

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

IN RE:

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,**

Debtors.

CASE NO: 23-90611

CHAPTER 11

**INCORA INTERMEDIATE II LLC,
successor in interest to WESCO
AIRCRAFT HOLDINGS, INC.,**

Plaintiff,

v.

**FEDERAL INSURANCE COMPANY,
EVEREST NATIONAL INSURANCE
COMPANY, and ENDURANCE RISK
SOLUTIONS ASSURANCE COMPANY,**

Defendants.

CASE NO.:

PLAINTIFF'S COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Incora Intermediate II LLC (“Incora” or “Plaintiff”), successor in interest to Wesco Aircraft Holdings, Inc. (“Wesco”), the Debtor in the above-captioned bankruptcy case, brings this action (the “Adversary Proceeding”) against Defendants Federal Insurance Company (“Federal”), Everest National Insurance Company (“Everest”), and Endurance Risk Solutions Assurance Company (“Endurance”) (collectively, “Defendants” or “Insurers”), related to the above-captioned bankruptcy proceeding (the “Bankruptcy Proceeding”), and would respectfully show:



INTRODUCTION

1. This action concerns the Insurers’ refusal to honor their obligations as Directors and Officers (“D&O”) insurers to reimburse defense costs incurred by Wesco in connection with several related Underlying Actions (defined below) arising from a series of financial transactions undertaken by Wesco in March 2022 (the “2022 Financing Transactions”). The Bankruptcy Court has approved the allowance of the defense costs related to the 2022 Financing Transactions on a final basis.

2. After a years-long effort in defending itself without coverage from the Insurers, Wesco prevailed on all claims in the Underlying Actions at the District Court level but incurred, and continues to incur, substantial defense costs. The risk of such legal expenses and any resulting damages are among the reasons why Wesco and its affiliates purchased D&O insurance from their Insurers.

3. The Insurers, however, denied coverage for Wesco’s defense of the Underlying Actions, wrongly pointing to a “Contractual Liability Exclusion.” Despite being presented with authority demonstrating that the Insurers’ position lacked legal and factual merit, the Insurers continued to repudiate their coverage obligations.

4. Plaintiff, successor in interest to Wesco, files this lawsuit seeking a judgment that: (1) the Insurers have a duty to promptly reimburse Plaintiff for all defense costs incurred by Wesco to date, and to pay Plaintiff’s defense costs going forward, in connection with these Underlying Actions, including approximately \$30 million in defense costs approved by the Bankruptcy Court; (2) the Insurers have breached their insurance contracts; and (3) the Insurers are liable to Plaintiff for actual damages, additional damages, penalty interest, prejudgment interest, post-judgment interest, attorneys’ fees, court costs, and any other relief just and equitable.

PARTIES

5. Plaintiff Incora Intermediate II LLC, successor in interest to Wesco Aircraft Holdings, Inc., is a Delaware limited liability company with its principal place of business at 2601 Meacham Blvd., Ste. 400, Fort Worth, Texas. The sole member of Plaintiff Incora Intermediate II LLC is Incora Intermediate I LLC, a Delaware limited liability company with its principal place of business at 2601 Meacham Blvd., Ste. 400, Fort Worth, Texas.

6. On information and belief, Defendant Federal Insurance Company is an Indiana corporation with its principal place of business in Indiana.

7. On information and belief, Defendant Everest National Insurance Company is a Delaware corporation with its principal place of business in New Jersey.

8. On information and belief, Endurance Risk Solutions Assurance Company is a Delaware corporation with its principal place of business in New York.

JURISDICTION AND VENUE

9. This Adversary Proceeding relates to the above-captioned Chapter 11 Bankruptcy Proceeding, *In re Wesco Aircraft Holdings Inc. et al.*, No. 23-90611, pending in the Southern District of Texas, Houston Division.

10. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

11. Pursuant to Rule 7008 of the Bankruptcy Rules, if it is determined that this Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution, Plaintiff consents to the entry of final orders or judgment by the Bankruptcy Court.

12. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS

A. The Policies

13. Wesco and its affiliates purchased from Federal an insurance policy (Policy No. 8262-1174, the “Federal Policy”) for the Policy Period from July 1, 2021 to July 1, 2022, providing, among others, “Directors & Officers and Entity Liability Coverage” with an aggregate limit of liability of \$10 million. *See* Ex. 1, Federal Policy.

14. Wesco and its affiliates also purchased from Everest an excess insurance policy (Policy No. PC2EX00007-212, the “Everest Policy”) for the Policy Period from July 1, 2021 to July 1, 2022 with an aggregate limit of liability of \$10 million in excess of \$10 million. *See* Ex. 2, Everest Policy. The Everest Policy states that “[e]xcept as provided herein, this policy shall follow form to the terms and conditions of the [Federal] Policy.” *Id.* at 1.

15. Wesco and its affiliates also purchased from Endurance an excess insurance policy (Policy No. DOX30008721300, the “Endurance Policy”) for the Policy Period from July 1, 2021 to July 1, 2022 with an aggregate limit of liability of \$10 million in excess of \$20 million. *See* Ex. 3, Endurance Policy. The Endurance Policy states that “[t]erms defined in the [Federal Policy] are used herein with the meaning assigned to them in the [Federal Policy] unless otherwise indicated.” *Id.* at 1.

16. All three D&O policies (the “Policies”) “are deemed to be and shall be treated as Executory Contracts” under the confirmed Chapter 11 plan entered on December 27, 2024 (the “Plan”) and “on and after the Effective Date, shall be assumed in their entirety by the Reorganized Debtors pursuant to the Plan.”¹ The Bankruptcy Court retained exclusive jurisdiction to “resolve any matters related to . . . any potential contractual obligation under any Executory Contract . . .

¹ The Bankruptcy Proceeding, ECF No. 2528, at 138.

that is assumed.”²

17. The Insuring Clause (C) Entity Liability Coverage of the Federal Policy, to which the excess policies follow form, provides:

The Company shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**, or the Extended Reporting Period if applicable.

Ex. 1, Federal Policy at 34 (emphasis in original).

18. “**Organization** means the **Parent Organization** and any **Subsidiary**. **Organization** shall also mean any such entity as a debtor in possession under United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.” *Id.* at 9 (emphasis in original). “Wolverine [Top] Holding Company” is listed as the **Parent Organization**. *Id.* at 7, 9 (emphasis in original).

19. **Subsidiary** means: “any entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers or equivalent positions of such entity are owned, or controlled, by the **Parent Organization**, directly or through one or more **Subsidiaries**[.]” *Id.* at 10 (emphasis in original).

20. “**Claim** means any: . . . civil proceeding commenced by the service of a complaint or similar pleading . . . against an **Insured** for a **Wrongful Act**, including any appeal therefrom[.]” *Id.* at 64–65 (emphasis in original).

21. “**Insured** means any **Organization** and any **Insured Person**.” *Id.* at 36 (emphasis in original).

22. “**Wrongful Act** means any actual or alleged error, misstatement, misleading

² The Bankruptcy Proceeding, ECF No. 2528, at 170–71.

statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by: . . . for purposes of coverage under Insuring Clause (C), Entity Liability Coverage, any **Organization**.” *Id.* at 38 (emphasis in original).

23. “**Loss** means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including: . . . **Defense Costs**” *Id.* at 65–66 (emphasis in original).

24. “**Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing any **Claim** and the premium for appeal, attachment or similar bonds.” *Id.* at 36 (emphasis in original).

25. The Federal Policy contains an exclusion, referred to herein as the “Contractual Liability Exclusion,” stating:

The [Insurer] shall not be liable for **Loss** on account of any **Claim** against an Organization:

a. Contract
based upon, arising from or in consequence of any liability in connection with any written contract or agreement to which an **Organization** is a party

Id. at 40 (emphasis in original). The Contractual Liability Exclusion includes an exception, which provides that this Exclusion “shall not apply to the extent that such **Organization** would have been liable in the absence of such contract or agreement.” *Id.* (emphasis in original).

B. The Underlying Actions

Wesco entered the 2022 Financing Transactions to resolve liquidity problems.

26. In 2019, Wesco financed a leveraged buyout. The leveraged buyout featured three indentures: the 2024 Secured Indenture, the 2026 Secured Indenture, and the 2027 Unsecured Indenture (collectively, the “Indentures”).

27. In March 2022, Wesco entered a series of transactions with some of the Indenture counterparties (the “2022 Financing Transactions”) in an effort to resolve its urgent liquidity problems.

Wesco was sued after the 2022 Financing Transactions for various tort, contract, and equitable claims.

28. The following proceedings followed from the 2022 Financing Transactions (collectively, the “Underlying Actions”).

29. On October 28, 2022, the noteholders of the 2024 and 2026 Secured Indentures that did not participate in the 2022 Financing Transactions (the “2024/2026 Noteholders”) sued Wesco and others in New York state court,³ seeking damages and avoidance of the 2022 Financing Transactions through various tort, contract, and equitable theories.

30. On March 27, 2023, Langur Maize, L.L.C. (“Langur Maize”), the majority holder of the 2027 Unsecured Indenture that did not participate in the 2022 Financing Transactions, sued Wesco’s affiliates and others in New York state court,⁴ seeking damages and avoidance of the 2022 Financing Transactions through various tort, contract, and equitable theories.

31. On June 1, 2023, Wesco and certain affiliates filed for bankruptcy in the United States Bankruptcy Court for the Southern District of Texas⁵ (the “Bankruptcy Proceeding”) and commenced an adversary proceeding on the same day in the same court (the “Underlying Adversary Proceeding”)⁶ to stay the state court actions and later amended the complaint to seek declaratory judgment on the state court claims. After further proceedings, the 2024/2026

³ *SSD Investments Ltd. et al. v. Wilmington Savings Fund Society, FSB, et al.*, Index No. 654068/2022 (N.Y. Sup. Ct., N.Y. Cty.) (“SSD Investments Complaint”).

⁴ *Langur Maize, L.L.C. v. Platinum Equity Advisors, LLC, et al.*, Index No. 651548/2023 (N.Y. Sup. Ct., N.Y. Cty.) (“Langur Maize Complaint”).

⁵ *In re Wesco Aircraft Holdings, Inc.*, Case No. 23-90611 (MI) (Bankr. S.D. Tex.).

⁶ *Wesco Aircraft Holdings, Inc. et al. v. SSD Investments Ltd. et al.*, Adv. Pro. No. 23-03091 (MI) (Bankr. S.D. Tex.).

Noteholders and Langur Maize agreed to stay the state court cases and litigate at least the declaratory relief claims in the Texas bankruptcy court. The 2024/2026 Noteholders and Langur Maize reserved rights to, among other things, obtain *de novo* review by the U.S. District Court for the Southern District of Texas. On July 31, 2023, the 2024/2026 Noteholders and Langur Maize brought counterclaims and crossclaims against Wesco (among others) in the Underlying Adversary Proceeding, largely in the form of their state court pleadings. *See* Ex. 4, The 2024/2026 Noteholders Claims; Ex. 5, The Langur Maize Claims. On August 15, 2023, the 2024/2026 Noteholders sought to add certain wrongful transfer claims and a conspiracy to commit fraudulent transfer claim against Wesco. *See* Ex. 6, The Proposed 2024/2026 Noteholders Claims. The Bankruptcy Court allowed introducing evidence for the proposed wrongful transfer claims at trial.

32. The District Court conducted *de novo* review (the “District Court Proceeding”) of the Bankruptcy Court’s reports and recommendations in the Underlying Adversary Proceeding.⁷ The District Court issued three memorandum orders and a final judgment on December 8, 2025.⁸

33. The District Court’s final judgment, along with its related orders, have been appealed to the Fifth Circuit.⁹

34. Claims asserted (including threatened/proposed claims) against Wesco by the 2024/2026 Noteholders and Langur Maize in the Underlying Actions include but are not limited to the following.

⁷ *Wesco Aircraft Holdings, Inc., et al. v. SSD Investments Ltd., et al.*, No. 4:25-cv-00202 (S.D. Tex.).

⁸ The District Court Proceeding, ECF Nos. 119–122.

⁹ *Wesco Aircraft Holdings, Inc., et al. v. 2026 Noteholders*, No. 26-20018 (5th Cir.).

The 2024/2026 Noteholders Claims
First cause of action: Declaratory judgment regarding standing
Second cause of action: Declaratory judgment regarding breach of contract
Third cause of action: Declaratory judgment regarding breach of implied covenant of good faith and fair dealing
Fourth cause of action: Equitable lien
Eighth cause of action: Intentional fraudulent transfer (proposed)
Ninth cause of action: Insider preferential transfer (proposed)
Tenth cause of action: Conspiracy to commit fraudulent transfer (proposed)
Langur Maize Claims
Eighth cause of action: Declaratory judgment that 2022 Financing Transactions violated terms of the indenture and that Langur Maize has standing to sue

35. In connection with their counterclaims filed in the Underlying Adversary Proceeding, the 2024/2026 Noteholders also filed a motion for standing, seeking to confirm their direct standing or to obtain derivative standing to bring all claims pleaded in the Underlying Adversary Proceeding as well as additional non-contract theories;¹⁰ they later amended this motion to pursue additional non-contract theories.¹¹ Langur Maize filed a motion seeking derivative standing to pursue preferential transfer claims that it had included in its state court complaint, but had omitted from its pleading in the Underlying Adversary Proceeding.¹²

36. In September 2023, all parties to the Underlying Adversary Proceeding filed motions for summary judgment (or judgment on the pleadings),¹³ which the Bankruptcy Court decided on January 14, 2024.¹⁴ The Bankruptcy Court granted declaratory judgment on 2024/2026 Noteholders' standing, dismissed certain claims on the merits, dismissed certain claims brought

¹⁰ The Bankruptcy Proceeding, ECF No. 341.

¹¹ The Bankruptcy Proceeding, ECF No. 652.

¹² The Bankruptcy Proceeding, ECF No. 650.

¹³ The Underlying Adversary Proceeding, ECF Nos. 196, 198–216.

¹⁴ The Underlying Adversary Proceeding, ECF No. 508.

by the 2024/2026 Noteholders on the basis that the claims are property of Wesco's bankruptcy estate, and held other claims over for trial.¹⁵ The Bankruptcy Court also confirmed that the claims put forward by Langur Maize are "direct" claims held by Langur Maize, rather than claims held by Wesco's bankruptcy estate.¹⁶ The Bankruptcy Court also dismissed certain claims on the merits brought by Langur Maize and held other claims over for trial.¹⁷

Various tort and extracontractual claims remained live at trial.

37. Trial in the Underlying Adversary Proceeding commenced in late January 2024 and lasted for six months, with 33 days of evidence from 21 witnesses and arguments from nearly a dozen parties. The following relevant claims or proposed claims still asserted against Wesco were part of the trial.¹⁸

The 2024/2026 Noteholders Claims
Declaratory judgment regarding breach of contract
Equitable lien
Intentional fraudulent transfer
Insider preferential transfer
Conspiracy to commit fraudulent transfer
Langur Maize Claims
Declaratory judgment that 2022 Financing Transactions violated terms of the indenture

The District Court dismissed the tort claims and held that the 2022 Financing Transactions did not breach Wesco's obligations under its Indentures.

38. On January 15, 2025, the Bankruptcy Court issued a report and recommendation, recommending that the District Court issue a declaration that Wesco breached contractual

¹⁵ The Underlying Adversary Proceeding, ECF No. 508, at 7–16, 36–58; ECF No. 554, at 1–2.

¹⁶ The Underlying Adversary Proceeding, ECF No. 508, at 28–32.

¹⁷ The Underlying Adversary Proceeding, ECF No. 508, at 36–58.

¹⁸ On January 23, 2024, the parties agreed to permit evidence at trial for the equitable lien and transfer theories.

obligations to Langur Maize under its 2027 Unsecured Indenture, and that the District Court dismiss other claims.

39. On January 17, 2025, the Bankruptcy Court issued a report and recommendation, recommending that the District Court issue a declaration that the 2022 Financing Transactions complied with the 2024 Indenture but breached the 2026 Indenture.

40. On February 19, 2025, the Bankruptcy Court issued a report and recommendation recommending that the District Court dismiss the 2024/2026 Noteholders' tortious interference claims against other defendants.

41. On December 8, 2025, after considering the parties' objections, as well as the responses and replies thereto, and conducting a *de novo* review of the extensive record and the issues raised in the parties' objections, the District Court (i) declared that the 2022 Financing Transactions did not breach Wesco's obligations under its Indentures and dismissed all breach-of-contract claims; (ii) dismissed all tort claims and equitable claims; and (iii) entered a final judgment. A notice of appeal followed on January 6, 2026, and the appeal remains pending.

Wesco incurred substantial defense costs to defend against the Underlying Actions, which the Court approved for payment.

42. Wesco retained Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") to represent Wesco in connection with the defense of the Underlying Actions, incurring substantial expenses to defend against the 2024/2026 Noteholders' and Langur Maize's claims.

43. Quinn Emanuel, as special litigation counsel to Wesco and its debtor affiliates approved by the Bankruptcy Court,¹⁹ filed several applications in the Bankruptcy Proceeding for compensation for professional services rendered, including in connection with the defense of the Underlying Actions.

¹⁹ The Bankruptcy Proceeding, ECF No. 664.

44. With respect to the defense of the Underlying Actions, Quinn Emanuel requested approval from the Bankruptcy Court of \$30,117,439.00 (\$27,105,695.10 after applying a 10% discount) relating to professional services for the defense of the “2022 Transaction Litigation,” divided across six separate fee applications²⁰, each of which was approved in full by the Bankruptcy Court²¹:

Application Period	2022 Transaction Litigation — Fees (100%)	2022 Transaction Litigation — Fees (after 10% discount)
First Interim (06/01/2023–08/31/2023)	\$5,127,624.00	\$4,614,861.60
Second Interim (09/01/2023–11/30/2023)	\$5,899,519.50	\$5,309,567.55
Third Interim (12/01/2023–02/29/2024)	\$9,454,160.50	\$8,508,744.45
Fourth Interim (03/01/2024–05/31/2024)	\$5,992,193.00	\$5,392,973.70
Fifth Interim (06/01/2024–08/31/2024)	\$3,432,861.50	\$3,089,575.35
Sixth period within Final Application (09/01/2024–01/31/2025)	\$211,080.50	\$189,972.45
Total	\$30,117,439.00	\$27,105,695.10

45. On April 24, 2025, the Bankruptcy Court ordered that “[t]he compensation and reimbursement of expenses allowed in this order and all previous interim allowances of compensation and reimbursement of expenses are approved on a final basis” and “[t]he Debtors are authorized to disburse any unpaid amounts”²²

46. The Bankruptcy Court retained exclusive jurisdiction to “adjudicate all matters related to the granting and denying, in whole or in part, of any applications for allowance of

²⁰ The Bankruptcy Proceeding, ECF No. 966, at 7–8, ECF No. 1497, at 7–8, ECF No. 1928, at 7–8, ECF No. 2303, at 6–7, ECF No. 2393, at 6–7, ECF No. 2751, at 6–7.

²¹ The Bankruptcy Proceeding, ECF No. 1067, at 1, ECF No. 1600, at 1, ECF No. 1979, at 1, ECF No. 2373, at 1, ECF No. 2522, at 1, ECF No. 2806, at 1.

²² The Bankruptcy Proceeding, ECF No. 2806.

compensation or reimbursement of expenses to Retained Professionals [including Quinn Emanuel] pursuant to the Bankruptcy Code or the Plan[.]”²³

47. Subsequent to the Final Application filed by Quinn Emanuel, Plaintiff has continued to incur defense costs with respect to the defense and appeal of the December 8, 2025 final judgment.

C. Plaintiff’s Entitlement to Coverage for the Underlying Actions

Wesco provided timely notice to its Insurers.

48. Wesco provided timely and proper notice of the Underlying Actions and the resulting insurance claim during the applicable Policy Period, and the Insurers acknowledged receipt of Wesco’s notice.

49. Wesco first provided notice to Federal on April 26, 2022. *See* Ex. 7, April 26, 2022 Notice.

50. The 2024/2026 Noteholders’ state court complaint was filed on October 28, 2022 in New York Supreme Court, and Federal thereafter acknowledged receipt of the 2024/2026 Noteholders’ complaint. *See* Ex. 8, Feb. 24, 2023 Federal Letter at 1.

51. Langur Maize’s state court complaint was filed on March 27, 2023 in New York Supreme Court, and Federal likewise acknowledged receipt of the Langur Maize complaint, deeming it a Related Claim to the 2024/2026 Noteholders’ state court complaint. *See* Ex. 9, May 4, 2023 Federal Letter at 1.

52. On June 1, 2023, Wesco initiated the Bankruptcy Proceeding. On July 31, 2023, the 2024/2026 Noteholders and Langur Maize resubmitted their claims as counterclaims and crossclaims in the Underlying Adversary Proceeding.

²³ The Bankruptcy Proceeding, ECF No. 2528, at 170.

53. Wesco reported the 2024/2026 Noteholders and Langur Maize counterclaims and crossclaims in the Underlying Adversary Proceeding to the Insurers on November 9, 2023.

54. Federal acknowledged receipt of the Underlying Adversary Proceeding counterclaims and crossclaims, and stated that, “during the 2021–2022 policy year, [it] received notice of circumstances that could give rise to a Claim by secured and unsecured noteholders pursuant to Section VI(B) of the D&O Coverage Part,” and that the later “counterclaims and crossclaims by the 2024/2026 Holders and Langur Maize arise from the previously noticed circumstances and therefore are deemed to have been first made during the 2021–2022 Policy Year.” *See* Ex. 10, Feb. 16, 2024 Federal Letter at 5.²⁴

The Policies provide coverage for the Underlying Actions.

55. The 2021–2022 Federal Policy (to which the Everest Policy and Endurance Policy follow form in all material respects) affords Entity Liability Coverage under which Federal “shall pay . . . **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**”

56. Under the Federal Policy, a “**Claim**” includes a civil proceeding commenced by the service of a complaint.

57. Further, if during the **Policy Period** an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Insurer, then any **Claim** subsequently arising from such circumstances shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances were first reported to the Federal. *See* Ex. 1, Federal Policy at 75.

²⁴ Although Federal’s February 16, 2024 correspondence states that it received the pleadings relating to the 2024/2026 Noteholders and Langur Maize counterclaims and crossclaims on January 9, 2024, such pleadings in fact were reported on November 9, 2023.

58. As Wesco provided timely notice during the 2021–2022 Policy Period, the Underlying Actions qualify as a **Claim** that is deemed made during the **Policy Period**. *See* Ex. 8, Feb. 24, 2023 Federal Letter at 2.

59. An **Organization** means the **Parent Organization** identified in the Federal Policy and any **Subsidiary**. Ex. 1, Federal Policy at 9. **Organization** shall also mean any such entity as a debtor in possession under United States bankruptcy law. *Id.*

60. **Subsidiary** means: “any entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers or equivalent positions of such entity are owned, or controlled, by the **Parent Organization**, directly or through one or more **Subsidiaries**[.]” *Id.* at 10 (emphasis in original).

61. The **Parent Organization** named in the Federal Policy is “Wolverine [Top] Holding Company” (“Wolverine”). *Id.* at 7, 9. At the time this matter was reported to the D&O insurers and the Underlying Actions were first commenced against Wesco, Wesco was a wholly-owned subsidiary of Wolverine, thereby qualifying as a **Subsidiary** of Wolverine per the language of the Federal Policy. Wesco is therefore a covered **Organization**.

62. **Loss** is defined to include, among other things, **Defense Costs**. *Id.* at 65–66.

63. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing any **Claim**. *Id.* at 36.

64. The defense costs described herein and for which Plaintiff seeks reimbursement from the Insurers are **Loss** on account of a **Claim** first made against an **Organization** during the

July 1, 2021 to July 1, 2022 Policy Period.

65. The defense costs for which Plaintiff seeks reimbursement from the Insurers are reasonable, as evidenced by the Bankruptcy Court’s approval of same pursuant to 11 U.S.C. § 330 and applicable case law.

66. Accordingly, the defense costs for which Plaintiff seeks reimbursement from the Insurers are covered under the Policies.

The Insurers erroneously denied coverage, relying on the Contractual Liability Exclusion.

67. The Federal Policy includes the following exclusion:

The [Insurer] shall not be liable for **Loss** on account of any **Claim** against an **Organization** . . .

based upon, arising from or in consequence of any liability in connection with any written contract or agreement to which an **Organization** is a party, provided that this Exclusion [] shall not apply to the extent that such **Organization** would have been liable in the absence of such contract or agreement.

(the “Contractual Liability Exclusion”).

68. The Insurers categorically denied or have refused to provide coverage under the Policies for the defense of the Underlying Actions, relying on the Contractual Liability Exclusion.

69. Specifically, Federal denied coverage for Wesco based on the Contractual Liability Exclusion, asserting that every cause of action against Wesco “arises from, is based upon or is in consequence of” the governing notes and indentures. *See* Ex. 8, Feb. 24, 2023 Federal Letter at 1.

70. Thereafter, Federal issued a similar denial with respect to the *Langur Maize* Complaint, treating it as a Related Claim and invoking the Contractual Liability Exclusion. *See* Ex. 9, May 4, 2023 Federal Letter at 1.

71. On October 24, 2023, Everest denied coverage relying on the Contractual Liability Exclusion, adopting and incorporating Federal’s coverage positions “[b]ecause the [Everest]

Policy is subject to the same terms and conditions as the primary policy issued by Federal.” *See* Ex. 11, October 24, 2023 Everest Letter at 2.

72. On February 16, 2024, following receipt of the Underlying Adversary Proceeding counterclaims and crossclaims, Federal reiterated its position that there is no coverage for the Underlying Actions, again relying on the Contractual Liability Exclusion and asserting that all counts are based on, arise out of, or are in consequence of the written indentures and related agreements. *See* Ex. 10, Feb. 16, 2024 Federal Letter at 6.

73. On March 11, 2024, Wesco submitted (through its broker) correspondence to the excess insurer Defendants Everest and Endurance detailing Wesco’s position that the Contractual Liability Exclusion does not apply to the Underlying Actions.

74. On May 21, 2024, Everest denied coverage for the Underlying Adversary Proceeding counterclaims and crossclaims, again relying on the Contractual Liability Exclusion. Specifically, Everest advised that it “adopts and incorporates herein each and every coverage defense/issue asserted by Federal in its February 16, 2024 letter as the coverage position of Everest,” and that “Everest denies coverage to the entity insured defendants for the Counterclaims based on the contract exclusion.” *See* Ex. 12, May 21, 2024 Everest Letter at 2.

75. Defendant Endurance never issued a position acknowledging coverage after receipt of the Underlying Adversary Proceeding counterclaims and crossclaims.

The Contractual Liability Exclusion does not bar coverage.

76. Since their inception, the Underlying Actions have plainly included non-contract theories asserted by different claimants, later consolidated or addressed in the Underlying Adversary Proceeding. Specifically, the asserted claims included non-contract claims such as equitable lien, preferential transfer, and other tort claims. The breadth of theories pleaded demonstrates that the allegations have not been limited solely to contractual liability. The

Contractual Liability Exclusion does not bar defense coverage for such claims.

77. The Insurers have been on notice that their basis for denying coverage lacks factual and legal merit, yet the Insurers still refused to reimburse Plaintiff the defense costs incurred in the Underlying Actions.

78. The Federal Policy's Contractual Liability Exclusion is narrowly limited; it states that the Insurers are not responsible for Loss on account of Claims arising from an Organization's actual contractual "*liability*" (unless the exception brings that liability back within coverage). The Contractual Liability Exclusion is not triggered by mere allegations of noncompliance or nonconformance with contractual terms.

79. No contractual liability has ever been established. The District Court found, among other things, that "the 2022 [Financing] Transactions did not breach Wesco's obligations under its indentures" and dismissed all breach-of-contract claims.²⁵ The District Court held that the 2022 Financing Transactions "were proper, appropriate, lawful, and consistent with the terms" and "refuse[d] to find any implied sacred rights" when "[t]hose indentures were negotiated by sophisticated parties who chose their language carefully."²⁶ For this additional reason, the Contractual Liability Exclusion has no application to the Underlying Actions.

* * *

80. Wesco has satisfied, or is excused from performing, all terms and conditions of the Policies.

81. By refusing to provide coverage, the Insurers are in breach of their Policies.

82. As a result of the Insurers' breach of their Policies, Wesco has suffered substantial damages, and Plaintiff will continue to suffer damages.

²⁵ The District Court Proceeding, ECF No. 119, at 2.

²⁶ The District Court Proceeding, ECF No. 119, at 17.

FIRST CLAIM FOR RELIEF

Declaratory Judgment: Duty to Reimburse Defense Costs

(Against All Defendants)

83. Plaintiff incorporates the allegations in the above paragraphs of this Complaint as though fully alleged herein.

84. An actual bona fide controversy exists between Plaintiff and the Insurers that requires judicial declaration by this Court of the parties' rights and duties regarding insurance coverage under the Policies.

85. Valid contracts exist between Wesco and its affiliates and the Insurers, namely the Policies.

86. Wesco has provided timely notice to the Insurers of the Underlying Actions.

87. Wesco fully performed all obligations under the Policies or is excused from performing them, including as a result of the Insurers' wrongful denial of coverage.

88. The Insurers are obligated to promptly reimburse Plaintiff for all defense costs incurred by Wesco in the past, and to pay Plaintiff's defense costs going forward, in these Underlying Actions. The Insurers have wrongfully denied coverage for the Underlying Actions relying on the Contractual Liability Exclusion. Plaintiff seeks a declaration to this effect.

SECOND CLAIM FOR RELIEF

Breach of Contract

(Against All Defendants)

89. Plaintiff incorporates the allegations in the above paragraphs of this Complaint as though fully alleged herein.

90. Valid contracts exist between Wesco and its affiliates and the Insurers, namely the Policies.

91. The Insurers have breached those contracts by failing to reimburse Plaintiff for defense costs incurred in the Underlying Actions.

92. Wesco fully performed all obligations under the Policies or is excused from performing them as a result of the Insurers' wrongful denial of coverage.

93. The Insurers' breaches of contract have proximately caused Plaintiff's damages including, but not limited to, the attorneys' fees, costs, and expenses incurred in the defense of the Underlying Actions and this instant action to enforce its rights under the Policies.

94. Plaintiff is entitled to recover as damages against the Insurers all fees, costs, and expenses, incurred as a result of the Underlying Actions and the instant action, together with interest thereon.

THIRD CLAIM FOR RELIEF

Violations of the Prompt Payment of Claims Provision in Chapter 542 of the Texas Insurance Code

(Against All Defendants)

95. Plaintiff incorporates the allegations in the above paragraphs of this Complaint as though fully alleged herein.

96. Defense costs are a "first-party" insurance claim.

97. The Insurers' failure to reimburse Wesco for its defense costs in the Underlying Actions violates the Prompt Payment of Claims provisions in Chapter 542 of the Texas Insurance Code.

98. As a consequence of its statutory violation, the Insurers are liable to pay Plaintiff, in addition to the amount of damages asserted, penalty interest at the rate of 18 percent per annum on the said damages.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff seeks judgment against Defendants as follows:

- a. A determination and award of damages consisting of all reasonable defense expenses incurred by Wesco in the Underlying Actions, including any consequential damages;
- b. Awarding prejudgment interest incurred from the date of each defense invoice at the statutory rate of interest, per annum;
- c. Ordering the Insurers to pay ongoing reasonable defense expenses within the deadlines set forth in such invoices;
- d. Awarding Plaintiff penalty interest pursuant to the Texas Prompt Payment of Claims Act;
- e. Awarding Plaintiff's reasonable attorneys' fees incurred in this lawsuit in accord with applicable Texas law;
- f. Awarding costs of court herein; and
- g. Such other and further relief deemed just and proper.

Respectfully submitted,

/s/ Lingzi Hu

LATHAM & WATKINS LLP

Lingzi Hu (TX Bar No. 24120908)

300 Colorado Street, Suite 2400

Austin, TX 78701

Telephone: (737) 910-7326

Email: lingzi.hu@lw.com

-and-

Paul Moura (NY Bar No. 5291695)

(Pro Hac Vice Motion Forthcoming)

1271 Avenue of the Americas

New York, NY 10020

Telephone: (212) 906-1200

Email: paul.moura@lw.com

Counsel for Plaintiff

EXHIBIT 1

PREMIUM BILL

Insured: WOLVERINE HOLDING CORPORATION

Date: 09/18/2021

Producer: MARSH USA INC - LOS ANGELES
633 W 5TH ST STE 1200
LOS ANGELES, CA 90071-0000

Company: Federal Insurance Company

THIS BILLING IS TO BE ATTACHED TO AND FORM A PART OF THE POLICY REFERENCED BELOW.

Policy Number: 8262-1174

Policy Period: July 1, 2021 to July 1, 2022

NOTE: PLEASE RETURN THIS BILL WITH REMITTANCE AND NOTE HEREON ANY CHANGES. BILL WILL BE RECEIPTED AND RETURNED TO YOU PROMPTLY UPON REQUEST.

PLEASE REMIT TO PRODUCER INDICATED ABOVE. PLEASE REFER TO 8262-1174

Product	Effective Date	Premium
FFP30	07/01/21	\$355,954.00

TOTAL POLICY PREMIUM	\$355,954.00
TOTAL INSTALLMENT PREMIUM DUE	\$355,954.00

**POLICYHOLDER
DISCLOSURE NOTICE OF
TERRORISM INSURANCE COVERAGE**
(for policies with no terrorism exclusion or sublimit)
Insuring Company: Federal Insurance Company

You are hereby notified that, under the Terrorism Risk Insurance Act (the “Act”), this policy makes available to you insurance for losses arising out of certain acts of terrorism. Terrorism is defined as any act certified by the Secretary of the Treasury of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that the insurance provided by your policy for losses caused by acts of terrorism is partially reimbursed by the United States under the formula set forth in the Act. Under this formula, the United States pays 85% of covered terrorism losses that exceed the statutorily established deductible to be paid by the insurance company providing the coverage. Beginning in 2016, the Federal share will be reduced by 1% per year until it reaches 80%, where it will remain.

However, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

If aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

The portion of your policy's annual premium that is attributable to insurance for such acts of terrorism is: \$ **-0-**.

If you have any questions about this notice, please contact your agent or broker.

IMPORTANT NOTICE TO POLICYHOLDERS

Insuring Company: Federal Insurance Company

All of the members of the Chubb Group of Insurance companies doing business in the United States (hereinafter "Chubb") distribute their products through licensed insurance brokers and agents ("producers"). Detailed information regarding the types of compensation paid by Chubb to producers on US insurance transactions is available under the Producer Compensation link located at the bottom of the page at www.chubb.com, or by calling 1-866-588-9478. Additional information may be available from your producer.

Thank you for choosing Chubb.

Notice of Loss Control Services

Insuring Company: Federal Insurance Company

As a Chubb policyholder, you have loss prevention information and/or services available to you, as listed in this Notice. You may order any brochure by email to formsordering@chubb.com and to view our full suite of loss prevention brochures/services go to www.chubb.com/us/fl-lossprevention

Directors and Officers (D&O) Liability Loss Prevention Services

- **Directors and Officers Liability Loss Prevention Manuals:**
Directors and Officers Liability Loss Preventions – #14-01-0035
Directors and Officers Securities Litigation Loss Preventions – #14-01-0448
Director Liability Loss Prevention in Mergers and Acquisitions – #14-01-1099
Directors and Officers Liability Loss Prevention for Not-for-Profit- -#14-01-0036
Cyber Loss Mitigation for Directors -#14-01-1199

Employment Practices Liability (EPL) Loss Prevention Services

- **Toll-free Hot Line**
Have a question on how to handle an employment situation? Simply call **1.888.249.8425** to access the nationally known employment law firm of Jackson Lewis P.C. We offer customers an unlimited number of calls to the hot line at no additional charge.
- **ChubbWorks.com**
ChubbWorks.com is a web-based platform that offers multiple services including overviews of employment laws, sample employment policies and procedures, and on-line training. To gain immediate access to ChubbWorks go to www.chubbworks.com and register using your policy number.
- **Employment Practices Loss Prevention Guidelines Manual**
Employment Practices Loss Prevention Guidelines - #14-01-0061
- **Loss Prevention Consultant Services**
Chubb has developed a network of more than 120 law firms, human resources consulting firms, and labor economist/statistical firms that offer specialized services for employment issues.
- **Public Company EPL Customers**
Employment Practices Loss Prevention Guidelines – Written by Seyfarth Shaw exclusively for Chubb this manual provides an overview of key employment issues faced by for-profit companies and offers proactive idea for avoiding employment lawsuits.
- **Private Company EPL Customers**
Employment Practices Loss Prevention Guidelines – Written by Seyfarth Shaw exclusively for Chubb this manual provides an overview of key employment issues for –profit companies and offers proactive idea for avoiding employment lawsuits.

Fiduciary Liability Loss Prevention Services

- **Fiduciary Liability Loss Prevention Manual**
Who May Sue You and Why: How to Reduce Your ERISA Risks and the Role of Fiduciary Liability Insurance #14-01-1019

Crime Loss Prevention Services

- **Crime/Kidnap, Ransom & Extortion Loss Prevention Manual**
Preventing Fraud: How Anonymous Hotlines Can Help #14-01-1090

Cyber Security Loss Prevention Services

Visit: <https://www2.chubb.com/us-en/business-insurance/cyber-security.aspx> to learn more about Chubb's Cyber Services for our policyholders.

Health Care Directors and Officers (D&O) Liability Loss Prevention Services

- **Readings in Health Care Governance Manual**
Readings in Health Care Governance -#14-01-0788
- **ChubbWorks.com**
ChubbWorks.com for Health Care Organizations – The Health Care Zone is a free online resource containing health care specific loss prevention information for employment practices liability, directors and officers (D&O) liability, and fiduciary liability exposures. To gain immediate access to ChubbWorks go to www.chubbworks.com and register using your policy number.
- **Health Care D&O Loss Prevention Consultant Services**
Health Care D& O Loss Prevention Consultant Services- #14-01-1164

The services provided are advisory in nature. While this program is offered as a resource in developing or maintaining a loss prevention program, you should consult competent legal counsel to design and implement your own program. No liability is assumed by reason of the services, access or information provided. All services are subject to change without notice.

GTC DECLARATIONS

FEDERAL INSURANCE COMPANY

A stock insurance company, incorporated under the laws of Indiana, herein called the Company

Capital Center, 251 North Illinois, Suite 1100
Indianapolis, IN 46204-1927

Policy Number: 8262-1174

NOTICE: THE LIABILITY COVERAGE PARTS PROVIDE CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD", OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE RETENTION. IN NO EVENT WILL THE COMPANY BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF LIABILITY. READ THE ENTIRE POLICY CAREFULLY.

Item 1. Parent Organization: WOLVERINE HOLDING CORPORATION
Principal Address: 360 N CRESCENT DR
BEVERLY HILLS, CA 90210

Item 2. Policy Period:
(A) From: July 1, 2021
(B) To: July 1, 2022
At 12:01 AM local time at the address shown in Item 1.

Item 3. A Combined Maximum Aggregate Limit of Liability applies:

☐ Yes ☒ No

The Combined Maximum Aggregate Limit of Liability for all **Claims** under all **Liability Coverage Parts** shall be:

Not Applicable

Item 4. Coverage applicable to this Policy:

- ☒ Directors & Officers and Entity Liability Coverage Part
- ☒ Employment Practices Liability Coverage Part
- ☒ Fiduciary Liability Coverage Part
- ☐ Miscellaneous Professional Liability Coverage Part
- ☐ Employed Lawyers Liability Coverage Part
- ☐ CyberSecurity Coverage Part
- ☒ Crime Coverage Part

☐ Kidnap Ransom and Extortion Coverage Part☐ Workplace Violence Expense Coverage Part**Item 5. Extended Reporting Period:**

- (A) Additional Period: 1 year
(B) Additional Premium: 100 % of Annual Premium

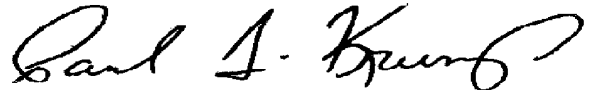
In witness whereof, the Company issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.

FEDERAL INSURANCE COMPANY

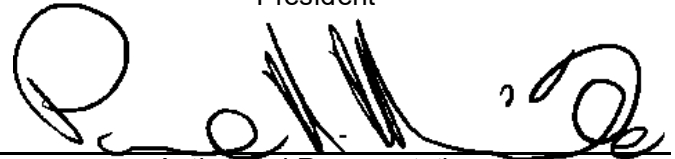
Secretary

09/18/2021

Date



President



Authorized Representative

In consideration of payment of the premium and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy, the Company and the Insureds agree as follows:

I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Part, the terms and conditions of each Coverage Part apply only to that Coverage Part. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part. All references to "Section", "Subsection", "Paragraph" or "Subparagraph" in these General Terms and Conditions shall apply only to these General Terms and Conditions, unless otherwise stated. All references to "Section", "Subsection", "Paragraph" or "Subparagraph" in a Coverage Part, shall apply only to such Coverage Part, unless otherwise stated.

II. DEFINITIONS

Anniversary Date means the date and time exactly one (1) year after the date and time set forth in Item 2(A), Policy Period, of the GTC Declarations and each succeeding date and time exactly one (1) year after the previous **Anniversary Date**.

Claim shall have the meaning ascribed to that term in each applicable Coverage Part.

Coverage Event means the event or loss which must occur or be sustained or discovered, in order to invoke coverage under each **Non-Liability Coverage Part**.

Defense Costs shall have the meaning ascribed to that term in each applicable Coverage Part.

Expense shall have the meaning ascribed to that term in each applicable Coverage Part.

Insured shall have the meaning ascribed to that term in each applicable Coverage Part.

Insured Person shall have the meaning ascribed to that term in each applicable Coverage Part.

Liability Coverage Part means:

(A) the Directors & Officers and Entity Liability, Employment Practices Liability, Fiduciary Liability, Employed Lawyers Liability and Miscellaneous Professional Liability Coverage Parts; and

(B) Insuring Clause (A), Cyber Liability Coverage, of the CyberSecurity Coverage Part,

if purchased as set forth in Item 4, Coverage applicable to this Policy, of the GTC Declarations.

Loss shall have the meaning ascribed to that term in each applicable Coverage Part.

Non-Liability Coverage Part means:

(A) the Crime, Kidnap Ransom and Extortion and Workplace Violence Expense Coverage Parts; and

(B) Insuring Clauses (B), Privacy Notification and Crisis Management Expenses Coverage; (C), Reward Expenses Coverage; (D), E-Business Interruption and Extra Expenses Coverage; (E), E-Threat Expenses Coverage and (F), E-Vandalism Expenses Coverage, of the CyberSecurity Coverage Part,

if purchased as set forth in Item 4, Coverage applicable to this Policy, of the GTC Declarations.

Organization means the **Parent Organization** and any **Subsidiary**. **Organization** shall also mean any such entity as a debtor in possession under United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

Parent Organization means the entity named in Item 1 of the GTC Declarations.

Policy Period means the period of time set forth in Item 2 of the GTC Declarations, subject to any prior termination in accordance with Section X, Termination of Policy.

Policy Year means the period, within the **Policy Period**, from the date and time set forth in Item 2(A), Policy Period, of the GTC Declarations to the first **Anniversary Date**, or the period from an **Anniversary Date** to its next succeeding **Anniversary Date**, subject to any prior termination in accordance with Section X, Termination of Policy.

Potential Claim shall have the meaning ascribed to that term in each applicable Coverage Part.

Related Claims means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

Securityholder Derivative Demand Evaluation Costs shall have the meaning ascribed to that term in each applicable Coverage Part.

Subsidiary means:

- (A) any entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers or equivalent positions of such entity are owned, or controlled, by the **Parent Organization**, directly or through one or more **Subsidiaries**;
- (B) any entity while:
 - (1) exactly fifty percent (50%) of the voting rights representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers or equivalent positions of such entity are owned, or controlled, by the **Parent Organization**, directly or through one or more **Subsidiaries**; and
 - (2) the **Parent Organization**, pursuant to a written contract with the owners of the remaining and outstanding voting stock of such entity, solely controls the management and operation of such entity; or
- (C) any foundation, charitable trust or political action committee while such entity is controlled by the **Parent Organization**.

Voluntary Program Loss shall have the meaning ascribed to that term in each applicable Coverage Part.

Voluntary Program Notice shall have the meaning ascribed to that term in each applicable Coverage Part.

Wrongful Act shall have the meaning ascribed to that term in each applicable Coverage Part.

III. LIMIT OF LIABILITY

(A) With respect to the **Liability Coverage Parts**:

- (1) If the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations is elected, the amount stated in such Item 3 shall be the maximum aggregate limit of liability of the Company for all **Loss**, **Voluntary Program Loss** and **Securityholder Derivative Demand Evaluation Costs** during each **Policy Year** under all **Liability Coverage Parts** combined. However, any **Loss**, **Voluntary Program Loss** or **Securityholder Derivative Demand Evaluation Costs** paid under any **Liability Coverage Part** shall not exceed the Maximum Aggregate Limit of Liability set forth in Item 2 of the Declarations of such Coverage Part.
- (2) If the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations is not elected, the maximum aggregate limit of liability of the Company for all **Loss**, **Voluntary Program Loss**, and **Securityholder Derivative Demand Evaluation Costs** during each **Policy Year** under each **Liability Coverage Part** shall be the Maximum Aggregate Limit of Liability set forth in Item 2 of the Declarations for each **Liability Coverage Part**.

-
- (3) **Defense Costs** are part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the Declarations of each **Liability Coverage Part** and payment by the Company of **Defense Costs** shall reduce and may exhaust such Limits of Liability.
- (B) With respect to the **Non-Liability Coverage Parts**, the Company's maximum liability shall be the Limits of Liability set forth in the Declarations of each **Non-Liability Coverage Part**.
-

IV. RELATED CLAIMS

With respect to the **Liability Coverage Parts**:

- (A) All **Related Claims** shall be deemed a single **Claim** made in the **Policy Year** in which the earliest of such **Related Claims** was first made or first deemed to have been made in accordance with the Reporting section of the applicable **Liability Coverage Part** (the "Earliest Related Claim").
- (B) All **Related Claims** shall be subject to the same Retention and Limits of Liability applicable to the Earliest Related Claim.
-

V. EXTENDED REPORTING PERIOD

With respect to the **Liability Coverage Parts**:

- (A) If this Policy does not renew or otherwise terminates for a reason other than for failure to pay premium (each a "Termination of Coverage"), then an **Insured** shall have the right to purchase an Extended Reporting Period for the Additional Period and Additional Premium set forth in Item 5 of the GTC Declarations.
- (B) In the event of a Termination of Coverage and upon request from an **Insured**, the Company shall, in its sole discretion, provide a quote for Additional Periods other than as set forth in Item 5, Extended Reporting Period, of the GTC Declarations. Any such additional quote offered shall be subject to such Additional Premium as the Company may require.
- (C) The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.
- (D) This right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase the Extended Reporting Period, together with payment of the applicable Additional Premium, is received by the Company within sixty (60) days after the effective date of the Termination of Coverage.
- (E) If an Extended Reporting Period is purchased, then coverage otherwise afforded by this Policy shall be extended to apply to **Claims**: (1) first made during such Extended Reporting Period; and (2) reported to the Company pursuant to the Reporting section of the applicable Coverage Part, but only to the extent such **Claims** are for **Wrongful Acts** before the effective date of such Termination of Coverage or the date of any conversion of coverage described in Section VI, Changes in Exposure, whichever is earlier. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the **Policy Year** immediately preceding the Extended Reporting Period.
- (F) The entire premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.
- (G) The limit of liability for the Extended Reporting Period is part of and not in addition to any maximum aggregate limit of liability for the **Policy Year** immediately preceding the Extended Reporting Period.
-

VI. CHANGES IN EXPOSURE**(A) Acquisition of Another Organization**

- (1) If before or during the **Policy Period** an **Organization** acquires voting rights in another entity such that the acquired entity becomes a **Subsidiary**,
- (2) then coverage shall be provided for such **Subsidiary** and its **Insureds** with respect to any:
 - (a) **Liability Coverage Part**, solely for **Claims** for **Wrongful Acts** after such acquisition; or
 - (b) **Non-Liability Coverage Part**, solely after the effective date of such acquisition subject to the Liability for Prior Losses section of such **Non-Liability Coverage Part**.

(B) Cessation of Subsidiaries

- (1) If before or during the **Policy Period** an **Organization** ceases to be a **Subsidiary**,
- (2) then with respect to any:
 - (a) **Liability Coverage Part**, coverage for such **Subsidiary** and its **Insureds** shall continue until termination of this Policy in accordance with Section VI(C), Conversion of Coverage Under Certain Circumstances, or Section X, Termination of Policy, whichever occurs first, but only for **Claims** for **Wrongful Acts** while such **Organization** was a **Subsidiary**; or
 - (b) **Non-Liability Coverage Part**, such **Subsidiary** and its **Insureds** shall cease to be **Insureds** as of the effective date of such cessation and coverage under this Policy shall apply as provided in such **Non-Liability Coverage Part**.

(C) Conversion of Coverage Under Certain Circumstances

- (1) If during the **Policy Period** any of the following events occur:
 - (a) another entity, person or group of entities or persons acting in concert, acquires more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors, trustees, members of the Board of Managers or management committee members of the **Parent Organization**;
 - (b) the acquisition of all or substantially all of the **Parent Organization's** assets, by another entity, person or group of entities or persons acting in concert, or the merger of the **Parent Organization** into or with another entity such that the **Parent Organization** is not the surviving entity; or
 - (c) the **Parent Organization** emerges from bankruptcy as of the effective date stated in the plan of reorganization,
- (2) then:
 - (a) any applicable coverage under this Policy with respect to:
 - (i) any **Liability Coverage Part**, shall continue until the expiration of the current **Policy Period**, solely for **Claims** for **Wrongful Acts** prior to such event;
 - (ii) the Crime Coverage Part, shall terminate subject to Exclusions III(C), Loss Sustained Option, or III(D), Loss Discovered Option, of such Coverage Part;
 - (iii) the Kidnap Ransom and Extortion Coverage Part, shall terminate subject to Exclusion III(A)(9), Notice, of such Coverage Part;
 - (iv) the Workplace Violence Coverage Part, shall terminate subject to Exclusion III(E) Notice, of such Coverage Part; or
 - (v) Insuring Clauses (B), Privacy Notification and Crisis Management Expenses Coverage; (C), Reward Expenses Coverage; (D), E-Business Interruption and

Extra Expenses Coverage; (E), E-Threat Expenses Coverage and (F), E-Vandalism Expenses Coverage, of the CyberSecurity Coverage Part, shall continue until the expiration of the current **Policy Period** solely for **Expense** first incurred prior to such event;

- (b) the **Parent Organization** shall give written notice of such event to the Company as soon as practicable together with such information as the Company may require; and
- (c) the entire premium for this Policy shall be deemed fully earned as of the effective date of such event.

VII. SPOUSES, DOMESTIC PARTNERS, ESTATES AND LEGAL REPRESENTATIVES

With respect to the **Liability Coverage Parts**, coverage under this Policy shall extend to **Claims** for **Wrongful Acts** of an **Insured Person** made against:

- (A) the lawful spouse or domestic partner of such **Insured Person** solely by reason of such spouse or domestic partner's status as a spouse or domestic partner, or such spouse or domestic partner's ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**; or
- (B) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased, or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is legally incompetent, insolvent or bankrupt,

provided that no coverage afforded by this Section VII shall apply with respect to any loss arising from an act, error or omission by an **Insured Person's** spouse, domestic partner, estate, heirs, legal representatives or assigns.

VIII. SUBROGATION

In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery. As a condition precedent to the Company's payment under this Policy, the **Insureds** agree to execute all papers required and shall take all reasonable actions to secure and preserve such rights, including the execution of such documents necessary to enable the Company to effectively bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

IX. NOTICE

- (A) Notice to the Company of any **Claim, Potential Claim, Voluntary Program Notice** or circumstances under any **Liability Coverage Part**, or any **Coverage Event** under any **Non-Liability Coverage Part**, shall be deemed notice under the Policy in its entirety.
- (B) All notices to the Company under this Policy of any **Claim, Potential Claim, Voluntary Program Notice** or circumstances under any **Liability Coverage Part**, or any **Coverage Event** under any **Non-Liability Coverage Part**, shall be given in writing to one of the following addresses:
 - (1) specialtyclaims@chubb.com; or
 - (2) Attn: Claims Department
Chubb Group of Insurance Companies
82 Hopmeadow St.
Simsbury, CT 06070-7683

(C) All other notices to the Company under this Policy shall be given in writing addressed to:

Attn: Chubb Underwriting Department
Chubb Group of Insurance Companies
202B Hall's Mill Road
Whitehouse Station, NJ 08889

(D) Any notice described above shall be effective on the date of receipt by the Company.

X. TERMINATION OF POLICY

(A) This Policy shall terminate at the earliest of the following times:

- (1) upon receipt by the Company of written notice of termination from the **Parent Organization**, provided that this Policy may not be terminated by the **Parent Organization** after the effective date of any event described in Section VI(C), Conversion of Coverage Under Certain Circumstances;
- (2) upon expiration of the **Policy Period** set forth in Item 2 of the GTC Declarations;
- (3) twenty (20) days after receipt by the **Parent Organization** of a written notice of termination from the Company based upon nonpayment of premium, unless the premium is paid within such twenty (20) day period; or
- (4) at such other time as may be agreed upon by the Company and the **Parent Organization**.

(B) The Company shall refund the unearned premium computed at customary short rates if this Policy is terminated by the **Parent Organization**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XI. BANKRUPTCY

Bankruptcy or insolvency of an **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

XII. COORDINATION OF COVERAGE

Any **Loss** covered under more than one **Liability Coverage Part** shall be first covered under the CyberSecurity Coverage Part, if applicable, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** which is not paid under the CyberSecurity Coverage Part shall then be covered under the Employment Practices Coverage Part, if applicable, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** otherwise covered under any other applicable **Liability Coverage Part** which is not paid under the CyberSecurity or Employment Practices Liability Coverage Parts shall be covered under such other **Liability Coverage Part**, subject to the terms, conditions and limitations of such **Liability Coverage Part**.

Any loss covered under the CyberSecurity Coverage Part and the Kidnap Ransom and Extortion Coverage Part shall be first covered under the Kidnap Ransom and Extortion Coverage Part, subject to its terms, conditions and limitations. Any remaining portion of such loss otherwise covered under the CyberSecurity Coverage Part which is not paid under the Kidnap Ransom and Extortion Coverage Part shall be covered under the CyberSecurity Coverage Part, subject to its terms, conditions and limitations.

XIII. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in this Policy, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in The Wall Street Journal on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

XIV. ACTION AGAINST THE COMPANY

No action may be taken against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy. No person or entity shall have any right under this Policy to join the Company as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the Company be impleaded by such **Insured** or legal representatives of such **Insured**.

XV. ROLE OF PARENT ORGANIZATION

By acceptance of this Policy, the **Parent Organization** agrees that it shall be considered the sole agent of, and shall act on behalf of, each **Insured** with respect to: (A) the payment of premiums and the receiving of any return premiums that may become due under this policy; (B) the negotiation, agreement to and acceptance of endorsements; and (C) the giving or receiving of any notice provided for in this Policy (except the giving of notice to apply for an Extended Reporting Period as provided in Section V, Extended Reporting Period, the giving of notice as provided in Section VIII, Proof of Loss and Legal Proceedings, of the CyberSecurity Coverage Part and the giving of notice of **Claim, Potential Claim, Voluntary Program Notice** or circumstances as provided in the Reporting section of the applicable **Liability Coverage Part**). Each **Insured** agrees that the **Parent Organization** shall act on its behalf with respect to all such matters.

XVI. ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy which is signed by an authorized representative of Chubb, a division of Federal Insurance Company.

XVII. TERRITORY

This Policy shall apply anywhere in the world.

XVIII. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience and form no part of the terms and conditions of coverage.

XIX. COMPLIANCE WITH TRADE SANCTIONS

This insurance does not apply to the extent that trade or economic sanctions or other similar laws or regulations prohibit the Company from providing insurance.

Schedule of Forms

To be attached to and form part of
Policy No. 8262-1174

Company: Federal Insurance Company

Issued to: WOLVERINE HOLDING CORPORATION

ForeFront Portfolio 3 0 General Terms and Conditions Policy

14-02-17753 (12/10 ed.)

14-02-17754 (12/10 ed.)

14-02-18075 (5/11 ed.)

14-02-18714 (2/12 ed.)

FL-216872.1 (4/18 ed.)

FL-216990 (3/18 ed.)

PF-277720 (4/19 ed.)

ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

14-02-17293 (1/11 ed.)

14-02-17755 (12/10 ed.)

14-02-18074 (5/11 ed.)

14-02-19646 (2/13 ed.)

14-02-21084 (3/14 ed.)

14-02-21993 (9/16 ed.)

14-02-22156 (9/16 ed.)

FL-260472 (7/18 ed.)

FL-262944 (8/18 ed.)

MS-304805 (7/20 ed.)

MS-331220 (8/21 ed.)

PF-277856CA (5/19 ed.)

PF-283456 (6/19 ed.)

PF-292191 (12/19 ed.)

ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

14-02-14596 F3 (8/11 ed.)

14-02-14609 F3 (8/11 ed.)

14-02-14656 F3 (8/11 ed.)

14-02-17238 F3 (7/12 ed.)

14-02-17291 (12/10 ed.)

14-02-17756 (12/10 ed.)

Form 14-02-0854 (Ed. 04-01)

Schedule of Forms

To be attached to and form part of
Policy No. 8262-1174

Company: Federal Insurance Company

Issued to: WOLVERINE HOLDING CORPORATION

14-02-18726 (2/12 ed.)

