

ENTERED

August 09, 2023

Nathan Ochsner, Clerk

**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
RETAIN AND COMPENSATE CERTAIN PROFESSIONALS
UTILIZED IN THE ORDINARY COURSE OF BUSINESS
AND (II) GRANTING RELATED RELIEF**

(Docket No. 422)

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



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Upon the motion (the “*Motion*”)² of the above-captioned debtors (collectively, the “*Debtors*”), for entry of an order (i) authorizing them to retain and compensate Ordinary Course Professionals and (ii) granting certain 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 is in the best interests of the Debtors’ estates; it is hereby **ORDERED** that:

1. The Debtors are hereby authorized, but not directed, to employ and compensate the Ordinary Course Professionals in accordance with the procedures set forth below (the “*OCP Procedures*”), effective as of the Petition Date:

- *OCP List.* The Debtors are authorized to employ the Ordinary Course Professionals that are listed on **Schedule 1** to the Motion (the “*OCP List*”) in accordance with these OCP Procedures.
- *OCP Declaration.* Each Ordinary Course Professional on the initial OCP Lists will file and serve, within 30 days after entry of this Order, a declaration substantially in the form annexed to this Order (the “*OCP Declaration*”), by which the Ordinary Course Professional shall certify that it does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the professional is to be employed.
- *Modifications to OCP List.* The Debtors may add an Ordinary Course Professional to the OCP List, remove one from the OCP List, or reclassify one from “Tier 1” to “Tier 2” or vice versa, by filing an amended OCP List with the Court within 30 days after the addition, removal or reclassification of the Ordinary Course Professional is to be effective. If an Ordinary Course Professional is added to the OCP List, the new Ordinary Course Professional shall file an OCP Declaration within 30 days following the date on which its retention is to be effective.

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

- *Service.* Each OCP List and OCP Declaration that is required to be served pursuant to this Order shall be served upon each of the following (the “*Notice Parties*”):
 - i. counsel to the First Lien Noteholder Group, Davis Polk & Wardwell LLP, Attn: Damian Schaible (Damian.Schaible@DavisPolk.com), Angela Libby (Angela.Libby@DavisPolk.com), and Stephanie Massman (Stephanie.Massman@DavisPolk.com), and;
 - ii. proposed counsel to the Official Committee of Unsecured Creditors (the “*Committee*”), Morrison & Foerster LLP, Attn: Lorenzo Marinuzzi (LMarinuzzi@MoFo.com), Theresa Foudy (TFoudy@MoFo.com), Michael Birnbaum (MBirnbaum@MoFo.com), Benjamin Butterfield (BButterfield@MoFo.com), and Raff Ferraioli (RFerraioli@MoFo.com);
 - iii. counsel or proposed counsel to any other statutory committee appointed in this Chapter 11 Cases; and
 - iv. the Office of the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, Attn: Jayson Ruff (Jayson.B.Ruff@USDOJ.gov).
- *Objections to OCP Retention.* If a party in interest wishes to object to the retention, employment or compensation of an Ordinary Course Professional, it must, within 14 days following service of the corresponding OCP Declaration (in the case of a Notice Party) or filing of the OCP Declaration (in the case of another party in interest), file a written objection and serve its objection on proposed counsel to the Debtors, (i) Milbank, LLP, 55 Hudson Yards, 36th Floor, New York, NY 10001, Attn: Dennis F. Dunne (DDunne@Milbank.com), Samuel A. Khalil (SKhalil@Milbank.com), and Benjamin M. Schak (BSchak@Milbank.com) and (ii) Haynes and Boone LLP, 1221 McKinney Street, Suite 4000, Houston, TX 77010, Attn: Charles A. Beckham Jr. (Charles.Beckham@HaynesBoone.com) and Kelli S. Norfleet (Kelli.Norfleet@HaynesBoone.com). If no timely objection is filed and served, the retention, employment, and compensation of the Ordinary Course Professional will be deemed approved on the terms of this Order without the need for a hearing or further order of the Court. If a timely objection cannot be resolved consensually within 14 days, the Debtors shall schedule a hearing on the matter.
- *Payment of Fees.* Subject to the OCP Caps set forth below, the Debtors will be authorized to pay, without formal application to the Court, 100% of compensation and reimbursable expenses to each Ordinary Course Professional retained, upon receipt of reasonably detailed invoices indicating the nature of the services rendered and expenses incurred. However, the Debtors shall not pay any Ordinary Course Professional any amount until it has filed an OCP Declaration and the objection deadline has passed without objection (or, in the event that a timely objection has been filed, until the objection has been resolved consensually or by further order of

the Court). For the avoidance of doubt, the Debtors shall have the right to dispute any invoice, and this Court shall have jurisdiction over any such dispute.

- *Fee Caps.* The fees of each Ordinary Course Professional listed as a “Tier 1” professional on the OCP List shall be limited to \$200,000 per month over each rolling three-month period (the “*Tier 1 Cap*”). The fees of each Ordinary Course Professional listed as a “Tier 2” professional on the OCP List shall be limited to \$75,000 per month over each rolling three-month period (the “*Tier 2 Cap*” and, together with the Tier 1 Cap, the “*OCP Caps*”).
- *Excess Fees.* To the extent an Ordinary Course Professional seeks compensation in excess of the OCP Caps (the “*Excess Fees*”), the Ordinary Course Professional shall file a notice of fees in excess of the applicable cap (the “*Notice of Excess Fees*”) and an invoice setting forth, in reasonable detail, the nature of the services rendered and expenses actually incurred. If a party in interest wishes to object to a Notice of Excess Fees, it must, within 14 days following service of the Notice of Excess Fees (in the case of a Notice Party) or filing of the Notice of Excess Fees (in the case of another party in interest), file a written objection and serve its objection on proposed counsel to the Debtors listed in clause (e) of these OCP Procedures. If no objection is filed and served, the Debtors will be authorized to pay, without further order of the Court, 100% of the Excess Fees. If a timely objection cannot be resolved consensually within 14 days, the Debtors shall schedule a hearing on the matter.
- *Quarterly Statements.* At three-month intervals during these chapter 11 cases (each, a “*Quarter*”), beginning with the Quarter ending on August 31, 2023, the Debtors will file with the Court and serve on the Notice Parties, no later than 30 days after the last day of such Quarter, a statement that will include the following information for each Ordinary Course Professional that received compensation or expense reimbursement during the Quarter: (i) the Ordinary Course Professional’s name; (ii) the amount paid or due to the Ordinary Course Professional as compensation for services rendered or reimbursement of expenses incurred during the Quarter; (iii) the aggregate amount of payments made to the Ordinary Course Professional through the end of the reported Quarter as compensation for services rendered or reimbursement of expenses incurred during the chapter 11 cases; and (iv) a general description of the services rendered by the Ordinary Course Professional.

2. Any agreement (an “*Indemnification Agreement*”) by any of the Debtors to indemnify an Ordinary Course Professional shall be subject to the following modifications, during the pendency of these cases:

- The Ordinary Course Professional shall not be entitled to indemnification, contribution, or reimbursement pursuant to its Indemnification Agreement for services other than the services provided under the associated engagement

agreement, unless such services and the indemnification, contribution, or reimbursement are approved by the Court.

- Notwithstanding anything to the contrary in the Indemnification Agreement, the Debtors shall have no obligation to indemnify the Ordinary Course Professional, or provide contribution or reimbursement to the Ordinary Course Professional, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from the Ordinary Course Professional's gross negligence, willful misconduct, fraud, self-dealing (if found to be applicable), bad faith, or breach of fiduciary duty (if any); (ii) for a contractual dispute in which the Debtors allege the breach of the Ordinary Course Professional's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; (iii) of any type for which the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002); or (iv) settled prior to a judicial determination under the foregoing clauses, but determined by the Court, after notice and a hearing, to be a claim or expense for which the Ordinary Course Professional should not receive indemnity, contribution, or reimbursement under the terms of the Indemnification Agreement as modified by the Court.
- If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) or (ii) the entry of an order closing these chapter 11 cases, the Ordinary Course Professional believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under an Indemnification Agreement (as modified by this Order), including the advancement of defense costs, the Ordinary Course Professional must file an application in this Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by the Court approving the payment. All parties in interest shall retain the right to object to any demand by the Ordinary Course Professional for indemnification, contribution, or reimbursement. In the event that the Ordinary Course Professional seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to an Indemnification Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in the Ordinary Course Professional's own applications, both interim and final, but determined by the Court after notice and a hearing.

3. This Order shall not apply to any professional person retained by the Debtors pursuant to a separate order of the Court.

4. This Order shall not preclude an Ordinary Course Professional from subsequently seeking retention as an estate professional under section 327 or 328 of the Bankruptcy Code. In the event that an Ordinary Course Professional seeks retention pursuant to this Order and

subsequently files a separate retention application, its proposed retention order may be effective as of the later of (i) the commencement of work by the professional or (ii) the date that is 30 days prior to the filing and service of its OCP Declaration.

5. Nothing in this Order shall prejudice (a) the U.S. Trustee from seeking an order from the Court requiring an Ordinary Course Professional to file a separate retention application under section 327(a) or 327(e) of the Bankruptcy Code or (b) the Debtors or the U.S. Trustee from seeking an order altering the amount of any OCP Cap.

6. The form of OCP Declaration attached as **Exhibit 1** to this Order is approved.

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

8. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out the relief granted in this Order.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: August 08, 2023.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1
TO ORDINARY COURSE PROFESSIONALS ORDER
FORM OF ORDINARY COURSE PROFESSIONAL DECLARATION

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

In re

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

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

DECLARATION OF ORDINARY COURSE PROFESSIONAL

I, [NAME], hereby declare, pursuant to section 1746 of title 28 of the United States Code:

1. I am a [TITLE] of [FIRM] located at [ADDRESS] (the "**Firm**").
2. One or more of Wesco Aircraft Holdings, Inc. and its debtor affiliates (collectively, the "**Debtors**") has requested that the Firm provide [DESCRIPTION OF SERVICES] to the Debtors, and the Firm has consented to provide such services.
3. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in the Debtors' chapter 11 cases. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants or employees of the Debtors, or other parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases. In

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addition, the Firm does not have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates with respect to the matters on which the Firm is to be retained.

4. Neither I nor any principal of or professional employed by the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Firm.

5. Neither I nor any principal of or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates, with respect to the matters on which the Firm is to be retained.

6. The Debtors owe the Firm \$[AMOUNT] for prepetition services.

7. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and, upon conclusion of that inquiry or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: [●]

/s/ _____
[NAME]