Docket #0026 Date Filed: 6/4/2024

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)
ARROW ELECTRONICS, INC., Plaintiff, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, Defendant.	Adv. Pro. No. 24-03010 (MI)

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING AND IMPLEMENTING SETTLEMENT OF ADVERSARY PROCEEDING

[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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Wesco Aircraft Holdings, Inc. ("***WAHI***" and, together with its affiliated debtors and debtors in possession, the "***Debtors***"[2] or "***Incora***") respectfully states as follows.

RELIEF REQUESTED

1. By this motion (the "***Motion***"), WAHI seeks entry of an order, authorizing Incora to enter into a settlement (the "***Settlement***") with Arrow Electronics, Inc. and its affiliates (together, "***Arrow***") in resolution of the above-captioned adversary proceeding (the "***Adversary Proceeding***") and other matters, and implementing certain terms of that Settlement. Except when noted, citations to the docket refer to the docket in the Adversary Proceeding.

2. The principal statutory bases for this Motion are sections 105(a) and 363(b) of title 11 of the U.S. Code (the "***Bankruptcy Code***") and Rule 9019 of the Federal Rules of Bankruptcy Procedures (the "***Bankruptcy Rules***").

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. Arrow is a global distributor of electronic components that has occasionally acted as both a vendor and customer of Incora. In early 2023, Arrow sent a series of wire transfers to WAHI in the total amount of $683,720.33. By Arrow's account, these wire transfers were sent to Incora by mistake; the money was intended for an unrelated company called Inrcore, LLC.

[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***") [Main Case 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 as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed on June 16, 2023; no trustee, examiner or other official committee has been appointed.

5. During the Chapter 11 Cases, Incora has acknowledged that Arrow is entitled to a general unsecured claim for the refund of its pre-petition payments. *See* Schedule E/F, at line 3.76 (Aug. 30, 2023) [Main Case Docket No. 693] (recording a non-contingent, liquidated, undisputed "Refund Request Claim" against Wesco Aircraft Hardware Corp. in the amount of $683,720.33).

6. On January 23, 2024, Arrow initiated the Adversary Proceeding through the filing of a complaint. Among other things, Arrow's complaint sought to impose a constructive trust against the proceeds of the $683,720.33 payments.

7. Separately, Arrow has filed over $300,000 of unsecured claims, some of which assert priority status under 11 U.S.C. § 503(b)(9). *See* Proofs of Claim No. 1378, 1379, 1381, 1383, 1385, 1386, 1467, 1472, 1474, 1481, 1483, 1486. During the early stages of the Chapter 11 Cases, Incora offered critical vendor status to Arrow. However, Arrow declined to commit to providing services to Incora while the mistaken 2023 payments were unresolved.

8. Incora and Arrow have engaged in several months of constructive discussions to resolve the Adversary Proceeding. Those discussions have resulted in a proposed Settlement on the following terms:

- Incora will pay Arrow $740,000 in full settlement of the claims raised in the Adversary Proceeding and Arrow's proofs of claim.
- Arrow will accept critical vendor status and will execute a vendor payment agreement substantially similar to the form attached to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief* [Main Case Docket No. 3]. Arrow will extend credit on 30-day payment terms, up to a global limit of $250,000.
- Arrow will withdraw its proofs of claim and voluntarily dismiss the Adversary Proceeding. Arrow will waive any further recovery (including on account of unsecured claims) on the payments that are the subject of the Adversary Proceeding, and will grant full releases to Incora and its related parties.
- All components of the Settlement are subject to approval of the Court under Bankruptcy Rule 9019.

BASIS FOR RELIEF

9. Section 105(a) of the Bankruptcy Code, in pertinent part, empowers the Court to issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C. §105(a).

10. Bankruptcy Rule 9019(a) provides, in relevant part, that a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Refin. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, approval of a compromise is within the sound discretion of the bankruptcy court. *See U.S. v. AWECO, Inc.* (*In re AWECO, Inc.*), 725 F.2d 293, 297 (5th Cir. 1984). Settlements are considered a "normal part of the process of reorganization" and "a desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated, and costly." *Rivercity v. Herpel* (*In re Jackson Brewing Co.*), 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act). Likewise, section 363(b)(1) of the Bankruptcy Code authorizes, in relevant part, a debtor in possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate," which will be permitted if there is a good business reason for doing so. *See, e.g.*, *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. . . ."); *see also Institutional Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc.* (*In re Cont'l Airlines, Inc.*), 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a 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.").

11. The Fifth Circuit sets forth a three-factor balancing test under which bankruptcy courts are to analyze proposed settlements. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 642 F.2d 599, 602 (5th Cir. 1980). The factors the Court considers are: "(1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and

law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise." *Id.*.

12. Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *See Age Refin. Inc.*, 801 F.3d at 540 (internal citations omitted) ; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp.* (*In re Foster Mortg. Corp.*), 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540 (citations omitted); *Foster Mortg. Corp.*, 68 F.3d at 918.

13. Additionally, the role of the bankruptcy court is generally not to decide the issues in dispute when evaluating a settlement. *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Instead, the court should determine "whether the settlement is fair and equitable as a whole." *Id.*;. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

14. Incora submits that the proposed Settlement satisfies the foregoing criteria and is a reasonable settlement that is in the best interest of the Debtors' estates. *First*, success in the Adversary Proceeding is not a foregone conclusion. To be sure, Incora continues to maintain that Arrow is entitled only to the general unsecured claim that Incora listed in its schedules of assets and liabilities, because bankruptcy courts have typically refused to impose a constructive trust over the proceeds of mistaken pre-petition payments. *See In re Dow Corning Corp.*, 192 B.R. 428 (Bankr. E.D. Mich. 1996) (refusing to impose constructive trust for benefit of claimant that had inadvertently made a double payment); *cf. Compton v. Plains Mktg., LP* (*In re Tri-Union Dev. Corp.*), 349 B.R. 145, 151-152 (Bankr. S.D. Tex. 2006) (Isgur, J.) (explaining that constructive trust is a disfavored remedy where a payor's own negligence was the cause of a mistaken payment). Nevertheless, Incora recognizes that some risk exists that a constructive trust would be imposed.

15. *Second*, even if Incora prevails in the Adversary Proceeding, its victory may be pyrrhic if it is forced to spend as much or almost as much to litigate the matter as the mistaken payments amount to. Litigation of the Adversary Proceeding is likely to entail, at a minimum, full briefing and argument on a motion to dismiss. Depending on the result of the motion to dismiss, Incora may also be forced to expend estate assets to collect and review documentary discovery, to propound discovery of Arrow employees, and to defend depositions of several Incora employees in (among other places) Mexico and the United Kingdom.

16. *Third*, aside from the expenses of attorney fees, the discovery process may be a distraction for all of the Incora employees—at both the executive and subordinate levels—who were involved in Incora's response to Arrow's mistaken payments.

17. *Fourth*, the Settlement will open the door for Incora to resume its longstanding commercial relationship with Arrow. Arrow is a major producer and distributor of electronic hardware. As such, Incora classified Arrow as a "critical vendor" in the early stages of the Chapter 11 Cases. Although Incora has subsequently found alternatives to direct orders with Arrow, Incora would still prefer to maintain a business relationship with Arrow.

18. For these reasons, Incora believes that the Settlement should be approved and implemented through the proposed order attached to the Motion.

NOTICE

19. Notice of this Motion will be provided to (a) all parties in interest listed on the master service list maintained by the Debtors pursuant to paragraph 11 of the Procedures for Complex Cases in the Southern District of Texas; and (b) counsel to Arrow. The Debtors respectfully submit that no further notice is required under the circumstances.

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Dated: June 4, 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 4, 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.

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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)
ARROW ELECTRONICS, INC., Plaintiff, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, Defendant.	Adv. Pro. No. 24-03010 (MI)

ORDER AUTHORIZING AND IMPLEMENTING SETTLEMENT OF ADVERSARY PROCEEDING

[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***"), for entry of an order (this "***Order***") authorizing and implementing the Settlement; 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 Settlement is approved.

2. The Debtors and Arrow are authorized to execute a vendor payment agreement (the "***VPA***") in substantially the form attached to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief* [Main Case Docket No. 3]. The VPA shall provide that Arrow will extend credit on 30-day payment terms, up to a global limit of $250,000.

3. Upon execution of the VPA, the Debtors shall pay $740,000.00 (the "***Settlement Payment***") to Arrow in full satisfaction of the claims asserted by Arrow in the Adversary Proceeding and the proofs of claim filed by Arrow in the Chapter 11 Cases.

4. Upon payment pursuant to paragraph 3 of this Order, each of Arrow's outstanding proofs of claim in the Chapter 11 Cases shall be deemed withdrawn and Arrow's scheduled unsecured claim shall be deemed satisfied.

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

5. The Adversary Proceeding is dismissed, without prejudice to reinstatement if the execution of the VPA or the transfer of the Settlement Payment does not occur. The Clerk of Court is respectfully directed to close the Adversary Proceeding.

6. Upon payment pursuant to paragraph 3 of this Order and upon other consideration set forth in the Settlement, the Debtors and Arrow (each, a "***Releasing Party***" and, collectively, the "***Releasing Parties***"), each on behalf of itself and any other party, person, or entity claiming under or through it, hereby generally releases, discharges, acquits, and covenants not to sue (i) each other Releasing Party and its respective current and former agents, servants, officers, directors, shareholders, employees, subsidiaries, divisions, affiliates, parents, attorneys, successors, predecessors, heirs, personal representatives, and assigns (each of the foregoing, including each Releasing Party, a "***Released Party***") from all manners of action, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses, liens, and claims of every kind, nature, and character whatsoever, other than with respect to subsequent commercial agreements between Arrow and the Debtors, the VPA, and the rights and obligations of the Releasing Parties under the Settlement or Order, whether in law or in equity, whether based on contract (including, without limitation, quasi-contract or estoppel), statute, regulatory, tort (including, without limitation, intentional torts, fraud, misrepresentation, defamation, breaches of alleged fiduciary duty, recklessness, gross negligence, or negligence) or otherwise, accrued or unaccrued, known or unknown, matured, unmatured, liquidated or unliquidated, certain or contingent, that such Releasing Party ever had or claimed to have or now has or claims to have, against any Released Party arising under or related to the Settlement, the Adversary Proceeding, each of Arrow's outstanding proofs of claim in the Chapter 11 Cases, or Arrow's scheduled unsecured claim, and (ii) each other Releasing Party from any and all other claims or causes of action arising prior to the entry of this Order, other than with respect to subsequent commercial agreements between Arrow and the Debtors, the VPA, and the rights and obligations of the Releasing Parties under the Settlement or Order.

7. Notwithstanding Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Rules or the Bankruptcy Local Rules of the U.S. Bankruptcy Court for the Southern

District of Texas, the terms of this Order shall be 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 this Order, including by recording the withdrawal and satisfaction of Arrow's claims on the Debtors' claims register.

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

Dated: _____
Houston, Texas

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MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE