

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

In re

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

Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

**DEBTORS' MOTION TO EXTEND
THE DEADLINE TO COMPLY WITH
SECTION 345(B) OF THE BANKRUPTCY CODE**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <http://ecf.txsb.uscourts.gov/> within 21 days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within 21 days from the date this motion is filed. Otherwise, the Court may treat this pleading as unopposed and grant the relief requested.

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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The above-captioned debtors and debtors in possession (the “**Debtors**”² and, together with their non-Debtor subsidiaries, “**Incora**”) respectfully state as follows.

RELIEF REQUESTED

1. By this motion (the “**Motion**”), Incora seeks entry of an order extending the deadline to comply with section 345(b) of the Bankruptcy Code through and including August 31, 2024. A proposed form of order (the “**Proposed Order**”) is attached to this Motion.

2. The principal statutory bases for this Motion are sections 105(a) and 345(b) of the Bankruptcy Code.

JURISDICTION AND VENUE

3. 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

4. On the Petition Date, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Them to (A) Maintain and Use Their Existing Cash Management System, (B) Pay Bank Fees, (C) Utilize Existing Business Forms, (D) Utilize Credit Cards, and (E) Engage in Intercompany Transactions and (II) Waiving Compliance with Section 345(b)* [Docket No. 80] (the “**Cash Management Motion**”) seeking authority to use the Debtors’

² A detailed description of the Debtors and their businesses is set forth in the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) [Docket No. 13], filed with the Debtors’ voluntary petitions for relief filed under title 11 of the United States Code (the “**Bankruptcy Code**”), on June 1, 2023 (the “**Petition Date**”). The Debtors are operating their businesses during the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the “**Committee**”) was appointed on June 16, 2023; no trustee, examiner or other official committee has been appointed. Citations to “Docket No. ___” refer to the docket in the above-captioned main case, while citations to “Adv. Docket No. ___” refer to the docket in the adversary proceeding captioned *Wesco Aircraft Holdings, Inc., et al. v. SSD Invs. Ltd. et al.*, Adv. No. 23-03091 (MI) (Bankr. S.D. Tex) (the “**2022 Financing Adversary Proceeding**”).

existing Cash Management System, including their Bank Accounts.³ The Court entered an order approving the Cash Management Motion on an interim basis [Docket No. 122] on June 1, 2023, and an order approving the Cash Management Motion on a final basis [Docket No. 374] (the “**Final Cash Management Order**”) on July 7, 2024. Pursuant to the Final Cash Management Order, on a number of occasions during the Chapter 11 Cases, the Debtors and the U.S. Trustee have consensually agreed to extend the deadline to come into compliance with section 345(b) of the Bankruptcy Code. The current deadline to comply with section 345(b) of the Bankruptcy Code is June 3, 2024 (the “**Section 345(b) Deadline**”).⁴ Paragraph 12 of the Final Cash Management Order provides that the Debtors may seek relief from the Court to obtain further extensions of the Section 345(b) Deadline.

5. As described in the Cash Management Motion, as of the Petition Date the Debtors maintain 62 Bank Accounts at nine different financial institutions. The majority of the Debtors’ Bank Accounts are with JPMorgan Chase Bank. Forty-eight of the 62 Bank Accounts are maintained at depositories that have agreed to comply with the requirements of the U.S. Trustee. The remaining Banks—at which the Debtors maintain 14 Bank Accounts—are not authorized depositories. Of those, one Bank Account, was maintained at MUFG Bank in the United States, but the Debtors closed this account postpetition. The remaining thirteen Bank Accounts are maintained overseas at BBVA Bank (in Mexico), Santander Bank (in Argentina and Poland), Bank Hapoalim (in Israel), and Bank Leumi (also in Israel). As of the Petition Date, the aggregate balance in these 13 Bank Accounts was \$4,504,651.

6. All four of the Banks holding the remaining Bank Accounts are located outside of the United States and thus are less likely to be identified by the U.S. Trustee as authorized depositories. However, the principal basis for the exclusion of these four Banks from the U.S.

³ Capitalized terms used, but not defined, in this Motion have the meanings ascribed to such terms in the Cash Management Motion.

⁴ Pursuant to paragraph 30 of the Complex Case Procedures, the filing of this Motion automatically extends the Section 345(b) Deadline until the Court rules on the Motion.

Trustee Guidelines is location—not financial soundness or stability. The Debtors believe that these financial institutions have demonstrated throughout these Chapter 11 Cases that they are well-positioned to continue performing depository and cash management functions. Moreover, the Israeli government provides an implicit guarantee of the Israeli Bank Accounts, which provides the functional equivalent of insurance by the Federal Deposit Insurance Corporation. In addition, as outlined in the Cash Management Motion, the balances for the remaining accounts outside of the United States are modest in comparison to those reflected in the authorized depositories. Given the global nature of Incora’s operations and cash management requirements, it is not feasible to consolidate all cash activities in the narrow group of financial institutions approved in the U.S. Trustee Guidelines.

7. The Debtors, along with their advisors, have investigated possible solutions to the non-compliance of the Bank Accounts held at the foreign Banks. Prior to the commencement of these chapter 11 cases, the Debtors and the U.S. Trustee engaged in discussion regarding section 345(b) compliance. These discussions are reflected via the consensual request for an extension for the Bank Accounts to come into section 345(b) compliance under the Cash Management Motion, with the ability to further extend without court order. During the Chapter 11 Cases, the Debtors and the U.S. Trustee extended the Section 345(b) Deadline on numerous occasions, but the Debtors understand that the U.S. Trustee has now changed its policy concerning consensual extensions of section 345(b) deadlines without the filing of a motion.

8. Despite these efforts, at this time the Debtors have not been able to bring the Bank Accounts held at foreign Banks into compliance with section 345(b) of the Bankruptcy Code without causing significant disruption to the Cash Management System and their business operations and/or jeopardizing the Debtors’ ability to confirm a plan and emerge from bankruptcy. In most cases, Incora uses non-Debtor subsidiaries for its operations outside the United States and the United Kingdom, and the bank accounts that support those operations are not subject to the requirements of section 345(b). However, in the case of Argentina and Israel, Incora’s operations

are conducted through U.S.-domiciled entities that are Debtors in these cases. Incora's operations in Argentina and Israel therefore depend heavily on these Bank Accounts.

BASIS FOR RELIEF

9. Pursuant to section 345(b) of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or by the deposit of securities of the kind specified in 31 U.S.C. § 9303. *See* 11 U.S.C. § 345(b). Nonetheless, a bankruptcy court may waive these requirements “for cause.” *Id.*; *see also In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

10. The Court's ability to excuse strict performance of the deposit and investment requirements of section 345(b) “for cause” arises from the 1994 amendments to the Bankruptcy Code. The legislative history of that amendment provides as follows:

Section 345 of the Code governs investments of funds of bankruptcy estates. The purpose is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.*, 33 F.3d 294 (3d Cir. 1994).

In re Service Merchandise Co., Inc., 240 B.R. at 896 (quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)).

11. In *Service Merchandise*, the bankruptcy court identified the following factors as a guide for determining whether cause exists to waive the requirements of section 345(b) of the Bankruptcy Code:

- a. The sophistication of the debtor's business;
- b. the size of the debtor's business operations;
- c. the amount of investments involved;
- d. the Moody's and Standard and Poor ratings of the financial institutions where the debtor's funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor's own business for insuring the safety of the funds;
- g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor of current practices;
- i. the harm, if any, to the estate; and
- j. the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch. Co., 240 B.R. at 896. The *Service Merchandise* court concluded that "cause" existed to warrant relief under section 345(b) of the Bankruptcy Code because the debtors there were "large, sophisticated [companies] with a complex cash management system[,]" with the ability to shift money as needed to ensure that their funds were safe. *Id.* The benefits to the debtor in waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would needlessly handcuff these debtors' reorganization efforts." *Id.* at 896–897.

12. Here, the Debtors merely seek a further extension of the deadline to comply with section 345(b). Requiring the Debtors to immediately transfer funds to other banks to be fully in compliance with section 345(b) would be unduly burdensome to the Debtors' operations, which span multiple jurisdictions and currencies, and could cause severe tax and/or regulatory consequences. In addition, the vast majority of the Bank Accounts, are maintained in U.S. Trustee authorized depositories. Even those that are not in authorized depositories are primarily maintained

at well-capitalized banks. Those Banks, particularly those located outside of the U.S., are essential to the Debtors' global operations because they enable conversion to local currencies and are otherwise necessary for the Debtors to transact in certain jurisdictions.

13. The Debtors are a multi-national, sophisticated enterprise with a complex cash management system that allows their operations to function efficiently and with minimal risk. The Bank Accounts that do not comply with section 345(b) of the Bankruptcy Code are maintained at well-respected, stable financial institutions. The significant financial and logistical burden to the estate to comply with section 345(b) is not reasonable, particularly considering the fact that the Debtors are approaching the conclusion of the trial in the 2022 Financing Adversary Proceeding and a hearing to consider confirmation their chapter 11 plan is currently set for early July.

14. As mentioned, each of the foreign Bank Accounts is at a well-established global financial institution that is heavily regulated with strict capital and reporting requirements and is familiar with the Debtors' business operations. These capital requirements reduce risks to the funds deposited in such accounts. In the case of the two Israeli Banks, the local government has historically made good on all deposits with failed banks. *See* David Marzuk, *Domestic Bank Intermediation: Domestically Owned Versus Foreign-Owned Banks in Israel*, BIS Papers No. 54, 2011, available at <https://www.bis.org/publ/bppdf/bispap54n.pdf>. Moreover, these accounts support specific operations in Argentina and Israel that cannot feasibly be supported through section 345(b)-compliant accounts outside those jurisdictions. Thus, the Debtors' ability to continue to use the foreign Bank Accounts will be administratively convenient, efficient, and minimize unnecessary costs to the estates.

15. Considering the majority of the Debtors' bank accounts comply with section 345(b) of the Bankruptcy Code, granting a further extension of the deadline to comply with the requirements under section 345(b) of the Bankruptcy Code would not negatively affect any party in interest. Accordingly, the *Service Merchandise* factors show that sufficient cause exists to extend the deadline to comply with section 345(b) of the Bankruptcy Code. In recent cases in this district, many chapter 11 debtors have not been able to comply with section 345(b) and have obtained

extensions of the expiration of the section 345(b) compliance deadline. *See, e.g., In re OSG Holdings, Inc.*, No. 23-90799 (CML) (Bankr. S.D. Tex. Nov. 9, 2023) (extending the time for compliance with section 345(b)); *In re Noble House Home Furnishings LLC*, No. 23-90773 (CML) (Bankr. S.D. Tex. Oct. 6, 2023) (same); *In re Athenex, Inc.*, No. 23-90295 (DRJ) (Bankr. S.D. Tex. June 15, 2023) (same); *In re Kalera, Inc.*, No. 23-90290 (DRJ) (Bankr. S.D. Tex. May 24, 2023) (same).

NOTICE

16. Notice of this Motion will be provided to all parties in interest listed on the master service list maintained by Incora pursuant to paragraph 11 of the Complex Case Procedures, including the U.S. Trustee. Incora respectfully submits that no further notice is required under the circumstances.

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Upon the foregoing Motion, Incora respectfully requests that the Court (a) enter an order granting this Motion, substantially in the form attached, and (b) grant such other relief as is just and proper.

Dated: June 3, 2024

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

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*Counsel to the Debtors and
Debtors in Possession*

CERTIFICATE OF SERVICE

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

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

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

In re

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

Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

**ORDER EXTENDING THE
DEADLINE TO COMPLY WITH SECTION
345(B) OF THE BANKRUPTCY CODE**

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

Upon the motion (the “*Motion*”),² of the above-captioned debtors (collectively, the “*Debtors*” or “*Incora*”), for entry of an order (this “*Order*”) extending the deadline for the Debtors to comply with section 345(b) of the Bankruptcy Code; 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 Incora’s estates; it is hereby **ORDERED** that:

1. The Section 345(b) Deadline is extended with respect to the Bank Accounts held at foreign Banks until August 31, 2024.
2. Notice of the Motion as provided therein shall be deemed good and sufficient and satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules.
3. This Order is without prejudice to Incora’s rights to seek further extensions of the Section 345(b) Deadline.
4. Incora and its agents are authorized to take all steps necessary or appropriate to carry out this Order.

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

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

Dated: _____
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE