

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

In re

WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 23-90611 (MI)

(Jointly Administered)

**JOINT LIMITED OBJECTION OF THE PRECISION ENTITIES TO
DEBTORS' MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN**

Avibank Mfg., Inc., Avibank Services, LLC, SPS Technologies, LLC (d/b/a Cherry Aerospace), Designed Metal Connections, Inc. (d/b/a Permaswage USA), Fatigue Technology, Inc., Permaswage SAS, SPS Aerostructures Limited (trading as PCC Aerostructures United Kingdom), S.P.S. International Limited, SPS Technologies Limited, SPS Technologies, LLC (d/b/a Air Industries Co.), SPS Technologies, LLC (d/b/a PB Fasteners), SPS Technologies, LLC (Jenkintown), SPS Technologies, LLC (Santa Ana), SPS Technologies, LLC (d/b/a Shur-Lok Company), Shur-Lok International S.A., and KALISTRUT Aerospace S.A.S. (together, the “Precision Entities”), by and through their undersigned counsel, hereby file this limited objection (the “Objection”) to the *Modified First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [Docket No. 1223] (the “Plan”). In support of the Objection, the Precision Entities respectfully state as follows:

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.kcellc.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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BACKGROUND

1. On June 1, 2023 (the “Petition Date”), the Debtors each filed a voluntary petition for bankruptcy relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”).

2. On January 12, 2024, the Debtors filed the Plan.

3. Article V.B.1 of the Plan provides for the payment of the Allowed amount of a “Cure Claim” under an assumed Executory Contract. *See* Plan, Article V.B.1, p. 47 (“[T]he Debtors or the Reorganized Debtors shall satisfy all Allowed Cure Claims in respect of assumed Executory Contracts . . . by payment in Cash, on the Effective Date or as soon as reasonably practicable thereafter, of the Allowed amount.”).

4. The Plan defines “Cure Claim” (in relevant part) as “a monetary Claim . . . on account of a Debtor’s *defaults* under an Executory Contract . . . assumed by such Debtor under section 365 or 1123 of the Bankruptcy Code.” Plan, Article I.A.69, p. 7 (emphasis added).

5. Accordingly, the Plan properly provides for the payment of Cure Claims—which includes amounts in “default”—upon assumption of an Executory Contract.

6. The Plan, however, provides for the release of amounts owed under an assumed Executory Contract that are not satisfied by the Cure Claim because those amounts are not in “default.” Specifically, the Plan provides that “[a]ssumption of any Executory Contract . . . pursuant to the Plan shall result in the *full release and satisfaction of any Claims or defaults* . . . arising under any such Executory Contract . . . at any time before the date that it is assumed.” Plan, Article V.B.1, p. 47 (emphasis added).

7. The Plan defines “Claim” by reference to its definition in section 101(5) of the Bankruptcy Code. *See* Plan, Article I.A.44, p. 5. Section 101(5) defines “Claim” (in relevant part) as a “right to payment, whether or not such right is . . . matured [or] unmatured.” 11 U.S.C. § 101(5)(A).

8. Therefore, by providing for the release of any “Claims or defaults,” Article V.B.1 of the Plan provides for the release of accrued but unmatured amounts (which constitute “Claims”) that are not in default and, therefore, are not part of the Cure Claim to be paid upon assumption of an Executory Contract. Stated differently, the Plan creates a “gap” in the payment of amounts owed under an assumed Executory Contract by providing for the release of accrued but unmatured amounts without payment of those amounts (the “Payment Gap”).

9. On February 6, 2024, counsel for the Precision Entities advised Debtors’ counsel that the language of Article V.B.1 of the Plan created the Payment Gap. After an email exchange and productive discussions, counsel for the Debtors agreed on February 14, 2024, to include the following underlined/boldfaced text (the “Plan Revision”) in Article V.B.1 of a further modified or amended Plan to close the Payment Gap:

Assumption of any Executory Contract and/or Unexpired Lease pursuant to the Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or non-monetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any such Executory Contract and/or Unexpired Lease at any time before the date that it is assumed (**other than Claims for amounts under such assumed Executory Contracts and/or Unexpired Leases that are accrued but not yet due as of the date of Assumption**). Subject to the resolution of any timely objections in accordance with Article V.B.2, any Proofs of Claim filed with respect to an Executory Contract and/or Unexpired Lease that has been assumed or assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

10. As of this Objection's filing date, the Debtors have not filed a modified or amended Plan containing the Plan Revision.

LIMITED OBJECTION

11. The Plan does not provide for the payment of all amounts owed under an assumed Executory Contract. As drafted, the Plan creates the Payment Gap that wrongfully releases accrued but unmatured amounts owed at the time of assumption without any payment of those amounts.

12. As the Debtors have not yet filed a modified or amended Plan containing the Plan Revision to close the Payment Gap, the Precision Entities object to the Plan due to the Payment Gap.

13. To assume any Executory Contract with a Precision Entity, the Debtor must provide for the payment of *all* obligations under the Executory Contract. As the United States Court of Appeals for the Fifth Circuit has declared with respect to the assumption of an executory contract under section 365 of the Bankruptcy Code, “[w]hen it comes to assuming an executory contract, we have been clear that it’s *all or nothing*: ‘An executory contract must be assumed or rejected *in its entirety*.’” *Anytime Fitness, L.L.C. v. Thornhill Bros. Fitness, L.L.C. (In re Thornhill Bros. Fitness, L.L.C.)*, 85 F.4th 321, 325 (5th Cir. 2023) (quoting *Matter of Provider Meds, LLC*, 907 F.3d 845, 851 (5th Cir. 2018) (citation omitted) (emphasis added)).

14. So long as the Plan contains the Payment Gap, the Plan fails to comply with section 365 of the Bankruptcy Code and is unconfirmable. *See* 11 U.S.C. § 1129(a)(1) (“The court shall confirm a plan only if all of the following requirements are met: (1) The plan complies with the applicable provisions of this title[.]”).

RESERVATION OF RIGHTS

The Precision Entities reserve the right to amend or supplement this Objection, and to object to any other relief sought by the Debtors in connection with confirmation of the Plan. Without limiting the foregoing, the Precision Entities reserve their right to object to the proposed Cure Claims on any of their Executory Contract(s) with one or more Debtors.²

CONCLUSION

WHEREFORE, the Precision Entities respectfully request that this Court enter an order (i) sustaining this Objection; (ii) establishing that the Debtors must file a second amended Plan that includes the Plan Revision or, in the alternative, that the Plan Revision must be included in the Order confirming the Plan; and (iii) granting the Precision Entities such other relief as is appropriate.

² The Debtors extended the Precision Entities' deadline to object to Cure Claims.

Dated: May 3, 2024
Houston, Texas

Respectfully submitted,

REED SMITH LLP

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Counsel for the Precision Entities

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, a true and correct copy of the foregoing *Joint Limited Objection of Precision Entities to Debtors' Modified First Amended Joint Chapter 11 Plan* was served electronically through the Court's ECF transmission facilities on all parties registered to receive ECF notice in the above-captioned chapter 11 cases.

/s/ Paul D. Moak

Paul D. Moak (Texas Bar No. 00794316)

REED SMITH LLP