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

In re:	)	Case No. 23-90611 (MI)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*,[1]	)	Chapter 11
Debtors.	)	(Jointly Administered)

CORRECTED OMNIBUS (I) MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR EXCLUSIVE LEAVE, STANDING, AND AUTHORITY TO PROSECUTE AND SETTLE CERTAIN CLAIMS, CAUSES OF ACTION, AND CLAIM OBJECTIONS ON BEHALF OF THE DEBTORS' ESTATES AND (II) CLAIM OBJECTION

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at http://ecf.txsb.uscourts.gov on or before January 5, 2024, pursuant to the *Notice of Fifth Extension of the Challenge Period Under the Final DIP Order Solely with Respect to the Official Committee of Unsecured Creditors* [Docket No. 972]. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk on or before January 5, 2025. Otherwise, the Court may treat this pleading as unopposed.

[1] The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at http://www.kccllc net/incora/. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

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The Official Committee of Unsecured Creditors (the "Committee") of Wesco Aircraft Holdings, Inc., *et al.* (collectively, "Incora," the "Company," or the "Debtors"), by and through its undersigned counsel, hereby files this omnibus standing motion and claim objection (this "Motion and Claim Objection") for entry of an order, in the form annexed hereto as **Exhibit A** (the "Proposed Order"), pursuant to sections 105, 502, 1103, and 1109 of title 11 of the United States Code (the "Bankruptcy Code"), and rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) granting the Committee exclusive standing and authority to commence, prosecute, and settle certain claims, causes of action, and objections (the "Proposed Claims") on behalf of the Debtors' estates against Platinum Equity Advisors, LLC and certain subsidiaries and investment funds managed or controlled by it, including Wolverine Top Holding Corporation ("Wolverine TopCo" and, collectively, "Platinum"), the employees of Platinum that have served on Incora's board of directors, including Michael Fabiano, John Holland, Louis Samson, Mary Ann Sigler, and Malik Vorderwuelbecke (collectively, the "Platinum Directors"), Patrick Bartels, Incora's independent director ("Bartels"), Wilmington Savings Fund Society, FSB as successor indenture trustee and notes collateral agent with respect to the 2024 Secured Notes, the 2026 Secured Notes, the Unsecured Notes, the New 1L Notes, and the New 1.25L Notes (each, as defined herein) (in such capacities, "WSFS"), Carlyle Global Credit Investment Management, L.L.C. and certain subsidiaries and investment funds managed or controlled by it, including Falcon Aerospace Holdings, LLC ("Falcon" and, collectively, "Carlyle"), Spring Creek Capital, LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "Spring Creek"), Senator Investment Group LP and certain subsidiaries and investment funds managed or controlled by it (collectively, "Senator"), Silver Point Capital, LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "Silver Point"), Pacific Investment

Management Company LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "PIMCO"), Olympus Peak Asset Management LP and certain subsidiaries and investment funds managed or controlled by it (collectively, "Olympus Peak" and, together with WSFS, Carlyle, Spring Creek, Senator, Silver Point, and PIMCO, collectively, the "Participating Noteholders"), Bank of America, N.A., as administrative agent, collateral agent, and swingline lender ("BOA" or the "ABL Agent") and the other lenders and issuing banks under the Debtors' Revolving Credit Agreement (the "ABL Credit Agreement") from time to time (collectively, the "ABL Lenders"), and any holders of any equity, debt, or liens or recipients of any other transfers described herein necessary to effectuate any requested relief, and any subsequent transferees of the transfers sought to be avoided herein ("Doe Defendants 1-100" and, together with Platinum, the Platinum Directors, Bartels, the Participating Noteholders, the ABL Agent, and the ABL Lenders, collectively, the "Defendants"), including, without limitation, authorizing the Committee to file an adversary complaint against the Defendants, in substantially the form attached hereto as **Exhibit B** (the "Proposed Complaint"), and (ii) disallowing certain claims of the Defendants under section 502 of the Bankruptcy Code for the reasons set forth herein.[1] In support of this Motion and Claim Objection, the Committee respectfully represents as follows:[2]

PRELIMINARY STATEMENT

1. The Committee seeks standing to assert, on behalf of the Debtors' estates, the claims described herein (the "Estate Claims") that could potentially result in the avoidance by the Debtors' estates of over a billion dollars of obligations, the avoidance of liens on estate assets purportedly securing such obligations, and the recovery for the benefit of the estates of hundreds

[1] The Proposed Complaint is incorporated into this Motion and Claim Objection by reference.

[2] The Committee reserves all rights to seek standing to pursue additional claims against the Defendants and claims against all parties other than the Defendants.

of millions of dollars fraudulently transferred as well as substantial damages for breach of fiduciary duty. The Proposed Complaint asserts colorable claims with a value that far exceeds any potential cost of prosecution, and the Debtors have waived any right to bring the Estate Claims under the terms of their postpetition financing or have otherwise declared their lack of intention to bring them. The Committee also objects to the allowance of claims for unmatured interest and those asserted by Defendants that have not returned avoidable transfers. For the reasons set forth herein, the Motion and Claim Objection should be granted.

2. The Estate Claims arise from three separate, but ultimately connected, transactions: Platinum's highly-leveraged acquisition in 2020 of Wesco Aircraft Holdings, Inc. ("Aircraft Holdings" and, together with its subsidiaries immediately prior to such date, collectively, "Wesco") through a merger with Platinum's U.K.-based portfolio company, Pioneer Holdings, LLC ("Pattonair"), the highly-controversial "uptier" transaction (the "Uptier Transaction") that closed in March 2022 and triggered the two state court litigations that are currently at the center of these cases, and certain amendments to the asset-backed revolving credit facility (the "ABL"). The Estate Claims seek, *inter alia*, remedies for fraudulent transfers against the prepetition bondholders who financed Platinum's purchase of Wesco, which did not provide the Debtors with reasonably equivalent value for the obligations incurred and security interests granted; Platinum and a Carlyle subsidiary, Falcon, for having received proceeds of such financing for less than reasonably equivalent value; the Participating Noteholders who engaged in the Uptier Transaction that provided the Debtors with less than reasonably equivalent value, in each case, at a time when the Debtors were insolvent; and the ABL Lenders who received additional liens on unencumbered property without providing reasonably equivalent value in return. The Committee also seeks standing to prosecute a preference claim against Platinum, and breach of fiduciary duty and related

claims against Platinum and the Debtors' board of directors for, *inter alia*, approving fraudulent transfers made for the benefit of Platinum, which controlled the Debtors and at all times prioritized Platinum's financial interests over the Company's in blatant disregard of its fiduciary duties. Finally, the Committee seeks standing to prosecute aiding and abetting breach of fiduciary duty claims and equitable subordination against the Participating Noteholders and claims arising from modifications to the ABL Credit Agreement.

3. As alleged in the Proposed Complaint, on August 9, 2019, after years of declining performance, Wesco agreed to be taken private by an affiliate of Platinum in a leveraged buyout (the "LBO"). In connection with the LBO, Platinum required Wesco to merge with Pattonair and saddled the combined Company with \$2.364 billion in debt, almost twice the combined Company's \$1.2 billion aggregate pre-merger debt load. When the LBO closed in January 2020, the Company—rebranded as "Incora"—was insolvent by all objective measures. Incora received no value for over \$1.1 billion that immediately went out the door to Carlyle and other Wesco shareholders, nor did it receive value in exchange for an additional [redacted] in transaction fees, [redacted]. Those transfers, and the debt incurred to fund them, are avoidable as constructive fraudulent transfers under applicable state law. The LBO, and Platinum's pattern of prioritizing its interests over the Company's following the LBO, also give rise to claims for breach of fiduciary duty and equitable subordination against Platinum and the Platinum Directors.

4. Any attempt to hand-wave the Debtors' struggles as a COVID-19 story must be ignored. The reality is that the over-leveraged capital structure that Platinum imposed upon Incora left the Company insolvent, with unreasonably small capital, and unable to pay its debts when they became due from the moment the LBO closed. Platinum [redacted]

[redacted][3] Within months of the LBO closing, Platinum had [redacted]. By November 2020, Incora had exhausted its meager liquidity and was in desperate need of cash, which resulted in Platinum injecting an [redacted]—$25 million of which was papered as a "loan" (the "<u>Wolverine Note</u>") that should be recharacterized as equity.

5. Still, the next year, Incora was again running out of liquidity which led to its decision to enter into Amendment No. 6 (as defined below) of the ABL Credit Agreement, pursuant to which, the ABL Agent received additional collateral from new guarantors, and [redacted], without providing consideration for such benefits. In addition to Amendment No. 6, the continued problems with liquidity led Platinum to cause Incora to enter into the Uptier Transaction, by which the Debtors offered new "super senior" secured debt at par plus accrued interest in exchange for certain of the bonds issued as part of the LBO. Because the Uptier Transaction was premised on an exchange of avoidable debt, it too is avoidable as a constructively fraudulent transfer. In addition, as part of the Uptier Transaction, the Debtors massively overpaid for secured and unsecured notes that were

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[3] [redacted] Unless otherwise indicated, all references to Exhibits are to exhibits attached to the accompanying *Declaration of Darren Smolarski in Support of Corrected Omnibus (I) Motion of the Official Committee of Unsecured Creditors for Exclusive Leave, Standing, and Authority to Prosecute and Settle Certain Claims, Causes of Action, and Claim Objections on Behalf of the Debtors' Estates and (II) Claim* <u>*Objection*</u> (the "<u>Smolarski Declaration</u>"), filed contemporaneously herewith.

trading below par (the secured notes were trading for approximately 85 cents on the dollar and the unsecured notes around 50 cents on the dollar), paid an additional [redacted] (adding to the growth of the Company's debt obligations over time) to the Participating Noteholders, and agreed to onerous indemnification obligations that were then cited as one of the causes for the Debtors' chapter 11 filing. The Uptier Transaction provided the Debtors with less than reasonably equivalent value at a time when the Debtors were insolvent. The Committee thus seeks standing to bring constructive fraudulent transfer claims arising from the Uptier Transaction for this independent reason. Moreover, the Uptier Transaction is avoidable as an actual fraudulent conveyance because Platinum, whose intent is imputed to the Company, used the Uptier Transaction to improve its position in the capital structure and intentionally hindered, delayed or defrauded all creditors excluded from participating.

6. Platinum and its affiliated directors also abused their control over the Debtors to engage in self-dealing through the Uptier Transaction: specifically, to exchange [redacted] the $25 million unsecured Wolverine Note for secured debt. The self-dealing exchange is an avoidable "insider" preference under applicable law and gives rise to additional claims for breach of fiduciary duty and equitable subordination. In addition, the Participating Noteholders knowingly enabled Platinum's breach of fiduciary duty and are independently liable for aiding and abetting that breach.

7. Following its appointment, the Committee began an independent investigation into the LBO, the Uptier Transaction, and the Company's other prepetition activities. As set forth above, the Committee has identified, *inter alia*, avoidable transfers and claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and equitable subordination relating to the LBO, the Uptier Transaction, and Platinum's conflicted and self-interested decision-making

on behalf of the Debtors. The Debtors waived their ability to pursue most of the Estate Claims under the terms of their postpetition financing facility or have otherwise declared their intention to release, rather than pursue, the Estate Claims.[4] However, unsecured creditors will receive no meaningful distribution in these cases if these Estate Claims are released. The Committee, as the sole fiduciary for unsecured creditors, must be granted exclusive standing to pursue or settle these claims on behalf of the Debtors' estates.

8. In addition, because the Committee has direct standing under section 502 of the Bankruptcy Code to object to the allowance of claims, the Committee hereby objects to the allowance of certain of the Defendants' Claims. In particular, under the Final DIP Order, the Debtors have stipulated to claims in favor of Silver Point and PIMCO that include a $195 million "make-whole" premium that should be disallowed as unmatured interest under section 502(b)(2) of the Bankruptcy Code and the opinion of the Court of Appeals for the Fifth Circuit in *Ultra Petroleum Corp. v. Ad Hoc Comm. Of OpCo Unsecured Creditors (In re Ultra Petroleum Corp.)*, 51 F.4th 138, 147 (5th Cir. 2022), *cert. denied*, 143 S. Ct. 2495 (2023). Furthermore, the Defendants who received fraudulent transfers recoverable under section 550(a) of the Bankruptcy Code are not entitled to any recovery from the Debtors' estates until they repay those transfers pursuant to section 502(d) of the Bankruptcy Code.

9. For the foregoing reasons, and as more particularly set forth herein, the Committee should be granted authority to prosecute the Proposed Complaint, and the Committee's objections to the Defendants' claims should be sustained.

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[4] *See Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [D.I. 396] (the "Final DIP Order"), ¶¶ G, 19; *Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et. al*. [D.I. 962] (the "Chapter 11 Plan"), Art. VIII(D).

JURISDICTION AND VENUE

10. The Court has jurisdiction over this Motion and Claim Objection pursuant to 28 U.S.C. § 1334. This Motion and Claim Objection is a core proceeding under 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The Committee consents to the entry of a final order or judgment by this Court in connection with this Motion and Claim Objection if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

FACTUAL BACKGROUND

A. Overview Of Incora's Business

12. Incora is a provider of supply chain management services in several industries and the largest independent distribution and supply chain services provider in the global civilian and military aerospace industry.[5] In its distribution business, Incora offers aerospace hardware and parts, electronic products, chemicals, and tooling products, which it procures, tracks, and provides to customers from service centers around the world.[6] In its service business, Incora manages all aspects of its customers' supply chains, including procurement, warehouse management, and onsite customer services, offering both customized supply-chain management plans and ad hoc direct sales.[7]

[5] *See Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* [D.I. 13] (the "First Day Declaration"), ¶ 6.

[6] *See id*.

[7] *See id*.

B. The 2020 LBO

1. Carlyle's Ownership Stake In Wesco.

13. On or around August 29, 2006, Carlyle made its first investment in Wesco through one of its subsidiaries, Falcon.[8] Carlyle, through Falcon, purchased a majority stake of approximately 83.8% of the company's common stock from Wesco's previous owner and founder.[9] In 2011, Carlyle decided to take Wesco public via an initial public offering (the "IPO"). As set forth in a July 2011 prospectus, Carlyle sought to sell approximately 21 million shares of Wesco and set a price range of $15.50 to $17.50 per share.[10] The IPO disappointed, with Carlyle receiving only $15.00 per share.[11] Following the IPO, Carlyle reduced its ownership stake to 65.5% of Wesco's common stock,[12] and would continue to reduce its stake to 23.4% in subsequent years.[13]

2. Wesco Board Explores Sale After Years Of Declining Performance.

14. In November 2017, after several years of declining performance, Wesco began exploring the possibility of a sale of the company. Wesco's Board of Directors (the "Board") asked a team of investment bankers at Morgan Stanley to review the company's market position,

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[8] Carlyle Group Management L.L.C. is the general partner of The Carlyle Group L.P., which is a publicly traded entity listed on NASDAQ. The Carlyle Group L.P. is the sole shareholder of Carlyle Holdings I GP Inc., which is the managing member of Carlyle Holdings I GP Sub L.L.C., which is the general partner of Carlyle Holdings I L.P., which is the managing member of TC Group, L.L.C., which is the managing member of TC Group IV Managing GP, L.L.C., which is the managing member of Falcon. *See 2019 Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 2) (Sep. 13, 2019), at 139 (the "2019 Proxy Statement").

[9] *See* Keating, Dave, "Carlyle Acquires Wesco Aircraft" (Smolarski Ex. 3), dated Aug. 29, 2006; *see also Amendment No. 4 to Form S-1 Registration Statement* of Wesco Aircraft Holdings, Inc. (Form S-1) (Smolarski Ex. 4) (Jul. 14, 2011), at 5 (the "2011 Prospectus").

[10] *See* (Smolarski Ex. 4), 2011 Prospectus at 2; *see also* Reuters, "Wesco Aircraft prices IPO below range – underwriter" (Smolarski Ex. 5), dated Jul. 27, 2011.

[11] *See* Smolarski Ex. 5.

[12] *See* Meikle, Brad, "Wesco Aircraft, A Carlyle IPO, Disappoints In Debut" (Smolarski Ex. 6), dated Aug. 15, 2011.

[13] *See Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 7) (Dec. 14, 2018), at 45 (the "2018 Proxy Statement").

stock price, performance, and operational and valuation benchmarking and discussed potential strategic buyers and an illustrative process for a review of the company's options.[14] In parallel, Wesco's Board hired an outside consulting firm, AlixPartners, to undertake a comprehensive review of its business operations.[15]

15. Although Wesco's Board decided not to press forward with a sale process at that time, the work performed by AlixPartners resulted in the development of an operational improvement initiative known as "Wesco 2020" which launched in May 2018.[16] Nonetheless, between August 2018 and April 2019, Wesco's stock price dropped from $13.95 to approximately $8.25.[17]

16. In January 2019, Wesco's Board established an ad hoc committee to oversee a formal sale process and hired investment bankers at J.P. Morgan and Morgan Stanley to advise Wesco.[18] Later that same month, on January 31, 2019, Wesco management announced the company's negative financial results for the first fiscal quarter of 2019 (which ended December 31, 2018). Although sales for the first quarter grew by about 9% year-over-year (faster than expected), the ***cost*** of these sales increased more than 10% and selling, general and administrative expenses also grew faster than sales. As a result, pre-tax income at Wesco declined more than 10% to just $22.11 million. With the news, Wesco's stock dropped 12.7%.

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[14] *See* Smolarski Ex. 2, 2019 Proxy Statement at 38.

[15] *See id.*

[16] *See id.*

[17] *See id.* at 137.

[18] *See* Smolarski Ex. 2, 2019 Proxy Statement at 39-40.

3. Wesco's Business Woes Continue As Merger Deal Comes Together With Platinum.

17. In February 2019, Wesco management prepared an initial set of management projections for use with potential bidders.[19] Those financial projections showed steadily increasing earnings from 2019 to 2023 leading to a projected Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") of $271 million in 2023 (a substantial increase from Wesco's actual EBITDA of $161 million in 2018).[20] Wesco's Board of Directors, which included two members appointed by Carlyle,[21] approved the projections for use with bidders on April 8, 2019.[22] During the second quarter earnings call, Wesco management said that Wesco had been winning contract renewals by accepting lower margins. Wesco also reported operating income that was significantly down year-over-year at $29.8 million compared to $33.2 million in the same quarter the prior year.[23]

18. Wesco's bankers initially cast a wide net in their search for a buyer for Wesco. Between April and May 2019, Wesco entered into confidentiality agreements with 14 potential

[19] *See* Smolarski Ex. 2, 2019 Proxy Statement at 40.

[20] *See id.* at 73.

[21] *See Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 8) (Jan. 26, 2012), at 5-9; *see also Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 9) (Dec. 13, 2012), at 7-8; *Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 10) (Dec. 19, 2013), at 5-7; *Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 11) (Dec. 18, 2014), at 5-9; *Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 12) (Dec. 16, 2015), at 8-10; *Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 13) (Dec. 16, 2016), at 5-7; *Proxy Statement Pursuant to Section 14(a) of the Securities and Exchange Act of 1934* of Wesco Aircraft Holdings, Inc. (Schedule 14A) (Smolarski Ex. 14) (Dec. 15, 2017), at 4-9; 2018 Proxy Statement (Smolarski Ex. 7) at 7-9.

[22] *See* Smolarski Ex. 2, 2019 Proxy Statement at 40-41.

[23] Form 10-Q for the Quarterly Period Ended June 30, 2019 of Wesco Aircraft Holdings, Inc. (filed Aug. 8, 2019). at 27 (citation omitted).

bidders.[24] The cast of potential acquirors, however, rapidly narrowed.[25] By June 2019, only four potential bidders remained, including Platinum, which intended to merge Wesco with Pattonair, a portfolio company it had acquired in 2017.[26] Prior to the LBO and subsequent merger, Pattonair had [redacted].[27]

19. Platinum [redacted].[28] After [redacted].[29] And, most importantly from Platinum's point of view, the merger [redacted].[30] That is, Platinum's [redacted].

[24] *See* Smolarski Ex. 2, 2019 Proxy Statement at 41.

[25] *See id*. at 44.

[26] *See id.* (noting only four potential bidders remained, one of them being Platinum).

[27] [redacted]

[28] [redacted]

[29] [redacted]

[30] [redacted]

20. By July 2019, despite extensive outreach and preliminary interest from more than ten parties, only two parties, Platinum and another private equity firm ("PE Bidder B"), remained interested in a potential transaction involving Wesco.[31] During its diligence, Platinum [redacted].[32] In commenting on [redacted]"[33]

21. Of particular concern, Platinum [redacted],[34] [redacted][35] On July 28, 2019, in a call between Wesco and Platinum, Platinum raised "additional diligence concerns and questions . . . regarding the company's financial performance for the first nine months of fiscal 2019, particularly as relates to future financial projections [and] sales margins and trends . . . ."[36] On August 1, 2019, after Platinum expressed concerns about its financial projections, Wesco took the highly unusual step of preparing a second set of projections to replace the initial projections

[31] *See* Smolarski Ex. 2, 2019 Proxy Statement at 41-44.

[32] [redacted]

[33] [redacted]

[34] [redacted]

[35] [redacted]

[36] *See* Smolarski Ex. 2, 2019 Proxy Statement at 45-46.

bidders received in April.[37] The second set of projections reduced the initial management projections for nearly every financial metric, including free cash flow, in every single year of the five-year forecast period and, in particular, decreased projected EBITDA for 2023 from $271 million to $224 million.[38] PE Bidder B dropped out of the process shortly thereafter, leaving Platinum as the only party to submit a binding bid for Wesco.[39]

4. Platinum And Wesco Sign Merger Agreement.

22. On August 5, 2019, despite its concerns about Wesco's financial condition, Platinum submitted its final offer of $11.05 per share, which Wesco's Board quickly accepted.[40] On August 9, 2019, Wesco announced that it had entered into a definitive merger agreement to be acquired by an affiliate of Platinum (the "Merger Agreement").[41] The press release announcing the transaction indicated that the cash purchase price represented a premium of approximately 27.5 percent to the 90-day volume weighted average share price for the period ended May 24, 2019, which was the last trading day prior to media speculation regarding a potential transaction involving Wesco.[42]

23. On the day the merger was announced, Wesco released its financial results for the third fiscal quarter of 2019, ending on June 30, 2019.[43] Although gross profits were up slightly

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[37] *Id*.

[38] *See id*. at 74.

[39] *See id.* at 46-47.

[40] *See id*. at 5, 37; *see also* "*Wesco Aircraft to Be Acquired by Platinum Equity for USD 1.9bn*" DEBTWIRE (Aug. 9, 2019) (Smolarski Ex. 21) (the "Merger Announcement").

[41] *See id.*; *see also* Agreement and Plan of Merger, by and among Wolverine Intermediate Holding II Corporation, Wolverine Merger and Aircraft Holdings, dated as of Aug. 8, 2019, Wesco_2004_0012112 (Smolarski Ex. 22) (the "Merger Agreement").

[42] *See* (Smolarski Ex. 21) Merger Announcement at 1.

[43] *See generally* Form 10-Q for the Quarterly Period Ended June 30, 2019 of Wesco Aircraft Holdings, Inc. (filed Aug. 8, 2019).

year-over-year, they were down compared to the prior quarter.[44] Gross margin continued to decline—this time, by 1.6 percentage points from the prior quarter to 23.9%—and fell to 24.8% for the first nine months of the fiscal year.[45] Wesco also reported a material decline in operating income.[46]

24. Wesco's shareholders voted overwhelmingly in favor of the merger. Given Wesco's downward trajectory, their enthusiasm made sense. In securities litigation that followed, Wesco's Board of Directors would defend its decision to sell the company, characterizing the decline in Wesco's business prospects as "dramatic," an "undeniable reality," and "worse than predicted by management."[47] Wesco's Board went so far as to gloat that, "[a]n overwhelming 99.9 percent of the shares present . . . voted to approve the merger. And it is good that they did, because Wesco's fourth quarter and fiscal year 2019 financial results were lower than ***both*** sets of projections [*i.e.*, the initial April 2019 and the lower August 2019 projections]."[48]

25. Pursuant to the Merger Agreement, Platinum, through its indirect subsidiary Wolverine Intermediate Holding II Corporation (defined in the Merger Agreement as "Parent"), was required to deposit funds sufficient to purchase and cancel all outstanding Wesco shares at a price of $11.05 per share.[49] Although the Merger Agreement contemplated that Platinum would obtain debt financing to consummate the merger,[50] Platinum expressly acknowledged and agreed

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[44] *See id.* at 27.

[45] *See id*.

[46] *See id.*

[47] *See Mem. of Law in Supp. of Defs.' Mot. to Dismiss the Second Am. Class Action Compl.*, *Gray v. Wesco Aircraft Holdings, Inc.*, Case No. 1:19cv-08528 (S.D.N.Y. Jan. 24, 2020) [Docket No. 25], at 2; *see also Brief for Defendants-Appellees*, *Gray v. Wesco Aircraft Holdings, Inc.*, Case No. 20-01530 (2d. Cir. Oct. 6, 2020) [Docket No. 47], at 2, 39 (Smolarski Ex. 24).

[48] *See Mem. of Law in Supp. Of Defs.' Mot. to Dismiss the Second Am. Class Action Compl.*, *supra* note 47, at 9.

[49] *See* (Smolarski Ex. 22) Merger Agreement at § 2.1.

[50] *Id*. at § 5.10(a).

that obtaining such financing was "not a condition" to closing the transaction.[51] In fact, so long as Wesco complied with its obligations under the Merger Agreement, certain representations and warranties of Wesco remained true and correct, and there had been no material adverse effect (a notoriously high bar in M&A transactions),[52] Platinum was obligated to close.[53] In the event that Platinum did not fulfill its obligation to close, whether due to a failure to raise debt financing or otherwise, Wesco could seek specific performance.[54]

5. Platinum Struggles To Place Buyout Debt.

26. Undeterred by Wesco's declining performance, Platinum pushed forward with its plan to leverage its acquisition with $2.3 billion in debt, nearly twice the combined Company's pre-merger debt load. Platinum's head of debt capital markets, Kevin Smith,[55] [redacted] Wolverine Escrow, LLC ("Wolverine Escrow"), [redacted].[56] The Debtors' [redacted]

[51] *Id.* at § 5.11(e).

[52] *See, e.g.*, Ann M. Lipton & Eric L. Talley, *Twitter v. Musk: The "Trial of the Century" That Wasn't*, 40(4) DEL. LAW. 10 (2022) (Smolarski Ex. 23).

[53] (Smolarski Ex. 22) Merger Agreement at § 6.3.

[54] *Id.* at §§ 7.1(g), 7.4(a), 8.14.

[55] *See Biography of Kevin P. Smith, Managing Director*, https://www.platinumequity.com/people/kevin-smith/ (last visited Nov. 26, 2023) (Smolarski Ex. 25).

[56] [redacted]

[redacted][57] The [redacted].[58]

27. As part of its efforts to market the financing, in September 2019, Platinum [redacted].[59] To arrive at [redacted].[60] [redacted].[61]

28. In describing [redacted];[62] [redacted]

[57] [redacted]

[58] [redacted]

[59] [redacted]

[60] [redacted]

[61] [redacted] *see also* "*Wesco pricing drifts wider as buysiders scrutinize Platinum's proposed Pattonair merger – Deal Preview*" DEBTWIRE (Oct. 25, 2019) (Smolarski Ex. 31).

[62] [redacted] (the "October 2020 Investment Committee Update").

[redacted].[63] As mentioned before, Platinum [redacted].[64]

29. In mid-October, Platinum [redacted] (the "October 2019 Lender Presentation").[65] In its October 2019 Lender Presentation, Platinum [redacted][66] Platinum [redacted][67]

30. Tellingly, these forecasts [redacted]. While Platinum [redacted].[68] In fact, Platinum's [redacted][69] In

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[63] [redacted]

[64] [redacted]

[65] [redacted]

[66] [redacted]

[67] [redacted]

[68] [redacted]

[69] [redacted]

Platinum's [redacted].[70]

[redacted][71]

31. In addition, in describing the Company's [redacted].[72] In comparison, Platinum's [redacted].[73]

32. When speaking to prospective lenders, Platinum [redacted]

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70 [redacted]

71 [redacted]

72 [redacted]

73 [redacted]

[redacted][74] However, Platinum and the underwriters [redacted]:[75]

> [redacted].[76]
>
> [redacted].[77]
>
> [redacted][78]
>
> [redacted].[79]

33. According to press reports, prospective lenders were critical of both the "highly adjusted financials" being used to market the deal and the Company's "high strung credit profile" which left it with "little room for error."[80] The financial press noted that, "several buysiders following the deal are only giving the company credit for a fraction of Platinum's projected synergies, which would imply leverage of 8.9x - 10.7x, far in excess of the company's marketed

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[74] [redacted] *see also* "*TERMS: Wesco schedules roadshow for USD 1.575bn notes backing LBO and merger*" DEBTWIRE (Oct. 18, 2019) (Smolarski Ex. 37); *see also* "*TERMS: Wesco Aircraft sets talk for USD 600m loan backing LBO and merger*" DEBTWIRE (Oct. 21, 2019) (Smolarski Ex. 38).

[75] [redacted]

[76] [redacted]

[77] [redacted]

[78] [redacted]

[79] [redacted]

[80] Email from Debtwire to K. Smith, dated Oct. 25, 2019 (Smolarski Ex. 42) at PLAT-AP-029932.

numbers."[81] Reports noted significant "execution risk of merging the two companies," and that "Moody's also expects free cash flow of roughly USD 0m to negative USD 50m."[82]

34. Platinum thus faced a decision: decrease the amount of leverage in Incora's capital structure by writing a bigger equity check or switch to an all high-yield bond structure that would burden Incora with significantly more leverage, a higher cost of capital, nearer-term maturities, and tighter covenants. Had Platinum [redacted].[83] However, given [redacted][84] Platinum [redacted].[85]

35. Instead, Platinum chose to [redacted].[86] Reflecting on the decision at the time, Platinum personnel [redacted]

[81] *Id.*

[82] *Id.*

[83] [redacted]

[84] [redacted]

[85] [redacted]

[86] [redacted].

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[redacted][87]

36. However, even this [redacted][88] In an effort to [redacted].[89] To further sweeten the deal, Platinum [redacted][90] In the end, however, even with a gaudy yield of 13.76%,[91] the underwriters [redacted].[92] Carlyle (whose subsidiary Falcon stood to receive approximately $255 million in cash at closing for the buy-out of its equity ownership of Wesco) [redacted].[93]

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87 [redacted]

88 [redacted]

89 [redacted].

90 [redacted]

91 *See* "*Banks Breathe Life Into Scrapped Bond Sales in Hot Market*", Bloomberg, dated Nov. 15, 2019 (Smolarski Ex. 45).

92 [redacted]

93 [redacted]

37. Yet, even with Carlyle's [redacted], the LBO financing [redacted] Platinum [redacted] Wolverine Intermediate Holding Corporation ("HoldCo"), Incora's indirect holding company, [redacted] paid-in-kind notes due 2028 (the "HoldCo PIK Notes"). Platinum [redacted].[94] Due to HoldCo's placement in the hierarchy of the Company's organizational structure, the HoldCo PIK Notes were structurally subordinated to virtually all other obligations of the Company and functionally the equivalent of preferred stock.

38. According to one Bloomberg article published at the time, the difficulty in placing the financing had arisen from investors being put off by "overly rosy projections," the lack of liquidity and equity contribution from Platinum, and too much risk:

> When a group of lenders led by Bank of America Corp. tried to sell financing for a buyout of Wesco Aircraft Holdings Inc., potential investors balked. Too risky they said.
>
> After a month of negotiations, the banks took an extreme measure to salvage the deal: they agreed to hold on to a $100 million bond that won't pay interest for eight years and will rank more junior to the rest of the financing, according to people with knowledge of the matter.
>
> The payment-in-kind bond, among the riskiest types of high-yield financing because issuers pay interest on debt with more debt, was

94 [redacted]

> added at the last minute, to allay investor concerns about the company's liquidity and to get the deal done, the people said.
>
> . . . .
>
> The financing faced resistance by investors from the get-go, and underwent several changes. The first sign of trouble emerged when plans for a $600 million term loan were ditched in favor of a larger junk-bond offering. The banks raised $2.1 billion from high-yield bonds.
>
> The PIK helped plug a gap in the financing and reduced the amount that Platinum Equity planned to borrow from a revolving credit facility, the people said, asking not to be named discussing a private transaction.
>
> Some investors like the Wesco business itself, but several were put off by a number of features in the financing. Among concerns were overly rosy projections about future costs savings from the merger and an equity contribution from Platinum Equity that some deemed too small, the people said.
>
> Bankers added a number of sweeteners, including hiking the pricing of the debt. Wesco's $525 million of unsecured bonds maturing in eight years offered a yield of 13.76%, one of the highest this year.[95]

39. Kevin Smith [redacted].[96] As finally constituted, the financing (collectively the "LBO Debt" and the related security interests, the "LBO Liens") consisted of:

- an asset-backed revolving credit facility comprised of a $300 million U.S. facility and a $75 million U.K. facility, plus a $100 million "accordion";
- $650 million in senior secured notes due in 2024 priced at 8.5% interest and 99 OID for yield of 8.75% (the "2024 Secured Notes");
- $900 million in senior secured notes due 2026 priced at 9% interest and 99 OID for yield of 9.2% (the "2026 Secured Notes" and, together with the 2024 Secured Notes, the "Secured Notes");

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95 [redacted]

96 [redacted]

- $525 million in unsecured notes due 2027 with 13.125% interest and 97 OID for yield of 13.75% (the "Unsecured Notes"); and
- $100 million in HoldCo PIK Notes with 13.75% interest.

40. As part of [redacted][97] Although Platinum's [redacted][98] Mr. Smith and the other members of the Platinum deal team [redacted].[99] When at least [redacted].[100] And when the underwriters [redacted][101] The reason for Platinum's [redacted] [redacted][102]

---

97 [redacted]

98 [redacted]

99 [redacted]

100 [redacted]

101 [redacted]

102 [redacted]

41. From the road show for the originally intended capital structure, to the ultimate closings of the modified financings, Incora's [redacted].[103]

6. Wesco [redacted] Underperform In 2019 Prior To Closing.

42. While recognizing that Wesco had weak historical performance and several years of downward trends, Platinum [redacted][104] But [redacted][105] For example, in late July 2019, prior to execution of the Merger Agreement, [redacted][106] Consideration of whether [redacted][107]

43. Shortly following the execution of the Merger Agreement, it became apparent that Platinum had [redacted]

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[103] [redacted]

[104] [redacted]

[105] [redacted]

[106] [redacted]

[107] [redacted]

[redacted][108] In fact, Wesco's [redacted][109] Wesco finished the fourth fiscal quarter with EBITDA of just $36 million, approximately 20% lower than the prior quarter. [redacted][110]

44. Further exacerbating [redacted] For example, for the quarter ended December 31, 2019, [redacted].[111] By early January 2020, [redacted][112] [redacted]

[108] [redacted]

[109] [redacted]

[110] [redacted]

[111] [redacted]

[112] [redacted]

[redacted][113]

45. In short, in the period of time between the signing of the Merger Agreement and the closing—when the LBO Debt and LBO Liens would be assumed by Incora—the Company's [redacted].[114]

7. **The ABL Facility.**

(a) **The Creation And Structure Of The ABL Facility.**

46. Financing for the LBO included an ABL with $375 million of commitments with an "accordion" feature that would allow the Company to access to another $100 million of liquidity. In materials [redacted].[115]

47. The ABL was governed by the ABL Credit Agreement, and was entered into on January 9, 2020, by Aircraft Holdings and certain affiliates and subsidiaries (together, the "ABL Borrowers").[116] Platinum was heavily involved in the structuring and negotiating the ABL on

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[113] [redacted]

[114] [redacted]

[115] [redacted]

[116] Additional signatories to the ABL Credit Agreement include: (i) Pattonair USA, Inc.; (ii) Wesco Aircraft Hardware Corp, (iii) Haas Holdings, LLC, and (iv) Haas Group International, LLC. As discussed herein, the Borrowers also include: (i) Pattonair Group Limited, (ii) Pattonair (Derby) Limited, (iii) Pattonair Limited, (iv) Wesco Aircraft EMEA, Ltd., and (v) Wolverine Intermediate Holdings II Corporation.

Incora's behalf.. The ABL Credit Agreement provided for [redacted]: (a) [redacted],[117] [redacted] (b) [redacted][118] [redacted]

48. [redacted]

49. To facilitate the ABL and contemporaneously with its closing, Platinum caused certain ABL Borrowers and other subsidiaries (the "Guarantors")[119] to enter into a guaranty

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[117] [redacted]

[118] [redacted]

[119] [redacted]

agreement (the "Guaranty Agreement"), which, among other things, provided secured guaranties of the obligations under the ABL Credit Agreement, with certain exceptions. [redacted][120] [redacted][121] [redacted][122] [redacted].[123]

(b) **The ABL Draws.**

50. Due to Platinum's difficulties in raising debt, operational performance at [redacted] Wesco [redacted] as well as [redacted].[124]

[120] [redacted]

[121] [redacted]

[122] [redacted]

[123] [redacted]

[124] [redacted]

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51. Of that amount, [redacted].[125]

52. Further, and at the same time as [redacted][126] [redacted] was an understatement, [redacted][127]

53. Finally, the need to [redacted].[128] Specifically, between the time of signing the Merger Agreement and the closing, the Company's [redacted]

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125 [redacted]

126 [redacted]

127 [redacted]

128 [redacted]

[redacted][129]

54. As the effort to place the financing dragged on and the closing of the merger got pushed off, one Platinum employee [redacted]

> [redacted][130]

Platinum thus [redacted].[131]

55. When Wesco management [redacted][132] Instead, Platinum [redacted][133]

56. When Pattonair [redacted] [redacted][134] Platinum stated that, [redacted]

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[129] [redacted]

[130] [redacted]

[131] [redacted]

[132] [redacted]

[133] [redacted]

[134] [redacted]

[redacted][135] Later, describing how the LBO had been funded, Platinum [redacted][136]

57. Platinum's decision to [redacted][137] Thus, every dollar drawn to manage liquidity—from the LBO funding, to [redacted]—was a dollar less that the Company could direct towards growing its business (which it desperately needed to do to service its newly acquired $2.3 billion debt burden) or to serve as a buffer for the proverbial rainy day.

8. Issuance Of The Secured Notes And Unsecured Notes.

58. The 2024 Secured Notes, the 2026 Secured Notes, and the Unsecured Notes became obligations of the Debtors through a four-step process. *First*, on November 27, 2019 (prior to the closing of the LBO), Wolverine Escrow (a Platinum subsidiary) issued the 2024 Secured Notes, the 2026 Secured Notes, and the Unsecured Notes under the Original Indentures (as defined

---

135 [redacted]

136 [redacted]

137 [redacted]

below)[138] [redacted].[139] Wolverine Escrow retained the proceeds of the Secured and Unsecured Notes pending the closing of the LBO in January 2020. *Second*, on the date the LBO closed, [redacted] Wolverine Merger Corporation ("Wolverine Merger") [redacted].[140] *Third*, and immediately thereafter, Wolverine Merger paid $1.12 billion in merger consideration to Wesco's former shareholders and then merged into Aircraft Holdings and ceased to exist, leaving Aircraft Holdings (but none of its subsidiaries) liable for the Secured and Unsecured Notes and subject to the liens securing the Secured Notes.[141] [redacted],

[138] *See Indenture*, dated as of November 27, 2019, among Wolverine Escrow, LLC (to be merged with and into Wesco Aircraft Holdings, Inc.), the Guarantors from time to time party hereto, and The Bank of New York Mellon Trust Company, N.A., as Trustee and as Notes Collateral Agent; *Indenture*, dated as of November 27, 2019, among Wolverine Escrow, LLC (to be merged with and into Wesco Aircraft Holdings, Inc.), the Guarantors from time to time party hereto, and The Bank of New York Mellon Trust Company, N.A., as Trustee and as Notes Collateral Agent; *Indenture*, dated as of November 27, 2019, among Wolverine Escrow, LLC (to be merged with and into Wesco Aircraft Holdings, Inc.), the Guarantors from time to time party hereto, and The Bank of New York Mellon Trust Company, N.A., as Trustee (collectively, the "Original Indentures").

[139] ([redacted]

[140] [redacted]

[141] *See generally* Merger Agreement.

[redacted][142] [redacted].[143]

59. All of the foregoing actions [redacted].[144]

9. The LBO Transfers.

60. At the closing of the LBO in January 2020, Wolverine Merger and Parent transferred approximately $1.12 billion to Wesco's former shareholders (the "<u>LBO Equity Purchase Price</u>"),[145] including approximately $255 million to Carlyle, in exchange for their equity interests and paid [redacted] in transaction fees (the "<u>LBO Transaction Fees</u>"), [redacted] Under the Debtors' [redacted]

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[142] [redacted]

[143] [redacted].

[144] [redacted] *see*, *e.g.*, Smolarski Ex. 22.

[145] [redacted]

[redacted].[146] Despite that requirement, [redacted].[147] Even if the Debtors [redacted].[148] In addition to the foregoing, Incora [redacted]:[149]

Sources	**Uses**
ABL ($86 million at closing)[150]	Refinance existing debt ($1,257 million)
2024 Secured Notes ($650 million)	Transfer to Wesco shareholders ($1,120 million)
2026 Secured Notes ($900 million)	Transaction fees [redacted]
Unsecured Notes ($525 million)	Platinum's equity in Pattonair ($555 million)
HoldCo PIK Notes ($100 million)	[redacted]
Cash from Platinum ($266 million)	
Platinum's equity in Pattonair ($555 million)	
[redacted]	
Cash on balance sheet ($76 million)	
[redacted]	[redacted]

61. The holders of the LBO Debt were aware that the individual steps and transfers comprising the LBO were undertaken in concert with one another, and no individual step would

146 [redacted]

147 [redacted]

148 [redacted]

149 [redacted]

150 [redacted]

have occurred without the others. Indeed, the Offering Memorandum provided to prospective purchasers of the LBO Debt explained that Parent, Wolverine Merger, and Aircraft Holdings had entered into the Merger Agreement pursuant to which Parent agreed to acquire Aircraft Holdings by way of a reverse triangular merger, and that outstanding shares of Aircraft Holdings would be converted into the right to receive $11.05 per share.[151] The Offering Memorandum goes on to explain that the purchase price for the acquisition will be financed by the ABL, the Secured Notes, the Unsecured Notes, the HoldCo PIK Notes, a $266.1 million cash equity investment by Platinum, and cash on hand.[152] The [redacted].[153]

10. Incora Was Insolvent At Closing.

62. When the LBO closed, Incora was undercapitalized by all measures. In fact, [redacted][154] The Company's undercapitalization was no secret at the time. [redacted][155] In the months leading

[151] *See* Wesco Aircraft Holdings, Inc. Offering Memorandum (Nov. 13, 2019) (the "Offering Memorandum").

[152] *See id.*; [redacted]

[153] [redacted]

[154] [redacted]

[155] [redacted]

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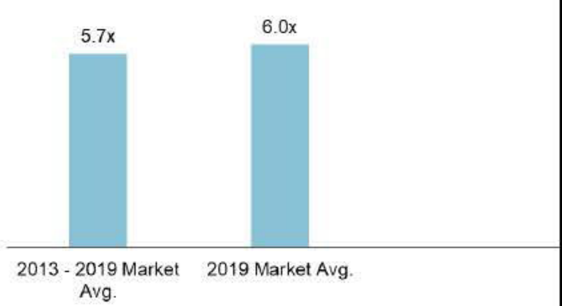
up to the bankruptcy filing, [redacted][156]

63. Objectively, the average *pro forma* leverage multiple[157] of large corporate LBOs at the time of the Incora LBO was ***6.0 times EBITDA***,[158] [redacted][159]

[redacted]



[redacted]

[redacted][160]

[156] [redacted]

[157] "Leverage multiple" meaning debt divided by some measure of profitability, commonly EBITDA.

[158] In other words, the aggregate amount of the Company's indebtedness equaled [redacted]

[159] [redacted]

[160] [redacted]

64. As overleveraged as the Company would have been [redacted] the situation at closing was actually far worse. Platinum [redacted] In the six months between the execution of the Merger Agreement and the closing of the transaction, [redacted]

65. In fact, in the [redacted][161]

[redacted]

162

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161 [redacted]

162 [redacted]

66. In [redacted][163]

67. Wesco's [redacted] underperformance leading up to the closing of the merger, combined with its cash flow difficulties and expensive debt, led to the Company closing the LBO with an unsustainable capital structure from day one. Platinum had sized the amount of the debt [redacted][164]

68. As an illustration of its unsustainable leverage, Incora, [redacted].[165] Run-rating this performance for a full year of performance, which is a common methodology utilized in gauging and analyzing the recent performance of a business, would imply [redacted]. When multiplied by [redacted],[166] the [redacted] implies a valuation of approximately [redacted] the Company's *pro forma* debt of $2,364 million.

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163 [redacted]

164 [redacted]

165 [redacted]

166 [redacted].

69. The inclusion of [redacted] to the Company's EBITDA would not make the Company solvent. On the contrary, according to [redacted] Adding these [redacted] to the [redacted] figure and multiplying by the same multiple [redacted] implies valuations of approximately [redacted], both of which [redacted] the company's *pro forma* debt of $2,364 million.

70. The implications are even worse if the same analysis is applied to [redacted].[167] Annualizing that quarterly result would suggest that if the Company could not improve its performance going forward, [redacted] These valuations—and their implications for the Company's insolvency at the time of the LBO—are bolstered by [redacted]. For example, [redacted][168]

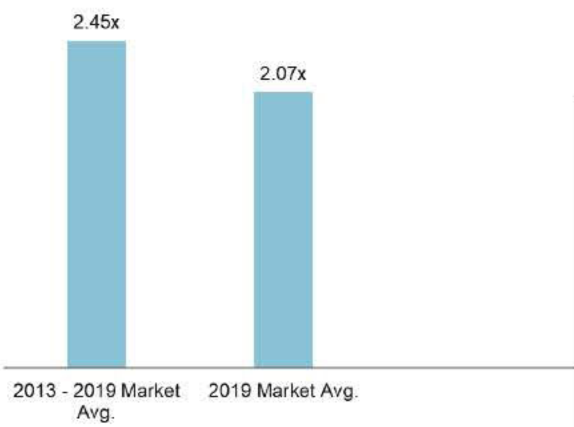
71. Incora's [redacted] is also indicative of the Company's insolvency at the time of the merger. The average *pro forma* coverage ratio (*i.e.*, earnings less capital expenditures necessary to maintain the business, divided by cash interest expense) for similar transactions was ***2.1 times***, [redacted]

[167] [redacted]

[168] [redacted]

[redacted]. Even worse, [redacted]

[redacted]



[redacted]

[redacted]

169

72. Simple math highlights the severity of Incora's liquidity issues at the time that the LBO closed. Incora had approximately [redacted] In addition, Platinum projected approximately [redacted] and as further explained herein, Incora was also burdened with $7 million of annual Platinum management fees. Those three uses combined add up to approximately [redacted]. In addition to those cash uses, Incora would have also needed to pay cash income taxes in the magnitude of tens of millions of dollars per year, one-time costs related to its [redacted], and manage its working capital. All of that for a business that

169 [redacted]

generated only [redacted] of EBITDA in the [redacted] and [redacted] of EBITDA in the [redacted]. And this was not news to Platinum—Platinum [redacted].[170]

73. Incora's poor financial state and credit metrics can be partially attributed to Platinum's small cash equity contribution. In the seven years prior to the LBO, the average equity contribution for a transaction of this size was approximately 42%, while Platinum contributed just $266 million in cash equity, representing a meager [redacted] of Wesco's purported [redacted] enterprise value or [redacted] Even crediting the non-cash Pattonair equity contribution at an overvalued $555 million[171] increases the total equity contribution to [redacted].[172] The lack of equity signifies overleverage, which then naturally led to and was exacerbated by the expensive debt that Platinum forced Incora to assume.

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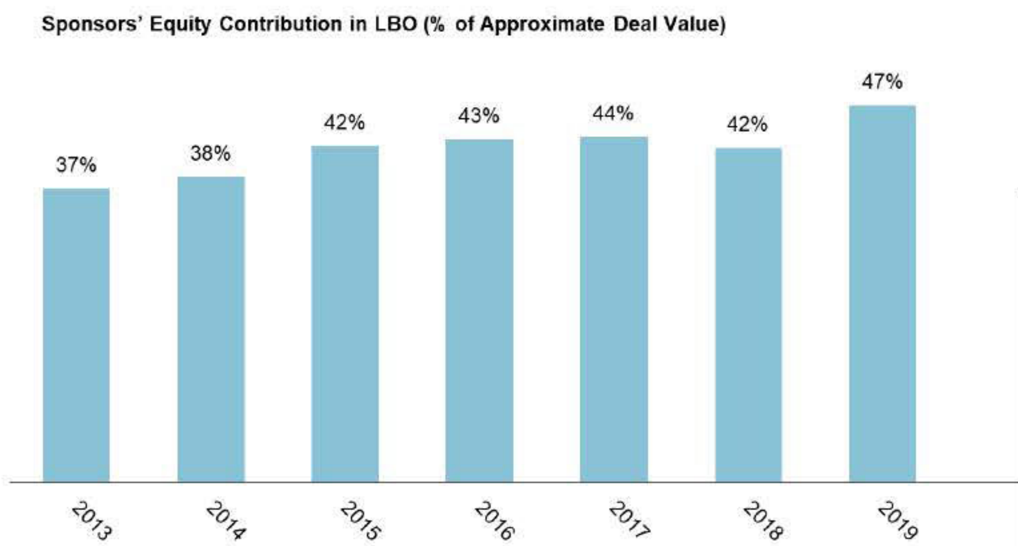
170 [redacted]

171 [redacted]

172 [redacted].



[redacted]

[173]

11. Incora's Performance After Closing Demonstrates That Its Capital Structure Was Unsustainable.

74. Incora's performance deteriorated even further after the acquisition closed and before the onset of the COVID-19 pandemic, highlighting the unsustainability of the combined Company's capital structure—irrespective of COVID. For the quarter [redacted][174] The lender presentation for the quarter [redacted] Instead, the biggest drivers of the underperformance [redacted]

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[173] Market average data from PitchBook – Leveraged Commentary & Data; [redacted]

[174] [redacted]

[redacted][175] Notably, these are [redacted].[176]

75. Between October 2019 and the end of March 2020, Incora had generated approximately [redacted] Regardless of COVID, it was clear that Incora's projections [redacted] were far removed from reality and that its capital structure was unsustainable.

[redacted][177]

[175] [redacted].

[176] [redacted]

[177] [redacted]

C. Platinum Abused Its Control To Benefit Itself At The Expense Of The Insolvent Company.

1. Platinum's Transaction and Consulting Fees.

76. In connection with the LBO closing, Platinum entered into a Corporate Advisory Services Agreement, dated as of January 9, 2020 (the "CASA"), with Wolverine TopCo, [redacted] Wolverine TopCo is not one of the Debtors in the bankruptcy (the "Chapter 11 Cases"), but rather the top holding company in the corporate structure that sits "above the borrowing group" and [redacted].[178] Under the terms of the CASA, [redacted].[179]

77. The CASA was [redacted].[180] [redacted] [redacted].[181] Moreover, while the CASA [redacted][182]

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[178] [redacted]

[179] [redacted]

[180] [redacted]

[181] [redacted]

[182] [redacted]

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78. The CASA was [redacted].[183] The CASA itself [redacted].[184] Instead, the CASA [redacted]

> [redacted]
>
> [redacted].[185]

79. Despite the fact that the CASA [redacted] Platinum directed that the Debtors [redacted].[186] There is no evidence that [redacted],[187] [redacted]-

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183 [redacted]

184 [redacted]

185 [redacted]

186 [redacted]

187 [redacted]

[redacted][188] According to the Debtors, [redacted][189]

80. Also purportedly pursuant to [redacted] the CASA, Platinum unilaterally decided to charge the Debtors a $7 million annual "management fee" (the "Management Fee").[190] However, again, there is no evidence that [redacted][191] During 2020, the Debtors [redacted].[192]

81. Starting in the first quarter of 2021, Platinum [redacted].[193] The Debtors [redacted].[194] The Debtors understood that [redacted].[195]

82. However, [redacted].[196] By January of 2022, Platinum had

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[188] [redacted]

[189] [redacted]

[190] [redacted]

[191] [redacted]

[192] [redacted]

[193] [redacted]

[194] [redacted]

[195] [redacted]

[196] [redacted]

[redacted].[197] During her deposition, Platinum CFO, Mary Ann Sigler, [redacted].[198] In fact, Ms. Sigler [redacted].[199]

2. Rather Than Address Incora's Insolvency, Platinum Focuses On Maximizing Its Own Returns.

83. By no later than April 2020—only three months after the LBO closed—it had become readily apparent that Platinum's intentional undercapitalization of Incora had left the Company in dire financial straits. On April 6, 2020, Moody's downgraded its ratings for Incora, including the Company's corporate family rating (from B3 to Caa1) and the ratings for its Secured Notes (from B3 to Caa1) and Unsecured Notes (from Caa2 to Caa3).[200] Moody's attributed the downgrade to the Company's "aggressive governance evidenced by its high tolerance for financial

[redacted]

197 [redacted]

198 [redacted]

199 [redacted]

200 *See* "*Wesco Aircraft CFR downgraded to Caa1 from B3 on earnings headwinds – Moody's*" DEBTWIRE (Apr. 6, 2020) (Smolarski Ex. 79).

risk and weak balance sheet with thin capitalization."[201] Moody's explained that the "large-sized combination of Wesco and Pattonair" created "near-term execution and integration risk in an industry where inventory optimization and consistent on-time customer deliveries are of paramount importance."[202] Moody's explained this risk was "elevated . . . against a backdrop of a highly leveraged balance sheet with modest cash reserves and pending earning headwinds from the coronavirus outbreak."[203] As a result, in the first half of 2020, the prices for the Unsecured Notes and HoldCo PIK Notes dropped to distressed levels.

84. Not long after, and [redacted].[204] In the second quarter of 2020, Platinum [redacted].[205] These [redacted]. Make no mistake, however: Platinum [redacted]. Instead, Platinum saw [redacted].

[201] *See id.*

[202] *See id.*

[203] *See id.*

[204] [redacted].

[205] [redacted]

85. In the summer of 2020, Platinum considered [redacted] However, Platinum recognized that [redacted] According to [redacted] (the "July 2020 Investment Committee Memo"), [redacted]"[206] Though there was [redacted]"[207] Platinum believed that [redacted].[208]

86. Platinum also flagged in its July 2020 Investment Committee Memo that, [redacted].[209] The July 2020 Investment Committee Memo concluded that in

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206 [redacted]

207 [redacted]

208 [redacted]; [redacted]

209 [redacted] [redacted]

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[redacted].[210] Simply put, [redacted]

87. The July 2020 Investment Committee Memo also addressed [redacted].[211] Platinum posited that [redacted].[212] Platinum's interests yet again trumped those of the Company, [redacted]

3. Subsequent Deterioration In The Company's Finances Forces Platinum's Hand.

88. On July 30, 2020, several months into the COVID pandemic and less than seven months after the acquisition closed, Moody's again downgraded Incora's credit rating.[213] The agency reduced the Company's corporate family rating (from Caa1 to Caa3) and the ratings for its

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210 [redacted].

211 [redacted]

212 [redacted]

213 *See* "*Wesco Aircraft CFR downgraded to Caa3 from Caa1 on earnings pressures – Moody's*" DEBTWIRE, Jul. 30, 2020 (Smolarski Ex. 79).

Secured Notes (from Caa1 to Caa3) and Unsecured Notes (from Caa3 to Ca).[214] The "Ca" rating expressed Moody's view that the Unsecured Notes "were highly speculative and were likely in, or very near, default."[215] Moody's noted that the operating environment created by COVID-19 "combined with a poorly capitalized balance sheet and expectations of negative free cash flow, give rise to the possibility of some form of default over the next 12 to 24 months."[216]

89. By the fall of 2020, Platinum had determined that [redacted].[217] In particular, Platinum had determined that [redacted][218] In the absence of additional investment, Platinum anticipated [redacted][219] Platinum also determined that, [redacted]"[220]

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[214] *See id*.

[215] *See Ratings Scale and Definitions*, Moody's,https://www moodys.com/sites/products/productattachments/ap075378 1 1408 ki.pdf (last visited Nov. 27, 2023) (defining Ca rating as "[o]bligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery in principal and interest.").

[216] *See* Smolarski Ex. 79.

[217] [redacted]

[218] [redacted]

[219] [redacted]

[220] [redacted]

90. Platinum decided to [redacted] "unsecured promissory note" (the "Wolverine Note") [redacted].[221] Despite the formal label affixed to the Wolverine Note, Platinum regularly [redacted]"[222] and continued to [redacted].[223] At the time [redacted]"[224]

91. The Wolverine Note was entered into by Aircraft Holding in favor of Wolverine TopCo. Aircraft Holding was the sole obligor under the terms of the Note, [redacted].[225] The terms of the Wolverine Note [redacted].[226] Due to [redacted]

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221 [redacted]

222 [redacted]

223 [redacted]

224 [redacted]

225 [redacted]

226 [redacted]

[redacted].[227] The Debtors relied [redacted][228] That is, Platinum essentially [redacted][229] Smith also attested that, [redacted]

> [redacted][230]

4. ABL Amendments.

92. As noted previously, between the LBO closing in 2020 and leading into the fall of 2021, Incora [redacted] and Platinum [redacted] Platinum searched for other liquidity-enhancing transactions and attempted to increase liquidity through the addition of certain amendments to the original ABL Credit Agreement. These modifications are reflected in the following paragraphs:

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[227] [redacted]

[228] [redacted]

[229] [redacted]

[230] [redacted]

93. On February 20, 2020, the ABL Borrowers entered into Amendment No. 1 to the ABL Credit Agreement, which provided for increases in the commitments for the U.S. Subfacility (from $300,000,000 to $380,000,000) and the UK Subfacility (from $75,000,000 to $95,000,000). [redacted][231] [redacted].[232]

94. On March 2, 2020, and April 27, 2020, the parties entered into Amendment No. 2 to the ABL Credit Agreement, and Amendment No. 3 to ABL Credit Agreement, respectively. [redacted]. [redacted]. [redacted][233] [redacted].[234]

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[231] [redacted]

[232] [redacted]

[233] [redacted]

[234] [redacted]

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95. Thereafter, on October 26, 2021, and December 31, 2021, the parties entered into Amendment No. 4 and Amendment No. 5 to the ABL Credit Agreement, respectively. [redacted] [redacted]. [redacted] [redacted][235] [redacted].[236]

96. Finally, Platinum orchestrated another amendment to the ABL Credit Agreement ("Amendment No. 6"), which sought to implement a first-in-last-out ("FILO") tranche that would sit in the ABL. [redacted] Upon information and belief, Platinum used its leverage over other Incora lenders to have them agree to this transaction.

97. On February 17, 2022, ABL Borrowers and Guarantors entered into Amendment No. 6, which provided for, among other things:

a. [redacted]

b. [redacted]

[235] [redacted]

[236] [redacted]

[redacted]

c. [redacted]

98. [redacted] Upon information and belief neither the Borrowers, their advisors, nor the Guarantors undertook any analysis to verify the accuracy of this representation. [redacted][238] [redacted].[239]

99. In contemplation of Amendment No. 6, on February 11, 2022, Platinum caused Wesco Aircraft Canada Inc., and Haas Group Canada Inc. (the "Canadian Guarantors") to enter into that certain joinder to the Guaranty Agreement (the "Canadian Joinder Agreement"), pursuant

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[237] [redacted]

[238] [redacted]

[239] [redacted]

to which, [redacted]. Upon information and belief, the Canadian Guarantors received no benefit for entering into the Canadian Guarantors Joinder Agreement, as they were not borrowers under the ABL facility.

100. Additionally, [redacted] Haas TCM de Mexico, S. de R.L. de C.V. (the "Mexican Guarantor," and together with the Canadian Guarantors, the "Foreign Guarantors") entered into a certain joinder agreement [redacted] (the "Mexican Joinder Agreement," and together, with the Canadian Guarantors, the "Foreign Joinder Agreements").

101. Upon information and belief, the Mexican Guarantors received no benefit for entering into the Mexican Joinder Agreement [redacted]. Moreover, upon information and belief, the decisions to enter into the joinder agreements were not made by the Foreign Guarantors, but rather by Platinum. Furthermore, the decisions to enter into the joinder agreements and Amendment No. 6 were not made in the Foreign Guarantors' best interests, but instead the interests of Platinum.

102. Neither Platinum nor Incora provided the Borrowers or the Guarantors with additional cash, either at the time of entering into Amendment No. 6 or thereafter in exchange for taking on these increased debt obligations. Thus, through Amendment No. 6, Platinum increased the obligations and costs of the ABL Facility without any commensurate consideration through, among other things, (a) [redacted]

[redacted],[240] (b) [redacted], and (c) [redacted].

D. The 2022 Uptier Transaction.

1. Background

103. By late 2021, Incora faced a severe liquidity crisis due to an upcoming interest payment on its Secured Notes and Unsecured Notes. Incora retained advisors and ultimately chose to pursue an "uptier" exchange with the Participating Noteholders. The Uptier Transaction triggered the two state court litigations that are currently at the center of Incora's chapter 11 cases.

104. In September 2021, Platinum engaged PJT Partners ("PJT") as an investment banker to raise incremental capital for the Debtors.[241] Although the Debtors' capital needs were substantial, PJT [redacted].[242] Instead, Platinum and the Debtors [redacted] holders of the Debtors' Secured Notes including Silver Point and PIMCO (the "Majority Secured Group").[243] Platinum and the Debtors [redacted] holders of Secured Notes holding approximately 36% of the Debtors' outstanding 2026 Secured Notes (the "Minority Secured Group").[244] Although the Minority Secured Group [redacted]

[240] Prior to Amendment No. 6 there were five (5) other amendments, one of which provided, among other things, [redacted].

[241] [redacted]

[242] [redacted].

[243] [redacted].

[244] [redacted].

[redacted].[245] It appears that [redacted]

105. The Minority Secured Group proposals demanded concessions from Platinum, including that Platinum forego its $7 million Management Fee, agree to equitize the $25 million Wolverine Note, and agree to exchange its Unsecured Notes for new notes that would be paid "in kind" through November 2024.[246] In contrast, the Majority Secured Group's proposals never required any concessions from Platinum with respect to its Management Fees, the Wolverine Note, or the interest that Platinum was set to receive on its Unsecured Notes and the Wolverine Note. Moreover, starting with the very first proposed term sheet delivered by the Majority Secured Group to Platinum, the Majority Secured Group dangled the carrot to Platinum it could be given the opportunity as part of the Uptier Transaction to exchange its Unsecured Notes for new secured notes.[247]

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[245] [redacted]

[246] *See* Debtors' Statement of Uncontroverted Facts In Support of Their Motion for Summary Judgment (Adv. P. No. 23-03091 (MI)) [ECF No. 204] ("Statement of Debtors' Uncontroverted Facts"), Ex. 16 (Formerly Secured Noteholders' Mar. 6, 2022 Proposal) at 2-3; Ex. 17 (Formerly Secured Noteholders' Mar. 11, 2022 Proposal).

[247] *See* Statement of Debtors' Uncontroverted Facts, Ex. 6 (Participating Secured Noteholders' Dec. 23, 2021 Proposal) at 1 ("Unsecured / HoldCo Noteholders (including notes held by Platinum and affiliates, if any) potentially offered the opportunity to exchange into PIK super senior secured second-out debt.").

2. Overview of Uptier Transaction.

106. The Committee will refrain from describing each step of the Uptier Transaction in detail and will focus instead on the elements of that transaction that are relevant to the Committee's claims. At a high level, the Majority Secured Group agreed to provide the Company with $250 million of additional liquidity in exchange for additional Secured Notes. The issuance of this debt was prohibited by the Original Indentures, so Incora and Participating Noteholders agreed to amend the terms of the Original Indentures to permit the new debt.

107. In exchange for those consents, Incora agreed to the Uptier Transaction, in which the Debtors purchased [redacted] in principal amount of Secured Notes [redacted] of which were held by [redacted] by issuing $1,286 million in principal amount of new first-lien senior secured notes due 2026 (the "New 1L Notes") at a price equal to the par value of the Secured Notes [redacted].[248] Immediately prior to the exchange, Silver Point and PIMCO voted to strip the liens securing the Secured Notes that were left behind, rendering those obligations unsecured.[249] The Debtors also purchased [redacted] of Unsecured Notes held by [redacted], and the $25 million Wolverine Note, by issuing $472.8 million in principal amount of 1.25-lien senior secured notes (the "New 1.25L Notes" and, together with the New 1L Notes, the "Uptier Debt") at a price equal to the par value of the Unsecured Notes and the Wolverine Notes, [redacted].[250]

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248 [redacted].

249 *See* "Fourth Supplemental Indenture – 2024 Notes" (Smolarski Ex. 86), WESCO_QE_UCC_2004_00000623, at WESCO_QE_UCC_2004_00000625-27; *see also* "Fourth Supplemental Indenture – 2026 Notes" (Smolarski Ex. 87), WESCO_QE_UCC_2004_00006065, at WESCO_QE_UCC_2004_00006067-69.

250 [redacted]

108. On February 8, 2022, the day that rumors of the Uptier Transaction first became public, the Secured Notes traded for approximately 85 cents on the dollar and the Unsecured Notes traded around 50 cents on the dollar.[251] On March 29, 2022, the day after the Uptier Transaction closed, [redacted].[252]

109. The Uptier Transaction was followed by three additional incremental debt exchanges (collectively, the "Follow-On Exchanges") in which [redacted] were permitted to exchange Secured Notes for New 1L Notes on the same terms as the initial exchange. On [redacted].[253] At the time, the 2026 Secured Notes, which by the terms of the Uptier Transaction were rendered unsecured, were trading for approximately 70 cents on the dollar.[254] On [redacted].[255] At the time, the 2026 Secured Notes were trading for

[251] *See* "Incora Working With PJT, Millbank [sic] as Company Discusses Non-Pro-Rata Uptier With Major Holders Including Pimco, Silver Point; Akin-Advised Group Assembling Blocking Position" (Smolarski Ex. 88), dated Feb. 9, 2022.

