

**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 (DRJ)

Chapter 11

(Joint Administration Requested)

**DEBTORS' EMERGENCY
MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THEM TO PAY LIEN CLAIMS
AND CLAIMS UNDER 11 U.S.C. § 503(B)(9)
AND (II) 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 (Jones), 4th Floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

¹ 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.



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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 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 an order (the “**Order**”): (i) authorizing, but not directing, them to pay in the ordinary course of business certain prepetition 503(b)(9) Claims and Lien Claims (each as defined below) up to the respective caps set forth in the proposed Order; (ii) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and (iii) granting related relief. A proposed form of order is attached to this Motion as **Exhibit A**.

2. The Debtors intend to condition the payment of the 503(b)(9) Claims and Lien Claims on their holders agreeing to provide their respective goods 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 Critical and Foreign Vendor 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 this Motion.

4. The principal statutory bases for this Motion are sections 105(a), 363, 503(b) and 1107(a) of title 11 of the U.S. Code (as amended, the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), paragraph 4(c) of the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”), and Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Local Rules**”).

5. 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**”).²

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

JURISDICTION AND VENUE

6. 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

7. 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.

8. On June 1, 2023 (the "*Petition Date*"), the Debtors each 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 businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed.

9. 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 503(B)(9) AND LIEN CLAIMANTS

10. The following table summarizes the categories of claims which the Debtors request authority to pay and the estimated amounts outstanding for each such category as of the Petition Date:

Category	Estimated Amount Outstanding as of Petition Date
503(b)(9) Claims	\$92,000,000
Lien Claims	\$5,000,000
Total amount of claims:	\$97,000,000

A. The Section 503(b)(9) Claimants

11. Incora's job is to ensure that it can make critical supplies available to its customers as scheduled and with minimal lead times. Any disruption to Incora's vendor relationships could have a catastrophic effect on its reputation among customers, its market share, and ultimately its ability to emerge from these chapter 11 cases as a going concern. Indeed, supply chain disruptions have been the most significant drag on Incora's financial performance in the past year and were a significant factor in the filing of these chapter 11 cases.

12. Section 503(b) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the Debtor within 20 days before the commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). The Debtors have received inventory, goods, or materials from various vendors (the "**503(b)(9) Claimants**") within the 20-day period preceding the Petition Date, giving rise to claims under section 503(b)(9) of the Bankruptcy Code (the "**503(b)(9) Claims**").

13. Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term contracts and, instead, the Debtors obtain goods and materials from such claimants on an order-by-order basis. As a result, many of the 503(b)(9) Claimants may refuse to supply new merchandise to the Debtors unless their 503(b)(9) Claims are paid. The Debtors also believe that certain 503(b)(9) Claimants may reduce the Debtors' prepetition trade credit or impose stricter payment terms, such as demanding payment in cash on delivery.

14. The Debtors have concluded that payment to certain 503(b)(9) Claims outside of a chapter 11 plan is necessary to avoid disruptions to their operations. The Debtors' business, as one of the largest aerospace and defense supply chain and distribution service providers in the world, relies on continuing access to, and relationships with, various 503(b)(9) Claimants. 503(b)(9) Claimants provide the Debtors with aerospace, electrical, and chemical parts and/or components and access to a network of other crucial vendors. Absent these products, the Debtors' operations would be severely impaired.

15. As described in the First Day Declaration, Incora operates in a highly specialized and regulated industry. If a vendor increases its prices or refuses to do business, Incora may be unable to switch to a different vendor until the affected customer has obtained approval to use the alternative vendor's part. Moreover, some vital products are proprietary or acquired from limited-source vendors who cannot be replaced without extraordinary expense or delay.

16. The Debtors therefore request authorization, but not direction, to pay certain outstanding prepetition 503(b)(9) Claims subject to the limitations set forth in the proposed Order. For the avoidance of doubt, the Debtors propose to pay 503(b)(9) Claims only to the extent necessary and on such terms and conditions as are appropriate, in the Debtors' business judgement, to avoid disruptions to their business.

17. The Debtors estimate that, as of the Petition Date, approximately \$92,000,000 is outstanding on account of the 503(b)(9) Claims.

