

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

*In re*

**WESCO AIRCRAFT HOLDINGS, INC.,  
*et al.*,<sup>1</sup>**

Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING AND IMPLEMENTING  
SETTLEMENT OF ADVERSARY PROCEEDING**

**Emergency relief has been requested. Relief is requested not later than 12:00  
p.m. (Central Time) on June 28, 2024.**

**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.**

<sup>1</sup> 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**”<sup>2</sup> 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.<sup>3</sup>

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**”).

3. This Motion was originally filed on June 4, 2024, in the Adversary Proceeding and was served on all parties to the Master Service List in the main bankruptcy case. The Motion is now filed in the main bankruptcy case. To enable the parties to the settlement to conclude the terms thereof in a timely manner, the parties respectfully request shortened notice and emergency approval of the Motion as soon as the Court can reasonably accommodate given (i) the Parties seek to implement the settlement before June 30, 2024, (ii) the original Motion filed in the Adversary Proceeding was served on the Master Service List in the main bankruptcy case, (iii) the

<sup>2</sup> 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.

<sup>3</sup> On June 4, 2024, the Debtors filed the Motion in the Adversary Proceeding at Docket No. 26. On June 10, 2024, the Debtors’ Noticing and Claims Agent, KCC (now doing business as Verita Global), filed a Certificate of Service at Docket No. 27 in the Adversary Proceeding reflecting that KCC served the Motion upon the parties to the Debtors’ Master Service List via electronic and first-class mail, including all parties described in paragraph E of the Complex Rules for the Southern District of Texas. Because the Motion seeks approval of the compromise as a matter arising in the main bankruptcy case, the Debtors refile the Motion in the above styled bankruptcy case docket as well.

Motion has no objections and the relief requested thus appears uncontested, and (iv) the substance of the settlement has previously been reviewed with, and confirmed by, the principal secured parties in the chapter 11 cases as well as the representatives for the Official Committee of Unsecured Creditors.

### **EMERGENCY CONSIDERATION**

4. The Procedures for Complex Cases in the Southern District of Texas (“*the Complex Case Procedures*”) require that all motions seeking relief on less than 21-days’ notice must be filed as emergency motions. The Debtors request emergency consideration of this Motion to facilitate payment to Arrow, which the parties contemplated to be effectuated before the end of June 2024. Timely payment therefore enables Arrow to achieve critical vendor status and withdraw its proofs of claim. The settlement fosters rehabilitation of the commercial relationship between the parties and is beneficial to the Debtors’ ongoing business activities. No parties objected to the settlement when previously served on all parties to the Master Service List in the main bankruptcy case, albeit the Motion was filed in the Adversary Proceeding. Accordingly, the Debtors respectfully request that the Court grant the requested relief no later than 12:00 p.m. (Central Time) on June 28, 2024.

### **JURISDICTION AND VENUE**

5. 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**

6. 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 Incore, LLC.

7. 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).

8. 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.

9. 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.

10. 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**

11. 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).

12. 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.”).

13. 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.*

14. 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.

15. 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).

16. 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.

17. 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.

18. *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.

19. *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.

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

#### NOTICE

21. 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, all of whom were previously served via electronic and first-class mail when the Motion was filed in the Adversary Proceeding. The Debtors respectfully submit that no further notice is required under the circumstances.

*[Remainder of page intentionally blank]*

Dated: June 26, 2024

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

HAYNES AND BOONE, LLP  
Charles A. Beckham, Jr. (TX Bar No. 02016600)  
Patrick L. Hughes (TX Bar No. 10227300)  
Martha Wyrick (TX Bar No. 24101606)  
Re’Necia Sherald (TX Bar No. 24121543)  
1221 McKinney Street, Suite 4000  
Houston, TX 77010  
Telephone: 1 (713) 547-2000  
Email: Charles.Beckham@HaynesBoone.com  
Patrick.Hughes@HaynesBoone.com  
Martha.Wyrick@HaynesBoone.com  
ReNecia.Sherald@HaynesBoone.com#

MILBANK LLP  
Dennis F. Dunne (admitted *pro hac vice*)  
Samuel A. Khalil (admitted *pro hac vice*)  
Benjamin M. Schak (admitted *pro hac vice*)  
55 Hudson Yards  
New York, NY 10001  
Telephone: 1 (212) 530-5000  
Email: DDunne@Milbank.com  
SKhalil@Milbank.com  
BSchak@Milbank.com

Samir Vora (admitted *pro hac vice*)  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Telephone: 1 (424) 386-45000  
Email: SVora@Milbank.com

*Counsel to the Debtors and Debtors in Possession*



**CERTIFICATE OF SERVICE**

I certify that, on June 26, 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*

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<sup>1</sup> 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*”),<sup>2</sup> 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 of the relief in the Motion and the terms of settlement under the Motion filed on June 4, 2024 in the Adversary Proceeding that was then served on all parties in interest on the Master Service List for the main bankruptcy case, and which was refiled in the main bankruptcy case seeking emergency approval and otherwise served again on parties in interest to the Master Service List in the main bankruptcy case, 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.

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

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.

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

\_\_\_\_\_  
MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE