

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

*In re*

**WESCO AIRCRAFT HOLDINGS, INC.,  
*et al.*,<sup>1</sup>**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Joint Administration Requested)

**DEBTORS' 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**

Emergency relief has been requested. Relief is requested not later than 1:00 p.m. (Central Time) on June 1, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on June 1, 2023 at 1:00 p.m. (Central Time) in Courtroom 400, 4th Floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1 (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free

<sup>1</sup> 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.



**GoToMeeting application or click the link on Judge Jones’s home page. The meeting code is “Judge Jones”. Click the settings icon in the upper right corner and enter your name under the personal information setting.**

**Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jones’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

The above-captioned debtors and debtors in possession (the “*Debtors*” and, together with their non-Debtor subsidiaries, “*Incora*”) respectfully state as follows.

### RELIEF REQUESTED

1. By this motion (the “*Motion*”), the Debtors seek entry of interim and final orders (respectively, the “*Interim Order*” and “*Final Order*”): (i) authorizing, but not directing, them to pay in the ordinary course of business certain prepetition Critical Vendor Claims and Foreign Claims (each as defined below) subject to the respective caps set forth in the proposed Interim Order and the proposed Final Order; (ii) authorizing, but not directing, the Debtors to pay undisputed claims of vendors and suppliers arising from postpetition delivery of goods and provision of services that were ordered prepetition; (iii) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and (iv) granting related relief. Proposed form of the Interim Order is attached to this Motion as **Exhibit A-1** and proposed form of the Final Order is attached to this Motion as **Exhibit A-2**.

2. The Debtors intend to condition the payment of Critical Vendor Claims and Foreign Claims upon their holders agreeing to provide their respective goods and/or services during the chapter 11 cases on customary terms.

3. The Debtors also seek relief with respect to certain prepetition claims through the concurrently filed Section 503(b)(9) and Lien Claimant Motion. Where a given claim could be paid pursuant to both forms of relief, the Debtors intend to pay the claim (if at all) pursuant to that Motion rather than this.

4. The Debtors also request that the Court schedule a final hearing (the “*Final Hearing*”) within 21 days of the commencement of these chapter 11 cases, or as soon as thereafter as is convenient for the Court, to consider entry of the Final Order granting this relief.

5. The principal statutory bases for this Motion are sections 105(a), 363, 365, and 1107(a) of title 11 of the U.S. Code (as amended, the “*Bankruptcy Code*”), Rules 6003, 6004, and

6006 of the Federal Rules of Bankruptcy Procedures (the “*Bankruptcy Rules*”), and Rule 9013-1 of the Bankruptcy Local Rules (the “*Local Rules*”).

6. In support of this Motion, the Debtors rely upon the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* filed concurrently with this Motion (the “*First Day Declaration*”).<sup>2</sup>

## **JURISDICTION AND VENUE**

7. 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**

### **I. GENERAL BACKGROUND**

8. Incora is a provider of supply chain management services in several industries and the largest independent distribution and supply chain services provider in the global civilian and military aerospace industry. In its distribution business, Incora offers aerospace hardware and parts, electronic products, chemicals, and tooling products, which it procures, tracks and provides to customers from service centers around the world. In its service business, Incora manages all aspects of its customers’ supply chains, including procurement, warehouse management, and on-site customer services, offering both customized supply-chain management plans and ad hoc direct sales. In both lines, timely delivery of necessary hardware and chemicals is critical to the business operations of Incora and its civilian and military customers.

9. On June 1, 2023 (the “*Petition Date*”), each Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors have requested joint administration of their chapter 11 cases for procedural purposes. The Debtors are operating their

<sup>2</sup> Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these cases.

10. Additional information regarding the Debtors' businesses, assets, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First-Day Declaration.

## **II. OVERVIEW OF CRITICAL VENDORS AND FOREIGN CLAIMANTS**

11. Incora operates in highly specialized, highly regulated, and highly competitive industries. The uniqueness and competitiveness of the aerospace and defense industry, coupled with the highly regulated environment in which airlines must operate, leaves companies such as Incora, which serve these industries, with few alternatives with respect to certain vendors and service providers. If a vendor increases its prices or refuses to do business, Incora may be unable to switch to a different vendor until Incora's customer has obtained approval to use the alternative vendor's part. Moreover, some vital products important to the public's health, safety and welfare are custom-made by sole-source or limited-source vendors who cannot be replaced without extraordinary expense or delay. In certain cases, the loss of a key vendor would force Incora's customers to shut down their production lines, given the mission-critical nature of Incora's positioning in its customers' supply chains.

12. Incora's job is to ensure that it has critical supplies available to deliver to its customers, including those involving tightly regulated and controlled specifications, at the time the customers need them in their manufacturing process. Any material disruption to Incora's substantial vendor relationships could have a catastrophic effect on its reputation among customers, its market share, the operations of its more than 8,400 customers who each in turn serve the public, and ultimately Incora's ability to successfully emerge from these chapter 11 cases as a going concern. Indeed, as explained in its First Day Declaration, supply chain disruptions have been one of the most significant drags on Incora's financial performance in the past year and were a significant factor in filing these chapter 11 cases.

13. To achieve uninterrupted and timely service to its customers, Incora relies on continuing access to, and relationships with, certain highly specialized vendors (the “*Critical Vendors*”), as well as certain vendors and service providers that operate in foreign jurisdictions all of whom comprise creditors of one or more of the Debtors (the “*Foreign Claimants*”). Without uninterrupted access to these goods and services, and the smooth transition into its restructuring particularly for its foreign operations, Incora’s operations would be severely impaired, and its customers impacted to the detriment of all.

14. For this reason, the Debtors request authorization to pay certain outstanding prepetition claims of the Critical Vendors (the “*Critical Vendor Claims*”) and Foreign Claimants (the “*Foreign Claims*”), subject to the limitations set forth in the proposed Interim and Final Orders. Given the size, number and global scale of the Debtors’ operations, the Debtors intend to use their discretion to pay only those Critical Vendor Claims and Foreign Claims that are critical to maintaining the Debtors’ supply chain and provide the Debtors with favorable postpetition terms. The following table summarizes the estimated amounts outstanding Critical Vendor Claims and Foreign Claims that the Debtors request authority to pay:

Category	Estimated Amount Due to be Paid within 21 Days (Interim Order)	Estimated Amount Outstanding as of Petition Date (Final Order)
Critical Vendor Claims	\$65,000,000	\$84,000,000
Foreign Claims	\$51,000,000	\$81,000,000
<b>Total amount of claims:</b>	<b>\$116,000,000</b>	<b>\$165,000,000</b>

**A. The Critical Vendors**

15. Manufacturers and maintenance providers for airplanes, helicopters, and other technologies both in and out of the aerospace and defense manufacturing industries require hundreds of thousands of specialized parts. The Debtors provide just-in-time inventory services for many of their customers. The Debtors forecast inventory needs and maintain safety stock in some instances, which require constant replenishment as inventory is used. In other circumstances, the Debtors receive inventory that customers need immediately to keep their manufacturing

production lines operational. The Debtors fill a critical role in mitigating supply chain delays and managing long lead times to ensure customers receive the inventory they need when they need it. Thus, in the ordinary course of business, the Debtors deal with many providers of critical supplies that the Debtors depend upon to service their customers. Of particular importance are vendors irreplaceable due to geography, customer-mandated suppliers, proprietary or limited-source suppliers, and technical service providers with expertise specific to the Debtors' operations, its customers equipment, and the infrastructure in the numerous domestic and foreign locations in which the Debtors operate. The Debtors obtain such materials and related services from these Critical Vendors often on an order-by-order basis and without long-term contracts,<sup>3</sup> that would likely be impossible to replace or would result in substantially higher costs for the Debtors at this early, critical juncture in these chapter 11 cases. Consistent with industry norms, many of the Debtors' supplies are also acquired by means of purchase orders with lead times ranging from twelve to eighteen months, which would likely be cost-prohibitive or impossible to replace on short notice, particularly as to items that are specially designed, manufactured, or otherwise regulated.

16. In addition to providing difficult-to-source, custom-manufactured, or proprietary goods pursuant to highly specific agreements, many of the Critical Vendors are irreplaceable simply due to the scale of the Debtors' operations. In the ordinary course of business, the Debtors maintain inventory valued in excess of \$1 billion, which consists of a tremendous array of supplies, parts, equipment, and other assorted goods. Indeed, some of the aircraft for which the Debtors provide supplies may be comprised of as many as 6 million individual parts, and many of these parts are subject to substantial technical specifications and particular materials, with no room for manufacturing errors. It would be impossible for the Debtors, much less any logistics provider, to

<sup>3</sup> For example, the Debtors estimate that less than 15% of inventory purchases are tied to active long-term supplier contracts. Most inventory purchases are made at market prices through new purchase orders. Even the minority of purchases made through active supplier contacts often involve suppliers who supply other parts off-contract through separate purchase orders, thus providing these suppliers additional leverage to without critical parts if other prepetition liabilities are not satisfied.

find alternative suppliers to provide bulk substitutes for the quantity of goods needed to operate the Debtors' enterprise—let alone alternative suppliers capable of delivering equivalent goods across the globe. It would be even more difficult to find such alternative suppliers on short notice during the pendency of these chapter 11 cases. These concerns apply with equal, if not greater force, to the approximately \$500 million of outstanding orders with lead times ranging from several weeks to over a year and a half. In many cases, there is simply no way to find alternate suppliers in time to meet customer needs. The Debtors believe that difficulties associated with obtaining substitute supply sources pose a significant risk to their operations absent the relief requested herein.

17. The Debtors have historically enjoyed favorable trade terms with certain of their Critical Vendors and believe that they would likely need to forego these favorable terms if they are forced to seek out new suppliers who may demand cash in advance or cash on delivery. Less favorable trade terms would negatively impact the value of the Debtors' estates.

18. To identify Critical Vendors and estimate prepetition amounts outstanding, the Debtors, in conjunction with their advisors, closely reviewed their accounts payable and prepetition vendor lists. The criteria considered in evaluating critical vendor status included whether: (a) a particular vendor is a sole- or limited-source provider; (b) quality control or other contractual requirements preventing the Debtors from replacing the vendor; (c) the vendor supplies highly engineered component parts that require substantial lead time to develop and produce; (d) the Debtors receive advantageous pricing or other terms from the vendor; (e) the vendor might face its own liquidity crisis if the Debtors do not promptly pay its prepetition claim; and (f) the Debtors lacked a long-term supply contract with the vendor, through which the Debtors could compel performance.

19. The Debtors and their advisors also have considered historical spending trends, procurement volume, and lead times for key purchase orders. The Debtors then considered whether a vendor would follow through on its threat to stop shipping goods either to the Debtors or to their non-debtor affiliates (that would not be protected by the automatic stay) and whether an amount



less than the full amount of a vendor's prepetition claim could induce such vendor to continue shipments.

20. The Debtors believe that jeopardizing their relationships with any of the entities identified as Critical Vendors would impose a severe strain on the Debtors' business operations and would likely result in significant revenue loss. Even a temporary interruption of the provision of the Critical Vendors' goods and services would impede the Debtors' operations, and the cumulative impact of such interruptions could have a catastrophic adverse effect on the Debtors' businesses and their ability to restructure as a going concern. Such harm would likely far outweigh the aggregate amount of the Critical Vendor Claims, which is modest in comparison to the overall value of the Debtors' enterprise and the amount of their secured and unsecured institutional debt.

21. For the avoidance of doubt, the Debtors and their advisors have not determined the complete list of individual Critical Vendors and will, in their sole discretion, make such determinations on a case-by-case basis. In the event that the amount of claims proposed to be paid must be amended, the Debtors will file a notice of the proposed overage and provide an opportunity for objections thereto. For the avoidance of doubt, the Debtors intend to pay only those Critical Vendor Claims where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

22. For the twelve months before the Petition Date, on average, the Debtors paid the currently identified Critical Vendors approximately \$87,000,000 per month. The Debtors estimate that, as of the Petition Date, the outstanding amount of Critical Vendor Claims (that are not addressed by the other First-Day Motions) may be as much as approximately \$84,000,000. Of these, approximately \$65,000,000 may come due during the first 21 days of these chapter 11 cases. Notably, the Debtors were forced to preserve liquidity by delaying payments to many vendors during the weeks and months before the Petition Date. Without meaningful, prompt payments to rectify past-due balances to Critical Vendors, the Debtors may face significant disruptions to their operations.

**B. The Foreign Claimants**

23. Given the global nature of their businesses, the Debtors must necessarily make payments in the ordinary course to Foreign Claimants. Indeed, with more than 30 stocking locations, warehouses, and offices around the world and multiple foreign hub warehouses, a critical component of the Debtors' business involves transacting with Foreign Claimants. The Foreign Claimants with which the Debtors regularly transact business are located in the United Kingdom, Canada, Mexico, South America, Southeast Asia, India, Japan, China, and continental Europe. Many of the Foreign Claimants are irreplaceable due to the specialized and customized nature of their products and services, specific to the Debtors' international operations. Moreover, it is often logistically impracticable—and significantly more cost prohibitive—for the Debtors to purchase goods and services from a U.S.-based entity than from a Foreign Claimant. Indeed, the same concerns discussed above with respect to the Critical Vendors apply with equal force to many of the Foreign Claimants. Accordingly, the loss of production or services from Foreign Claimants (even those that may not meet the high bar to be considered Critical Vendors) could have a deleterious effect on the Debtors' business operations outside of the United States, given the Debtors' global footprint and the extremely short timelines and exacting specifications on which the Debtors must provide supplies and related services. Thus, the Debtors' viability as a global enterprise is disproportionately dependent upon the maintenance of their relationships with the Foreign Claimants. Alternative suppliers or service providers in many situations may not exist in the necessary locations, and the amount of time and expense needed to locate and convert to alternative supply or service sources in foreign countries would be prohibitive.

24. Despite the worldwide impact of the stay upon bankruptcy, there is a practical aspect to this relief as well. Many of the Foreign Claimants lack meaningful, if any, contacts with the United States and may consider themselves beyond the effective jurisdiction of the Court, and therefore, may disregard the automatic stay, notwithstanding its extraterritorial application as a matter of U.S. law. Accordingly, many of the Foreign Claimants may withhold vital goods or services from the Debtors, thereby causing drastic consequences to the operation of the Debtors'

businesses. Attempts to pursue relief outside of the United States' system of enforcement would present uncertain outcomes, may be more costly than the value of the benefits obtained, and in any event would complicate the fostering of commercial relationships. Moreover, failure to pay the Foreign Claims accrued in the ordinary course may result in lawsuits and other collection remedies outside the United States, including the assertion of liens and perhaps other relief by the Foreign Claimants. Those actions would have both an immediate impact on the Debtors' ability to operate and long-term effects on their ability to attract new business and would distract the Debtors' foreign-based employees from their focus on serving the business. In many instances, it would be unduly time-consuming, of uncertain result, and burdensome for the Debtors to seek to enforce an order of this Court in the Foreign Claimants' home countries.

25. To maintain access to the critical goods and services provided by the Foreign Claimants, the Debtors request authority to pay the Foreign Claims as they become due in the ordinary course of business. For the avoidance of doubt, the Debtors intend to pay prepetition Foreign Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

26. For the twelve months before the Petition Date, on average, the Debtors paid the Foreign Claimants approximately \$49,000,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$81,000,000 is outstanding on account of the Foreign Claims, approximately \$51,000,000 of which is due or will become due within the first 21 days of these chapter 11 cases.

### **III. CUSTOMARY TRADE TERMS CONDITION**

27. In return for the payment of the Critical Vendor Claims and Foreign Claims, the Debtors propose (unless otherwise waived by the Debtors in their discretion) that the Critical Vendors and Foreign Claimants be required to continue providing goods and services to the Debtors on the most favorable terms (including credit limits, pricing, timing of payments, availability, and other terms) in effect between such Critical Vendor or Foreign Claimant and the Debtors in the 24-month period preceding the Petition Date or on such other terms as the Debtors

and the Critical Vendor or Foreign Claimant may otherwise agree (the “*Customary Trade Terms*”). The Debtors propose that the Customary Trade Terms apply for the balance of the term of each Critical Vendor or Foreign Claimant’s agreement with the Debtors, so long as the Debtors make payments in accordance with that agreement.

28. If any Critical Vendor Claim or Foreign Claim is paid and thereafter the applicable Critical Vendor or Foreign Vendor, as applicable, does not continue to provide goods or services to the Debtors on the Customary Trade Terms, any payments made will be deemed avoidable postpetition transfers under section 549 of the Bankruptcy Code and will be recoverable by the Debtors in cash upon written request; *provided* that, if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor or Foreign Claimant, the Debtors may elect to recharacterize and apply any such payment to such outstanding postpetition balance and such Critical Vendor or Foreign Claimant shall be required to repay the Debtors such amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any payment, the applicable Critical Vendor Claim or Foreign Claim will be reinstated as a prepetition claim in the amount recovered or recharacterized and reapplied and the relevant Critical Vendor or Foreign Claimant shall be entitled to file a proof of claim on account of such claim by the later of (a) 30 days following notice of reinstatement or (b) the general bar date established by order of the Court.

29. The Debtors also seek authorization to require, at their discretion, certain Critical Vendors and/or Foreign Claimants to enter into a contract evidencing the Customary Trade Terms, substantially in the form annexed hereto as **Exhibit B** (the “*Vendor Payment Agreement*”).

#### **IV. PAYMENT OF OUTSTANDING ORDERS**

30. Before the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (collectively, the “*Outstanding Orders*”). To avoid the risk of becoming general unsecured creditors with respect to such goods, certain suppliers may refuse to ship or transport goods subject to the Outstanding

Orders (or may recall shipments) unless the Debtors issue substitute postpetition purchase orders. To avoid this disruption to their business, and because goods delivered after the Petition Date and accepted by the Debtors will likely be entitled to administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order authorizing them, in their discretion, to satisfy any Outstanding Orders.

### **BASIS FOR RELIEF**

31. The global nature of the Debtors' business is a key source of revenue and a major factor in the Debtors' reputation and the loyalty of their customers. To maintain their operations on an uninterrupted basis and preserve the value of their estates, the Debtors must have the ability to pay the Critical Vendor Claims and Foreign Claims.

#### **I. AUTHORITY TO PAY CRITICAL VENDOR CLAIMS AND FOREIGN CLAIMS IS WARRANTED AND SHOULD BE GRANTED.**

32. Because the ability to pay Critical Vendors and Foreign Claimants is critical to the Debtors' continued operations, the Debtors submit that the requested relief may be granted under sections 363, 105(a), and 1107(a) of the Bankruptcy Code, as well as the doctrine of necessity.

33. Courts in this and other districts have granted similar relief in similar cases. *See, e.g., In re Envision Healthcare Corp.*, Case No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (Docket No. 112) (interim relief); *In re Party City Holdco Inc.*, No. 23-90005 (DRJ) (Bankr. S.D. Tex. Feb. 14, 2023) (Docket No. 440); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. June 8, 2022) (Docket No. 464); *In re Tabula Rasa Partners, LLC*, Case No. 21-33859 (CML) (Bankr. S.D. Tex. Feb. 1, 2022) (Docket No. 69); *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Jan. 6, 2022) (Docket No. 938); *In re Brazos Elec. Power Coop., Inc.*, No. 21-30725 (DRJ) (Bankr. S.D. Tex. Mar. 17, 2021) (Docket No. 236); *In re Pac. Drilling S.A.*, Case No. 20-35212 (DRJ) (Bankr. S.D. Tex. Nov. 3, 2020) (Docket No. 76); *In re SAExploration Holdings, Inc.*, Case No. 20-34306 (MI) (Bankr. S.D. Tex. Sept. 17, 2020) (Docket No. 153); *In re Tailored Brands, Inc.*, Case No. 20-33900 (MI) (Bankr. S.D. Tex. Aug. 26, 2020) (Docket No. 427); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020)

(Docket No. 408); *In re Seadrill Ltd.*, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 10, 2017) (Docket No. 260). Similar relief is also appropriate here.

34. Section 363(b) of the Bankruptcy Code Permits the Debtors to Pay Critical Vendor and Foreign Claims. The Debtors believe that the Court can and should authorize the payment of these Critical Vendor and Foreign Claims, especially since many would have prepetition 503(b)(9) Claims and Lien Claims under section 363(b)(1) of the Bankruptcy Code, which provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” Thus, where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make payments on account of prepetition obligations under section 363(b) of the Bankruptcy Code. *Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 435 (5th Cir. 2016); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”). Once the debtor articulates a reasonable business basis for its decision, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

35. As discussed above, every segment of the Debtors’ supply chain is indispensable to the timely operation of the Debtors’ assets. To ensure that the Debtors continue to maintain their historically excellent operational standards, it is imperative that the Debtors have the authority to pay the Critical Vendor Claims and Foreign Claims if determined necessary to preserve the Debtors’ operations, reputation, and the go-forward success of the Debtors’ businesses. The relief

requested is necessary to avoid immediate and irreparable harm to the Debtors' estates, and therefore represents a sound exercise of the Debtors' business judgment and is authorized under section 363 of the Bankruptcy Code.

**A. The Court Can Authorize Requested Relief Under Section 105(a) and the Doctrine of Necessity.**

36. Section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This provision provides a statutory basis for a debtor in possession to pay prepetition claims. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that “it is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999); *In re Scotia Dev.*, 2007 WL 2788840, at \*1–2, 2007, Bankr. LEXIS 3262, at \*7–8 (Bankr. S.D. Tex. Sept. 21, 2007); *In re CEI Roofing, Inc.*, 315 B.R. 50, 56 (Bankr. N.D. Tex. 2004); *In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003).

37. In addition, the equitable “doctrine of necessity” or the “necessity of payment” doctrine provide further authority for the Court to exercise its equitable powers to allow payment of critical prepetition claims that are not explicitly authorized by the Bankruptcy Code. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000) (noting that the payment of prepetition claims is permissible when the transactions are critical to the survival of the business of the debtor); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (“While pre-petition claims are normally disposed of in a plan of reorganization . . . there are well-established ‘necessity of payment’ and similar exceptions.”); *see also In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor);



*Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding that court was not “helpless” to apply this doctrine where alternative was cessation of operations).

38. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. This is especially the case involving a global logistics company serving a time sensitive industry. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor’s efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims under the doctrine of necessity, in light of the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor . . . .” *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”).

39. The Debtors’ ability to pay the Critical Vendor Claims and Foreign Claims is crucial to the preservation of their estates and their successful reorganization. The satisfaction of these claims will contribute significantly to the Debtors’ immediate business viability and future revenue-generating capability by preserving the confidence and goodwill of their customers and suppliers, both foreign and domestic.

40. Allowing the Debtors to pay the Critical Vendor Claims and Foreign Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code: preserving going concern value for the Debtors’ business and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 435 (1999).

**C. The Debtors’ Fiduciary Duties Justify Payment of the Critical Vendor and Foreign Claims.**

41. Additionally, under section 1107(a) of the Bankruptcy Code, a debtor has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. at 59 (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497). Bankruptcy courts have noted that, in certain



circumstances, the pre-plan satisfaction of prepetition claims may be the only way to fulfill this duty. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *In re CoServ, L.L.C.*, 273 B.R. at 497 (accepting the debtor’s argument that its fiduciary duties may require pre-plan payments to unsecured creditors). In *CoServ*, the Court noted that the debtor’s fiduciary duty may come into effect where pre-plan payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to the “sole suppliers of a given product.” *Id.* at 497–98.

42. Courts in the Fifth Circuit, including the Southern District of Texas, have followed *CoServ*’s three-part test to determine whether key prepetition claims may be paid by a debtor outside of the chapter 11 plan process on a postpetition basis. *See, e.g., In re Scotia Dev., LLC*, 2007 WL 2788840, at \*1–2, 2007 Bankr. LEXIS 3262, at \*7–8. First, it must be critical that the debtor deal with the claimant; second, unless it deals with the claimant, the debtor risks the probability of harm or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim; and third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *In re CoServ, L.L.C.*, 273 B.R. at 498; *see also Mirant Corp.*, 296 B.R. at 429–430. Accordingly, the Bankruptcy Code authorizes the payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

43. For the foregoing reasons, satisfying the Critical Vendor Claims and the Foreign Claims is necessary, appropriate, and in the best interests of the Debtors, their estates, and other parties in interest in these chapter 11 cases. Therefore, the Debtors respectfully submit that enabling them to fulfill their fiduciary duty is further ground for the Court to authorize the Debtors to pay the Critical Vendor Claims and the Foreign Claims.

**II. THE COURT SHOULD AUTHORIZE THE PAYMENT OF OUTSTANDING ORDERS.**

44. Before the Petition Date and in the ordinary course of business, the Debtors may have placed certain Outstanding Orders for various goods that will not be delivered until after the Petition Date. To avoid the risk of becoming general unsecured creditors with respect to such goods, some suppliers may refuse to deliver goods subject to the Outstanding Orders unless the Debtors issue substitute postpetition purchase orders. Without authorization to satisfy the Outstanding Orders as they come due in the ordinary course, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide suppliers with assurance of administrative priority status of their claims, or to litigate numerous motions for adequate assurance, or for assumption of contracts. The disruption to the continuous and timely flow of critical goods and inventory to the Debtors could force the Debtors to potentially halt operations, and at the least would complicate commercial relationships and distract officers and employees from running the business, which would damage the Debtors' business reputation, delay deliveries, erode the Debtors' customer base, increase administrative costs for professionals, and ultimately lead to a loss of revenue, all to the detriment of the estates.

45. Moreover, claims on account of the Outstanding Orders, to the extent the underlying goods are accepted by the Debtors, will likely in any event be entitled to administrative expense priority under section 503(b) of the Bankruptcy Code. Accordingly, granting the relief sought herein with respect to the Outstanding Orders will not give the claims of the affected vendors any greater priority than they otherwise would have and will not prejudice any other party in interest. On the other hand, such relief will alleviate the concerns of the Debtors' suppliers. Thus, the Court should authorize the Debtors to satisfy the Outstanding Orders as they come due in the ordinary course.

**III. THE COURT SHOULD DIRECT FINANCIAL INSTITUTIONS TO HONOR AUTHORIZED PAYMENTS.**

46. To facilitate implementation of the above-requested relief, the Debtors further request that the Court authorize and direct all applicable banks and financial institutions to receive,

process, honor, and pay any and all checks drawn or electronic fund transfers from its accounts, whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are identified by the Debtors as relating directly to the authorized payments on the Critical Vendor and Foreign Claimant obligations. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or other transfer requests that may be dishonored or rejected as a result of the commencement of the chapter 11 cases.

47. The Debtors believe that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to borrow post-petition financing and to use cash collateral. Through the Debtors' existing cash management system, the Debtors believe that checks or other transfer requests can be readily identified as an authorized payment on the Critical Vendor and Foreign Claimant obligations, and the Debtors are prepared to assist their banks by confirming whether particular transfers are authorized by an order granting this Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Critical Vendor and Foreign Claimant obligations.

### **EMERGENCY CONSIDERATION**

48. Bankruptcy Rule 6003 allows a bankruptcy court to grant relief within the first 21 days of a case "to the extent that relief is necessary to avoid immediate and irreparable harm," and paragraph 17 of the Procedures for Complex Cases in the Southern District of Texas (the "***Complex Case Procedures***") requires that all non-emergency motions be filed on at least 21 days' notice. Pursuant to those rules and Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion.

49. As described above and in the First Day Declaration, payment to the Critical Vendors and Foreign Claimants is critical and necessary to maintain the Debtors' operations and preserve the Debtors' business relationships with current customers. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the interim relief requested in this Motion on an emergency basis. Likewise, to ensure that any necessary Critical Vendor Claims and Foreign Claims are paid when due, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

### **RESERVATION OF RIGHTS**

50. Nothing in this Motion is intended or should be construed as (a) an implication, admission, or concession as to the validity, amount or priority of, or basis for, any claim against any Debtor; (b) a waiver of any Debtor's or any other party in interest's right to dispute any claim on any ground; (c) a promise or requirement to pay any claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification, adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor's or other party in interest's rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission or concession (i) that any particular claim is of a type specified or defined in the Motion or (ii) any lien, security interest, other encumbrance on property of any Debtor or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of, the same). If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

## NOTICE

51. Notice of this Motion will be provided to (a) the Office of the U.S. Trustee for Region 7; (b) the creditors holding the thirty largest unsecured claims, according to the list filed by the Debtors with their petitions and their counsel; (c) the administrative agent for the ABL Facility and its counsel; (d) the indenture trustee for the 1L Notes and its counsel; (e) the indenture trustee for the 1.25L Notes and its counsel; (f) the indenture trustee for the Unsecured Notes and its counsel; (g) the indenture trustee for the PIK Notes and its counsel; (h) Davis Polk & Wardwell LLP and Porter Hedges LLP, as counsel to an ad hoc group of holders of 1L Notes (the “**First Lien Noteholder Group**”); (i) Carlyle Global Credit Investment Management, LLC, and its counsel; (j) Senator Investment Group LP and its counsel; (k) Kobre & Kim LLP as counsel to an ad hoc group of holders of Unsecured Notes; (l) Langur Maize, L.L.C. and its counsel; (m) Katsumi and its counsel; (n) Platinum and its counsel; (o) each of the Debtors’ depositories and their respective counsel; (p) the Internal Revenue Service; (q) the Office of the U.S. Attorney for the Southern District of Texas; and (r) any other party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is required under the circumstances.

*[Remainder of page intentionally blank]*

Upon the foregoing Motion, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as **Exhibit A-1**, granting this Motion on an interim basis, (b) schedule the Final Hearing, (c) at the Final Hearing, enter the Final Order, substantially in the form attached as **Exhibit A-2**, granting this Motion on a final basis, and (d) grant such other relief as is just and proper.

Dated: May 31, 2023

Respectfully submitted,

/s/ Kelli S. Norfleet

Kelli S. Norfleet (TX Bar No. 24070678)  
Charles A. Beckham, Jr. (TX Bar No. 02016600)  
Martha Wyrick (TX Bar No. 24101606)  
**HAYNES AND BOONE, LLP**  
1221 McKinney Street, Suite 4000  
Houston, TX 77010  
Telephone: 1 (713) 547-2000  
Email: Kelli.Norfleet@HaynesBoone.com  
Charles.Beckham@HaynesBoone.com  
Martha.Wyrick@HaynesBoone.com

- and -

Dennis F. Dunne (*pro hac vice* pending)  
Samuel A. Khalil (*pro hac vice* pending)  
Benjamin M. Schak (*pro hac vice* pending)  
MILBANK LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone: 1 (212) 530-5000  
Email: DDunne@Milbank.com  
SKhalil@Milbank.com  
BSchak@Milbank.com

*Proposed Counsel to the  
Debtors and Debtors in Possession*

### **CERTIFICATE OF ACCURACY**

I certify, pursuant to Local Rule 9013-1(i), that the foregoing statements regarding the nature of the emergency set forth in the foregoing Motion are true and accurate to the best of my knowledge.

Dated: May 31, 2023

/s/ Kelli S. Norfleet  
Kelli S. Norfleet

### **CERTIFICATE OF SERVICE**

I certify that, on May 31, 2023, a true and correct copy of the foregoing document was served through the Court's 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' proposed noticing agent.

Dated: May 31, 2023

/s/ Kelli S. Norfleet  
Kelli S. Norfleet

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

*In re*

**WESCO AIRCRAFT HOLDINGS, INC.,  
*et al.*,<sup>1</sup>**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**INTERIM ORDER (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**

<sup>1</sup> The Debtors operate under the trade name Incoira 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 motion (the “*Motion*”),<sup>2</sup> of the above-captioned debtors (collectively, the “*Debtors*”), for entry of this Interim Order pursuant to sections 105(a), 363(b) and 1107(a) of the Bankruptcy Code, Bankruptcy Rules 4001 and 6003, (i) authorizing, but not directing, the Debtors to pay, in the ordinary course, prepetition Critical Vendor Claims and Foreign Claims; (ii) authorizing, but not directing, the Debtors to pay undisputed amounts owing on account of the Outstanding Orders; (iii) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and (iv) granting related relief; and the Court having jurisdiction to decide the Motion and to enter this Interim Order pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion 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 Motion having been provided under Local Rules 2002-1 and 9013-1, 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, in the First Day Declaration, and on the record establish just cause for entry of this Interim Order; and it appearing that entry of this Interim Order on an emergency basis is in the best interests of the Debtors’ estates; it is hereby **ORDERED** that:

1. The Debtors are authorized, but not directed, to (a) pay in the ordinary course of the Debtors’ businesses some or all of the prepetition Critical Vendor Claims and Foreign Claims and (b) to supplement, in their sole discretion, the list of Critical Vendor Claims; *provided* that the Debtors shall provide five (5) business days’ notice to counsel to the First Lien Noteholder Group of any material change thereto; *provided, however*, that the aggregate amount of such payments shall not exceed \$116,000,000 (the “*Interim Cap*”) until entry of the Final Order. The Debtors shall have the right to request authority from this Court, after notice and a hearing, to pay any amounts owed to Critical Vendors or Foreign Claimants in excess of the Interim Cap.

<sup>2</sup> Capitalized terms used but not defined in this Interim Order shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the customary practices in effect as of the Petition Date.

3. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim or Foreign Claim, as applicable, shall be deemed to have agreed to the terms and provisions of this Interim Order. Prior to making any payment pursuant to this Interim Order, the Debtors shall provide the payee with a copy of this Interim Order.

4. As a condition to receiving payment of its Critical Vendor Claim or Foreign Claim, the applicable Critical Vendor or Foreign Claimant shall be required to continue—or recommence—providing goods and services to the Debtors on the most favorable terms in effect between such Critical Vendor or Foreign Claimant and the Debtors in the 24-month period preceding the Petition Date or on such other terms as the Critical Vendor or Foreign Claimant and the Debtors may otherwise agree (collectively, the “*Customary Trade Terms*”). The Customary Trade Terms shall apply for the remaining term of such Critical Vendor or Foreign Claimant’s agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. Any payment made under the authority granted by this Interim Order to a Critical Vendor or Foreign Claimant that, thereafter, does not continue to provide goods or services to the Debtors on the Customary Trade Terms shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request; *provided* that, if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor or Foreign Claimant, the Debtors may elect to recharacterize and apply any such payment made pursuant to the authority granted hereunder to such outstanding postpetition balance and such Critical Vendor or Foreign Claimant shall be required to repay the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any payment by the Debtors in accordance with the

foregoing, the applicable Critical Vendor Claim or Foreign Claim shall be reinstated as a prepetition claim in the amount so recovered or recharacterized and reapplied, and the relevant Critical Vendor or Foreign Claimant shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (a) 30 days following notice of such reinstatement or (b) the general bar date.

6. The Debtors are hereby authorized, but not directed, before issuing payment to a Critical Vendor or Foreign Claimant, to obtain written verification that such Critical Vendor or Foreign Claimant will comply with paragraph 4 above and continue to provide goods or services to the Debtors on the Customary Trade Terms for the remaining term of such Critical Vendor's or Foreign Claimant's agreement with the Debtors; *provided, however*, that the absence of such written verification shall not limit the Debtors' rights hereunder.

7. This Interim Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Critical Vendor or Foreign Claimant.

8. All banks and other financial institutions are authorized and required to receive, process, honor and pay any and all checks and other transfer requests with respect to payments made by the Debtors pursuant to this Interim Order, whether presented before, on or after the Petition Date. However, a bank or other financial institution is not required to honor any such check or transfer request if insufficient funds are on deposit to cover the requested payment.

9. All banks and financial institutions are authorized to rely on the representations of the Debtors and their agents as to whether a particular payment is authorized to be paid pursuant to this Interim Order. The banks and financial institutions subject to this Interim Order shall have no liability in connection with honoring any prepetition checks or transfer requests contemplated by this Interim Order.

10. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new transfers, on account of the Critical Vendor Claims or the Foreign Claims, to replace any prepetition checks or transfer requests issued that are dishonored or rejected as a result of the commencement of these chapter 11 cases. Any amounts that are dishonored or

rejected and then paid pursuant to new postpetition checks or transfers shall not be credited against the Interim Cap.

11. The Debtors shall maintain a matrix/schedule of all amounts directly or indirectly paid under the terms of this Order (the “**Claimant Matrix**”), including the following information: (a) the category of claim paid, applied, or set off; (b) the amount of the payment, application, or setoff by category; (c) the Debtor(s) that made the payment, application, or setoff; (d) the identity of the recipient of the payment, application, or setoff; and (e) the date of the payment, application, or setoff. Within 20 days after the end of each month, commencing with the first full month after entry of this Order, the Debtors shall provide a copy of the Claimant Matrix to the U.S. Trustee, and on a confidential and professional eyes’ only basis (or on such other terms as mutually agreed) to counsel to the First Lien Noteholder Group, and on terms to be mutually agreed with counsel to any statutory committee appointed in these chapter 11 cases. The Debtors shall not be required to file or publish the Claimant Matrix.

12. Notwithstanding the relief granted in this Interim Order, all authorizations herein and all payments and actions pursuant thereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* filed contemporaneously herewith (collectively, such interim and final orders, the “**DIP Order**”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Interim Order, the terms of the DIP Order shall control.

13. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Interim Order (nor any actions or payments pursuant to the relief granted herein) shall constitute, nor is it intended to constitute: (a) an implication, admission, concession or finding as to the validity, priority, amount, basis for, or secured status of any particular claim against any Debtor, including priority under section 503(b)(9); (b) a waiver of the Debtors' or other party in interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification, adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor's or other party in interest's rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission, concession or finding (i) that any particular claim is of a type specified or defined in this Interim Order or the Motion or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of the same). Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee, any statutory committee appointed in these chapter 11 cases or any other party in interest, which are expressly reserved, to object to any payment made pursuant to this order to or for the benefit of an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment pursuant to this Interim Order to or for the benefit of an insider or an affiliate of an insider of the Debtors pursuant to this Interim Order, the Debtors shall first obtain the prior written consent of the Required Purchasers (as defined in the DIP Order) and, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee, the First Lien Noteholder Group

and any statutory committee appointed in these chapter 11 cases; *provided*, that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.

15. Notwithstanding entry of this Interim Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

16. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied, and that the relief granted in this Interim Order as to Critical Vendor Claims and Foreign Claims is necessary to avoid immediate and irreparable harm to the Debtors' estates.

18. The notice requirements of Bankruptcy Rule 6004(a) are waived as to the Motion. Notwithstanding Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Rules or Local Bankruptcy Rules, the terms of this Interim Order shall be immediately effective and enforceable upon its entry.

19. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out this Interim Order.

20. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

21. Responses to the Motion or objections to entry of an order granting the Motion on a final basis must be filed by \_\_\_\_\_, 2023, at 4:00 p.m. (CDT) and be served upon (a) the Debtors' proposed lead counsel (Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (DDunne@Milbank.com), Samuel A. Khalil (SKhalil@Milbank.com), and Benjamin M. Schak (BSchak@Milbank.com)), (b) the Debtors' proposed local counsel (Haynes and Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A.

Beckham, Jr. (Charles.Beckham@HaynesBoone.com), Kelli Norfleet (Kelli.Norfleet@HaynesBoone.com), and Martha Wyrick (Martha.Wyrick@HaynesBoone.com)), and (c) proposed counsel to any statutory committee that may be appointed in these cases, so as to be received by the same date and time.

22. The Final Hearing, if required, will be held on \_\_\_\_\_, **2023**, at \_\_: \_\_ \_\_.m. (CDT). If no responses or objections are timely filed and served, the Court may grant the Motion on a final basis without further notice or hearing.

Dated: \_\_\_\_\_  
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

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

*In re*

**WESCO AIRCRAFT HOLDINGS, INC.,  
*et al.*,<sup>1</sup>**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**FINAL ORDER (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**

<sup>1</sup> 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 motion (the “*Motion*”),<sup>2</sup> of the above-captioned debtors (collectively, the “*Debtors*”), for entry of this Final Order pursuant to sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code, Bankruptcy Rules 4001 and 6003, (i) authorizing, but not directing, the Debtors to pay, in the ordinary course, prepetition Critical Vendor Claims and Foreign Claims; (ii) authorizing, but not directing, the Debtors to pay undisputed amounts owing on account of the Outstanding Orders; (iii) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and (iv) granting related relief; and the Court having jurisdiction to decide the Motion and to enter this Final Order pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion 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 Motion having been provided under Local Rules 2002-1 and 9013-1, 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, in the First-Day Declaration, and on the record establish just cause for entry of this Final Order; and it appearing that entry of this Final Order is in the best interests of the Debtors’ estates; it is hereby **ORDERED** that:

1. The Debtors are authorized, but not directed, to (a) pay in the ordinary course of the Debtors’ businesses some or all of the prepetition Critical Vendor Claims and Foreign Claims and (b) to supplement, in their sole discretion, the list of Critical Vendor Claims; *provided* that the Debtors shall provide five (5) business days’ notice to counsel to the First Lien Noteholder Group of any material change thereto; *provided, however*, that the aggregate amount of such payments shall not exceed \$165,000,000 (the “*Payment Cap*”). The Debtors shall have the right to request authority from this Court, after notice and a hearing, to pay any amounts owed to Critical Vendors or Foreign Claimants in excess of the Payment Cap.

<sup>2</sup> Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the customary practices in effect as of the Petition Date.

3. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim or Foreign Claim, as applicable, shall be deemed to have agreed to the terms and provisions of this Final Order. Prior to making any payment pursuant to this Final Order, the Debtors shall provide the payee with a copy of this Final Order.

4. As a condition to receiving payment of its Critical Vendor Claim or Foreign Claim, the applicable Critical Vendor or Foreign Claimants shall be required to continue—or recommence—providing goods and services to the Debtors on the most favorable terms in effect between such Critical Vendor or Foreign Claimant and the Debtors in the 24-month period preceding the Petition Date or on such other terms as the Critical Vendor or Foreign Claimant and the Debtors may otherwise agree (collectively, the “*Customary Trade Terms*”). The Customary Trade Terms shall apply for the remaining term of such Critical Vendor or Foreign Claimant’s agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. Any payment made under the authority granted by this Final Order to a Critical Vendor or Foreign Claimant that, thereafter, does not continue to provide goods or services to the Debtors on the Customary Trade Terms shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request; *provided* that, if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor or Foreign Claimant, the Debtors may elect to recharacterize and apply any such payment made pursuant to the authority granted hereunder to such outstanding postpetition balance and such Critical Vendor or Foreign Claimant shall be required to repay the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any payment by the Debtors in accordance with the

foregoing, the applicable Critical Vendor Claim or Foreign Claim shall be reinstated as a prepetition claim in the amount so recovered or recharacterized and reapplied, and the relevant Critical Vendor or Foreign Claimant shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (a) 30 days following notice of such reinstatement or (b) the general bar date.

6. The Debtors are hereby authorized, but not directed, before issuing payment to a Critical Vendor or Foreign Claimant, to obtain written verification that such Critical Vendor or Foreign Claimant will comply with paragraph 4 above and continue to provide goods or services to the Debtors on the Customary Trade Terms for the remaining term of such Critical Vendor's or Foreign Claimant's agreement with the Debtors; *provided, however*, that the absence of such written verification shall not limit the Debtors' rights hereunder.

7. This Final Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Critical Vendor or Foreign Claimant.

8. All banks and other financial institutions are authorized and required to receive, process, honor, and pay any and all checks and other transfer requests with respect to payments made by the Debtors pursuant to this Final Order, whether presented before, on or after the Petition Date. However, a bank or other financial institution is not required to honor any such check or transfer request if insufficient funds are on deposit to cover the requested payment.

9. All banks and financial institutions are authorized to rely on the representations of the Debtors and their agents as to whether a particular payment is authorized to be paid pursuant to this Final Order. The banks and financial institutions subject to this Final Order shall have no liability in connection with honoring any prepetition checks or transfer requests contemplated by this Final Order.

10. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new transfers, on account of the Critical Vendor Claims or the Foreign Claims, to replace any prepetition checks or transfer requests issued that are dishonored or rejected as a result of the commencement of these chapter 11 cases. Any amounts that are dishonored or

rejected and then paid pursuant to new postpetition checks or transfers shall not be credited against the Payment Cap.

11. The Debtors shall maintain a matrix/schedule of all amounts directly or indirectly paid under the terms of this Order (the “**Claimant Matrix**”), including the following information: (a) the category of claim paid, applied, or set off; (b) the amount of the payment, application, or setoff by category; (c) the Debtor(s) that made the payment, application, or setoff; (d) the identity of the recipient of the payment, application, or setoff; and (e) the date of the payment, application, or setoff. Within 20 days after the end of each month, commencing with the first full month after entry of this Order, the Debtors shall provide a copy of the Claimant Matrix to the U.S. Trustee, and on a confidential and professional eyes’ only basis (or on such other terms as mutually agreed) to counsel to the First Lien Noteholder Group, and on terms to be mutually agreed with counsel to any statutory committee appointed in these chapter 11 cases. The Debtors shall not be required to file or publish the Claimant Matrix.

12. Notwithstanding the relief granted in this Final Order, all authorizations herein and all payments and actions pursuant thereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* filed contemporaneously herewith (collectively, such interim and final orders, the “**DIP Order**”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Final Order, the terms of the DIP Order shall control.

13. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Final Order (nor any actions or payments pursuant to the relief granted herein) shall constitute, nor is it intended to constitute: (a) an implication, admission, concession or finding as to the validity, priority, amount, basis for, or secured status of any particular claim against any Debtor, including priority under section 503(b)(9); (b) a waiver of the Debtors' or other party in interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification, adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor's or other party in interest's rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission, concession or finding (i) that any particular claim is of a type specified or defined in this Final Order or the Motion or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of the same). Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee, any statutory committee appointed in these chapter 11 cases or any other party in interest, which are expressly reserved, to object to any payment made pursuant to this Final Order to or for the benefit of an insider (as such term is defined in section 101(31) of the Bankruptcy Code) or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment pursuant to this Final Order to or for the benefit of an insider or an affiliate of an insider of the Debtors pursuant to this Final Order, the Debtors shall first obtain the prior written consent of the Required Purchasers (as defined in the DIP Order) and, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee, the First Lien Noteholder Group

and any statutory committee appointed in these chapter 11 cases; *provided*, that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.

15. Notwithstanding entry of this Final Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

16. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied, and that the relief granted in this Final Order as to Critical Vendor Claims and Foreign Claims is necessary to avoid immediate and irreparable harm to the Debtors' estates.

18. Notwithstanding Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Rules or Local Bankruptcy Rules, the terms of this Final Order shall be immediately effective and enforceable upon its entry.

19. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out this Final Order.

20. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: \_\_\_\_\_  
Houston, Texas

\_\_\_\_\_

UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B TO MOTION  
VENDOR PAYMENT AGREEMENT**

## VENDOR PAYMENT AGREEMENT

WHEREAS, on June 1, 2023, Wesco Aircraft Holdings, Inc., together with certain of its affiliates (each, a “*Debtor*”, and collectively, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of Texas (the “*Bankruptcy Court*”), whose cases (the “*Chapter 11 Cases*”) are jointly administered under the caption *In re Wesco Aircraft Holdings, Inc., et al.*, Case No. 23-90611;

WHEREAS, the Bankruptcy Court has entered certain final and/or interim orders (the “*Orders*”) authorizing (but not directing) the Debtors to make payments to select trade counterparties on account of prepetition debt;

WHEREAS, pursuant to the Orders, the Debtors may condition such payment on the applicable counterparty’s agreement to, among other things, maintain the provision of goods or services to the Debtors on ordinary prepetition terms, including under the terms of any applicable prepetition agreement;

WHEREAS, [•] (the “*Counterparty*”) has sought payment pursuant to the Orders, and the Debtors desire to confirm that the Counterparty will continue to provide goods and/or services to the Debtors and their non-Debtor affiliates (together, the “*Debtor Parties*” and, together with the Counterparty, the “*Parties*”) on ordinary terms and, if applicable, pursuant to the Parties’ prepetition arrangements;

IT IS HEREBY AGREED BETWEEN THE PARTIES (this “*Agreement*”):

1. The Debtor Parties shall pay the Counterparty the sum of [•] [USD] in satisfaction of the prepetition invoices set forth on Schedule 1 to this Agreement (the “*Payment*”). The Payment shall be applied on a “last in first out” basis to those invoices unless otherwise specified in writing by the Debtor Parties in their sole discretion, and shall be paid either (a) within 10 business days of execution of this Agreement or (b) as the underlying invoices would come due in the ordinary course of business, whichever is later, unless otherwise agreed in writing by the Parties.

2. Nothing in this Agreement is intended or should be construed as an implication, admission, or concession as to the validity, amount or priority of, or basis for any claim that has



been or may be asserted by the Counterparty against the Debtor Parties or vice versa. The Parties expressly reserve all of their respective rights and defenses with respect to any claims.

3. As a condition to receiving any Payment, the Counterparty shall continue to provide goods and/or services to the Debtor Parties on the most favorable terms (including, but not limited to, credit limits, pricing, timing of payments, availability, and other terms) that the Counterparty offered to the Debtor Parties during the 24-month period immediately prior to the commencement of the Chapter 11 Cases, whether or not pursuant to a written contract, set forth on Schedule 2 to this Agreement (the “*Customary Trade Terms*”), and shall not refuse to provide goods or services, delay delivery of goods or services, refuse to accept purchase orders, terminate any contract, or decline to renew any contract except for the Debtor Parties’ failure to make the Payment or to pay for postpetition goods and services in accordance with the Customary Trade Terms.

4. If the Counterparty receives the Payment and thereafter fails to provide goods or services to the Debtors on the Customary Trade Terms, the Payment shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. If there exists an outstanding postpetition balance due from the Debtors to the Counterparty, the Debtors may elect to recharacterize and apply any such payment to such outstanding postpetition balance and the Counterparty shall be required to repay the Debtors such amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any Payment by the Debtors, any such Payment will be reinstated as a prepetition claim in the amount recovered or recharacterized and reapplied, and the Counterparty shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (a) 30 days following notice of reinstatement or (b) the general bar date established by order of the Bankruptcy Court.

5. The Counterparty shall not file or otherwise assert against the Debtor Parties, their assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Counterparty by the Debtors arising from prepetition agreements or transactions. If the Counterparty has taken steps to file, assert, or perfect such a lien prior to entering into this Agreement, the Counterparty agrees to promptly take all necessary actions to release such lien and hereby authorizes the Debtors to take any such action on its behalf.

6. The Counterparty shall not require a lump-sum payment on the effective date of a plan in the Chapter 11 Cases on account of any then-outstanding administrative expenses arising from the delivery of postpetition goods or services, if such a payment is not then due under the Customary Trade Terms. Instead, the Counterparty agrees that any such administrative expenses will be paid in the ordinary course of business.

7. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Texas without regard to its conflict of laws principles, and will be subject to the exclusive jurisdiction of the Bankruptcy Court, to whose jurisdiction the Counterparty

hereby irrevocably agrees to submit itself for all purposes, including in respect of any and all claims or disputes arising from or relating to this Agreement.

For the Debtor Parties

For the Counterparty

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1 TO VENDOR PAYMENT AGREEMENT**

**INVOICES SUBJECT TO  
VENDOR PAYMENT AGREEMENT**

**[OMITTED]**

**SCHEDULE 2 TO VENDOR PAYMENT AGREEMENT**

**DOCUMENTED TRADE TERMS**

**[OMITTED]**