

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

In re

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

Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

**DEBTORS' OBJECTION
TO PROOF OF CLAIM #1127**

This is an objection to your claim. This objection asks the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

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



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The above-captioned debtors and debtors in possession (the “**Debtors**”² or “**Incora**”) respectfully state as follows.

RELIEF REQUESTED

1. By this objection (the “**Objection**”), Incora seeks entry of the proposed order (the “**Order**”), disallowing proof of claim number 1127 listed on **Schedule 1** to the Order.

2. More specifically, Incora seeks entry of the Order disallowing proof of claim number 1127 as filed by Declan Grant (the “**Claim**”) in part because the Claim asserts an equity interest instead of a claim and in part because the Claim asserts a claim for severance owed to an insider that does not conform to the requirements of section 503(c) of the Bankruptcy Code.

3. The principal bases for this Objection are sections 105(a), 501(a), 502(b), and 503(c) of title 11 of the U.S. Code (the “**Bankruptcy Code**”), Rule 3007 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Rules 3007-1 and 9013-1 of the Bankruptcy Local Rules of the U.S. Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”), and the Court’s *Order Approving Claim Objection and Settlement Procedures* [Dkt. No. 1354] (the “**Claims Procedures Order**”). This Objection is supported by the *Declaration of Christopher Kelly in Support of the Debtors’ Objection to Proof of Claim #1127* (the “**Kelly Declaration**”), attached to this Objection as **Exhibit A**.

4. If the claimant files and properly serves a timely response to this Objection, Incora will request the Court to schedule a hearing on that response.

² A detailed description of the Debtors and their businesses is set forth in the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) [Dkt. No. 13], filed with the Debtors’ voluntary petitions for relief filed under title 11 of the United States Code (the “**Bankruptcy Code**”), on June 1, 2023 (the “**Petition Date**”). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed on June 16, 2023; no trustee, examiner or other official committee has been appointed.

JURISDICTION AND VENUE

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

BACKGROUND

6. Mr. Grant was the chief commercial officer for Incora, whose employment ended in November 2021. As a senior executive, Mr. Grant received certain equity interests in Wolverine Top Holding Corporation, a non-Debtor parent of Incora. Upon Mr. Grant's departure from Incora, he entered into an "Executive Severance Agreement" that entitled him to continued health insurance coverage for 24 months, which is longer than the standard 18-month term that applies to most employees. Incora has declined to honor that aspect of the Executive Severance Agreement during these Chapter 11 Cases, in light of the Bankruptcy Code's prohibition on most severance payments to insiders. *See* 11 U.S.C. § 503(c)(2).

7. On September 28, 2023, Mr. Grant timely filed the Claim, which presents two distinct claims. The first part (presented as a general unsecured claim for \$1,685,804.11) asserts that Mr. Grant is a "[s]hareholder of Wolverine Top Corporation in respect of" certain common and preferred stock. The second part (presented as a priority claim for \$12,968.10) is on account of an "Executive Severance Agreement" between Mr. Grant and one of the Debtors. The Claim indicates that \$12,968.10 represents premiums for the final six months of health insurance coverage that he was entitled to receive under his Executive Severance Agreement.

BASIS FOR RELIEF

8. Section 501(a) of the Bankruptcy Code provides, in pertinent part, that "[a] creditor or an indenture trustee may file a proof of claim," while "[a]n equity security holder may file a proof of interest." 11 U.S.C. §501. Moreover, Bankruptcy Rule 3007 provides certain grounds upon which the Debtor can object, including claims that "are interests, rather than claims[.]" Fed. R. Bankr. P. 3007(d). As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof

of claim constitutes prima facie evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g., In re Jack Kline Co.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

9. As set forth herein and in the Kelly Declaration, the Claim is a combination of two purported claims that should both be disallowed: (a) a purported claim on account of various asserted equity interests and (b) a claim arising from obligations under his Executive Severance Agreement.

10. The first portion of the Claim should be disallowed, as it presents an equity interest rather than a claim. Indeed, Mr. Grant does not even assert an interest in any of the Debtors; his proof of claim indicates that he is a shareholder in "Wolverine Top Corporation," which appears to refer to "Wolverine Top Holding Corporation," a non-Debtor that itself holds interests in and claims against various Debtor entities. As a holder of stock (in whatever entity), Mr. Grant does not have a "claim" against any Incora entity. *See* 11 U.S.C. § 501(a) ("A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of *interest*.") (emphasis added); *cf.* § 101(5) ("The term 'claim' means— (A) right to payment . . . ; or (B) right to an equitable remedy for breach of performance . . . "). Accordingly, the first component of the Claim should be disallowed.

11. The second portion of the Claim should be disallowed under section 503(c)(2) of the Bankruptcy Code on the grounds that Mr. Grant received his severance package as an insider (former chief commercial officer and board member) and his customized severance package, labeled as an "Executive Severance Agreement," was not generally available to all full-time

employees. *See* 11 U.S.C. § 503(c) (“[T]here shall neither be allowed nor paid— . . . (2) a severance payment to an insider of the debtor, unless—(A) the payment is part of a program that is generally applicable to all full-time employees”); *see also In re AMR Corp.*, 490 B.R. 158, 166 (Bankr. S.D.N.Y. 2013) (“[A] severance payment is permissible only if it satisfies the two pronged test of Section 503(c)(2)(A) and (B): (i) the payment is part of a program that is generally applicable to all full-time employees”); *In re Forum Health*, 427 B.R. 650, 655 (Bankr. N.D. Ohio 2010) (holding that the “Debtors’ severance program, although generally applicable to all full-time non-union employees, is not generally applicable to all full-time employees[,]” and “[a]s a consequence, . . . [un]authorize[d] . . . under Section 503(c)(2).”).

RESERVATION OF RIGHTS

12. Incora reserves the right to modify, supplement, or amend this Objection as it pertains to any portion of the Claim. Nothing in this Objection shall be understood as (a) an admission as to the validity of any claim against a Debtor, (b) a waiver of the right of the Incora to dispute any claim against any Debtor on any grounds whatsoever at a later date, (c) a promise by any Debtor to pay any claim, or (d) a waiver of any rights of Incora under the Bankruptcy Code or other applicable law.

NOTICE

13. Pursuant to the Claims Procedures Order and Rule 3007 of the Bankruptcy Rules, notice of this Objection will be provided (a) by filing on the Court’s Electronic Court Filing system, (b) by mail, to the Office of the U.S. Trustee, and (c) by email, to counsel to the Official Committee of Unsecured Creditors and the First Lien Noteholder Group, and this Objection will be served on the claimant. The Debtors respectfully submit that no further notice is required under the circumstances.

Upon the foregoing Objection, the Debtors respectfully request that the Court (a) enter an order sustaining this Objection, substantially in the form attached to this Objection and (b) grant such other relief as is just and proper.

Dated: April 3, 2024

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

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CERTIFICATE OF SERVICE

I certify that, on April 3, 2024, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' noticing agent.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

EXHIBIT A
TO THE DEBTORS' OBJECTION
TO PROOF OF CLAIM #1127

CHRISTOPHER KELLY DECLARATION

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

In re

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

Debtors.

Case No. 23-90611 (MI)

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(Jointly Administered)

**DECLARATION OF CHRISTOPHER
KELLY IN SUPPORT OF THE DEBTORS'
OBJECTION TO PROOF OF CLAIM #1127**

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

I, Christopher Kelly, make this declaration pursuant to 28 U.S.C. § 1746 and state as follows:

BACKGROUND

1. I am a Managing Director with Alvarez & Marsal North America, LLC (together with its wholly-owned subsidiaries and independent contractors and also with employees of its professional service provider affiliates, all of which are wholly-owned by its parent company and employees, “**A&M**”), a restructuring advisory services firm with multiple offices throughout the country. Since 1983, A&M has been a global provider of turnaround advisory services to companies in crisis or those in need of performance improvement in specific financial and operational areas. A&M’s debtor advisory services have encompassed a wide range of activities targeted at stabilizing and improving a company’s financial position, including developing and validating forecasts and business plans; monitoring and managing cash, cash flow, and supplier relationships; assessing and recommending cost reduction strategies; and designing and negotiating financial restructuring packages.

2. I received a Bachelor’s Degree in Commerce from the McIntire School of Commerce at the University of Virginia and a Masters of Business Administration from Columbia University. I have more than 17 years of restructuring experience. I specialize in the development, evaluation and execution of restructuring plans; cash flow forecasting and liquidity management; and operational performance improvement. I have assisted clients across a variety of industries, including financial services, government contracting, transportation and logistics, manufacturing, business services, and retail and apparel.

3. In addition to acting as the financial advisor to the Debtors in these cases, some of my other most notable publicly disclosed restructuring assignments include Anna Holdings Inc. (Acosta), Arcapita Investments, Intelsat S.A., and Lehman Brothers Holdings Inc.

4. I am a senior member of the A&M team advising the Debtors. I have worked closely with the Debtors’ management and other professionals with respect to the Debtors’ restructuring efforts, including assisting the Debtors in preparing cash flow projections, budgets,

and other financial information. I am generally familiar with the Debtors' day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors' liabilities and the amount thereof owed to their creditors as of the Petition Date. I have read the *Debtors' Objection to Proof of Claim #1127* (the "**Objection**"),² and exhibits attached thereto and I submit this declaration in support thereof.³

5. To the best of my knowledge, information, and belief, and after investigation and review, the assertions made in the Objection are accurate.

CLAIM #1127

6. I understand that the Claim has two components: (a) a purported claim on account of various asserted equity interests and (b) a claim arising from obligations under an "Executive Severance Agreement."

I. EQUITY INTEREST

7. Wolverine Top Holding Corporation is a non-Debtor entity that holds interests in and claims against certain Debtors. I understand that Mr. Grant received certain interests in Wolverine Top Holding Corporation. Shareholders in Wolverine Top Holding Corporation do not, by virtue of that status, hold any claims against any Debtor entity.

II. EXECUTIVE SEVERANCE

8. Mr. Grant is a former chief commercial officer and board member for certain Incora entities. Mr. Grant's severance package—in particular, his 24-month health insurance continuation coverage—is not available and has never been available to all full-time employees whose employment with Incora is terminated. To the contrary, his severance package was separately negotiated and documented through a custom "Executive Severance Agreement."

² Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to them in the Objection.

³ Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at A&M and are based on information provided by them.

9. For the foregoing reasons, I believe that disallowance of the Claim is appropriate.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: April 3, 2024

/s/ Christopher Kelly

Christopher Kelly

**IN THE UNITED STATES BANKRUPTCY COURT
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HOUSTON DIVISION**

In re

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

Debtors.

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Chapter 11

(Jointly Administered)

**ORDER SUSTAINING THE DEBTORS'
OBJECTION TO PROOF OF CLAIM #1127**

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

Upon the *Debtors' Objection to Proof of Claim #1127* (the “**Objection**”);² and the Court having jurisdiction to decide the Objection and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Objection being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, such notice being adequate and appropriate under the circumstances; and after notice and a hearing, as defined in section 102 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order; and it appearing that entry of this Order is in the best interests of the Debtors' estates; it is hereby **ORDERED** that:

1. Any response to the Objection not otherwise withdrawn, resolved or adjourned is hereby overruled on the merits.

2. The claim filed as proof of claim #1127 (the “**Claim**”) is disallowed in its entirety for all purposes in these chapter 11 cases.

3. Notwithstanding any provision of the Bankruptcy Rules or Local Rules, the terms of this Order shall be immediately effective and enforceable upon its entry.

4. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out this Order, including by updating the claims register to reflect the relief granted by this Order.

5. Except as provided in this Order, nothing in this Order shall be deemed (a) a finding as to the validity of any claim against a Debtor, (b) a waiver of the right of the Debtors to dispute any claim against any Debtor on any grounds whatsoever at a later date, (c) a requirement for any Debtor to pay any claim, or (d) a waiver of any rights of the Debtors under the Bankruptcy Code or other applicable law.

² Capitalized terms used but not defined in this Order have the meanings ascribed to them in the Objection.

6. The Court retains exclusive jurisdiction over all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE