

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Zohar III, Corp., ¹	)	Case No. 18-10512 (KBO)
	)	
Debtor.	)	(Jointly Administered)
	)	
DAVID DUNN, AS LITIGATION	)	
TRUSTEE FOR ZOHAR LITIGATION	)	
TRUST-A,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 20-50534 (KBO)
	)	
PATRIARCH PARTNERS, LLC;	)	Related to Docket No. 1160
PATRIARCH PARTNERS VIII, LLC;	)	
PATRIARCH PARTNERS XIV, LLC;	)	
PATRIARCH PARTNERS XV, LLC;	)	
PHOENIX VIII, LLC; OCTALUNA LLC;	)	
OCTALUNA II LLC; OCTALUNA III	)	
LLC; ARK II CLO 2001-1, LIMITED;	)	
ARK INVESTMENT PARTNERS II, LP;	)	
ARK ANGELS VIII, LLC; PATRIARCH	)	
PARTNERS MANAGEMENT	)	
GROUP, LLC; PATRIARCH PARTNERS	)	
AGENCY SERVICES, LLC; and LYNN	)	
TILTON,	)	
	)	
Defendants, and	)	
	)	
180S, INC.; BLACK MOUNTAIN	)	
DOORS, LLC; CROSCILL HOME, LLC;	)	

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Zohar III, Corp. (9612). The Debtor's address is c/o Province, LLC 70 Canal Street, Suite 12E, Stamford, CT 06902. In addition to Zohar III, Corp., the Debtor's affiliates include the following debtors whose bankruptcy cases have been closed prior to the date hereof, along with the last four digits of their respective federal tax identification numbers and chapter 11 case numbers: Zohar II 2005-1, Corp. (4059) (Case No. 18-10513); Zohar CDO 2003-1, Corp. (3724) (Case No. 18-10514); Zohar III, Limited (9261) (Case No. 18-10515); Zohar II 2005-1, Limited (8297) (Case No. 18-10516); Zohar CDO 2003-1, Limited (5119) (Case No. 18-10517). All motions, contested matters, and adversary proceedings that remained open as of the closing of such cases, or that are opened after the date thereof, with respect to such closed-case debtors, are administered in this remaining chapter 11 case.

DURO TEXTILES, LLC; GLOBAL
AUTOMOTIVE SYSTEMS, LLC;
HERITAGE AVIATION, LTD.; INTREPID
U.S.A., INC.; IMG HOLDINGS, INC.;
JEWEL OF JANE, LLC; MOBILE
ARMORED VEHICLES, LLC; SCAN-
OPTICS, LLC; SILVERACK, LLC; STILA
STYLES, LLC; SNELLING STAFFING,
LLC; VULCAN ENGINEERING, INC; and
XPIENT SOLUTIONS, LLC,

Nominal Defendants.

PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
PATRIARCH PARTNER XV, LLC;
OCTALUNA LLC; OCTALUNA II LLC;
OCTALUNA III LLC; PATRIARCH
PARTNERS AGENCY SERVICES, LLC;
and PATRIARCH PARTNERS, LLC,

Counterclaim and Third-
Party Claimants,

v.

ZOHAR CDO 2003-1, LIMITED; ZOHAR
CDO 2003-1, CORP.; ZOHAR II 2005-1,
LIMITED; ZOHAR II 2005-1, CORP.;
ZOHAR III, LIMITED; ZOHAR III,
CORP.,

Counterclaim and Third-
Party Defendants.

DAVID DUNN, as Litigation Trustee for
Zohar Litigation Trust-A,

Plaintiff,

v.

LYNN TILTON, PATRIARCH
PARTNERS, LLC, PATRIARCH

Adv. Pro. No. 20-50776 (KBO)

PARTNERS VIII, LLC, PATRIARCH	)
PARTNERS XIV, LLC, PATRIARCH	)
PARTNERS XV, LLC, PATRIARCH	)
PARTNERS AGENCY SERVICES, LLC,	)
PATRIARCH PARTNERS	)
MANAGEMENT GROUP, LLC,	)
OCTALUNA LLC, OCTALUNA II LLC,	)
ARK II CLO-2001-1 LIMITED, ARK	)
INVESTMENT PARTNERS II, L.P., LD	)
INVESTMENTS, LLC, ZOHAR	)
HOLDING LLC, AND ZOHAR	)
HOLDINGS, LLC,	)
	)
Defendants.	)

**MEMORANDUM ORDER DENYING PATRIARCH
STAKEHOLDERS’ MOTION FOR RECONSIDERATION**

Following consideration of the *Patriarch Stakeholders’ Motion for Reconsideration* (the “Motion”)² and all briefing and submissions submitted in support of and in opposition to the Motion,³ **IT IS HEREBY FOUND AND ORDERED AS FOLLOWS:**

1. On August 28, 2025, following briefing and oral argument, the Court entered the *Order Directing Claw Back of Certain Documents and Striking Testimony* (the “Claw Back Order”).⁴ The Claw Back Order directed the claw back of documents produced in discovery by Jefferies Group LLC (“Jefferies”) relating to a “Precluded Matter” – the terms of a global restructuring proposal made as part of the Court-ordered mediation of the parties’ monetization disputes (the “Holdco Deal”).⁵

2. By the Motion, Patriarch⁶ requests that the Court reconsider and revise the Claw Back Order so that information contained within documents relating to Jefferies’ individual Portfolio Company valuations (“PC Valuations”) and Jefferies’ resulting financing commitments to Ms. Tilton to assist her purchase of certain Portfolio Companies (“Jefferies Financing”) are

² Adv. D.I. 1160.

³ Adv. D.I. 1161, 1162, 1198, 1202.

⁴ Adv. D.I. 1156; *see also* Adv. D.I. 1009, 1026, 1032, 1033 (related briefing).

⁵ “Precluded Matters” consist of “(a) the fact that any proposal was made during the mediation; (b) the terms of any proposals during the mediation; (c) any party’s formulation of a proposal to be made in the Mediation; (d) any party’s assessment of a proposal received in the mediation; and (e) communications among the parties to the mediation concerning any potential or actual proposal made in the mediation.” Adv. D.I. 441 (*Order (I) Granting Plaintiff’s Motion for a Protective Order and an Order to Modify and/or Quash Subpoenas to Nonparties and (II) Providing for Related Relief*).

⁶ Capitalized terms used but undefined herein shall have the meanings ascribed to them in the Motion.

excluded from the Court's claw-back directive and permitted to be used for all purposes in these proceedings.⁷ The Trust opposes Patriarch's request. For purposes of this Memorandum Order, the Court will refer collectively to the information at issue as the "Jefferies Materials."

3. By the Court's count, this is its fifth decision regarding the confidentiality of the Holdco Deal since 2020.⁸ The parties' disputes on this topic are all variations on the same theme – the use of the Holdco Deal for defensive and offensive purposes in these proceedings and the Debtors' bankruptcy cases. The Trust and Patriarch are familiar with the history, and the Court will not spend its limited time recounting the past. It will limit its remarks to only what are necessary to dispense with the Motion.

4. Patriarch moves for reconsideration pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, made applicable to the above-captioned proceedings by Rule 7054 of the Federal Rules of Bankruptcy Procedure. Rule 54(b) provides that an interlocutory order, like the Claw Back Order, "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."⁹ "Under Rule 54(b), a movant 'must still establish good cause for why the court should visit its prior [interlocutory] decision,' and a court 'may permit reconsideration [of an interlocutory order] whenever consonant with justice to do so.'"¹⁰ Patriarch asserts that reconsideration of the Claw Back Order is proper for two reasons.

5. Patriarch first argues that the Claw Back Order overlooks and contradicts a binding determination of the United States Court of Appeals for the Third Circuit that the Jefferies Materials are not subject to the mediation confidentiality this Court has maintained in these proceedings pursuant to the applicable Local Rule 9019-5.¹¹ The Trust argues that the Third Circuit has made no such determination, and that this argument was already raised by Patriarch and rejected by the Claw Back Order.

⁷ The Claw Back Order also struck portions of deposition testimony that relate to a Precluded Matter. This relief is not subject to the Motion.

⁸ Bankruptcy Case, D.I. 1389 (Feb. 7, 2020 Hr'g Tr.) (finding no waiver and striking certain portions of filed documents relating to the parties' monetization timeline disputes that revealed confidential mediation information); Bankruptcy Case, D.I. 3113 (striking portion of Patriarch's administrative expense claim, precluding mediation parties' introduction into the record of any testimony, documents, or information concerning the Precluded Matters, and ordering amendments by parties to adversary proceeding pleadings); Adv. D.I. 440 & 441 (striking Patriarch's requests for production, quashing Patriarch's subpoenas, ordering amendments to the Trust's pending complaint, and precluding discovery concerning the Precluded Matters); Adv. D.I. 1156 (the Claw Back Order).

⁹ FED. R. CIV. P. 54(b) ("[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.").

¹⁰ *Price v. United States*, No. CR 21-32-GBW-1, 2023 WL 8370107, at *2 (D. Del. Dec. 4, 2023) (alterations in original) (quoting *Qazizadeh v. Pinnacle Health Sys.*, 214 F. Supp. 3d 292, 295-96 (M.D. Pa. 2016)).

¹¹ See *infra* note 8.

6. In February 2022, the Court entered an order referred to in these proceedings as the “Strike Order.”¹² The Strike Order was affirmed on appeal by The Honorable Thomas L. Ambro, United States Circuit Judge, sitting by designation for the United States District Court for the District of Delaware.¹³ Judge Ambro’s decision was then affirmed by the Third Circuit.¹⁴

7. The part of the Third Circuit’s decision relevant to Patriarch’s reconsideration request addresses Patriarch’s argument that the Debtors forfeited the protection of mediation confidentiality during the 2019 bankruptcy proceedings of Dura Automotive Systems, LLC (“Dura”), a Portfolio Company.¹⁵ In those proceedings, the Debtors elicited testimony from a representative of Jefferies about the Holdco Deal and the related Jefferies Financing to evince Dura’s value.¹⁶ To decide the forfeiture issue before it, the Third Circuit weighed whether the Debtors used the information revealed by Jefferies in such a manner necessitating a finding of implied waiver of confidentiality:

In the context of the attorney-client privilege, this Court has instructed that parties may not use privileged information both as a ‘shield’ and a ‘sword.’ If a party agrees to disclose only favorably privileged documents while keeping for itself the unfavorable ones to gain an advantage in litigation, this partial disclosure may constitute an implied waiver. Courts consider whether one party took advantage of another and if partial disclosure created an unfair advantage when deciding whether partial disclosure forfeits a privilege as to all or some of privileged information.¹⁷

The court ultimately held that the Debtors’ use of the Jefferies information did not constitute forfeiture in light of their purpose in eliciting the testimony:

Considering the posture at which this information was elicited on cross-examination at a different bankruptcy proceeding, it is not evident that the Debtors sought to use the information as a ‘sword’ or that it took advantage of Patriarch Stakeholders. The information elicited on cross-examination was in connection to the Portfolio Company’s value, not the global restructuring proposals made during the mediation. It was not an attempt to present a one-sided

¹² Bankruptcy Case, D.I. 3113.

¹³ *Patriarch Stakeholders v. Zohar III Corp. (In re Zohar III, Corp.)*, Civ. No. 1:22-mc-119-TLA (D. Del.), D.I. 22 (Sealed), D.I. 24 (Redacted).

¹⁴ *In re Zohar III Corp.*, No. 23-2549, 2024 WL 1929021 (3d Cir. Apr. 23, 2024).

¹⁵ *Id.* at *4.

¹⁶ See *In re Dura Auto. Sys., LLC*, Case No. 19-06741 (Bankr. M.D. Tenn.), D.I. 198 (Oct. 23, 2019 Hr’g Tr.).

¹⁷ *Zohar III Corp.*, No. 23-2549, 2024 WL 1929021, at *4 (internal quotations and citations omitted).

story using this information and would be inappropriately viewed as a forfeiture of confidentiality.¹⁸

8. The Third Circuit did not make a whole-cloth determination that the Jefferies Materials are excepted from mediation confidentiality. Therefore, the Court's decision to order claw-back of the Jefferies Materials as a Precluded Matter does not violate any alleged "binding determination" imposed upon it by the appellate decision.¹⁹

9. Perhaps recognizing that its description of the Third Circuit's decision on the Strike Order is, putting it kindly, a stretch too far, Patriarch back-pedals in its reply paper and re-frames its position. It contends that the Court erred when it concluded that the Jefferies Materials are a Precluded Matter by ignoring an alleged central distinction of the Third Circuit between portfolio company valuation information and the Holdco Deal. But the Court need not entertain this new argument made in the reply. And regardless, Patriarch's reliance on this distinction for purposes of determining what is a Precluded Matter (as opposed to whether forfeiture occurred) is misplaced. The Jefferies Financing and the underlying PC Valuations are intertwined with the Holdco Deal, which is a Precluded Matter. It would not be fair to allow Patriarch to use the Jefferies Materials as evidence of value in these proceedings because the Trust would be foreclosed from using any relevant Precluded Matter to rebut, implicating the very concern of prejudice explored by the Third Circuit to reach its forfeiture decision.

10. Patriarch next argues that following oral argument it discovered evidence that Bardin Hill, a mediation party, disclosed materials prepared by Jefferies in connection with the Jefferies Financing to third parties and then relied on the information to represent to third parties that sufficient value existed in the Portfolio Companies to satisfy claims in full. Because Patriarch wishes to use the Jefferies Materials to similarly prove value in these proceedings, it urges the Court to revise the Claw Back Order in the interest of justice.

11. The Court agrees with the Trust that the materials Patriarch provides on this point do not support Patriarch's position. The documents rely on publicly available Jefferies' testimony from the Dura proceedings and unidentified information gained from discussions with Bardin Hill.²⁰ There is one reference to an anticipated "deal", but no details of the "deal" are provided except to note their confidentiality.²¹ It is also not clear whether the "deal" referenced is the Holdco Deal. But even if it was, such a disclosure does not warrant reconsideration of the Claw Back Order.

12. To protect the integrity and overall effectiveness of mediations, the cloak of confidentiality imposed over them should be lifted only in limited circumstances and in a surgical manner so as to avoid undue harm to the participants and their confidentiality expectations. In these proceedings, the Third Circuit has instructed that a mediation participant's selective

¹⁸ *Id.* (internal quotations and citations omitted).

¹⁹ Adv. D.I. 1161 at 2.

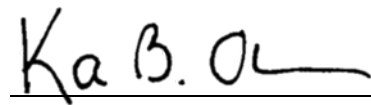
²⁰ Adv. D.I. 1062, Ex.1-3.

²¹ *Id.*, Ex.4.

disclosure of protected information should be remedied only as is necessary to eliminate an advantage caused by the disclosure.²² Bardin Hill is not a party to these proceedings and will not be using the Jefferies Materials to support claims against Patriarch. Therefore, there is no unfair advantage gained by the Trust because of Bardin Hill's behavior that would warrant reconsideration of the Claw Back Order.

13. Because Patriarch has not sufficiently shown that good cause exists to reconsider the Claw Back Order, the Motion is **DENIED**.

Dated: October 21, 2025
Wilmington, Delaware

A handwritten signature in black ink, appearing to read "Ka B. Owens", written over a horizontal line.

Karen B. Owens
Chief Judge

²² *Zohar III Corp.*, No. 23-2549, 2024 WL 1929021, at *5 (determining that the Debtors gained no advantage and therefore did not forfeit their right to mediation confidentiality after they failed to object when another mediation participant revealed confidential information).