Docket #1449 Date Filed: 7/3/2024

UNITED STATES BANKRUPTCY COURT
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)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Plaintiffs, *v.* **SSD INVESTMENTS LTD.**, *et al.*, Defendants.	Adv. Pro. No. 23-03091 (MI)
SSD INVESTMENTS LTD., *et al.*, Counterclaim Plaintiffs, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	
LANGUR MAIZE, L.L.C., Crossclaim Plaintiff, *v.* **PLATINUM EQUITY ADVISORS, LLC**, *et al.*, Crossclaim Defendants.	
LANGUR MAIZE, L.L.C., Third-Party Plaintiff, *v.* **UNNAMED PLATINUM FUNDS c/o PLATINUM EQUITY ADVISORS, LLC**, *et al.*, Third-Party Defendants.	
LANGUR MAIZE, L.L.C., Counterclaim Plaintiff, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	

[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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DEBTORS' STATEMENT IN RESPONSE TO COURT'S QUESTIONS AT JUNE 26, 2024 CLOSING ARGUMENT CONCERNING REMEDIES

The Debtors respectfully submit this statement in response to the Court's inquiry during closing arguments in the above-captioned adversary proceeding (the "***Adversary Proceeding***")[2] regarding whether "a United States Bankruptcy Judge, under 20 U.S.C. § 1334, [may] utilize *Pepper v. Litton* and [section] 510 to overcome legal relief and grant, instead, equitable relief." ECF 1447 (Closing Arguments) at 36:7-9.

On the third day of closing arguments, the Court explained that invalidation of the Third Supplemental 2026 Indenture would create a "terribly unfair result" in which the Participating Secured Noteholders provided the Company with $250 million in new money at a time of dire financial distress and "got nothing for it" (*i.e.*, an unsecured claim against the Company). *Id.* at 75:9-18. In light of this conundrum, the Court asked the parties if it has the power to use "equity" to avoid giving a "windfall" to the 2024/2026 Holders.[3]

The Debtors Anticipate Emerging From Chapter 11 Expeditiously. As the Court is aware, the Debtors provide just-in-time supply chain management services to numerous customers, primarily in the civilian and military aerospace industries. *See Declaration Of Raymond Carney In Support Of Chapter 11 Petitions And First Day Motions* ("***First Day Declaration***") ¶ 6. Incora serves thousands of customers worldwide, has over 3,000 employees, and works with thousands

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[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the *Counterclaim Defendants' Joint Post-Trial Brief* (ECF 1398).

[3] *See id.* at 19:15-24 ("THE COURT: So here is the question: If I determine that you have the right, maybe, to just keep your first lien, do I also have the right to say that goes too far, I'm not going to give the plaintiffs a windfall, and so I'm going to modify it down with an equitable adjustment recognizing the new money? And as to whether that is one form of equitable relief that you maybe entitled to, as opposed to legal relief, I guess I never looked up the definition. So my question is: Can I take away the bigger relief and give you smaller relief if I think that's the right thing to do?").

of suppliers and vendors across the entire aerospace supply chain. *Id.* ¶ 23. For all of these stakeholders—and not just the litigants in the Adversary Proceeding—it is imperative that the Company emerge from chapter 11 as soon as possible, and that it emerge as a healthy and trusted company that business partners can continue to confidently work with.[4]

These chapter 11 cases have already provided numerous benefits to the Debtors:

- ***Vendor Confidence***. Prior to filing chapter 11, the Company suffered significant liquidity shortfalls, driven in part by a lack of confidence in the Company's creditworthiness by vendors. As part of this reorganization case, the Debtors obtained $300 million of senior DIP financing, which provided enough funds to pay arrears to critical vendors (pursuant to a critical vendor order) and to pay all vendors for new products and services throughout the chapter 11 cases. This has led to a virtuous cycle of willingness among vendors to extend commercial terms, which in turn has allowed Incora to improve its working capital position.

