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

In re **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Debtors.[1]	Case No. 23-90611 (MI) Chapter 11 (Jointly Administered)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Plaintiffs, *v.* **SSD INVESTMENTS LTD.**, *et al.*, Defendants.	Adv. Pro. No. 23-03091
SSD INVESTMENTS LTD., *et al.*, Counterclaim Plaintiffs, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	

2024/2026 HOLDERS' EMERGENCY MOTION TO (I) STRIKE NONRESPONSIVE PORTION OF PIMCO'S BRIEF RESPONDING TO THE COURT'S FEBRUARY 29, 2024 REQUEST, (II) EXCLUDE DECLARATION OF SCOTT SHWARMANN, DATED MAY 13, 2024, AND (III) STRIKE COUNTERCLAIM DEFENDANTS' SUPPLEMENT CONCERNING THE TESTIMONY OF THE 2024/2026 HOLDERS' EXPERT EDWARD R. MORRISON

[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.

23906112406100000000000003

Emergency relief has been requested. Relief is requested not later than 5:00 p.m. CT on June 19, 2024. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The 2024/2026 Holders[2] respectfully move this Court, on an emergency basis, to strike certain recent filings by the Counterclaim Defendants, namely (i) Sections II and III of the PIMCO Noteholder's Brief Responding to the Court's February 29, 2024 Request (the "PIMCO Brief") (Docket No. 1266), (ii) the Declaration of Scott Schwarmann in support of the PIMCO Brief, dated May 13, 2024 (the "Schwarmann Declaration" or "Schwarmann Decl.") (Docket No. 1266-1), and (iii) the Debtors' and Non-Debtor Counterclaim Defendants' Supplement Concerning the Testimony of the 2024/2026 Holders' Expert Edward R. Morrison (the "Benchmark Rebuttal") (Docket No. 1288). Those filings should be stricken from the record because they are non-responsive to the Court's questions and rely on, or otherwise constitute, inadmissible evidence.

INTRODUCTION

1. On separate occasions, the Court asked the parties for further submissions to address two narrow topics: (i) whether PIMCO is subject to any regulations requiring that it keep accurate trading records, and (ii) how many of the 132 Benchmark Indentures identified by Professor Ed Morrison contain the phrase "series of transactions" or similar language accompanying lien-release protection.

2. ***First***, on February 29, the Court asked PIMCO whether federal securities regulations require it to maintain accurate internal trading records. *See* Docket No. 969 at 162:10-12 (Feb. 29 Trial Tr.). The simple answer to that question is ***yes***.

3. PIMCO is a registered investment advisor (*see* Ex. 1 (Investment Advisor Public Disclosure for Pacific Investment Management Company LLC), *available at* https://adviserinfo.sec.gov/firm/summary/104559), which ***must*** keep accurate records regarding their trading activity. *See* 15 U.S.C. § 80b-4; *see also* 17 C.F.R. § 275.204-2.

[2] Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the *2024/2026 Holders' First Amended Counterclaims*, Docket No. 144.

4. But instead of providing the Court with that simple answer and stopping there, on May 14, PIMCO submitted a nine-paragraph, hearsay declaration that is inadmissible along with a brief that goes well beyond the question posed by the Court. Those submissions improperly attempt to rewrite PIMCO's contemporaneous trading data to suit its post hoc litigation position.

5. PIMCO's trading records show that on March 28, 2022—the date on which the Phantom Notes were purportedly issued and concurrently canceled—PIMCO purchased ***only*** New 1L Notes and ***not*** Additional 2026 Notes (a.k.a. Phantom Notes). PIMCO attempted to explain away that unfavorable evidence through Mr. Dostart's testimony by eliciting from him that the trade ticket screenshot in a March 18, 2022 email was purposefully inaccurate, despite the fact that such testimony contradicted his deposition testimony. Docket No. 969 at 115:22-118:7, 122:9-123:4, 123:9-125:25, 151:6-156:5 (Feb. 29 Trial Tr.). Now, PIMCO is attempting to use the Court's request for briefing on recordkeeping requirements to introduce hearsay about which Mr. Dostart was precluded from testifying.

