

**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' SUPPLEMENTAL POST-TRIAL BRIEF

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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The 2024/2026 Holders² agree with the Court’s views expressed during closing arguments on June 26th that issuance of a declaratory judgment, finding that the 2022 Transaction is invalid because it violated the Indentures, would be legal relief.³ The Debtors, in fact, through this declaratory judgment action equated the Court’s determination of “the propriety of the 2022 Transaction” with “the legitimacy of [their] capital structure.” ECF 63 ¶9 (Debtors’ First Amended Complaint).

The Court is permitted by statute to grant declaratory relief under the Declaratory Judgment Act, which provides, in relevant part:

In a case of actual controversy within its jurisdiction[] . . . any court of the United States, upon the filing of an appropriate pleading, ***may declare the rights and other legal relations of any interested party seeking such declaration***, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a) (emphasis added).

It is well established that “[a]n order of declaratory relief on a claim for breach of contract is essentially legal [in] nature.” *NACM-New England, Inc. v. Nat’l Ass’n of Credit Mgmt., Inc.*, 927 F.3d 1, 8 (1st Cir. 2019) (quoting *Simler v. Conner*, 372 U.S. 221, 223 (1963) (per curiam)) (internal quotations omitted); *see also Roman Cath. Diocese of Rockville Ctr. v. Certain Underwriters at Lloyds, London & Certain London Mkt. Cos.*, 634 B.R. 226, 237 (S.D.N.Y. 2021) (“The Court agrees that the claims here (breach of contract and declaratory judgment) are legal in

² Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the 2024/2026 Holders’ Post-Trial Brief. *See* ECF 1394.

³ *See* ECF 1447 (Closing Arguments, June 26 Tr.) at 19:3-6 (“THE COURT: [A]nd maybe I’m just wrong about the classification, so sorry if I am. But I thought a declaration of rights that says you still have a first lien would be a legal remedy and not an equitable remedy.”).

nature[.]”⁴ To this end, declaratory relief “takes on the character of the underlying right or relation it declares.” *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 284 F. Supp. 2d 511, 679 (S.D. Tex. 2003) (citation omitted). Thus, in determining the nature of declaratory relief, “courts have examined the basic nature of the issues involved to determine how they would have arisen had Congress not enacted the Declaratory Judgment Act.” *Wallace v. Norman Indus., Inc.*, 467 F.2d 824, 827 (5th Cir. 1972).

Here, the cause of action being adjudicated by the Court in the first phase of closing arguments is whether the 2022 Transaction was permitted under the Indentures. Indeed, *both* the Debtors *and* the 2024/2026 Holders sought declaratory relief on that very issue. The 2024/2026 Holders asked for a “declaratory judgment that the Company, the Guarantor Defendants and WSFS breached the Governing Indentures[.]” ECF 144 at 73 (2024/2026 Holders First Amended Counterclaims). Similarly, the Debtors asked for a declaration that the 2022 Transaction complied with the indentures. *See* ECF 63 ¶ 15 (Debtors First Amended Complaint) (seeking declaratory judgment that 2022 Transaction complied with Indentures).

While the Court’s decision on those claims for declaratory relief is legal in nature,⁵ the Court can also use its equitable powers to assure a fair and equitable administration of the Debtors’

⁴ New York law, moreover, recognizes that acts taken by a trustee in violation of a trust indenture are “void” or voidable. *See In re Saldivar*, No. 11-10689, 2013 WL 2452699, at *4 (Bankr. S.D. Tex. June 5, 2013) (Isgur, J.) (finding assignment of note to trust after closing date was void ab initio under New York law); *Dye v. Lewis*, 324 N.Y.S.2d 172 (Sup. Ct. 1971), *modified*, 332 N.Y.S.2d 968 (App. Div. 4th Dep’t 1972) (holding contract requiring discharge of mortgage in violation of bond indenture was void); *see also Park Knoll Assocs. v. Conover*, No. 2020–03993, 2024 WL 2947582, at *2 (N.Y. App. Div. 2d Dep’t June 12, 2024) (“An ultra vires contract or transaction is void . . . not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it.”) (citations and quotations omitted).

⁵ The 2024/2026 Holders also submit that a declaration that the 2022 Transaction was unauthorized and invalid means as a legal matter that the liens securing the original 2024 and 2026 Notes were not lost and the \$250 million of gross new money came in on an unsecured basis. *See, e.g.*, ECF 1447 (Closing Arguments, June 26 Tr.) at 70:21-71:2.

estates.⁶ In that event, the 2024/2026 Holders will ask to present argument and evidence as to how they believe the Debtors' capital structure should be fashioned alongside a declaration that the 2022 Transaction was invalid but recognize that such a discussion is for another day.⁷

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⁶ The commentary to Federal Rule 18, which Federal Rule is incorporated into this Adversary Proceeding by Bankruptcy Rule 7018, recognizes that the Court may fashion both legal and equitable relief in the same proceeding. *See* Fed. R. Civ. P. 18 cmts. (This rule is inserted to make it clear that in a single action a party should be accorded all the relief to which he is entitled *regardless of whether it is legal or equitable or both*) (emphasis added).

⁷ *See* ECF 1447 (Closing Arguments, June 26 Tr.) at 90:21-91:1 (“[The Court:] I think it’s clear that, if we delve into whether we should issue equitable relief, that we will need a further, quote/unquote, ‘damages hearing’ to figure out what fair equitable relief might be because there's -- I just don’t have the components in the record right now for figuring that out.”).

Dated: July 3, 2024
New York, New York

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 3, 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