

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TECT AEROSPACE GROUP
HOLDINGS, INC., et. al.,

Debtors.¹

Chapter 11

Case No.: 21-10670 (KBO)

Ref. Docket No. 518, 555, 556, & 557

**OBJECTION BY THE BOEING COMPANY AND CENTRAL KANSAS AEROSPACE
MANUFACTURING, LLC TO PROPOSED TESTIMONY REGARDING EMERGENCY
MOTION OF UTICA EQUIPMENT FINANCE LLC AND UTICA REALTY
WELLINGTON, LLC TO REMOVE EQUIPMENT FROM DEBTORS' LOCATION;
MOTION TO STRIKE**

The Boeing Company, in its capacity as Prepetition Lender and DIP Agent under the *Final Order Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2, (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Granting Related Relief*, Docket No. 174 (the “**DIP Order**”), and Central Kansas Aerospace Manufacturing, LLC (with The Boeing Company, collectively “**Boeing**”), as Purchaser under the *Order (I) Approving the Sale of the Debtors' Kansas Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief*, Docket No. 372 (the “**Kansas Sale Order**”), hereby object to certain witness testimony and move to strike declarations based on the recent disclosures regarding testimony to be offered by Utica Equipment Finance LLC and

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors' mailing address is TECT Aerospace Group Holdings, Inc., c/o Conway MacKenzie, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.



Utica Realty Wellington, LLC (collectively, the “*Utica Entities*”) in support of their *Emergency Motion to Remove Equipment from Debtors’ Location* [Docket No. 518] (the “*Equipment Motion*”). This objection is based on the following:

- The Equipment Motion was filed on October 4, 2021, unaccompanied by a single declaration. It had attached several documents, but no testimonial or similar evidence. Prior to filing the Equipment Motion - indeed, several weeks prior - the Utica Entities knew Boeing disputed there being any agreement over removal of the Bavius machine. Yet they went ahead and filed the motion, baldly asserting such an agreement existed without providing any evidence to that effect.
- Although the Equipment Motion was filed as an emergency motion and was accompanied by a motion for order shortening time (“*MOST*”) for hearing on the Equipment Motion, the Court denied the MOST and set the Equipment Motion for hearing on ordinary notice for October 19, 2021.
- On Thursday, October 14, 2021, after Boeing filed its opposition to the Equipment Motion (the “*Boeing Opposition*”) and accompanying Declaration of Edward J. Neveril, Docket Nos. 541 and 542, the Utica Entities filed their “*Errata*” to the Equipment Motion [Docket No. 555]. While captioned “Errata,” it was in substance a reply to the Boeing Opposition.
- The Errata was accompanied by two declarations, of Armin Walther from Bavius and Horace Jennings from Utica. [Docket Nos. 556 and 557]
- On the afternoon of Friday, October 15, 2021, Boeing was informed by counsel to the Debtor that they had just been informed by the Utica Entities’ counsel of their intent to call four witnesses at the upcoming hearing on Tuesday, October 19: not

only Messrs. Walther and Jennings, but also two other Utica representatives, Scott Brown and John Storm.

Boeing objects to the testimony of any of the four proposed Utica witnesses.

- It is improper for the Utica Entities to propose Messrs. Brown and Storm as live witnesses less than two business days before the hearing on a motion (which was itself improperly filed, as described in Boeing's opposition) without having provided any declaration or other preview or proffer. Boeing has no idea even what topics Messrs. Brown and Storm are prepared to address, much less what they are expected to say. Messrs. Brown and Storm should not be permitted to testify.
- Boeing also objects to Messrs. Walther and Jennings as witnesses when their declarations were filed for the first time only with the "Errata," which was in effect Utica's reply in support of its Equipment Motion. While courts may accept declarations filed with reply pleadings in limited circumstances, those circumstances usually involve changes in parties' positions or new issues raised in opposition. Boeing's opposition raised no new issues and represented Boeing's consistent position. The Utica Entities' declarations therefore could and should have been filed with the original motion (or more appropriately, with the adversary complaint for injunction that the Utica Entities should have filed to seek the relief they request). Fed. R. Civ. Proc. 6(c)(2) ("Any affidavit supporting a motion must be served with the motion."); Local Bankr. R. 9006-1(a). *See also U.S. v. Heilman*, 377 Fed.Appx. 157, 198 (3d Cir. 2010), *citing Harvey v. Plains Twp. Police Dep't*, 421 F.3d 185, 192 (3d Cir.2005) ("A party's argument is waived if it is raised for the first time in a reply brief.").

- The principal issues at the October 19 hearing are (a) whether the Utica Entities can get any of the relief they request using the procedure they chose - a motion rather than an adversary proceeding, and (b) if so, whether the Utica Entities have demonstrated their entitlement to such relief. The first is primarily a legal question. The second is more factual, but and, leaving aside that motion practice was improper in the first place, the Utica Entities at least should have filed supportive declarations with their motion rather than filing eleventh hour “Errata” and even then seeking to present additional testimony at the hearing. The Walther and Jennings declarations should be stricken and their testimony barred.
- At the very least, Messrs. Walther and Jennings should be barred from testifying to anything beyond the scope of their declarations. If their testimony is relevant to the issues before the court, and they have provided declarations, that is enough. It is just as inappropriate to proffer a new witness at the last minute to testify, even though accompanied by a declaration, if the testimony goes beyond the declaration.

As described in Boeing’s Opposition, the Equipment Motion is procedurally improper, it should be denied on that ground, and the Court need not reach the evidentiary issues set forth in this Objection. Further, as set forth in the Opposition, the Equipment Motion is without merit. Nevertheless, the Utica Entities should not be allowed to substitute surprise for substance with their last minute tactics.

WHEREFORE, Boeing objects to any live testimony from Armin Walther, Horace Jennings, Scott Brown, or John Storm, and the Walther and Jennings declarations, Docket Nos. 556 and 557, should be stricken.

Dated: October 18, 2021
Wilmington, Delaware

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