[252] [redacted]

[253] [redacted]

[254] FINRA, Fixed Income Data, Trade History for CUSIP 97789LAB2 (2022).

[255] [redacted]

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approximately 63 cents on the dollar, and 2024 Secured Notes for approximately 50 cents on the dollar.[256] On [redacted].[257] In the weeks leading up to the exchange, the 2026 Secured Notes had traded for approximately 8 to 10 cents on the dollar.[258] [redacted]

3. Platinum Uses Uptier Transaction As An Opportunity To Engage In Self-Dealing.

110. The terms of the Original Indentures expressly provided that Platinum's vote—as an insider—was to be disregarded for the purposes of calculating support for indenture amendments.[259] Therefore, Platinum's vote was not required for the Company to receive the additional $250 million in liquidity that the Uptier Transaction was purportedly designed to obtain. Nonetheless, the Company [redacted].[260] While Carlyle [redacted],[261] Carlyle [redacted]

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[256] FINRA, Fixed Income Data, Trade History for CUSIP 97789LAB2 (2022) and CUSIP 97789LAC0 (2022).

[257] [redacted]

[258] FINRA, Fixed Income Data, Trade History for CUSIP 97789LAB2 (2022).

[259] [redacted]

[260] [redacted]

[261] [redacted]

[redacted].[262] In Silver Point's and PIMCO's view, [redacted]."[263] Platinum was [redacted].[264]

111. As a result of its participation in the Uptier Transaction, Platinum [redacted] and the $25 million Wolverine Note, for [redacted] that would recover ahead of unsecured creditors in a future bankruptcy proceeding.[265] Platinum's [redacted].[266] As noted above, Platinum [redacted] [redacted].[267]

112. In its [redacted], Platinum [redacted]

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[262] [redacted]

[263] [redacted]

[264] [redacted]

[265] [redacted].

[266] [redacted]

[267] [redacted]

[redacted]. Among the contested deal points during the negotiations was whether [redacted][268] More contentious were provisions [redacted].[269] Carlyle [redacted][270]

4. Incora Was Insolvent At Time Of Uptier Transaction.

113. It was not surprising that Platinum [redacted] both prior to and after the Uptier Transaction closing in March 28, 2022, Incora was insolvent. Platinum [redacted][271] Nor would the Company's [redacted].[272] Further, the [redacted]

268 [redacted]

269 [redacted]

270 [redacted].

271 [redacted]

272 [redacted]

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[redacted] [redacted].[273] The [redacted][274]

114. The Company's decision to include the $25 million Wolverine Note in the Uptier Transaction rather than repay it at scheduled maturity in March 2023[275] is also indicative of the Company's inability to satisfy obligations as they come due—the $25 million Wolverine Note represented less than 1.0% of the Company's $2.6 billion in funded debt obligations outstanding prior to the Uptier Transaction—why pay another four years of interest (including compounding PIK interest) on such a small obligation instead of simply paying it off?

115. A presentation from [redacted]

[273] [redacted]

[274] [redacted]

[275] Assuming for the sake of argument that the Wolverine Note was truly a debt obligation, and is not recharacterized as equity as argued below.

[redacted].[276]

5. The Uptier Transaction Did Not Provide Incora With Reasonably Equivalent Value.

116. The Uptier Transaction did not provide Incora with reasonably equivalent value. In terms of benefits, Incora issued New 1L Notes in the principal amount of $250 million but only received [redacted].[277] Incora has touted certain cash-saving benefits of the Uptier Transaction, noting that the maturities on $455 million of 2024 Secured Notes were extended by two years, annual cash interest expense was reduced (although compounding, "in kind" interest continued to accrue), and the maturity of the $25 million Wolverine Note was extended by four years.[278]

117. In exchange for these benefits, the Company gave away significant value to Platinum and the Participating Noteholders. As noted in paragraphs 106 through 112, *supra*, the Participating Noteholders received new obligations [redacted] at a time when the bonds being purchased by the Company were trading materially below par. This discrepancy is a loss of value by the Company. Although the Uptier Transaction purported to decrease the Company's annual cash interest expenses, in reality, the Company gave away [redacted]

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276 [redacted]

277 [redacted]

278 *See* First Day Declaration (D.I. 13), ¶¶ 11, 83; [redacted]

[redacted]

[redacted]

118. The increase in principal and interest obligations made future refinancings of Incora's debt more difficult and more expensive to accomplish—if not impossible. The Company could barely raise the debt to fund the LBO transaction and create its initial capital structure; a refinancing of the debt created by the Uptier Transaction would mean finding parties willing to replace significantly ***more*** debt based on the credit profile of a business [redacted]

119. Moreover, the purported benefit of an extension of the maturity on the 2024 Secured Notes was illusory at best, and harmful at worst, because it was combined with a new

[redacted]

"springing" maturity provision that would actually accelerate the maturity of 100% of the New 1L Notes to 2024—including the legacy 2026 Secured Notes that were exchanged and otherwise would not have matured until 2026. If the $184 million of left-behind 2024 Secured Notes scheduled to mature on November 15, 2024 were not refinanced by October 1, 2024, the New 1L Notes maturity would spring to October 1, 2024.[279] The Company [redacted].[280] Perversely, the Uptier Transaction thus ***shortened*** rather than lengthened the Company's maturity profile because the old 2026 Secured Notes that would have matured in 2026 could now mature two years earlier in 2024 due to the springing maturity provision. And the prospect of refinancing of the legacy 2024 Secured Notes was highly speculative—unless the holders of those notes consented to lesser treatment, the Company would have to find someone willing to pay 100 cents on the dollar for notes that were trading at approximately 60 cents after the Uptier Transaction.

120. The Company also gave up value by granting indemnification to the uptier participants for liability arising out of the Uptier Transaction (the "Indemnification Obligations").[281] This effectively transferred the risk of an aggressive, highly litigable transaction entirely onto the Company. These obligations were material enough to be cited by the Debtors in the First Day Declaration as "another drain on Incora's financial resources."[282] To date, the

[279] Although various [redacted], the New 1L Notes Indenture (as defined herein) was drafted such that the springing maturity would be triggered if ***any*** legacy 2024 Secured Notes were left outstanding. *See* New 1L Notes Indenture at §§ 1.01, 4.07(b)(16).

[280] [redacted].

[281] *See* Exchange Agreement, by and among the Company, Silver Point, PIMCO, (Smolarski Ex. [108]), dated March 28, 2022 at §8.02, Indemnification; [redacted]

[282] First Day Declaration (D.I. 13) at ¶ 14.

Company has been invoiced for $13 million, and paid out approximately $12 million, on account of these indemnification obligations.[283] Nearly $8 million of such costs have been asserted since the Petition Date.[284] These costs represent an incomplete picture of the magnitude of the obligation, as only a subset of parties eligible to seek indemnification have done so to date, and the Company's obligation is ongoing.[285]

121. As to Platinum, the Debtors' [redacted][286] However, these "benefits" were largely illusory. Despite Platinum's [redacted][287] Platinum already [redacted] [redacted].[288] In fact, [redacted].[289] And to make matters even worse (for the Debtors,

[283] Debtors' Responses and Objections to the Official Committee of Unsecured Creditors' Notice of Rule 2004 Examination and First Set of Interrogatories to Debtors (Smolarski Ex. [109), dated as of Nov. 17, 2023.

[284] *Id.*

[285] *Id.* (indemnification has been sought to date on account of uptier participation by Carlyle, Senator, Silver Point, and PIMCO, an incomplete list of uptier participants).

[286] [redacted]

[287] [redacted]

[288] [redacted]

[289] [redacted]

while better for Platinum) the Uptier Transaction [redacted].[290] Platinum's CFO, Mary Ann Sigler, [redacted].[291] Moreover, the Debtors [redacted],[292] and there was [redacted] in any event. Nonetheless, the Debtors' advisors [redacted][293]

122. Nor did the Company truly receive any benefit from the touted extension of the maturity of the Wolverine Note. As described herein, the Wolverine Note bore many hallmarks of equity, rather than debt, calling into question the benefit obtained from extending its "maturity." Further, the [redacted]—in other words, the Debtors' advisors [redacted]

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290 [redacted]

291 [redacted]

292 [redacted]

293 [redacted]

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[redacted].[294] This suggests that Platinum [redacted] and, again, calls into question the value obtained through the "maturity extension."[295] Finally, as noted above, the PIK interest on the Uptier Debt provided a short-term benefit at the cost of rendering a future refinancing more expensive if not impossible.

123. Platinum's participation in the Uptier Transaction should be viewed in light of the fact that [redacted] In the Platinum October 2020 Investment Committee Update, Platinum [redacted].[296]

6. Bartels' Role In Uptier Transaction.

124. Prior to 2022, [redacted].[297] Accordingly, in an attempt to benefit from the deferential business judgment standard, the Debtors determined it necessary to employ an independent director to bless Platinum's participation in the Uptier Transaction and provide the veneer of propriety. Bartels, who was handpicked by Platinum to fill this role, was thus key to achieving Platinum's goals of improving its position at the expense of unaffiliated creditors. And while nominally "independent" from Platinum, in reality, Bartels was anything but.

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[294] [redacted]

[295] [redacted]

[296] [redacted]

[297] [redacted]

125. Bartels was [redacted].[298] He was [redacted] Louis Samson, a director of HoldCo and current co-president of Platinum.[299] It does not appear that the Debtors' management [redacted].[300] Although [redacted]."[301]

126. In connection with his engagement, Bartels [redacted]."[302] Bartels recognized that, [redacted].[303] During the course of [redacted].[304] That [redacted]

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298 [redacted]

299 [redacted] *Louis Samson, Co-President at Platinum Equity*, PLATINUM EQUITY, https://www.platinumequity.com/people/louis-samson/ (last visited Nov. 15, 2023) (Smolarski Ex. 114).

300 [redacted]

301 [redacted].

302 [redacted]

303 [redacted]

304 [redacted]

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[redacted].[305]

127. Three months after [redacted][306] After his appointment and prior to his first board meeting [redacted].[307]

128. Although ostensibly retained [redacted]"[308] Bartels [redacted].[309] In fact, although Bartels [redacted],[310] Bartels [redacted].[311]

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305 [redacted]

306 [redacted]

307 [redacted]

308 [redacted]

309 [redacted]

310 [redacted]

311 [redacted]

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129. Instead, [redacted].[312] That Platinum [redacted] for example, the Majority Secured Group's [redacted].[313] The Debtors' advisors [redacted].[314] As Bartels [redacted]."[315] Similarly, the Debtors are [redacted]"[316] And despite [redacted].[317]

130. The Uptier Transaction [redacted] a March 24, 2022 Board meeting (the "March 24 Meeting").[318] During the [redacted]

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312 [redacted]

313 [redacted].

314 [redacted]

315 [redacted]

316 [redacted].

317 [redacted]

318 [redacted]

[redacted][319] Subsequently, the [redacted]. *Id.* Bartels [redacted].[320] After [redacted],[321] Bartels [redacted][322] Despite [redacted].[323] Further, prior to the [redacted].[324]

E. **Wesco's Bankruptcy Filing**

131. By early the next year, Incora was planning for bankruptcy. On May 31, 2023, Incora reached an agreement on the terms of its $300 million debtor-in-possession financing

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[319] [redacted].

[320] [redacted]

[321] [redacted]

[322] [redacted]

[323] [redacted]

[324] [redacted]

facility (the "DIP Facility") with PIMCO and Silver Point. The Company filed for bankruptcy the next day, June 1, 2023 (the "Petition Date").

F. The Debtors' Stipulations; Proposed Plan Releases

132. On the Petition Date, Incora filed a motion seeking authorization to enter into the DIP Facility (the "DIP Motion"). On July 10, 2023, the Court approved the DIP Motion and entered the Final DIP Order. The Final DIP Order includes stipulations by Incora regarding, among other things, the validity of and security for the ABL Facility and the Uptier Debt (collectively, the "Debtors' Stipulations").[325] In particular, the Debtors stipulated and agreed that the Debtors were justly and lawfully indebted and liable to (a) the holders of, and indenture trustee for, the New 1L Notes without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $1,318,739,792.00 of the outstanding New 1L Notes, plus certain costs, fees, and other "Obligations" as defined under the indenture that governs the New 1L Notes (the "New 1L Notes Indenture") and such stipulated claim the "New 1L Notes Stipulated Claim"),[326] and (b) the ABL Agent and the ABL Lenders without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than $420,981,782.90 of the outstanding principal amount of Revolving Loans (as defined in the ABL Credit Agreement) and with respect to all obligations on account of amounts available for drawing under outstanding letters of credit as of in an aggregate amount of $1,626,800.00, plus certain costs, fees, and other "Obligations" as defined in the ABL Credit Agreement (such stipulated claim, the "ABL Stipulated Claim").[327] The Debtors also stipulated and agreed that they were indebted and liable

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[325] *See* Final DIP Order (Smolarski Ex. 2) ¶ G.

[326] *See id.* at ¶ G(ii).

[327] *See id.* at (G)(vi).

to the holders of, and indenture trustee for, the New 1.25L Notes in the aggregate principal amount of not less than $499,955,412.00 of the outstanding New 1.25L Notes, plus certain costs, fees, and other "Obligations" as defined under the indenture that governs the New 1.25L Notes (such stipulated claim, the "New 1.25L Notes Stipulated Claim").[328]

133. The Final DIP Order provides that the Debtors' Stipulations are "binding upon the Debtors in all circumstances and for all purposes" and, as a result, Incora has waived any right to challenge the Debtors' Stipulations.[329] The Debtors' Stipulations would become binding on all other parties in interest, including the Committee, after the expiration of the Challenge Period (as defined in the Final DIP Order).[330] Pursuant to the Final DIP Order and subsequent agreement of the parties, the Challenge Deadline for the Committee is currently November 27, 2023.

134. On November 17, 2023, the Debtors filed their proposed Chapter 11 Plan. Under the terms of the Plan, the Debtors are proposing to release all estate claims against Platinum and its employees, the Platinum Directors, Bartels, Carlyle, and each of the other Participating Noteholders, among others, in exchange for no incremental consideration.[331] As currently drafted, the Plan provides no recovery to the Debtors' general unsecured creditors.[332] A hearing on the Debtors' motion for authority to solicit the Plan is currently scheduled for January 4, 2024.[333]

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[328] *See id.* at (G)(iv).

[329] *See id.* ¶ 19.

[330] *Id.*

[331] *See* Chapter 11 Plan, Art. VII.

[332] *See id.* at 31.

[333] *See Debtors' Motion For Entry of an Order (I) Approving the Disclosure Statement, (II) Approving Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Scheduling a Confirmation Hearing, and (V) Establishing Notice and Objection Procedures* [D.I. 964].

G. The New 1L Notes Indenture; Make-Whole Claims

135. Upon information and belief, the New 1L Notes Stipulated Claim includes a claim for any "Applicable Premium" as defined in the New 1L Notes Indenture. In addition, WSFS, an indenture trustee under the New 1L Notes Indenture has also filed a claim for the Applicable Premium.[334] Upon information and belief, using the calculation set forth below, the Make-Whole Amount (as defined below) included in the New 1L Stipulated Claim is no less than $195 million.

136. Under the New 1L Notes Indenture, "Applicable Premium" means, with respect to any New 1L Note on any redemption date, the greater of (1) 1.0% of the principal amount of the New 1L Note and (2) the excess of (a) the present value of (i) the redemption price of the New 1L Note at November 15, 2024 as of such redemption date (*i.e.*, 107.875% of principal amount) plus (ii) all required interest payments due on the New 1L Note as of such redemption date through November 15, 2024 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points, over (b) the principal amount of the New 1L Note (such amount, the "Make-Whole Amount").

137. The Make-Whole Amount is payable upon optional redemption or acceleration. The New 1L Notes Indenture provides that all outstanding New 1L Notes "will become due and payable immediately without further action or notice" in the event of, among other things, commencement of a voluntary bankruptcy case by the Debtors.[335] Thus, the New 1L Notes Indenture states that the outstanding New 1L Notes are purported to automatically accelerate upon an Incora bankruptcy filing, triggering payment of the Make-Whole Amount.[336] If accelerated

[334] *See* Claim No. 2003, Addendum ¶ 11.

[335] *See* 1L Notes Indenture §§ 6.01(6)-(7); 6.02.

[336] Acceleration is also notably triggered upon challenges to the 2022 Transactions. *See id.* at § 6.01(8)-(1).

prior to November 15, 2024, the New 1L Notes Indenture provides that principal plus the Applicable Premium will be due and owing.[337]

H. The Committee's Investigation to Date

138. In its capacity as a fiduciary for unsecured creditors, the Committee has undertaken a comprehensive investigation into potential claims of the Debtors' estates against various third parties and has identified certain meritorious claims that the Debtors hold against third parties. The Committee has discovered sufficient facts to support its motion to pursue those claims.

139. This Standing Motion and Claim Objection is based on the Committee's ongoing investigation to date and seeks (a) an order granting the Committee derivative standing to pursue the claims against the Defendants and any other persons or entities that discovery may show participated in the apparent misconduct, which are more fully described in the Committee's Proposed Complaint, and (b) the disallowance of certain of the Defendants' claims on the bases set forth herein.

140. The claims against the Defendants are premised upon causes of action including, but not limited to, the following: (a) actual and constructive fraudulent transfers; (b) preferential transfer; (c) breach of fiduciary duty and aiding and abetting the same; and (d) equitable subordination. As these causes of action are based on facts gathered to date, this list may not be exhaustive, and additional causes of action may be identified as the Committee's investigation continues.

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[337] *See id.*at §6.02.

LEGAL ARGUMENT ON STANDING MOTION

A. The Committee Should Have Exclusive Standing And Authority To Commence, Prosecute, And Settle The Proposed Claims.

141. The Committee should be granted exclusive standing and authority to commence, prosecute, and settle claims against the Defendants arising out of the factual allegations set forth herein and in the Proposed Complaint, on behalf of the Debtors' estates, pursuant to sections 1103 and 1109 of the Bankruptcy Code.

142. Bankruptcy Code section 1103(c)(2) expressly authorizes an official creditors' committee to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor[.]" 11 U.S.C. § 1103(c)(2). Further, section 1103(c)(5) states that a committee may "perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). Similarly, section 1109(b) provides that a party-in-interest, including a committee, "may raise and may appear and be heard on any issue in a case under [chapter 11]." 11 U.S.C. § 1109(b).

143. Based on these statutory grants of authority, it is "well-settled" that a creditors' committee may obtain derivative standing "to file suit on behalf of a debtor-in-possession." *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988); *see also In re MortgageAmerica*, 831 F.2d 97, 98 (5th Cir. 1987) (creditors' committee may, in some circumstances, have the right to initiate an avoidance action); *Coral Petroleum, Inc. v. Banque Paribas–London*, 797 F.2d 1351, 1363 (5th Cir. 1986) (suggesting that section 1109(b) provides a basis for the standing of a creditors' committee); *Fuel Oil Supply & Terminaling v. Gulf Oil Corp.*, 762 F.2d 1283, 1287 (5th Cir. 1985) (expressing approval of bankruptcy cases holding that section 1109(b) permits a creditors' committee to initiate an adversary proceeding under certain circumstances). Derivative standing is appropriate where the interests of unsecured creditors are "not protected," because the debtor fails to pursue "valid—and potentially profitable—cause[s] of

action" or cannot effectively do so because of "a conflict of interest." *Louisiana World*, 858 F.2d at 249-51.

144. Generally, derivative standing requires: (a) the existence of a colorable claim; (b) the debtor's unjustifiable refusal to pursue the claim (or, alternatively, a showing that a demand that the debtor pursue the claim would be futile); and (c) the permission of the bankruptcy court to initiate the action. *See Louisiana World*, 858 F.2d at 247. The Fifth Circuit has explained that, in making the ultimate determination, these factors "are a relevant consideration, though not necessarily a formalistic checklist." *Id*. Derivative standing is particularly appropriate where—as here—a debtor needing access to postpetition financing during the bankruptcy case has agreed to waive claims against its prepetition lenders. *See Cybergenics*, 330 F.3d at 574, n.8.

145. The Southern District of Texas Bankruptcy Court has eschewed line-by-line or claim-by-claim analysis of proposed complaints in favor of a more holistic assessment of the import of what has been alleged, and whether the claims may generally succeed. *See, e.g., In re Clear the Air*, LLC, 631 B.R. 286, 295 (S.D. Tex. Bankr. 2021) (finding that meeting the plausibility standard under *Twombly* and *Iqbal* was sufficient to determine that the claims contained "more than a sheer possibility"); *In re McConnell*, 122 B.R. 41, 44 (Bankr. S.D. Tex 1989) (noting that for a claim to be colorable, there must be a "possibility of success").

146. For the reasons discussed below, the Committee's claims easily surpass this requirement.

B. The Committee Has Identified Colorable Claims.

147. The relief sought by the Committee, as more fully set forth in the Proposed Complaint, generally arises from the LBO and the Uptier Transaction. The facts alleged herein and in the Proposed Complaint support colorable claims arising from each of these transactions.

1. LBO-Related Claims.

148. Through the LBO, in order to fund its acquisition of Wesco, Platinum overleveraged the Debtors and caused them to be insolvent and inadequately capitalized. The Debtors did not receive reasonably equivalent value for the obligations incurred and security interests granted because over $1.1 billion of proceeds were transferred to Wesco's shareholders in exchange for their equity, and another [redacted] of fees were paid to enable that to occur. The individual steps comprising the LBO and the transfers made in connection therewith (the "LBO Transfers") were undertaken as part of an integrated transaction whereby Wesco was taken private by Platinum and merged with Pattonair.[338] On information and belief, each of the parties to the LBO were aware that the individual steps of the LBO were undertaken in concert with one another, and no individual step would have occurred without the others.[339]

149. As set forth in detail below and in the Proposed Complaint, these actions give rise to colorable and valuable Estate Claims for constructive fraudulent transfer, breach of fiduciary duty, and equitable subordination.

(a) The LBO Equity Purchase Price and the LBO Transaction Fees Are Constructive Fraudulent Transfers and Should Be Avoided and Recovered for the Benefit of the Estates.

150. The Proposed Complaint alleges colorable claims to avoid as constructive fraudulent transfers the transfer of the $1.1 billion LBO Equity Purchase Price to Wesco's

[338] "Courts have 'collapsed' a series of transactions into one transaction when it appears that despite the formal structure erected and the labels attached, the segments, in reality, comprise a single integrated scheme when evaluated focusing on the knowledge and intent of the parties involved in the transaction." *Official Comm. of Unsecured Creditors of Sunbeam Corp. v. Morgan Stanley & Co. (In re Sunbeam Corp.)*, 284 B.R. 355, 370 (Bankr. S.D.N.Y. 2002) (citations omitted). "The paradigmatic example of such is a leveraged buyout." *Adelphia Recovery Tr. v. FPL Grp., Inc. (In re Adelphia Communs. Corp.)*, 512 B.R. 447, 490 (Bankr. S.D.N.Y. 2014) (citation omitted).

[339] *See supra* ¶ 60.

shareholders (including approximately $255 million to Falcon, a subsidiary of Carlyle) and the payment of the LBO Transaction Fees [redacted] to facilitate the LBO transaction.

151. Both section 548 of the Bankruptcy Code and applicable state law deem constructively fraudulent and avoidable any transfer of an interest of the debtor in property or any obligation incurred by the debtor that (a) was made or incurred if the debtor received less than a reasonably equivalent value in exchange for such transfer or obligation and (b) where the debtor was or became insolvent, was unreasonably undercapitalized, or intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due. *See* 11 U.S.C. § 548(a)(1)(B); *see also* Tex. Bus. & Com. Code §§ 24.005(a)(2), 24.006(a); 11 U.S.C. § 544(b) (state law avoidance actions may be asserted by trustee). Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under sections 544 or 548 of the Bankruptcy Code, the transferred property (or the value of such property) may be recovered for the benefit of the debtor's estate. *See* 11 U.S.C. § 550(a). In addition, pursuant to section 551 of the Bankruptcy Code, any transfer or obligation avoided under sections 544 or 548 is automatically preserved for the benefit of the estate. *See* 11 U.S.C. § 551.

152. Courts uniformly agree that transfers made to or for the benefit of shareholders in connection with a leveraged buyout do not provide the target company with reasonably equivalent value and are subject to challenge as constructive fraudulent transfers. *See, e.g., MFS/Sun Life Tr.-High Yield Series v. Van Dusen Airport Services Co.*, 910 F. Supp. 913, 933 (S.D.N.Y. 1995) ("Courts now uniformly hold that fraudulent conveyance laws apply to LBOs."); *Weisfelner v. Fund 1.*, et al. *(In re Lyondell Chem. Co.)*, 503 B.R. 348, 354 (Bankr. S.D.N.Y. 2014) ("Since the early days that LBOs came into common use, it has been recognized that LBOs are subject to

fraudulent transfer laws, and that when an LBO renders a debtor insolvent or inadequately capitalized, a court can . . . grant injured creditors relief." ((citing cases)).

153. The Proposed Complaint alleges that Incora did not receive fair consideration or reasonably equivalent value in connection with the LBO Transfers. As set forth in the Proposed Complaint, the LBO Equity Purchase Price and the LBO Transaction Fees were funded largely through the issuance of LBO Debt secured by the LBO Liens. Of the $2.364 billion in proceeds of the LBO Debt, over $1.1 billion was paid to Wesco shareholders as the LBO Purchase Price (including approximately $255 million to Falcon, an entity controlled by Carlyle) and an additional [redacted] was paid as LBO Transaction Fees [redacted] to facilitate a transaction for the benefit of Platinum and Wesco's former shareholders.[341] The Company received no value from having paid Wesco's former shareholders in order to enable Platinum to own the Company.

154. The Proposed Complaint alleges that the LBO left the Company insolvent, with unreasonably small capital, and unable to pay its debts as they became due, as is borne out by the Company's actual performance immediately following the LBO. Moreover, a "presumption of insolvency" arises from sufficient allegations that the target did not receive fair consideration in exchange for the encumbrance of its assets. *See Official Comm. of Unsecured Creditors of Norstan Apparel Shops v. LaHamas* (*In re Norstan Apparel Shops, Inc.*), 367 B.R. 68, 78 (Bankr. E.D.N.Y. 2007); *see also Sullivan v. Messer* (*In re Corcoran*) 246 B.R. 152, 163 (E.D.N.Y. 2000) ("Once it is established that a debtor transferred property without fair consideration, however, the law presumes that the transfer rendered him insolvent."); *United States v. Alfano*, 34 F. Supp. 2d 827,

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[340] *See supra* ¶ 60.

[341] *See supra* ¶ 12.

845 (E.D.N.Y. 1999) (where transfer was not in exchange for reasonably equivalent value, the transferee has the burden to overcome the presumption of insolvency by showing that the debtor was solvent after the transfer).

155. As set forth in the Proposed Complaint, the Debtors' performance has been in severe decline at all relevant times and the business could not reasonably support the $2.3 billion of debt that Platinum placed on the Company to fund its acquisition of Wesco. Wesco's financial struggles date back over a decade, beginning with Carlyle's disappointing attempt to take Wesco public in July 2011,[342] and continuing as Wesco hired outside consultants to design and implement the "Wesco 2020" initiative—a failed effort to shore up its business.[343] Wesco's declining prospects were the impetus for the Wesco Board of Directors to put the company up for sale, but that process also nearly failed, with Platinum emerging as the only prospective bidder (of more than a dozen) to submit a binding bid.[344]

156. Platinum knew, or reasonably should have known, that the Company could not support the leverage that Platinum imposed upon it. During the marketing process for the buyout, Wesco was forced to take the drastic step of retracting and reissuing financial projections to prospective bidders because Wesco's actual performance fell far short of the original projections.[345] Even the reissued projections, which showed a substantial decrease in every conceivable metric of financial performance, failed to accurately capture the diminished state of Wesco's business. In late July 2019, as Platinum prepared to sign the Merger Agreement, [redacted]

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342 *Supra* at ¶ 12.

343 *Supra* at ¶ 15.

344 *Supra* ¶ 21.

345 *Supra* note ¶¶ 20-21.

[redacted] but pressed forward with the acquisition anyway.

157. Wesco's financial condition became even more clear to Platinum after it signed the Merger Agreement. In response to [redacted] September results where Wesco achieved EBITDA of just $36 million, approximately 20% lower than the immediately preceding quarter, Platinum [redacted].[346] The December results [redacted][347] The combined Company's poor outlook was exacerbated by [redacted].[348]

158. While increasing the amount of Platinum equity contribution would have been the prudent response to these results, [redacted][349] Thus, Platinum pressed forward with its plan to nearly double the Company's debt burden—from $1.2 billion to $2.364 billion. When regular-way sources of financing were unavailable, [redacted] that left the struggling Company with a crushing interest burden.[350] Platinum [redacted]

[346] *Supra* ¶ 43.

[347] *Supra* ¶ 65.

[348] *Supra* ¶ 44.

[349] *Supra* ¶ 34.

[350] *Supra* ¶¶ 35-37.

[redacted].[351] Platinum [redacted][352]

159. Platinum [redacted][353] The leveraged loan market concurred. Platinum's preferred financing structure for the LBO included a $800 million "Term Loan B," but its underwriters were unable to place the term loan because prospective lenders put little stock in the "highly adjusted financials" that Platinum was using to market the deal.[354] In addition, [redacted] capital markets participants and the financial press—including publications like *Debtwire* and *Reorg Research*—were openly skeptical of Platinum's financial engineering.[355] By October 2019, before the December financial results were released, Debtwire was already describing the Company's proposed financing as "high strung" and leaving the Company "with little room for error."[356]

160. When it could not place the Term Loan B, Platinum pivoted to an all-high-yield bond structure which would leave the Company even further undercapitalized. To sweeten the

[351] *Supra* ¶ 27.

[352] *Supra* ¶ 30.

[353] *Supra* ¶ 62.

[354] *Supra* ¶ 33.

[355] *Supra* ¶ 27.

[356] *Supra* ¶ 33.

deal for bond investors, Platinum [redacted].[357] Platinum also [redacted].[358] In the end, Platinum was [redacted].[359]

161. When the LBO closed, Incora was undercapitalized by all measures. The average *pro forma* leverage of large corporate LBOs at the time was 6.0 times EBITDA, while [redacted].[360] The average *pro forma* coverage ratio—which measures a company's ability to pay its cash interest expense—for similar transactions was 2.1 times, while [redacted].[361] In addition, the average equity contribution for a transaction of

[357] *Supra* ¶ 35.

[358] *Supra* ¶ 40.

[359] *Supra* ¶ 36.

[360] *Supra* ¶¶ 29, 63.

[361] *Supra* ¶ 71.

this size was 42%, while [redacted].[362]

162. The Company's financial condition after the acquisition closed—and before the onset of the COVID-19 pandemic—was immediately distressed. For the Company's [redacted].[363] In April 2020, Moody's downgraded the Company's credit ratings on account of Platinum's "high tolerance for financial risk and weak balance sheet with thin capitalization."[364] By July of 2020, Platinum [redacted][365] By the Fall of 2020, Platinum [redacted].[366]

163. In sum, the Committee has alleged a colorable claim to avoid and recover the LBO Equity Purchase Price and the LBO Transaction Fees because those transfers were made (a) for the benefit of Platinum and Wesco's equity holders (including Carlyle) and provided no value to

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[362] *Supra* ¶ 28.

[363] *Supra* ¶ 74.

[364] *Supra* ¶ 83.

[365] *Supra* ¶¶ 85-86.

[366] *Supra* ¶¶ 89-90.

the Debtors' estates, much less reasonably equivalent value, and (b) while the Company was insolvent, inadequately capitalized, and believed or reasonably should have believed that it could not pay its debts as they would become due.

(b) The LBO Debt and LBO Liens Should Be Avoided As Constructive Fraudulent Transfers.

164. The Proposed Complaint alleges colorable claims to avoid more than [redacted] of LBO Debt and related LBO Liens as constructive fraudulent transfers, because the Company did not receive reasonably equivalent value to the extent the proceeds of the LBO Debt were used to fund the LBO Equity Purchase Price and LBO Transaction Fees.

165. When determining whether a transaction or series of transactions provides reasonably equivalent value to a debtor, courts will "collapse" multiple related transactions and consider the transactions as an integrated whole to determine their net effect. *See, e.g., HBE Leasing Corp. v. Frank*, 48 F.3d 623, 635 (2d Cir. 1995) ("It is well established that multilateral transactions may under appropriate circumstances be 'collapsed' and treated as phases of a single transaction for analysis under the [fraudulent conveyance statutes]."); *Orr v. Kinderhill Corp,* 991 F.2d 31, 35 (2d Cir. 1993) ("Thus, an allegedly fraudulent conveyance must be evaluated in context; where a transfer is only a step in a general plan, the plan must be viewed as a whole with all its composite implications.") (citations and quotation omitted); *U.S. v. Tabor Court Realty Corp*, 803 F.2d 1288 (3d Cir. 1986) (applying collapsing analysis in the context of an LBO); *Hill v. New Concept Energy* (*In re Yazoo Pipeline Co., L.P.*), 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) ("[M]ultistep transactions can be collapsed when the steps of the transaction are part of one integrated transaction.").