6. Contemporaneous records—which show that PIMCO intended to purchase, and in fact purchased, New 1L Notes with its new money, and ***not*** Phantom Notes—govern. *See e.g., Offshore Marine Contractors, Inc. v. Palm Energy Offshore, LLC*, No. CIV.A. 10-4151, 2013 WL 5530273, at *12 (E.D. La. Oct. 7, 2013), *judgment clarified*, No. CIV.A. 10-4151, 2013 WL 6858911 (E.D. La. Dec. 30, 2013), *aff'd sub nom. Offshore Marine Contractors, Inc. v. Palm Energy Offshore, L.L.C.*, 779 F.3d 345 (5th Cir. 2015) (finding that evidence contemporaneous to the events at issue "is significantly more probative than evidence of the parties' after-the-fact machinations").

7. ***Second***, on May 2, the Court asked the parties to identify the prevalence of the phrase "series of transactions" accompanying lien-release protection in the 132 Benchmark Indentures discussed during Professor Morrison's examination.

8. Like the 2024/2026 Holders, the Counterclaim Defendants identified four Benchmark Indentures that included some form of "series of transactions" language accompanying lien-release protection. Benchmark Rebuttal at 4. However, the Counterclaim Defendants disregarded the Court's request for parties to conduct a simple "counting exercise" with respect to the Benchmark Indentures. Docket No. 1249 at 177:24-178:11, 179:21-25 (May 2 Trial Tr.). They instead made a litany of legal arguments and tried to rebut Professor Morrison's testimony with brand new unsubstantiated "benchmarking," unaccompanied by a proffering a witness for the 2024/2026 Holders to cross-examine.

9. While the Benchmark Rebuttal should be stricken altogether, the data proffered by the Counterclaim Defendants in that unauthorized submission actually reinforces the 2024/2026 Holders' point: "series of transactions" language accompanying lien-release language is anomalous, and when it appears, it ***only*** accompanies the narrow lien-release protection, not the broad variation in the form of "have the effect of releasing all or substantially all of the Liens," that is contained in the Governing Indentures.

10. Accordingly, and for the reasons below, the Schwarmann Declaration and all arguments stemming from it in the PIMCO Brief, as well as the Benchmark Rebuttal, should be stricken from the record, in whole or in part, and the Counterclaim Defendants should be precluded from introducing them, referring to them, or otherwise relying on those materials during this trial.

ARGUMENT

11. Under the law of this Circuit, this Court may strike unresponsive, irrelevant and otherwise improper submissions pursuant to the Court's "inherent power to control the disposition of the causes on its docket." *Darden v. Vines*, No. 6:22-CV-00404, 2022 WL 11388606, at *2 (W.D. La. Oct. 19, 2022) (citing *U.S. v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005)); *Powell v. Dallas Morning News L.P.*, 776 F. Supp. 2d 240, 246 (N.D. Tex. 2011), *aff'd sub nom. Powell v. Dallas Morning News, LP*, 486 F. App'x 469 (5th Cir. 2012) (striking unauthorized supplemental declaration pursuant to "the Court's inherent power to control its docket"); *Vicks v. Packnett*, No. CV 18-556-BAJ-EWD, 2020 WL 2616398, at *1 (M.D. La. May 22, 2020) (recognizing that the courts' inherent power to control their dockets "includes the ability to remove matters from the record that are improperly filed").

12. Additionally, it is settled law that declarations from out-of-court declarants are inadmissible hearsay when offered for the truth of matters asserted in those declarations. *See*, *e.g.*, *CRST Expedited, Inc. v. Swift Transportation Co. of Arizona*, LLC, No. 17-CV-25-CJW-KEM, 2019 WL 2929516, at *7 (N.D. Iowa July 8, 2019); *Kanellakopoulos v. Unimerica Life Ins. Co.*, No. 15-CV-04674-BLF, 2018 WL 984826, at *5 (N.D. Cal. Feb. 20, 2018); *Def. of Animals v. U.S. Dep't of Agric.*, 587 F. Supp. 2d 178, 183 (D.D.C. 2008).

I. Sections II and III of the PIMCO Brief Should be Stricken as Improper Attempts by PIMCO to Fill Evidentiary Holes

13. As PIMCO admits, the Court authorized supplemental briefing to address "whether PIMCO's recordkeeping was subject to a regulatory regime and the nature of any such regime." PIMCO Brief at 1. Section I of the PIMCO Brief fully addresses that question by confirming that "[t]he recordkeeping requirements of [the SEC] Rule 204-2 apply to PIMCO in its role as a registered investment adviser." PIMCO Brief at ¶ 6.

14. Sections II and III of the PIMCO Brief, however, do not address the Court's narrow question about the regulatory regime applicable to PIMCO. Instead, through those sections, PIMCO attempts with hearsay and *ipse dixit* to patch a gaping hole in its evidence, namely the absence in PIMCO's ***contemporaneous*** trading records of ***any*** indication that PIMCO purchased the Phantom Notes.

15. PIMCO and Silver Point would not have lent Incora ***any*** new money in exchange for additional *pari pasu* notes. *See*, *e.g.*, Docket No. 536-24 at 5 (Mar. 24, 2022 Wolverine Intermediate Holding Corporation Boad Minutes) (noting that "[the PIMCO-Silver Point] Group was not willing to provide new money on a pari passu basis"); Docket No. 697 at 106:14-21 (Feb. 1 Trial Tr.);[3] Docket No. 939 at 200:25-201:2 (Feb. 27 Trial Tr.).[4]

16. Reflecting that reality, PIMCO produced copies of contemporaneous internal emails and trading records, which uniformly show that PIMCO was providing its $147 million portion of new money to Incora in exchange for the New 1L Notes, ***not*** the Phantom Notes.

17. PIMCO's internal emails show that in the days leading up to the 2022 Transaction, PIMCO prepared a trade ticket for its new-money investment. *See* Docket No. 905-6. The

---

[3] At trial, Platinum Sponsor's executive and member of Wolverine Intermediate's board of directors, Malik Vorderwuelbecke, testified as follows:

> **Q:** So your understanding, I take it, was that the majority secured group, PIMCO Silverpoint, was not willing to provide new money on a pari passu basis, right?
> **A:** That's correct.
> **Q:** Okay. And your understanding also was that the PIMCO Silverpoint Group was not willing to open up the transaction to all holders, right?
> **A:** Yes.

Docket No. 697 at 106:14-21 (Feb. 1 Trial Tr.).

[4] A representative of Evercore, PIMCO's and Silver Point's financial advisor with respect to the 2022 Transaction, likewise testified to his understanding that, in 2022, his clients would not have provided new money to Incora on a *pari passu* basis:

> **Q:** PIMCO and Silver Point were not willing to provide new money on a *pari passu* basis. Correct?
> **A:** On the terms described here, that's correct.

Docket No. 939 at 200:25-201:2 (Feb. 27 Trial Tr.).

description field in that trade ticket plainly stated—as shown below—that the debt security PIMCO would be purchasing as part of the 2022 Transaction was "**INCORA SUPER SENIOR 10.5% BONDS**," ***i.e. the New 1L Notes***:

Ticket Type	Fund	Account	Description	Asset	BBID	B/S	Quantity/Loan Amount	Price
BBG	Texas Children's Hospital Foundation	1730	INCORA SUPER SENIOR 10.5% BONDS	CORP9L9A5	PPEAEA2H5	Buy	243,000.00	100.00

Id. at 2.

18. At his deposition, PIMCO's witness, Mr. Dostart—who was designated by PIMCO as its corporate representative on the topic of purchases and sales of Incora notes (*see* Docket. No. 725-37 at 14:8-24; Docket No. 900-1 at 13 (Topic 1))—testified that this trade ticket was an accurate reflection of the ticket that was prepared and approved for providing new money to Incora in the 2022 Transaction. Docket No. 725-37 at 148:11-149:12.

19. Additionally, Mr. Dostart confirmed the accuracy of PIMCO's trade log which, like the trade ticket, reflects that, on March 28, 2022, PIMCO purchased ***only*** New 1L Notes and ***not*** the Phantom Notes. *See* Docket. No. 725-37 at 215:23-219:11; Docket No. 725-28. Mr. Dostart said he had no reason to believe there was anything inaccurate about those trade logs. Docket. No. 725-37 at 219:8-11.

20. Consistent with that testimony, PIMCO cited those trade logs in response to the 2024/2026 Holders' Interrogatories 15 and 16, seeking information about ***all*** Incora notes purchased by PIMCO. *See* Docket Nos. 905-10 at 4-6, 906 at 15-16. As shown below, those requests covered any purchases of the Phantom Notes that PIMCO would have made on March 28, 2022:

- **Interrogatory No. 15:** Without regard to time period, describe all Documents and information sources that reflect the price or prices at which You purchased Original Secured Notes, Unsecured Notes, New 1L Notes, or New 1.25L Notes;

- **Interrogatory No. 16:** Identify each of Your purchases and/or sales of Original Secured Notes, Unsecured Notes, New 1L Notes, or New 1.25L Notes.

The trading records to which PIMCO referred in responding to the foregoing interrogatories and which are now in evidence (*see* Docket Nos. 725-28 and 727-3) simply do not show a single purchase of the Phantom Notes by PIMCO on March 28, 2022.

21. At trial, PIMCO repeatedly and unsuccessfully tried to elicit a post-hoc explanation from Mr. Dostart that, despite the absence in PIMCO's trading records of any Phantom Notes' purchases, PIMCO supposedly still purchased those notes. *See*, *e.g.*, Docket No. 969 at 97:1-21, 112:3-8, 113:1-114:10, 115:22-116:19; 117:10-118:7 (Feb. 29 Trial Tr.).

22. The Court barred, as inadmissible hearsay, Mr. Dostart's attempt to explain that his decision to approve a trade ticket for the purchase of the New 1L Notes, which he first agreed was accurate at his deposition, was based on PIMCO's operational needs or practices:

> **PIMCO COUNSEL**: So what were you intending to do when you approved of a trade ticket that you've now testified has an inaccurate description?
> **MR. DOSTART**: I was intending to enable my operations to [*sic*] team to execute in the manner that they had communicated to me they viewed as best practice.
> **THE COURT**: I'm going to sustain the objection.

Docket No. 969 at 116:13-19 (Feb. 29 Trial Tr.).

23. Subsequently, the Court prohibited Mr. Dostart's attempt to rewrite PIMCO's trading records through testimony about how those records supposedly do not mean what they say:

> **MR. DOSTART**: So, consistent with what Your Honor and I just discussed, the -- the "buy" line reflects the acquisition by Account Number 1730, Texas Children's Hospital Foundation, of 244,000 of the additional 2026 notes.
> **THE COURT**: No, I'm not taking that answer. I'm not letting him change what's written there.

Docket No. 969 at 122:24-123:4 (Feb. 29 Trial Tr.).

24. PIMCO then tried to elicit the reasons its records described the Phantom Notes as the New 1L Notes, but again, that maneuver failed:

> **PIMCO COUNSEL**: Right, Your Honor. I've got – let me ask you -- let me ask you this. Do you believe that the description here is correct or incorrect?
> **MR. DOSTART**: I believe the description here is incorrect.
> **PIMCO COUNSEL**: Okay. And what's the basis for your belief?
> **MR. DOSTART**: Communication with my operations staff, my understanding of the transactions, and my review of this document.
> **2024/2026 HOLDERS COUNSEL**: Your Honor, to the extent that answer is based on communications with his operations staff, I'll move to strike.
> **THE COURT**: Sustained.

Docket No. 969 at 123:6-123:18 (Feb. 29 Trial Tr.).

25. Despite those rulings, PIMCO continues to proffer inadmissible hearsay in the PIMCO Brief to try to explain away its contemporaneous records. *See* PIMCO Brief at ¶¶ 8-11. But those are mere contentions, not evidence. As shown above, the Court declined to accept Mr. Dostart's statements about those matters on hearsay grounds. And it certainly should not accept PIMCO's *ex post* hearsay declaration or any arguments relying on such hearsay.

26. Moreover, apart from its inadmissibility, that hearsay constitutes "after-the-fact testimony and argument by an interested party that is contradicted by contemporaneous evidence." *Fed. Trade Comm'n v. Abbvie Inc*., No. CV 14-5151, 2016 WL 4478803, at *7 (E.D. Pa. Aug. 25, 2016); *see also Offshore Marine Contractors, Inc.*, 2013 WL 5530273, at *12 (finding that evidence contemporaneous to the events at issue "is significantly more probative than evidence of the parties' after-the-fact machinations"); *In re Drs. Hosp. of Hyde Park, Inc.*, 507 B.R. 558, 646 (Bankr. N.D. Ill. 2013) (recognizing probative value of contemporaneous evidence because it is "untainted by hindsight or post-hoc litigation interests").

27. In the end, PIMCO's attempt to elide the Court's evidentiary rulings through the PIMCO Brief, which itself relies on hearsay and attorney argument, should be rejected.

II. The Schwarmann Declaration Should be Excluded from Evidence

28. To support the unresponsive portion of its brief, PIMCO filed a declaration from a member of PIMCO's operations team, Scott Schwarmann. Docket No. 1266-1. The Court should exclude that declaration from the evidentiary record.

29. Not only is the Schwarmann Declaration inadmissible because, as this Court previously observed, such submission would constitute the "ultimate leading question" (Docket No. 827 at 242:3-17 (Feb. 9 Trial Tr.)), but it is also quintessential hearsay. Mr. Schwarmann was never identified as a witness by any party in this case and PIMCO did not attempt to call him to testify at trial. Thus, to the extent PIMCO offers into evidence any of the factual assertions in the Schwarmann Declaration, they are, on their face, "inadmissible hearsay because they are out-of-court statements by [a] declarant[] offered for the truth of the matter asserted." *In Def. of Animals*, 587 F. Supp. 2d 178 at 183.

30. Moreover, the declaration does not support PIMCO's position anyway. For instance, it assumes that the Original 2026 Notes and the Phantom Notes were identical. But they were not. As the Counterclaim Defendants admitted on reply in the summary judgment briefing, the Phantom Notes were not assigned the same CUSIP as the Original 2026 Notes. *See* Docket No. 323 at 33 n.15 (*Debtors' Reply in Support of Their Motion for Summary Judgement*). In fact, they were never issued a CUSIP, although the indenture would allow them to be assigned the same CUSIP if they were "fungible" for tax purposes. *Id*.

III. The Benchmark Rebuttal Should Be Stricken

31. The Court's request for supplementation following Professor Morrison's testimony was simple: "All that we're doing is looking for words in documents." Docket No. 1249 at 178:4-5 (May 2 Trial Tr.). The Court's focus was also clear: how, if at all, does the prevalence of certain

language in the *132 Benchmark Indentures* impact the relative composition of broad versus narrow lien-release provisions. *Id.* at 178:7-11 (allowing supplements to show whether or not "***the list*** of what is broad and not broad should shift") (emphasis added). The list before the Court was, of course, the Benchmark Indentures. *See* Docket No. 432-1 at 97-254 (Expert Report of Edward Morrison, Appendix C).

32. The Benchmark Rebuttal nonetheless disregards the bounds of the Court's allowance to supplement the record. Instead, the Counterclaim Defendants attempt to backdoor rebuttal expert testimony with brand new, inadmissible information and no witness to cross-examine. Their gambit, however, backfires for multiple reasons.

33. As the Court explained, the Counterclaim Defendants' cross-examination of Professor Morrison regarding one indenture that contains the "series of transactions" language in the lien-release provision is "not persuasive unless it's backed by numbers." Docket No. 1249 at 178:23-179:4 (May 2 Trial Tr.); *id.* at 180:5-9 ("I frankly want you to have the opportunity to tell me it happened 40 times and therefore, it discredits his report").

34. Rather than conduct the limited counting exercise requested by the Court as to the Benchmark Indentures, the Counterclaim Defendants purport to provide in their Benchmark Rebuttal the results of a "a non-exhaustive search" of "indentures (including note purchase agreements) and credit agreements" that allegedly include the "series of transactions" language (the "Hearsay Searches"). *See* Benchmark Rebuttal at 3-4. Those Hearsay Searches covered a period spanning more than two decades but identified only 36 agreements, plus the four Benchmark Indentures discussed in the 2024/2026 Holders' Rule 1006 Proffer. *See* Docket No. 1289 at 3-4.

35. Also, notably, the Counterclaim Defendants did not limit themselves to indentures, but also added credit agreements and note purchase agreements as well. Thus, far from discrediting Professor Morrison, the Benchmark Rebuttal confirms that there are vanishingly few funded debt instruments that include the language relied upon by the Counterclaim Defendants and ***none*** is analogous to the Benchmark Indentures.

36. To assess prevalence, the Hearsay Searches would need to establish the total number of credit instruments with language they focus on, which would include the total approximate number of not only indentures but also note purchase agreements and credit agreements from the past ***twenty-one years***. That implicates an extremely large universe from which one could try to extrapolate prevalence.

37. To illustrate, using Professor Morrison's benchmarking searches as a rough proxy for the volume of indentures during a 14-month period, and then assuming credit agreements and note purchase agreements are also utilized with approximately the same general regularity as indentures, the 40 instruments cited in the Hearsay Searches would need to be assessed against an approximate sample size 6,800.[5] Counterclaim Defendants, however, make no attempt whatsoever to estimate the actual population from which they purport to draw their sample. But, in any event, adjusted against an estimated baseline of 6,800 (which is educated guesswork), the Hearsay Searches would indicate a prevalence rate of ***0.6%*** over two decades.[6] Such a miniscule percentage

[5] Professor Morrison found 132 unique indentures and offering memoranda for senior secured notes in 14 months. If one assumes a steady rate of issuances, that reflects a rate of approximately 9.42 indentures per month, which translates to about 2,262 over twenty years. Assuming in that timeframe there is a roughly equal number of credit agreements, and a roughly equal number of note purchase agreements, that would equal 6,788.

[6] Likewise, focusing squarely on the 16 indentures identified by the Hearsay Searches implies a prevalence rate of just ***0.7%*** (*i.e.*, 16 ÷ 2,262), which reinforces the atypicality of the "series of transaction" language.

in such a vast timeframe lacks any probative value. *See, e.g.,* Docket No. 1249 at 180:1-2 (May 2 Trial Tr.).

38. Moreover, the Benchmark Rebuttal corroborates the 2024/2026 Holders' observation that the "series of transactions" language accompanying lien-release protection is ***always*** coupled with the otherwise narrow variant of lien-release language as classified by Professor Morrison: each one of the 40 Lien-Release provisions cited by the Counterclaim Defendants conforms to Professor Morrison's narrow classification. That is, it ***never*** accompanies broad language like that in the Governing Indentures, *i.e.* "have the effect of releasing."

39. Aside from missing the point, the Benchmark Rebuttal is inadmissible. In it, the Counterclaim Defendants provide no methodology from which the Court can assess the prevalence as it requested. Thus, the Benchmark Rebuttal's core claim rests on an unreliable analysis that employed cherry-picked materials to reach a desired outcome. *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 352 (5th Cir. 2007) ("Reliability is determined by assessing 'whether the reasoning or methodology underlying the testimony is scientifically valid.'") (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–93 (1993)); *see also* Fed. R. Evid. 702(c) (requiring that "testimony [be] the product of reliable principles and methods"); *360 Mortg. Grp., LLC v. Homebridge Fin. Servs., Inc.*, No. A-14-CA-00847-SS, 2016 WL 6075566, at *4 (W.D. Tex. Apr. 22, 2016) ("Experts cannot ignore relevant evidence by cherry-picking the facts which conform to a desired outcome.").

40. Professor Morrison's rigorous sample-testing stands in stark contrast to the Counterclaim Defendants' slapdash approach. For instance, Professor Morrison applied time parameters so that the Benchmark Indentures were drawn from contemporaneous issuances, each reflecting similar, pre-COVID market conditions. Docket No. 1173 at 159:1-17 (April 12 Trial

Tr.). Then, using indenture samples from three reliable databases, Professor Morrison verified that the patterns he observed in the 132 Benchmark Indentures, collectively, matched each individual sample standing alone. *Id*. at 162:22-163:13. Meanwhile, the Counterclaim Defendants not only provide no methodology for their Benchmark Rebuttal, they do not even attempt to identify a universe from which to measure it.

41. Finally, the Court will hear extensive closing argument regarding the Governing Indentures and, therefore, the 2024/2026 Holders do not intend to address the legal arguments in the Benchmark Rebuttal, as they will have much to say on that subject in due course. But, as to one such argument, the Counterclaim Defendants are wrong that the Rule of Construction in the Governing Indentures—that "***[p]rovisions apply to successive events and transactions***" (emphasis added)—is somehow limited to some but not other provisions of the Governing Indentures.[7] In fact, on its face, the Rule of Construction says just the opposite by broadly encompassing "[p]rovisions."[8] Moreover, as will be explained much further during closings, this Rule of Construction (among other provisions) and decades of case law underscore the broad intent of the Governing Indentures to prevent circumvention.

[7] The Counterclaim Defendants also posit that the "series of transaction" language's appearance in other, unrelated parts of the Governing Indentures makes its absence from the lien-release provision significant. *See* Benchmark Rebuttal at 3-4. This legal argument is not appropriate given the narrow scope of the Court's request. The 2024/2026 Holders will address the Counterclaim Defendants' flawed argument in the upcoming post-trial briefing.

[8] Additionally, the comments to the *Revised Model Simplified Indenture* explain that that this Rule of Construction came about to, among other things, apply to operational provisions "***like*** Section[] 5.01" (emphasis added), which addresses an issuer's sale of all or substantially all assets. 55 Bus. Law. 1115, 1176 (2000); *see also id.* at 1186, comments to Section 5.01 (explaining, "***serious consideration must be given to the possibility of accomplishing piecemeal, in a series of transactions, what is specifically precluded if attempted as a single transaction***" (emphasis added)). Section 9.02 of the Governing Indentures, which governs when amendments are needed with consent of holders, and what consent threshold applies for amendments by the issuer that may "have the effect of releasing all or substantially all Liens" (among other things), is plainly a covered provision.

CONCLUSION

42. For the foregoing reasons, the 2024/2026 Holders respectfully request that the Court (i) strike from the record Sections II and III of the PIMCO Brief, the Schwarmann Declaration and the Benchmark Rebuttal, and (ii) preclude the Counterclaim Defendants from introducing those filings, referring to them, or otherwise relying on them during trial.

BASIS FOR EMERGENCY RELIEF

43. PIMCO filed the PIMCO Declaration on May 14, 2024, and the Counterclaim Defendants filed the Hearsay Search Appendix on May 23, 2024. Closing arguments on the validity of the Phantom Notes will take place on June 24, 2024, with post-trial briefs to be exchanged on June 17, 2024.

44. The 2024/2026 Holders thus seek relief on an emergency basis to ensure that the record for the first round of closing arguments is clear.

[*Remainder of Page Left Intentionally Blank*]

Dated: June 8, 2024
New York, New York

Respectfully submitted,

KOBRE & KIM LLP

By: */s/ Zachary D. Rosenbaum*

Zachary D. Rosenbaum
Adam M. Lavine
Darryl G. Stein
Igor Margulyan
Udi Karklinsky
Michael S. Brasky
John G. Conte
Vincent C. Yiu
800 Third Avenue
New York, NY 10022
Tel: 212-488-1200
zachary.rosenbaum@kobrekim.com
adam.lavine@kobrekim.com
darryl.stein@kobrekim.com
igor.margulyan@kobrekim.com
udi.karklinsky@kobrekim.com
michael.brasky@kobrekim.com
john.conte@kobrekim.com
vincent.yiu@kobrekim.com

-and-

FOLEY & LARDNER LLP

John P. Melko
1000 Louisiana Street, Suite 2000
Houston, TX 77002
Tel: 713-276-5500
JMelko@foley.com

Counsel to the 2024/2026 Holders

CERTIFICATE OF SERVICE

I certify that on June 8, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Zachary D. Rosenbaum*
Zachary D. Rosenbaum

EXHIBIT 1

Investment Adviser Firm Summary

PACIFIC INVESTMENT MANAGEMENT COMPANY LLC (CRD # 104559/SEC#:801-48187)

PACIFIC INVESTMENT MANAGEMENT CO LLC, PIMCO, PACIFIC INVESTMENT MANAGEMENT COMPANY LLC

VIEW LATEST FORM ADV FILED | PART 2 BROCHURES | PART 3 RELATIONSHIP SUMMARY

The adviser's **REGISTRATION** status is listed below.

REGISTRATION STATUS

SEC / JURISDICTION	REGISTRATION STATUS	EFFECTIVE DATE
SEC	Approved	11/14/1994

NOTICE FILINGS

Investment adviser firms registered with the SEC may be required to provide to state securities authorities a copy of their Form ADV and any accompanying amendments filed with the SEC. These filings are called "notice filings". Below are the states with which the firm you selected makes its notice filings. Also listed is the date the firm first became notice filed or registered in each state.

JURISDICTION	EFFECTIVE DATE
Alabama	3/28/2008
Alaska	4/5/2007
Arizona	3/27/2003
Arkansas	4/2/2002
California	11/14/1994
Colorado	3/28/2002
Connecticut	12/8/1997
Delaware	3/28/2002
District of Columbia	3/29/2002
Florida	7/6/1992
Georgia	3/10/1995
Hawaii	3/30/2007

Idaho	3/30/2007
Illinois	5/10/1971
Indiana	3/28/2002
Iowa	4/10/2007
Kansas	3/28/2002
Kentucky	3/27/2003
Louisiana	3/30/2007
Maine	3/30/2007
Maryland	3/28/2002
Massachusetts	1/1/1998
Michigan	3/28/2002
Minnesota	6/18/1992
Mississippi	3/30/2007
Missouri	3/28/2002
Montana	3/30/2007
Nebraska	3/28/2002
Nevada	3/30/2007
New Hampshire	2/18/2010
New Jersey	5/23/2002
New Mexico	2/18/2010
New York	7/21/2000
North Carolina	3/28/2002
North Dakota	2/18/2010
Ohio	5/12/1999
Oklahoma	3/30/2007
Oregon	3/27/2003
Pennsylvania	3/28/2002
Puerto Rico	2/18/2010
Rhode Island	3/30/2007
South Carolina	3/27/2009
South Dakota	4/2/2007
Tennessee	3/28/2003
Texas	7/18/1995

Utah	3/28/2003
Vermont	3/30/2007
Virgin Islands	2/18/2010
Virginia	10/9/1996
Washington	3/28/2002
West Virginia	2/18/2010
Wisconsin	3/30/2007
Wyoming	3/29/2018

EXEMPT REPORTING ADVISERS

Exempt Reporting Advisers ("ERA") are investment advisers that are not required to register as investment advisers because they rely on certain exemptions from registration under sections 203(l) and 203(m) of the Investment Advisers Act of 1940 and related rules. Certain state securities regulatory authorities have similar exemptions based on state statutes or regulations. An ERA is required to file a report using Form ADV, but does not complete all items contained in Form ADV that a registered adviser must complete. Other state securities regulatory authorities require an ERA to register as an investment adviser and file a complete Form ADV. Below are the regulators with which an ERA report is filed.

Not Currently an Exempt Reporting Adviser

B Broker

IA Investment Adviser

Disclosures

Disclosures can be customer complaints or arbitrations, regulatory actions, employment terminations, bankruptcy filings and certain civil or criminal proceedings that they were a part of.

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

In re **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Debtors.[1]	Case No. 23-90611 (MI) Chapter 11 (Jointly Administered)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Plaintiffs, *v.* **SSD INVESTMENTS LTD.**, *et al.*, Defendants.	Adv. Pro. No. 23-03091
SSD INVESTMENTS LTD., *et al.*, Counterclaim Plaintiffs, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	

[PROPOSED] ORDER GRANTING 2024/2026 HOLDERS' EMERGENCY MOTION TO (I) STRIKE NONRESPONSIVE PORTION OF PIMCO'S BRIEF RESPONDING TO THE COURT'S FEBRUARY 29, 2024 REQUEST, (II) EXCLUDE DECLARATION OF SCOTT SHWARMANN, DATED MAY 13, 2024, AND (III) STRIKE COUNTERCLAIM DEFENDANTS' SUPPLEMENT CONCERNING THE TESTIMONY OF THE 2024/2026 HOLDERS' EXPERT EDWARD R. MORRISON

[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 consideration of the *2024/2026 Holders' Emergency Motion to (I) Strike Nonresponsive Portion of PIMCO's Brief Responding to the Court's February 29, 2024 Request, (II) Exclude Declaration of Scott Shwarmann, Dated May 13, 2024, And (III) Strike Counterclaim Defendants' Supplement Concerning the Testimony of the 2024/2026 Holders' Expert Edward R. Morrison* (the "Motion"), related pleadings, any evidence presented, and any arguments of counsel, the Court is of the opinion and finds that the Motion should be granted.

IT IS THEREFORE ORDERED that the Motion[2] is granted. The Schwarmann Declaration and all arguments stemming from it, including in Sections II and III in the PIMCO Brief, and the Benchmark Rebuttal, are stricken from the record, and the Counterclaim Defendants are precluded from introducing them, referring to them, or otherwise relying on those materials during this trial.

Dated:_____

_____
MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

[2] Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.