that period.
10 That -- that's absolutely correct. And my understanding is
11 that the prepetition lenders are not opposing this process.
12 They're certainly aware of the timeline and they -- we need --
13 we understand that much work remains to be done. But we'll be
14 engaged with them, as best as we can, to get an agreement in
15 time for the confirmation.

16 Your Honor, a quick word about the objections and the
17 statements that we received in response to this motion. You
18 mentioned the U.S. Trustee's position. We think that's a
19 confirmation objection.

20 THE COURT: So I want to run through those and give
21 both you and the U.S. Trustee my preliminary thoughts on all of
22 those objections, and then hear you argue against the
23 preliminary thoughts, if you will. They took the trouble to
24 write a comprehensive pleading. And it -- I think some of the
25 issues in there we ought to address now, so we don't run into a

1 problem later. And others, I think, we should reserve for
2 confirmation. And I wanted to go through, in detail, my views
3 of it, and then let you argue against it, and let her argue
4 against it, if that works for you?

5 MR. GUZINA: Of course.

6 THE COURT: You okay with that, Ms. Whitworth?

7 MS. WHITWORTH: Yes, Judge, thank you.

8 THE COURT: Thank you. Did you want me to do that
9 now, or do you want to go through your other objections first?

10 MR. GUZINA: Why don't we come back to that, if
11 that's okay.

12 THE COURT: Sure.

13 MR. GUZINA: I'll just mention we received two other
14 statements and reservations of rights. One is from our old
15 friends at Golden Pass. Your Honor, as that statement now is
16 written, and working cooperatively with the Golden Pass team to
17 make sure that vendor payments are made as contemplated by our
18 settlement, we do have a concern over the timing in completing
19 that process. Exactly how much gets paid is critical to
20 determine the amount of the LC that will be reserved. And so,
21 we had a received assurances that this will get wrapped up in
22 time for our confirmation hearing. And that's certainly our
23 goal. In the unlikely event that we're not able to make that
24 happen, we may need Your Honor's help. And when we -- may to
25 tee up the issue. But that's certainly not our expectation.



1 THE COURT: So on that one, and I'll let Mr. Bruner
2 correct me if I'm wrong. I just read him saying, don't forget,
3 we're still here, and we're going to hang around, but you can
4 go ahead and approve the disclosure statement. I mean, did I
5 misread what you said, Mr. Bruner?

6 MR. BRUNER: No, I -- Bob Bruner, Norton Rose
7 Fulbright, on behalf of Golden Pass. No, that -- that's right.
8 You know, we -- we've been hyper focused on the preliminary
9 obligations under the settlement, and we think we're -- we have
10 been working in good faith with the debtors. We do that -- we
11 think we're getting there. There's a few wrinkles we still
12 need to work out, but it's --

13 THE COURT: So --

14 MR. BRUNER: -- I think it's all heading in the
15 correct direction.

16 THE COURT: I'm going to treat what you filed, unless
17 you want to tell me I'm wrong, is a statement, not as an
18 objection to rule on?

19 MR. BRUNER: That's right, Your Honor. It wasn't
20 intended to be objection, but will not be in a -- our view of
21 the progress.

22 THE COURT: Thank you.

23 MR. BRUNER: Thank you, Your Honor.

24 MR. GUZINA: And the other statements from CB&I and
25 Chiyoda, as Mr. Koster referenced at the started this hearing.

1 THE COURT: And they said they gave you some
2 language. I don't think I've seen the language. But are -- is
3 that something you all are going to get resolved pretty
4 quickly?

5 MR. GUZINA: Well, Your Honor, we got language from
6 them, I believe, at seven o'clock last night. And they've had
7 the disclosure statement since October 1. So we looked at the
8 language. It's essentially a reservation of rights. We're not
9 taking anybody's rights away. It's conditional approval of the
10 disclosure statement. So we went ahead and we filed updated
11 drafts of our documents in advance for today's hearing.

12 THE COURT: I didn't see where their statement was
13 included in that, though, right?

14 MR. GUZINA: It was not, correct.

15 THE COURT: Okay.

16 MR. GUZINA: We did not incorporate that language.
17 Now, if they -- if they are asking us to include a reservation
18 of rights under the -- in the order approving the disclosure
19 statement, that's certainly fine. We don't think it's
20 necessary, because, again, nobody's rights are being taken away
21 to --

22 THE COURT: I don't know if it's necessary. I'm just
23 trying to figure out if we have a dispute, it may be necessary.
24 But I'll give you all a chance to talk about whether you all
25 want to have a fight about what they're saying, or want to

1 include something in the confirmation order in the disclosure
2 statement. And I'll let them tell me whether we have an
3 objection or not. I think it -- what we have, right now, is an
4 objection, unless you include their language. But they may
5 wish for -- I don't know but --

6 MR. GUZINA: Yeah, we'll hear from them. I mean,
7 I've -- I read their statement as raising concerns over a piece
8 of the -- you know, the plan, which, certainly, is a
9 confirmation issue and something we will address in due course.
10 I mean, we certainly don't think their claims have merit. And
11 they're going to be arguing the same on Monday -- probably be
12 on the motion to dismiss. So that we've had -- we have some
13 time to figure out, between now and confirmation, as far as
14 what language they want, if it's a specific reservation of
15 rights, we'll hear from them. But again, we don't think it's
16 necessary.

17 THE COURT: Okay. We'll hear from them.

18 MR. GUZINA: Okay.

19 MR. BECKHAM: Thank you, Your Honor, Charles Beckham,
20 (indiscernible), from Haynes and Boone, on behalf of Chiyoda.
21 I believe Mr. Luze, from Kirkland, probably is on the line.
22 And he has --

23 THE COURT: Is that in case he disagrees with
24 something that you say?

25 MR. BECKHAM: And he may want to address the Court,

1 as well.

2 THE COURT: I've got Mr. Luze's line open in case he
3 wants to talk.

4 MR. LUZE: Yes, hello, Your Honor, Jack Luze. I'm
5 trying to get my camera to work, but I'm having an issue
6 (indiscernible).

7 THE COURT: We're all better off, so it's fine.

8 MR. BECKHAM: And I'm not going to comment on that,
9 Your Honor. But I'll proceed with the activity statement and
10 reservations that I wish (indiscernible) last evening, at 1378.
11 You are correct, it is not an objection to the disclosure
12 statement. We did provide language to the debtors last night,
13 asking that they put in additional disclosures relative to
14 three aspects of the disclosure statement. One, the impact of
15 the financing that's available for the debtors to exit
16 bankruptcy. And that's whether they're able to amend and
17 restate their prepetition existing credit agreement and whether
18 they've been able to obtain the financing related to the junior
19 piece of --

20 THE COURT: I think --

21 MR. BECKHAM: -- (indiscernible).

22 THE COURT: -- they said they haven't, but does that
23 need to go in there, given that they have the plan supplement
24 coming up?

25 MR. BECKHAM: Your Honor, in reading the disclosure



1 statement and the motion, it almost implies it is in place, but
2 it doesn't say that it is or is not. We provided some language
3 relative to that. They rejected it. We thought it would be
4 helpful. And, as their conditional disclosure statement, I
5 suppose they take the risk, with respect to proceeding forward
6 on confirmation of the -- of their plan and whether or not --

7 THE COURT: Well, here --

8 MR. BECKHAM: -- (indiscernible).

9 THE COURT: -- was his version of the risk, which may
10 or may not be appropriate. His was, if we don't get the
11 financing, we're not going to try and confirm a plan. And, if
12 we do, we've won on the risk. So he doesn't care. What I -- I
13 don't mean to put words in his mouth, but I think that's what
14 he told me.

15 MR. BECKHAM: Okay.

16 THE COURT: So do you have any problem with that? Do
17 you want to persist on an objection on that, or you're just
18 okay with him --

19 MR. BECKHAM: I'm fine --

20 THE COURT: -- taking that risk?

21 MR. BECKHAM: -- I'm okay with the debtors taking the
22 risk and --

23 THE COURT: Okay.

24 MR. BECKHAM: -- I'm happy that the Court is aware of
25 the risk.

1 THE COURT: Thank you.

2 MR. BECKHAM: Secondly, Your Honor, we raise issues
3 relative to the status of the pre-court litigation and the
4 underlying coverage issues. The reason we thought were
5 appropriate and elaborate explanation of that was appropriate
6 is because it puts risk on the confirmation. The reason the
7 debtors originally filed Chapter 11 which were related to joint
8 venture obligations related to Golden Pass. The import
9 obligations are just as serious. And they're just as serious
10 to Chiyoda and to CB&I because the joint several liability that
11 the parties have with respect to any of the liabilities coming
12 out of Freeport. We thought clear and more focused disclosure
13 relative to those risks could show was appropriate under these
14 circumstances. We provided language. They rejected it. We'd
15 still like to see it in the disclosure statement.

16 And, you know, I'm kind of old school, Your Honor.
17 Just -- I've been around for -- doing this for quite a while.
18 I don't think you can win or lose at a disclosure statement
19 hearing. My resolution that I've always seen is, if someone
20 wants to throw something at your disclosure statement, and just
21 not happily wrong, you can include it in the disclosure
22 statement and say Chiyoda and CB&I say this. The debtors have
23 chosen to reject that request. And we still think it's prudent
24 to allow the parties to understand it, because, Your Honor, the
25 plan provides that the debtors intend to pay unsecured

1 creditors in full. What we don't know is how big those
2 plaintiffs' claims are going to be.

3 We do -- are in agreement and alignment with Zachry,
4 that we don't think those are valid claims. But until you
5 resolve them, it's a risk for the debtors. And we think it's
6 not descriptive enough to say they're going to pay for it in
7 full if they don't have insurance coverage to pay them. Or the
8 claims are too large, and we'll see their ability to exit
9 bankruptcy. That's why we thought it was appropriate and
10 meritorious.

11 Then the -- and that goes to our third point as well,
12 Your Honor, of it just affects the -- it's a feasibility issue.
13 But how are they going to pay all unsecured creditors in full
14 if -- until they know what the amount of the claims are, and
15 then they either have insurance or funding to pay those. And
16 that's the language that was provided to them.

17 THE COURT: Thank you. So I need to hear from the
18 debtor on this one. I don't understand how the plan works. If
19 you pay all the unsecured creditors in full, and, after that,
20 there then comes a liquidated claim arising out of FLNG, What
21 risk are people taking about that. I don't know where that's
22 described anywhere.

23 MR. GUZINA: So Your Honor, we do have a discussion
24 of risk factors relating to the FLNG litigation and the
25 possibility that the insurance coverage will not be sufficient

1 to cover the potential exposure. So we do --

2 THE COURT: But what happens to the people that have
3 been told that they're getting a hundred cents on the dollar,
4 if it turns out that you have some uncovered exposure?

5 MR. GUZINA: Well, the vast majority of claimants,
6 absent a (indiscernible), the vast majority of claimants will
7 be paid before there's a resolution of --

8 THE COURT: Right. But then you have to give their
9 money back?

10 MR. GUZINA: No, absolutely not.

11 THE COURT: Well, but why not, if these guys deserve
12 equal treatment with them? I just think -- if that's the deal,
13 then you need to describe that arrangement. And I don't think
14 it's described. Because it -- at least, at this stage, I mean,
15 maybe you when your motion to dismiss -- but let's assume you
16 do, then it's going to be on appeal. You're always going to
17 have this risk, when you get to the confirmation hearing, that
18 there will be a large FLNG claim, whether on appeal or from me
19 or whatever. And I don't think we've told people what will
20 happen to them. But, ordinarily, you'd have a true up
21 arrangement, right?

22 MR. GUZINA: Well, not in a full pay plan where the
23 general unsecured creditors are -- I mean, they're technically
24 impaired. But, essentially, everybody gets a liquidated and
25 contingent will (indiscernible) and these claims will be

1 resolved in the ordinary course. So there's a liability that
2 becomes due two years from now. That's --

3 THE COURT: Uh-huh.

4 MR. GUZINA: -- something the company will have to
5 deal with, as no longer a debtor in possession.

6 THE COURT: So are you separately classifying these
7 claims?

8 MR. GUZINA: We are not. They're being treated the
9 same as everybody.

10 THE COURT: Yeah.

11 MR. GUZINA: They're liquidated and not contingent,
12 at the time the plan goes in effect, that they'll be paid in
13 cash, in full. Everything else will have to be resolved over
14 time, a -- whether in bankruptcy court, in a non-bankruptcy
15 forum, to get to a liquidated amount.

16 THE COURT: Then I think you need to describe that,
17 and that your burden at confirmation is going to be to
18 demonstrate that the plan is not likely to be followed by a
19 further reorganization, and that you will have, therefore, the
20 ability to pay a subsequently allowed FLNG claim.

21 MR. GUZINA: Oh, absolutely. But that's a
22 feasibility issue and something we will address at
23 confirmation.

24 THE COURT: But that risk isn't in here, I don't
25 think.

1 MR. GUZINA: Okay. We'll look over the risk factors
2 and we can be --

3 THE COURT: But, I mean, this is a special one. This
4 isn't just kind of a general statement. It's very material
5 allegation, with respect to feasibility. So I think it needs
6 to be dealt with. If you've got something in there, where you
7 think it -- it's there, I'd like to see it, you know, by the
8 end of today's hearing. But, if not, you know, we can come
9 back at the end of today, or we can come back tomorrow, and I'm
10 not delaying this. But we may need to beef up that language
11 some.

12 MR. GUZINA: Yeah. Understood, Your Honor. And as
13 for the other issue, which is the language that we received,
14 certainly, my approach is somebody tells me to do something
15 with the disclosure statement, fine, we'll go ahead and include
16 it. This isn't some polluted statement of what Chiyoda's view
17 of the (indiscernible) is. This is a position on what the GED
18 agreement provides, this is a position on what the coverage
19 issues are. We haven't had an opportunity to vet that with
20 counsel. We're handling that. Certainly, I've consulted with
21 insurance coverage counsel.

22 THE COURT: Yeah, I'm not telling you --

23 MR. GUZINA: (Indiscernible) --

24 THE COURT: --I'm not suggesting --

25 MR. GUZINA: -- (indiscernible).

1 THE COURT: -- you put their language in. I'm
2 suggesting we address this as a -- an area where you might need
3 additional disclosure or demonstrate to me that it's adequate.
4 And so, I just didn't maybe find the right section or whatever.

5 MR. GUZINA: Yeah, we -- perhaps, what we could do
6 is, at some point, we can print it and we'll go over -- we'll
7 look over the risk factors, and we can come back with
8 additional language that (indiscernible).

9 THE COURT: That makes some sense. All right. So
10 let's move to the U.S. Trustee, then. First is whether it is
11 appropriate, in a plan, to say that anyone that votes in favor
12 of the plan has consented to third party releases. Because
13 third party releases are not integral to 1122 and 1125 and
14 1129, 1126, they may be important to a debtor at confirmation.
15 I don't believe it's appropriate to require that somebody that
16 supports the plan, and believes it's a good idea, with the
17 debtor, to then give a third party release. I think that is
18 inappropriate -- it could inappropriately be using estate
19 assets that are going to make distributions as an incentive to
20 somebody to give a release, who they say, look, I need to get
21 800 hundred cents on the dollar, even without interest, so I'm
22 going to vote yes, even though I don't want to give a third
23 party release as to my interest.

24 So I'm inclined to think you need to take that out.
25 I don't think you really need it. And, if people vote yes,

1 they can opt out. And, if they don't do anything, then their
2 yes vote does, of course, count in this, that. But I'm
3 troubled by the argument made by the U.S. Trustee, believing
4 them to be correct. And I think it's a mistake to hold off on
5 that, to confirmation, because you can't fix it at that point.

6 MR. GUZINA: I -- yes, we agree, Your Honor. We'll
7 include it and I'll tell my (indiscernible) --

8 THE COURT: Thank you.

9 MR. GUZINA: -- (indiscernible) creditors are going
10 to accept it.

11 THE COURT: Number two, with respect to their
12 objection, this is one I want to carry to confirmation. But I
13 want to explain why I want to carry it to confirmation. And
14 that is whether the opt out provisions are adequate, post
15 Purdue. And I note that this plan has some features that
16 aren't addressed in Purdue at all, and at least some that
17 haven't been addressed by the Fifth Circuit, but that are
18 supportive of the position that you are taking.

19 The most important of those is I read the plan.
20 Anyone that participates and opts in to being a releasing party
21 also gets themselves a release. So there is a mutuality of
22 consideration here, where people may choose, as in a class
23 action, or the Court may choose, as in the class action
24 concept, of saying that this massive 15,000 creditors, we know
25 that they're not all going to vote. And so, in a class action

1 concept, the Supreme Court has held that opt out is the right
2 to go, not opt in. And with the mutual releases, I think that
3 may change the ballgame some, and think that, among other
4 things, means that we're wiser to hold off until a confirmation
5 hearing.

6 Second is, as you know, there's very rapid
7 development in the case law as to what's happening here. And I
8 don't want to make a decision prematurely on that. Third is
9 that I am unaware of anything that is in Purdue that would
10 change pre-Purdue practice. And, in fact, Purdue says we're
11 not trying to change, at this stage, in Purdue, anything, other
12 than you have to have consensual releases. And the Fifth
13 Circuit has affirmed a number of confirmations where this may
14 not have been the focal issue. But the way I -- I appreciate
15 the way the Fifth Circuit approaches confirmation issues on one
16 of these big cases is they read everything, and they're
17 affirming confirmations where we have opt out provisions and
18 cases -- they refer to it a couple of times. Haven't ruled
19 directly on opt in, opt out. But I'm very reluctant to change
20 Fifth Circuit practice, by sustaining an objection, as a matter
21 of law, rather than waiting and hearing the facts of the case.
22 I'm not assuring you that I will approve opt out either. But,
23 I think, because it is a factually dependent issue, that I
24 should wait.

25 Third, the exculpation provisions, I read your

1 exculpation provisions much differently than most and much
2 differently than ones the Fifth Circuit has ruled on before.
3 So that your exculpation provisions are very closely linked to
4 the provisions of 1125(e). These aren't exculpating things
5 that aren't already governed by the code, like some exculpation
6 provisions do. It may be that you're broader than 1125(e).
7 I'm not saying that you're narrowly within the confines, but
8 you may be pretty much in the heart of an 1125(e) provision
9 there. It seems to me that we ought to wait and hear what kind
10 of actual issues there are that are being exculpated, be
11 certain that we comply with Fifth Circuit law on those. But,
12 as you know, the Fifth Circuit has never said that you can't do
13 an exculpation, if it's limited to 1125(e). And so, if it
14 turns out that it's a hearing, from a factual point of view, we
15 determine that the exculpation provisions are broader than
16 1125(e), I'll just cure that in the confirmation order by
17 limiting it to 1125(e) as well as those things that are extra
18 1125(e) that the Fifth Circuit has said you can do. But that's
19 an issue that can easily be resolved after we learn the facts
20 in the confirmation order. So I'm not inclined to make you
21 make any changes on that.

22 The next U.S. Trustee objection is that you have
23 third party release provisions for people who were not sent
24 actual notice. I'm not sure that they're right about that.
25 But assuming that they are, I don't think I can give a third

1 party release to somebody that is a known entity without
2 sending them actual notice under the law. Publication notice
3 works for unknown parties but not for known parties. And I
4 take the U.S. Trustee objection as saying that you're trying to
5 extend third party releases to known parties who were not sent
6 notice, for example, to their last known address. I don't know
7 if that's true or not. If it is, I would sustain that
8 objection. And I want to hear from you, whether you are
9 attempting to create third party releases for people who are
10 known to you but who you -- to whom you're not sending notice.

11 MR. GUZINA: No, Your Honor. We intend to provide a
12 notice of non-voting status and an opportunity to opt out.

13 THE COURT: So they're telling me that you're not
14 doing that, and you're telling me you are doing that. If
15 that's -- factually, I don't know how to resolve that at a
16 hearing like this.

17 MR. GUZINA: Well, on that point --

18 THE COURT: But I will not approve --

19 MR. GUZINA: -- Your Honor, if we may --

20 THE COURT: -- I will not approve a third party
21 release to a third party that is identifiable and who did not
22 get sent actual notice. And so, I'll hear from you and the
23 U.S. Trustee. But I'm just telling you what that would come
24 out at.

25 And finally, with respect to having a clarifying

1 statement that you're not trying to interfere with governmental
2 police and regulatory powers, that may be in your disclosure
3 statement. I want to look. But plainly, that does need to be
4 in there, given the business that you're in. So I'm -- I'll
5 want to hear from you, whether you think that's already in your
6 disclosure statement. But, if not, I would order it to be
7 included, that to the extent that anything in the plan imposes
8 on police and regulatory powers, that you're not seeking to do
9 that.

10 So that -- if I've left something out, I did not mean
11 to. I've tried to be pretty comprehensive. And I want to
12 hear, if you want to each take some time to think about that or
13 talk to your teams. I then want to hear if the way that I'm
14 carving up that objection, sustaining it in part and deferring
15 it in part, works.

16 MR. GUZINA: So Your Honor, on the last points, we
17 will include additional language to address the issue of these
18 concerns. On the opt out issue, the second to last point, I
19 think we just need to look over the forms and make sure that
20 we're not missing something and make sure that we're reading it
21 the same as the U.S. Trustee. Certainly, if there's a
22 disconnect there, that's a drafting miss. That was not our
23 intent. So we will clean that up to the extent it's --

24 THE COURT: Okay.

25 MR. GUZINA: -- (indiscernible).

1 THE COURT: Well, then let me hear from the U.S.
2 Trustee. It sounds like we're making some agreement process
3 here.

4 MS. WHITWORTH: Good afternoon, Judge, Jana
5 Whitworth, on behalf of the United States Trustee. Wow. I had
6 my whole little outline done and you just --

7 THE COURT: Well, I've tried to address what you --

8 MS. WHITWORTH: -- you've changed things around.

9 THE COURT: -- I tried to address everything you
10 wrote to me. And did I miss something altogether?

11 MS. WHITWORTH: No, you -- you covered every aspect,
12 Judge. Let me just respond. Listening to the parties talk
13 about adding language in the disclosure statement, it brought
14 to mind maybe some of the issues that the Trustee, the concerns
15 that the Trustee has, that the Trustee could add a comment or
16 something into the disclosure statement with regard to third
17 party releases. And I'd like the opportunity to go back to my
18 client and see if that's something that he will approve. Maybe
19 attach something to -- either in the solicitation package or
20 the disclosure statement saying, you know, what the Trustee's
21 position is on the third party releases.

22 THE COURT: And, I think, if you kept something
23 short, that says that you think that third party releases are
24 not permissible in an opt out form, and that if the Court
25 overrules those at confirmation, people aren't going to get

1 their commensurate release as long as it's kept
2 (indiscernible), I doubt the debtors have a problem with that,
3 but let's see what they say.

4 MS. WHITWORTH: Sure. And so, I was just looking at
5 the dates, Judge.

6 THE COURT: Are you okay with the other things?

7 MS. WHITWORTH: Okay. Let me go through my list.

8 THE COURT: So one was you're -- you win on if you
9 vote yes, you can still opt out.

10 MS. WHITWORTH: Got that. Got that one.

11 THE COURT: Two is reserving third party releases
12 because of the neutrality of the release, the changes in
13 Purdue, all of that stuff. I'm just reserving all of that for
14 confirmation.

15 MS. WHITWORTH: Confirmation, got that. Okay.

16 THE COURT: Three is limiting the exculpation, at
17 least, potentially, to 1125(e), where, I think their
18 exculpation is much narrower than what I'm used to.

19 MS. WHITWORTH: It's very narrow. The only issue we
20 have, Judge, is they've included a retained professional, the
21 CRO, that was employed and by order of the Court as an
22 exculpated party. And we couldn't find any case law cited --

23 THE COURT: Well, that's exculpated under
24 non-1125(e). If they're only exculpating them for 1125(e) --

25 MS. WHITWORTH: Then he would be included, you're

1 right, Judge.

2 THE COURT: I mean, just look at 1125(e) again but --

3 MS. WHITWORTH: Well, I've seen in other plans,
4 Your Honor, is where there are -- there's actually a separate
5 definition for exculpated 1125(e) professional parties. And
6 that would include the --

7 THE COURT: But I think the entire exculpation is an
8 1125(e) exculpation. I don't think they've gone beyond
9 1125(e), which means you can include -- I'm looking at it. I
10 think you can include professionals under 1125(e).

11 MS. WHITWORTH: I don't know that Highland Capital --
12 under 1125(e) --

13 THE COURT: Well, Highland Capital didn't deal with
14 1125(e). Highland Capital --

15 MS. WHITWORTH: Right.

16 THE COURT: -- dealt with exculpation without any
17 reference or mention of 1125(e). The code does this, under
18 1125(e), itself. So I think, as long as we're sticking to
19 that, we're very consistent with what the Fifth Circuit has
20 said. It's they've limited this -- the Fifth Circuit has
21 limited non-1125(e) exculpations to a certain group of parties,
22 and I'm obviously going to enforce that. But anyway -- so I
23 think, though, that goes to confirmation. Let's see --

24 MS. WHITWORTH: Okay.

25 THE COURT: -- what they're doing.

1 MS. WHITWORTH: Okay, Judge.

2 THE COURT: And then, he says they're not trying to
3 get third party releases, to be able to look -- they don't send
4 actual notice to -- and they'll need to talk about where you
5 all have a disconnect on that.

6 MS. WHITWORTH: Sure, Judge. Just that the language
7 is really confusing.

8 THE COURT: I'm with -- I suspect you all will work
9 through that pretty quickly, if you're in agreement in
10 principle. And finally, he agrees to include the police and
11 regulatory clarification, if that's needed.

12 MS. WHITWORTH: Then, I guess, I really don't have
13 anything left, Judge.

14 THE COURT: So you're okay. Is -- but you're going
15 to give him some language today --

16 MS. WHITWORTH: Yes.

17 THE COURT: -- to include?

18 MS. WHITWORTH: It's 1:30. It's 3:30, D.C. time. So
19 if -- it'll probably be tomorrow before I'm able to get that
20 approved, Judge.

21 THE COURT: Okay. So I want to hear from them about
22 this. But we could come back -- 10:45 in the morning?

23 MS. WHITWORTH: 10:45, Judge?

24 THE COURT: That work for you all?

25 UNIDENTIFIED: (Indiscernible).

1 THE COURT: What's that?

2 MR. GUZINA: Not for me, but Mr. Koster can cover
3 that. We can also just include language that says this is the
4 U.S. Trustee's position on third party releases. This is
5 just --

6 THE COURT: If you're willing --

7 MR. GUZINA: -- disclosure statement language.

8 THE COURT: -- to do that. I'm not going to make you
9 take whatever they send. That's why I wanted to give you a
10 hearing so you could --

11 MS. WHITWORTH: I'm sure we can reach a resolution.

12 MR. GUZINA: No, I'm just hoping we just include
13 something today. I don't know why we need a hearing.

14 MS. WHITWORTH: I've got to go back to my client,
15 Judge. I mean, this is something that I've been sitting here
16 trying to find a resolution. I'd like to -- I don't have
17 authority of my client. I'm just trying to find a creative way
18 to resolve that.

19 THE COURT: Okay. Are you free, Mr. Koster, at 10:45
20 in the morning?

21 MR. KOSTER: Your Honor, I may be able to be
22 available remotely. I will not be in Houston.

23 THE COURT: Would 1:30 work better for you?

24 MS. WHITWORTH: The afternoon would honestly work
25 better for me, Judge, because D.C.'s an hour ahead of me so --

1 THE COURT: Any time in the afternoon --

2 MR. KOSTER: I --

3 THE COURT: -- work for anyone on your team?

4 MR. KOSTER: -- will be available any time in the
5 afternoon, by telephone, perhaps not by video, if that's
6 acceptable to Your Honor.

7 THE COURT: I'm not going to allow anyone in the
8 courtroom. This will be a telephone and video hearing on that
9 so that I can save everybody the money. What time can you do
10 it?

11 MR. KOSTER: Either 10:45 or 1:30 is fine with me.

12 THE COURT: Okay. Let's just do it at 1:30 tomorrow,
13 to be sure that I don't hold it up at all. We have -- we'll
14 get all the language --

15 MS. WHITWORTH: Okay.

16 THE COURT: -- inserted.

17 MS. WHITWORTH: Thank you, Your Honor. Thank you.

18 THE COURT: That also gives you an opportunity to
19 work on the language with -- unless you're going to show me,
20 today, that you've already got that risk language done. Go get
21 the risk language and you'll get an order out tomorrow.

22 MR. KOSTER: Yeah.

23 THE COURT: We okay?

24 MS. WHITWORTH: And just, Judge, if I could just go
25 over the dates because I was listening --

1 THE COURT: Oh.

2 MS. WHITWORTH: -- but I didn't -- I don't think my
3 (indiscernible).

4 THE COURT: Well, the only thing I suggested was, is
5 that we come in on the 16th, which will then push all of the
6 other dates out.

7 MS. WHITWORTH: Oh, that subject, the --

8 THE COURT: Other than the 5th. The 5th would stay
9 in place. Then they're --

10 MS. WHITWORTH: The confirmation hearing --

11 THE COURT: -- going to revise their order to push
12 the other dates out as far as they can.

13 MS. WHITWORTH: So you're talking about the
14 confirmation hearing, Judge?

15 THE COURT: On the 16th, yeah.

16 MS. WHITWORTH: Okay. And so, then everything else
17 we'll add new days, right? Okay. Thank you.

18 THE COURT: We need to look at weekends and stuff
19 like that. But everything else would add some days to it, to
20 try and deal with your timeliness issue.

21 MS. WHITWORTH: Thank you, Judge. Appreciate that.

22 THE COURT: Thank you. So the hearing will be at the
23 16th at 1:30 in the afternoon.

24 Mr. Beckham.

25 MR. BECKHAM: Yeah, Charles Beckham, on behalf of

1 Chiyoda. 1:30 tomorrow works for us. We'll review the risk
2 language and the debtors are going to propose -- Ms. Wyrick is
3 working right now on some suggested language to assist the
4 debtors. I don't know if they want to see our language or
5 (indiscernible), but we're already working on a
6 (indiscernible).

7 THE COURT: So I don't want a dispute about this
8 tomorrow. You all can agree on language. Just you all fix
9 this problem.

10 MR. BECKHAM: Yeah, I'm sure we'll be --

11 THE COURT: You're working too closely to solve too
12 big of problems to not fix this problem. I actually do not
13 want a hearing where I have competing language. I mean, I'll
14 take that if I have to have it. But given what you all have
15 accomplished in the case, fix this problem, please.

16 MR. BECKHAM: Yes, Your Honor.

17 THE COURT: Thank you. All right. What else can --
18 does anyone have any other objections they wish to raise? Good
19 afternoon.

20 UNIDENTIFIED: Good afternoon, Your Honor. I do not
21 have an objection. I just wanted to say, because you had a
22 couple of comments about the bank, that we are still working on
23 that exit facility. That has not been done. But we are
24 working closely with the debtors to try to accomplish that so
25 that it can be filed in connection with the plan supplement.

1 But, as of today, we haven't -- we don't have an agreement on
2 that.

3 THE COURT: So I haven't worried about that issue too
4 much because it seems to me it either falls into place or it
5 doesn't. And there's a strong incentive by both parties to
6 make it fall into place, because I bet you want this
7 confirmation to occur earlier than they want this confirmation
8 to occur.

9 UNIDENTIFIED: As long as it's on terms that I want,
10 yes, Your Honor, that is true.

11 THE COURT: So you may not get exactly the terms you
12 want, but you'll work it out.

13 UNIDENTIFIED: Yes, Your Honor. Thank you.

14 THE COURT: Okay. Thank you. Anybody else?

15 MR. DESATNIK: Good afternoon, Your Honor --

16 THE COURT: Afternoon.

17 MR. DESATNIK: -- Daniel Desatnik, for the Statutory
18 Unsecured Claimholders' Committee. Certainly not up here with
19 an objection, quite the opposite.

20 THE COURT: I read your letter. Thank you.

21 MR. DESATNIK: Yes, thank you for reading it. As you
22 are then well aware, we can confirm -- we're pleased to confirm
23 that we have a deal with the debtors. We agree with the
24 characterization of that deal by the Court and by the debtors,
25 earlier. What's really important for the committee, in

1 addition to the full hundred cent pay plan, is the fact that to
2 the extent that there are any objections or any estimated
3 claims that they will accrue post effective date interest at
4 the federal judgment rate. So they're in no way prejudiced
5 from any delay in getting paid. For those claims that are not
6 objected to by the effective date, that is the claim objection
7 deadline, they will be deemed allowed and paid within five
8 days. After that deadline, the debtors may extend that
9 deadline, loans for 30 days, with cause shown as to specific
10 claims, but not a blanket extension. Any claims that are
11 allowed by that date, they will get paid five days afterwards.

12 We want to just apprise and say that we support the
13 conditional approval of the disclosure statement. It is
14 obviously still work to be done, particularly, the exit
15 financing. But we think that those processes can and should be
16 done in parallel. We agree with the debtors and management,
17 that the sooner the debtors are able to get back to work, the
18 better. The sooner they can turn the page on this chapter, the
19 quicker they can get back to the productive and strong
20 relationships they had with many of our constituents that they
21 historically enjoyed before this bankruptcy.

22 And just with regards to the letter that we did file,
23 we've asked, and the debtors have sought that be part of the
24 solicitation package. We think --

25 THE COURT: They didn't push back too hard on that.

1 MR. DESATNIK: They did not push back too hard on
2 that. So we believe that the committee's prospective in
3 support of the plan, urging general unsecured claimholders to
4 vote in favor of the plan, is important information, and,
5 certainly, adequate information we would hope that Your Honor
6 approves that under 1125.

7 THE COURT: So on the third party release issue, am I
8 correct, that you've negotiated so that your clients, if they
9 choose to give a third party release, get equivalent releases
10 back?

11 MR. DESATNIK: Your Honor, that was a feature of the
12 plan before we --

13 THE COURT: It's in the plan, though.

14 MR. DESATNIK: Yes, it is. That -- the mutuality of
15 the releases and -- is in the plan. That's correct. And the
16 committee is supportive of the mutuality of the releases.

17 THE COURT: Thank you.

18 MR. DESATNIK: Thank you, Your Honor.

19 MR. GUZINA: Your Honor, real quickly on that last
20 point, and I don't want to mislead the Court, we do have the
21 concept of retained causes of action that will be scheduled in
22 the plan supplement. So those will be carved out in the
23 releases --

24 THE COURT: Right.

25 MR. GUZINA: -- that people are getting. So it's not

1 a blanket --

2 THE COURT: But the known -- the unknowns that people
3 always fear, of someday I'm going to get sued out of this
4 thing, those go away if they're not fully disclosed to people,
5 right?

6 MR. GUZINA: Correct. We're -- we'll reserve
7 whatever rights we have under contracts and the like. But the
8 unknowns, you're correct, the idea is there's no overhang.

9 One other point, Your Honor, and, obviously, we'll be
10 back in front of you tomorrow, via video, Mr. Meghji has
11 patiently waited. And he was -- he's prepared to -- well, we
12 hoping to proffer testimony from him, to the extent needed, for
13 a conditional approval of the disclosure statement. What we
14 would suggest is that we put that off until the confirmation
15 hearing (indiscernible) evidentiary burden, then. And, if
16 that's okay with you, then Mr. Meghji does not have to join us
17 tomorrow. Because I do believe he's traveling.

18 THE COURT: So Mr. Meghji, would you press "five
19 star" one time on your phone. Wait. I see you. Never mind.
20 Mr. Meghji, good afternoon. Mr. Meghji.

21 MR. MEGHJI: Good afternoon, Your Honor. Can you
22 hear me?

23 THE COURT: I can. Mr. Meghji, would you raise your
24 right hand, please.

25 MOHSIN MEGHJI, DEBTORS' WITNESS, SWORN

1 THE COURT: Thank you. Have you read the disclosure
2 statement?

3 MR. MEGHJI: I have.

4 THE COURT: Is it true and correct?

5 MR. MEGHJI: Yes.

6 THE COURT: So that's enough for me to give
7 conditional approval of the disclosure statement, unless
8 somebody -- because, I mean, I've read it. And so long as it's
9 true, I think it's adequate. So if anyone else has any
10 questions for Mr. Meghji, go ahead. But I did want to get
11 conditional approval done, if we could. And I don't see a
12 reason to bring him back tomorrow. The changes that we're
13 going to make won't alter that testimony.

14 MR. GUZINA: Thank you, Your Honor.

15 THE COURT: Anybody else have any questions for
16 Mr. Meghji? All right.

17 Then, subject to these few changes we're going to
18 approve, give conditional approval to the disclosure statement.
19 Tomorrow, once we review those changes, I suspect they will be
20 relatively straightforward. And, if you can file, you know, at
21 any point before the hearing, redlines of the changes that
22 you've made to deal with -- I've already read the redlines that
23 you filed, I think, this morning. So all I need are redlines
24 that you're making in response to today's objections. So they
25 should be pretty short. And then we'll take a look at those.

1 If what you're doing is simply attaching, as Exhibit 17, the
2 statement by the U.S. Trustee, for example, that's all that you
3 need to say. And then get the statement on in there. So
4 anything else that anyone believes we should be doing today?

5 MR. KOSTER: Very briefly, Your Honor.

6 THE COURT: Mr. Koster.

7 MR. KOSTER: For the record, Charles Koster, for the
8 debtors. Has Your Honor had an opportunity to review any of
9 the balloting or solicitation materials? And is that something
10 you'd like to take up today, so that we could fix any issues,
11 in advance of tomorrow?

12 THE COURT: I did not look at that. If I have any
13 issue with that, I will have it redlined and available
14 tomorrow, to where you can turn it around immediately. But
15 I'll have that done for tomorrow.

16 MR. KOSTER: Thank you, Your Honor.

17 THE COURT: Thank you. Anything else? Okay. Thank
18 you all for your cooperation, and we will be in recess until
19 three o'clock.

20 (Proceedings concluded at 2:30 p.m.)

21 * * * * *

22

23

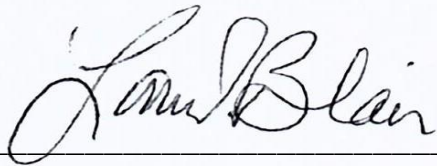
24

25



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

I, Laura I. Blair, 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.



LAURA I. BLAIR, AAERT NO. 682

DATE: NOVEMBER 14, 2024

ACCESS TRANSCRIPTS, LLC



**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

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at <https://www.txs.uscourts.gov/>.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at <https://www.txs.uscourts.gov/> or by calling (713) 250-5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner
Clerk of Court

1	UNITED STATES BANKRUPTCY COURT		
	SOUTHERN DISTRICT OF TEXAS		
2	HOUSTON DIVISION		
3		)	CASE NO: 24-90377-mi
)	
4	ZACHRY HOLDINGS, INC.,	)	Houston, Texas
)	
5	Debtor.	)	Monday, November 18, 2024
)	
6		)	8:59 a.m. to 11:15 a.m.
	-----)		
7	FLNG LIQUEFACTION, LLC,	)	CASE NO: 24-03189-mi
	ET AL.,	)	ADVERSARY
8	Plaintiffs,)	
)	
9	Vs.)	
)	
10	ZACHRY INDUSTRIAL INC.,)	
	ET AL.,)	
11	Defendants.)	
	-----)		
12	ALLIANZ GLOBAL RISKS US	)	CASE NO: 24-03190-mi
	INSURANCE CO. ET AL.,	)	ADVERSARY
13	Plaintiffs,)	
)	
14	Vs.)	
)	
15	ZACHRY INDUSTRIAL, INC.,)	
	ET AL.,)	
16	Defendants.)	
	-----)		
17	FLNG LIQUEFACTION LLC, ET AL.,	)	CASE NO: 24-03195-mi
	Plaintiffs,	)	ADVERSARY
18)	
	Vs.)	
19)	
	CB&I INC. ET AL.,)	
20	Defendants.)	
	-----)		

21

22 HEARING

23 BEFORE THE HONORABLE MARVIN ISGUR
24 UNITED STATES BANKRUPTCY JUDGE

25

1 APPEARANCES:

2 For the Debtor: CHARLES R. KOSTER
 White & Case LLP
3 609 Main Street
 Houston, TX 77002

4
 JOHN THOMAS
5 Hicks Thomas LLP
 700 Louisiana Street,
6 Houston, TX 77002

7 For FLNG and
 Pfs. in Adv. 3189: KENNETH GREEN
8 Bonds Ellis Eppich Schafer
 Jones LLP
 950 Echo Lane
9 Houston, TX 77024

10 For Pfs. in Adv. 3189: KEVIN HOOD
 Zabel Freeman
11 1135 Heights Blvd.
 Houston, TX 77008

12 For Allianz: EVAN MALINOWKSI
13 Denenberg Tuffle
 2245 Texas Drive
14 Sugar Land, TX 77479

15 For Chiyoda: CHARLES JONES
 MARTHA WYRICK
16 Haynes and Boone, LLP
 2801 N. Harwood Street
17 Dallas, TX 75201

18 For FLNG Plaintiffs: MICHAEL FISHEL
 CHRIS TAYLOR
19 King & Spalding LLP
 1100 Louisiana Street
20 Houston, TX 77002

21 For CB&I: JACK MASSEY
 MATTHEW RAWLINSON
22 Baker & McKenzie
 800 Capitol
23 Houston, TX 77002

24

25

1 Court Reporter: UNKNOWN

2 Courtroom Deputy: UNKNOWN

3 Transcribed by: Veritext Legal Solutions
4 330 Old Country Road, Suite 300
Mineola, NY 11501
5 Tel: 800-727-6396

6

7

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: All right. On the 9:00 docket we are
3 here in various matters concerning the FLNG facility. We're
4 here in Adversary Proceeding 24-3189, Adversary Proceeding
5 24-3190, Adversary Proceeding 24-3195, as well as matters in
6 the complex case 24-90377. If you wish to appear, you
7 should go ahead and approach the podium, identify yourself
8 and your client. If you wish to appear on the phone, please
9 press 5 star and turn on your camera. Mr. Koster?

10 MR. KOSTER: Good morning, Your Honor. Charles
11 Koster, White and Case for the debtors. I will return
12 briefly after appearances to take up the agenda unless you
13 would like me to do that now.

14 THE COURT: Well, let's go ahead and take up the
15 agenda while you're here.

16 MR. KOSTER: Great. So as you mentioned, there
17 are the motions to dismiss in the adversary proceeding.
18 We'll have argument on that today. We'd like to follow that
19 with the scheduling conference in connection with the
20 related claims objections, and Your Honor has also scheduled
21 the emergency motion that the debtors filed on Friday
22 related to an increase in the letter of credit
23 (indiscernible) on one of our projects. We'd indicate that
24 (indiscernible), Your Honor.

25 THE COURT: That's fine. Thank you.

1 MR. KOSTER: Thank you.

2 MR. GREEN: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. GREEN: Ken Green, Bonds Ellis appearing for
5 the FLNG subrogation claimants and the plaintiffs in
6 Adversary 24-3189. I'm joined by Kevin Hood here from Zabel
7 Freeman who's lead counsel for the plaintiffs in the 3189
8 matter, and also Evan Malinowski of the Denenberg firm who's
9 lead counsel for the plaintiffs in the 3190 matter.

10 THE COURT: Thank you.

11 MR. JONES: Good morning, Your Honor. Charlie
12 Jones of Haynes and Boone on behalf of Chiyoda International
13 Corp. I'm joined at counsel's table by my colleague Ms.
14 Wyrick.

15 THE COURT: Thank you. Good morning.

16 MR. FISHEL: Good morning, Your Honor. Michael
17 Fishel from King and Spalding on behalf of the FLNG
18 plaintiffs for the contract claims. With me today Mr. Chris
19 Taylor who will be arguing the motion to dismiss and also
20 Mr. (Indiscernible).

21 THE COURT: Thank you.

22 MR. MASSEY: Good morning, Judge. Jack Massey
23 from Baker McKenzie here on behalf of CB&I along with my
24 colleague Matthew Rawlinson.

25 THE COURT: Thank you. Good morning.

1 MR. THOMAS: Good morning, Your Honor. John
2 Thomas from Hicks Thomas LLP, special litigation counsel to
3 the debtors.

4 THE COURT: Thank you. Good morning.

5 MR. THOMAS: I'm here to present argument on the
6 motions to dismiss. I think we have all appearances now.
7 And Your Honor, I would tell you that we've all conferred
8 about the order of proceedings today. Unless the Court has
9 a different plan, we've tried to organize the argument in a
10 way that would be most efficient to the Court given the
11 number of various motions that are pending.

12 And that order of proceeding, with the Court's
13 permission, would be that I would present an overview of the
14 FNLG project contracts. Zachry has unique motions to
15 dismiss with regard to each of the adversary proceedings.
16 And then after I've presented on those two motions, the
17 motor defect case first followed by the insurance
18 subrogation cases, I would turn the podium over to CB&I
19 (indiscernible) for their supplemental comments.

20 And then having conferred with plaintiff's
21 counsel, they would agree that then to respond to our
22 presentation in the order in which we've presented it.
23 Okay.

24 THE COURT: All right. That works for me if it
25 works for --

1 MR. THOMAS: Does that work?

2 THE COURT: -- everybody else. Is that the deal?
3 All right. Let's go ahead in that line then. Do you have
4 someone's that's going to do a PowerPoint or...

5 MR. THOMAS: Yes, Your Honor. The presenter is
6 Zachry trial tech Mr. Brian Cressa. We do have a deck we
7 would use with the court to walk through the presentation.

8 THE COURT: All right. He's now the presenter,
9 and let's let him...

10 MR. THOMAS: All right, Your Honor. You know,
11 we've -- we have done a lot of work in this case behind the
12 scenes. It's a pleasure to be able to finally speak to Your
13 Honor. We were here many times on a golden pass, and truly
14 it's been a shame that you and Mr. Benji did not have a
15 chance to visit that project because I think it would've
16 provided some context here. The --

17 THE COURT: You're regretting that settlement
18 then?

19 MR. THOMAS: Pardon?

20 THE COURT: You're regretting the settlement that
21 you did?

22 MR. THOMAS: No, Your Honor. I was regretting you
23 didn't have a chance to go to the plant to see the
24 construction because you would've seen some of the things
25 relating to this amazing facility FLNG that was completed.

1 The first part of it was completed almost five years ago in
2 December. It's -- this is an overview of the facility
3 itself. Let me get my clicker, see if it works. To orient
4 the Court, obviously we've got a map here that depicts
5 Freeport. In red is Quintana Island. That is the location
6 of the FLNG facility. Three trains and a dock for
7 transportation of finished product overseas.

8 These are the three trains that are at issue, each
9 covered by a separate agreement, the first being T1, T2, T3.
10 You see those white roofs, Your Honor. Those are roofs
11 covering the compressor and the engines -- motors that are
12 at issue in this case. They're absolutely amazing in
13 operation in their massive 75 megawatt motors for each of
14 the three roofs. And 10 of these motors were at issue in
15 the case, 3 in operation, and 1 as a spare.

16 We call this -- and I call this in the
17 presentation a mega project just like the GPS -- GPX
18 project, Your Honor. Billions of dollars to construct and
19 billions of dollars in revenue and profit each year.
20 Freeport itself says building a facility that will produce
21 enough LNG to supply energy for a city of 2.5 million people
22 for an entire day is a massive and expensive undertaking.
23 The complete economic benefit of exporting the contracted 15
24 metric tons per annum of liquified natural gas and an
25 estimated economic value of \$5.8 billion. That's billions

1 of dollars of profit each year for FLNG our counterparty in
2 this case.

3 Your Honor, I mentioned that we have three
4 separate contracts. I've identified the dates of those
5 agreements and the date of the commercial operations as I've
6 mentioned. T1 began commercial operations almost five years
7 ago. And in essence, all of the defendants' motions here
8 today in one way or another are asking the Court to enforce
9 these agreements and enforce all of the agreements, Your
10 Honor.

11 The theme of this case today here is that the
12 consideration between the parties to enable FLNG to have an
13 amazing facility like this is the allocation of loss and the
14 limitations on liability related to the project. In
15 essence, we're going to talk about waivers of consequential
16 damages and other damages in a way to prevent a tail of
17 legacy liability from following these parties involved in
18 the construction for years into the future.

19 THE COURT: Does the nature of the damage to, I
20 believe there are different damage components asserted
21 against your client, change the analysis -- no. I should
22 put it a different way. Do we need to separately analyze
23 each of the damage elements to see if it is governed by the
24 contractual limitations or not? Or is it the same analysis
25 for all of the different damages components?

1 MR. THOMAS: It depends on the damage that is at
2 issue, and I think as we walk through the contract
3 provisions, the contract itself answers the Court's
4 question. But yes, we do need to look at what type of
5 damage it is and follow how the contract allocates the
6 responsibility for that loss.

7 Now, remember, we're dealing with the allocation
8 of responsibility and loss between two counterparties, two
9 sophisticated entities that bark in the nature of that
10 allocation of responsibility.

11 THE COURT: So this will be a factual question
12 really for both sides. The insurers, for example, say there
13 should be a difference if there is property damage, and it
14 strikes me that that makes sense if it is property damage to
15 a third party. And I don't know whether the damages were
16 all to FLNG's property or were some to neighbors or, you
17 know, other sites that aren't governed by FLNG?

18 MR. THOMAS: I'm sure that the carrier's lawyers
19 will have a response to this, but on the pleading itself,
20 it's my reading of the pleading as to the FLNG property
21 itself.

22 THE COURT: I couldn't tell from the pleading. So
23 you're not aware of damage to, for example, a neighboring
24 facility where an explosion could've caused damage to that
25 neighboring facility.

1 MR. THOMAS: I am not, Your Honor. And of course,
2 it's remotely set off near the coast of Quintana Island, so
3 I am not aware of any --

4 THE COURT: Sounds like --

5 MR. THOMAS: -- and I don't read --

6 THE COURT: Sounds like it was a big explosion, so
7 for whatever --

8 MR. THOMAS: It's rather modest, Your Honor, I
9 think by comparison to some other disasters that might've
10 occurred given the nature of the product that was released
11 and the nature of (indiscernible) --

12 THE COURT: But in any event, your arguments are
13 going to assume that all of the property damage was to
14 property that was owned by FLNG and that none of the
15 property damage was to third-party property. That's the
16 assumption underlying your argument.

17 MR. THOMAS: Actually, no, Your Honor --

18 THE COURT: Okay.

19 MR. THOMAS: -- because the recovery related to
20 insurance doesn't matter if FLNG paid out to third parties
21 because it's not a third party suing in this instance, which
22 might change the calculus. This is only FLNG suing in its
23 own right.

24 THE COURT: It might change the contract. Or not
25 change the contract. It's -- I mean, it seems to me that if

1 they paid a third party, they would be subrogated to that
2 third party's right in all likelihood. And that third party
3 may have had a direct link. But we'll worry about that. I
4 need you -- but your argument is no matter whether it's
5 third-party property or not, you think the contract applies.

6 MR. THOMAS: Yes, Your Honor.

7 THE COURT: All right.

8 MR. THOMAS: So with this in mind, Your Honor,
9 just -- I've got -- I've highlighted some cases here. The
10 Bombardier case, the Texas Supreme Court in 2019, if Your
11 Honor was going to read one case under this situation, this
12 is it. I have some quotes related to that case that I'd
13 like to talk about later. But in this case, the liability
14 of -- limitation-of-liability clause is -- the court upholds
15 is generally valid and enforceable.

16 Interestingly enough, Your Honor, this is a case
17 relating to Jim Crane's purchase of a private jet. He
18 bought a plane that he thought was brand new but it has used
19 engines. It went to trial. Punitive damages were awarded.
20 The contract had a limitation of loss for consequential
21 damages and punitive damages. The court reversed the
22 judgment and said the punitive damages waiver was
23 permissible and that the court needed to enforce the
24 contract made by the parties. So that's the context for
25 some more of the discussion here, Your Honor.

1 Courts have -- the parties in this case, James
2 Construction, relinquished a claim to any consequential
3 damages to which they may be entitled in the event of a
4 lawsuit, which the paragraph explicitly contemplates. Cite
5 a Judge Ellison case. Texas law explicitly blesses the
6 existence of consequential damage waivers. These are cited
7 in our brief, Your Honor.

8 And out of the Texas Supreme Court again, risks of
9 economic loss tend to be especially well-suited to the
10 allocation by contract. And a contract that settles
11 responsibility for such a risk will therefore be referred in
12 most cases to a judicial assignment liability after harm is
13 done.

14 So I'd like to begin with perhaps one of the most
15 important allocations of responsibility and limitations of
16 recovery, and that is related to the waiver of consequential
17 damages, Your Honor. Article 20 of the contract, 20.5,
18 states very explicitly and unambiguously that
19 notwithstanding any other provisions of this agreement to
20 the contrary, neither owner nor contractor shall be liable
21 to each other under this agreement whether a contract tort,
22 including negligence, which is what is pled in the
23 subrogation case, strict liability, products liability,
24 indemnity, contribution, or other cause of action, or
25 special indirect, incidental, or consequential losses or

1 damages, including the loss of profits, use, opportunity,
2 revenue, financing, (indiscernible) capacity, or business
3 interruptions.

4 And that owner and contractor on behalf of those
5 settles hereby waive or release each other from all such
6 lawsuits and damages. Notice the mutuality here, Your
7 Honor. This was a bargain made going both ways. And in
8 this context, Your Honor, the cases that we're going to be
9 talking about, the first one in particular, the Munger case,
10 we're asking the court to dismiss the claims of
11 consequential damages based on this bargain and this
12 consideration that was provided to the EPC contractors for
13 obtaining the building (indiscernible) facility. That was
14 the consideration that was given by FLMG.

15 I made a note here, Your Honor, that imagine the
16 situation of trying to get financing when you potentially
17 face a long-term tail of billions and billions of dollars of
18 potential consequential loss. We just couldn't do these
19 projects. These EPC companies couldn't do these projects,
20 and companies like FLNG and Golden Pass would not have these
21 very profitable facilities without these types of provisions
22 that prevent a long-term liability tail following them for
23 decades into the future.

24 I want to walk through a couple of more
25 provisions, Your Honor, before turning to the specific

1 motions because they will put things into context and be
2 responsive to some of the Court's questions. In the
3 contract, there's explicit that after substantial completion
4 that the owner shall bear the risk of loss to the Train 3
5 facility. And keep in mind, Your Honor, it's undisputed,
6 and in fact in the pleadings in the case, that each of the
7 Train 1, 2, and 3 contracts are substantially identical. So
8 this is applicable to each of the trains at issue.

9 And this risk of loss is not absolute because
10 there are aspects of the potential liability that will
11 follow the contractor. Among them is warranty and
12 correction of work. I've put a synopsis of the warranty
13 provisions here, Your Honor, that there is a warrant of the
14 work. There's an assignment of soft contractor warranties.

15 The defect correction period, which we'll focus on
16 quite a bit here in a minute, Your Honor, is 18 months. And
17 it can be extended 12 months up to a total of 30 months to
18 have the contractors repair or remedy defective work that's
19 identified by FLNG. And we'll see that that did in fact
20 occur and a waiver of implied warranties.

21 Particularly important here, Your Honor, are the
22 insurance provisions. They're in Exhibit O of the contract.
23 And by the way, Your Honor, I know online sometimes it's
24 difficult to parse all these together. I have a binder with
25 the contract tabbed with Exhibit O if Your Honor and the

1 clerk would like to have one at the conclusion of this
2 hearing.

3 THE COURT: That'd be great. Thank you.

4 MR. THOMAS: So let's talk about insurance. They
5 specified the insurance as -- in Attachment O. And it's
6 insurance to be provided by both the contractor and the
7 owner. As it relates to the contractor, there is CGL
8 coverage of 2 million with 150 million of umbrella coverage
9 with a 3-year completed operations coverage. Pollution
10 liability is \$75. And the mutuality here continues because
11 the insurance policies that were obtained pursuant to this
12 agreement by a contractor were supposed to have a waiver of
13 subrogation over and against the owner.

14 As to the owner's coverage, all risk coverage on
15 builders' risk, that was substantial completion. Property
16 insurance at the discretion of the owner. Waiver of
17 subrogation in favor of the contractors in the event there's
18 a recovery on the policies. And again, a waiver of claims
19 against the contractor and a waiver of subrogation.

20 I want to talk about the different aspect of the
21 limitation of liability. We talked before about the
22 complete waiver of consequential damage recovery, business
23 interruption loss. This is a further limitation on
24 recovery. 20.2 of the contract covers all three trains, and
25 subject to the limitations and exceptions set forth in this

1 section, which we'll talk about, contractors shall be liable
2 to owner for any damages, loss, cost, and expense to the
3 extent such damage or destruction arises directly or
4 indirectly or results from or relates to the work. The work
5 is defined broadly. But here's the limitation, Your Honor.
6 Next paragraph.

7 Contractor's liability set forth in the foregoing
8 sentence shall be limited to \$1 million unless -- well, I'll
9 get to that, Your Honor. This is a waiver of any damages in
10 excess of that million dollar limit. And that limitation
11 applies unless the damage or destruction directly or
12 indirectly (indiscernible) arises out of a result or relates
13 to the gross negligence or willful misconduct of any
14 supervisory personnel.

15 And we're going to talk about gross negligence as
16 it relates to the motor defect case in a second, Your Honor.
17 And then secondly, there's -- the cap is removed for damage
18 related to equipment that is mechanically or structured
19 coupled to defective work.

20 So with that background, Your Honor, I want to
21 move specifically to the motion to dismiss what we've been
22 calling the motor defect case Adversary 3195. So we move to
23 dismiss based on the waiver of consequential damages. The
24 opposition says that -- well, I'll get to that. This is the
25 opposition. This boils down to one sentence, Your Honor.

1 Because the consequential damages waivers in the ECP
2 contracts are void in instances of gross negligence and
3 plaintiff had alleged gross negligence, the motion should be
4 denied.

5 Now, Your Honor, we don't think that's an accurate
6 statement of the law. We think that the Bombardier case and
7 others make a distinction between a complete waiver of
8 liability for gross negligence and something that is a
9 limitation on the recovery. But Your Honor, I'm going to
10 give you an avenue to address this without taking on that
11 legal issue. Because what they ask for is that they pled
12 gross and therefore we shouldn't have a dismissal.

13 The contract -- this is Paragraph 64, Page 14 of
14 the petition in this case. That's it. We have two words,
15 gross negligence, and one sentence. 81(c) adopts the
16 federal rules. This pleading of gross negligence, which
17 requires a pleading, and this is the gross negligence
18 standard under Texas, (indiscernible), that's adopted by
19 this contract, requires conduct, an act or omission which
20 requires extreme degree of risk and subjective awareness --
21 and nevertheless subjective awareness of the risk, but
22 nevertheless proceeding with conscious indifference to the
23 rights, safety, or welfare or others.

24 This pleading fails to satisfy this pleading
25 requirement of pleading the elements of gross negligence on

1 its face. I don't think that there will be much dispute
2 about that, but it doesn't satisfy the pleading standard in
3 this court, in the federal court pursuant to 81(c), which
4 adopts the pleadings requirements of the federal court.

5 THE COURT: So the Fifth Circuit's made it really
6 clear that if that's the kind of a defective, I just let
7 them replead.

8 MR. THOMAS: I knew you were going to ask that,
9 Your Honor. But I'm going to cover that. I'm going to say,
10 Your Honor, it is completely futile. That is the limitation
11 on repleading. And let me address that. Let me address
12 futility and this is an engineering evaluation provided by
13 the joint venture of CB&I and Zachry in connection with the
14 evaluation of the very motors that are the basis of the
15 motor defect case.

16 And in this analysis, the joint venture identifies
17 that the complexity of the first -- and of first-of-a-kind
18 challenges of this project really needed to be taken into
19 consideration. Because they need to be serious,
20 considerations that must be carefully managed, and it is in
21 the interest of the project for FLNG and the joint venture
22 to act to mitigate these risks to the fullest extent
23 possible.

24 How did the joint venture recommend that those
25 risks be mitigated? They advised against the use of the GD

1 motors. In particular, they Siemens is the recommended
2 supplier because of their previous experience. And that
3 that -- if using the Siemens motors would reduce the overall
4 risk for the project. They go on to say that Siemens is
5 unquestionably the greater experience for large synchronous
6 -- I knew I'd get it -- motors of the type proposed for the
7 FLNG project.

8 There's a significant difference in the strength
9 of references between Siemens and GE for the motors.
10 Siemens has built well over 50 such motors. GE, as of this
11 date, built only two motors over 30 megawatts. What GE
12 provided were 75 megawatt motors that turned out to be
13 defective. Notwithstanding the recommendations, the joint
14 venture was instructed to use the motors proposed by GE.

15 I don't think -- I think it's futile, Your Honor,
16 for them to replead because of the recommendation to go
17 against GE. But I think since it was pled as gross in state
18 court, before you give them the opportunity to replead --
19 and Your Honor, I'm asking you to grant our motion to
20 dismiss the motor case. Whether or not you give them leave
21 to replead is the issue.

22 I would ask counsel what facts does he base the
23 gross negligence statement that he made in state court
24 pursuant to Rule 13 of the Texas Rules of Civil Procedure.
25 I would like to hear what he thinks he can replead before

1 Your Honor gives him permission to replead. And I
2 understand your trepidation about repleading. But because
3 of the futility argument and the ability to ask counsel here
4 today what they're going to plead to satisfy that standard
5 of gross negligence, I think it's worth hearing it in court
6 today before Your Honor gives them (indiscernible).

7 THE COURT: All right.

8 MR. THOMAS: All right, Your Honor. I'm going to
9 turn now -- that is our presentation on the motor defect
10 case in 3195 adversary. I'd like to move to the Zachry
11 motion to dismiss the -- in its entirety the claims set
12 forth for subrogation in both 3189 and 3190. Your Honor,
13 this is a copy of an investigative report that reported to
14 be conducted subsequent to the incident.

15 The root cause analysis that was performed by FLNG
16 itself determined that operator error was at the cause. And
17 we're not here to deal with the merits. I've also put in
18 here --

19 THE COURT: This is the closing of both ends of
20 the pressurized container?

21 MR. THOMAS: That's correct, Your Honor. And this
22 is one of the ruptured pipes. I guess it's a clean burn.
23 Cost a lot of money to repair and was shut down for a period
24 of time. It's not revealed in the pleading how long they
25 were shut down but shut down a billion's worth of business

1 interruption. And this excerpt is from the petitions, a
2 billion one in business interruption time element damages
3 that are claimed in this case. In particular, damages that
4 are excluded by the contract. Now keep in mind, the
5 subrogation plaintiffs as the insurance companies stand in
6 the shoes of FLNG, okay?

7 THE COURT: That's where I sort of starting asking
8 you questions.

9 MR. THOMAS: Yeah.

10 THE COURT: It was really about 36(a) where I
11 understood, at least from reading the complaint, that
12 business interruption had to have been FLNG's own business.
13 I did not understand from the complaint whether all physical
14 damages were to FLNG's own property. And that I think is
15 essential for me to understand how to apply the contractual
16 provisions.

17 MR. THOMAS: Actually, as it relates to our unique
18 motions, you don't have to make that (indiscernible), Your
19 Honor, and let me tell you why. I'm going to walk through
20 -- this is a timeline that, in October of '21, there was an
21 amendment to the contract that extended the defect
22 correction period pursuant to the agreement.

23 Now, let me set the stage for our motion to
24 dismiss on the subrogation case. We filed a motion that
25 said the contract preclude any recovery over and against the

1 contractors in the event you make a claim for insurance and
2 make recovery. Our statement to the Court was on the face
3 of the pleading, they pled that they have insurance on the
4 facility and that they've recovered by payments made to
5 FLNG. The response to that motion to dismiss was to say,
6 oh, no, the defect correction period ended because the
7 incident occurred more than 12 months after substantial
8 completion of each train.

9 Our reply to that is to put this in the record,
10 the corrected work amendment, that extended the defect
11 correction period to November of 2022. Their response to
12 that is, okay, well, we can't challenge that because there's
13 hundreds of emails in the record between FLNG and the
14 contractors in this case that extended -- discussed the
15 extension of the defect correction period. They now shift
16 to a contract interpretation that says we didn't prove that
17 this is the insurance that is applicable and referenced by
18 the contract.

19 Let me address that issue, Your Honor. This is
20 the defect correction period extension that we talked about.
21 The defect correction period for such corrective work shall
22 be, shall be extended for an additional 12 months from the
23 date of the completion of such corrective work. That's the
24 amendment to the contract that agreed that that period would
25 be extended.

1 Now, this is the property insurance provisions
2 that are central to our motion to dismiss, which is a real
3 cut-through, Your Honor. And it says property insurance in
4 amounts determined by Freeport LNG using its discretion as a
5 reasonable and prudent operator and as necessary to comply
6 with the leases and debt obligations will provide coverage
7 for physical loss or damage to the existing facility.

8 Then it goes on to say that that coverage will
9 apply to the expansion facility, Trains 3, 2, and 1. And
10 it's in their own discretion. What is the amount that they
11 deem necessary to protect their interest? Such property
12 insurance shall also cover portions of the expansion
13 facility after they achieve substantial completion under
14 this agreement as between owner and contractor.

15 Owner's obligation to provide this coverage shall
16 expire upon the expiration of the defect correction period.
17 So that's why it's crucial to understand what is the defect
18 correction period. That's why the initial opposition to our
19 motion was to say ha, ha, you're outside that defection
20 correction period.

21 THE COURT: I hate to keep harping on this
22 hypothetical that may have no applicability --

23 MR. THOMAS: I'm sorry?

24 THE COURT: -- I don't see -- my hypothetical may
25 have zero applicability because no one's told me yet what

1 the property is that's damaged and you don't know, but going
2 back to that, that only applies to the FLNG's property, not
3 the property of someone else, right? Go back one slide.

4 MR. THOMAS: Yeah, it -- it's -- this is --

5 THE COURT: Physical loss or damage to the
6 existing facility. So if a neighboring property got
7 damaged, then maybe the inference is different, right? And
8 not covered by this. That's why I'm asking. I don't know.
9 Again, I don't have any reason to know where the physical
10 damage occurred, but it may make for a different outcome.

11 MR. THOMAS: I suppose it potentially can, but
12 these were policies that covered -- well, I think it's
13 physical loss of this property, Your Honor. Other side will
14 have to address that.

15 THE COURT: Well, I'm -- I want -- the main issue
16 is I want to be sure that I hear from the plaintiffs --

17 MR. THOMAS: Yes.

18 THE COURT: -- as to whether they're alleging in
19 their suit physical loss or damage to FLNG's property or
20 physical loss or damage to some third-party's property.
21 Because it --

22 MR. THOMAS: Yep.

23 THE COURT: As I read through this preparing, that
24 struck me as an issue that could matter where I can't tell
25 from the pleading.

1 MR. THOMAS: As I read the pleading, Your Honor,
2 it was repairing the facility to put it back in operation.
3 However, there's no dispute that the consequential damages
4 of \$1.1 billion are for shutdown of this plant.

5 THE COURT: That part I agree. So it's really
6 under Subparagraph A of the damages clause where my
7 questions are (indiscernible). It's still \$230 million.
8 That's a lot of money.

9 MR. THOMAS: We would ask that the 1.1 billion be
10 dismissed.

11 THE COURT: Well, I understand you would ask that.
12 Let me hear what they have to say about that.

13 MR. THOMAS: Your Honor, let me just -- here is
14 the definition of defect correction period. The defect
15 correction period means the period commencing upon a
16 substantial completion and ending 18 months thereafter as
17 may be extended in accordance with 12(d). That's
18 (indiscernible). It doesn't matter whether defect
19 correction was -- period was extended for particular work on
20 the facility as a whole. The definition of the contract
21 adopts any extension for corrective work no matter what that
22 work is.

23 Here is where the rubber meets the road, Your
24 Honor. An owner waives any and all claims, damages, loss,
25 costs, and expenses against contractor indemnified parties

1 who are our clients, CB&I, Zachry, and Chiyoda,
2 subcontractors and each of their respective agents,
3 officers, directors, and employees. To the extent owner
4 receives payment for such claims, damages, losses, costs,
5 and expenses under any insurance policy required to be
6 procured by or on behalf of owner pursuant to this
7 agreement.

8 So any policy acquired by FLNG in its discretion
9 during the defect correction period satisfies this
10 definition, and they have waived any claim for damages in
11 this case to the extent that they recovered on their
12 insurance claim. That is established on the face of the
13 petitions, Your Honor, and their claims in their entirety
14 should be dismissed based on this waiver, this benefit of
15 the bargain that was made in connection with the
16 consideration provided to the contractors to build this
17 amazing facility.

18 Your Honor, that concludes my discussion here this
19 morning. I'm going to yield the podium to counsel for CB&I
20 and Chiyoda. And then what we've talked about is that
21 addressing the responses and (indiscernible) in turn, which
22 I believe Mr. Taylor will go first on the (indiscernible) in
23 that case.

24 THE COURT: Thank you.

25 MR. THOMAS: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. TAYLOR: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. TAYLOR: I'll very briefly get to the point on
5 property that you raised earlier during Mr. Thomas'
6 argument. We do things based on the pleadings in both of
7 the gas release and explosion cases, but the property damage
8 appears to be related to the facility itself, and there is
9 nothing in the pleadings that would suggest that damage was
10 done to any third party.

11 Paragraph 23 (indiscernible) and Paragraph 34 in
12 the parallel lawsuit are the two paragraphs that allege
13 damages. Both allege damages to the facility itself, and
14 exclusively the facility in each paragraph included
15 (indiscernible) damages that caused the business
16 interruption and the delay, which comes to the \$1.1 billion
17 claim chiefly at issue.

18 There's nothing in these petitions that otherwise
19 gives notice of damage to third parties or implicates tort
20 (indiscernible). I don't want to belabor these issues
21 because they're very thoroughly briefed, but there's a long
22 line of cases in Texas that deal with the contour issue.
23 Starting with the Jim Walters Homes v. Reed, which
24 essentially (indiscernible) when an injury is only economic
25 loss through a subject of contract, then that dispute needs

1 to be handled under a relative contract. LAN/STV v. Eby
2 says the same thing and includes a long discussion of
3 relevant law under the restatement three of torts and
4 relevant academic sources in Texas that essentially say the
5 court has a gatekeeping role in determining whether a claim
6 like this one ought to be heard in court or heard in
7 contract.

8 The reasons to hear in contract are because in a
9 huge commercial case like this one, while the
10 (indiscernible) project (indiscernible) Mr. Thomas
11 describes, you would have certainty. You would have
12 allocation of risk as agreed upon. You can insurance. You
13 can have indemnity, and all of these things are discussed in
14 the restatement as reasons why a contractual decision is
15 better than a tort decision.

16 This all leads to Mr. Thomas' (indiscernible) idea
17 that EPC contractors can do this work only because they have
18 the contractual protections like the ones he's discussed,
19 which stopped them from being exposed to indeterminate and
20 potentially unlimited liability in ten years after going and
21 at a project like this one.

22 The appellate court cases, Judge, that apply to
23 these kind of concepts in Texas, there's very good law in
24 cases like Exxon Mobil v. Kinder Morgan or DeWitt County
25 like McAuliffe v. Parks. That's saying it has the potential

1 for a tort claim and a contract claim, but there is a
2 contract that exists (indiscernible) between the two
3 parties, that contract ought to apply. The DeWitt County
4 claim is instructive here. In that case, an electrical co-
5 op was cutting down trees. The landlords objected, sued for
6 tort, and the court said, well, the tort suit would be okay,
7 but these parties are contractual crediting. They have a
8 contract that allocates risk. If anything, we're between
9 them, and that is the way that this case (indiscernible)
10 occurred in contract, not in negligence.

11 These cases are instructive here. The plaintiffs
12 were a joinder to these cases. The Chapman Homes case
13 essentially involved a case in which a home builder and a
14 home owner had a controversy with a plumber who did the job
15 very badly and flooded the house causing property damage.
16 The Texas Supreme Court said that kind of tort case could
17 continue, but that's a readily distinguishable fact pattern
18 because there was no privity contract between the plumber
19 and the homeowner and the allocation of risks where there
20 was privity between the plumber and the contractor. Then it
21 dealt with the kind of issues that arose from the flooding.

22 This case, on the other hand, involves a 700-page
23 contract with paragraph after paragraph after paragraph
24 specifically dealing with the works in question, and
25 specifically allocating remedies, assurance,

1 (indiscernible), and (indiscernible) between the parties.

2 We think that that case falls squarely on the Walter Reed
3 LEN line of cases that ought to be applied to make this case
4 proceed (indiscernible). Thank you, Your Honor.

5 THE COURT: Thank you. Mr. Jones?

6 MR. JONES: Good morning again, Your Honor.

7 Charlie Jones for Chiyoda International. We have joined in
8 CB&I's motion to dismiss the 189 and 190 adversaries. We
9 think for all the reasons that Mr. Thomas and Mr. Massey
10 have put in that this motion should be granted at a minimum
11 to ask the plaintiffs to replead in contract.

12 It talks about a lot of the contract limitations
13 that were negotiated for these highly sophisticated parties.
14 Billions and billions of dollars have changed hands over the
15 years. These cases should be governed by the contract. I
16 would like to point out one other contract limitation that's
17 particularly important in this contract. This is the jury
18 waiver. And along with the limitations about damages and
19 mutual releases and insurance releases that my colleagues
20 have covered in depth, that is particularly important in
21 this instance.

22 That's why these claims should be at a minimum
23 replead in the contract. And I do believe the Court should
24 grant the limitations on the (indiscernible). In reading
25 these pleadings, in the gas release cases, there was no

1 allegation whatsoever (indiscernible) third party, Your
2 Honor. If that is going to be the allegation, it should be
3 set out clearly. And so I think Your Honor is right of
4 course about the Fifth Circuit law and the re-pleadings.
5 But these things (indiscernible). Thank you.

6 THE COURT: Thank you.

7 MR. TAYLOR: Good morning, Your Honor. Chris
8 Taylor from King Spalding on behalf of the FLNG plaintiffs
9 in the adversary 3195. I do not have a PowerPoint
10 presentation because, frankly, (indiscernible) used in
11 connection with the motion to dismiss are pretty narrow and
12 straightforward. And the issue at the end of the day is
13 whether or not we have alleged facts that -- enough facts in
14 our petition, complaint that on their face are plausible
15 enough to support a claim for consequential damages.

16 Actually, the motion to dismiss will be even
17 narrower than that. The motion to dismiss was that because
18 of the waiver of consequential damages in (indiscernible)
19 contracts, that they wanted to enforce that. But under
20 Article 2 of the UCC, there's a provision 2.719(c) that the
21 only way we can avoid the effect of the waiver of
22 consequential damages is if we can allege unconscionability.

23 Now, you didn't see that at all in the
24 presentation today. Apparently they've abandoned that
25 position. And in the reply for the very first time, Zachry

1 has argued this -- has challenged the sufficiency of the
2 allegations of gross negligence. Now we believe the Fifth
3 Circuit case law is very clear that new issues that are
4 raised in the reply for the very first time are not properly
5 before the Court and are waived the Court shouldn't even
6 consider that argument. It was raised for the first time in
7 the reply. It wasn't in our initial motion. Their argument
8 to dismiss our consequential damages claim has completely
9 pivoted.

10 However, if the Court does consider the
11 sufficiency of the allegations of gross negligence in our
12 petition, we believe that they survive the motion to dismiss
13 or, as I'll address later, if you don't believe this, we
14 would respectfully request an opportunity to replead. Now
15 --

16 THE COURT: How do you respond to the specific
17 argument, if you want to do it today, that they advised
18 against using these motors and that your client overruled
19 their recommendation? Therefore, how can they be grossly
20 negligent since their advice was not taken? I think that's
21 a summary of what --

22 MR. TAYLOR: Sure.

23 THE COURT: -- you said.

24 MR. TAYLOR: And appreciate you raising that, Your
25 Honor. First of all, that wasn't part of my motion to

1 dismiss and it couldn't be, but their -- they try -- then be
2 trying to incorporate documents that are not provided in the
3 complaint and not referenced in the complaint to support a
4 motion to dismiss. So that would advance that summary
5 judgment argument.

6 However, as we cite in our response -- and that's
7 an issue that they raised in their claims objection. What
8 we said in our response to the claims objection was that
9 these contractors, they're responsible for -- it's a turnkey
10 APC contractor responsible for 100 percent of the work.
11 There's a provision in the contract that says that if a --
12 if work is performed by a subcontractor, the contractors
13 agree to be responsible for that work. What -- even to the
14 extent they perform the work themselves.

15 In addition, the recommendation not to -- to go
16 with Siemens as opposed to GE, the actual recommendation
17 that they included in their exhibits to their motion -- to
18 their claims objection show that the primary basis for not
19 recommending GE was cost. And so what the parties did was
20 they entered into a change order that increased the contract
21 price by \$5 million to account for the additional -- the
22 higher price of motors (indiscernible).

23 And there's a provision in the contract or the
24 change order that says that no other terms of the contract
25 are implicated or changed by the change order. So they're

1 still on the hook for not only being responsible for the
2 work of subcontractors as if they performed itself, but also
3 inspecting and making sure that the motors were installed
4 properly. However, in addition to the -- you know, the
5 defect with the GE motors themselves --

6 THE COURT: Was this in -- do you all allege it
7 was an installation defect or a defect within the motor
8 itself?

9 MR. TAYLOR: It's both. It's both. There are --

10 THE COURT: So let's talk for a moment about the
11 defect in the motor itself.

12 MR. TAYLOR: That's the -- the defect in the motor
13 itself is, frankly, is really not part of our -- I mean, it
14 was a design defect and it's not part of our -- aside from
15 the general contractor or the contractors being responsible
16 for the work of the subcontractors, it's not part of our
17 gross negligence allegations.

18 The gross negligence allegations, and Mr. Thomas
19 said -- he pointed to I think Paragraph 67, said two words,
20 gross negligence. That was in the recitation of our cause
21 of action, but he ignored the preceding allegations in our
22 complaint. And we don't dispute that the elements are
23 required to prove gross negligence are extreme degree of
24 risk. These are 75 megawatt motors that I think Mr. Thomas
25 referred to as massive. And necessarily, any defect in

1 those motors necessarily involve an extreme degree of risk.

2 The second element is conscious indifference. In
3 our complaint/petition, we don't allege an isolated once or
4 -- you know, one or two defects in workmanship and quality
5 assurance. They're -- these -- all three motors suffered
6 from the same repeated multiple defects in workmanship, the
7 installation, and quality assurance by the contractors.
8 We've alleged that they failed to use locking washers --
9 locking nuts and washers. As a result, a two-foot-long bolt
10 fell out of the motor and ended up in the (indiscernible)
11 rotor damaging the motors.

12 We allege they -- that they disregarded
13 manufacturer instructions as to what parts to use and not to
14 use dissimilar metals. Also we've alleged they inadequately
15 torqued the bolts as part of an installation of the motors.
16 And we believe that taken in concert, all of those
17 allegations at a very minimum, rise to the level of gross
18 negligence.

19 THE COURT: So if you think you've -- I -- first
20 of all, I agree that you can say gross negligence over in
21 one place and proof gross negligence in another place within
22 the complaint. They don't need to be -- you don't need to
23 use magic words. Do you -- if I determine, though, that
24 what you have said is inadequate to demonstrate gross
25 negligence accepting your facts as true, are there more

1 facts that you have to allege? Or have we seen it and so
2 there isn't any point in repleading? I just sort of decide
3 it either does or doesn't state gross negligence.

4 MR. TAYLOR: We can certainly expound on it. I
5 think that it's -- you know, to rise to the level of
6 conscious indifference, I mean, one or two defects, okay. I
7 get it. Probably a lot of things can go wrong. But when
8 the same defects occur over and over again in connection
9 with all three motors, we believe we've alleged the facts
10 rise to the level of gross negligence. But we can allege
11 more if we need to.

12 And that's, you know, Your Honor's point is that,
13 you know, the Fifth Circuit is clear, and I think Your Honor
14 has held as well that the parties should be given an
15 opportunity to replead.

16 THE COURT: You should be. I think you should be
17 if you want it. If you're telling me, though, that you've
18 already done it and you've been comprehensive in what you've
19 done, I'm not looking to just give you busy work either.

20 MR. TAYLOR: Understood.

21 THE COURT: So I think what I'm hearing you say is
22 that if I determine that the current pleadings are
23 inadequate, that you do want an opportunity to replead.

24 MR. TAYLOR: That's exactly right, Your Honor.

25 And all the repleading and futility cases that they've cited

1 in their reply, these were -- I think every single one of
2 them where the complaint was admitted one time previous to
3 the motion to dismiss is --

4 THE COURT: But it seems like the -- in terms of
5 the portion that says that the selection of motors was
6 improper or that there was a defect within the motors
7 themselves, you haven't alleged any gross negligence on that
8 right?

9 MR. TAYLOR: Right. That's just a breach of the
10 contract because there are four of the defects of
11 (indiscernible) --

12 THE COURT: That's going to be subject to all of
13 the limits that they're talking about, right? The only part
14 that may not be subject to the limits of the gross
15 negligence parts.

16 MR. TAYLOR: That's true, but I don't know that
17 you can separate the two. I don't know that you can
18 separate the defect in the motor and the defect in the
19 workmanship and the quality assurance. Because they're on
20 the hook for all of that, and you can't say okay this --
21 these specific damages were caused by a defect in the motor
22 and then you fail to use the locking nuts and the washers,
23 and you failed to torque and failed the quality assurance.
24 How --

25 THE COURT: If you can't separate it, then you're

1 not proving gross negligence because the damage would've
2 occurred without the gross negligence, right? You've got to
3 demonstrate the gross negligence led to the damage.

4 MR. TAYLOR: Right.

5 THE COURT: If you're telling me that you can't
6 separate the two, then your complaint fails.

7 MR. TAYLOR: No, I think you can't start with the
8 two because it was one failure. It was all of that that
9 contributed to the failure of the motors. All of that had
10 had a causal link to the --

11 THE COURT: Well, to -- I -- it's a but-for
12 question, right? If but -- assuming that your allegations
13 of gross negligence are valid just for a moment, if --
14 without any gross negligence if they had put on all the
15 locking washers, etcetera, if you still would've had the
16 failure, then the gross negligence didn't contribute to the
17 damage if you're telling me the failure's going to occur
18 inevitably just from the selection of the motors.

19 MR. TAYLOR: I think the fact that the bolts fell
20 out of the motors and landed in the windings, and that
21 that's what damaged the motors and caused the down time of
22 the three trains. I just --

23 THE COURT: All right.

24 MR. TAYLOR: Unless Your Honor has any questions,
25 one thing I wanted to touch on, and that is Mr. Thomas

1 recommended that you read the Bombardier case. I want to
2 point out that that wasn't a waiver of gross -- of
3 consequential damages case. It was a waiver of punitive
4 damages. Didn't involve allegations of gross negligence.
5 The one case that surprisingly they didn't address in their
6 motion or their reply is the Zachry v. Port Authority of
7 Houston case from the Texas Supreme Court in 2014 where
8 Zachry made the exact opposite arguments that they're making
9 today.

10 And the port authority made the arguments that
11 that you have to enforce these contracts as they're written.
12 These are sophisticated parties. These were heavily
13 negotiated. The court -- the Texas Supreme Court held that
14 great injury waivers of consequential damages in the
15 instance of gross negligence are void as against public
16 policy. Otherwise you get these parties who sign up for one
17 thing but then commit gross negligence or (indiscernible)
18 misconduct that damages the contractual relationship.

19 So for all those reasons, unless Your Honor has
20 any questions, we would respectfully request the Court deny
21 the motion to dismiss FLNG's claims of (indiscernible).

22 THE COURT: Thank you, sir.

23 MR. HOOD: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. HOOD: I'm Kevin Hood. I represent the

1 subrogated insurers in the 24-03189 action. I've been asked
2 to speak on the economic loss rule regarding both motions.
3 Mr. Malinowski will address the issues, such as
4 consequential damages and the waiver of summary
5 (indiscernible) issues. CI filed its initial motion to
6 dismiss based on (indiscernible) stock. I won't spend a lot
7 of time with the history of that, but we'll -- let me start
8 answering one question that the Court had several times
9 regarding property damage. It's my understanding that it
10 was just damage to the FLNG property, not third-party houses
11 or anything like that.

12 THE COURT: Okay.

13 MR. HOOD: We're dealing with three independent
14 contracts, Train 1, Train 2, and Train 3. That's important
15 because they operate separately as well. While they do have
16 a lot of their terms that are exactly the same, there are
17 differences in those contracts and I'll bring that up in
18 just a few minutes.

19 But regarding (indiscernible), there are a lot of
20 absolutes said in the motions. You know, plaintiffs cannot
21 recover because of this, and they did (indiscernible) the
22 exceptions to the amount of (indiscernible). They said we
23 could not show an independent duty. Well, we've done that.
24 In the Chapman case, the Texas Supreme Court recognized
25 independent duty for (indiscernible) with care.

1 And that case then was involving a subcontractor.
2 So in their response, in their reply they said, well,
3 Chapman only applies to subcontractors where there's no
4 direct privity of contract between the owner and the
5 subcontractor. And I believe they said the LBN case settled
6 that case. I saw that in a footnote last night. It was
7 kind of buried, but I did see that.

8 That doesn't take into account opinions that were
9 written after that. First off, in the LBN case, the Texas
10 Supreme Court did not limit Chapman to just third party
11 subcontractors. Neither did it limit it in the Chapman case
12 itself. So there's no holding out when it says only in a
13 case of non-contractual subcontractors.

14 There are two cases that we found. One from the
15 Northern District Aircraft Holding v. Learjet in which there
16 was direct privity between the plaintiff and defendant, and
17 the court held that, yes, there is an independent duty to do
18 your work with care. And it went and ruled on that basis.
19 And he found (indiscernible) did not apply. The same in
20 Constance Joy II v. Jordan Stevenson. That's a Southern
21 District case in which the contractor was to replace a heat
22 exchanger in a (indiscernible).

23 It went out for (indiscernible) clasps that were
24 negligently placed, came loose, flooded the yacht, and
25 destroyed the electrical system in the yacht. And in that

1 case, the court said, yes, there is a contract between those
2 parties. However, there is also an independent duty. And
3 we have to look at the facts of the case to determine
4 whether it applies or not. And the same in this case. We
5 have to look at the facts of the case to determine whether
6 the contract, the work under the contract, is actually the
7 cause of the damages that we are seeking in this case.

8 Once again, we're dealing with three separate
9 contracts. And that's -- they cite one provision in the
10 tier 3 contract, and this goes to talk about the other
11 property. We have (indiscernible) damage to the other
12 property. Well, we have damage to the tier 1 and we have
13 damage to the tier 2 and damage to tier 3. We believe that
14 once we determine which contract this falls under -- and
15 there's been no determination of that yet, then we have to
16 determine whether the other two trains are the property.

17 And we can't make that determination until we
18 really know, you know, this pipe, which one this would fall
19 under. So they talk about the Section 20.2 limitation of
20 liability of the same. Look, this covers everything. It
21 covered after substantial completion Train 1, Train 2, and
22 Train 3. That's great if it's Train 3. But the language in
23 Train -- the contract of Train 1 and Train 2 is different.

24 Train 1 doesn't take into account damage after
25 substantial completion for Train 2 and Train 3. The Train 2

1 contract doesn't take into account for damage after
2 substantial completion for Train 3. Those questions cannot
3 be answered until we determine actually this pipe was
4 replaced and which contract it was replaced under. And then
5 when the haz-op reports (indiscernible), what contract were
6 those performed under? None of that's been addressed in any
7 of these motions. We just don't know right now. And it's
8 confusing, quite frankly.

9 You know, there's a lot going on out there.
10 You've seen this is a huge facility, and we will have to get
11 into the emails and the people that do the work out there
12 and determine this. And right now I don't think you can
13 dismiss based on a loss timeframe. Because there's just not
14 enough information right now to tell us that.

15 THE COURT: Are you telling me that it's your
16 client's position that there is no contract that could be
17 written under Texas law that would absolve two parties to a
18 contract that's extremely complicated from a potential tort
19 suit? That it's just not possible to write that contract or
20 this one isn't written correctly?

21 MR. HOOD: I think it's a blend of the two. No,
22 I'm not saying there is no way to do that.

23 THE COURT: I thought you said it was against
24 public policy to do it, which would mean there's no way to
25 do it.

1 MR. HOOD: I don't believe I said it was against
2 public policy.

3 THE COURT: Okay. I thought you said that one of
4 the cases held that it was against public policy to absolve
5 a tort that hadn't yet committed a tort.

6 MR. HOOD: I believe that was prior counsel
7 talking about the (indiscernible) --

8 THE COURT: Okay.

9 MR. HOOD: -- (indiscernible).

10 THE COURT: Okay. Sorry.

11 MR. HOOD: No.

12 THE COURT: So do you think there is a contract
13 that could be written between parties and all we're worried
14 about is whether this language does it, that says that there
15 would be no liability by Zachry or its partners for any tort
16 as a result of negligence in the implementation of the
17 contract? One cannot write that provision or one could
18 write that provision?

19 MR. HOOD: I think one can write that provision.
20 (Indiscernible).

21 THE COURT: So where isn't this one broad enough
22 to cover tort?

23 MR. HOOD: I don't believe it is broad enough to
24 cover (indiscernible) --

25 THE COURT: Yeah, but show me some language that

1 makes it exclude tort. Because it says tort, right?

2 MR. HOOD: I don't see where it excludes those
3 duties that -- under tort law. It talks about contractual
4 for sure, and it recognizes that it could be liable under
5 tort.

6 THE COURT: It says, though, that there's --
7 they're not liable, right, if there's a problem under tort?
8 The parties contract in a way of the tort liability. Do you
9 know that they didn't?

10 MR. HOOD: I don't believe they did. I don't
11 believe they did it regarding the duty that we have alleged
12 (indiscernible).

13 THE COURT: Let me look again because I'm not --
14 have not memorized these contracts, right? But I thought
15 there was a provision that excluded tort liability. Here it
16 is.

17 MR. HOOD: Well, that's in one of the limitation
18 of liability clauses --

19 THE COURT: Right.

20 MR. HOOD: -- under Train 3. And that's when
21 they're talking about the amount of damages. Not
22 necessarily excluding any (indiscernible). I'm saying if
23 we're on a limited tort, if there is a limit to our --

24 THE COURT: A million dollars? A million-dollar
25 limit?

1 MR. HOOD: A million unless one of the exceptions
2 or exclusions provided here applies, such as
3 (indiscernible). That's one of the exclusions to the
4 million-dollar cap.

5 THE COURT: But then that's governed by the
6 continued duty to correct defective work, right?

7 MR. HOOD: If we're in that period. Once again,
8 you know, there's no --

9 THE COURT: Is there an argument -- what's the
10 argument we're not in that period?

11 MR. HOOD: Well, the argument was that first
12 they're talking about PSG valves to the extent of the
13 defective correct period. Really PSV valves have nothing to
14 do with this case. And as you noted earlier, this is a pipe
15 that was closed off at two ends. There was not a PSV valve
16 between those two ends. So we're not dealing with a
17 defective PSV valve or anything that had to be replaced
18 regarding the PSV valve. So that's kind of a red herring.
19 So -- and the contract talks about extending the --

20 THE COURT: Well, there could've been -- they
21 could've left all of the safety warnings in place, right?

22 MR. HOOD: They could've left all the monitoring
23 in place as they chose to put it in the background, which
24 didn't sound the alarms.

25 THE COURT: Right. I understood that allegation,

1 but I didn't understand why that's not governed by the
2 exclusion or the limitation on liability to a million
3 dollars.

4 MR. HOOD: Because that goes to the defective
5 work, which is an exception to the million dollars.

6 THE COURT: Okay. I'll look again.

7 MR. HOOD: On 20.2 it goes down. You see it
8 address the gross negligence and the willful one. And the
9 third exception is it was related to defective work. So --

10 THE COURT: Okay.

11 MR. HOOD: And that's regarding (indiscernible).
12 I'm not going, you know, to beat a dead horse here because
13 we've all -- we all understand what it is. But we have
14 shown a (indiscernible) duty (indiscernible) or alleged
15 damage to the property. We think as to a tort claim, it is
16 correct.

17 THE COURT: Thank you.

18 MR. MALINOWSKI: Good morning, Your Honor. Evan
19 Malinowski on behalf of the other subrogation who is working
20 with Mr. Hood on this case.

21 THE COURT: Good morning.

22 MR. MALINOWSKI: Initially I was going to address
23 some of the extra arguments on statute of limitations or
24 pleading sufficiency, but they haven't really been raised
25 today. So if Your Honor has any questions, I'm happy to

1 answer them. But otherwise, I'll turn to the consequential
2 damages waiver (indiscernible). On the consequential
3 damages argument, the defendants cannot even agree on what,
4 if anything, applies to limit the consequential damages.
5 Specifically in our motion they state that EPC contracts
6 limits damages in three relevant sections, but each
7 limitation applies in a different situation. That sounds in
8 Your Honor needing to hear evidence on which, if any,
9 applied and under what circumstance.

10 But as a factual matter, as a pleading matter, we
11 have pled a claim that can move forward. If there is a
12 limitation to apply, it only can apply if we have pled a
13 claim and if defendants want to use the contract to limit
14 their claim and determine which limitation between \$1
15 million or \$214 million or \$430 million. That sounds like
16 some evidence that this court needs to hear in order to
17 determine those arguments.

18 So on that alone, that is not ripe for a motion to
19 dismiss, but rather a motion for summary, if at all, between
20 the limitations and the consequential damages. They can't
21 apply without hearing evidence on that.

22 As to the waiver of subrogation arguments, we have
23 already discussed that -- and I think we disagree with
24 counsel on when the defect-corrected period ends and whether
25 it relates to only an extent the defect-corrected period,

1 only to the specific corrected work, or as defendants allege
2 it broadly to the entirety of the agreement. Because the
3 waiver of subrogation, if it does apply, only applies for
4 the insurance that's required to be taken out under the
5 agreement. The insurance that's required to be taken out
6 under the agreement only applies for during the project and
7 then during, if any, any (indiscernible) defect-corrected
8 period as to that defect-corrected work.

9 So in tort, Your Honor, that waiver of several, if
10 any, is an affirmative defense. It is something to limit
11 the allegations made. But as a factual matter as a gateway,
12 gatekeeping function, plaintiffs have pled --

13 THE COURT: I'm not sure --

14 MR. MALINOWSKI: Sorry.

15 THE COURT: -- that you have standing if you're
16 not subrogated, right? It's a threshold question that you
17 have to answer.

18 MR. MALINOWSKI: Sure.

19 THE COURT: If you are not subrogated, you can't
20 be here. So demonstrate to -- your burden is to demonstrate
21 that you're subrogated. It's not their burden to prove that
22 you're not.

23 MR. MALINOWSKI: Correct, Your Honor. And we are
24 subrogated by virtue of the payment. It's the waiver of
25 subrogation that they cite as --

1 THE COURT: You're not subrogated by virtue of the
2 payment if the contract says you're not.

3 MR. MALINOWSKI: If there is a waiver of
4 subrogation, yes, Your Honor. However --

5 THE COURT: Show me why you're not.

6 MR. MALINOWSKI: Because the waiver of subrogation
7 does not apply because the defect-corrected period as to the
8 allegations being alleged did not extend the insurance
9 requirements to include a waiver of (indiscernible) for our
10 work.

11 THE COURT: How do I get that? Because I don't --
12 I have not seen that in -- let me see in the policy and in
13 the extension to corrective period. Are you disputing that
14 the corrective period itself existed at the time that we
15 were in the corrective period?

16 MR. MALINOWSKI: No, Your Honor. We're alleging
17 for the -- the basis of this lawsuit was not within the
18 corrective period as required under Attachment O where it
19 says owner's obligation is to provide this coverage --

20 THE COURT: So can I see that? Because I don't
21 have the contracts here in front of me.

22 MR. MALINOWSKI: Yes, Your Honor. I believe --
23 can we get the hard copies, John, that you guys... So the
24 text, and we'll get that up to Your Honor, is in --

25 THE COURT: Yeah, yeah. Thank you.

1 MR. MALINOWSKI: So in the back it looks like it's
2 tabbed, Your Honor, to O, to inclusion O.

3 THE COURT: Okay.

4 MR. MALINOWSKI: And on Page O-9, the waiver of
5 subrogation in Clause 4 at the bottom, the last sentence of
6 the first paragraph, the owner's obligation to provide this
7 coverage, this coverage meaning the waiver of subrogation,
8 shall expire upon expiration of the defect-corrective --

9 THE COURT: I'm just not -- I'm not quite with
10 you. So I'm on Paragraph 4?

11 MR. MALINOWSKI: Yes, Page O-9, Your Honor.

12 THE COURT: I'm on O-9.

13 MR. MALINOWSKI: Paragraph 4.

14 THE COURT: Okay.

15 MR. MALINOWSKI: Literally the last sentence of
16 that paragraph before Sub I.

17 THE COURT: At --

18 MR. MALINOWSKI: At the (indiscernible).

19 THE COURT: -- a waiver of subrogation will be
20 provided in the policy in favor of contractor,
21 subcontractors, and sub-subcontractors CB&I, Zachry,
22 Chiyoda, and other lenders.

23 MR. MALINOWSKI: Correct.

24 THE COURT: What does that say to me that I care
25 about?

1 MR. MALINOWSKI: Right. As between the owner and
2 the contractor, the owner's obligation to provide this
3 coverage. "This coverage" meaning also that waiver shall
4 expire upon expiration of the defect-corrective period.

5 THE COURT: No, that's not the obligation to
6 provide the subrogation. That's the obligation to provide
7 the coverage.

8 MR. MALINOWSKI: Correct. And the coverage
9 includes a waiver of --

10 THE COURT: In the coverage it would have the
11 subrogation.

12 MR. MALINOWSKI: -- subro, Your Honor.

13 THE COURT: Okay.

14 MR. MALINOWSKI: The only requirement, if at all,
15 to apply a waiver of subrogation is arising out of the
16 contract -- I'm sorry, required --

17 THE COURT: Okay. So --

18 MR. MALINOWSKI: -- this agreement.

19 THE COURT: But if you're telling me that the --

20 MR. MALINOWSKI: Which we are arguing expired.

21 THE COURT: -- defective correction period was in
22 existence, it's a period measure. This is a measure of
23 time, right?

24 MR. MALINOWSKI: As to --

25 THE COURT: No, where does --

1 MR. MALINOWSKI: -- the corrective work, Your
2 Honor.

3 THE COURT: Where does it say as to the corrective
4 work?

5 MR. MALINOWSKI: In the section --

6 THE COURT: It's a time measure, not a work
7 measure.

8 MR. MALINOWSKI: Corrective work is 12.3 I
9 believe.

10 THE COURT: No, that's a measure of time. Shall
11 expire upon the expiration of the defective correction
12 period. It doesn't say as to limits or as to no limits.
13 That's a time measure. So why didn't you have a subrogation
14 -- a non-subrogation?

15 MR. MALINOWSKI: Your Honor, this is a separate
16 policy procured. I think --

17 THE COURT: Right.

18 MR. MALINOWSKI: -- various counsel -- and you had
19 asked before about limitation clauses or otherwise. This
20 happened after completion of the project. There was
21 insurance in effect after completion of the project based on
22 Freeport's need to just insure its own work, not based on
23 the contract. Freeport had insurance.

24 THE COURT: So what that they had insurance? They
25 were required to provide insurance to cover this without

1 rights of subrogation and the time when met was no longer a
2 requirement, was the expiration of the defect correction
3 period. I'm not even following a little bit of your
4 argument, just so you know. It seems obvious that you're
5 wrong. So tell me why you're right.

6 MR. MALINOWSKI: Your Honor, if you flip to the
7 actual agreement where it talks about the corrective period,
8 Page 119 --

9 THE COURT: Of --

10 MR. MALINOWSKI: -- of the agreement --

11 THE COURT: -- which agreement?

12 MR. MALINOWSKI: The one that's in front of you.
13 The ECP Agreement 3 that we're using to cite here, which
14 again, as Mr. Hood already brought up, there's three
15 separate contracts for the three separate trains.

16 THE COURT: Yeah. Tell me which one you want to
17 look at.

18 MR. MALINOWSKI: Page 119.

19 THE COURT: Okay. Okay.

20 MR. MALINOWSKI: This agreement limits it to any
21 corrective work after substantial completion to such
22 corrective work, Your Honor.

23 THE COURT: That's not the -- but that may be what
24 is covered under defect correction. That's not what is
25 covered under the required policy. The required policy is a

1 measure of time, not a measure of liability.

2 MR. MALINOWSKI: As to the corrective work, Your
3 Honor. As to the --

4 THE COURT: No.

5 MR. MALINOWSKI: -- completion of the project.

6 THE COURT: You're reading "as to the corrective
7 work" into a sentence that doesn't contain that. The last
8 sentence of Paragraph 4 does not say "as to the corrective
9 work". It's simply not there at all.

10 MR. MALINOWSKI: Your Honor, the corrective work
11 is defined in Page 119, Section 12.3.

12 THE COURT: We're not talking corrective work.
13 We're talking the defect correction period. I don't care
14 what the defective work was about.

15 MR. MALINOWSKI: I think --

16 THE COURT: This requires the non-subrogation
17 right through the end of the defective correction period.

18 MR. MALINOWSKI: Which the correction -- the
19 defective correction period, Your Honor, is limited to the
20 corrective work for a contract.

21 THE COURT: It's a time measure. I don't know why
22 that's difficult to follow. There's a difference between
23 whether liability exists or whether liability is waived and
24 a measure of time that is used in a contract. This contract
25 uses a measure of time. It expires at the end of the defect

1 correction period. I mean, I don't follow the argument
2 otherwise.

3 MR. MALINOWSKI: And Your Honor, I am trying to
4 articulate how to restate it and I'm not sure the right way
5 to restate it for you other than -- I mean, the insurance
6 procured that covered this loss that brings the subrogated
7 insurers to this court today, plaintiffs allege that that
8 insurance was not governed by the requirements within the
9 EPC agreement.

10 THE COURT: Tell me why not.

11 MR. MALINOWSKI: That was separate insurance to
12 cover Freeport. Freeport maintained insurance, as they do
13 on all their facilities, to cover their facilities. No one
14 in contract tells Freeport to maintain insurance. There are
15 instances when they do, such as this, such as when a project
16 --

17 THE COURT: But this contract --

18 MR. MALINOWSKI: -- got away.

19 THE COURT: This contract required it, right?

20 MR. MALINOWSKI: During the work, Your Honor.

21 During the work and as it's limited to the corrective work
22 only.

23 THE COURT: Okay.

24 MR. MALINOWSKI: Not to the haz-op studies, any...
25 The insurance that brings us here, Your Honor, today is not

1 as a basis of what Zachry or any other joint venture
2 required per a contract to cover the construction period and
3 then any defective work that was corrected prior to. That's
4 not what brings us here. That's not the basis of this
5 lawsuit, and therefore plaintiffs argue that that waiver
6 does not apply.

7 THE COURT: Thank you, sir. All right. I am
8 granting the motion to dismiss the claims by the insurers.
9 They have no standing to be here. They are not subrogated
10 to any of the right to the debtor. I don't think that this
11 is an ambiguous contract. The measure by which they were
12 required to maintain insurance without subrogation rights
13 ran through the end of the defect correction period. The
14 argument that it also entailed what was covered in the
15 defect correction misses the point.

16 The point is they were required to provide the
17 insurance. It was required not to have subrogation
18 provisions, and it was required to be provided through the
19 end of the defect correction period. Any such insurance had
20 to have the waiver of subrogation. I don't think the
21 insurers, therefore, have standing to bring their lawsuits,
22 and I am dismissing the subrogation lawsuits.

23 As to the motor suit, I want to go back and reread
24 it frankly. I have difficult time imagining that if I read
25 it not to include allegations sufficient to over gross

1 negligence that I would not give an opportunity to amend,
2 frankly. But I want to go read it again before I decide
3 whether it sufficiently pleads gross negligence. Go ahead,
4 Mr. Thomas. You look like you need to talk to me pretty
5 badly, but...

6 MR. THOMAS: No, Your Honor. No, Your Honor.
7 Just before you finish I wanted to ask two things. One is
8 may I give you a copy of this deck that summarizes those
9 provisions that may be relevant to your review?

10 THE COURT: Yes, please do.

11 MR. THOMAS: I'll give opposing counsel copies as
12 well.

13 THE COURT: Thank you. Mr. Jones?

14 MR. JONES: Your Honor, Charlie Jones, Haynes and
15 Boone on behalf of Chiyoda International. I just want to
16 clarify that your dismissal of the insurance subrogation
17 (indiscernible), the 189 and the 190, applies to all
18 defendants?

19 THE COURT: Yes.

20 MR. JONES: Okay. Thank you.

21 THE COURT: Yes. Absolutely. And it's a full
22 dismissal. It's not a partial dismissal. I don't think
23 they have standing to bring this lawsuit.

24 MR. JONES: Would you like us to prepare an order
25 for Your Honor?

1 THE COURT: I'm going to just prepare a one-
2 sentence order. It's going to say for the reasons set forth
3 on the record, this case is dismissed.

4 MR. JONES: Thank you, Judge.

5 THE COURT: Thank you. All right. Let's go to
6 the other matters that we have on the calendar in the main
7 case. Mr. Koster?

8 MR. KOSTER: Your Honor, for the record, Charles
9 Koster for the debtors. Turning the claims objections that
10 were filed in the main case, Your Honor's ruling of a moment
11 ago I think should make this much simpler. And recognizing
12 that you'll be reviewing again the pleadings related to the
13 motor defect case, I believe without rehashing any of the
14 arguments made by counsel and recognizing that we're simply
15 here on a scheduling conference, we've made it to these
16 claims objections, that counsel had indicated at the
17 (indiscernible) that all information related to the gross
18 negligence allegations is set forth in the pleading and
19 admitted that the installation issue is inseparable from the
20 motor issues themselves.

21 And on that basis, at least my simple mind fails
22 to understand how it could possibly gross negligence to get
23 around to --

24 THE COURT: So I -- there is zero briefing before
25 me about dual independent causes that would've caused the

1 failure. I definitely am not going to go out on a limb of
2 guessing at what I think tort law ought to be without any
3 briefing on that so that you know, Mr. Koster. I understand
4 because I stated your argument for you, but he says I think,
5 look, even if the motor had been defective, if it had been
6 installed right, it wouldn't have caused these huge bolts to
7 fall down and destroy the motor casing. And that's
8 defective work.

9 That's not the defective motor. And so that's an
10 independent cause where even if you had one defect, at least
11 some of the damage from the other defect would've occurred.
12 So how do I grapple with that without -- my tort expertise
13 is limited, right?

14 MR. KOSTER: Understood entirely, Your Honor, and
15 I think that your ruling and your comments just now make
16 clear that this a far narrower dispute that was just an hour
17 ago and the issues that we'll be taking up in connection
18 with the claims objections and the discovery, if any, that
19 may be needed that go to causation can presumably be done
20 very quickly.

21 We had attempted in advance of this hearing to
22 come up with an agreed schedule with the plaintiffs related
23 to resolution of these issues through the claims objections.
24 The debtors have no interest or intent of depriving any of
25 the parties of all of the rights that they would have in

1 connection with the litigation of the issues on the merits
2 in the adversary proceedings. That said, as Your Honor is
3 well aware, we hope to resolve these issues entirely in
4 connection with confirmation. And we think that there is no
5 reason that the parties can't agree to a relatively fast
6 schedule for all necessary --

7 THE COURT: So let me ask this. I hear what
8 you're saying. I do think this landscape changes a bit
9 today. Can we come back at 11 this morning after you have a
10 chance to confer with opposing counsel and figure out what
11 you all jointly propose that we do or separately propose?
12 But I don't think I need to hear, you know, the back and
13 forth. I think you all need to talk at this point.

14 MR. KOSTER: That's a great suggestion from the
15 debtor's perspective. 11 is absolutely fine.

16 THE COURT: Can you still meet at 11?

17 MAN: Yes, Your Honor.

18 THE COURT: Okay. We'll take a break and let you
19 all come back at 11 on that issue. Hold on. We still have
20 the 9:30 hearing on your emergency motion for an order
21 authorizing expansion of the LLC. I figured we'd have
22 everybody here and didn't need much notice. So the real
23 issue is whether anybody's going to object to this. Do we
24 have any objections at all to allowing the expansion of the
25 letter of credit? Anyone on the phone please press 5 star.

1 I think this is ordinary course, frankly, and I
2 appreciate your coming. I don't mean it that way. But it
3 means I don't think I need any real time to think through
4 this. It makes so much sense. It's a fairly nominal amount
5 given the context of the case and I should have everybody
6 here today because this is an essential hearing. So I want
7 to know if anyone objects. If not, I'm going to grant 1426.
8 Okay. I'm granting 1426. We'll get that done. We're in
9 recess in this case until 11. We've got a -- Mr. Green?

10 MR. GREEN: If I might say one thing, Your Honor?

11 THE COURT: Yes, sir.

12 MR. GREEN: I would stick around until 11, but I
13 believe your ruling on the adversary would also dispose of
14 the FLNG subrogation claimants' proofs of claim --

15 THE COURT: I agree.

16 MR. GREEN: -- for the same reason.

17 THE COURT: You don't need to be here at 11 if you
18 don't want to.

19 MR. GREEN: But there is one thing I want to say
20 though. It may be unavoidable that if the subrogate
21 insurers want to appeal, there may have to be two appeals.

22 THE COURT: Right.

23 MR. GREEN: It would be more efficient if there
24 was a way to only have one appeal, but that was the only
25 comment I wanted to make.

1 THE COURT: I'm not going to rule on all the other
2 -- look, I think the policy and its interpretation is really
3 complex, and it -- the subrogation is really obvious. So --

4 MR. GREEN: What I meant was you have a ruling in
5 the adversary proceeding and there'll be a separate ruling
6 in the main case on the claim objection.

7 THE COURT: Why don't I do one order then that
8 we'll file in both that says this disposes of the claim
9 objection and the claim is allowed at zero? I'm sorry. I
10 misunderstood what you were saying. Yes. We'll make it a
11 single -- yeah. What I don't want to end up ruling on are
12 the complexities of the interpretation of the other
13 provisions of the contract as to whether you might have a
14 good liability claim, or whether it's waived, or all of that
15 stuff.

16 So we'll deal with that. And then instead of a
17 one-sentence order, it'll be a two-sentence order. Would
18 you all rather just agree on that two-sentence order to be
19 sure you get a unitary appeal? Because I do want to do that
20 for you.

21 MR. GREEN: Okay. Thank you.

22 THE COURT: And just would you all upload an order
23 that is consistent that would allow a single appeal for
24 both? Does that work?

25 MR. GREEN: Yes, Your Honor.

1 THE COURT: Okay. Thank you all. We're in recess
2 then until 11 in this case. I'm going to stay out here. I
3 have a 10:30 hearing on another case. Thank you.

4 (Recess)

5 THE COURT: Now let's go back to the FLNG matters.
6 Did you all reach an agreement on what to do?

7 MR. KOSTER: Good morning again, Your Honor. For
8 the record, Charles Koster for the debtors. We appreciate
9 the time that Your Honor afforded us to work on a schedule.
10 At this time we would propose the following. We would like
11 to continue the scheduling conference for a time ideally
12 next Monday if that works for Your Honor.

13 THE COURT: Monday the 18th?

14 MR. KOSTER: Monday the 25th.

15 THE COURT: I'm sorry. The 25th. All right.
16 What time?

17 MR. KOSTER: Whenever Your Honor has availability
18 for us is just fine from the debtor's perspective.

19 THE COURT: I'm going to be out next week, so I
20 would prefer this to be a phone-and-video-only hearing.

21 MR. KOSTER: Absolutely.

22 THE COURT: I could make it in if I need to be,
23 but if it's just a scheduling conference I would prefer not
24 to, to be frank about.

25 MAN 1: Remote is preferable for the debtors as

1 well.

2 THE COURT: All right. You all okay with that?

3 MAN 2: I'm going to be remote as well, Your
4 Honor, in Scottsdale.

5 MR. KOSTER: I'll say, Your Honor, the afternoon
6 would be better, but not if somebody else went out
7 (indiscernible).

8 THE COURT: Afternoon, 1:30 okay?

9 MR. KOSTER: Yes, Judge.

10 THE COURT: Okay. 1:30 we'll continue the
11 scheduling conference until then.

12 MR. KOSTER: The reason being, for context, Your
13 Honor, the parties have already begun settlement
14 discussions. We need certain information from the FLNG
15 plaintiffs to provide to our carriers with respect to
16 potential liability. We are also discussing with the
17 plaintiffs stipulating to a cap on damages that may resolve
18 the separate endeavor Your Honor is undertaking with respect
19 to the motion to dismiss and the potential need to permit
20 repleading with respect to gross negligence.

21 That is so important to the debtors, Your Honor,
22 because as you're well aware, we are in the midst of
23 conversations both with our existing banks and with our
24 potential sources of exit financing, all of whom are
25 following this issue very closely. No surprise.

1 We are also discussing the prospect of mediation
2 including our carriers to help us get to a resolution. And
3 while it may be premature, with Your Honor's permission, we
4 would like to approach Judge Lopez potentially as soon as
5 the end of this week if we are unable to make substantial
6 progress to understand what his schedule may be to assist us
7 resolve this issue as he did so expertly in connection with
8 the Golden Pass issues.

9 THE COURT: That's just fine with me, but he's
10 quite the busiest man in the world right now. Trying to fit
11 into his calendar in the timeframe you need I think is
12 really unlikely. But if he's got the time, it's just fine
13 with me. I don't think he will. So you might give some
14 thought to an alternative to that.

15 MR. KOSTER: Understood. I think from the
16 debtors' perspective, we would also very much appreciate
17 Judge Perez's assistance on this to the extent he has
18 interest and availability in helping us. I have not
19 (indiscernible) with the other parties, but I can only
20 imagine that everyone would jump at the opportunity to be
21 before him in any capacity.

22 THE COURT: So I think there's a problem that
23 could exist, which I think is a waivable problem. I believe
24 he representing Zachry pre-petition in some matters, not in
25 this matter. And if that's the case -- otherwise, it's fine

1 with me. I just would want everybody to understand the
2 extent of that. That may not bother anybody frankly.
3 Wouldn't bother me, but still want everybody to know about
4 it.

5 MR. KOSTER: We appreciate that, Your Honor. And
6 to the extent we need to call upon his services, we will
7 clarify (indiscernible).

8 THE COURT: Why don't we do this then? By the
9 22nd, would you all file an agreement on scheduling? And
10 we'll obviate the need for the hearing on the 25th. If I
11 can approve that. Just to save everybody the trouble of
12 connecting in at all if you've already agreed on what that's
13 going to look like. Does that work?

14 MR. KOSTER: We should be able to do that, and at
15 the very least we will file a short statement if we cannot
16 agree on dates with our independent views --

17 THE COURT: You don't need to do that. I don't
18 want you to spend all that money. If it's -- I'm just
19 saying if it's agreed, let's not all come to a hearing on
20 the 25th. I'm sorry, the -- yeah, the 25th. If it's not
21 agreed we'll have the hearing and deal with it on a normal
22 way. That's fine. So I'm going to not take it under
23 advisement at this stage on the gross negligence issue,
24 right? I want to give you all an opportunity to get that
25 settled on your own. Or do you want me to take that under

1 advisement now and start working on it?

2 MAN 3: We'll ask to confer briefly on that, Your
3 Honor.

4 THE COURT: Yep. My ruling, you know, obviously
5 could affect your settlement negotiations, and that's not my
6 desire.

7 MR. THOMAS: Your Honor, it's John Thomas. As
8 much as I hate to have the Court do work while we're
9 settling, it's an important issue related to the case. We
10 think it's an issue that can make an impact on what we're
11 doing. So I -- from my perspective, Your Honor, I would ask
12 the Court to take it under submission.

13 THE COURT: I will work on it no matter what you
14 tell me. The question is whether we should issue an opinion
15 on it before you all conclude your settlement negotiations
16 because the opinion is likely to alter settlement
17 negotiations.

18 MAN 4: I'm happy to have the opinion issue.

19 MR. FISHEL: Michael Fishel for FLNG. I
20 respectfully disagree. I think right now things, while
21 they're certainly progressing, they're slight -- they're
22 tenuous. And you know, Mr. Koster said about a limitation
23 of liability. We're obviously taking that into
24 consideration, and that would be a significant give on our
25 part.

1 And ultimately, I think throwing a ruling in the
2 midst of settlement discussions could significantly alter
3 the thinking (indiscernible). And we would simply ask
4 perhaps -- and I understand Your Honor's going to work on
5 it, but some type of abatement for at least a week to at
6 least let the parties get a crack at this, resolve it.

7 THE COURT: Let's assume -- and believe this is
8 not the decision.

9 MR. FISHEL: Understood.

10 THE COURT: It could be the decision, as I
11 indicated before, that I review it and that I have you
12 replead. When is confirmation set for?

13 MR. FISHEL: December 16th.

14 THE COURT: 16th?

15 MR. FISHEL: 16, 1-6.

16 THE COURT: So if I delay issuing the ruling, then
17 I want to shorten the time for you to file your amended
18 complaint so that I can still have a reasonable decision out
19 before confirmation.

20 MR. FISHEL: Understood.

21 THE COURT: So...

22 MR. FISHEL: Well, I guess, Your Honor, not to put
23 you on the spot, how long do you think it would take you to
24 issue a ruling? Are we talking about days or weeks?

25 THE COURT: Days.

1 MR. FISHEL: Days.

2 THE COURT: What I'm thinking I should do is to
3 not issue anything before the hearing on the 25th. But once
4 I issue it to maybe limit you all to as short as seven days
5 to file your amended complaint, which means we can then hold
6 hearings on it. But I don't want to put people -- it's not
7 fair to burden you all --

8 MR. FISHEL: No, no, I --

9 THE COURT: -- the day of the confirmation
10 hearing, but we did have a hearing today and --

11 MR. FISHEL: That would --

12 THE COURT: -- if I'm going to delay the ruling,
13 that's a reason to burden you all.

14 MR. FISHEL: Your Honor, that would work. That
15 would --

16 THE COURT: Mr. Thomas, can you live with that?

17 MR. THOMAS: Yes, Your Honor.

18 THE COURT: Okay. Well, then on the 25th -- so
19 we're now going to have the hearing on the 25th no matter
20 what, we're going to have a status conference on the motion
21 to dismiss. And I will not issue a ruling prior to that
22 status conference. I may issue it at the status conference
23 as an oral ruling, but I will not issue it before them so
24 that we can see if you all are making progress towards
25 settlement. And then if you are, we may delay that a few

1 more days. But I would think by next Monday. I mean, it's
2 really not that much I need to do. I think I need to go
3 back and -- in fairness to everybody, I need to go read the
4 complaint with care to see what I think about its current
5 pleadings.

6 MR. FISHEL: Totally.

7 THE COURT: And that's -- as I've already said,
8 the idea of me dismissing it without giving you a chance to
9 replead I think is very low. So it may not be that
10 monumental of a decision anyway, but...

11 MR. FISHEL: Understood. And you know, we
12 certainly commend the debtors and we've tried. And I think
13 they would recognize our approach as we're not -- I've said
14 this from day one, we want the company to be successful. We
15 want them to emerge, but we have to preserve our rights.
16 And we're not trying to blow up the plan here. But we also
17 have our own rights and our own discovery here. And we are
18 trying to get to the table, but the party that's missing at
19 this table is the insurer.

20 THE COURT: Who's the insurer?

21 MR. THOMAS: Your Honor, Zurich has the primary.

22 THE COURT: And who's Zurich's lawyer?

23 MAN 4: Ackerman. I've forgotten his name. He's
24 I believe in the Houston office, but it's the Ackerman firm
25 who's representing them. Now, I will say this, that maybe

1 that's counsel in the Zachry -- or the Zurich analysis or
2 coverage position with regard to the FLNG. It may be
3 somebody different on the other case involving the motor
4 defect. We've received an agreement to fund the defense in
5 a reservation of rights. I don't know if they've engaged
6 outside counsel. I can find that out, Your Honor.

7 THE COURT: Look, I'm not going to order Zurich to
8 appear, but I am going to make a docket entry that I am
9 respectfully requesting Zurich appear at the hearing on the
10 25th so that we can determine the status of settlement
11 negotiations and make it clear to them they're not ordered
12 to appear. It would really be helpful to me, though, to
13 hear from them. I want to give them an opportunity to be
14 here and would appreciate it if they could come.

15 MAN 5: And Your Honor, we'll make sure that they
16 receive that request.

17 THE COURT: Thank you. I assume no objection from
18 you to encouraging the insurers to play a role.

19 MAN 6: None whatsoever. None whatsoever.

20 THE COURT: Okay. Is there anything else we can
21 do today? Mr. Koster?

22 MR. KOSTER: No, Your Honor. Thank you for your
23 time.

24 THE COURT: Thank you. We'll see you all on the
25 25th. Thank you. We're in recess until 1:30.

1 (Whereupon these proceedings were concluded at

2 11:15 AM)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
Motion to Dismiss by the Insurers	55	8
Subrogation Lawsuits	55	22
1426	60	7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned to the right of the line number 6.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: November 22, 2024

**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

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at <https://www.txs.uscourts.gov/>.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at <https://www.txs.uscourts.gov/> or by calling (713) 250-5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner
Clerk of Court