

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

JAMES R. BLACKMON, JUSTIN M.
ROZELLE, ERIC A. MYERS, and JERED
MUNSON, individually and as representatives
of a class of similarly situated persons, on
behalf of the ZHI 401(K) RETIREMENT
SAVINGS PLAN,

Plaintiffs,

v.

ZACHRY HOLDINGS, INC., THE
COMPENSATION AND BENEFITS COMMITTEE
OF ZACHRY HOLDINGS, INC.; and DOES No. 1-
10, Whose Names Are Currently Unknown,

Defendants.

Case No: 5:20-cv-00988-JKP-ESC

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

***IF YOU WERE A PARTICIPANT IN THE ZHI 401(K) RETIREMENT SAVINGS PLAN BETWEEN
AUGUST 21, 2014 AND FEBRUARY 18, 2022, YOU COULD RECEIVE A PAYMENT AND YOUR
LEGAL RIGHTS WILL BE AFFECTED BY THIS CLASS ACTION SETTLEMENT.***

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

This Notice advises you of the settlement (“Settlement”) of a lawsuit against Zachry Holdings, Inc. (“Zachry”) and the Compensation and Benefits Committee of Zachry Holdings, Inc. (“Committee”) (collectively, “Defendants”). In the lawsuit, Plaintiffs, James R. Blackmon, Justin M. Rozelle, Eric A. Myers and Jered Munson (collectively, “Plaintiffs” and with Defendants, the “Parties”), allege that Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”) by, among other things, failing to perform proper oversight of the ZHI 401(k) Retirement Savings Plan (“Plan”). Defendants deny these allegations and deny that they engaged in any improper conduct. **YOU SHOULD READ THIS ENTIRE NOTICE CAREFULLY BECAUSE YOUR LEGAL RIGHTS WILL BE AFFECTED, WHETHER YOU ACT OR NOT.**

Your rights and options, and the deadline for you to object if you are opposed to the Settlement, are explained in this Notice.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this Notice? 1
2. What is this lawsuit about? 1
3. What is a class action lawsuit?..... 1
4. Why is there a settlement? 1
5. How do I get more information about the Settlement? 1
6. Who will administer the Settlement? 2

THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE

7. What does the Settlement provide?..... 2
8. How may I benefit from the Settlement? 2
9. How do I submit a claim for a Settlement Payment?..... 2
10. What are the Plaintiffs receiving from the Settlement? 3

THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP

11. What do I give up by participating in the Settlement?..... 3

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?..... 3

OPTING OUT OF THE SETTLEMENT

14. Can I exclude myself from the Class? 3

OBJECTING TO THE SETTLEMENT

15. What does it mean to object? 3
16. What is the procedure for objecting to the Settlement, including any objection to Class Counsel’s Motion for Attorneys’ Fees and Expenses or Case Contribution Award?..... 3,4

THE COURT’S FAIRNESS HEARING

17. When/where will the Court decide whether to approve the Settlement? 5
18. Do I have to attend the Fairness Hearing? 5
19. May I speak at the Fairness Hearing? 5

IF YOU DO NOTHING

20. What happens if I do nothing at all? 5

1. Why did I get this Notice?

You have been identified as a participant, Former Participant, Beneficiary or Alternate Payee of a participant or Former Participant, of the Plan at any time on or after August 21, 2014, through and including February 18, 2022 (the “Class Period”).¹

You are receiving this Notice because you have a right to know about the proposed settlement of a class action lawsuit in which you are a potential Class Member before the Court decides whether to approve the Settlement.

This Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to get them.

The lawsuit is pending in the United States District Court for the Western District of Texas (the “Court”). It is known as *Blackmon, et al. v. Zachry Holdings, Inc., et al.*, No. 5:20-cv-00988-JKP-ESC (W.D. Tex.) and is brought against Defendants.

2. What is this lawsuit about?

On August 21, 2020, Plaintiffs filed an action against Defendants, alleging that they violated ERISA by, among other things, failing to perform proper oversight of the Plan. Since the filing of the action, the parties engaged in litigation, including amending the pleadings to reflect ongoing investigation into the claims and other developments, exchanging substantial document productions, and briefing a motion to dismiss. In October 2021, the Parties mediated the action and ultimately were able to reach the terms of the Settlement explained in this Notice. Defendants have denied and continue to deny any wrongdoing or liability and would continue to vigorously defend the lawsuit if the proposed Settlement is not approved.

3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “class representatives” sue on their own behalf and on behalf of other people who they allege have similar claims. One court resolves all the issues for all class members in a single lawsuit. Plaintiffs are the proposed class representatives in this lawsuit, and are sometimes referred to in this Notice as the “Class Representatives” or as “Plaintiffs.”

4. Why is there a settlement?

The Parties have agreed to the Settlement after extensive negotiations. By agreeing to a settlement, the Parties avoid the costs and risks of further litigation, and Plaintiffs and the other members of the Settlement Class will receive compensation. Class Counsel have conducted an extensive review of the evidence in the case and the potential risks and benefits of continued litigation. Plaintiffs and Class Counsel agree that the Settlement is in the best interest of the Settlement Class. The Court has not made any finding that Defendants have done anything wrong or violated any law or regulation.

5. How do I get more information about the Settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement (“Settlement Agreement”), which is available at www.strategicclaims.net/zachry401k, by contacting Class Counsel (*see* answer to question 12 for contact information) or the Settlement Administrator (*see* answer to question 6 for contact information), or by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.txwd.uscourts.gov/>.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

¹ Capitalized terms not otherwise defined in this Notice shall have the same meaning as in the Settlement Agreement, which is available at strategicclaims.net/zachry401k/.

6. Who will administer the Settlement?

The Settlement Administrator, Strategic Claims Services, will administer the Settlement, including the processing of the Former Participant Claim Form, if applicable, that you may need to fill out and send in to receive any settlement payment. You may contact the Settlement Administrator by: (a) sending a letter to Zachry 401k Settlement Administrator, c/o Strategic Claims Services, 600 N Jackson St #205, Media, PA 19063; (b) sending an e-mail to info@strategicclaims.net; (c) visiting the Settlement website at www.strategicclaims.net/zachry401k; or (d) calling toll-free at 866-274-4004.

THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE

7. What does the Settlement provide?

Defendants have agreed to pay a total of \$1,875,000 to the Class Members (“Gross Settlement Amount”), with up to 33 1/3% of that amount to be paid to Class Counsel in attorneys’ fees, and expenses to the extent approved by the Court, as well as \$15,000 (“Case Contribution Fee”) to be paid to each of the Class Representatives to the extent approved by the Court. The amount that will be available for distribution to Class Members (known as the “Net Settlement Amount”) will be the Gross Settlement Amount *minus* the amounts used for other approved settlement purposes (Case Contribution Fees, Court-approved Attorneys’ Fees and Expenses to Class Counsel, Administration Expenses, and certain taxes and tax-related costs).

8. How may I benefit from the Settlement?

You may benefit by receiving payment of a portion of the Net Settlement Amount. The amount paid to each participant and Former Participant will be determined by a Plan of Allocation. As explained below, if you are a participant, or Beneficiary or Alternate Payee of a participant and you have an Active Account in the Plan, you do not need to take any action in order to receive payment under the Settlement. If you are a Former Participant, or a Beneficiary or Alternate Payee of a Former Participant and you do not have an active account in the Plan, you will need to submit a Former Participant Claim Form by the deadline for submission in order to receive payment under the Settlement. Payments made to participants, or to Beneficiaries or Alternate Payees of a participant who have Active Accounts in the Plan under the Settlement shall be made into these persons’ individual investment accounts in the Plan. Payments made to Former Participants, or to Beneficiaries or Alternate Payees of Former Participants who do not have Active Accounts in the Plan under the Settlement may be made either by check or tax-qualified rollover to an individual retirement account or other eligible employer plan.