166. This principle applies with full force to LBOs. In the LBO context, "no single transfer would take place without the expectation that the entire transaction will be consummated."

MFS/Sun Life Tr.-High Yield Series v. Van Dusen Airport Services Co., 910 F. Supp. 913, 934 (S.D.N.Y. 1995). "Accordingly, LBOs are routinely treated as unitary transactions for purposes of fraudulent conveyance laws." *Id.* In the LBO context, the question of whether the debtor received reasonably equivalent value will be determined after "collapsing" the transaction and ascertaining what the target, rather than any third party, received. *See Mellon Bank, N.A. v. Metro Communications, Inc.*, 945 F.2d 635, 646 (3d Cir. 1991); *see also Murphy*, 126 B.R. at 394; *Yoder v. T.E.L. Leasing, Inc.* (*In re Suburban Motor Freight, Inc*.), 124 B.R. 984, 997 (Bankr. S.D. Ohio 1990) ("Courts have looked beyond the artifice created by the parties to the essence of the transaction."). "Because the assets of the target are pledged as security for a loan that benefits the target's former owners rather than the target itself, it is unlikely that any LBO can satisfy fair consideration requirements." *MFS/Sun Life*, 910 F.Supp. at 917 (citations omitted). As set forth in the Offering Memorandum [redacted], prospective lenders understood that the LBO Debt and the LBO Liens were issued to facilitate the LBO and [redacted].[367]

167. Therefore, at least [redacted] of the LBO Debt and the LBO Liens should be avoided because (a) the LBO rendered the Company insolvent, inadequately capitalized, and unable to pay its debts as they became due, and (b) the Company did not receive reasonably equivalent value for issuing the LBO Debt or granting the LBO Liens to the extent the proceeds of the LBO Debt were used to fund the LBO Equity Purchase Price or pay the LBO Transaction Fees, because those payments were made for the benefit of Platinum and Wesco's shareholders (including Carlyle), not the Debtors.

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[367] *See supra* ¶ 61.

(c) The Management Fees Paid to Platinum Should Be Avoided As Constructive Fraudulent Transfers and Recovered for the Benefit of the Estates.

168. The Proposed Complaint alleges a colorable claim to avoid at least $7 million in Management Fees paid by the Debtors as constructive fraudulent transfers under applicable state law and to recover those amounts for the benefit of the Debtors' estates.

169. The Debtors paid the Management Fees, [redacted]. As noted above, [redacted][368] Although the CASA [redacted].[369] Moreover, while the CASA [redacted] there is no evidence that [redacted][370] If anyone [redacted].[371] Moreover, when looked at as a percentage of revenue or EBITDA, charging the Debtors a $7 million annual Management Fee was well over market for what other private equity firms were charging portfolio companies as "management fees" during the same time period.

170. Accordingly, the Management Fees paid to Platinum should be avoided as constructive fraudulent transfers and recovered for the benefit of the Debtors' estates, because the

[368] *See supra* ¶¶ 76-77

[369] *See supra* ¶ 77.

[370] *See supra* ¶ 79.

[371] *See supra* ¶ 77.

Debtors were insolvent in 2020 when the Management Fees were paid, and the Debtors did not receive reasonably equivalent value for payment of the Management Fees.

(d) Platinum and Mary Ann Sigler Breached Their Fiduciary Duties in Connection with the LBO and LBO Transfers and Amendment No. 6 to the ABL.

171. The Proposed Complaint alleges colorable claims that Platinum, as the controlling shareholder, and Mary Ann Sigler, as the officer and director of the Debtor entities that authorized the incurrence of the LBO Debt and granting of the LBO Liens, are liable for breach of fiduciary duties to Incora and its creditors.

172. Directors and controlling shareholders of a corporation owe the corporation and its shareholders fiduciary duties of care and loyalty.[372] *See, e.g., In re MultiPlan Corp. Stockholders Litig*., 268 A.3d 784, 799 (Del. Ch. 2022). Those duties run to the corporation's creditors when the corporation is insolvent. *See North Amer. Catholic Ed. Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007) (creditor of insolvent company may assert derivative claims for breaches of fiduciary duties); *Nisselson v. Lernout*, 568 F. Supp. 2d 137, (D. Mass. 2008) (holding that under Delaware law, creditor may bring derivative action for breach of fiduciary duty against directors or officers of corporation when corporation is in the "zone of insolvency").

173. The duty of care requires directors to "use that amount of care which ordinarily careful and prudent men would use in similar circumstances." *In re Walt Disney Co. Deriv. Litig*., 907 A.2d 693, 749 (Del. Ch. 2005); *Stanziale v. Nachtomi* (*In re Tower Air, Inc*.), 416 F.3d 229,

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[372] The Debtors are incorporated in multiple jurisdictions, including Delaware and Texas. Under Texas law, a corporation's "internal affairs"—including claims for breach of fiduciary duty—are governed by the law of the state where it was incorporated. *See* TEX. BUS. ORGS. CODE ANN. § 1.102 (Smolarski Ex. 120). Thus, in analyzing the sufficiency of the evidence that Platinum and Sigler breached their respective fiduciary duties, the Court must consider the elements of that tort as defined by the substantive law of the states in which the Debtors are incorporated. For the purposes of the analysis herein, the Committee has assumed that applicable law is substantially similar to Delaware law (and is not aware of any material distinctions among the various sources of applicable law).

241-42 (3d Cir. 2005) (due care violation is "synonymous with engaging in an irrational decision-making process" by failing to obtain information necessary to make an informed decision, or reaching irrational conclusions in light of available information). Notably, a director's duty to exercise care is heightened where a major corporate transaction such as a leveraged buyout is being considered. *See Brandt v. Hicks, Muse & Co*. (*In re Healthco Int'l, Inc*.), 208 B.R. 288, 305 (Bankr. D. Mass. 1997). Board action with respect to such a transaction "will fail to meet the standard of due care" if it reflects an "indifference to [] potential risk of harm" to the corporation. *Official Comm. of Unsecured Creditors of TOUSA, Inc. v. Technical Olympic, S.A.* (*In re TOUSA, Inc*.), 437 B.R. 447, 462 (Bankr. S.D. Fla. 2010) (citation omitted).

174. The duty of loyalty "is an affirmative obligation to protect and advance the interests of the corporation and mandates that [the director] absolutely refrain from any conduct that would harm the corporation." *Autobacs, Strauss, Inc. v. Autobacs Seven Co*. (*In re Autobacs*), 473 B.R. 525, 562 (Bankr. D. Del. 2012); *see also Lampe v. Lampe* (*In re Lampe*), 665 F.3d 506, 515 (3d Cir. 2011) (fiduciary is required "in dealing with the affairs of the corporation to promote the interests of the corporation rather than its own interest"). A complaint sufficiently pleads breach of the duty of loyalty if it alleges that the fiduciaries (a) were interested in the transaction at issue, (b) acted without good faith, or (c) lacked independence. *See Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 981 (Del. Ch. 2000) (declining to dismiss duty of loyalty claim where only single basis was pled); *see also Brehm v. Eisner*, 746 A.2d 244, 264 n.66 (Del. 2000).

175. When a fiduciary is aware of, but recklessly disregards, the possibility that a leveraged buyout will result in the corporation's insolvency, inadequate capitalization, or inability to pay their debts, that fiduciary commits a breach of its fiduciary duties. *See Official Comm. of Asbestos Claimants of G-1 Holding, Inc. v. Heyman*, 277 B.R. 20, 37 (S.D.N.Y. 2002) ("The

Committee has adequately alleged that a breach of fiduciary duty existed because GAF either was insolvent or rendered insolvent by the transfer or was operating in the vicinity of insolvency at the time of or immediately after the transfer."); *In re Healthco Intl*, 195 B.R. at 984-85 (allegations that directors approved of leveraged buy-out transaction that left the corporation "terminally ill" were sufficient to plead a cause of action for breach of fiduciary duty); *Wieboldt Stores*, 94 B.R. at 510 (sustaining cause of action for breach of fiduciary duty against directors based on having approved of transaction that resulted in the company's insolvency); *Hechinger Investment Co. of Del. v. Fleet Finance Group*, 274 B.R. 71, 89-91 (D. Del. 2002) (fiduciaries can be personally liable for LBO-related transfers based on breach of fiduciary duty to creditors).

176. Platinum and Sigler breached their duties to Incora in connection with the LBO. In approving the LBO, Platinum and Sigler considered only Platinum's own parochial interests when issuing the LBO Debt despite the obvious and devastating impact on Incora and its creditors, as detailed above and in the Proposed Complaint.[373] Platinum and Sigler [redacted][374] Such allegations state colorable claims for breach of fiduciary duty.

177. The fact that Platinum was the "purchaser" and contributed equity to the combined Company does not insulate it or Ms. Sigler from liability. For example, in the LBO-related litigation that arose from the *Tribune* bankruptcy, famed private-equity investor Sam Zell was sued for breach of his fiduciary duties for negotiating and facilitating the Tribune LBO, even though

[373] *See supra* ¶¶ 76-82.

[374] *See supra* ¶¶ 62-73.

Mr. Zell was the "purchaser" of Tribune and did not join the company's board of directors until more than a month after the board voted to approve the leveraged buyout. *See In re Tribune Co. Fraudulent Conveyance Litig.*, S.D.N.Y. No. 11MD2296 (DLC), 2019 WL 294807, at *22 (S.D.N.Y. Jan. 23, 2019), *aff'd in part*, *vacated in part*, *remanded*, 10 F.4th 147 (2d Cir. 2021). The *Tribune* court denied Mr. Zell's motion to dismiss because, among other things, he was instrumental in placing $3.7 billion in buyout debt. The *Tribune* court rejected Mr. Zell's argument that Tribune had already committed to the LBO transaction, in its entirety, before he joined the board of directors, and instead found that Tribune's subsequent decision to incur the buyout debt was never "inevitable." *See id*.

178. Similarly, Platinum was well aware that the Foreign Joinder Agreements and Amendment No. 6 to the ABL benefitted Platinum at the expense of the Foreign Guarantors, [redacted]. [redacted], for which the Foreign Guarantors received no consideration, and caused [redacted] to take on additional debt without any consideration.

179. The Committee's claim for breach of fiduciary duty is timely. Although the various Debtors are incorporated under the laws of various jurisdictions (which such laws apply to the substance of the Committee's claims), Texas law supplies the limitations period with respect to each Debtor. That is "[b]ecause Texas state law treats statutes of limitations questions as procedural rather than substantive," and thus "federal courts sitting in Texas need not undertake a choice of law analysis—the Court simply enforces Texas's limitations periods." *Austin v. Brown & Fortunato, P.C. (In re Uplift RX, LLC)*, No. 17-32186-MI, 19 (Bankr. S.D. Tex. Aug. 21, 2023); *see, e.g.*, *Janvey v. Adams & Reese, LLP*, No. 3:12-CV-0495-N, 2013 WL 12320921, at *4 (N.D.

Tex. Sept. 11, 2013) (applying Texas statute of limitations to breach of fiduciary claims arising under Louisiana law). The statute of limitations for breach of fiduciary duty in Texas is four years. *See* Tex. Civ. Prac. & Rem. Code § 16.004(a)(5).

180. Therefore, the Proposed Complaint has identified colorable claims for breach of fiduciary duty against Platinum and Sigler in connection with the LBO.

(e) Platinum's Claims Should Be Equitably Subordinated On Account Of Its LBO-Related Conduct.

181. Under section 510(c) of the Bankruptcy Code, a court has the power to equitably subordinate an allowed claim where (a) the claimant has engaged in inequitable conduct, (b) the misconduct injured other creditors or conferred an unfair advantage, and (c) equitable subordination is not inconsistent with the Bankruptcy Code. *See Benjamin v. Diamond* (*In re Mobile Steel Co*.), 563 F.2d 692, 699-700 (5th Cir. 1977).

182. Courts have generally recognized three categories of inequitable conduct that may give rise to equitable subordination: "(1) fraud, illegality, breach of fiduciary duties; (2) undercapitalization; and (3) claimant's use of the debtor as a mere instrumentality or alter ego." *Wilson v. Huffman* (*In re Missionary Baptist Found. of Am., Inc*.), 712 F.2d 206, 212 (5th Cir. 1983). Other courts have allowed equitable subordination when the claimant is unjustly enriched "through another's loss brought about by one's own unconscionable, unjust, unfair, close or double dealing or foul conduct." *Fundex Capital Corp. v. Balaber-Strauss* (*In re Tampa Chain Co*.), 53 B.R. 772, 779 (Bankr. S.D.N.Y. 1985) (quoting *In re Harvest Milling Co*., 221 F.Supp. 836, 838 (D. Or. 1963)). Any inequitable conduct directed at the debtor or its creditors may be sufficient to warrant subordination of the creditor's claim, regardless of whether that inequitable conduct was related to the acquisition or assertion of that claim. *In re Mobile Steel Co*., 563 F.2d at 700.

183. The Proposed Complaint alleges that Platinum, through the Platinum Directors, misused its control over Incora to the detriment of Incora's creditors. The Proposed Complaint alleges that Platinum considered only its own interests and failed to evaluate whether the LBO and the incurrence of the LBO Debt would result in the insolvency of Incora, or the impact those transactions would have on Incora's creditors. The Proposed Complaint also alleges that Platinum [redacted].[375] The Proposed Complaint also alleges that Platinum [redacted].[376] Therefore, any claims asserted by Platinum should be equitably subordinated.

2. The Uptier Claims.

184. In the Uptier Transaction, Platinum, which was motivated by its own self-interest in improving its position in the capital structure in contemplation of an eventual bankruptcy filing, caused the Company to enter into a transaction that was intentionally designed to benefit certain creditors at the expense of other creditors, and through which the Debtors gave up far more value to Platinum and the other Participating Noteholders than the Debtors received in return. As set forth in detail below and in the Proposed Complaint, these actions give rise to colorable and valuable Estate Claims for actual fraudulent transfer, constructive fraudulent transfer, preferential transfer, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and equitable subordination.

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[375] *See supra* ¶¶ 29-32, 67.

[376] *See id.*

(a) The Uptier Debt and the Uptier Liens Should Be Avoided as Actual Fraudulent Transfers.

185. The Proposed Complaint alleges colorable claims to avoid the Uptier Debt and Uptier Liens (as defined below) as actual fraudulent transfers because Platinum's intent can be imputed to Incora, and Platinum orchestrated and caused Incora to effectuate the Uptier Transaction with the actual intent to hinder, delay, and defraud Incora's creditors that did not participate in the Uptier Transaction.

186. Section 548 of the Bankruptcy Code provides that a bankruptcy trustee may avoid a transfer of an interest of the debtor in property, or an obligation incurred by the debtor, that was made or incurred within two years before a chapter 11 bankruptcy filing with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became . . . indebted." 11 U.S.C. § 548(a)(1)(A). Similarly, pursuant to section 544(b) of the Bankruptcy Code, a bankruptcy trustee may avoid a transfer of property or obligation that is voidable under state fraudulent transfer law. 11 U.S.C. § 544(b).

187. Actual intent to hinder, delay, or defraud may be inferred from circumstantial evidence and the presence of so-called "badges of fraud." *See Cipolla v. Roberts (In re Cipolla)*, 476 F. App'x 301, 306-07 (5th Cir. 2012); *see also In re Wiggains*, 848 F.3d 655, 661 (5th Cir. 2017). Courts have considered a variety of factors—or "badges of fraud"—to determine whether actual intent exists. *See In re Soza*, 542 F.3d 1060, 1066-67 (5th Cir. 2008). Courts generally look at six badges of fraud that evidence an intent to hinder, delay, or defraud: "(1) the lack or inadequacy of consideration; (2) the family, friendship or close associate relationship between the parties; (3) the retention of possession, benefit, or use of the property in question; (4) the financial condition of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the

incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of the events and transactions under inquiry." *Cadle Co. v. Pratt (In re Pratt)*, 411 F. 3d 561, 565 (5th Cir. 2005) (citing *Pavy v. Chastant (In re Chastant)*, 873 F.2d 89, 90 (5th Cir. 1989)). Although not dispositive, the "presence of several 'badges of fraud' gives rise to a presumption of fraudulent intent, which shifts the burden to the [defendant] to demonstrate some legitimate purpose for the transfers." *Carr v. Loeser (In re Int'l Auction & Appraisal Servs., LLC)*, No. 11-00813 (MDF), 2014 Bankr. LEXIS 5294, at *18 (Bankr. M.D. Pa. Aug. 27, 2014) (internal citation omitted).

188. The Proposed Complaint credibly alleges several badges of fraud that give rise to a presumption of fraudulent intent:

- The Debtors were insolvent at the time of the Uptier Transaction;[377]
- Platinum is an insider of the Debtors that both orchestrated and stood to benefit from the Uptier Transaction;
- The Uptier Transaction was structured to benefit Platinum and the Participating Noteholders to the detriment of creditors who were not permitted to participate, including those holders of Unsecured Notes that were not allowed to participate in the exchange and were subordinated to Platinum's New 1.25L Notes;[378]
- Immediately following the Uptier Transaction, the New 1.25L Notes were [redacted];[379]
- Platinum exchanged its $25 million unsecured Wolverine Note, which had no upstream guarantees and was therefore structurally subordinated to the vast majority of the Debtors' unsecured debt, and is subject to recharacterization as equity, for New 1.25L Notes that were guaranteed by all of the Debtors; and
- Platinum retained control of all the property subject to the liens granted in the Uptier Transaction.

[377] *See supra* ¶¶ 113-115.

[378] *See supra* ¶¶ 106-107.

[379] *See supra* ¶ 108.

189. Therefore, the Proposed Complaint has identified valuable claims for avoidance of the New 1L Notes and the New 1.25L Notes because the Company engaged in the Uptier Transaction with actual intent to hinder, delay, or defraud non-participating creditors, including those holders of Unsecured Notes that were not allowed to participate in the transaction.

(b) The Uptier Debt, the Uptier Liens, and the Indemnification Obligations Should Be Avoided as Constructive Fraudulent Transfers.

190. The Uptier Debt, the related liens granted by Incora (the "Uptier Liens"), and the indemnification obligations assumed as part of the Uptier Transaction are avoidable as constructively fraudulent transfers for several independent reasons.

191. ***First***, an obligation that is avoidable cannot serve as "reasonable equivalent value" for the purposes of fraudulent transfer analysis. *See, e.g.*, *In re HDD Rotary Sales, LLC*, 499 B.R. 542, 545 (Bankr. S.D. Tex. 2013) ("if the Court avoids an obligation, then the transfers made by the debtor on account of that obligation are necessarily not made for reasonably equivalent value, and may be set aside as constructively fraudulent if the other requirements are met"); *Silverman v. Paul's Landmark, Inc.* (*In re Nirvana Restaurant Inc.*), 337 B.R. 495, 502 (Bankr. S.D.N.Y. 2006) ("if the Guaranty is avoided as a fraudulent obligation, it cannot serve as 'fair consideration' for the subsequent Transfers") (citing *Dempster v. Overview Equities, Inc.*, 4 A.D.3d 495 (N.Y. App. Div. 2004) (unenforceable obligation cannot constitute "fair consideration")).

192. The Uptier Debt was issued, and the Uptier Liens were granted, in exchange for Secured Notes and Unsecured Notes that were used to finance the LBO [redacted].[380] As set forth above, the Secured Notes and the Unsecured Notes should be avoided because the Company was insolvent and did not receive reasonably equivalent

[380] *See supra* ¶¶ 110-112.

value for issuing those obligations.[381] Because the Secured Notes and Unsecured Notes are avoidable, those notes cannot have constituted reasonably equivalent value for the New 1L Notes and New 1.25L Notes in the Uptier Transaction. The Uptier Debt and Uptier Liens are therefore avoidable as constructively fraudulent transfers.

193. ***Second***, and irrespective of whether the LBO Debt is avoided, the Debtors did not receive reasonably equivalent value, from a market perspective, for the Uptier Debt. The Bankruptcy Code does not define the term "reasonably equivalent value," but it is generally accepted that a debtor "receives reasonably equivalent value for what it gives up if it gets roughly the value it gave." *Official Comm. of Unsecured Creditors of Fedders North America, Inc. v. Goldman Sachs Credit Partners L.P. (In re Fedders North America, Inc.)*, 405 B.R. 527, 546 (Bankr. D. Del. 2009 (quotations and citation omitted); *see also BFP v. Resolution Trust Corp.*, 511 U.S. 531, 548 (1994) ("the inquiry [is] whether the debtor has received value that is substantially comparable to the worth of the transferred property"). In making this determination, courts look to the market value of what was transferred and received, among other things. *See Grochocinski v. Zeigler (In re Zeigler)*, 320 B.R. 362, 375 (Bankr. N.D. Ill. 2005). Whether value given was reasonably equivalent is normally a question of fact, as valuation factors turn on the case-specific circumstances surrounding the debtor's decision to enter into the challenged transaction. *See Am. Tissue, Inc. v. Donaldson Lufkin & Jenrette Sec. Corp.*, 351 F. Supp. 2d 79, 105-06 (S.D.N.Y. 2004) (quotation omitted).

194. As part of the Uptier Transaction, the Debtors purchased 2024 Secured Notes and 2026 Secured Notes, which were trading at 74 cents and 86 cents, respectively, using New 1L

[381] *See supra* ¶¶ 116-123.

Notes that were trading at 101.2% shortly after the transaction closed.[382] Through this transaction, Incora [redacted].[383] *See, e.g.*, *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000) ("The value of consideration given for a transfer alleged to be in fraud of creditors is determined from the standpoint of creditors."). The purchase of Unsecured Notes using New 1.25L Notes was even more egregious. Immediately prior to the Uptier Transaction, the Unsecured Notes were trading at approximately 50 cents yet Participating Noteholders received New 1.25L Notes in the amount of par [redacted].[384] Thus, the result of this transaction was to [redacted].[385] *See id*. ("The proper focus is on the net effect of the transfers on the debtor's estate, the funds available to the unsecured creditors."). The giveaway of value by the Company is confirmed by the fact that [redacted][386] The Follow-On Exchanges, although they were in name exchanges of Secured Notes for New 1L Notes, had a value disparity akin to, and in some instances worse than, the initial Uptier Transaction because the Secured Notes had been purportedly rendered unsecured in the initial Uptier Transaction and had fallen in price thereafter. The 2026 Secured Notes exchanged by [redacted] were trading at approximately 70 cents on the dollar; the 2024 and

[382] *See supra* ¶¶ 5, 107.

[383] *See supra* ¶¶ 107-109.

[384] *See supra* ¶ 109.

[385] *See supra* ¶¶ 107-109.

[386] [redacted]

2026 Secured Notes [redacted] were trading at 50 cents and 63 cents, respectively; by the time of the [redacted] the 2026 Secured Notes [redacted] were trading at 8 to 10 cents on the dollar.[387] Yet, regardless of these deeply distressed market prices, each time, the participating bondholders were permitted to exchange for par [redacted] value of a new instrument with greater protections than their old notes.[388] Cumulatively, the Company [redacted] as a result of lopsided consideration given in the Follow-On Exchanges.

195. From this perspective, the Debtors did not receive reasonably equivalent value in connection with the Uptier Transaction. *In re Sanchez Energy Corp.*, Bankr. S.D. Tex. No. 19-34508, 2023 WL 4986394, at *21 (Bankr. S.D. Tex. Aug. 3, 2023) ("The trading data of secured and unsecured notes at the time of the transfers is the best evidence of the value of the property transferred."); *see also VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 629–30 (3d Cir. 2007) ("Even if, as [the plaintiff] implies, the market was suffering from some irrational exuberance in establishing [the debtor's] stock price, that gives me no basis for second-guessing the value that was fairly established in open and informed trading."). Several well-regarded commentators have made the same observation. *See also* Marc S. Kirschner, *et al.*, *A Market Based Theory to Demonstrate Lack of Reasonably Equivalent Value for Abusive Debt Exchange Offers*, 2022 Ann. Surv. of Bankr. L. 9. at 263 ("[W]e think market value is far and away the most important factor" for demonstrating lack of reasonably equivalent value in abusive debt exchange offers); Emil A. Kleinhaus & Alexander B. Lees, *Debt Repayments as Fraudulent Transfers* 8 AM. BANKR. L. J.

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[387] *See supra* ¶ 109.

[388] *See id.*

307, 322 (2014) ("If a debtor has assets sufficient to pay only a fraction of its unsecured obligations and repays an unsecured debt in full, the claim satisfied by the debtor has a value in bankruptcy (and in the marketplace) that is lower than its face amount. In that circumstance, one could argue that the economic benefit received by the debtor by repaying its debt is less than, rather than equal to, the face value of the debt.").

196. ***Third***, if the disparity between the face amount of New 1L Notes given in exchange for stressed Secured Notes and deeply distressed Unsecured Notes was not enough of an imbalance to show that there was no "substantially comparable" exchange of value, the aggregated elements of the transaction further point to the conclusion that Incora did not receive "roughly the value it gave." *BFP v. Resolution Trust Corp.*, 511 U.S. at 548; *Fedders*, 405 B.R. at 546. The following is a non-exhaustive comparison of the value Incora received relative to the value that it gave up pursuant to the transaction:

Reasonably Equivalent Value Analysis of Uptier Transaction

$ in millions

Value Incora Received		Value Incora Gave	
Description	**Amount**	**Description**	**Amount**
$250m notes issuance: cash to balance sheet	[redacted]	$250m notes issuance	$ 250
[redacted]		$250m notes issuance: fees	[redacted]
PIK and maturity extension: early years cash benefits	[redacted]	Ongoing indemnification of uptier participants	
		PIK: later years cash and refinancing detriment	
		[redacted]	

Notes

[redacted]

197. In particular, the Indemnification Obligations incurred by the Company in favor of the participants in the Uptier Transaction should be avoided as constructively fraudulent transfers. None of the holders had the benefit of such indemnification prior to the Uptier Transaction, rendering the provision an absolute transfer of value away from the Company. This burden was

material enough to be cited by the Debtors in the First Day Declaration as a drain on liquidity[389] and, upon information and belief, the Debtors have paid out nearly $12 million to date on account of the Indemnification Obligations.[390] The fact that the indemnification would be called upon and therefore must have been valued seriously could not have been a shock to the Company and its advisors—in March 2022 when the Uptier Transaction was finalized and approved, there had already been litigations challenging at least four non-pro rata uptier transactions.[391]

198. ***Fourth***, the exchange of the $25 million Wolverine Note for the New 1.25L Notes (such exchange, the "Wolverine Note Exchange") is avoidable as a constructive fraudulent transfer for the additional reason that Debtor entities that became guarantors on the New 1.25L Notes (the "New 1.25 Note Guarantors") did not receive reasonably equivalent value in exchange for the obligations they incurred on account of the Wolverine Note.[392] Prior to the exchange, only Aircraft Holdings was obligated to pay the Wolverine Note.[393] By exchanging the Wolverine Note for New 1.25L Notes, numerous Debtors assumed liability for repayment of that obligation without

[389] *See* First Day Declaration ¶ 14.

[390] *See supra* ¶¶ 5, 120.

[391] *See LCM XXI Ltd. v. Serta Simmons Bedding, LLC*, No. 21 CIV. 3987 (KPF) (S.D.N.Y.); *Black Diamond Commercial Fin. LLC v. Murray Energy Corp.*, 616 B.R. 84 (Bankr. S.D. Ohio 2020); *Audax Credit Opportunities Offshore Ltd. v. TMK Hawk Parent, Corp*., 72 Misc. 3d 1218(A), 150 N.Y.S.3d 894 (N.Y. Sup. Ct. 2021); *ICG Global Loan Fund 1 DAC v. Boardriders Inc.*, No. 655175/2020 (N.Y. Sup. Ct); *North Star Debt Holdings, L.P., et al., v. Serta Simmons Bedding, LLC et al.*, No. 652243/2020 (N.Y. Sup. Ct.).

[392] The New 1.25 Note Guarantors consist of the following Debtor entities: Wolverine Intermediate Holding II Corporation; Pattonair USA, Inc.; Wesco Aircraft Hardware Corp.; Haas Holdings, LLC; Haas Group International, LLC; Pioneer Finance Corporation; Pioneer Holding Corporation; Pattonair Holding, Inc.; UNISEAL, Inc.; Interfast USA Holdings Incorporated; Haas Group, LLC; Wesco LLC 1; Wesco LLC 2; Haas of Delaware, LLC; Haas TCM Industries LLC; NetMRO, LLC; Haas Chemical Management of Mexico, Inc.; Haas Corporation of China; Haas TCM of Israel, Inc.; Haas International Corporation; Haas Corporation of Canada; Wesco Aircraft SF, LLC; Wesco Aircraft Canada, LLC; Wesco 1 LLP; Wesco 2 LLP; Wolverine UK Holdco Limited; Adams Aviation Supply Company Limited; Pattonair Holdings Limited; Pattonair Group Limited; Pattonair Europe Limited; Pattonair (Derby) Limited; Pattonair Limited; Quicksilver Midco Limited; Wesco Aircraft International Holdings Limited; Wesco Aircraft EMEA, Ltd.; Haas Group International SCM Limited; Flintbrook Limited; and Wesco Aircraft Europe Limited. The New 1.25 Note Guarantors also consists of non-Debtor entity Haas Group of the UK Limited.

[393] *See supra* ¶ 91.

receiving value in return.[394] Courts have regularly found that, where subsidiaries incur substantial obligations to secure existing indebtedness of their parent and do not receive substantial new value in return, such transactions are constructively fraudulent. *See e.g.*, *Official Comm. of Unsecured Creditors of TOUSA, Inc. v. Citicorp N.A. (In re TOUSA, Inc.)*, 422 B.R. 783, 843-50 (Bankr. S.D. Fla. 2009), *aff'd*, *Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298 (11th Cir. 2012) (subsidiaries did not receive reasonably equivalent value for guaranteeing upstream debt, which rendered the upstream guarantees constructively fraudulent); *see also* Transcript of Hearing at 43:14-45:3, *In re The McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. July 6, 2020), ECF No. 641 ("[T]he debts that were refinanced were not the subsidiaries' own debts. Practically all of the benefit went to the refinancing of the parent's own unsecured note obligations. The parties argue that the enterprise as a whole benefitted sufficiently to make the incurrence of these obligations worthwhile as to each separate subsidiary, but certainly there is at least a colorable basis to argue to the contrary.").[395]

199. ***Fifth***, the $25 million Wolverine Note cannot serve as "reasonable equivalent value" for the purposes of fraudulent transfer analysis, because it is, in economic substance, a disguised equity interest. "[T]here can be little doubt that bankruptcy courts have the power to

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[394] *See supra* ¶ 122.

[395] Any argument that the Uptier Transaction provided reasonably equivalent value to the New 1.25 Note Guarantors by staving off the bankruptcy of the Company as a whole should be rejected. Courts addressing this argument under similar circumstances have held that such a speculative benefit might not provide reasonably equivalent value because, in some cases, staving off the bankruptcy only delays the "inevitable." *See, e.g.*, *TOUSA*, 680 F.3d at 1312-13 (affirming bankruptcy court finding that benefit to subsidiaries of immediately avoiding bankruptcy was not reasonably equivalent value, as the avoidable transaction only delayed the debtors' "inevitable" bankruptcy filing); *see also Feltman v. Wells Fargo Bank, N.A. (In re TS Emp., Inc.)*, 597 B.R. 494, 528-29 (Bankr. S.D.N.Y. 2019) ("The opportunity to avoid a default or bankruptcy may not necessarily constitute 'reasonably equivalent value.'"); *Cooper v. Centar Inv. Ltd. (In re TriGem Am. Corp.)*, 431 B.R. 855, 868 (Bankr. C.D. Cal. 2010) ("Merely delaying the consequence of insolvency is not a measurable benefit to the subsidiary."). The Committee submits that the Company's bankruptcy filing was similarly inevitable here.

recharacterize debt as equity when such is warranted by the facts." *Weisfelner v. Blavatnick* (*In re Lyondell Chem*.), 544 B.R. 75, 93 (Bankr. S.D.N.Y. 2016). In the Fifth Circuit, a bankruptcy court may recharacterize an asserted debt as equity by applying state law. *In re Lothian Oil Inc*., 650 F.3d 539, 542 (5th Cir. 2011). In doing so, the court may evaluate, among other things: (a) the intent of the parties, (b) the identity between creditors and shareholders, (c) the extent of the instrument holder's participation in the debtor's management, (d) the ability of the corporation to obtain funds from outside sources, (e) the thinness of the capital structure in relation to debt, (f) the risk involved, (g) the voting power of the holder of the instrument, and (h) the presence or absence of a fixed maturity date. *See Fin Hay Realty Co. v. United States*, 398 F.2d 694, 696 (3d Cir. 1968); *In re Lothian Oil Inc*., 650 F.3d at 544 (noting Texas' adoption of the multi-factor test from *Fin Hay Realty Co*.). The factors are "aids in answering the ultimate question whether the investment, analyzed in terms of its economic reality, constitutes risk capital entirely subject to the fortunes of the corporate venture or represents a strict debtor-creditor relationship." *Fin Hay*, 398 F.2d at 697.