B. The Lien Claimants

18. The Debtors also routinely do business with entities that may have liens on specific goods (collectively, the "*Lien Claimants*").³ As described in further detail below, the claims assertable by the Lien Claimants (the "*Lien Claims*") generally consist of: (a) claims of shippers

³ In the ordinary course of business, certain vendors, including certain Lien Claimants, are paid through a payments processor that is an affiliate of Platinum Equity. Incora pays the payment processor a nominal fee pursuant to the terms of an arms-length negotiated contract. If approved by the Court, the payment of certain Lien Claims would occur through this payment processor consistent with past practice. For the avoidance of doubt, this Motion does not seek authorization to pay any prepetition service fees to the payment processor.

and warehouses and (b) claims on account of customs duties and related fees.⁴ The Debtors have determined, in the exercise of their business judgment, that payment of certain of the Lien Claims is necessary for obtaining the delivery and release of their goods, parts, components, materials, equipment, and other items (collectively, the “*Goods*”).

19. In the event prepetition Lien Claims remain unpaid, the Lien Claimants could assert liens on the Goods under non-bankruptcy law to secure payment and/or refuse to deliver or release the Goods in their possession or otherwise impede the Debtors’ use of property until their claims are satisfied and their liens redeemed. The Lien Claimants’ possession (and retention) of the Debtors’ Goods or enforcement of liens would disrupt the Debtors’ operations and affect their ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors’ estates in many cases would likely be much greater than the relevant Lien Claims. Pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may also be entitled to adequate protection of any valid possessory lien, the payment of which would drain estate funds. In the case of domestic and foreign customs offices, the Debtors could also accrue significant penalties for not paying the applicable Lien Claims. Accordingly, it is critical to the Debtors’ estates that the Debtors be permitted to pay prepetition Lien Claims to avoid complications, disruptions, or any restrictions on their ability to rely on the continued provision of the Lien Claimants’ services.

20. To continue using the Lien Claimants’ services, the Debtors request authority to pay prepetition Lien Claims as they become due and payable in the ordinary course of business. For the avoidance of doubt, the Debtors seek authority to pay only those Lien Claims that the Debtors determine, in their sole discretion, to be necessary or appropriate to (a) obtain release of critical or valuable Goods, (b) maintain reliable, efficient, and smooth distribution systems, and (c) induce

⁴ There may be some quantum of claims held by third parties who could assert liens on the Debtors’ and their customer’s property if the Debtors fail to pay for goods or services rendered. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, might be excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b)(1)(A). For the avoidance of doubt, any such claims are Lien Claims as that term is used herein.

the Lien Claimants to continue performing and otherwise supporting the Debtors' postpetition operations.

21. For the twelve months before the Petition Date, on average, the Debtors paid the Lien Claimants approximately \$7,000,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$5,000,000 is outstanding on account of the Lien Claims.

1. Carriers and Warehouses

22. The Debtors seek to pay prepetition claims of certain domestic and foreign commercial common carriers, freight forwarders and consolidators, delivery services, and other third-party providers of shipping and transportation services, including those third parties that facilitate the movement of various Goods through customs (collectively, the "*Carriers*") and the prepetition claims of those third-parties that store or otherwise aid in the transport of their Goods through established national and international distribution networks of third-party warehouses (the "*Warehouses*" and, together, the "*Transportation and Warehouse Claims*").

23. As of the Petition Date, the Debtors contract with approximately 40 Carriers and Warehouses in both the United States and abroad to service the Debtors' 30 domestic and international distribution centers and forward stocking locations. These distribution centers and forward stocking locations are primarily located in the United States, the United Kingdom, Canada, Mexico, and Israel.

24. The services provided by the Carriers and Warehouses are critical to the Debtors' day-to-day operations. At any given time, there are countless shipments *en route* to various locations. Therefore, many Carriers and Warehouses currently have Goods in their possession that are important to the Debtors' operations. Because of the commencement of these chapter 11 cases, certain Carriers and Warehouses who hold Goods for delivery to or from the Debtors may refuse to release those Goods pending receipt of payment for their prepetition services, which would

disrupt the Debtors' operations. Indeed, under some state⁵ and non-U.S.⁶ laws, a Carrier or Warehouse may have a lien on the Goods in its possession to secure the charges and/or expenses incurred for the transportation or storage of such Goods. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Carriers and Warehouses, as holders of possessory liens, may be entitled to adequate protection.

25. The Debtors rely on the Carriers and Warehouses to timely manage the large volume of Goods transported to various points in the Debtors' worldwide operations. Accordingly, because the Debtors are dependent on the third-party Carriers and Warehouses, it is essential that the commencement of these cases do not give any Carriers and Warehouses reason or excuse to cease performing or to retain the Debtors' Goods.

2. *Customs Duties*

26. In the ordinary course of their business, the Debtors purchase various goods and supplies overseas and import those goods and supplies (collectively, the "*Imported Goods*") into the United States and other jurisdictions. The Debtors' purchase of the Imported Goods is vital to their business operations. For example, without the uninterrupted purchase and delivery of the Imported Goods, such as aircraft parts, components, and raw materials, ongoing operations would suffer, and certain operations may be significantly impaired.

27. Accordingly, the Debtors seek authority for themselves and the customs brokers acting as their agents, to continue to make necessary payments of customs duties, import-related

⁵ For example, section 7 307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7 307(a).

⁶ For example, section 41 of the United Kingdom's Sale of Goods Act 1979 provides, in pertinent part, that "the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases: . . . (a) where the goods have been sold without any stipulation as to credit; (b) where the goods have been sold on credit but the term of credit has expired; (c) where the buyer becomes insolvent." Sale of Goods Act, 1979, c. 54, pt. I, § 41 (Eng.). Furthermore, "the seller may exercise his lien or right of retention notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer." *Id.* Carriers (or "forwarders") and warehouses may also be entitled to exercise lien rights under English common law.

taxes, entry fees, and other incidental import and related expenses (collectively, the “*Customs Duties*”) to the U.S. Customs and Border Protection Agency (the “*U.S. Customs Service*”) and to non-U.S. customs authorities on account of obligations that arose or relate to the period before the Petition Date.

28. If the Customs Duties are not timely paid, the U.S. Customs Service and non-U.S. customs authorities may demand liquidated damages, assess interest, or impose other penalties and sanctions. Absent payment, (i) the Debtors’ customs brokers may, in some instances, assert carrier’s or warehouses’ liens on the Imported Goods, (ii) the U.S. Customs Service may assert a lien against the Imported Goods under 19 C.F.R. § 141.1(d), and (iii) non-U.S. customs authorities may assert similar liens or take other action against the Debtors in their respective jurisdictions. Accordingly, it is in the best interest of the Debtors’ estates and stakeholders that the Debtors be authorized to pay the Customs Duties to ensure continuous flow of the Imported Goods.

29. A substantial portion of the Customs Duties sought to be paid hereunder would be entitled to priority pursuant to section 507(a)(8)(F) of the Bankruptcy Code. Section 507(a)(8)(F), in pertinent part, affords priority to the allowed unsecured claims of governmental units for a customs duty arising out of the importation of merchandise:

- a. entered for consumption within one year before the date of the filing of the petition;
- b. covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or
- c. entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisalment or classification of such merchandise was not available to the appropriate customs officer before such date.

11 U.S.C. § 507(a)(8)(F).

30. As priority claims, the Customs Duties that are subject to section 507(a)(8)(F) must be paid in full before the Debtors make any distributions to holders of general unsecured claims

under any chapter 11 plan. Accordingly, the proposed relief will most likely only affect the timing of the payment of most, if not all, Customs Duties and, therefore, will not prejudice the rights of general unsecured creditors.

III. CUSTOMARY TRADE TERMS CONDITION

31. In return for the payment of prepetition 503(b)(9) Claims and Lien Claims, the Debtors propose (unless otherwise waived by the Debtors in their discretion) that the 503(b)(9) Claimants and Lien Claimants be required to continue providing Goods and/or services to the Debtors on the most favorable terms (including credit limits, pricing, timing of payments, availability, and other terms) in effect between such 503(b)(9) Claimant or Lien Claimant and the Debtors in the 24-month period preceding the Petition Date or on such other terms as the Debtors and such 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 503(b)(9) Claimant or Lien Claimant’s agreement with the Debtors, so long as the Debtors make payments in accordance with that agreement.

32. If any 503(b)(9) Claim or Lien Claim is paid and thereafter the applicable 503(b)(9) Claimant or Lien Claimant, as applicable, does not continue to provide Good or services to the Debtors on Customary Trade Terms, any payments so made will be deemed an avoidable postpetition transfer 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 503(b)(9) Claimant or Lien Claimant, the Debtors may elect to recharacterize and apply any such payment to such outstanding postpetition balance and such 503(b)(9) Claimant or Lien 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 503(b)(9) Claim or Lien Claim will be reinstated as a prepetition claim in the amount recovered or recharacterized and reapplied and the relevant 503(b)(9) Claimant or Lien 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.

33. The Debtors also seek authorization to require, at their discretion, certain 503(b)(9) Claimants and/or Lien Claimants to enter into a contract evidencing the Customary Trade Terms, substantially in the form annexed hereto as **Exhibit B** (the “*Vendor Payment Agreement*”).

BASIS FOR RELIEF

34. 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 continue to pay the 503(b)(9) Claims and Lien Claims.

I. AUTHORITY TO PAY 503(B)(9) CLAIMS AND LIEN CLAIMS IS WARRANTED AND SHOULD BE GRANTED.

35. Because the ability to pay 503(b)(9) Claimants and Lien 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.

A. Section 363(b) of the Bankruptcy Code Permits the Debtors to Pay 503(b)(9) and Lien Claims

36. The Debtors believe that the Court can and should authorize the payment of 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 can “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. *In re BNP Petroleum Corp.*, 642 F. App’x 429, 434–435 (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.” *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)).

37. As discussed above, every segment of the Debtors’ supply chain—and the various third parties that enable its timely and efficient functioning—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 all 503(b)(9) Claims and Lien 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.

38. Furthermore, few countervailing factors are present here. For example, paying the 503(b)(9) Claims or the Customs Duties now will not diminish the recoveries of general unsecured creditors. As set forth above, the 503(b) Claims and many, if not all, of the Customs Duties are entitled to priority and, thus, must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. §§ 507(a)(8)(F), 1129(a)(9)(A). The Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation, and the timing of such payments lies within the Court’s discretion.

39. Courts in this district have granted authority for debtors to pay administrative expenses similar to those sought to be paid hereunder in similar cases. *See, e.g., In re Envision Healthcare Corporation*, Case No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (Docket No. 112) (interim relief); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex.

June 8, 2022) (Docket No. 464); *In re Frontera Holdings LLC*, Case No. 21-30354 (MI) (Bankr. S.D. Tex. Feb. 23, 2021) (Docket No. 146); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020) (Docket No. 408); *In re Speedcast Int'l Ltd*, Case No. 20-32243 (MI) (Bankr. S.D. Tex. May 18, 2020) (Docket No. 213); *In re S. Foods Grp., LLC*, Case No. 19-36313 (DRJ) (Bankr. S.D. Tex. Nov. 13, 2019) (Docket No. 121); *In re Westmoreland Coal Co.*, Case No. 18-35672 (MI) (Bankr. S.D. Tex. Nov. 15, 2018) (Docket No. 512). This relief is also appropriate here.

40. Similarly, paying the Lien Claims will have a minimal effect on the recoveries of general unsecured creditors. Many Lien Claimants will likely receive the same recovery under a plan of reorganization because the value of the Debtors' property in their possession is likely greater than the amount of their Lien Claims, making those claims fully secured. Conversely, the preservation of the Debtors' assets and a seamless transition into chapter 11 will maximize the value of the Debtors' estates and inure to the benefit of all creditors. Such an efficient outcome constitutes a strong business purpose for paying the Lien Claims.

41. Courts in this district have granted authority for debtors to pay prepetition claims secured by possessory liens where the payment is essential to such debtor's continued operations. *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 Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. June 17, 2022) (Docket No. 588); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020) (Docket No. 408); *In re iQor Holdings Inc.*, Case No. 20-34500 (DRJ) (Bankr. S.D. Tex. Sept. 11, 2020) (Docket No. 70). Similar relief is also appropriate here.

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

42. 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 (Bankr. N.D. Tex. 2003).

43. 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. at 497 (“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).

44. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. 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”).

45. The Debtors’ ability to pay the 503(b)(9) Claims and Lien 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.

46. Allowing the Debtors to pay the 503(b)(9) Claims and Lien 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 503(b)(9) and Lien Claims.

47. 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 497–498.

48. 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.

49. For the foregoing reasons, satisfying the 503(b)(9) Claims and the Lien 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 503(b)(9) Claims and the Lien Claims.

II. THE COURT SHOULD DIRECT FINANCIAL INSTITUTIONS TO HONOR AUTHORIZED PAYMENTS.

50. 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 503(b)(9) Claimant and Lien 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.

51. 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 503(b)(9) Claimant and Lien 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 503(b)(9) Claimant and Lien Claimant obligations.

EMERGENCY CONSIDERATION

52. 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 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.

53. As described above and in the First Day Declaration, payment to the 503(b)(9) Claimants and Lien 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 503(b)(9) Claims and Lien 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).

RESERVATIONS OF RIGHTS

54. 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

55. 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 an order, substantially in the form attached as **Exhibit A**, granting this Motion and (b) grant such other relief as is just and proper.

Dated: May 31, 2023

Respectfully submitted,

/s/ Kelli S. Norfleet

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*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 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.,¹**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**ORDER (I) AUTHORIZING
THE DEBTORS TO PAY LIEN CLAIMS
AND CLAIMS UNDER 11 U.S.C. § 503(B)(9)
AND (II) GRANTING RELATED RELIEF**

¹ 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*”),² of the above-captioned debtors (collectively, the “*Debtors*”), for entry of an order, pursuant to sections 105(a), 363(b), 1107(a), and 503(b) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and paragraph 4(c) of the Complex Case Procedures, (i) authorizing, but not directing, the Debtors to pay prepetition amounts in the ordinary course owing on account of the 503(b)(9) Claims and Lien Claims; (ii) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and (iii) granting related relief; and the Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 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, 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 on an emergency basis is in the best interests of the Debtors’ estates and that immediate relief is justified to avoid immediate and irreparable harm to 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 503(b)(9) Claims and Lien Claims and (b) to supplement, in their sole discretion, the list of 503(b)(9) Claims and Lien 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 \$97,000,000. The Debtors shall have the right to request authority from this Court, after notice and a hearing, to pay any amounts owed to 503(b)(9) Claimants and Lien Claimants in excess of \$97,000,000.

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

2. Any party that accepts payment from the Debtors on account of a 503(b)(9) Claim or Lien Claim shall be deemed to have agreed to the terms and provisions of this Order, a copy of which shall be provided by the Debtors to all such parties.

3. As a condition to receiving payment of its 503(b)(9) Claim or Lien Claim, the applicable 503(b)(9) Claimant or Lien Claimant shall be required to continue—or recommence—providing Goods and services to the Debtors on the most favorable terms in effect between such 503(b)(9) Claimant or Lien Claimant and the Debtors in the 24-month period preceding the Petition Date or such other terms as the 503(b)(9) Claimant or Lien Claimant and the Debtors may otherwise agree (collectively, the “*Customary Trade Terms*”). The Customary Trade Terms shall apply for the remaining term of such 503(b)(9) Claimant or Lien 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. Any Lien Claimant who has perfected a lien on the Debtors’ or their customers’ Goods that accepts any payment pursuant to the authority granted by this Order further agrees to take whatever action is necessary to promptly remove the lien at the Lien Claimant’s sole cost and expense.

4. Any payment made under the authority granted by this Order to a 503(b)(9) Claimant or Lien Claimant that, thereafter, does not continue to provide Goods or services to the Debtors on 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 503(b)(9) Claimant or Lien 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 503(b)(9) Claimant or Lien 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 503(b)(9) Claimant or Lien Claimant shall be reinstated as a prepetition

claim in the amount so recovered or recharacterized and reapplied, and the relevant 503(b)(9) Claimant or Lien Claimant shall be entitled to file a proof of claim with respect to its alleged 503(b)(9) Claim or Lien Claim by the later of (a) 30 days following notice of such reinstatement or (b) the general bar date.

5. The Debtors are hereby authorized, but not directed, before issuing payment to a 503(b)(9) Claimant or Lien Claimant, to obtain written verification that such 503(b)(9) Claimant or Lien Claimant will comply with paragraph 3 above and continue to provide goods or services to the Debtors on the Customary Trade Terms for the remaining term of such 503(b)(9) Claimant's or Lien Claimant's agreement with the Debtors; *provided, however*, that the absence of such written verification shall not limit the Debtors' rights hereunder.

6. All banks and 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 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.

7. 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 Order. The banks and financial institutions subject to this Order shall have no liability in connection with honoring any prepetition checks or transfer requests contemplated by this Order.

8. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new transfers, on account of the 503(b)(9) Claims or the Lien 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.

9. 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.

10. Notwithstanding the relief granted in this 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 Order, the terms of the DIP Order shall control.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this 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 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 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.

12. 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 or for the benefit of to 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 Order to or for the benefit of an insider or an affiliate of an insider of the Debtors, 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; *provided, further*, that with respect to any payment made to a Lien Claimant through a payment processor (consistent with past practice) shall only constitute a payment to an insider to the extent that such Lien Claimant is an insider.

13. Notwithstanding entry of this 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.

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

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

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