- ***Customer Contracts***. During the year before the Debtors filed for chapter 11, they suffered intense pressure on their profit margins due to long-term customer contracts that did not include inflation-protection clauses. As a result, the Debtors were forced to sell parts to customers at pre-inflation prices. Because of the chapter 11 filing, the Debtors were able to use the threat of rejection under section 365 to convince dozens of long-term customers to re-negotiate their contracts, both to increase price lists and to include inflation-protection terms going forward. In a small number of cases, Incora has exercised its rejection power to reject long-term contracts that could not be re-negotiated.

- ***Organizational Restructuring***. With the expectation that the Debtors will emerge from bankruptcy with new owners, senior management has welcomed the opportunity to develop a new vision for the Company's internal organizational structure and to attract talented new personnel. The new structure creates clear lines of responsibility for P&L in both business divisions (hardware and chemicals) and clear metrics for improvements to working capital, inventory flow, IT overhaul, and SG&A expenses.

Following these operational and financial improvements, the time has now come for the Debtors to exit chapter 11 so that they may fully capitalize on these achievements. As the Debtors

[4] The entire Wesco enterprise, which includes both the Debtors and non-debtor affiliates, employs nearly 4,000 people. Of course, the Debtors' continued status as chapter 11 debtors impacts the Company's non-debtor affiliates as well.

informed the Court at the outset of closing arguments, the Debtors are singularly focused on "finding a pathway out of bankruptcy" ECF 1445 at 4:19-24. To that end, the Debtors are engaging with all parties in interest to develop a confirmable plan of reorganization as quickly as practicable, to be formulated "immediately after there's a decision from the Court" in this Adversary Proceeding. *Id.* at 4:25-5:7. Thus, it is exceedingly important that the Court resolve this Adversary Proceeding promptly. Therefore, the Debtors will not contest the Court's application of equity to arrive at whatever it believes is the proper result, in hopes that the Court will do so shortly.

The Bankruptcy Court Should Apply Any Remedy In An Equitable And Just Manner. As the Counterclaim Defendants explained at length in their post-trial briefing, the "extraordinary" and "unusual" remedy of equitable subordination under section 510(c) of the Bankruptcy Code should not be used against the Participating Secured Noteholders because there is no evidence they engaged "in fraud, spoliation, or overreaching." ECF 1398 (Counterclaim Defendants Joint Post-Trial Brief) at 68-70 (citing *inter alia In re SI Restructuring, Inc.*, 532 F.3d 355, 359 & n.2 (5th Cir. 2008) and *Matter of Fabricators, Inc.*, 926 F.2d 1458, 1465 (5th Cir. 1991)). The same is also true of the 2024/2026 Holders, as the Court recognized during closing arguments. ECF 1447 at 43:1-12. Thus, the Debtors submit that, in this indenture contract dispute, equitable subordination is not the appropriate doctrine for the Court to apply its equitable powers. In particular, as admitted by key witnesses for the Counterclaim-Plaintiffs, the notion of what is "fair" is misplaced in contract disputes, where legal remedies apply.

That being said, the Debtors believe that in applying any remedy, whether legal or equitable, the Court should use its discretion to avoid an unfair result if it concludes there was a

breach of the Original 2026 Indenture, but that the parties' conduct falls short of the unconscionable behavior required for subordination by section 510(c) of the Bankruptcy Code.

To the extent it affects the feasibility of a plan, the Debtors reserve the right to be heard with respect to how any adjustment of secured or unsecured claims should be applied to this case given the facts and circumstances. And the Debtors further reserve all rights with respect to any judgment concerning whether a breach of contract occurred to begin with.

Dated: July 3, 2024

Respectfully submitted:

/s/ Christopher D. Porter

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024, a copy of the foregoing Statement was served through the Court's CM/ECF notification system to all parties who have appeared in this case through counsel or who have submitted a request for service by CM/ECF.

/s/ Christopher D. Porter
Christopher D. Porter