200. Here, Platinum is the sole shareholder of Incora and dictated the terms of the Wolverine Note to the Company. At the time of issuance of the Wolverine Note, the Company [redacted].[396] Platinum itself [redacted].[397] The Company [redacted]

[396] *See supra* ¶ 91.

[397] *See id.*

[redacted].[398] Finally, at the time of the Wolverine Note, the Debtors [redacted].[399] Each of these factors weighs in favor of recharacterizing the Wolverine Note as a disguised equity interest.

(c) The Issuance of New 1.25L Notes to Platinum Should Be Avoided as an Insider Preference Under TUFTA.

201. The Proposed Complaint alleges colorable claims to avoid the issuance of the New 1.25L Notes to Platinum as preferential transfers in violation of TUFTA § 24.006(b), because (a) the issuance was a transfer made to an insider, Platinum, on account of an antecedent debt; (b) Incora was insolvent at the time of the transfer; and (c) Platinum orchestrated the Uptier Transaction knowing that Incora was insolvent and that intent can be imputed to Incora.

202. There are no defenses to this insider preference, as Platinum provided no new value in the Uptier Transaction: though Platinum deferred the "maturity" of the Wolverine Note and agreed to accrue its annual $7 million "management fee," both of those alleged benefits are illusory, because the Wolverine Note is disguised equity subject to recharacterization and Incora [redacted].[400]

203. On information and belief, claims seeking to avoid the Wolverine Note Exchange pursuant to TUFTA § 24.006(b) were previously asserted by certain of the Debtors' noteholders in New York state court lawsuits filed on or about October 28, 2022 and March 27, 2023, in each case within one year of the Wolverine Note Exchange. Because claims seeking to avoid the

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[398] *See id*.

[399] *See id*.

[400] *See supra* ¶¶ 80-82.

Wolverine Note Exchange were timely asserted by creditors under state law, those claims were preserved and can be asserted by a trustee or other entity with requisite standing pursuant to Bankruptcy Code section 544(b) on behalf of the Debtors' estates. *See Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 256 (5th Cir. 2010) (upon bankruptcy filing, chapter 7 trustee succeeded creditor as plaintiff in prepetition suit for fraudulent transfer, alter ego, and constructive trust); *see also* 11 U.S.C. § 544(b).

(d) Platinum, The Platinum Directors, And Bartels Each Breached Their Fiduciary Duties In Connection With The Uptier Transaction.

204. As set forth above, directors and controlling shareholders of a corporation owe the corporation and its shareholders fiduciary duties of care and loyalty, which run to a corporations' creditors when the corporation is insolvent.[401] The evidence at trial will show that Platinum, the Platinum Directors, and Bartels abdicated their role as corporate fiduciaries in approving the Uptier Transaction and tilting the playing field toward Platinum and the Participating Noteholders.

205. ***First***, with respect to Platinum, Platinum breached its fiduciary duties by using its status and control to orchestrate and effectuate the Uptier Transaction for its benefit and to the detriment of the Debtors and their creditors. In particular, and as set forth above, Platinum advanced its position by participating in the Uptier Transaction and selling [redacted] in principal amount of Unsecured Notes (purchased for a fraction of their face value) and the $25 million Wolverine Note, for [redacted] in New 1.25L Notes (which included [redacted].[402] The New 1.25L Notes were

[401] *See supra* ¶¶ 172-175.

[402] *See supra* ¶ 111.

[redacted].[403] Platinum's improved position [redacted]. Instead, Platinum's [redacted]

206. Platinum's entire stewardship of the Company from the LBO onward shows beyond doubt that Platinum unabashedly prioritized Platinum's interests over the interests of the Company. Nothing demonstrates this better than [redacted].[404] At that time, Platinum [redacted].[405] Yet, Platinum [redacted].[406]

207. That total disregard of fiduciary obligations was present again in the Uptier Transaction when Platinum decided that it needed to be able to exchange its Unsecured Notes for new 1.25L Notes even though it would harm other unsecured creditors and the Company. As demonstrated above, Incora was insolvent prior to and after closing of the Uptier Transaction.[407]

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[403] *See id.*

[404] *See supra* ¶ 85.

[405] *See id.*

[406] *See supra* ¶ 86.

[407] *See supra* ¶ 113.

Moreover, the Uptier Transaction increased the Company's principal and interest obligations, rendering future refinancings difficult.[408] Like the LBO, at the time of the Uptier Transaction, Platinum [redacted].[409] The Proposed Complaint asserts a colorable claim for breach of fiduciary duty against Platinum for orchestrating and participating in the Uptier Transaction in order to advance its own interests to the detriment of the Company and its creditors.

208. ***Second***, as to the Platinum Directors, they breached their fiduciary duties to Incora in connection with the issuance of the New 1.25L Notes to Platinum as part of the Uptier Transaction. Indeed, the Platinum Directors, and presumably Bartels once he joined the Board, [redacted]. For example, when Carlyle [redacted].[410] By [redacted].[411] In so doing, the Platinum Directors considered only their own interests, and failed to evaluate the impact the Uptier Transaction (and especially the issuance of the New 1.25L Notes to Platinum) would have on the Company's creditors. In addition, the Platinum Directors agreed to onerous Indemnification Obligations that were then cited as one of the causes for the Debtors' chapter 11

[408] *See supra* ¶ 118.

[409] *See supra* ¶¶ 111-112.

[410] *See supra* ¶ 110.

[411] Upon information and belief, the Platinum Directors were selected and controlled by Platinum.

filing.[412] The Platinum Directors, [redacted].[413] The Platinum Directors' malfeasance and/or nonfeasance constituted a clear violation of their fiduciary duties.

209. ***Third***, Mr. Bartels, Platinum's hand-picked "independent" director, also breached his fiduciary duties in connection with approving the Uptier Transaction. Mr. Bartels was [redacted] Mr. Bartels [redacted].[414] Notably, Mr. Bartels [redacted],[415] and [redacted].[416] Mr. Bartels [redacted].[417] Instead, as the [redacted].[418] After a meeting [redacted].

[412] *See* First Day Declaration ¶ 89.

[413] *See supra* ¶ 120.

[414] *See supra* ¶ 128.

[415] *See id.*

[416] *See id.*

[417] *See supra* ¶ 129.

[418] *See supra* ¶ 130.

[redacted].[419] Mr. Bartels [redacted][420]
The Proposed Complaint asserts a colorable claim for breach of fiduciary duty against Mr. Bartels for his [redacted] to the detriment of the Company and its creditors.

(e) The Participating Noteholders Aided And Abetted, And Knowingly Participated In, Platinum's, the Platinum Directors', and Bartels' Breach Of Fiduciary Duty.

210. Where a third party knowingly participates in the breach of a fiduciary's duties, such third party becomes a joint tortfeasor with the fiduciary and is liable as such. *See Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 639 (5th Cir. 2007) (citing *Kinzbach Tool Co. v. CorbettWallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942)); *see also Woloshen v. State Farm Lloyd*s, 2008 U.S. Dist. LEXIS 68647, at 5-6 n.3, 2008 WL 4133386, at *2 n.3 (N.D. Tex. Sept. 2, 2008) (Fitzwater, C.J.) (observing how this liability has been characterized as an "aiding and abetting" theory of liability); *Chester Cty. Employees' Ret. Fund v. KCG Holdings, Inc.*, 2019 WL 2564093, at *18 (Del. Ch. June 21, 2019) ("A party is liable for aiding and abetting when it knowingly participates in any fiduciary breach.").

211. To allege knowing participation, a plaintiff must assert: (a) the existence of a fiduciary relationship; (b) that the third party knew of the fiduciary relationship; and (c) that the

[419] *See id.*

[420] *See supra* ¶¶ 128-129.

third party was aware that it was participating in the breach of that fiduciary relationship. *See Meadows*, 492 F.3d at 639 (*citing Cox Tex. Newspapers, L.P. v. Wootten*, 59 S.W.3d 717, 721-22 (Tex. App. 2001)).

212. As set forth above, Platinum, the Platinum Directors, and Bartels had a fiduciary duty to Incora and its creditors.[421] The Participating Noteholders, as sophisticated parties represented by experienced counsel, no doubt understood that Platinum and the Platinum Directors and Bartels owed fiduciary duties to the Company and—given Debtors' precarious financial position in the days leading up to the Uptier Transaction—to creditors. And the Participating Noteholders were well aware that the Uptier Transaction benefitted Platinum at the expense of Debtors and various creditors, and nevertheless participated in the Uptier Transaction, most notably by providing the consents without which the Uptier Transaction could not have occurred.[422]

213. The Participating Noteholders understood exactly what they were getting into: they knew that Platinum had a fiduciary duty to Incora and its creditors, Platinum was aware of such duty, and that the Uptier Transaction benefited Platinum at the expense of other stakeholders. By providing the requisite consents, the Participating Noteholders paved the way for the Uptier Transaction and knowingly participated in the Uptier Transaction. In fact, [redacted].[423] When [redacted].[424] For all of these

[421] *See supra* ¶¶ 204-209.

[422] *See supra* ¶¶ 106-107.

[423] *See supra* ¶ 110.

[424] *See id.*

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reasons, the Proposed Complaint identifies colorable claims against the Participating Noteholders for aiding and abetting, and knowingly participating in, breach of fiduciary duty in connection with the Uptier Transaction.

(f) Platinum And The Participating Noteholders' Claims Should Be Equitably Subordinated On Account Of Their Conduct Related To The Uptier Transaction.

214. Platinum and the Participating Noteholders' conduct in connection with the Uptier Transaction was inequitable, warranting subordination. As set forth above, Platinum and the Platinum Directors owed fiduciary duties to the Company and its creditors and the Participating Noteholders knew it. The Uptier Transaction benefited Platinum to the detriment of the Company and its creditors [redacted].[425] The Participating Noteholders colluded with Platinum in effectuating the Uptier Transaction by providing the necessary consents and otherwise advancing their position by purchasing the New 1L Notes and New 1.25L Notes, as applicable.[426] Platinum breached its fiduciary duties and the Participating Noteholders colluded with Platinum, aiding and abetting Platinum's breach.[427] Therefore, any claims asserted by Platinum or the Participating Noteholders should be equitably subordinated.

3. Lien Avoidance Claims.

215. Section 544 of the Bankruptcy Code, commonly referred to as the "strong arm" clause, gives the debtor in possession or bankruptcy trustee the rights of a hypothetical lien creditor with a judgment who may avoid any unperfected liens. *See* 11 U.S.C. § 544(b). Section 550(a) enables recovery of the property transferred or the value of such property for the benefit of the

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[425] *See supra* ¶ 205.

[426] *See supra* ¶¶ 106-107.

[427] *See supra* ¶¶ 106-107, 212.

estate, and section 551 preserves any avoided transfers or obligations automatically for the estate. *See* 11 U.S.C. §§ 550(a), 551.

216. These provisions permit debtors to treat a creditor with an unperfected security interest as of the petition date as an unsecured creditor. *See Holber v. Dolchin Slotkin & Todd, P.C.* (*In re Am. Rehab & Physical Therapy, Inc.*), No. 04-14562, 2006 Bankr. LEXIS 1440, at *17 (Bankr. E.D. Pa. May 18, 2006) (strong arm provisions are "intended to cut off unperfected security interests, secret liens, and undisclosed prepetition claims against the debtor's property as of the commencement of the case[]" (citation omitted)); *see also Official Comm. of Unsecured Creditors of Nat'l Forge Co. v. Clark* (*In re Nat'l Forge Co.*), 326 B.R. 532, 547-548 (W.D. Pa. 2005) (affirming bankruptcy court's finding that the Committee's similar claims under section 544(b) were colorable and sufficient to grant derivate standing).

217. As a result of its investigation, the Committee has concluded that approximately $14 million of bank account balances, the Debtors' commercial tort claims (including those alleged herein) and $120 million in D&O insurance policies do not appear to be subject to perfected security interests. The Defendants' interests in these assets may be avoided under section 544(b) of the Bankruptcy Code and applicable state law and recovered for the benefit of the Debtors' estates. *See* 11 U.S.C. § 544(b).

218. ***Bank Accounts***. The Debtors listed a number of bank accounts (the "<u>Bank Accounts</u>") in their schedules of assets and liabilities and statements of financial affairs [Docket Nos. 512-601], none of which are subjected to perfected security interests. In order for a security interest in a deposit account to be perfected under Section 9-312(b) of the Uniform Commercial Code ("<u>UCC</u>"), the secured party must have "control" over the account, as determined in accordance with Section 9-104 of the UCC. *See* UCC § 9-312(b). A secured party has control

over a deposit account if (a) the secured party is the bank with which the deposit account is maintained, (b) there is a control agreement in place, or (c) the secured party becomes the bank's customer with respect to the deposit account. *See* UCC § 9-104(a).

219. Here, the Bank Accounts are not maintained at either Bank of New York Mellon Trust Company, N.A. ("BNYM"), the former notes collateral agent, or Wilmington Savings Fund Society, FSB ("WSFS"), the current notes collateral agent. Although there are control agreements in place for five of the Bank Accounts, those agreements all refer to BNYM as the collateral agent for the LBO Debt rather than WSFS, the collateral agent for the Uptier Debt. There is no evidence these control agreements were assigned to WSFS in connection with the Uptier Transaction. In the absence of such, these control agreements are not sufficient to perfect the security interest of WSFS in the Bank Accounts and that interest is avoidable under section 544(b) of the Bankruptcy Code.

220. ***D&O Policies and Commercial Tort Claims***. The Debtor entities have 18 director and officer insurance policies. There are three ways to perfect a lien on insurance policies: (a) perfecting a lien on the underlying commercial tort claims brought under the policies, (b) perfecting a lien on the proceeds of the policies, or (c) entering a control agreement that covers an account into which proceeds are paid.

221. The Debtors have also purported to grant certain of the Defendants a security interest in their commercial tort claims. In order to take a security interest in commercial tort claims, those claims must be specifically identified. *See* UCC § 9-108(e)(1).

222. The Defendants' alleged security interest in the director and officer insurance policies is not perfected. As an initial matter, UCC Article 9 generally does not apply to "a transfer of an interest in or an assignment of a claim under a policy of insurance." *See* UCC § 9-109(d)(8)

Thus, a security interest in insurance policies generally cannot be perfected with a UCC filing. There is no evidence that the Defendants took additional steps required under applicable state law to perfect a security interest over the D&O insurance policies. Second, a security interest in proceeds is perfected "if the security interest in the original collateral was perfected." *See* UCC § 9-315(c). With respect to insurance, this generally only applies to insurance that protects damage to, or loss of, collateral. UCC § 9-102(a)(64)(E); *see also In re Montreal, Maine & Atlantic Ry., Ltd.*, 799 F.3d (1st Cir. 2015)). Since there was no perfected security interest in the underlying policies or claims related to the policies, any security interest in the proceeds available under the Debtors' director and officer insurance policies is unperfected. Finally, if proceeds from a D&O liability claim are paid into accounts covered by a control agreement on a postpetition basis, those proceeds would remain unencumbered because of the automatic stay.

223. The Defendants do not have a security interest in any commercial tort claims, because no such claims have been identified in the Defendants' security documents.

4. ABL and Amendment No. 6 Claims.

224. Through Amendment No. 6 to the ABL Credit Agreement, Platinum caused, among other things, [redacted]. Additionally, [redacted] thereby adding to the costs to the ABL Borrowers. At the same time, the assets of the Foreign Guarantors were pledged as additional collateral for the benefit of the ABL Lenders, however the Foreign Guarantors received no consideration on account of the pledge [redacted].

ny-2653905

(a) The Guarantees Of The Foreign Guarantors Which Were Provided To The ABL Agent Should Be Avoided As Constructive Fraudulent Transfers.

225. The guaranties granted by the Foreign Guarantors to the ABL Agent are avoidable as a constructively fraudulent transfer. Pursuant to the Foreign Joinder Agreements, executed around the time of Amendment No. 6 to the ABL Credit Agreement, the Foreign Guarantors guaranteed the debt obligations of [redacted].

226. Despite the introduction of the FILO Subfacilities, the ABL Agent provided no new value to the Foreign Guarantors in exchange for the guaranties. Accordingly, the Foreign Guarantors received less than a reasonably equivalent value in exchange for the guaranties they incurred. Indeed, neither the Canadian Guarantors nor the Mexican Guarantor received any value.

227. As discussed herein, the Debtors were insolvent at all relevant times. Additionally, the Foreign Guarantors were rendered insolvent prior to, or as a result of giving the guaranties.

228. The Complaint contains a colorable claim as to the constructive fraudulent transfer claim against the ABL Agent, stemming from the Foreign Joinder Agreements and Amendment No. 6.

(b) The Obligations Provided To The ABL Agent By The [redacted] Should Be Avoided As A Constructive Fraudulent Transfer.

229. The debt obligations incurred by the [redacted] [redacted], in favor of the ABL Agent, are avoidable as constructively fraudulent transfers. As a result of [redacted], the direct liabilities of the [redacted].

230. [redacted]

[redacted]

231. As discussed herein, the Debtors were insolvent at all relevant times. Moreover, prior to, or as a result of the [redacted] should be avoided as constructively fraudulent.

232. Upon information and belief, the ABL Agent knew or should have known that the [redacted] would be incurring debts through their guaranties that would be beyond their ability to pay as such debts matured and that they were engaged in business or a transaction for which any of their remaining property would be unreasonably small given the effects of Amendment 6. Accordingly, the [redacted] should be avoided as constructively fraudulent.

233. The Complaint contains a colorable claim as to the constructive fraudulent transfer claim against the ABL Agent, stemming from [redacted].

C. Incora's Refusal To Pursue The Claims Is Unjustifiable And Demand Would Be Futile

234. As discussed above, once a committee has shown the existence of colorable claims, it should be granted standing to pursue those claims if the debtor has refused to do so and such refusal is unjustifiable. There is no question that Incora has refused to pursue the Committee's Proposed Claims against the Defendants, as they agreed not to do so in the Final DIP Order. Specifically, Incora stipulated and agreed to the validity of the New 1L Notes Stipulated Claim, the ABL Stipulated Claim, and the New 1.25L Notes Stipulated Claim, and that such claims are

not subject to recharacterization, subordination, or any other challenge.[428] The Debtors also stipulated that the liens securing such claims are valid and perfected.[429] Aside from the stipulations, the Debtors granted a broad release in the Final DIP Order to holders of, and the indenture trustee for, the New 1L Notes, the ABL Lenders, and the DIP Secured Parties (as defined in the Final DIP Order).[430] The Debtors have also proposed to grant broad releases of estate claims against the Defendants (including claims for breach of fiduciary duty) under their proposed Plan.[431] Thus, no formal "demand" on Incora to bring suit is necessary. *Nat'l Forge Co*., 326 B.R. at 545 (finding demand unnecessary where debtors had waived right to challenge proposed defendants' claims).

235. Whether Incora's refusal to pursue the claims is unjustified requires the Court to assess whether the claims would likely benefit the debtor's estate, including by "weighing . . . the probability of success and financial recovery." *Official Comm. of Unsecured Creditors of Am.'s Hobby Ctr. v. Hudson United Bank (In re Am.'s Hobby Ctr.)*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998). To be clear, however, the Committee need not demonstrate a likelihood of success to obtain standing. *See Adelphia Commc'ns Corp.*, 330 B.R. at 386.

236. To the extent required, the Committee has also made a more than sufficient showing of a probability of success on the merits of the litigation. The Proposed Complaint and this Motion and Claim Objection are filled with detailed allegations, including citations to documents the Committee has obtained in discovery, not mere conclusory allegations. The Committee has

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[428] *See* Final DIP Order ¶ G.

[429] *See id.* at ¶ G (xi)-(xiii).

[430] *See id.* at ¶ (G)(xvi).

[431] See *supra* ¶ 132.

demonstrated that ample support exists for the Proposed Claims such that the pursuit of litigation, at the very least, will not be a "hopeless fling." *Adelphia*, 330 B.R. at 386.

237. Because the Proposed Claims are colorable, and because their pursuit would benefit unsecured creditors, the Committee is entitled to pursue the claims on behalf of Incora. The Court should thus grant the motion and authorize the Committee to file the Proposed Complaint.

D. The Committee Should Be Granted Exclusive Authority to Settle

238. Incora's inability to bring the Proposed Claims also disables it from effectively managing or settling any resulting litigation. Incora is effectively hamstrung by the waivers and stipulations it agreed to include in the Final DIP Order and by the releases that it has proposed to grant pursuant in the Plan, which together bar it from seeking to avoid or otherwise challenge the validity, priority, and extent of obligations to the Defendants and related liens, among other things.

239. The Proposed Claims could potentially yield a substantial recovery for the benefit of Incora's estates and creditors. As a result, Incora should not retain any rights to settle and compromise any claims the Committee is granted leave to commence. Moreover, the Committee's ability to litigate the Proposed Claims will be hindered if Incora retains the right to propose a settlement because, among other things, a settlement offer from Incora will likely reduce the incentive for the Defendants to enter into settlement negotiations with the Committee.

240. Moreover, the Committee is the appropriate party to pursue, and potentially settle, these claims against the Defendants. The Committee is the only independent fiduciary for the unsecured creditors of Incora in these chapter 11 cases. *See Locks v. U.S. Tr.*, 157 B.R. 89, 93 (W.D. Pa. 1993) ("A member of an official Chapter 11 committee is a fiduciary for the class the Committee represents."); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 303 (Bankr. D. Del. 2006) (noting that the official committee of unsecured creditors owes a fiduciary duty to general

unsecured creditors). In that capacity, the Committee seeks to bring these claims against the Defendants for the benefit of Incora's estates and creditors.

241. Finally, as discussed in further detail below, this pleading constitutes the Committee's objection to the Defendants' claims against Incora's estates. Incora may not settle those objections unilaterally, because that would deprive the Committee of its right to adjudication of its claim objection under section 502 of the Bankruptcy Code. *See In re C.P. Hall Co.*, 513 B.R. 540, 544 (Bankr. N.D. Ill. 2014) ("Just as [a party-in-interest] has a right to object to the [claimant's] claims, he has a right to receive a ruling from the court on his objection notwithstanding [the chapter 7 trustee's] proposed settlement."). The Committee is the appropriate party to settle the Proposed Claims against the Defendants, because any attempt by Incora to settle would deprive the Committee of its rights under section 502. *Id.*

LEGAL ARGUMENTS ON CLAIM OBJECTIONS

242. Although the Committee should be granted derivative standing to commence the proposed Adversary Proceeding for the reasons discussed above, the Committee already has direct standing under section 502 of the Bankruptcy Code to object to the Defendants' claims.

243. Section 502(a) provides that "[a] claim or interest . . . is deemed allowed, unless a party in interest . . . objects."11 U.S.C. § 502(a). Section 1109(b) provides that the term "party in interest" includes an official committee of unsecured creditors. *See* 11 U.S.C. § 1109(b) ("A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or an indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."). Therefore, the Committee is a "party in interest" and has a statutory right to bring a claim objection under section 502. *See In re Solutia Inc.*, 47 Bankr. Ct. Dec. 27 (Bankr. S.D.N.Y. Sept. 14, 2006) ("[T]he Committee does have the

standing to pursue its own objections to the claims of Monsanto and Pharmacia."); *Official Creditors' Comm. for QMect, Inc. v. Electrochem Funding, LLC* (*In re QMect, Inc*.), 349 B.R. 620, 625 (Bankr. N.D. Cal. 2006) (a "creditor or creditors' committee has standing independent of the trustee or debtor-in-possession to object to another creditor's claim . . . ."); *Matter of Levy*, 54 B.R. 805, 808 (Bankr. S.D.N.Y. 1985) ("[A] creditors' committee has the right to object to a claim filed by an individual creditor . . . .").

244. Under section 502(b) of the Bankruptcy Code, a claim is subject to disallowance if it is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1). Here, the Defendants' purported claims are unenforceable against the Debtors because they are avoidable or subject to equitable subordination, for all of the reasons discussed above. In addition, because the Committee has identified colorable claims for recovery of estate property against Platinum and Carlyle, any claims asserted by Platinum and Carlyle are disallowed pursuant to section 502(d) of the Bankruptcy Code pending those Defendants' return of any property wrongfully transferred from the estate. Therefore, even if the Court does not grant the Committee derivative standing to pursue its claims against the Defendants in an adversary proceeding, it should treat this motion as a claim objection and disallow the Defendants' claims pursuant to section 502 of the Bankruptcy Code.[432]

[432] The Committee reserves all rights to supplement this objection and to object to any claims, including claims asserted by the Defendants and/or their affiliates, on any alternative grounds under applicable law.

A. The Defendants' Claim For Applicable Premium Or Make-Whole Amounts Should Be Disallowed As Unmatured Interest Under Section 502(b)(2) Of The Bankruptcy Code.

245. It is bedrock bankruptcy law that claims for interest unmatured as of the petition date are disallowed. *See* 11 U.S.C. § 502(b)(2);[433] see *also In re W. Texas Mktg. Corp.*, 54 F.3d 1194, 1197 (5th Cir. 1995); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372-73 (1988) (recognizing "the general rule disallowing postpetition interest). "This rule flows from the legal principle that 'interest stops accruing at the date of the filing of the petition.'" *In re Pengo Indus., Inc.*, 962 F.2d 543, 546 (5th Cir. 1992) (quoting S. Rep. No. 95-989, at 63 (1978)). The plain text of the New 1L Notes demonstrates that, by design and effect, that the Make-Whole Amount is interest, unmatured as of the Petition Date. As a result, any claim on account of the Make-Whole Amount should be disallowed.

246. ***The Make-Whole Claim is Interest.*** While "interest" is generally defined as money "paid to compensate for the delay and risk involved in the ultimate repayment of monies loaned," *Thrifty Oil Co. v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2002) (citation omitted), courts, including the Fifth Circuit, look past the form of transaction to its economic substance when assessing whether an amount is "interest" under section 502(b)(2) of the Bankruptcy Code. *See In re Pengo Indus., Inc.*, 962 F.2d 543, 546 (5th Cir. 1992) (holding that unamortized original issue discount is "unmatured interest" disallowable under section 502(b)(6));

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[433] Section 502(b)(2) of the Bankruptcy Code states:

> (b) Except as provided in subsections I(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States *as of the date of the filing of the petition*, and *shall allow* such claim in such amount, *except* to the extent that— (2) such claim is for *unmatured interest*.

11 U.S.C. § 502(b)(2) (emphasis added).

see also In re Oakwood Homes Corp., 449 F.3d 588, 599 (3d Cir. 2006) (examining the "economic reality of the transaction" when addressing section 502(b)(2)); *In re Doctors Hosp. of Hyde Park, Inc.*, 508 B.R. 697, 705 (Bankr. N.D. Ill. 2014) ("[C]ourts look to the economic substance of the transaction to determine what counts as interest . . . ." (citing *In re Chateaugay Corp.*, 961 F.2d 378, 380 (2d Cir. 1992))). It is well-settled that, "[i]f the claim in question is the economic equivalent of . . . interest, it is disallowed by § 502(b)(2)." *Wells Fargo Bank, N.A. v. Hertz Corp. (In re Hertz Corp.),* No. 20-11218 (MFW), 2022 Bankr. LEXIS 3358, at *9 (Bankr. D. Del. Nov. 21, 2022) ("*Hertz II*")

247. Recently, in *Ultra Petrol. Corp. v. Ad Hoc Comm. Of OpCo Unsecured Creditors (In re Ultra Petrol. Corp.),* 51 F.4th 138 (5th Cir. 2022) ("*Ultra IV*"), the Fifth Circuit Court of Appeals considered whether a contractual make-whole amount was the economic equivalent of unmatured interest. There, the court reasoned that make-whole provisions "are rather precisely [ ] the 'economic equivalent of unmatured interest.'" *Ultra* IV, 51 F.4th at 146 (5th Cir. 2022) (quoting *Pengo*, 962 F.2d at 546 (citation omitted)). That is because make-whole amounts "are expressly designed to liquidate fixed-rate lenders' damages flowing from debtor default while market interest rates are lower than their contractual rates. Lenders' damages equal the present value of all their future interest payments. ***In other words, a make-whole amount is nothing more than a lender's unmatured interest, rendered in today's dollars***." *Ultra IV*, 51 F.4th at 146 (emphasis added); *see also In re Energy Future Holdings Corp.*, 842 F.3d 247, 251 (3d Cir. 2016) (referring to a make-whole as a "contractual substitute for interest lost on [n]otes redeemed before their expected due date"); *In re MPM Silicones, L.L.C.*, 874 F.3d 787, 801 n.13 (2d Cir. 2017) (same).

248. Here, the Make-Whole Amount is expressly designed to be the "economic equivalent" of unmatured interest by making the noteholders whole for any interest payments they will not receive. Under the 1L Notes Indenture, the Make-Whole Amount is:

> the greater of: (1) 1.0% of the principal amount of the 2026 1L Secured Note; and (2) the excess of: (a) the present value of (i) the redemption price of the 2026 1L Secured Note at November 15, 2024 as of such redemption date (such redemption price being calculated based on the percentage set forth in the table appearing in Section 3.07(f) . . .), plus (ii) all required interest payments due on the 2026 1L Secured Note as of such redemption date through November 15, 2024 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over (b) the principal amount of the 2026 1L Secured Note . . . .[434]

The 1L Notes Indenture thus expressly calculates the Make-Whole Amount based on future interest. Since it is calculated based on future, unearned, unaccrued interest, the Make-Whole Amount is intended to replicate the value of future interest payments. Thus, the Make-Whole Amount is explicitly the "economic equivalent" of unmatured interest.[435]

249. ***The Interest Represented by the Make-Whole Claim is Unmatured***. Section 502(b)(2) of the Bankruptcy Code expressly bars claims for interest unmatured "as of the date of the filing of the petition." 11 U.S.C. § 502(b)(2). The term "unmatured interest" is not defined by the Bankruptcy Code, but courts define it as "interest that is not yet due and payable at the time of a bankruptcy filing . . . ." *HSBC Bank USA, Nat'l Ass'n v. Calpine Corp.*, No. 07-3088 (GBD),

[434] *See* 1L Notes Indenture, definition of "Applicable Premium."

[435] The 1L Notes Indenture provides that the Make-Whole Amount "shall be presumed to be equal to the liquidated damages sustained by each Holder as the result of the early acceleration or redemption of the 2026 1L Secured Notes and the Issuer and each Guarantor agrees that it is a reasonable estimate under the circumstances currently existing of such Holder's actual damages." 1L Notes Indenture § 6.02. However, this has no bearing on whether the Make-Whole Amount is the economic equivalent of unmatured interest that should be disallowed pursuant to section 502(b) of the Bankruptcy Code. *See Ultra IV*, 51 F.4th at 148-50; *see also Hertz*, 637 B.R. at 791 ("If it were enough to just label a make-whole claim liquidated damages . . . , then a contract providing that on default or redemption 'all unmatured interest' would be immediately due and payable could avoid the effect of section 502(b)(2) completely.").

2010 U.S. Dist. LEXIS 96792, at *19 (S.D.N.Y. Sept. 15, 2010). When courts address the meaning of "unmatured" in the section 502(b)(2) analysis where interest takes the form of a prepayment premium—*i.e.*, a make-whole—the inquiry focuses on whether the prepayment premium was triggered (became "due and payable") prior to the actual filing of the bankruptcy petition. This is consistent with the legislative history behind section 502(b)(2) of the Bankruptcy Code. *See* H.R. Rep. No. 95-595, at 352-53 (1977) ("Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any *ipso facto* or bankruptcy clause in the agreement creating the claim."); S. Rep. No. 95-989, 62 (1977) (containing identical text); *see also In re Bonner*, No. 80-01342-MAC, 1984 WL 37542, at *3 (Bankr. M.D. Ga. Jan. 3, 1984) ("By reference to the *ipso facto* clause, Congress recognized that it did not intend to penalize the debtor for filing a bankruptcy petition.").

250. Controlling law in the Fifth Circuit is clear that automatic acceleration triggered by the commencement of a chapter 11 case does not make interest "mature" under section 502(b)(2) of the Bankruptcy Code. *See Ultra IV*, 52 F.4th at 147 ("The bankruptcy court correctly rejected the argument, reasoning that the MNPA's acceleration provision was an *ipso facto* clause that is not to be considered in assessing whether the payment it triggered had matured." (citations omitted)). "[M]ore to the point, a make-whole amount contractually triggered by a bankruptcy petition cannot antedate that same bankruptcy petition. First the petition is filed; then the make-whole amount becomes due—first the cause; then the effect." *Id.*

251. Here, there were no acceleration triggers prior to the Petition Date under the New 1L Notes Indentures or otherwise. The event of default under the New 1L Notes Indenture was the Debtors' bankruptcy filing, which then automatically accelerated the outstanding principal, allegedly triggering the "Applicable Premium." The Make-Whole Amount is thus purportedly due

because of "Petition Date acceleration" and is therefore unmatured ***as of*** the petition date. Thus, the claim on account of the Make-Whole Amount is unmatured interest that should be disallowed.[436]

B. Any Claims Asserted By Platinum and Carlyle Must Be Disallowed Unless And Until [redacted] LBO Equity Purchase Price In Full.

252. Pursuant to 11 U.S.C. § 502(d), the Proposed Complaint seeks to disallow the claims of Carlyle unless, and until, Carlyle returns the LBO Equity Purchase Price [redacted], and of Platinum unless and until Platinum returns [redacted] the $7 million in Management Fees.

