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

In re:	Chapter 11
Wesco Aircraft Holdings, Inc., *et al.*,	Case No. 23-90611 (MI)
Debtors.[1]	(Jointly Administered)

THE AD HOC 2024/2026 NOTEHOLDER GROUP'S INITIAL OBJECTION TO CONFIRMATION OF MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF WESCO AIRCRAFT HOLDINGS, INC., *ET AL.*

(Related to ECF No. 1223)

[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 a thttp://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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Rules

The ad hoc group (the "**2024/2026 Noteholder Group**") of holders of the 8.50% notes due 2024 (the "**2024 Notes**") and the 9.00% notes due 2026 (the "**2026 Notes**") hereby files this initial objection (the "**Initial Objection**") to confirmation of the *Modified First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [ECF No. 1223][2] (as it may be further modified or amended, the "**Plan**").[3] In support of this Initial Objection,[4] the 2024/2026 Noteholder Group respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. The 2024/2026 Noteholder Group owns more than 95% in principal amount of the outstanding 2026 Notes and 60% in principal amount of the outstanding 2024 Notes – in excess of $450 million of the Debtors' funded debt. As such, the 2024/2026 Noteholder Group collectively is one of the largest creditors of the Debtors. Further, the Plan classifies the claims represented by the 2024 Notes and the 2026 Notes as General Unsecured Claims. Based on the Debtors' estimates, the 2024/2026 Noteholder Group represents upwards of 65% or more of the class of General Unsecured Claims in the Plan.

2. This Initial Objection is filed pursuant to agreement among the 2024/2026 Noteholder Group, the Debtors, and the Consenting IL Noteholders. This Initial Objection asserts objections to confirmation of the Plan that are not implicated by the results of the 2022 Financing Adversary Proceeding. Rather, objections to confirmation that implicate issues being litigated in

---

[2] References to "[ECF No. __]" are references to documents filed in the Debtors' main chapter 11 case, styled *In re Wesco Aircraft Holdings, Inc., et al.*, Case No. 23-90611 (MI). References to "[Adv. Pro. ECF No. __]" are references to documents filed in the adversary proceeding styled *Wesco Aircraft Holdings, Inc., et al. v. SSD Investments Ltd., et al.* Case No. 23-03091 (MI).

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

[4] The 2024/2026 Noteholder Group notes that this Initial Objection is being filed at least several weeks in advance of a hearing on confirmation of the Plan. Thus, in addition to not addressing certain objections in this Initial Objection, discussed in more detail below, the 2024/2026 Noteholder Group reserves the right to further supplement this Initial Objection.

that adversary proceeding will be the subject of a separate objection filed, if necessary, at a later date as agreed by the parties and/or a further court order. Until such time all such objections are preserved.

3. Those objections that are directly related to the 2022 Financing Adversary Proceeding and will be addressed in a separate filing include, but are not limited to, objections based on the good faith requirement of section 1129(a)(3) of the Bankruptcy Code to the extent such objection is based on the facts and circumstances surrounding the Debtors' March 2022 transaction that is the subject of the 2022 Financing Adversary Proceeding (the "**2022 Financing Transaction**"). However, in an abundance of caution, and although they are very much tied to the 2022 Financing Adversary Proceeding, this Initial Objection does object to (a) the Global Settlement, which expressly purports to be a settlement of the issues currently being litigated in the 2022 Financing Adversary Proceeding, and (b) a settlement with the Committee (the "**UCC Settlement**"), which assumes a complete victory by the Debtors and other counterclaim defendants in the 2022 Financing Adversary Proceeding, on the basis that those settlements do not meet the requirements of Rule 9019 of the Federal Rules of Bankruptcy Procedure.

4. The 2022 Financing Transaction scrambled the Debtors' entire capital structure by, among other things, purporting to issue additional 2026 Notes and exchange those notes for new secured debt, which is treated as such under the Plan, even though the additional 2026 Notes were never validly issued in the first place. Relatedly, the 2022 Financing Transaction unlawfully stripped the liens that secured the 2024 Notes and the 2026 Notes, and the Plan improperly treats those obligations as unsecured. But putting aside the many infirmities in the Plan that are a direct result of the 2022 Financing Transaction, there are numerous other reasons to deny confirmation of the Plan. For example, the Plan is the culmination of a chapter 11 process that has treated the

Debtors' unsecured creditors in dramatically different ways, including through the use of a critical vendor order that appears to have wiped away – through payment in full – all of the claims of alleged "critical" vendors who, it appears, were perhaps not so critical to the Debtors' ongoing operations after all. This, in addition to the establishment of a large convenience class, has turned these chapter 11 cases into, essentially, a two party dispute between the Debtors and the 2024/2026 Noteholder Group. A chapter 11 plan that is proposed to effectively bless such a process has not been proposed in good faith under section 1129(a)(3) of the Bankruptcy Code.

5. In addition, the Plan as currently constructed is not feasible under section 1129(a)(11) of the Bankruptcy Code. Simply put, the evidence at the confirmation hearing will fail to prove that confirmation of the Plan will not lead to insolvency and subsequent chapter 11 cases for the Debtors. Indeed, the majority of fees & expenses incurred by the Debtors appear to have been incurred in fighting its disenfranchised noteholders and the Committee. Debtors' fees and expenses through February, top $72 million. That amount does ***not*** include significant sums which the Debtors are paying its DIP lenders who are also defendants in the 2022 Financing Adversary Proceeding.[5] Moreover, a significant portion of Committee fees (discussed below) appear to have been incurred in connection with the Debtors' efforts to shield its equity sponsor and current 1L lenders

6. Moreover, the Debtors will not be able to prove at the confirmation hearing that the Plan satisfies the "best interest of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code. In short, the Debtors will not be able to establish the Plan's compliance with section 1129(a)(7) because (i) the members of the 2024/2026 Noteholder Group have voted against the

[5] The 2024/2026 Noteholders intend to further address such reimbursements in connection with any final objection to the Plan that may need to be filed, and expressly reserve the right to do so.

Plan, (ii) they are impaired by the Plan, and (iii) they will not receive as much under this Plan as they would in a chapter 7 liquidation, particularly given that the Plan proposes certain releases and indemnifications that would not be present in a chapter 7 liquidation and that drastically, and negatively, impact the recoveries of unsecured creditors in these Chapter 11 Cases.

7. The Plan also does not comply with applicable provisions of the Bankruptcy Code and thus violates section 1129(a)(1) of the Bankruptcy Code. In particular, the Plan brazenly imports into the treatment of certain of the holders of the 1L Notes an indemnification obligation contained in the 1L Notes Indenture, which is a prepetition contract. This effective assumption of the Debtors' prepetition indemnification obligations violates section 502(e)(1)(B) of the Bankruptcy Code or, in the alternative, section 509(c) of the Bankruptcy Code. This is notwithstanding the fact that the funded debt claims under the 1L Notes Indenture are being equitized in part. These indemnification obligations also cast doubt on the feasibility of the Plan under section 1129(a)(11), as noted above.

8. In another bold attempt to circumvent applicable case law, the exculpation provisions of the Plan propose to "exculpate" certain parties from *prepetition* conduct, a backdoor way of avoiding the opt out option that creditors have with respect to the Third Party Releases. Further, the breadth of the parties entitled to exculpation violates binding Fifth Circuit precedent.

9. Finally, the Debtors failed to file the New Organizational Documents in the Plan Supplement, as required by the Plan.

10. For all of these reasons and the reasons set forth below, the Debtors cannot carry their burden to prove that the Plan meets the requirements for confirmation under section 1129 of the Bankruptcy Code. As a result, the Court should deny confirmation of the Plan.

II. FACTUAL BACKGROUND

A. THE CHAPTER 11 CASES

11. On June 1, 2023 (the "**Petition Date**"), the Debtors filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"). On June 16, 2023, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "**Committee**").

B. THE STATE COURT LITIGATION; THE 2024/2026 HOLDERS' STANDING MOTION; AND THE ADVERSARY PROCEEDING

12. The Debtors commenced the 2022 Financing Adversary Proceeding[6] on the Petition Date by, among other things, seeking an injunction to stay the 2022 Financing State Court Litigation, which included an action commenced by certain members of the 2024/2026 Noteholder Group in the New York Supreme Court in October 2022 (the "**First New York State Court Action**"). On or about August 22, 2023, the Debtors and certain members of the 2024/2026 Noteholder Group stipulated to a stay of the First New York State Court Action "until the earlier of (i) resolution of the Amended Counterclaims and the Effective Date of a plan of reorganization, or (ii) a further order of this Court terminating the stay of the First New York State Court Action." *See Joint Stipulation and Agreed Order Staying the First New York State Court Action* [Adv. Pro. ECF. No. 194], pp. 4-5.

13. On June 22, 2023, certain members of the 2024/2026 Noteholder Group filed an *Answer, Affirmative Defenses, and Counterclaims* to the Debtors' Complaint. *See* Adv. Pro. ECF No. 50. On July 9, 2023, the Debtors filed their *First Amended Complaint and Counterclaims Answer*. *See* Adv. Pro. ECF No. 63. On July 31, 2023, certain members of the 2024/2026

[6] Given the ongoing trial in the 2022 Financing Adversary Proceeding, the Court is familiar with the facts surrounding the 2022 Financing Transaction and the claims of the litigants in the 2022 Financing Adversary Proceeding. Thus, for purposes of this Initial Objection, the 2024/2026 Noteholder Group merely summarizes some of the procedural history of the 2022 Financing Adversary Proceeding.

Noteholder Group filed their *First Amended Counterclaims*. *See* Adv. Pro. ECF No. 144. On August 8, 2023, the parties filed their Answers and on August 23, 2023, the parties filed their dispositive motions (the "**Dispositive Motions**").

14. On or about August 15, 2023, certain members of the 2024/2026 Noteholder Group filed the *Amended and Supplemental Motion of the 2024/2026 Holders (I) Confirming Direct Standing to Pursue Certain Claims and Remedies or, in the Alternative, (II) for Derivative Standing to Pursue Such Claims and Remedies and for Exclusive Settlement Authority* (the "**2024/2026 Holders' Standing Motion**") [ECF No. 652]. The 2024/2026 Holders' Standing Motion sought standing to prosecute claims set forth in a proposed form of Second Amended Counterclaims.

15. The Court held a hearing on the Dispositive Motions on October 11, 2023. On January 14, 2023, the Court issued its *Memorandum Opinion* [Adv. Pro. ECF No. 508] and *Order* [Adv. Pro. ECF No. 509]. On January 23, 2024, the Court entered its *Supplement to Memorandum Opinion* [Adv. Pro. ECF No. 553] and its *Amended Order on Motions for Summary Judgment* [Adv. Pro. ECF No. 554].

16. Trial in the 2022 Financing Adversary Proceeding commenced on January 25, 2024, and is scheduled to continue until at least early June 2024. The scope of the 2022 Financing Adversary Proceeding is set forth in the *Stipulation as to Scope of Adversary Proceeding, Trial and Resolution of the 2024/2026 Holders' Standing Motion* [Adv. Pro. ECF. No. 541]. As agreed by the parties, the Court may consider as part of the trial in the adversary proceeding evidence relating to various claims included in the 2024/2026 Holders' Standing Motion, which motion remains unresolved.

17. Until resolution of the adversary proceeding and the 2024/2026 Holders' Standing Motion, the capital structure of the Debtors, and the ownership of certain claims and remedies, will remain unknown, and any plan of reorganization will be merely hypothetical. Thus, this Initial Objection does not include all of the bases for denying confirmation of the Plan, and additional bases tied to the 2022 Financing Adversary Proceeding will be presented at a later date.

C. THE CRITICAL VENDOR MOTION

18. On the Petition Date, the Debtors filed their *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief* [ECF No. 3] (the "**Critical Vendor Motion**"). In the Critical Vendor Motion, the Debtors sought authority to pay up to $116 million in Critical Vendor Claims and Foreign Claims (both as defined in the Critical Vendor Motion) on an interim basis and $165 million of such claims on a final basis. Notwithstanding certain concerns expressed by the 2024/2026 Noteholder Group with respect to the Critical Vendor Motion, the Court granted ***final*** relief on the Critical Vendor Motion on the Petition Date. *See Jun, 1, 2023 Hr'g. Tr.* at 88:11-13; 88:22-15 and 89:1-4 (THE COURT: "So the difference between the interim request and the final request is just north of 40 million dollars, right? . . . But let's empower the management team to go do what they're [sic] skillsets should be and that is to be the best they can in leading this company. I mean, if I -- if I need to worry that they're going to make bad decisions with respect to 40 million dollars, I have a bigger problem that I need to deal with. Why shouldn't we just go empower management, let them have final orders, and let's get them out of the courtroom and back into the field doing what they do?").

19. The 2024/2026 Noteholder Group notes that, according to the Disclosure Statement, the total amount of the claims represented by the 2024 Notes and the 2026 Notes is

$538,542,306. *See Disclosure Statement*, p. 13. Further, the Debtors estimate in the Disclosure Statement that the holders of such notes will receive a recovery of 2%-5%. *See Disclosure Statement*, p. 4. Thus, the $165 million authorized to be paid on account of Critical Vendor Claims and Foreign Claims is many multiples of those projected recoveries, and likely many multiples of the projected recoveries for the entire General Unsecured Claims class.

20. Further, as discussed below, even seven months into these chapter 11 cases, the Debtors had not paid out all of the funds authorized to be paid out to Critical Vendor Claims and Foreign Claims in the final order granting the Critical Vendor Motion, which standing alone belies the notion that such creditors were "critical" and calls into question the merits of the relief sought in the Critical Vendor Motion in the first place.

D. ESTATE CAUSES OF ACTION; THE COMMITTEE STANDING MOTION

21. On November 27, 2023, the Committee filed its *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* [Docket No. 994; corrected at Docket Nos. 1020 and 1025] (the "**Committee Standing Motion**").

22. In the Committee Standing Motion, the Committee noted that it had "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." *See Committee Standing Motion*, p. 81. It further stated that "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," *See Committee Standing Motion*, pp. 6-7. Because of the Debtors' releases, the Committee further averred that "unsecured creditors will receive no meaningful distribution in these cases if these Estate Claims are released," i*d.*, p .7. The Committee Standing Motion describes the "Estate Claims" as 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***." *See Committee Standing Motion*, pp. 2-3 (emphasis supplied).

23. In any event, the Committee's statement in the Committee Standing Motion, which was filed more than five months ago, "that unsecured creditors will receive no meaningful distribution in these cases if these Estate Claims are released," is proving prescient. This is because in the UCC Settlement, discussed in more detail below, the Committee supported the release of claims worth hundreds of millions or billions of dollars for an approximate 2%-5% distribution to holders of General Unsecured Claims in the form of a splash of the New Common Equity, *before* taking into account any dilution from the Management Incentive Plan; a small amount of cash allocated to unsecured creditors in the Convenience Class; a questionable undertaking by the Debtors to make (seven months into the case) additional critical vendor payments; and an acceleration of payment of fees to Committee professionals.

24. The Committee is comprised of two trade creditors and the indenture trustee for the 2027 Unsecured Notes. Those noteholders have held unsecured obligations at all times, and are classified as unsecured obligations under the Plan. Despite the 2024/2026 Noteholders currently

compromising the largest block of unsecured claims under the Debtors' own calculations, the Committee did not consult with the 2024/2026 Noteholders prior to entering into the settlement agreement that purports to settle valuable claims that would have inured in part to the benefit of the 2024/2026 Noteholder Group.

E. THE CHAPTER 11 PLAN

25. ***The Filing of the Plan and Disclosure Statement***. On November 17, 2023, the Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al*. [ECF No. 963] and their *Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [ECF No. 962]. These filings contained few details of the Debtors' proposed treatment of creditors and were fairly characterized as "placeholders". It was not until almost six weeks later, on December 27, 2023 that the Debtors filed a revised plan and disclosure statement that contained any proposed economics. On January 12, 2024, the Debtors filed the Plan and the *Disclosure Statement for Modified First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al*. [ECF No. 1224]. The material provisions of the Plan include, among others, the following:

26. ***The Global Settlement***. Article IV.A. of the Plan provides that the Plan constitutes a "global" settlement of all Claims and Interests. In particular, Article IV.A. provides:

> Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute an arms' length and good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan, including (a) all Claims and Released Claims that are related to the 2022 Financing Transactions and the Financing Litigation, (b) Claims arising from diminution of value from collateral, (c) valuation of collateral supporting the ABL Facility, the 1L Notes and the 1.25L Notes, (d) the amount of secured and unsecured Claims arising from the 1L Notes and 1.25L Notes pursuant to section 506(a)(1) of the Bankruptcy Code, (e) rights to cash payments on account of DIP Financing Claims under section 1129(a)(9)(A) of the Bankruptcy Code, (f) all Claims on account of make-whole premiums, call protection, and similar amounts and premiums, and (g) the applicability of turnover of proceeds arising under any intercreditor agreement. All distributions made to holders of Allowed Claims and Interests in any Class in

> accordance with the Plan are intended to be, and shall be, final. Among other things, the Plan provides for a global settlement among the Debtors and various creditors of the Debtors (the "Global Settlement"), which provides substantial value to the Debtors' Estates.

27. Prior to filing the Plan, the Debtors did not engage in any settlement discussions with the 2024/2026 Noteholder Group regarding this proposed "global" settlement.

28. ***The Plan's Proposed Distributions to Creditors***. In furtherance of this purported "global" settlement, the Plan provides for the following distributions to creditors, among others:

- **1L Notes**: "each holder of an Allowed 1L Notes Claim shall receive (i) its Pro Rata share of (A) $420,000,000 in principal amount of New Takeback Notes and (B) 96.5% of the New Common Equity, subject to dilution by any New Common Equity issued in respect of the Management Incentive Plan, and (ii) the indemnification set forth under Article V.D.2.b." *See Plan*, Art. III.B.4.c.
- **General Unsecured Claims**: "each holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Settlement Equity Pool." *See Plan*, Art. III.B.8.c.

29. The "Settlement Equity Pool" is defined as "3.5% of the New Common Equity, subject to dilution by any New Common Equity issued in respect of the Management Incentive Plan." *See Plan*, Art. I.A.190.

30. The Disclosure Statement estimates that holders of the 1L Notes will receive a recovery of approximately 58%-92% and that holders of General Unsecured Claims, including holders of the 2024 Notes and the 2026 Notes, will receive a recovery of approximately 2%-5%.

31. The amount of non-Convenience Class trade debt that remains outstanding at emergence (and will be sharing the *de minimis* recoveries of the funded debt unsecured

claimholders) is estimated by the Debtors to equal between approximately $0 and $40 million. As the Debtors' Disclosure Statement states:

> This chart [omitted] assumes that the value of New Common Equity will be within the range disclosed in the Valuation Analysis attached as Exhibit D, that all post-Effective Date debt will be valued at par, that the Settlement Equity Pool will be shared by holders of approximately $650 million to $690 million of General Unsecured Claims, and that the consideration allocated to Class 7b will be shared by holders of approximately $70 million to $75 million of General Unsecured Convenience Claims. Actual ranges and recoveries may differ materially from these assumptions.
>
> *See Disclosure Statement*, p. 4.

32. ***The Debtors' Debt Burden Upon Emergence***. The Plan contemplates that the Debtors will be obligated on a significant amount of debt upon emergence from bankruptcy:

- The "New Revolver Facility" will be in the form of an asset-based revolver, with aggregate commitments of up to $600 million, to be made available to the Reorganized Debtors by one or more lenders in an amount and on terms acceptable to the Debtors and the Required Consenting 1L Noteholders. *See Disclosure Statement*, p. 39.
- The "New Exit Notes" will be in the aggregate principal amount of approximately $324 million and issued in respect of DIP Financing Claims in accordance with the Plan pursuant to the terms and conditions of the New Exit Notes Documents. *See id.*
- The "New Takeback Notes" will be the new notes in the aggregate principal amount of $420 million to be issued in respect of 1L Notes Claims, which notes shall have terms acceptable to the Debtors and the Required Consenting 1L Noteholders. *See id.*

33. ***The UCC Settlement***. The Plan also incorporates the terms of the UCC Settlement, which is a settlement among the Debtors, the Committee, and the Consenting 1L Noteholders, and is reflected in a stipulation that was filed on the docket. *See Stipulation Regarding (A) 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 and (B) First Amended Joint Chapter 11 Plan of Wesco Aircraft Holding, Inc., et al.* (ECF No. 1191). The UCC Settlement has not been approved by the Court.[7]

34. While the UCC Settlement contains numerous dispositive provisions, for purposes of this Initial Objection the primary components of the UCC Settlement are as follows:

- The Committee Acceptable Plan (as defined in the UCC Settlement) shall provide for the automatic withdrawal of the Committee Standing Motion upon the occurrence of the Effective Date of a Committee Acceptable Plan.
- Each holder of an Allowed Claim, other than an Administrative Expense, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an ABL Facility Claim, a 1L Notes Claim, a 1.25L Notes Claim, a PIK Notes Claim, an Intercompany Claim or a General Unsecured Convenience Claim, shall receive its Pro Rata share of 3.5% of New Common Equity, subject to dilution by any New Common Equity issued in respect of the Management Incentive Plan.
- The Debtors shall make commercially reasonable efforts, prior to Confirmation, to offer full payment of critical vendor claims under the Final Order (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign

[7] The Debtors originally sought Court approval of the UCC Settlement on an emergency basis. *See Debtors' Emergency Motion for Entry of a Stipulation and Agreed Order Regarding (A) 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 and (B) First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc, et al.* [ECF No. 1144]. The 2024/2026 Noteholder Group objected to approval of the UCC Settlement. *See The 2024/2026 Noteholder Group's Objection and Reservation of Rights with Respect to Debtors' Emergency Motion for Entry of a Stipulation and Agreed Order Regarding (A) 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 and (B) First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc, et al.* [ECF No. 1163] (the "**Committee Settlement Motion**"). The Court indicated that while it would extend certain deadlines with respect to the Committee's Standing Motion, the Debtors did not require approval of the UCC Settlement at that time. *See Jan. 4, 2024 Hr'g. Tr.* at 8:6-7 ("THE COURT: But they don't need my signature to say they have reached a deal that is subject to court approval.").

Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief [Docket No. 128] (the "Critical Vendor Order") to any person previously identified as an eligible critical vendor that has not yet executed a vendor payment agreement pursuant to the Critical Vendor Order; provided that the Debtors shall be under no obligation to offer or make any payments under the Critical Vendor Order beyond the "Payment Cap" set forth in the Critical Vendor Order as originally entered or to offer or make any payments that do not comply with the terms of the Critical Vendor Order, and shall be under no obligation to offer or make any payments to any vendor that does not execute a vendor payment agreement in substantially the form attached to the Critical Vendor Order.

- The Debtors shall waive all Causes of Action arising under section 547 of the Bankruptcy Code, section 548 of the Bankruptcy Code to the extent arising under the same facts as section 547, or any state law equivalent thereof, in each case, whether asserted offensively or defensively (including in response to any Claim filed against the Debtors' Estates) against any party that does business with the Debtors or has been identified as an eligible critical vendor as of the date of this Stipulation.

See UCC Settlement, ¶¶ I.1.a., i. & k.

35. The Committee Settlement Motion also stated that "[u]pon the filing of this Stipulation or December 29, 2023, whichever is later, in accordance with and subject to the terms of the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals [Docket No. 606] (the "Interim Compensation Procedures Order"), the Debtors shall promptly pay all then-unpaid fees and expenses identified in Monthly Fee Statements (as defined in the Interim Compensation Procedures Order) that have been filed by the Committee's Retained Professionals, notwithstanding anything in the DIP Order or such Monthly Fee Statements to the contrary." *See Committee Settlement Motion*, ¶13.

36. Astoundingly, as the above bullets make clear, the Committee's constituents will receive almost nothing under the UCC Settlement that they would not have gotten otherwise (despite the Committee having incurred almost $20 million in fees through February 2024 and having filed a 134 page-long Committee Standing Motion, which sought standing to pursue valuable and meritorious claims against third parties). For example, critical vendors are either

entitled to payment as a critical vendor, or not. Compelling the Debtors to make commercially reasonable efforts to pay such vendors has little, if any, benefit to the unsecured creditor class the Committee represents. The same is true with respect to payment of the Committee's professional fees, which would be paid in any event. Finally, the distribution to unsecured creditors of 3.5% of the New Common Stock, worth according to the Debtors somewhere between $13 million and $35 million,[8] before dilution by the Management Incentive Plan, is less than any reasonable estimate of the claims being given up by the Committee in the UCC Settlement and less than the value that would have flowed to unsecured creditors absent the releases contained in the Plan (or in a chapter 7 scenario).

37. In any event, and even more astoundingly, despite the 2024/2026 Noteholder Group being the Committee's largest general unsecured constituency under the Plan, the Committee did not consult with the 2024/2026 Noteholder Group prior to agreeing to the UCC Settlement.

38. ***The Indemnity Claims***. The Plan also provides for a broad indemnity for the IL Indenture Trustee and the Consenting IL Noteholders (the "**Indemnity Claims**") that is *identical* to the indemnities provided to those parties in the prepetition contracts arising out of the 2022 Financing Transaction.

39. The Indemnity Claims are provided for in Article V.D.2.b. of the Plan, which states:

> Indemnification of 1L Indenture Trustee and Holders of 1L Notes Claims. Following the Effective Date, ***Consenting 1L Noteholders, the 1L Indenture Trustee*** (solely in Wilmington Savings Fund Society, FSB's capacity as the trustee and collateral agent under the 1L Indenture and not in any capacity relating to the 1.25L Notes, the 2024 Unsecured Notes, the 2026 Unsecured Notes or the 2027 Unsecured Notes or the 1.25L Indenture, the 2024 Unsecured Indenture, the 2026 Unsecured Indenture or the 2027 Unsecured Indenture or any other document executed by it, or binding on it, in connection with its role as the indenture trustee for the 1.25L Notes, the 2024 Unsecured Notes, the 2026 Unsecured Notes or the 2027 Unsecured Notes) ***and their respective Related Parties shall be indemnified***

[8] Assuming that the General Unsecured Class is between $650 million and $690 million and a 2% to 5% distribution on such claims, both as estimated in the Disclosure Statement.

> ***by the Reorganized Debtors with respect to all present and future actions, suits, and proceedings against the Consenting 1L Noteholders, the 1L Indenture Trustee or their respective Related Parties in connection with or related to the 2022 Financing Transactions, the Financing Litigation, and/or any other Causes of Action in connection with or related to the 1L Indenture*** (including, with respect to the 1L Indenture Trustee, for its reasonable and documented fees and expenses and for the reasonable and documented fees and expenses of its counsel) ***or the other Note Documents*** (as defined in the 1L Indenture), ***on the same terms as afforded under the 1L Indenture or the other Note Documents (as defined in the 1L Indenture)***.

See Plan, Art. V.D.2.a. (emphasis supplied). For the reasons set forth below, the Indemnity Claims are impermissible, and confirmation of the Plan should be denied unless the Indemnity Claims are stricken from the Plan.

40. ***The Exculpation***. The term "Exculpated Parties" is defined in the plan as "collectively, and in each case in their capacities as such and, in each case, to the maximum extent permitted by law: (a) the Debtors, (b) the Reorganized Debtors, (c) the Committee and its members, (d) any independent director of a Debtor (including Patrick Bartels as independent director of Wolverine Intermediate Holding), and (e) in each case, the Retained Professionals and other professional advisors of the foregoing."

41. The Plan contains an impermissibly broad exculpation provision. In particular, Article VIII.F. of the Plan provides:

> Without affecting or limiting the releases set forth in Article VIII.D and Article VIII.E, and notwithstanding anything in the Plan to the contrary, to the fullest extent permitted by applicable law, no Exculpated Party shall have or incur, and each ***Exculpated Party*** shall be released and exculpated from, any claim or Cause of Action arising on or after the Petition Date in connection with or arising out of the administration of the Chapter 11 Cases; the negotiation and pursuit of the DIP Financing; the Restructuring Support Agreement; the New Exit Notes, the New Takeback Notes; the New Revolver Facility; the Plan (including the Plan Supplement); the Disclosure Statement; ***the Financing Litigation***; the Restructuring Transactions; the solicitation of votes for, or confirmation of the Plan; any settlement or other acts approved by the Bankruptcy Court; the funding of the Plan; Consummation of the Plan; the administration and implementation of the Plan or the property to be distributed under the Plan; the issuance or distribution of securities under or in connection with the Plan; the issuance, distribution,

> purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors under or in connection with the Plan; or the transactions in furtherance of any of the foregoing . . .

See Plan, Art. VIII.F. (emphasis supplied).

42. Of particular note, the definition of the "Financing Litigation" includes the 2022 Financing Transaction – a prepetition transaction – and the definition of "Exculpated Parties" includes the Debtors' independent director and "Retained Professionals and other professional advisors of the foregoing". *See Plan*, Art. I.A.103 & 97.

III. INITIAL OBJECTIONS

A. THE DEBTORS CANNOT MEET THEIR BURDEN OF PROVING THAT THE PLAN MEETS THE CONFIRMATION REQUIREMENTS OF THE BANKRUPTCY CODE.

43. As the proponents of the Plan, the Debtors have the burden of proving that all elements of section 1129(a) are satisfied. *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009) (*citing In re Internet Navigator Inc.*, 289 B.R. 128, 131 (Bankr. N.D. Iowa 2003)). The Debtors must satisfy their burden of proof by a preponderance of evidence. *Id*. (*citing In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir.1993), *cert. denied*, 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993)).

B. THE DEBTORS CANNOT PROVE THAT THE PLAN HAS BEEN PROPOSED IN GOOD FAITH UNDER SECTION 1129(a)(3).

44. Section 1129(a)(3) of the Bankruptcy Code requires that the "plan has been proposed in good faith and not by any means forbidding by law." 11 U.S.C. § 1129(a)(3). "The 'good faith' of a reorganization plan must be 'viewed in light of the totality of the circumstances surrounding confection' of the plan." *Matter of Jasik*, 727 F.2d 1379, 1383 (5th Cir. 1984) (*citing Public Finance Corp. v. Freeman*, 712 F.2d 219, 221 (5th Cir. 1983)); *see also Matter of T-H New Orleans Ltd. Partnership*, 116 F.3d 790, 802 (5th Cir. 1997) (stating that the good faith

requirement "must be viewed in light of the totality of the circumstances surrounding establishment of a Chapter 11 plan, keeping in mind that the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start."). "A totality of the circumstances approach looks to Debtors' conduct in preparing and proposing the Plan." *In re Dernick*, 624 B.R. 799, 811 (Bankr. S.D. Tex. 2020) (citing *In re Northbelt, LLC*, 630 B.R. 228, 277 (Bankr. S.D. Tex. 2020)).

45. A plan must be proposed with a legitimate and honest purpose to reorganize and have a reasonable hope of success to satisfy the good faith requirement. *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985). Courts assesses whether the "plan was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected." *Northbelt, LLC*, 630 B.R. at 277. "As promulgated by the Fifth Circuit, the § 1129(a)(3) inquiry is ultimately fact-specific, fully empowering the bankruptcy courts to deal with chicanery." *Id.* (*citing In re Vill. at Camp Bowie I, L.P.*, 710 F.3d 239, 248 (5th Cir. 2013)).

46. In this case, proving that the Plan has been proposed in good faith would seem to be an impossible burden. Here, in contravention of 1122(a) and 1123(a)(4) of the Bankruptcy Code, the Debtors have gerrymandered their treatment of claims and classification by treating their remaining (funded debt) unsecured claims in a dramatically different fashion than the vast majority of trade claims in the case. Those favored claims, by virtue of payment in a critical vendor order, have been paid or will be paid, out of turn and in full and by virtue of the waiver of chapter 5 causes of action will face no preference liability. In contrast, the remining unsecured claims, except for a convenience class, will receive a small fraction of the Reorganized Debtors' stock which will be worth close to zero. That the Debtors received court approval to pay 100% of critical vendor claims at a first day hearing may absolve them from wrongdoing in their payment of such

claims, but it does not negate the fact they have manipulated the reorganization process in ways the Bankruptcy Code does not contemplate or allow, in order to leave the main target of their chapter 11 cases – their adversaries in the ongoing adversary proceeding – left holding the proverbial (empty) bag.

47. To summarize, after wrongfully stripping the 2024/2026 Noteholders of their liens and subsequently filing Chapter 11, the debtors have paid the vast majority of their trade vendors, leaving, by their own calculations, only allegedly unsecured debt of approximately $538 million owed to the 2024/2026 Noteholders, plus over $100 million owed to similarly left behind 2027 Noteholders, and a small stub of approximately $0 to $40 million in non-Convenience Class trade debt.

48. Had the Debtors proposed a chapter 11 plan which provided expressly that it would pay nearly all trade claims in full while affording the infinitely worse treatment described above to other holders of General Unsecured Claims, including the holders of the 2024 Notes and the 2026 Notes, it could not pass statutory muster Code sections 1122 and 1123 of the Bankruptcy Code. Doing it in steps throughout the case should fare no better.

C. THE DEBTORS CANNOT PROVE THAT THE GLOBAL SETTLEMENT AND THE UCC SETTLEMENT MEET THE REQUIREMENTS OF RULE 9019.

49. Federal Rule of Bankruptcy Procedure 9019 provides: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). A bankruptcy court may approve a settlement only if it is "fair and equitable and in the best interest of the estate." *In re Beach*, 731 Fed. Appx. 322, 325 (5th Cir. 2018) (*quotation omitted*); *see also Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015) (same). *See also Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (a bankruptcy court has a duty "to

determine that a proposed compromise forming part of a reorganization plan is fair and equitable") (*citing In re Chicago Rapid Transit Co.*, 196 F.2d 484 (7th Cir. 1952)). In the Fifth Circuit, courts apply a three-part balancing test "with a focus on comparing 'the terms of the compromise with the likely rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015)).

50. In particular, in deciding whether to approve a settlement a "bankruptcy court must evaluate: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. *In re Age. Ref., Inc.*, 801 F.3d at 540; *In re In re Beach*, 731 Fed. Appx. at 325 (citation omitted). The third prong's "other factors" - the so-called *Foster Mortgage* factors - include "(i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *In re Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997) (*citing Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.*), 68 F.3d 914, 917 (5th Cir. 1995)).

51. Further, when – as here – a settlement includes insiders and does not have broad creditor support, a court has a duty to carefully review it. As stated by the *Foster Mortgage* court, "[t]he court's scrutiny must be great when the settlement is between insider and an overwhelming majority of creditors in interest oppose such settlement of claims. While no magic words need be spoken, there must be evidence that such factors were considered." *In re Foster Mortg. Corp.*, 68 F.3d at 919.

52. More particularly, while the business judgment rule might apply to transactions between a debtor and an unrelated third party, it is not applicable to transactions among a debtor and an insider of the debtor. *See In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) ("By definition, the business judgment rule is not applicable to transactions among a debtor and an insider of the debtor. Those kinds of transactions are inherently suspect because 'they are rife with the possibility of abuse.'") (citations omitted). Instead, "courts apply a 'heightened scrutiny' test in assessing the *bona fides* of a transaction among a debtor and an insider of the debtor." *Id.* (citation omitted). The Debtors are Delaware corporations and Delaware courts, in the merger context with an insider, apply the "entire fairness" test – remarkably similar to the test in bankruptcy. *See, e.g.*, *Firefighters' Pension Sys. of City of Kansas City, Missouri Tr. v. Presidio, Inc.*, 251 A.3d 212, 249 (Del. Ch. 2021) ("Not even an honest belief that the transaction was entirely fair will be sufficient to establish entire fairness. Rather, the transaction itself must be objectively fair, independent of the board's beliefs.") (citation omitted). Indeed, as the Fifth Circuit has recognized, a "claim arising from the dealings between a debtor and an insider ***is to be rigorously scrutinized by the courts***." *Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991) (emphasis supplied). "In applying heightened scrutiny, courts are concerned with the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration." *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010).

53. The Debtors will not be able to demonstrate, by a preponderance of the evidence, that the Global Settlement and the UCC Settlement meet the Fifth Circuit's requirements for approval of settlements in bankruptcy cases. Without limitation, the primary defects of the Global

Settlement are that it (i) releases certain claims belonging to the Debtors' for inadequate consideration, including claims against directors, officers, and the Debtors' equity sponsor, and (ii) purports to settle the 2022 Financing Adversary Proceeding, including remedies belonging to the 2024/2026 Noteholders, for virtually no consideration. While case law is uniform that in deciding whether to approve a settlement "it is unnecessary to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement," ***see*** *In re Cajun Electric Power Coop.*, 119 F.3d at 356 (citation omitted), in this case, the Court is conducting a trial in the 2022 Financing Adversary Proceeding that has clearly demonstrated that the underpinnings of the Global Settlement—the assumption that the Debtors' capital structure immediately before its chapter 11 filings is the appropriate one—is incorrect. Thus, the Global Settlement is not "fair and equitable".

54. Further, in the UCC Settlement the Committee agreed to support the Plan's settlement of substantial claims it had identified as belonging to the Debtors' estates for practically zero consideration, including claims against the Debtors' directors and equity sponsor. Such agreement was reached before any trial evidence had been presented. And while the 2024/2026 Noteholder Group will abstain from characterizing the evidence in this filing in light of the ongoing trial, such evidence clearly does not support the release of such estate causes of action.[9]

55. Finally, given the benefits the Debtors' management and board, including its "independent director", are receiving under the Global Settlement, they have a financial interest in its approval. This should subject the Global Settlement to heightened scrutiny. Moreover, the UCC Settlement reflects that the Committee is not demonstrably representative of the unsecured

[9] The 2024/2026 Noteholder Group reserves the right to present such evidence in support of its Plan objections in a further filing and/or at the confirmation hearing.

creditors it is charged with representing, as evidenced by the fact that it did not consult with its largest constituent before agreeing to the UCC Settlement.

D. THE DEBTORS CANNOT PROVE THAT THE PLAN IS FEASIBLE UNDER SECTION 1129(a)(11).

56. Section 1129(a)(11) of the Bankruptcy Code, the so-called "feasibility" requirement, states that confirmation may proceed only if "[c]onfirmation of the plan is likely not to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). "To allow confirmation, the bankruptcy court must make a specific finding that the plan as proposed is feasible." *Matter of T-H New Orleans Ltd. Partnership*, 116 F.3d 790, 801 (5th Cir. 1997).

57. "In determining if a plan is feasible, the 'inquiry is peculiarly fact intensive and requires a case by case analysis.'" *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 266 (Bankr. S.D. Tex. 2015) (*citing In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 833 (Bankr. E.D. Pa. 1995) (noting that the standard is to use the parameters set forth in the statute)). This requires that the Debtors show that they can accomplish what they propose to do in the plan, on the timeline and terms set forth in the plan. *In re Samurai Martial Sports, Inc.*, 644 B.R. 667, 695 (Bankr. S.D. Tex. 2022).

58. Bankruptcy Courts analyzing feasibility consider factors including "the earning power of the business, its capital structure, the economic conditions of the business, the continuation of present management, and the efficiency of management in control of the business after confirmation." *Star Ambulance Service*, 540 B.R. at 266 (citing *In re D&G Invs. of West Fla., Inc.*, 342 B.R. 882, 886 (Bankr. M.D. Fla. 2006)). This test, however, is a loose test with the court being able to "weigh (or indeed ignore) various factors at its discretion [, and] courts do not typically 'check off' factors and need not consider all of the factors in their decisions." *In re*

Quintela Group, LLC, 2021 WL 4295247, at *4 (S.D. Tex. Sept. 20, 2021) (*citing In re Geijsel*, 480 B.R. 238, 257 (Bankr. N.D. Tex. 2012)).

59. The Debtors will not be able to demonstrate at the confirmation hearing that, as currently constructed, the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors. In particular, the 2024/2026 Noteholder Group submits that the Debtors will not be able to prove that the Plan is feasible because the Debtors' ongoing obligation to indemnify certain parties with respect to the 2022 Financing Transaction has not been quantified, whether in the Disclosure Statement or otherwise, and these indemnity obligations will further weigh on the viability of the Reorganized Debtors as a going concern.

60. Indeed, in the Disclosure Statement the Debtors acknowledge the risk of the Indemnity Claims to the value of the New Common Equity, but note their inability to "predict with certainty" the quantum of those potential claims. *See Disclosure Statement*, p. 162 ("the value of [the New Common Equity] may be affected by the indemnification obligations owed to the 1L Indenture Trustee and Holders of 1L Notes Claims. The Debtors cannot predict with certainty the potential value, if any, of such indemnification obligations, but payments on account of such indemnification obligations could adversely impact the value of the New Common Equity").

61. The Debtors nevertheless assert that the Plan is feasible. *See Disclosure Statement*, at p. 162 (noting the Debtors' disagreement with the 2024/2026 Noteholder Group's assertion that the Plan is not feasible). But the potential effect of the Indemnity Claims on the Reorganized Debtors is not discussed at all in the Debtors' financial projections or anywhere else in the Disclosure Statement. *See Disclosure Statement*, pp. 110-11. With the overhang of the unquantified Indemnity Claims on the Debtors after emergence, the Debtors will have a substantial burden to prove the feasibility of the Plan. *See In re 20 Bayard Views, LLC*, 445 B.R. 83, 101

(Bankr. E.D.N.Y. 2011) ("[i]n most situations, the time immediately following bankruptcy will call for fairly specific proof of the company's ability to meet its obligations . . .") (*quoting Dish Network Corp. v. DBSD N. Am. Inc. (In re DBSD N. Am. Inc.)*, 2011 WL 350480, at *22 (2nd Cir. Feb. 7, 2011)).

62. And although though the Plan and Disclosure Statement are silent on the potential amount of the Indemnity Claims, the fact that they may be material can be inferred from the efforts the Debtors and the Consenting IL Noteholders have expended to protect those claims. Starting with the 2022 Financing Transaction and now to a chapter 11 plan process, the Consenting 1L Noteholders have jealously guarded these claims.

63. Additionally, the most recent amendment to the Plan includes a provision to equitize any payment on the New Takeback Notes which the Reorganized Debtors cannot afford to make. *See Notice of Filing of Amended Plan Supplement* [ECF No. 1564], Exhibit D. This sleight of hand clearly signals the doubts the Debtors (and Consenting 1L Noteholders) have about the ability of the Debtors to make interest payments on their debt immediately post-emergence, and while this provision may help them avoid an immediate default under their post-emergence debt, it is indicative of an entity that will need further reorganization.

E. THE DEBTORS CANNOT PROVE THAT THE PLAN COMPLIES WITH THE BEST INTERESTS OF CREDITORS TEST UNDER SECTION 1129(a)(7).

64. Section 1129(a)(7) of the Bankruptcy Code requires that for a given class of claims, that each holder in such class must either accept the Plan or "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7." 11 U.S.C. §1129(a)(7).

65. The best interests test focuses on individual creditors rather than classes of claims. *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 761 (Bankr. S.D.N.Y. 1992) (citation omitted). Thus, under the best interests test, a Court must find that each non-accepting creditor "will receive or retain value that is not less than the amount he would receive if the debtor were liquidated." *Id.* (citation omitted). The proponent of a chapter 11 plan – here the Debtors – "must introduce sufficient current financial information about the debtor, his assets and liabilities, and his prospects to permit the court to judge whether the test has been satisfied." *In re Piece Goods Shops Co., L.P.*, 188 B.R. 778, 791 (Bankr. M.D.N.C. 1995).

66. The Plan and Disclosure Statement estimate that holders of the 2024 Notes and the 2026 Notes will receive a distribution of approximately 2%-5% in the form of their share of 3.5% of the New Common Equity, subject to further dilution by the Management Incentive Plan. *See Disclosure Statement*, p. 4. In a chapter 7 liquidation, among other things, (a) the Debtors would not be effectively (and impermissibly) assuming the prepetition indemnity obligations owed to the holders of the 1L Notes Claims, as provided in the Plan, (b) the Debtors would not be providing releases to multiple parties of the various claims identified by the Committee in the Committee Standing Motion, as provided in the Plan, and (c) the Debtors would not waive preference claims, as provided in the UCC Settlement.

67. The Estate Claims that the Plan purports to release would inure to the benefit of the Debtors' unsecured creditors, and so would the preference claims which the UCC Settlement also purports to waive. Those claims will be proven at the confirmation trial to be worth more than the meager recoveries granted to the General Unsecured Claims under any reasonable valuation scenario. As for the prepetition indemnity obligations, which the Debtors classify as secured claims and purport to repackage postpetition as the Indemnity Claims, those would be deemed

invalid in a chapter 7 liquidation (as they should be in these Chapter 11 Cases) and would therefore not eat into unsecured creditors' recoveries in a liquidation scenario when they very much do under the present Plan construct.

68. At a minimum, then, the Debtors must demonstrate by a preponderance of the evidence that, in a liquidation without the preferential treatment being given to certain creditors and potential litigation targets under the Plan, the holders of the 2024 Notes and the 2026 Notes who voted against the Plan will nonetheless receive less than the paltry distribution provided to them under the Plan.

F. THE PLAN DOES NOT COMPLY WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE IN VIOLATION OF SECTION 1129(a)(1).

69. ***The Plan Does Not Comply with Section 502(e)(1)(B) of the Bankruptcy Code***. Section 502(e)(1)(B) provides:

> Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution . . .

11 U.S.C. §502(e)(1)(B).

70. Thus, a claim against a debtor must be disallowed pursuant to section 502(e)(1)(B) if (i) the debtor is co-liable with the claimant; (ii) the claim is contingent; and (iii) the claim is for "reimbursement or contribution." *In re Alta Mesa Res., Inc.*, 2022 WL 17984306 at *3 (Bankr. S.D. Tex. Dec. 28, 2022). The Indemnity Claims are contingent "reimbursement or contribution" claims that must be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

71. <u>The Debtors, on the One Hand, and the Consenting 1L Noteholders and the IL Indenture Trustee, on the Other Hand, are Co-liable</u>. In order for section 502(e) to apply, "[t]here

must exist . . . a shared liability to the same party on the same claim." *In re Tri-Union Dev. Corp.*, 314 B.R. 611, 617 (Bankr. S.D. Tex. 2004) (*citing* COLLIER ON BANKRUPTCY, Vol. 4 at ¶ 502.06[2][b]). Co-liability is interpreted broadly. *In re Amatex Corp.*, 110 B.R. 168, 171 (Bankr. E.D. Pa. 1990).

72. The Debtors are co-liable with the Consenting 1L Noteholders on claims asserted by members of the 2024/2026 Noteholder Group. Indeed, the Debtors have admitted as much, stating in the Complaint that commenced the 2022 Financing Adversary Proceeding that "[t]he Debtors and the Non-Debtor Parties share an identity of interests because of the interwoven nature of the New York State Actions Plaintiffs' claims and the asserted contractual indemnification rights, such that the claims against the Non-Debtor Parties are, at their core, about the Debtors' conduct in connection with the 2022 Transaction" and "the Non-Debtor Parties and the Debtors share an identity of interests such that the New York State Actions against the Non-Debtor Parties are effectively lawsuits against the Debtors." *See Adversary Complaint* [Adv. Pro. ECF No. 1], at ¶¶ 6 & 99.

73. Even after the Plan was on file, the Debtors reiterated this position—this time jointly with the Consenting 1L Noteholders—in the *Debtors' and Non-Debtor Counterclaim Defendants' Response to the Court's Request for Supplemental Briefing Regarding Subject Matter Jurisdiction* [Adv. Pro. ECF No. 501]. In that filing, the Debtors and the Consenting 1L Noteholders stated:

> The Original Indentures, the 2026 Secured 1L Notes Indenture, the 2027 Secured 1.25L Notes Indenture, the Note Purchase Agreement, and the Exchange Agreement contain indemnity provisions that plainly cover all Non-Debtor Claims asserted by the 2024/2026 Holders . . . .
>
> . . .
>
> A finding of liability on any of the Non-Debtor Claims would therefore give rise to

> an indemnity claim against the Debtors' estates.

Id. at 9, 11. The Debtors and Consenting 1L Noteholders likewise conceded that:

> Here, each Non-Debtor Claim turns on a fundamental question: did the 2022 Transaction comply with the express or implied terms of the Original Indentures? Put differently, a finding of liability on a Non-Debtor Claim is necessarily intertwined with a determination of liability against the Debtors.

74. The Indemnity Claims are Contingent. "'Contingent' in this context means 'unfunded.' Thus, claims remain 'contingent' for purposes of Bankruptcy Code §502(e)(1)(B) until the co-debtor has paid the creditor." *In re Tri-Union Dev. Corp.*, 314 B.R. 611 at 616-17. *See also In re Alta Mesa Res., Inc.*, 2022 WL 17984306 at *3 ("A claim for indemnification is generally considered contingent unless the claimant has actually paid the third party."). There is no doubt that the Indemnity Claims are contingent. Until the Consenting 1L Noteholders are found liable on claims asserted against them, any Indemnity Claims for damages are contingent.

75. The Indemnity Claims are Claims for Reimbursement or Contribution. Courts interpret a claim for indemnity to be a claim for "reimbursement or contribution." *In re Alta Mesa Res., Inc.*, 2022 WL 17984306 at *3 (*citing In re RNI Wind Down Corp.*, 369 B.R. 174, 181-182 (Bankr. D. Del. 2007) (*quoting In re Vectrix Bus. Solutions, Inc.*, 2005 WL 3244199, at *3 (Bankr. N.D. Tex. 2005)).

76. Accordingly, because all three parts of the section 502(e)(1)(B) test are met, the Court should disallow the Indemnity Claims. The Debtors may argue that the Indemnity Claims are not subject to section 502(e)(1)(B) because the Indemnity Claims are postpetition obligations under the Plan, not prepetition obligations under the prepetition debt documents, to which section 502(e)(1)(B) does not apply. But this argument does not work. The Debtors' obligation under the Plan to indemnify the IL Indenture Trustee and the Consenting IL Noteholders is nothing more than a disguised attempt to circumvent section 502(e)(1)(B). Indeed, the Debtors did not even

attempt to draft a separate, postpetition indemnity and include it in the Plan. Rather, the Debtors merely imported the indemnities in the prepetition debt documents in favor of the 1L Indenture Trustee and the Consenting 1L Noteholders into the Plan. *See Plan*, Art. V.D.2.a. (the Consenting IL Noteholder and the IL Indenture Trustee "shall be indemnified by the Reorganized Debtors . . . ***on the same terms as afforded under the 1L Indenture or the other Note Documents (as defined in the 1L Indenture***") (emphasis supplied). Thus, the Indemnity Claims are nothing more than a prepetition obligation of the Debtors that the Bankruptcy Code says must be disallowed. The Indemnity Claims only exist because of the 2022 Transaction and the language of the indemnity solely refers to facts and claims that arose prepetition. Claims associated with the negotiating, drafting or implementation of the Plan or claims associated with postpetition conduct are not covered by the Indemnity Claims at issue here, which makes any argument that this is a new, independent obligation of the Debtors ludicrous.

77. ***Alternatively, the Plan Does Not Comply with Section 509(c) of the Bankruptcy Code***. Section 509(c) of the Bankruptcy Code provides in pertinent part:

> The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim . . . for reimbursement or contribution, of an entity that is liable with the debtor on . . . such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

11 U.S.C. §509(c).

78. Section 509(c) and section 502(e)(1)(B) "enable the co-liable third party to elect its path of recovery: either as a reimbursement or contribution creditor under §502 or as a subrogee under §509. 4 *Collier on Bankruptcy* ¶ 502.06[2][e]. "However, the codebtor's choice is constrained by § 509(c). That subsection provides that, regardless of whether the codebtor chooses to pursue a subrogation claim under §509 or a reimbursement/contribution claim under §502, its claim shall be 'subordinate[d] to the underlying creditor's claim until such time as the codebtor

has paid the underlying creditor in full.'" *In re Dow Corning Corp.*, 250 B.R. 298, 365 (Bankr. E.D. Mi. 2000); *see also In re Chateaugay Corp.*, 89 F.3d 942, 947 (2nd Cir. 1996); *In re LTC Holdings, Inc.*, 10 F.4th 177, 185 (3rd Cir. 2021).

79. As a subrogation claim under section 509, the Consenting 1L Noteholders and the 1L Indenture Trustee must meet the requirements of section 509(c), which requires that the claims of the 2024/2026 Noteholder Group must be paid in full first before any recovery can be paid to the Consenting 1L Noteholders and the 1L Indenture Trustee based on such Indemnity Claims. The Plan's proposed payment of such claims in full thus violates the Bankruptcy Code and therefore does not comply with section 1129(a)(1).

G. THE PLAN'S EXCULPATION PROVISION IS IMPERMISSIBLY BROAD.

80. The scope of the Exculpation exceeds what is permissible under binding Firth Circuit precedent. *First*, the Exculpation includes "any claim or Cause of Action arising on or after the Petition Date in connection with or arising out . . . the Financing Litigation . . ." The term " Financing Litigation" is defined as:

> any Cause of Action arising out of or related to (a) the facts and circumstances alleged in any complaint filed in the 2022 Financing State Court Litigation, including all Causes of Action alleged therein; (b) the facts and circumstances alleged in any complaint, counterclaim, or crossclaim filed in the 2022 Financing Adversary Proceeding, including all Causes of Action alleged therein; (c) the Standing Motions, including all Causes of Action alleged therein; (d) the 2022 Financing Transactions, including: (i) the facts and circumstances related to the negotiation of and entry into the 1L Indenture or the 1.25L Indenture and any related transactions or agreements, including any related amendments to the Unsecured Notes Indentures or the security or collateral documents related thereto; (ii) any consents provided in connection with any amendments, supplements or waivers with respect to the 2024 Unsecured Notes, the 2026 Unsecured Notes, the 2027 Unsecured Notes, the Unsecured Notes Indentures or related documents; (iii) the issuance of additional notes under the 2026 Unsecured Indenture; or (iv) the purchase or exchange of any 'Obligations' under, and as defined in, the Unsecured Notes Indentures through the 2022 Financing Transactions; and/or (e) any associated documentation or transactions related to the foregoing.
>
> *See Plan*, Art. I.A.103.

81. Thus, while the Exculpation provision on its face is limited to "any claim or Cause of Action arising on or after the Petition Date", the definition of "Financing Litigation", in particular subparts (a), (b), (d) and (e), makes reference to ***prepetition*** acts, including the 2022 Financing Transactions. Exculpation provisions in chapter 11 plans should apply only to ***postpetition*** acts. Otherwise they are disguised third party releases, without providing creditors voting on the Plan with any ability to opt out.

82. *Second*, the definition of "Exculpated Parties" includes "the Retained Professionals and other professional advisors of the" Exculpated Parties. As the Fifth Circuit clearly and unequivocally held in *Highland Capital Management*, "[i]n sum, our precedent and §524(e) require any exculpation in a Chapter 11 reorganization plan be limited to the debtor, the creditors' committee and its members for conduct within the scope of their duties, 11 U.S.C. § 1103(c), and the trustees within the scope of their duties . . . And so, excepting the Independent Directors and the Committee members, the exculpation of non-debtors here was unlawful. Accordingly, the other non-debtor exculpations must be struck from the Plan." *In re Highland Capital Mgmt., L.P.*,, 48 F.4th 419, 437-38 (5th Cir. 2022). Thus, the proposed exculpation of the "Retained Professionals and other professional advisors of the" Exculpated Partis is unlawful and fatal to the Plan.

83. *Third*, the definition of "Exculpated Parties" includes "any independent director of a Debtor (including Patrick Bartels as independent director of Wolverine Intermediate Holding)". To the knowledge of the 2024/2026 Noteholder Group, Mr. Bartels is the only independent director of any of the Debtors. In *Highland Capital*, the independent directors were appointed as "bankruptcy trustees" for the Debtors, who were entitled to "all the rights and powers of a trustee". *See Highland Capital*, 48 F.4th at 427. It is on this basis that the Firth Circuit permitted their

inclusion in the exculpation provision in that case. Here, the same cannot be said of Mr. Bartels. Thus, his inclusion in the Plan's exculpation provisions is improper.

H. THE DEBTORS HAVE NOT INCLUDED THE "NEW ORGANIZATIONAL DOCUMENTS" OR THEIR MATERIAL TERMS IN THE PLAN SUPPLEMENT, IN VIOLATION OF THE PLAN.

84. The Plan defines the "New Organizational Documents" as "the new bylaws, certificates of incorporation, certificates of formation, limited liability company agreements, operating agreements, certificates of limited partnership, agreements of limited partnership, shareholder agreements, or such other organizational documents of the Reorganized Debtors, ***the forms or material terms of which shall (as to Reorganized Incora) be included in the Plan Supplement***, which shall be, in each case, in form and substance acceptable to the Required Consenting 1L Noteholders." *See Plan*, Art. I.A.136 (emphasis supplied).

85. The Debtors have filed two "Plan Supplements". The first was filed on February 1, 2024 and included only a Schedule of Rejected Contracts and/or Unexpired Leases that listed 12 leases or executory contracts to be rejected by the Debtors. *See Notice of Filing of Plan Supplement* [ECF No. 1357]. The second – the "Amended Plan Supplement" - was filed on March 20, 2024 and includes (i) an Amended Schedule of Rejected Contracts and/or Unexpired Leases (which added one contract to the list filed on February 1, 2024), (ii) a Schedule of Assumed Executory Contracts and/or Unexpired Leases with a cure amount above $0.00 (listing one such contract), (iii) short – barely one page - summaries of the terms of the terms of the New Takeback Notes and the New Exit Notes, and (iv) Schedules of Retained Causes of Action. *See Notice of Filing of Amended Plan Supplement* [ECF No. 1564].

86. The Court has ordered the Debtors to file the Plan Supplement "7 days prior to Voting Deadline". *See Order Amending the Order (I) Approving 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 [ECF No. 1426]. But nowhere in the Plan Supplements filed to date are the "forms or material terms" of the New Organizational Documents, as required by the Debtors' own Plan. While the Plan is merely a proposed chapter 11 plan and has not been confirmed or gone effective, the Debtors are already violating its terms by (a) not including the New Organizational Documents or the material terms of such documents in any Plan Supplement filed to date and (b) at the same time setting a May 3, 2024 deadline to object to confirmation of the Plan.

87. This is not just an academic point. The Plan proposes that the holders of the 2024 Notes and the 2026 Notes will be minority shareholders in the reorganized Debtors. As such, the terms of the Debtors' new organizational documents, shareholders agreements, and governance documents are material to the noteholders and could result in additional objections to the Plan, which the 2024/2026 Noteholder Group are not be able to include in this Initial Objection and thus we reserve all rights with respect thereto.

I. FOR THE AVOIDANCE OF DOUBT, EACH MEMBER OF THE 2024/2026 NOTEHOLDER GROUP OPTS OUT OF THE THIRD PARTY RELEASES AND OBJECTS TO THE 1L CLAIMS.

88. The members of the 2024/2026 Noteholder Group each indicated its intent on the ballots they received from their respective Nominees to opt out of the Third-Party Release set forth in the Plan. However, for the avoidance of doubt, the members of the 2024/2026 Noteholder Group and their affiliated funds that are or were holders of the 2024 Notes or the 2026 Notes opt out of the Third Party Release.

89. Further, for the reasons argued in the 2022 Financing Adversary Proceeding, and for the avoidance of doubt, the 2024/2026 Noteholder Group objects to the Plan's proposed allowance of the 1L Notes Claims.

IV. CONCLUSION

90. For the reasons stated above and for the reasons stated in any subsequent objection filed by the 2024/2026 Noteholder Group, the Court should deny confirmation of the Plan.

Dated: May 3, 2024
Houston, Texas

FOLEY & LARDNER LLP

By: */s/ John P. Melko*

John P. Melko
1000 Louisiana Street, Suite 2000
Houston, TX 77002
Tel: 713-276-5500
jmelko@foley.com

Mark F. Hebbeln (admitted *pro hac vice*)
321 North Clark Street, Suite 3000
Chicago, IL 60654
Tel: 312-832-4500
mhebbeln@foley.com

-and-

KOBRE & KIM LLP

Zachary D. Rosenbaum (admitted *pro hac vice)*
Adam M. Lavine (admitted *pro hac vice)*
Darryl G. Stein (admitted *pro hac vice)*
Igor Margulyan (admitted *pro hac vice)*
Michael S. Brasky (admitted *pro hac vice)*
John G. Conte (admitted *pro hac vice)*
800 Third Avenue
New York, NY 10022
Tel: 212-488-1200
zachary.rosenbaum@kobrekim.com
adam.lavine@kobrekim.com
darryl.stein@kobrekim.com
igor.margulyan@kobrekim.com
michael.brasky@kobrekim.com
john.conte@kobrekim.com

Counsel for the Ad Hoc 2024/2026 Noteholder Group

Certificate of Service

I certify that on May 3, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ John P. Melko

John P. Melko

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

In re:	Chapter 11
Wesco Aircraft Holdings, Inc., *et al.*,	Case No. 23-90611 (MI)
Debtors.[1]	(Jointly Administered)

ORDER DENYING MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF WESCO AIRCRAFT HOLDINGS, INC., ET AL.

Related to Docket No. 1223

CAME ON FOR CONSIDERATION, the *Modified First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [Docket No. 1223] (the "Plan"), and the objection by ad hoc group of holders of the 8.50% notes due 2024 and the 9.00% notes due 2026 (the "2024/2026 Noteholder Group") to the Plan. After considering the Plan and the Objection and related pleadings, and any arguments of counsel, it is HEREBY ORDERED THAT confirmation of the Plan is DENIED.

Date: _____

_____
UNITED STATES BANKRUPTCY JUDGE

[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 a thttp://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.