9. How do I submit a claim for a Settlement Payment?

If you are a participant, or a Beneficiary or Alternate Payee of a participant and you have an Active Account in the Plan, you do not need to submit a claim to be eligible for a payment under the Settlement. Your payment amount will automatically be calculated by the Settlement Administrator. If you are a Former Participant, or a Beneficiary or an Alternate Payee of a Former Participant and you do not have an Active Account in the Plan, you must submit a Former Participant Claim Form by the deadline for submission in order to be eligible for a payment under the Settlement. “Former Participant” means a member of the Settlement Class who does not have an Active Account (*i.e.*, a balance greater than \$0) as of September 30, 2021.

If you are a Former Participant, or a Beneficiary or Alternate Payee of a Former Participant and you do not have an Active Account in the Plan, and want to receive any monetary benefits from the Settlement, you must submit the Former Participant Claim Form by no later than June 20, 2022. You must mail the Former Participant Claim Form to the address shown on the Form.

A Former Participant Claim Form will be deemed submitted when it is actually received by the Settlement Administrator at the address listed in the Form.

Even if you do not submit a Former Participant Claim Form, you will be bound by the Settlement. (See answer to question 14 below.)

10. What are the Plaintiffs receiving from the Settlement?

Class Counsel intends to ask the Court to award each Class Representative a Case Contribution Fee of up to \$15,000 in recognition of the work and effort they expended on behalf of the Class.

THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP

11. What do I give up by participating in the Settlement?

Each Member of the Settlement Class gives Defendants a “release.” A release means you give up your rights to sue Defendants or receive any benefits from any other lawsuit against Defendants if the lawsuit asserts similar claims or relates in any way to the practices or decisions at issue in this lawsuit.

For additional details about the scope of the release, consult the Settlement Agreement or contact Class Counsel. (See answer to question 5 for details.)

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Miller Shah LLP and Capozzi Adler, P.C. as Class Counsel. You will not be charged for the work of these lawyers. If you want to be represented by a different lawyer in this case, you may hire one at your own expense.

13. How will the lawyers (Class Counsel) be paid?

Class Counsel will ask the Court for an award of attorneys’ fees and expenses of up to 33 1/3% of the Settlement Amount based upon the value of the Settlement, the time they have devoted to this engagement, and the expenses they have advanced in prosecuting this matter.

OPTING OUT OF THE SETTLEMENT

14. Can I exclude myself from the Settlement Class?

No. The Settlement Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the lawsuit for all claims that were asserted in the lawsuit or are otherwise included as Released Claims as defined in the Settlement Agreement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

OBJECTING TO THE SETTLEMENT

15. What does it mean to object?

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not have any bearing on your right to receive the benefits of the Settlement if it is approved by the Court.

16. What is the procedure for objecting to the Settlement, including any objection to Class Counsel’s Motion for Attorneys’ Fees and Expenses or Case Contribution Award?

You can ask the Court to deny approval of the Settlement and/or the Motion for Attorneys' Fees and Expenses of Class Counsel or the Case Contribution Award to be requested for the Class Representative by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The Court, however, can award less than the amount requested by Class Counsel for attorneys' fees and expenses or the amount requested for the case contribution award and, if the Court does so, because of an objection or in its own discretion, although that ruling could affect the timing and amount of settlement payments, any such objection to or reduction in Class Counsel's attorneys' fees and expenses or case contribution fees to be paid to the Class Representative would not otherwise affect the finality of the Settlement.

Any objection to the proposed Settlement or Motion for Attorneys' Fees and Expenses or Case Contribution Award must be in writing in accordance with the requirements in the Preliminary Approval Order. If you file a timely written objection, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number *Blackmon, et al. v. Zachry Holdings, Inc., et al.*, No. 5:20-cv-00988-JKP-ESC (W.D. Tex.); (b) be submitted to the Court either by mailing them to the Clerk of the Court for the United States District Court for the Western District of Texas, United States Courthouse, 655 E. Cesar E. Chavez Blvd., Room G65, San Antonio Texas 78206, or by filing them in person at any location of the United States District Court for the Western District of Texas; and (c) be filed or postmarked on or before June 14, 2022. Your objection must also include (1) your full name, current address, and current telephone number, and, if represented by counsel, any of your counsel's names and contact information; (2) a written statement of your objection(s), specifying the reason(s) for each such objection, including any supporting evidence, and whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class; (3) copies of any papers, brief, or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection; (5) a list of any other objections to any class action settlements you or anyone acting on your behalf has submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years; and (6) your signature, even if you are represented by counsel.

Any party may file a response to an objection by a Class Member at least seven (7) calendar days before the Fairness Hearing.

ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.

Clerk of the Court

U.S. District Court for the
Western District of Texas
Clerk of Court
United States Courthouse
655 E. Cesar E. Chavez Blvd.,
Room G65
San Antonio Texas 78206

Class Counsel

Mark K. Gyandoh
CAPOZZI ADLER, P.C.
312 Old Lancaster Road
Merion Station, PA 19066
Tel: (610) 890-0200
mark@capozziadler.com

Defense Counsel

Deborah S. Davidson
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, Illinois 60601
Telephone: (312) 324-1000
deborah.davidson@morganlewis.com

James E. Miller
Laurie Rubinow
MILLER SHAH LLP
65 Main Street
Chester, CT 06412
Tel: (860) 526-1100
jemiller@millershah.com
lrubinow@millershah.com

THE COURT'S FAIRNESS HEARING

17. When/where will the Court decide whether to approve the Settlement?

On July 14, 2022, at 10:30 a.m., in Courtroom D on the 2nd Floor of the United States Courthouse, 262 West Nueva, San Antonio Texas 78207, the Court will hold a Fairness Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The hearing may be continued from time to time by the Court without further notice, and may be held via teleconference or videoconference. Please check the website or contact Class Counsel if you wish to confirm that the hearing time has not been changed and to determine if it is occurring in person or by video or teleconference.

18. Do I have to attend the Fairness Hearing?

No; however, you are welcome to attend at your own expense. If you file an objection to the Settlement, you do not have to go to Court to talk about it. As long as your objection is filed or postmarked by June 14, 2022 and you comply with the requirements in the answer to question 16 above, the Court will consider it. You may also send your own lawyer at your expense to attend the Fairness Hearing.

19. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the hearing. Anyone wishing to appear must state in their written objection their intention to appear at the Fairness Hearing, at your own expense.

Objectors or their attorneys intending to participate in at the Fairness Hearing must file a notice of intention to participate (and, if applicable, the name, address, and telephone number of the objector's attorney) with the Court by no later than June 29, 2022. Any objectors, or their counsel, who does not timely file a notice of intention to participate in accordance with this Paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

YOU AND ALL OTHER SETTLEMENT CLASS MEMBERS WILL BE BOUND BY THE JUDGMENT AND SETTLEMENT AGREEMENT, INCLUDING THE RELEASE OF CLAIMS, IF YOU DO NOTHING. If you are a participant, or a Beneficiary or Alternate Payee of a participant and you have an active account in the Plan, you do not need to take any action to be eligible to receive the Settlement benefits. If you are a Former Participant, or a Beneficiary or Alternate Payee of a Former Participant and you do not have an active account in the Plan, you must submit a Former Participant Claim Form by the submission deadline or you will not receive any of the settlement payments described above in the answers to questions 7 and 8.

DATED: March 21, 2022

**THIS NOTICE HAS BEEN SENT TO YOU BY ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

Zachry 401k Settlement Administrator
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063

IMPORTANT LEGAL NOTICE – PLEASE FORWARD

Mail ID
Name
Address
City, State, Zip