253. Section 502(d) of the Bankruptcy Code provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section[s 544, 547, and 548] of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section [550] of this title." 11 U.S.C. § 502(d).

254. The Committee asserts colorable claims against Platinum and Carlyle to avoid and recover [redacted] the Management Fees, and LBO Equity Purchase Price under Bankruptcy Code §§ 544 and 550. Thus, the Defendants' claims should not be allowed and such claims should be disallowed until, and unless, the Defendants pay the full amount of such transfers to the Debtors' estates. *See In re Octagon Roofing*, 156 B.R. 214, 219 (Bankr. N.D. Ill. 1993)

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[436] The solvent-debtor exception upheld in *Ultra IV* is does not apply. As set forth herein, the Debtors are and have been insolvent at all relevant times. However, even if the Debtors were solvent (they are not), "the solvent-debtor exception only ensures that solvent debtors make good on their valid contractual obligations." *Ultra IV*, 51 F.4th at 156. The Make-Whole Amount is unenforceable under New York law, the governing law under the 1L Notes Indenture (*see* IL Notes Indenture § 13.06). Therefore, even if the Debtors were solvent, any claim for the Make-Whole Amount must be disallowed. *See Ultra IV*, 51 F.4th at 157 ("If New York law would prohibit enforcement of the Make-Whole Amount as an unenforceable penalty, the Code would not allow it as a claim, and the solvent-debtor exception could not resuscitate it.").

("[A] claim may be disallowed not only if the claimant has a § 550 judgment pending against it, but also if that claimant was granted a security interest that is voidable under § 544 or one of the other avoidance actions, even if a judgment pursuant to § 550 has not been entered.").

RESERVATION OF RIGHTS

255. The Committee reserves its right to supplement this Motion and Claim Objection or file additional motions for standing or claims objections, with respect to additional evidence or other claims and/or causes of action against the Defendants or other defendants, and/or to file amended complaints and/or claim objections as necessary and permitted by applicable law. The inclusion of any cause of action in the Proposed Complaint is not an admission by the Committee that a motion for standing is required to assert such cause of action, and the Committee reserves all rights with respect thereto.

[*Continued on Next Page*]

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (a) enter an order, substantially in the form of the Proposed Order annexed hereto as **Exhibit A**, granting the Committee the exclusive standing and authority to commence, prosecute, and settle the Proposed Claims, and (b) grant such other and further relief as the Court may deem just and proper.

Dated: December 5, 2023

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(With Respect To All Proposed Claims, Other Than Those Relating To The ABL Facility)

Counsel to the Official Committee of Unsecured Creditors of Wesco Aircraft Holdings, Inc., et al.

Exhibit A

Proposed Order

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

In re:	)	Case No. 23-90611 (DRJ)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*,[438]	)	Chapter 11
Debtors.	)	(Jointly Administered)
	)	**Re: ECF No. ___**

ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' (I) CORRECTED OMNIBUS MOTION FOR EXCLUSIVE LEAVE, STANDING, AND AUTHORITY TO PROSECUTE AND SETTLE CERTAIN CLAIMS, CAUSES OF ACTION, AND CLAIM OBJECTIONS ON BEHALF OF THE DEBTORS' ESTATES AND (II) CLAIM OBJECTION

Upon the omnibus motion, dated December 4, 2023 (the "Motion"),[439] of the Official Committee of Unsecured Creditors (the "Committee") to the above-captioned debtors and debtors in possession (collectively, "Incora" or the "Debtors") of these chapter 11 cases, for entry of an order (this "Order"), pursuant to sections 105, 502, 1103, and 1109 of title 11 of the United States Code (the "Bankruptcy Code"), rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), granting the Committee exclusive standing and authority to commence, prosecute, and settle the Proposed Claims on behalf of the Debtors' estates against the Defendants, including, without limitation, authorizing the Committee to file and adversary complaint against the Defendants, in substantially the form attached to the Motion as **Exhibit B**, and (ii) disallowing the claims of the Defendants under section 502 of the Bankruptcy Code, all as more fully set forth

[438] The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at http://www.kccllc net/incora/. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

[439] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Final DIP Order; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and upon any hearing held on the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief requested in this Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion shall be, and hereby is, **GRANTED** as set forth herein.

2. The Committee is granted exclusive standing and authority pursuant to sections 105, 1103, and 1109 of the Bankruptcy Code to commence and prosecute the Proposed Claims, as stated more particularly in the Motion and draft adversary complaint attached as Exhibit B to the Motion (collectively, the "Causes of Action"), with the full rights and privileges of, and in the stead of, the Debtors.

3. The Committee shall have the sole right and authority to negotiate and settle the Causes of Action on behalf of the Debtors' estates; provided, however, that nothing herein shall

obligate, nor shall be deemed to obligate, the Committee to negotiate or settle, nor to discuss the negotiation or settlement of, any Causes of Action.

4. The Committee is authorized and empowered to take all actions necessary or appropriate to effectuate the relief granted in this Order.

5. The Committee may amend or modify the draft adversary complaint attached as Exhibit B to the Motion prior to its filing.

6. Nothing in this Order shall affect in any way the Committee's rights to seek standing to bring any other additional causes of action against the Defendants or any other party.

7. Any settlement of the Causes of Action shall be subject to approval by the Court after notice and a hearing.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _______
Houston, Texas

____
THE HONORABLE MARVIN P. ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Complaint

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

In re: WESCO AIRCRAFT HOLDINGS, INC., *et al.*,[1] Debtors.	Case No. 23-90611 (MI) Chapter 11 (Jointly Administered)
The Official Committee of Unsecured Creditors of Wesco Aircraft Holdings, Inc., *et al.*, Plaintiff, v. PLATINUM EQUITY ADVISORS, LLC, *et al.*, Defendants.	Adv. Pro. No. _____________

[PROPOSED] COMPLAINT

[1] The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at http://www.kccllc net/incora/. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

The Official Committee of Unsecured Creditors (the "Committee") of Wesco Aircraft Holdings, Inc. and its debtor affiliates (collectively, "Incora," the "Company," or the "Debtors") in the above-captioned chapter 11 cases, by and through its counsel, hereby files as Plaintiff on behalf of the Debtors' estates, this adversary complaint (the "Complaint"), against Platinum Equity Advisors, LLC and certain subsidiaries and investment funds managed or controlled by it, including Wolverine Top Holding Corporation ("Wolverine TopCo" and, collectively, "Platinum"), the employees of Platinum that have served on Incora's board of directors or as officers of Incora, including Michael Fabiano, John Holland, Louis Samson, Mary Ann Sigler, and Malik Vorderwuelbecke (collectively, the "Platinum Directors"), Patrick Bartels, Incora's independent director ("Bartels"), Wilmington Savings Fund Society, FSB as successor indenture trustee and notes collateral agent with respect to the 2024 Secured Notes, the 2026 Secured Notes, the Unsecured Notes, the New 1L Notes, and the New 1.25L Notes (each, as defined herein) (in such capacities, "WSFS"), Carlyle Global Credit Investment Management, L.L.C. and certain subsidiaries and investment funds managed or controlled by it, including Falcon Aerospace Holdings, LLC ("Falcon," and collectively, "Carlyle"), Spring Creek Capital, LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "Spring Creek"), Senator Investment Group LP and certain subsidiaries and investment funds managed or controlled by it (collectively, "Senator"), Silver Point Capital, LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "Silver Point"), Pacific Investment Management Company LLC and certain subsidiaries and investment funds managed or controlled by it (collectively, "PIMCO"), Olympus Peak Asset Management LP and certain subsidiaries and investment funds managed or controlled by it (collectively, "Olympus Peak" and, together with WSFS, Carlyle, Spring Creek, Senator, Silver Point, and PIMCO, collectively, the "Participating

Noteholders”), Bank of America, N.A., as administrative agent, collateral agent, and swingline lender (“BOA” or the “ABL Agent”) and the other lenders and issuing banks under the Debtors’ Revolving Credit Agreement (the “ABL Credit Agreement”) from time to time (collectively, the “ABL Lenders”), and any holders of any equity, debt, or liens or recipients of any other transfers described herein necessary to effectuate any requested relief, and any subsequent transferees of the transfers sought to be avoided herein (“Doe Defendants 1-100” and, together with Platinum, the Platinum Directors, Bartels, the Participating Noteholders, the ABL Agent, and the ABL Lenders, collectively, the “Defendants”).[2] In support of this Complaint, the Committee respectfully states as follows:

NATURE OF PROCEEDING

1. By this Complaint, the Committee hereby asserts, on behalf of the Debtors’ estates, certain claims (the “Estate Claims”) that could potentially result in the avoidance by the Debtors’ estates of over a billion dollars of obligations, the avoidance of liens on estate assets purportedly securing such obligations, and the recovery for the benefit of the estates of hundreds of millions of dollars fraudulently transferred, as well as substantial damages for breach of fiduciary duty.

2. The Estate Claims arise from three separate, but ultimately connected, transactions: (i) Platinum’s highly-leveraged acquisition in 2020 of Wesco Aircraft Holdings, Inc. (“Aircraft Holdings” and, together with its subsidiaries immediately prior to such date, collectively, “Wesco”) through a merger with Platinum’s U.K.-based portfolio company, Pioneer Holdings, LLC (“Pattonair”), (ii) the highly-controversial “uptier” transaction (the “Uptier Transaction”) that closed in March 2022 and triggered two state court litigations and related adversary proceedings

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Corrected Omnibus (I) Motion of the Official Committee of Unsecured Creditors for Exclusive Leave, Standing, and Authority to Prosecute and Settle Certain Claims, Causes of Action, and Claim Objections on Behalf of the Debtors’ Estates and (II) Claim Objection* (the “Standing Motion”), filed contemporaneously herewith.

before this Court, and (iii) certain amendments to the asset-backed revolving credit facility (the "ABL"). The Estate Claims seek, *inter alia*, remedies for fraudulent transfers against (a) the prepetition bondholders who financed Platinum's purchase of Wesco which did not provide the Debtors with reasonably equivalent value for the obligations incurred and security interests granted; (b) Platinum and a Carlyle subsidiary, Falcon, for having received the proceeds of such financing for less than reasonably equivalent value; (c) the Participating Noteholders who engaged in the Uptier Transaction that provided the Debtors with less than reasonably equivalent value, in each case at a time when the Debtors were insolvent; and (d) the ABL Lenders who received additional liens on unencumbered property without providing reasonably equivalent value in return. The Committee also seeks to prosecute a preference claim against Platinum, and breach of fiduciary duty and related claims against Platinum and the Debtors' board of directors for, *inter alia*, approving fraudulent transfers made for the benefit of Platinum, which controlled the Debtors and at all times prioritized Platinum's financial interests over the Company's in blatant disregard of its fiduciary duties. Finally, the Committee seeks to prosecute aiding and abetting breach of fiduciary duty claims and equitable subordination against the Participating Noteholders.

3. On August 9, 2019, after years of declining performance, Wesco agreed to be taken private by an affiliate of Platinum in a leveraged buyout (the "LBO"). In connection with the LBO, Platinum required Wesco to merge with Pattonair and saddled the combined Company with $2.364 billion in debt, almost twice the combined Company's [redacted] aggregate pre-merger debt load. When the LBO closed in January 2020, the Company—rebranded as "Incora"—was insolvent by all objective measures. [redacted]

[redacted]. Those transfers, and the debt incurred to fund them, are avoidable as constructive fraudulent transfers under applicable state law. The LBO, and Platinum's pattern of prioritizing its interests over the Company's following the LBO, give rise to claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and equitable subordination against Platinum and the Platinum Directors.

4. The over-leveraged capital structure that Platinum imposed upon Incora left the Company insolvent, with unreasonably small capital, and unable to pay its debts when they became due from the moment the LBO closed. Platinum [redacted] Within months of the LBO, Platinum [redacted] By November 2020, Incora had exhausted its meager liquidity and was in desperate need of cash, which resulted in Platinum injecting [redacted]—$25 million of which was papered as a "loan" (the "Wolverine Note") that should be recharacterized as equity.

5. Still, the next year, Incora was again running out of liquidity, which led to its decision to enter into Amendment No. 6 (as defined below) of the ABL Credit Agreement, pursuant to which, the ABL Agent received additional collateral from new guarantors, and a reallocation of debt obligations from certain guarantors and borrowers, without providing consideration for such benefits. In addition to Amendment No. 6, the continued problems with

liquidity led Incora to its decision to enter into the Uptier Transaction, by which the Debtors offered new "super senior" secured debt at par plus accrued interest in exchange for certain of the bonds issued as part of the LBO. Because the Uptier Transaction was premised on an exchange of avoidable debt, it too is avoidable as a constructively fraudulent transfer.

6. In addition, as part of the Uptier Transaction, the Debtors paid a price far in excess of the actual value of secured and unsecured notes that were trading below par (the secured notes under 90 cents on the dollar and the unsecured notes around 50 cents), [redacted] (adding to the growth of the Company's debt obligations over time) to the Participating Noteholders, and agreed to onerous indemnification obligations that were then cited as one of the causes for the Debtors' chapter 11 filing. The Debtors received less than reasonably equivalent value as part of the Uptier Transaction at a time when the Debtors were insolvent. The Uptier Transaction is thus avoidable as a constructive fraudulent transfer.

7. The Uptier Transaction is avoidable as an actual fraudulent transfer as well, because Platinum, whose intent is imputed to the Company, was motivated by its desire to improve its position in the capital structure by implementing a transaction that intentionally hindered, delayed or defrauded all creditors excluded from participating. Platinum and its affiliated directors abused their control over the Debtors to engage in self-dealing through the Uptier Transaction—specifically, to exchange [redacted] the $25 million unsecured Wolverine Note for secured debt. The self-dealing exchange is an avoidable "insider" preference under applicable law and gives rise to additional claims for breach of fiduciary duty and equitable subordination. In addition, the Participating Noteholders knowingly enabled Platinum's breach of fiduciary duty and are independently liable for aiding and abetting that breach.

8. In addition, the Committee hereby objects to the allowance of certain of the Defendants' Claims. In particular, the Debtors have stipulated to claims in favor of Silver Point and PIMCO that include a $195 million "make-whole" premium that should be disallowed as unmatured interest. Furthermore, the Defendants who received fraudulent transfers recoverable under section 550(a) of the Bankruptcy Code are not entitled to any recovery from the Debtors' estates until they repay those transfers pursuant to section 502(d) of the Bankruptcy Code.

9. For the foregoing reasons, and as more particularly set forth herein, the Committee's claims in this Complaint should be upheld, and the Committee's objections to the Defendants' claims should be sustained.

JURISDICTION AND VENUE

10. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

11. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

12. Alternatively, this Court has noncore concurrent jurisdiction over this proceeding under 28 U.S.C. § 1334(b), as the causes of action are directly related to the Debtors' chapter 11 cases and will have a significant impact on the Debtors' estates.

13. This Court has personal jurisdiction over the Defendants pursuant to Bankruptcy Rule 7004.

14. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The Committee consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

PARTIES

16. The Committee was appointed on June 16, 2023, pursuant to section 1102(a)(1) of chapter 11 of title 11 of the United States Code, §§ 101 *et seq*. (the "Bankruptcy Code"). The Committee was authorized to file this Complaint by the *Order Granting the Official Committee of Unsecured Creditors' (I) Corrected Omnibus Motion for Exclusive Leave, Standing, and Authority to Prosecute and Settle Certain Claims, Causes of Action, and Claim Objections on Behalf of the Debtors' Estates and (II) Claim Objection*, entered by this Court in an order dated ________, 2024.

17. Upon information and belief, Platinum Equity Advisors, LLC (together with certain subsidiaries and investment funds managed or controlled by it, including Wolverine Top Holding Corporation, a Delaware corporation with its principal place of business is in Beverly Hills, California, "Platinum") is an investment firm registered with the Securities and Exchange Commission ("SEC") with its principal place of business in Beverly Hills, California.

18. Upon information and belief, Michael Fabiano is a current member of the board of directors of Incora.

19. Upon information and belief, John Holland is a current member of the board of directors of Incora.

20. Upon information and belief, Louis Samson is a current member of the board of directors of Incora.

21. Upon information and belief, Mary Ann Sigler is a current member of the board of directors of Incora.

22. Upon information and belief, Malik Vorderwuelbecke is a current member of the board of directors of Incora.

23. Upon information and belief, Patrick Bartels, a North Carolina resident, is a current member of the board of directors of Incora and was appointed as an independent director in connection with the process that led to the 2022 Uptier Transaction.

24. Upon information and belief, Carlyle Global Credit Investment Management, L.L.C. (together with certain subsidiaries and investment funds managed or controlled by it, including "Falcon," a Delaware limited liability company with its principal place of business in Weston, Florida, "Carlyle") is an investment firm registered with SEC with its principal place of business in New York, New York.

25. Upon information and belief, Senator Investment Group LP (together with certain subsidiaries and investment funds managed or controlled by it, "Senator") is an investment firm registered with SEC and with its principal place of business in New York, New York.

26. Upon information and belief, Silver Point Capital, LLC (together with certain subsidiaries and investment funds managed or controlled by it, "Silver Point") is an investment firm registered with SEC with its principal place of business in Greenwich, Connecticut.

27. Upon information and belief, Pacific Investment Management Company LLC (together with certain subsidiaries and investment funds managed or controlled by it, "PIMCO") is an investment firm registered with SEC with its principal place of business in Newport Beach, California.

28. Upon information and belief, Spring Creek Capital, LLC (together with certain subsidiaries and investment funds managed or controlled by it, "Spring Creek") is an investment firm registered with SEC and with its principal place of business in Wichita, Kansas.

29. Upon information and belief, Olympus Peak Asset Management LP is an investment firm registered with SEC with its principal place of business in Greenwich, Connecticut.

30. Bank of America, N.A. ("BOA," or the "ABL Agent") is an investment bank and financial services firm incorporated in Delaware with its principal place of business in Charlotte, North Carolina.

31. Upon information and belief, WSFS is a financial services firm incorporated in Delaware with its principal place of business in Wilmington, Delaware.

32. "ABL Lenders" comprise the ABL Agent and other lenders and issuing banks under the Debtors' ABL Credit Agreement.

33. Doe Defendants 1-100 are holders of any equity, debt, or liens or recipients of any other transfers described herein necessary to effectuate any requested relief, and any subsequent transferees of the transfers sought to be avoided herein.

FACTUAL BACKGROUND

A. Overview Of Incora's Business

34. Incora is a provider of supply chain management services in several industries and the largest independent distribution and supply chain services provider in the global civilian and military aerospace industry.

35. In its distribution business, Incora offers aerospace hardware and parts, electronic products, chemicals, and tooling products, which it procures, tracks, and provides to customers from service centers around the world.

36. In its service business, Incora manages all aspects of its customers' supply chains, including procurement, warehouse management, and onsite customer services, offering both customized supply-chain management plans and ad hoc direct sales.

B. The 2020 LBO

1. Carlyle's Ownership Stake In Wesco.

37. On or around August 29, 2006, Carlyle made its first investment in Wesco through one of its subsidiaries, Falcon. Carlyle, through Falcon, purchased a majority stake of approximately 83.8% of the company's common stock from Wesco's previous owner and founder.

38. In 2011, Carlyle decided to take Wesco public via an initial public offering (the "IPO"). As set forth in a July 2011 prospectus, Carlyle sought to sell approximately 21 million shares of Wesco and set a price range of $15.50 to $17.50 per share. The IPO disappointed, with Carlyle receiving only $15.00 per share.

39. Following the IPO, Carlyle reduced its ownership stake to 65.5% of Wesco's common stock, and would continue to reduce its stake to 23.4% in subsequent years.

2. Wesco Board Explores Sale After Years Of Declining Performance.

40. In November 2017, after several years of declining performance, Wesco began exploring the possibility of a sale of the company.

41. Wesco's Board of Directors (the "Board") asked a team of investment bankers at Morgan Stanley to review the company's market position, stock price, performance, and operational and valuation benchmarking and discussed potential strategic buyers and an illustrative process for a review of the company's options.

42. In parallel, Wesco's Board hired an outside consulting firm, AlixPartners, to undertake a comprehensive review of its business operations.

43. Although Wesco's Board decided not to press forward with a sale process at that time, the work performed by AlixPartners would result in the development of an operational improvement initiative later known as "Wesco 2020."

44. Between August 2018 and April 2019, Wesco's stock price dropped from $13.95 to approximately $8.25.

45. In January 2019, the Wesco Board established an ad-hoc committee to oversee a formal sale process and hired investment bankers at J.P. Morgan and Morgan Stanley to advise Wesco.

46. Later that same month, on January 31, 2019, Wesco management announced the company's negative financial results for the first quarter of 2019 (which ended on December 31, 2018). Although sales for the first quarter grew by about 9% year-over-year (faster than expected), the ***cost*** of these sales increased more than 10% and Selling, General and Administrative ("SG&A") expenses also grew faster than sales. As a result, pre-tax income at Wesco declined more than 10% to just $22.11 million.

47. With the news, Wesco's stock dropped 12.7%.

3. Wesco's Business Woes Continue As Merger Deal Comes Together With Platinum.

48. In February 2019, Wesco management prepared an initial set of management projections for use with potential bidders.

49. Those financial projections showed steadily increasing earnings for each year from 2019 to 2023 leading to a projected Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") of $271 million in 2023 (a substantial increase from Wesco's actual EBITDA of $161 million in 2018).

50. Wesco's Board of Directors, which included two members appointed by Carlyle approved the projections for use with bidders on April 8, 2019.

51. During the second quarter earnings call, Wesco management said that Wesco had been winning contract renewals by accepting lower margins. Wesco also reported operating

income that was significantly down year-over-year at $29.8 million compared to $33.2 million in the same quarter the prior year.

52. Wesco's bankers initially cast a wide net in attempting to find a buyer for Wesco.

53. Between April and May 2019, Wesco entered into confidentiality agreements with 14 potential bidders.

54. The cast of potential acquirors, however, rapidly narrowed.

55. By June 2019, only four potential bidders remained including Platinum, which intended to merge Wesco with Pattonair, a portfolio company it had acquired in 2017.

56. Prior to the LBO and subsequent merger, Pattonair had [redacted]

57. Platinum [redacted]

58. After [redacted] And, most importantly from Platinum's point of view, the merger [redacted] That is, Platinum's [redacted]

59. By July 2019, despite extensive outreach and [redacted] interest from more than ten parties, only two parties, Platinum, and another private equity firm ("PE Bidder B"), remained interested in a potential transaction involving Wesco.

60. During its diligence, Platinum [redacted]

61. In commenting on [redacted]

62. On July 28, 2019, in a call between Wesco and Platinum, Platinum raised "additional diligence concerns and questions . . . regarding the company's financial performance for the first nine months of fiscal 2019, particularly as relates to future financial projections [and] sales margins and trends . . . ."

63. On August 1, 2019, after Platinum expressed concerns about Wesco's financial projections, Wesco took the highly unusual step of preparing a second set of projections to replace the initial projections bidders received in April.

64. The second set of projections reduced the initial management projections for nearly every financial metric, including free cash flow, in every single year of the five-year forecast period and, in particular, decreased projected EBITDA for 2023 from $271 million to $224 million.

65. PE Bidder B dropped out of the process shortly thereafter, leaving Platinum as the only party to submit a binding bid for Wesco.

4. Platinum And Wesco Sign Merger Agreement.

66. On August 5, 2019, despite its concerns about Wesco's financial condition, Platinum submitted its final offer of $11.05 per share, which Wesco's Board quickly accepted.

67. On August 9, 2019, Wesco announced that it had entered into a definitive merger agreement to be acquired by an affiliate of Platinum (the "Merger Agreement").

68. The press release announcing the transaction indicated that the cash purchase price represented a premium of approximately 27.5 percent to the 90-day volume weighted average share price for the period ended May 24, 2019, which was the last trading day prior to media speculation regarding a potential transaction involving Wesco.

69. Pursuant to the Merger Agreement, Platinum, through its indirect subsidiary Wolverine Intermediate Holding II Corporation (defined in the Merger Agreement as "Parent"), was required to deposit funds sufficient to purchase and cancel all outstanding shares of Wesco Aircraft Holdings, Inc. at a price of $11.05 per share.

70. Although the Merger Agreement contemplated that Platinum would obtain debt financing to consummate the merger, Platinum expressly acknowledged and agreed that obtaining debt financing was "not a condition" to closing the merger.

71. In fact, so long as Wesco complied with its obligations under the Merger Agreement, certain representations and warranties of Wesco remained true and correct, and there had been no material adverse effect (a notoriously high bar in M&A transactions), Platinum was obligated to close the transaction.

72. In the event that Platinum did not fulfill its obligation to close, whether due to a failure to raise debt financing or otherwise, Wesco could either seek specific performance forcing

Platinum to close or elect to terminate the Merger Agreement and receive a $112 million "break-up fee" from Platinum.

73. On the day the merger was announced, Wesco released its financial results for the third fiscal quarter of 2019, ending on June 30, 2019.

74. Although gross profits were up slightly year-over-year, they were down compared to the prior quarter.

75. Gross margin continued to decline—this time, by 1.6 percentage points from the prior quarter to 23.9%—and fell to 24.8% for the first nine months of the fiscal year.

76. Wesco also reported a material decline in operating income.

77. Wesco's shareholders voted overwhelmingly in favor of the merger. Given Wesco's downward trajectory, that shareholder enthusiasm made sense.

78. In securities litigation that followed, Wesco's Board of Directors would defend its decision to sell the company, characterizing the decline in Wesco's business prospects as "dramatic," an "undeniable reality," and "worse than predicted by management."

79. Wesco's Board went so far as to gloat that "[a]n overwhelming 99.9 percent of the shares present . . . voted to approve the merger."

80. And it is good that they did, because Wesco's fourth quarter and fiscal year 2019 financial results were lower than ***both*** sets of projections" (*i.e.*, the initial April 2019 and lower August 2019 projections).

5. Platinum Struggles To Place Buyout Debt.

81. Undeterred by Wesco's declining performance, Platinum pushed forward with its plan to leverage its acquisition with $2.3 billion in debt, nearly twice the combined Company's pre-merger debt load.

82. Platinum's head of debt capital markets, Kevin Smith, [redacted] Wolverine Escrow, LLC ("Wolverine Escrow"), [redacted]

83. The Debtors' [redacted]

84. The [redacted].

85. As part of the efforts to market the financing, in September 2019, Platinum, [redacted]

86. To arrive at [redacted]

87. [redacted]

88. In describing [redacted]

89. [redacted]

90. As noted above, Platinum [redacted]

91. In mid-October, Platinum [redacted]

92. In the October 2019 Lender Presentation, Platinum [redacted]

93. To arrive at [redacted]

94. Yet the forecasts [redacted]

95. While Platinum [redacted]

96. In fact, Platinum's [redacted]

97. In Platinum's [redacted]

[redacted]

98. In addition, in describing the Company's [redacted]

99. In comparison, Platinum's [redacted]

100. When speaking to prospective lenders, Platinum [redacted]

[redacted]

101. However, Platinum and the underwriters [redacted]

[redacted]

102. According to press reports, prospective lenders were highly critical of the "highly adjusted financials" being used to market the deal, and the Company's "high strung credit profile" which left it with "little room for error."

103. The financial press noted that, "several buysiders following the deal are only giving the company credit for a fraction of Platinum's projected synergies, which would imply leverage of 8.9x-10.7x, far in excess of the company's marketed numbers."

104. Reports noted significant "execution risk of merging the two companies," and that "Moody's also expects free cash flow of roughly USD 0m to negative USD 50m."

105. Platinum thus faced a decision: [redacted]

106. Had Platinum [redacted]

107. However, given [redacted]

108. Platinum simply was "not putting more equity in," no matter the consequences.

109. Instead, Platinum chose to [redacted]

110. Reflecting on the decision at this time, Platinum personnel [redacted]

111. However, even the [redacted]

112. To further sweeten the deal, [redacted]

113. In the end, however, even with a gaudy yield of 13.75%, the underwriters [redacted]

114. Carlyle (whose subsidiary Falcon stood to receive approximately $255 million in cash at closing for the buy-out of its equity ownership of Wesco) [redacted]

115. Yet, even with Carlyle's [redacted], there was still a hole in the LBO financing which w[redacted]

116. Platinum [redacted] Wolverine Intermediate Holding Corporation ("HoldCo"), Incora's indirect holding company, [redacted] paid-in-kind notes due 2028 (the "HoldCo PIK Notes") that [redacted]

117. Due to HoldCo's placement in the hierarchy of the Company's organizational structure, the HoldCo PIK Notes were structurally subordinated to virtually all other obligations of the Company and functionally the equivalent of preferred stock.

118. According to one Bloomberg article published at the time, the difficulty in placing the financing had arisen from investors being put off by "overly rosy projections," the lack of liquidity and equity contribution from Platinum, and too much risk:

> When a group of lenders led by Bank of America Corp. tried to sell financing for a buyout of Wesco Aircraft Holdings Inc., potential investors balked. Too risky they said.
>
> After a month of negotiations, the banks took an extreme measure to salvage the deal: they agreed to hold on to a $100 million bond that won't pay interest for eight years and will rank more junior to the rest of the financing, according to people with knowledge of the matter.

> The payment-in-kind bond, among the riskiest types of high-yield financing because issuers pay interest on debt with more debt, was added at the last minute, to allay investor concerns about the company's liquidity and to get the deal done, the people said.
>
> . . . .
>
> The financing faced resistance by investors from the get-go, and underwent several changes. The first sign of trouble emerged when plans for a $600 million term loan were ditched in favor of a larger junk-bond offering. The banks raised $2.1 billion from high-yield bonds.
>
> The PIK helped plug a gap in the financing and reduced the amount that Platinum Equity planned to borrow from a revolving credit facility, the people said, asking not to be named discussing a private transaction.
>
> Some investors like the Wesco business itself, but several were put off by a number of features in the financing. Among concerns were overly rosy projections about future costs savings from the merger and an equity contribution from Platinum Equity that some deemed too small, the people said.
>
> Bankers added a number of sweeteners, including hiking the pricing of the debt. Wesco's $525 million of unsecured bonds maturing in eight years offered a yield of 13.76%, one of the highest this year.

119. Kevin Smith [redacted]

120. As finally constituted, the financing (collectively the "LBO Debt" and the related security interests, the "LBO Liens") consisted of:

- $375 million ABL plus $100 million "accordion";
- $650 million in senior secured notes due in 2024 priced at 8.5% interest and 99 OID for yield of 8.75% (the "2024 Secured Notes");
- $900 million in senior secured notes due 2026 priced at 9% interest and 99 OID for yield of 9.2% (the "2026 Secured Notes" and, together with the 2024 Secured Notes, the "Secured Notes");
- $525 million in unsecured notes due 2027 with 13.125% interest and 97 OID for yield of 13.75% (the "Unsecured Notes"); and

- $100 million in HoldCo PIK Notes with 13.75% interest.

121. As part of the [redacted]

122. Although the Platinum [redacted], Mr. Smith and the remainder of the Platinum deal team [redacted]

123. When at least [redacted]

124. And when the underwriters [redacted]

125. The reason for Platinum's [redacted]

126. From the road-show for the originally-intended capital structure, to the ultimate closings of the modified financings, Incora's [redacted]

6. Wesco And [redacted] Underperform In 2019 Prior To Closing.

127. While recognizing that Wesco had weak historical performance and several years of downward trends, Platinum [redacted]

[redacted]

128. But [redacted] For example, [redacted]

129. Shortly following the execution of the Merger Agreement, it became apparent that Platinum had [redacted]

130. [redacted]

131. In fact, Wesco's [redacted]

132. [redacted]

133. [redacted]

134. Further exacerbating the [redacted]

135. By early January 2020, [redacted]

136. The combined [redacted]

137. In the period of time between the signing of the Merger Agreement and the closing, as the Company's [redacted].

7. **The ABL Facility.**

a. <u>The Creation and Structure of the ABL Facility</u>

138. Financing for the LBO included an ABL with $375 million of commitments with an "accordion" feature that would allow the Company to access to another $100 million of liquidity.

139. In materials [redacted]

140. The ABL was governed by the ABL Credit Agreement, and was entered into on January 9, 2020, by Wesco Aircraft Holdings, Inc. and certain affiliates and subsidiaries

(collectively, the "ABL Borrowers").[3] Platinum was heavily involved in structuring and negotiating the ABL on Incora's behalf.

141. The ABL Credit Agreement provided for [redacted]: (a) [redacted],[4] and (b) [redacted].[5] [redacted].

142. [redacted]

143. [redacted].

[3] [redacted]

[4] [redacted]

[5] [redacted]

144. To facilitate the ABL and contemporaneously with its closing, Platinum caused certain ABL Borrowers and other subsidiaries (the "<u>Guarantors</u>")[6] to enter into a guaranty agreement (the "<u>Guaranty Agreement</u>"), which, among other things, provided secured guaranties of the obligations under the ABL Credit Agreement, with certain exceptions.

145. [redacted][7] [redacted][8] [redacted]

146. Mary Ann Sigler signed the Guaranty Agreement on behalf of six Borrowers[9] and 19 Guarantors.[10]

---

[6] [redacted]

[7] [redacted]

[8] [redacted]

[9] [redacted]

[10] [redacted]

b. The ABL Draws

147. Contrary to initial expectations, [redacted]—due to Platinum's difficulties in raising debt, operational performance at [redacted] Wesco [redacted], as well as [redacted] Of that amount, [redacted]

149. Further, and at the same time as [redacted]

150. [redacted] was an understatement, [redacted].

151. Finally, the need to [redacted] Specifically, between the time of signing the Merger Agreement and the closing, the Company's [redacted]

152. [redacted]

[redacted]

153. As the effort to place the financing dragged on and the closing of the merger got pushed off, one Platinum employee [redacted]

[redacted]

Platinum thus [redacted]

154. When Wesco management [redacted]

155. Instead, Platinum [redacted]

156. When Pattonair [redacted]

157. Platinum stated that, [redacted]

158. Later, describing how [redacted], Platinum said [redacted]

159. All of these increasing liquidity demands on the ABL put achievement of Platinum's already aggressive financial projections further at risk.

160. The ABL [redacted]

161. Thus, every dollar drawn to manage liquidity – from the LBO funding, to [redacted] – was a dollar less that the Company could direct to investment such as in inventory to grow the business; or, to serve as a buffer for the proverbial rainy day.

8. Issuance Of The Secured Notes And Unsecured Notes.

162. The 2024 Secured Notes, the 2026 Secured Notes, and the Unsecured Notes became obligations of the Debtors through a four-step process.

163. *First*, on November 27, 2019 (prior to the closing of the LBO), Wolverine Escrow, a Platinum subsidiary, issued the 2024 Secured Notes, the 2026 Secured Notes, and the Unsecured Notes under the Original Indentures (as defined below) [redacted]

164. Wolverine Escrow retained the proceeds of the LBO Debt issuance pending the closing of the LBO in January 2020.

165. *Second*, on the date the LBO closed, [redacted] into Wolverine Merger Corporation ("Wolverine Merger") [redacted].

166. *Third*, and immediately thereafter, Wolverine Merger paid the $1.12 billion in merger consideration to the Wesco shareholders and then merged into Wesco Aircraft Holdings, Inc. and ceased to exist, leaving Wesco Aircraft Holdings, Inc. (but none of its subsidiaries) liable for the LBO debt.

167. [redacted].

168. [redacted].

169. All of the foregoing actions [redacted]

9. **The LBO Transfers.**

170. At the closing of the LBO in January 2020, Wolverine Merger Corp. and Parent transferred approximately $1.12 billion to Wesco's former shareholders (the "LBO Equity Purchase Price"), including approximately $255 million to Carlyle, in exchange for their equity interests and paid [redacted] in transaction fees (the "LBO Transaction Fees"), [redacted]

171. Under the Debtors' [redacted]

172. Despite that requirement, [redacted]

173. Even if the Debtors [redacted]

174. In addition to the foregoing, Incora [redacted]

175. [redacted]

Sources	Uses
ABL ($86 million at closing)[11]	Refinance existing debt ($1,257 million)
2024 Secured Notes ($650 million)	Transfer to Wesco shareholders ($1,120 million)
2026 Secured Notes ($900 million)	[redacted]
Unsecured Notes ($525 million)	Platinum's equity in Pattonair ($555 million)
HoldCo PIK Notes ($100 million)	[redacted]
Cash from Platinum ($266 million)	
Platinum's equity in Pattonair ($555 million)	
[redacted]	
Cash on balance sheet ($76 million)	
[redacted]	[redacted]

176. Each of the parties to the LBO were aware that the individual steps and transfers comprising the LBO were undertaken in concert with one another, and no individual step would have occurred without the others.

177. Indeed, the Offering Memorandum provided to prospective purchasers of the LBO Debt explains that Parent, Wolverine Merger, and Wesco Aircraft Holdings, Inc. entered into the Merger Agreement pursuant to which Parent agreed to acquire Wesco Aircraft Holdings, Inc. by way of a reverse triangular merger, and that outstanding shares of Wesco Aircraft Holdings, Inc. would be converted into the right to receive $11.05 per share.

178. The LBO Offering Memorandum goes on to explain that the purchase price for the acquisition will be financed by the ABL, the Secured Notes, the Unsecured Notes, the HoldCo PIK Notes, a $266.1 million cash equity investment by Platinum, and cash on hand.

11 [redacted]

179. Market participants were also aware of the sources and uses of the funds raised from the financial arrangements entered into in connection with the LBO.

180. The [redacted]

10. Incora Was Insolvent At Closing.

181. When the LBO closed, Incora was undercapitalized by all measures.

182. In fact, [redacted]

183. Word of that undercapitalization eventually spread outside of Platinum. For example, a Senator [redacted]

184. [redacted]

185. Objectively, the average pro forma leverage of large corporate LBOs at the time of the Incora LBO was ***6.0 times EBITDA***, [redacted]

186. [redacted].

[redacted]

187. As overleveraged as the Company would have been [redacted] the situation at closing was actually far worse. Platinum [redacted] In the six months between the execution of the Merger Agreement and the closing of the transaction, [redacted]

188. In fact, in the [redacted]

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[redacted]

189. In [redacted]

190. The Company's underperformance leading up to the closing of the merger, combined with their cash flow difficulties and how expensive the debt was, led to the Company closing the LBO with an unsustainable capital structure from day one.

191. Platinum had sized the amount of the debt [redacted]

192. As an example of its unsustainable leverage, Incora, [redacted]

193. Run-rating this performance for a full year of performance, which is a common methodology utilized in gauging and analyzing the recent performance of a business, would imply an [redacted]

194. [redacted] can then be [redacted] imply a valuation of approximately [redacted] the company's pro forma debt of $2,364 million.

195. Even adding in the potential [redacted] does not make the Company solvent. On the contrary, according to Platinum's internal projections, [redacted], respectively.

196. Adding such forecasted savings and synergies to the [redacted] figure and multiplying by [redacted] implies valuations of approximately [redacted] both of which are [redacted] the company's pro forma debt of $2,364 million.

197. The implications are even worse if the same analysis is applied to [redacted]

198. Annualizing that quarterly result would suggest that if the Company could not improve its performance going forward, [redacted]

199. For calendar year 2019, [redacted]

200. These valuations—and their implications for the Company's insolvency at the time of the LBO—are bolstered by [redacted]

201. For example, [redacted]

202. Furthermore, Incora's [redacted] also supports Incora's insolvency at the time of the merger.

203. The average pro forma coverage ratio (*i.e.*, earnings less capital expenditures necessary to maintain the business, divided by cash interest expense) for similar transactions was ***2.1 times***, [redacted]

204. Even worse, [redacted]

[redacted]

205. A simple addition of Incora's projected cash uses demonstrates Incora's serious liquidity issues at the time that the LBO closed.

206. Incora had approximately [redacted]

207. Platinum projected [redacted]

208. In addition, as further explained herein, Platinum contends Incora was also burdened with $7 million of Platinum management fees per year.

209. Those three uses combined [redacted]

210. In addition to those cash uses, [redacted] would have also needed to pay cash income taxes in the magnitude of tens of millions of dollars per year, one-time costs related to its [redacted], and manage its working capital.

211. All of that for a business that generated only [redacted] of EBITDA in the [redacted] and $86 million of EBITDA in the [redacted]

212. Platinum [redacted]

213. Incora's poor financial state and credit metrics can be partially attributed to Platinum's small cash equity contribution.

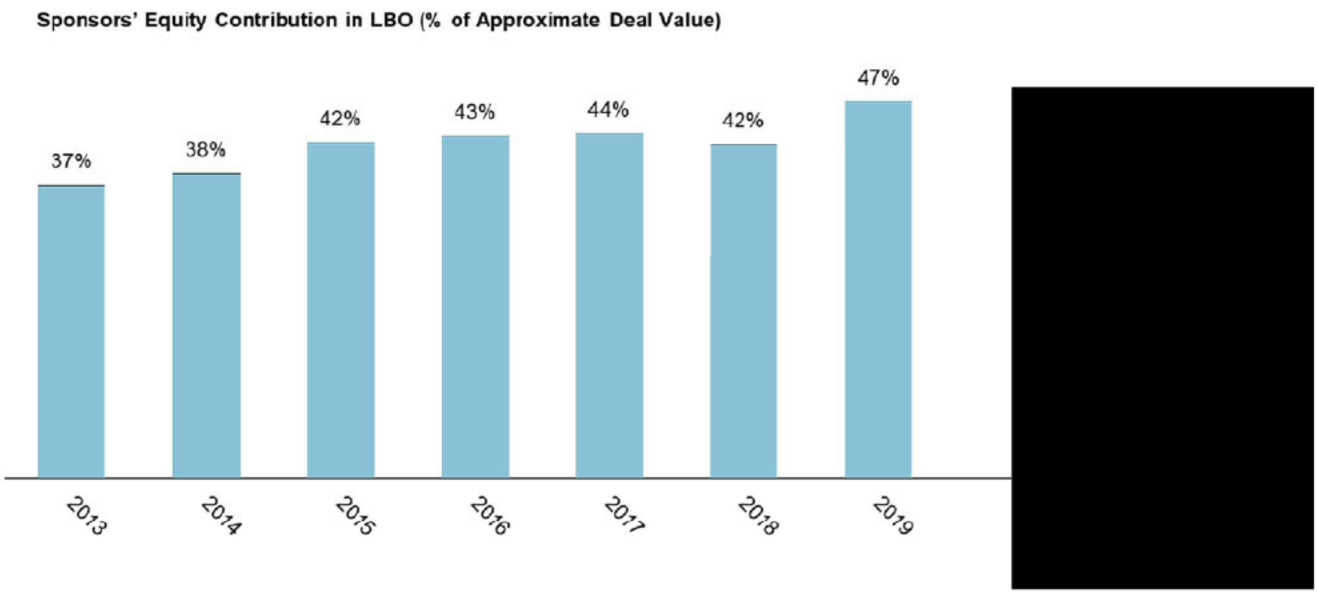
214. In the seven years prior to the LBO, the average equity contribution for a transaction of this size was approximately 42%, while Platinum contributed just $266 million in cash equity,

representing a meager [redacted]

215. Even crediting the non-cash Pattonair equity contribution overvalued at a purported $555 million increases the total equity contribution to [redacted]

216. Such a small equity contribution signifies overleverage, which then naturally led to and was exacerbated by the unsustainably high cost of debt with which Incora was burdened.

217. Platinum was aware that an additional cash equity contribution would partially alleviate Incora's woes but refused to contribute any more.



[redacted]

11. Incora's Performance After Closing Demonstrates That Its Capital Structure Was Unsustainable.

218. Incora's performance deteriorated even further after the acquisition closed and before the onset of the COVID-19 pandemic, highlighting the unsustainability of the combined Company's capital structure—irrespective of COVID.

219. For the quarter [redacted]

[redacted]

220. The lender presentation for the quarter [redacted]

221. Instead, the biggest drivers of the underperformance [redacted]

222. These are the [redacted]

223. Between October 2019 and the end of March 2020, Incora had generated approximately [redacted]

224. Regardless of COVID, it was clear that Incora's projections [redacted] were far removed from reality and that its capital structure was unsustainable.

[redacted]

C. Platinum Abused Its Control To Benefit Itself At The Expense Of The Insolvent Company

1. Platinum's Transaction and Consulting Fees.

225. In connection with the LBO closing, Platinum entered into a Corporate Advisory Services Agreement, dated as of January 9, 2020 (the "CASA"), with Wolverine TopCo, [redacted]

226. Wolverine TopCo is not one of the Debtors in the bankruptcy (the "Chapter 11 Cases"), but rather the top holding company in the structure that sits "above the borrowing group" [redacted]

227. Under the terms of the CASA, [redacted]

228. The CASA was [redacted]

229. [redacted]

230. Moreover, while the CASA [redacted]

231. The CASA was [redacted]

232. The CASA itself [redacted]

233. Instead, the CASA [redacted]

[redacted]

[redacted]

234. Despite the fact that the CASA [redacted] Platinum directed that the Debtors [redacted]

235. However, there is no evidence that [redacted]

236. According to the Debtors, [redacted]

237. Also, purportedly pursuant to [redacted] the CASA, Platinum unilaterally decided to charge the Debtors a $7 million annual "management fee" (the "<u>Management Fee</u>").

238. Again, however, there is no evidence that [redacted]

239. During 2020, the Debtors [redacted]

240. Starting in the first quarter of 2021, Platinum [redacted]

241. The Debtors [redacted]

242. The Debtors [redacted]

243. [redacted]

244. However, [redacted]

245. By January of 2022, Platinum had informed the Debtors that [redacted] Management Fees.

246. During her deposition, Platinum CFO, Mary Ann Sigler, [redacted]

247. What's more, Ms. Sigler [redacted]

2. Rather Than Address Incora's Insolvency, Platinum Focuses On Maximizing Its Own Returns.

248. By no later than April 2020—only three months after the LBO closed—it had become readily apparent that Platinum's intentional undercapitalization of Incora had left the Company in dire financial straits.

249. On April 6, 2020, Moody's downgraded its ratings for Incora, including the Company's corporate family rating (from B3 to Caa1) and the ratings for its Secured Notes (from B3 to Caa1) and Unsecured Notes (from Caa2 to Caa3).

250. Moody's attributed the downgrade to the Company's "aggressive governance evidenced by its high tolerance for financial risk and weak balance sheet with thin capitalization."

251. Moody's explained that the "large-sized combination of Wesco and Pattonair" created "near-term execution and integration risk in an industry where inventory optimization and consistent on-time customer deliveries are of paramount importance."

252. Moody's explained this risk was "elevated . . . against a backdrop of a highly leveraged balance sheet with modest cash reserves and pending earning headwinds from the coronavirus outbreak."

253. As a result, in the first half of 2020, the prices for the Unsecured Notes and HoldCo PIK Notes dropped, with these notes trading down to 58.8 cents on the dollar and 40 cents on the dollar, respectively, by July 2020.

254. Not long after, and [redacted]

255. After [redacted]

256. Platinum [redacted] Instead, Platinum saw [redacted]

257. Specifically, in the summer of 2020, Platinum considered [redacted]

258. However, Platinum recognized that [redacted]

259. According to [redacted] (the "July 2020 Investment Committee Memo"), [redacted]

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[redacted]

260. Though there was [redacted]

261. Platinum believed that [redacted]

262. Platinum also flagged in its July 2020 Investment Committee Memo that, [redacted]

263. The July 2020 Investment Committee Memo concluded that in most situations, [redacted]

264. Because [redacted]

265. The July 2020 Investment Committee Memo also contained a section on [redacted]

266. Platinum posited that [redacted]

267. Platinum's interests yet again trumped those of the Company, [redacted]

3. Subsequent Deterioration In The Company's Finances Forces Platinum's Hand.

268. On July 30, 2020, several months into the COVID pandemic and less than seven months after the acquisition closed, Moody's again downgraded Incora's credit rating.

269. The agency reduced the Company's corporate family rating (from Caa1 to Caa3) and the ratings for its Secured Notes (from Caa1 to Caa3) and Unsecured Notes (from Caa3 to Ca).

270. The "Ca" rating expressed Moody's view that the Unsecured Notes "were highly speculative and were likely in, or very near, default."

271. Moody's noted that the operating environment created by COVID-19 "combined with a poorly capitalized balance sheet and expectations of negative free cash flow, give rise to the possibility of some form of default over the next 12 to 24 months."

272. By the Fall of 2020, Platinum had instead determined that [redacted]

273. In particular, Platinum had determined that [redacted]

274. Platinum anticipated [redacted]

275. Platinum also determined that, [redacted]

276. Platinum decided to [redacted] "unsecured promissory note" (the "Wolverine Note") [redacted]

277. Despite the formal label affixed to the Wolverine Note, Platinum regularly [redacted]

278. At the time [redacted]

279. The Wolverine Note was entered into by Wesco Aircraft Holding, Inc. in favor of Wolverine TopCo.

280. Wesco Aircraft Holding, Inc. was the [redacted]

281. The terms of the Wolverine Note [redacted]

282. Due to [redacted]

283. The Debtors [redacted]

284. [redacted]

285. Smith also attested that, [redacted]

[redacted]

4. ABL Amendments.

286. As noted previously, between the LBO closing in 2020 and leading into the fall of 2021, Incora [redacted] and Platinum [redacted] Platinum searched for other liquidity-enhancing transactions and attempted to

increase liquidity through the addition of certain amendments to the original ABL Credit Agreement. These modifications are reflected in the following paragraphs:

287. On February 20, 2020, the ABL Borrowers entered into Amendment No. 1 to the ABL Credit Agreement, which provided for increases in the commitments for the U.S. Subfacility (from $300,000,000 to $380,000,000) and the UK Subfacility (from $75,000,000 to $95,000,000).

288. [redacted]

289. [redacted]

290. [redacted] [redacted]. [13]

291. On March 2, 2020, and April 27, 2020, the parties entered into Amendment No. 2 to the ABL Credit Agreement, and Amendment No. 3 to ABL Credit Agreement, respectively. [redacted]

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12 [redacted]

13 [redacted]

292. [redacted][14] [redacted].[15]

293. Thereafter, on October 26, 2021, and December 31, 2021, the parties entered into Amendment No. 4 and Amendment No. 5 to the ABL Credit Agreement, respectively. [redacted]

294. [redacted]

295. [redacted][16] [redacted].[17]

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[14] [redacted].

[15] [redacted]

[16] [redacted]

[17] [redacted]

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296. Finally, Platinum orchestrated another amendment to the ABL Credit Agreement ("Amendment No. 6"), which sought to implement a first-in-last-out ("FILO") tranche that would sit in the ABL.

297. [redacted]

298. Upon information and belief, Platinum used its leverage over other Incora lenders to have them agree to this transaction.

299. On February 17, 2022, ABL Borrowers and Guarantors entered into Amendment No. 6, which provided for, among other things:

a. [redacted]

b. [redacted]

c. [redacted]

18 [redacted]

300. [redacted]. Upon information and belief neither the Borrowers, their advisors, nor the Guarantors undertook any analysis to verify the accuracy of this representation.

301. [redacted]

302. [redacted][19] [redacted].[20]

303. In contemplation of Amendment No. 6, on February 11, 2022, Platinum caused Wesco Aircraft Canada Inc., and Haas Group Canada Inc. (the "Canadian Guarantors") to enter into that certain joinder to the Guaranty Agreement (the "Canadian Joinder Agreement"), pursuant to which, [redacted]

304. Upon information and belief, the Canadian Guarantors received no benefit for entering into the Canadian Guarantors Joinder Agreement, as they were not borrowers under the ABL Facility.

305. Additionally, [redacted] Haas TCM de Mexico, S. de R.L. de C.V. (the "Mexican Guarantor," and

[19] The Borrowers under Amendment No. 6 are: (i) Holding II, (ii) Pattonair USA, Inc., (iii) Wesco Aircraft Hardware Corp., (iv) HAAS Holdings, LLC, (v) Wesco, and (vi) HAAS Group International, LLC.

[20] The Guarantors under Amendment No. 6 are: (i) Pioneer Finance Corporation, (ii) Pioneer Holding Corporation, (iii) Pattonair Holding, Inc., (iv) Uniseal, Inc., (v) Interfast USA Holdings Incorporated, (vi) HAAS Group, LLC, (vii) Wesco LLC 1, (viii) Wesco LLC 2, (ix) HAAS of Delaware LLC, (x) HAAS TCM Industries LLC, (xi) NETMRO, LLC, (xii) HAAS Chemical Management of Mexico, Inc., (xiii) HAAS Corporation of China, (xiv) HAAS TCM of Israel Inc., (xv) HAAS International Corporation, (xvi) HAAS Corporation of Canada, (xvii) Wesco Aircraft Canada, LLC, (xviii) Wesco Aircraft SF, LLC, (xix) Haas Group Canada Inc., (xx) Wesco Aircraft Canada, Inc, (xxi) Wolverine UK Holdco Limited, (xxii) Wesco 1 LLP, and (xxiii) Wesco 2 LLP.

together with the Canadian Guarantors, the "Foreign Guarantors") entered into a certain joinder agreement [redacted] (the "Mexican Joinder Agreement," and together, with the Canadian Guarantors, the "Foreign Joinder Agreements").

306. Upon information and belief, the Foreign Guarantors received no benefit for entering into the Mexican Joinder Agreement [redacted].

307. Moreover, upon information and belief, the decisions to enter into the joinder agreements were not made by the Foreign Guarantors, but rather by Platinum.

308. Furthermore, the decisions to enter into the joinder agreements and Amendment No. 6 were not made in the Foreign Guarantors' best interests, but instead the interests of Platinum.

309. Neither Platinum nor Incora provided the Borrowers or the Guarantors with additional cash, either at the time of entering into Amendment No. 6 or thereafter in exchange for taking on these increased debt obligations.

310. Thus, through Amendment No. 6, Platinum increased the obligations and costs of the ABL Facility without any commensurate consideration through, among other things, (a) [redacted],[21] (b) [redacted], and (c) [redacted].

[21] Prior to Amendment No. 6 there were five (5) other amendments, one of which provided, among other things, increases in the commitments for the US and UK Subfacilities.

D. The 2022 Uptier Transaction

1. Background

311. By late 2021, Incora faced a severe liquidity crisis due to an upcoming interest payment on its bonds.

312. Incora retained advisors and ultimately chose to pursue an "uptier" exchange with holders of majorities of its secured and unsecured debt.

313. The Uptier Transaction triggered the two state court litigations that are currently at the center of Incora's chapter 11 cases.

314. Platinum first engaged PJT Partners ("PJT") as an investment banker for the Debtors to raise that incremental capital in September 2021.

315. Although the Debtors' capital needs were substantial, PJT [redacted]

316. Instead, Platinum and the Debtors [redacted] holders of the Debtors' Secured Notes including Silver Point and PIMCO (the "Majority Secured Group").

317. Platinum and the Debtors received further unsolicited outreach in February 2022 from another group of holders of Secured Notes holding approximately 36% of the Debtors' outstanding 2026 Secured Notes (the "Minority Secured Group").

318. Although the Minority Secured Group [redacted]

[redacted]

319. It appears that [redacted]

320. Notably, the Minority Secured Group proposals demanded concessions from Platinum, including that Platinum forego its $7 million management fee; agree to PIK and extend the maturity of the $25 million Wolverine Note; agree to equitize the $25 million Wolverine Note; agree to exchange its Unsecured Notes into new PIK unsecured notes and accept 100% PIK through November 2024.

321. In contrast, the Majority Secured Group's proposals never required any concessions from Platinum in terms of Platinum's management fees, the maturity date of the Wolverine Note, nor the interest that Platinum was set to receive on its Unsecured Notes and the Wolverine Note.

322. Moreover, from the time of the very first proposed term sheet delivered by the Majority Secured Group to Platinum, the Majority Secured Group dangled the carrot to Platinum that the holders of Unsecured Notes—including Platinum specifically—be given the opportunity as part of the Uptier Transaction to exchange their Unsecured Notes for new secured notes.

2. Overview of Uptier Transaction

323. At a high level, the holders of a majority of the Secured Notes—Silver Point and PIMCO—agreed to provide the Company with $250 million of additional liquidity in exchange for additional Secured Notes.

324. The issuance of this debt was prohibited by the Original Indentures, so Incora and the holders of a majority of its Secured Notes and Unsecured Notes—Silver Point, PIMCO, and Carlyle—agreed to amend the terms of the Original Indentures to permit the new debt.

325. In exchange for those consents, Incora agreed to the Uptier Transaction, through which the Debtors purchased [redacted] in principal amount of Secured Notes (the majority of which were held by [redacted] who collectively owned [redacted] of Secured Notes), by issuing $1,286 million in principal amount of new first-lien senior secured notes due 2026 (the "New 1L Notes"), at a price equal to the par value of the Secured Notes [redacted]

326. Silver Point and PIMCO then voted to strip the liens securing the Secured Notes that were left behind, rendering those obligations unsecured.

327. The Debtors also purchased [redacted] of Unsecured Notes [redacted] and the $25 million Wolverine Note, by issuing $472.8 million in principal amount of 1.25-lien senior secured notes (the "New 1.25L Notes" and, together with the New 1L Notes, the "Uptier Debt"), at a price equal to the part value of the Unsecured Notes and the Wolverine Notes, [redacted]

328. On February 8, 2022, the day that rumors of the Uptier Transaction first became public, the Secured Notes traded for approximately 85 cents on the dollar and the Unsecured Notes traded around 50 cents on the dollar.

329. On March 29, 2022, the day after the Uptier Transaction closed, [redacted]

330. The Uptier Transaction was followed by three additional incremental debt exchanges (collectively, the "Follow-On Exchanges") in which [redacted] were permitted to exchange Secured Notes for New 1L Notes on the same terms as the initial exchange.

331. On [redacted]

332. At the time, the 2026 Secured Notes, which by the terms of the Uptier Transaction were rendered unsecured, were trading for approximately 70 cents on the dollar.

333. [redacted]

334. At the time, the 2026 Secured Notes were trading for approximately 63 cents on the dollar, and 2024 Secured Notes for approximately 50 cents on the dollar.

335. On [redacted]

336. In the weeks leading up to the exchange, the 2026 Secured Notes had traded for approximately 8 to 10 cents on the dollar.

337. [redacted]

Self-Dealing

338. The terms of the Original Indentures expressly provided that Platinum's vote—as an insider—was to be disregarded for the purposes of calculating support for indenture amendments.

339. Therefore, Platinum's vote was not required for the Company to receive the additional $250 million in liquidity that the Uptier Transaction was designed to obtain.

340. Nonetheless, the Company [redacted]

341. While Carlyle [redacted] Carlyle [redacted]

342. In Silver Point's and PIMCO's view, [redacted]

343. Platinum was [redacted]

344. As a result of its participation in the Uptier Transaction, Platinum [redacted] and the $25 million Wolverine Note, for [redacted] that would recover ahead of unsecured creditors in a future bankruptcy proceeding.

345. Platinum's [redacted]

346. As noted above, Platinum [redacted]

347. In its [redacted] Platinum [redacted]

348. Among the contested deal points during the negotiations was whether [redacted]

349. More contentious were provisions [redacted] Carlyle [redacted]

4. Incora Was Insolvent At Time Of Uptier Transaction

350. Prior to and after the Uptier Transaction closing in March 28, 2022, Incora was insolvent.

351. Platinum [redacted]

352. And according to Platinum's projections, the Company's EBITDA [redacted]

353. Further, the [redacted]

354. The [redacted]

355. The Company's decision to include the $25 million Wolverine Note in the Uptier Transaction rather than repay it at scheduled maturity in March 2023[22] is also indicative of the Company's inability to satisfy obligations as they come due—the $25 million Wolverine Note represented less than 1.0% of the Company's $2.6 billion in funded debt obligations outstanding prior to the Uptier Transaction, calling into question why one would choose to pay another four years of interest (including compounding PIK interest).

356. A presentation from the [redacted]

5. The Uptier Transaction Did Not Provide Incora With Reasonably Equivalent Value

357. The Uptier Transaction did not provide Incora with reasonably equivalent value.

[22] Assuming for the sake of argument that the Wolverine Note was truly a debt obligation, and is not recharacterized as equity as argued below.

358. In terms of benefits, Incora received [redacted]

359. Incora has also touted certain cash-saving benefits of the Uptier Transaction, noting that the maturities on $455 million of 2024 Secured Notes were extended by two years, annual cash interest expense was reduced, and the maturity of the $25 million Wolverine Note was extended by four years.

360. In exchange for these purported benefits, the Company gave away value in a number of different forms to the uptier participants, including Platinum.

361. Although the Company's annual cash interest expense had been set to decrease in the years following the Uptier Transaction, because (i) the incremental capital was injected in the form of debt, (ii) the terms of the Uptier Transaction increased Incora's debt cost of capital, and (iii) [redacted] which would continue to compound over time, the Company agreed to give away [redacted]

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[redacted]

362. The increase in principal and interest obligations increased the likelihood that any future refinancings of Incora's debt would be more difficult and more expensive to accomplish – if not impossible.

363. The Company could barely raise the debt to fund the LBO transaction and create its initial capital structure; a refinancing of the debt created by the Uptier Transactions would mean finding parties willing to replace significantly ***more*** debt based on the credit profile of a business [redacted]

364. Moreover, the purported benefit of an extension of the maturity on the 2024 Secured Notes was illusory at best, and harmful at worst, because it was combined with a new "springing" maturity provision that would actually accelerate the maturity of 100% of the 1L Notes

to 2024 – including the legacy 2026 Secured Notes that were exchanged and otherwise would not have matured until 2026.

365. If the $184 million of left-behind 2024 Secured Notes scheduled to mature on November 15, 2024 were not refinanced[23] by October 1, 2024, the New 1L Notes maturity would spring to October 1, 2024.

366. The Company [redacted]

367. The springing maturity provision in the New 1L Notes indenture also included language that the springing date would be extended by the same amount of time that the left-behind holders of 2024 Secured Notes consensually extended their maturity.

368. This suggests that the participants in the Uptier Transaction were not as interested in giving the Company unfettered runway to 2026 as they were in maintaining for themselves a temporal repayment advantage over the excluded bondholders.

369. Perversely, the Uptier Transaction thus ***shortened*** rather than lengthened the Company's maturity profile because the old 2026 Secured Notes that would have matured in 2026 could now mature two years earlier in 2024 due to the springing maturity provision.

370. And the prospect of avoiding the springing maturity by a 2024 refinancing of the legacy 2024 Secured Notes was highly speculative–either these parties who had just been disadvantaged by the Company and their fellow holders would have to consent to receiving some new debt obligation from the Company that would presumably rank behind the New 1L and 1.25L

[23] Although various term sheets describe the springing maturity as being triggered if more than $50 million in principal amount of 2024 Secured Notes that did not participate in the Uptier Transaction and remained outstanding, the indenture for the New 1L Notes was drafted in such a way that certain "Restricted Payment" prepayments would lower the threshold to zero from $50 million such that the springing maturity would be triggered if ***any*** legacy 2024 Secured Notes were left outstanding.

Notes, or the Company would have to find someone willing to lend it the proceeds to pay off this remaining debt – in other words, the Company would have to find someone willing to pay 100 cents on the dollar for debt that was trading at approximately 60 cents after the Uptier Transaction.

371. As to Platinum, the Debtors' [redacted]

372. Benefits to the Company were largely illusory.

373. Despite Platinum's [redacted] Platinum already had [redacted]

374. In fact, [redacted].

375. And to make matters even worse—for Debtors, while better for Platinum—the Uptier Transaction [redacted]

376. Platinum's CFO, Mary Ann Sigler, [redacted]

377. Moreover, the Debtors [redacted]

378. Nonetheless, the Debtors' advisors [redacted]

379. [redacted]

380. The Company also never truly received any benefit from the touted extension of the maturity of the Wolverine Note.

381. The Wolverine Note bore many hallmarks of equity, rather than debt, calling into question the benefit obtained from extending its "maturity."

382. Further, [redacted]—in other words, the Debtors' advisors [redacted]

383. This suggests that Platinum [redacted] and, again, calls into question the value obtained through the "maturity extension."

384. Finally, as noted above, the PIK interest on the exchanged debt provided a short-term benefit at the cost of rendering a future refinancing more expensive if not impossible.

385. Platinum's participation in the Uptier Transaction should be viewed in light of the fact that Platinum [redacted]. In the Platinum October 2020 Investment Committee Update, Platinum [redacted]

[redacted]

6. Bartels' Role In Uptier Transaction.

386. Prior to 2022, [redacted]

387. Accordingly, in an attempt to benefit from the deferential business judgment standard, the Debtors determined it necessary to employ an independent director to bless Platinum's participation in the Uptier Transaction and thereby provide the veneer of propriety.

388. Bartels, who was handpicked by Platinum to fill this role, was thus key to achieving Platinum's goals of improving its position at the expense of unaffiliated creditors. And while nominally "independent" from Platinum, in reality, Bartels was anything but.

389. Bartels was [redacted]

390. He was subsequently interviewed by numerous Platinum employees, including Louis Samson, a director of HoldCo and current co-president of Platinum.

391. It does not appear that the Debtors' management was [redacted]

392. Although [redacted]

393. In connection with his engagement, Bartels [redacted]

394. In other words, as Bartels recognized, [redacted]

395. During the course of [redacted].

396. That [redacted]

397. Three months after [redacted]

398. After his appointment and prior to his first board meeting [redacted]

399. Although ostensibly retained [redacted]

400. In fact, although Bartels [redacted] Bartels [redacted]

401. Instead, [redacted]

402. That Platinum [redacted] for example, the Majority Secured Group's [redacted]

403. The Debtors' [redacted]

404. As Bartels [redacted]

405. And despite [redacted]

406. The Uptier Transaction [redacted] at a March 24, 2022 Board meeting (the "<u>March 24 Meeting</u>").

407. During the [redacted]

408. Subsequently, the [redacted]

409. [redacted]

410. After [redacted]

411. Despite [redacted]

412. Further, prior to [redacted]

E. Wesco's Bankruptcy Filing

413. By early the next year, Incora was planning for bankruptcy.

414. On May 31, 2023, Incora reached an agreement on the terms of its $300 million debtor-in-possession financing facility (the "DIP Facility") with PIMCO and Silver Point.

415. The Company filed for bankruptcy the next day, June 1, 2023 (the "Petition Date").

F. The Debtors' Stipulations

416. On the Petition Date, Incora filed a motion seeking authorization to enter into the DIP Facility (the "DIP Motion").

417. On July 10, 2023, the Court approved the DIP Motion and entered the Final DIP Order.

418. The Final DIP Order includes stipulations by Incora regarding, among other things, the validity of and security for the ABL Facility and the Uptier Debt (collectively, the "Debtors' Stipulations").

419. In particular, the Debtors stipulated and agreed that the Debtors were justly and lawfully indebted and liable to (a) the holders of, and indenture trustee for, the New 1L Notes without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $1,318,739,792.00 of the outstanding New 1L Notes, plus certain costs, fees, and other "Obligations" as defined under the indenture that governs the New 1L Notes (the "New 1L Notes Indenture") and such stipulated claim the "New 1L Notes Stipulated Claim"), and (b) BOA, the ABL Lenders, and other holders of ABL debt without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than $420,981,782.90 of the outstanding principal amount of Revolving Loans (as defined in the credit agreement governing the ABL Facility) and with respect to all obligations on account of amounts available for drawing under outstanding letters of credit as of in an aggregate amount of $1,626,800.00, plus certain costs, fees, and other "Obligations" as defined under the documents that govern the ABL (the "ABL Credit Documents," and such stipulated claim, the "ABL Stipulated Claim").

420. The Debtors also stipulated and agreed that they were indebted and liable to the holders of, and indenture trustee for, the New 1.25L Notes in the aggregate principal amount of not less than $499,955,412.00 of the outstanding New 1.25L Notes, plus certain costs, fees, and other "Obligations" as defined under the indenture that governs the New 1.25L Notes (such stipulated claim, the "New 1.25L Notes Stipulated Claim").

421. The Final DIP Order provides that the Debtors' Stipulations are "binding upon the Debtors in all circumstances and for all purposes" and, as a result, Incora has waived any right to challenge the Debtors' Stipulations.

G. The New 1L Notes Indenture; Make-Whole Claims

422. Upon information and belief, the New 1L Notes Stipulated Claim includes a claim for any "Applicable Premium" as defined in the New 1L Notes Indenture.

423. In addition, WSFS, an indenture trustee under the New 1L Notes Indenture has also filed a claim for the Applicable Premium.

424. Upon information and belief, using the foregoing calculation, the Make-Whole Amount (defined below) included in the New 1L Stipulated Claim is no less than $195 million.

425. Under the New 1L Notes Indenture, "Applicable Premium" means, with respect to any New 1L Note on any redemption date, the greater of (1) 1.0% of the principal amount of the New 1L Note and (2) the excess of (a) the present value of (i) the redemption price of the New 1L Note at November 15, 2024 as of such redemption date (*i.e.*, 107.875% of principal amount) plus (ii) all required interest payments due on the New 1L Note as of such redemption date through November 15, 2024 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points, over (b) the principal amount of the New 1L Note (such amount, the "<u>Make-Whole Amount</u>").

426. The Make-Whole Amount is payable upon optional redemption or acceleration.

427. The New 1L Notes Indenture provides that all outstanding New 1L Notes "will become due and payable immediately without further action or notice" in the event of, among other things, commencement of a voluntary bankruptcy case by the Debtors.

428. Thus, the New 1L Notes Indenture states that the outstanding New 1L Notes are purported to automatically accelerate upon an Incora bankruptcy filing, triggering payment of the Make-Whole Amount.

429. If accelerated prior to November 15, 2024, the New 1L Notes Indenture provides that principal plus the Applicable Premium will be due and owing.

COUNT I
Avoidance And Recovery Of The LBO Equity Purchase Price And [redacted]
As Constructive Fraudulent Transfers
Against Carlyle And Platinum
(11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law)

430. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

431. The transfers of the LBO Equity Purchase Price to Carlyle and the payment of LBO Transaction Fees [redacted] are constructively fraudulent transfers that should be avoided and recovered for the benefit of the Debtors' estates.

432. Incora did not receive fair consideration or reasonably equivalent value in connection with the LBO Transfers.

433. The LBO Equity Purchase Price and LBO Transaction fees were funded largely through the issuance of LBO Debt secured by the LBO Liens.

434. Of the $2.364 billion in proceeds of the LBO Debt, over $1.1 billion was required to be paid to Wesco shareholders as the LBO Purchase Price (including approximately $255 million to Falcon, an entity controlled by Carlyle) [redacted] to facilitate a transaction for the [redacted]

435. The Company received no value from having paid Wesco's former shareholders in order to enable Platinum to own the Company.

436. The LBO left Incora insolvent, with unreasonably small capital, and unable to pay its debts as they became due, as is borne out by the Company's actual performance immediately following the LBO.

437. The Debtors' performance had been in severe decline at all relevant times and the business could not reasonably support the $2.3 billion of debt that Platinum placed on the Company to fund its acquisition of Wesco.

438. Wesco's financial struggles dated back over a decade, beginning with Carlyle's disappointing attempt to take Wesco public in July 2011, and continued as Wesco hired outside consultants to design and implement the "Wesco 2020" initiative—a failed effort to shore up its business.

439. Wesco's declining prospects were the impetus for the Wesco Board of Directors to put the company up for sale, but that process also nearly failed, with Platinum emerging as the only prospective bidder (of more than a dozen) to submit a binding bid.

440. Platinum knew, or reasonably should have known, that the Debtors could not support the leverage that it imposed upon the Debtors through the LBO.

441. During the marketing process for the buyout, Wesco was forced to take the drastic step of retracting and reissuing financial projections to prospective bidders because the company's actual performance fell far short of the original projections. Even the reissued projections, which showed a substantial decrease in every conceivable metric of financial performance, failed to accurately capture the diminished state of Wesco's business.

442. In late July 2019, as Platinum prepared to sign the Merger Agreement, [redacted] but pressed forward with the acquisition anyway.

443. In response to a [redacted] fiscal Q4 performance where Wesco achieved EBITDA of just $36 million, approximately 20% lower than the immediately preceding quarter, Platinum [redacted]

[redacted]

444. The December results [redacted] The combined Company's poor outlook was exacerbated [redacted]

445. When regular-way sources of financing were unavailable, Platinum made the decision to pivot towards a high-yield financing package, including a term loan, that left the struggling Company with a crushing interest burden.

446. [redacted]

447. Platinum [redacted] The leveraged loan market concurred.

448. Platinum's preferred financing structure for the LBO included a $800 million "Term Loan B," but its underwriters were unable to place the term loan because prospective lenders put little stock in the "highly adjusted financials" that Platinum was using to market the deal.

449. In addition, [redacted] capital markets participants and the financial press—including publications like *Debtwire* and *Reorg Research*—were openly skeptical of Platinum's financial engineering.

450. By October 2019, before the December financial results were released, Debtwire was already describing the Company's proposed financing as "high strung" and leaving the Company "with little room for error."

451. When it could not place the Term Loan B, Platinum pivoted to an all-high-yield bond structure, which would leave the Company even further undercapitalized.

452. To sweeten the deal for bond investors, [redacted]

453. Platinum also forced its underwriters to purchase $100 million of HoldCo PIK Notes, which were deeply subordinated and thus traded significantly below par as soon as the LBO closed, suggesting the market believed the Company would be unable to pay its debts.

454. Platinum was unable to place the Unsecured Notes [redacted] limited working capital.

455. When the LBO closed, Incora was undercapitalized by all measures.

456. The average pro-forma leverage of large corporate [redacted]

457. The average *pro forma* coverage ratio—which measures a company's ability to pay its cash interest expense—for similar transactions was 2.1 times, [redacted]

458. In addition, the average equity contribution for a transaction of this size was 42%, while Platinum contributed [redacted] and [redacted] which did nothing for Incora's liquidity position.

459. The Company's financial condition after the acquisition closed—and before the onset of the COVID-19 pandemic—was immediately distressed.

460. For the Company's [redacted]

461. In April 2020, Moody's downgraded the Company's credit ratings on account of Platinum's "high tolerance for financial risk and weak balance sheet with thin capitalization."

462. By July of 2020, [redacted]

463. By Fall of 2020, [redacted]

464. [redacted] should be avoided as constructively fraudulent transfers because those transfers were made for the benefit of [redacted] and [redacted] and provided no value to the Debtors' estates, much less reasonably equivalent value, and while the Company was insolvent, inadequately capitalized, and believed or reasonably should have believed that it could not pay its debts as they would become due.

<u>COUNT II</u>
Avoidance Of The LBO Debt And LBO Liens As Constructive Fraudulent Transfers Against Silver Point, PIMCO, Carlyle, Platinum, Senator, Spring Creek, the ABL Agent, ABL Lenders, WSFS, And Doe Defendants 1-100
(11 U.S.C. § 544 and Applicable State Fraudulent Transfer Law)

465. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

466. The LBO rendered the Company insolvent, inadequately capitalized, and unable to pay its debts as they became due.

<u>COUNT III</u>
Avoidance And Recovery Of Management Fees As Constructive Fraudulent Transfers Against Platinum
(11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law)

467. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

468. Payments of at least $7 million in Management Fees paid by the Debtors should be avoided as constructive fraudulent transfers and recovered for the benefit of the Debtors' estates.

469. The Debtors were insolvent at the time the Management Fees were paid.

470. The Debtors paid the Management Fees [redacted]

471. [redacted]

472. Although the CASA [redacted]

473. If anyone [redacted].

474. Moreover, when looked at as a percentage of revenue or EBITDA, charging the Debtors a $7 million annual Management Fee was well over market for what other private equity firms were charging portfolio companies as "management fees" during the same time period.

475. Accordingly, the Management Fees paid to Platinum should be avoided as constructive fraudulent transfers and recovered for the benefit of the Debtors' estates, because the Debtors were insolvent in 2020, when the fees were paid, and the Debtors did not receive reasonably equivalent value for payment of the Management Fees.

COUNT IV
Breach of Fiduciary Duties In Connection With LBO Transaction And Amendment No. 6 To The ABL Credit Agreement
Against Platinum And Mary Ann Sigler

476. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

477. Platinum, as the controlling shareholder, and Mary Ann Sigler, as the officer and director of the Debtor entities that authorized the incurrence of the LBO Debt and granting of the LBO Liens, breached their fiduciary duties to Incora in connection with the LBO.

478. In approving the LBO, Platinum and Sigler considered only Platinum's own interests when issuing the LBO Debt despite the obvious and devastating impact on Incora and its creditors.

479. Platinum and Sigler [redacted]

480. Similarly, Platinum was well aware that the Agreements and Amendment No. 6 to the ABL benefitted Platinum at the expense of the Foreign Guarantors, the [redacted], and the [redacted].

481. [redacted], for which the Foreign Guarantors received no consideration, and caused the [redacted] to take on additional debt without any consideration.

<u>COUNT V</u>
Avoidance Of The Uptier Debt And Uptier Liens As Actual Or Constructive Fraudulent Transfers
Against Participating Noteholders, Including But Not Limited To Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, WSFS, And Doe Defendants 1-100
(11 U.S.C. §§ 544 and 548 and Applicable State Fraudulent Transfer Law)

482. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

483. The Uptier Debt and related liens granted by Incora (the "Uptier Liens") should be avoided as actual fraudulent transfers because Platinum's intent can be imputed to Incora, and Platinum orchestrated and caused Incora to effectuate the Uptier Transaction with the actual intent to hinder, delay, and defraud Incora's creditors that did not participate in the Uptier Transaction.

484. The Debtors were insolvent at the time of the Uptier Transaction.

485. Platinum is an insider of the Debtors that both orchestrated and stood to benefit from the Uptier Transaction.

486. The Uptier Transaction was structured to benefit Platinum and the Participating Noteholders to the detriment of creditors who were not permitted to participate, including those holders of Unsecured Notes that were not allowed to participate in the exchange and were subordinated to Platinum's New 1.25L Notes.

487. [redacted]

488. Platinum exchanged its $25 million unsecured Wolverine Note, which had no upstream guarantees and was therefore structurally subordinated to the vast majority of the Debtors' unsecured debt, and is subject to recharacterization as equity, for New 1.25L Notes that were guaranteed by all of the Debtors.

489. Platinum retained control of all the property subject to the liens granted in the Uptier Transaction.

490. The Committee therefore alleges that the New 1L Notes and the New 1.25L Notes should be avoided because the Company engaged in the Uptier Transaction with actual intent to hinder, delay, or defraud non-participating creditors, including those holders of Unsecured Notes

that were not allowed to participate in the transaction, and because the Company was insolvent at the time of the Uptier Transaction.

491. Alternatively, the Committee alleges that the Uptier Debt and the Uptier Liens incurred in connection with the Uptier Transaction are avoidable as constructively fraudulent transfers because the Company was insolvent and because, for several reasons, the Company did not receive reasonably equivalent value for incurring those obligations.

492. The Debtors were insolvent at the time of the Uptier Transaction.

493. The Uptier Debt was issued, and the Uptier Liens were granted, in exchange for Secured Notes and Unsecured Notes that were used to finance the LBO.

494. The Secured Notes and the Unsecured Notes should be avoided because the Company was insolvent and did not receive reasonably equivalent value for issuing those obligations.

495. Because the Secured Notes and Unsecured Notes are avoidable, those notes cannot have constituted reasonably equivalent value for the New 1L Notes and New 1.25L Notes in the Uptier Exchange.

496. The Debtors did not receive reasonably equivalent value for the Uptier Debt from a market value perspective.

497. As part of the Uptier Transaction, the Debtors purchased 2024 Secured Notes and 2026 Secured Notes, which were trading at 74 cents and 86 cents, respectively, using New 1L Notes that were trading at 101.2% shortly after the transaction closed.

498. Through this transaction, Incora [redacted]

499. [redacted]

500. [redacted]

501. [redacted]

502. The Follow-On Exchanges, although they were in name exchanges of Secured Notes for New 1L Notes, had a value disparity akin to, and in some instances worse than, the initial Unsecured Uptier Exchange because the Secured Notes had been purportedly rendered unsecured in the original Secured Uptier Exchange and had fallen in price thereafter.

503. The 2026 Secured Notes exchanged by [redacted] trading at approximately 70 cents on the dollar; the 2024 and 2026 Secured Notes [redacted] were trading at 50 cents and 63 cents, respectively; by the time of the [redacted], the 2026 Secured Notes [redacted] were trading at 8 to 10 cents on the dollar.

504. Yet, regardless of these deeply distressed market prices, each time, the participating bondholders were permitted to exchange for par [redacted] value of a new instrument with greater protections than their old notes.

505. Cumulatively, the Company [redacted] as a result of lopsided consideration given in the Follow-On Exchanges.

506. The aggregated elements of the Uptier Transaction demonstrate that Incora did not give up roughly the value it gave.

507. The $25 million Wolverine Note cannot serve as reasonable equivalent value for the purposes of fraudulent transfer analysis, because it is, in economic substance, a disguised equity interest.

508. [redacted]

509. At the time of issuance of the Wolverine Note, [redacted]

510. Platinum itself described the Wolverine Note as [redacted]

511. The Company had policies in place for related-party transactions, and for transactions involving potential conflicts of interest, but the Company has admitted that those policies were not followed for the Wolverine Note.

512. At the time of the Wolverine Note's origination, the Debtors were insolvent and [redacted]

<u>COUNT VI</u>
Avoidance And Recovery Of The Indemnification Obligations As Constructive Fraudulent Transfers
Against Participating Noteholders, Including But Not Limited To Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, WSFS, And Doe Defendants 1-100
(11 U.S.C. §§ 544, 548, and 550 and Applicable State Fraudulent Transfer Law)

513. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

514. The Committee alleges that the indemnification obligations assumed as part of the Uptier Transaction are avoidable as constructively fraudulent transfers because the Company was

insolvent and because, for several reasons, the Company did not receive reasonably equivalent value for incurring those obligations.

515. The indemnification obligations were granted, in exchange for Secured Notes and Unsecured Notes that were used to finance the LBO.

516. None of the holders had the benefit of such indemnification prior to the Uptier Transactions, rendering the provision an absolute transfer of value away from the Company.

517. This burden was material enough to be cited by the Debtors in the First Day Declaration as a drain on liquidity, and the Debtors have paid out nearly $12 million to date.

518. The fact that the indemnification would be called upon, and therefore must have been valued seriously, could not have been a shock to the company and its advisors. In March 2022, when the Uptier Transactions were finalized and approved, there had already been litigation challenging at least four non-pro rata uptier transactions.

COUNT VII
Avoidance Of Uptier Debt Exchanged for the Wolverine Note As An Actual Or Constructive Fraudulent Transfer
Against Platinum
(11 U.S.C. §§ 544 and 548 and Applicable State Fraudulent Transfer Law)

519. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

520. The Committee alleges that the exchange of the $25 million Wolverine Note for the New 1.25L Notes (such exchange, the "Wolverine Note Exchange") is also avoidable as a constructive fraudulent transfer because the Debtors did not receive reasonably equivalent value in the Wolverine Note Exchange, and the Debtors were insolvent at the time of the Wolverine Note Exchange.

521. Prior to the exchange, only Wesco Aircraft Holdings, Inc. was obligated to pay the Wolverine Note.

522. By exchanging the Wolverine Note for the New 1.25L Notes, numerous Debtors assumed liability for repayment of that obligation without receiving value in return.

523. The Debtor entities that became guarantors on the New 1.25L Notes (the "New 1.25 Note Guarantors") were not guarantors on the original Wolverine Note.

524. The New 1.25 Note Guarantors did not receive reasonably equivalent value in exchange for their becoming guarantors on the New 1.25L Notes to the extent the Wolverine Note was exchanged for New 1.25L Notes.

525. Alternatively, the Wolverine Note represented an equity investment in the Debtors and was thus an equity investment exchanged for New 1.25L Notes, without reasonably equivalent value provided in return to the Debtors.

COUNT VIII
Avoidance Of The New 1.25L Notes Issued To Platinum As An Insider Preferential Transfer
Against Platinum
(11 U.S.C. § 544 and Applicable State Fraudulent Transfer Law)

526. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

527. The Committee alleges that the New 1.25L Notes issued to Platinum should be avoided as preferential transfers because the issuance was a transfer made to an insider, Platinum, on account of an antecedent debt, Incora was insolvent at the time of the transfer; and Platinum orchestrated the Uptier Transaction knowing that Incora was insolvent and that intent can be imputed to Incora.

528. Platinum provided no new value in the Uptier Transaction.

529. Though Platinum deferred the "maturity" of the Wolverine Note and agreed to accrue its annual $7 million "management fee," both of those alleged benefits are illusory, because

the Wolverine Note is disguised equity subject to recharacterization, and Incora had no obligation under the CASA to pay the Management Fee, which Platinum had already agreed to defer or waive.

530. On information and belief, claims seeking to avoid the Wolverine Note Exchange pursuant to TUFTA § 24.006(b) were previously asserted by certain of the Debtors' noteholders in New York state court lawsuits filed on or about October 28, 2022 and March 27, 2023, in each case within one year of the Wolverine Note Exchange.

531. Because claims seeking to avoid the Wolverine Note Exchange were timely asserted by creditors under state law, those claims were preserved and can be asserted by a trustee or other entity with requisite standing pursuant to Bankruptcy Code section 544(b) on behalf of the Debtors' estates.

COUNT IX
Breach Of Fiduciary Duties In Connection With The Uptier Transaction Against Platinum, Platinum Directors, And Bartels

532. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

533. The Committee alleges that Platinum, the Platinum Directors,[24] and Bartels breached their fiduciary duties to Incora in approving the Uptier Transaction and tilting the playing field toward Platinum and the Participating Noteholders.

534. Platinum breached its fiduciary duties by using its status and control to orchestrate and effectuate the Uptier Transaction for its benefit and to the detriment of the Debtors and their creditors.

[24] All causes of action against the Platinum Directors are alleged against the individuals whether serving solely in their capacity as directors or to the extent they performed, or failed to perform, any such acts as an officer of the Company.

535. In particular, and as set forth above, Platinum advanced its position by participating in the Uptier Transaction and selling [redacted]n in principal amount of Unsecured Notes and the $25 million Wolverine Note, for [redacted] in New 1.25L Notes ([redacted]

536. The New 1.25L Notes were designed to recover ahead of unsecured creditors in a future bankruptcy proceeding.

537. Platinum's [redacted] consequence of the deal.

538. Instead, Platinum's primary goal [redacted]

539. Platinum's [redacted]

540. Nothing demonstrates this better than Platinum's [redacted]

541. At that time, [redacted]

542. Yet, [redacted]

543. That total disregard of fiduciary obligations was present again in the Uptier Transaction when Platinum decided that it needed to be able to exchange its Unsecured Notes for new 1.25L Notes even though it would harm other unsecured creditors and the Company.

544. Moreover, the Uptier Transaction increased the Company's principal and interest obligations, rendering future refinancings difficult.

545. Like the LBO, at the time of the Uptier Transaction, [redacted]

546. The Platinum Directors breached their fiduciary duties to Incora in connection with the issuance of the New 1.25L Notes to Platinum as part of the Uptier Transaction.

547. Indeed, the [redacted]

548. For example, when Carlyle proposed [redacted]

549. By [redacted] [redacted]

550. In so doing, the Platinum Directors considered only their own interests, and failed to evaluate the impact the Uptier Transaction (and especially the issuance of the New 1.25L Notes to Platinum) would have on the Company's creditors.

[redacted] [redacted]

551. In addition, the Platinum Directors agreed to onerous indemnification obligations that were then cited as one of the causes for the Debtors' chapter 11 filing.

552. The Platinum Directors, [redacted]

553. The Platinum Directors' malfeasance and/or nonfeasance constituted a clear violation of their fiduciary duties.

554. Mr. Bartels, Platinum's hand-picked "independent" director, also breached his fiduciary duties [redacted]

555. Mr. Bartels [redacted]

556. Mr. Bartels [redacted]

557. [redacted]

558. [redacted]

559. After [redacted]

[redacted]

COUNT X

Aiding And Abetting And Knowingly Participating In Breach Of Fiduciary Duties In Connection With The Uptier Transaction

Against Participating Noteholders, Including But Not Limited To Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, And Doe Defendants 1-100

560. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

561. The Committee alleges that Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, and the Doe Defendants 1-100 (collectively, the "Participating Noteholders") aided and abetted, and knowingly participated in, the breach of fiduciary duties by Platinum and the Platinum Directors because Platinum had a fiduciary duty to Incora and its creditors, the Participating Noteholders knew of this fiduciary relationship, and the Participating Noteholders were aware that they were participating in the breach of this fiduciary relationship.

562. Platinum had a fiduciary duty to Incora and its creditors.

563. The Participating Noteholders, as sophisticated parties represented by experienced counsel, [redacted]' precarious financial position in the days leading up to the Uptier Transaction—to creditors.

564. The Participating Noteholders were well aware that the Uptier Transaction benefitted Platinum at the expense of Debtors and various creditors, and nevertheless participated in the Uptier Transaction, most notably by providing the consents without which the Uptier Transaction could not have occurred.

565. The Participating Noteholders understood exactly what they were getting into: they knew that Platinum had a fiduciary duty to Incora and its creditors, Platinum was aware of such duty, and the Uptier Transaction benefited Platinum at the expense of other stakeholders.

566. By providing the requisite consents, the Participating Noteholders paved the way for the Uptier Transaction and knowingly participated in the Uptier Transaction.

COUNT XI
Equitable Subordination
Against Participating Noteholders, Including But Not Limited To Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, The Platinum Directors, Patrick Bartels, And Doe Defendants 1-100
(11 U.S.C. § 510)

567. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

568. The Committee alleges that Platinum's claims should be equitably subordinated because Platinum, through the Platinum Directors, respectively, misused its control over Incora to the detriment of Incora's creditors.

569. Platinum failed to evaluate whether the LBO and the incurrence of the LBO Debt would result in the insolvency of Incora, or the impact those transactions would have on Incora's creditors.

570. [redacted]

571. Platinum maintained [redacted]

572. The Participating Noteholders' conduct in connection with the Uptier Transaction was similarly inequitable, warranting subordination.

573. As set forth above, the Participating Noteholders knew that Platinum and the Platinum Directors owed fiduciary duties to the Company and its creditors.

574. They were also aware that the Uptier Transaction benefited [redacted]

575. Regardless, the [redacted]

576. The Participating Noteholders colluded with Platinum, aiding and abetting Platinum's breach of its fiduciary duties.

577. Therefore, any claims asserted by the Participating Noteholders should be equitably subordinated.

578. As set forth above, the Platinum Directors and Patrick Bartels breached their fiduciary duties to Incora, and any claims they assert for indemnification should, therefore, be equitably subordinated as well.

<u>COUNT XII</u>
Avoidance Of Unperfected Security Interests
Against Participating Noteholders, Including But Not Limited To Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, WSFS, And Doe Defendants 1-100
(11 U.S.C. §§ 544 and 548 and Applicable State Law)

579. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

580. [redacted]

581. The Debtors listed a number of bank accounts (the "Bank Accounts") in their schedules of assets and liabilities and statements of financial affairs [Docket Nos. 512-601], none of which are subjected to perfected security interests.

582. The Bank Accounts are not maintained at either Bank of New York Mellon Trust Company, N.A. ("BNYM"), the former notes collateral agent, or WSFS, the current notes collateral agent.

583. Although there are control agreements in place for five of the Bank Accounts, those agreements all refer to BNYM as the collateral agent for the LBO Debt rather than WSFS, the collateral agent for the Uptier Debt.

584. There is no evidence these control agreements were assigned to WSFS in connection with the Uptier Transaction.

585. The Debtor entities have eighteen director and officer insurance policies (the "D&O Policies").

586. The Defendants' alleged security interest in the D&O Policies is not perfected.

587. There is no evidence that the Defendants took additional steps required under applicable state law to perfect a security interest over the D&O Policies.

588. Since there was no perfected security interest in the underlying policies or claims related to the policies, any security interest in the proceeds available under the Debtors' D&O Policies is unperfected.

589. If proceeds from a D&O liability claim are paid into accounts covered by a control agreement on a postpetition basis, those proceeds would remain unencumbered because of the automatic stay.

590. The Debtors have also purported to grant certain of the Defendants a security interest in their commercial tort claims (the "Tort Claims").

591. The Defendants have not identified any Tort Claims in the Defendants' security documents.

COUNT XIII
Disallowance Of The Make Whole Amount As Unmatured Interest Or An Unenforceable Penalty
Against All Defendants That Are Holders of New 1L Notes or Liens Related Thereto
(11 U.S.C. §§ 105, 502 and Fed. R. Bankr. 3007 and 7001)

592. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

593. Any claim by certain Defendants to a make-whole payment under the New 1L Notes Indenture (such payment, the "Make Whole Amount") is the economic equivalent of unmatured interest and should be disallowed, as it would make any noteholders whole for interest payments they will otherwise not receive.

594. The 1L Notes Indenture has a make-whole provision that expressly calculates the Make-Whole Amount based on future interest.

595. Since it is calculated based on future, unearned, unaccrued interest, the Make-Whole Amount is intended to replicate the value of all future interest payments.

596. There were no acceleration triggers prior to the Petition Date under the New 1L Notes Indentures or otherwise.

597. The event of default under the New 1L Notes Indenture was the Debtors' bankruptcy filing on the Petition Date, which then automatically accelerated the outstanding principal, allegedly triggering the "Applicable Premium."

COUNT XIV
Disallowance Of Claims Against All Defendants That Have Not Returned Avoided Transfers
(Under 11 U.S.C. § 502(d))

598. The Committee repeats and re-alleges the other allegations contained this Complaint as if fully set forth herein.

599. To the extent that any Defendant asserts any claim(s) against the Debtors, such claims should be disallowed unless and until such Defendant, as appropriate, pay to the Debtors the value of any transfer avoided pursuant to this Complaint.

COUNT XVI
Avoidance And Recovery Of Constructive Fraudulent Transfer Against The ABL Agent
(11 U.S.C. §§ 544, 548, 550; Tex. Bus. & Com. § 24.001, et seq.)

600. The Committee repeats and realleges each and every allegation in the preceding paragraphs as fully set forth herein.

601. Pursuant to Amendment No. 6, and the Foreign Joinder Agreements, the Foreign Guarantors became Guarantors under the ABL Credit Agreement and granted guarantees to the ABL Agent.

602. Despite the introduction of the FILO, the ABL Agent provided no new value to the Foreign Guarantors in exchange for their guarantees. Accordingly, the Foreign Guarantors received less than a reasonably equivalent value in exchange for the guarantees they provided. Indeed, neither the Canadian Guarantors nor the Mexican Guarantor received any value.

603. As discussed herein, the Debtors were insolvent no later than February 2022. Additionally, the Foreign Guarantors were either insolvent prior to, or as a result of providing, the guarantees.

604. Upon information and belief, the ABL Agent knew or should have known that both the Foreign Guarantors would be incurring debts through the guarantees that would be beyond their ability to pay as such debts matured.

605. Upon information and belief, the Foreign Guarantors were engaged in business or a transaction for which any property remaining with the debtor was an unreasonably small capital.

606. Accordingly, the guarantees granted by the Foreign Guarantors should be avoided as constructively fraudulent.

COUNT XVII
Avoidance And Recovery Of Constructive Fraudulent Transfer Against The ABL Agent
(11 U.S.C. §§ 544, 548, 550; Tex. Bus. & Com. § 24.001, et seq.)

607. The Committee repeats and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

608. As a result of the [redacted], the direct liabilities of the [redacted] increased [redacted]

609. [redacted]

610. As discussed herein, the Debtors were insolvent no later than February 2022. Moreover, prior to, or as a result of the [redacted] were rendered insolvent.

611. Upon information and belief, the ABL Agent knew or should have known that the [redacted] and [redacted] would be incurring debts through their guaranties that would be beyond their ability to pay as such debts matured and that they were engaged in business or a transaction for which any of their remaining property would be unreasonably small given the effects of Amendment No. 6.

612. Accordingly, the [redacted] as to the [redacted] and [redacted] should be avoided as constructively fraudulent.

RESERVATION OF RIGHTS

613. The Committee reserves its right to supplement this Complaint with additional evidence or other claims and/or causes of action against the Defendants, and/or to file amended complaints as necessary and permitted by applicable law.

PRAYER FOR RELIEF

WHEREFORE, the Committee respectfully requests that the Court enter an order:

(a) Avoiding and recovering the $255 million in LBO Equity Purchase Price paid to Carlyle as a constructively fraudulent transfer;

(b) Avoiding and recovering the [redacted] paid to [redacted] as a constructively fraudulent transfer;

(c) Avoiding the LBO Debt and LBO Liens as constructive fraudulent transfers;

(d) Avoiding and recovering the $7 million in Management Fees paid to Platinum as constructively fraudulent transfers;

(e) Assigning liability to Platinum and Mary Ann Sigler for monetary damages, in an amount to be determined, in connection with their collective breach of fiduciary duties to Incora and its creditors on account of their actions taken in connection with the LBO and Amendment No. 6 of the ABL Credit Agreement;

(f) Avoiding the Uptier Debt and Uptier Liens as actually fraudulent transfers;

(g) Alternatively, avoiding the Uptier Debt and Uptier Liens as constructively fraudulent transfers;

(h) Avoiding the Indemnification Obligations (and recovering the amounts paid on account of such obligations) as constructively fraudulent transfers;

(i) Avoiding the exchange of the Wolverine Note for New 1.25L Notes as a constructively fraudulent transfer;

(j) Avoiding the issuance of the New 1.25L Notes to Platinum as a preferential transfer;

(k) Assigning liability to Platinum, the Platinum Directors, and Bartels for monetary damages, in an amount to be determined, in connection with their collective breach of fiduciary duties to Incora and its creditors in connection with the issuance of the New 1.25L Notes to Platinum;

(l) Assigning liability to Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, Olympus Peak, and Doe Defendants 1-100 for monetary damages, in an amount to be determined, in connection with their collective aiding and abetting of Platinum's, the Platinum Directors', and Bartels' collective breach of fiduciary duties to Incora and its creditors in connection with the Uptier Transaction;

(m) Equitably subordinating Platinum's claims;

(n) Equitably subordinating the claims of Silver Point, PIMCO, Senator, Platinum, Carlyle, Spring Creek, Olympus Peak, and Doe Defendants 1-100;

(o) Equitably subordinating any claims by the Platinum Directors and Patrick Bartels for indemnification;

(p) Avoiding the alleged liens on the Debtors' Bank Accounts, D&O Policies, and Tort Claims and finding such assets (and the proceeds thereof) to be unencumbered and available for the benefit of the Debtors' unsecured creditors;

(q) Disallowing any claim for Applicable Premium or Make Whole Amount asserted by any Defendants on account of the New 1L Notes;

(r) Ordering that, pursuant to the applicable provisions of the Bankruptcy Code, including, without limitation, sections 502(b) and (d) of the Bankruptcy Code, each claim asserted by the Defendants is disallowed;

(s) Avoiding the guarantees of the Foreign Guarantors which were provided to the ABL Agent as constructively fraudulent transfers;

(t) Avoiding the obligations provided to the ABL Agent by the [redacted] from the [redacted] as constructively fraudulent transfers; and

(u) Granting such other and further relief as the Court may deem just and proper.