14-02-19708 (12/12 ed.)

14-02-21810 (5/15 ed.)

14-02-8483 F3 (5/11 ed.)

FL-216872.3 (4/18 ed.)

MS-305609 (7/20 ed.)

PF-277857 (5/19 ed.)

ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

14-02-17297 (12/10 ed.)

14-02-17298 (12/10 ed.)

14-02-17299 (12/10 ed.)

14-02-17300 (12/10 ed.)

14-02-17301 (1/11 ed.)

14-02-17757 (12/10 ed.)

14-02-18106 (6/11 ed.)

14-02-19911 (4/13 ed.)

14-02-21148 (10/14 ed.)

14-02-22020 (4/16 ed.)

14-02-22742 (6/17 ed.)

14-02-6265 F3 (2/12 ed.)

14-02-6297 F3 (11/15 ed.)

ForeFront Portfolio 3.0 Crime Coverage Part Federal

14-02-14686 F3 (5/11 ed.)

14-02-18107 (5/11 ed.)

14-02-19628 (8/14 ed.)

14-02-21134 (5/14 ed.)

ALL-317454 (3/21 ed.)

FL-261169 (7/18 ed.)

PF-271128 (1/19 ed.)

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement: July 1, 2021

Federal Insurance Company

Endorsement No. 1

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**CALIFORNIA AMENDATORY ENDORSEMENT
TO THE GENERAL TERMS AND CONDITIONS SECTION**

In consideration of the premium charged, it is agreed that:

1. Section X, Termination of Policy, is amended by adding the following at the end of paragraph (A)(2):

provided that, non-renewal by the Company is effective only if the Company mails or delivers notice of non-renewal to the **Parent Organization** and to the agent of record, if any, at the mailing address shown on this Policy at least sixty (60) but not more than one hundred twenty (120) days before the expiration of the **Policy Period**; or

2. Section X, Termination of Policy, is amended further to add the following paragraphs at the end of the section:

No notice of nonrenewal by the Company is required in any of the following situations:

- (1) the transfer of, or renewal of, this Policy without a change in its terms or conditions or the rate on which the premium is based to another insurer within the Chubb Group of Insurance Companies;
- (2) if this Policy is extended for ninety (90) days or less, provided that the Company has given notice of nonrenewal before such extension;
- (3) if the **Parent Organization** has obtained replacement coverage or has agreed, in writing, within sixty (60) days of the termination of this Policy, to obtain such coverage;
- (4) if the **Parent Organization** requests a change in the terms or conditions or risks covered by this Policy within sixty (60) days before the end of the **Policy Period**;
- (5) if this Policy is for a period of no more than sixty (60) days and the Company notifies the **Parent Organization** at the time of issuance that it may not be renewed; or
- (6) if the Company has made a written offer to the **Parent Organization**, within the required time period for doing so under this Policy, to renew this Policy under changed terms or conditions or at a changed premium rate.

The Company may condition renewal of this Policy upon a reduction in limits, elimination of coverages, increase in retentions or increase of more than twenty-five percent (25%) in the rate upon which the premium is based, by mailing or delivering notice of such renewal change(s) to the **Parent Organization** at the mailing address shown on this Policy and to the agent of record, if any, at least sixty (60) but not more than one hundred twenty (120) days before the expiration of the **Policy Period**.

The Policy will be deemed to have been amended to the extent necessary to effect the purposes and intent of this Amendatory Endorsement.

The regulatory requirements set forth in this Amendatory Endorsement shall supercede and take precedence over any provisions of the Policy or any endorsement to the Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such Policy or endorsement provisions comply with the applicable insurance laws of the State of California.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

CALIFORNIA PREMIUM ENDORSEMENT

In consideration of the premium charged, it is agreed that in compliance with the ruling of the Commissioner of Insurance of the State of California and the opinion of the Attorney-General of that state requiring that the premium for all bonds or policies be endorsed thereon, the basic premium charged for the attached bond/policy for the period

From: July 1, 2021

To: July 1, 2022

Is: Three Hundred Fifty Five Thousand Nine Hundred Fifty Four and 00/100 Dollars -----
(\$355,954.00)

The Policy will be deemed to have been amended to the extent necessary to effect the purposes of this Amendatory Endorsement.

The regulatory requirements set forth in this Amendatory Endorsement shall supersede and take precedence over any provisions of the Policy or any endorsement to the Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such Policy or endorsement provisions comply with the applicable insurance laws of the state of California.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 3

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

BANKRUPTCY ENDORSEMENT

In consideration of the premium charged, it is agreed that Section XI, Bankruptcy, of the General Terms and Conditions is deleted and replaced with the following:

XI. BANKRUPTCY

- (A) Bankruptcy or insolvency of an **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.
- (B) In the event a liquidation or reorganization proceeding is commenced by or against an **Organization** pursuant to the United States Bankruptcy Code, as amended, any similar law or any equivalent law thereof, the **Organization** and the **Insured Persons** hereby agree not to oppose or object to any efforts by the Company, the **Organization** or an **Insured Person** to obtain relief from any stay or injunction.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

ADD ORGANIZATION ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) Solely with respect to any purchased **Liability Coverage Part**, the definition of **Organization** in Section II, Definitions, of the General Terms and Conditions is amended to include:

Patton Air

- (2) Solely with respect to each **Organization** scheduled above and the **Insured Persons** thereof, the Company shall not be liable for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any written demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured** on or prior to 07/01/2021, or the same or substantially the same fact, circumstance or situation underlying or alleged therein.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 5

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

NON-PRIVATE EQUITY GTC AMENDMENT ENDORSEMENT

In consideration of the premium charged, it is agreed that the General Terms and Conditions are amended as follows:

(1) The GTC Declarations is amended by adding the following:

Item 6.	Run-Off Coverage Period:	
(A)	Additional Period of One (1) Year:	100%
	Additional Premium for One (1) Year:	100%
(B)	Additional Period of Three (3) Years:	150%
	Additional Premium of Three (3) Years:	150%
(C)	Additional Period of Six (6) Years:	175%
	Additional Premium of Six (6) Years:	175%

(2) AMEND DEFINITIONS

(i) Section II, Definitions, is amended to add the following definitions:

Foreign Jurisdiction means any jurisdiction, other than the United States or any of its territories or possessions.

Foreign Policy means the standard directors and officers liability policy (including all mandatory endorsements, if any) of the Company or any other member company of Chubb Limited ("Chubb") approved by Chubb to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this Policy. If more than one such policy exists, then **Foreign Policy** means the standard policy most recently registered in the local language of the **Foreign Jurisdiction**, or if no such policy has been registered, then the policy most recently registered in that **Foreign Jurisdiction**. The term **Foreign Policy** shall not include any partnership managerial, pension trust or professional liability coverage.

(ii) The following is added:

Run-Off Coverage Period

With respect to any applicable **Liability Coverage Part**, if the **Parent Organization** gives the Company written notice of an acquisition as described in Subparagraphs (C)(1)(a) and (C)(1)(b) of Section VI, Changes in Exposure, as soon as practicable, but in no event later than the expiration date of the **Policy Period**, the Company shall provide the **Parent Organization** with up to a six (6) year extension of coverage solely for **Claims for Wrongful Acts** prior to such acquisition (the "Run-off Coverage Extension"). Such Run-off Coverage Extension shall be subject to additional terms and conditions as the Company shall require pursuant to an applicable Run-off Endorsement, and the payment of additional premium as set forth in Item 6 of the GTC Declarations. Such additional premium shall be reduced by the amount of the unearned premium from the date of the acquisition through the expiration date of the **Policy Period**.

If an **Insured** elects the terms and conditions of the Run-Off Coverage Extension, such Run-Off Coverage Extension shall replace any extension of coverage that would otherwise be available to the **Insureds** pursuant to Section V, Extended Reporting Period. No additional extension of coverage shall be permitted unless by mutual agreement of the Company and the **Parent Organization**.

(3) AMEND SUBROGATION

Section VIII, Subrogation, is amended to add the following:

Notwithstanding any other provisions of this Policy, any recoveries of payments made by the Company shall be the sole property of the Company, but an amount equal to the amount of such recoveries, minus all costs incurred by the Company to obtain such recoveries, shall reinstate, in such amount, as of the date each recovery is received by the Company, the Limits of Liability of this Policy that were eroded or exhausted by any payment under this Policy.

(4) ADD STATE AMENDATORY INCONSISTENCY

The following Section is added as follows:

STATE AMENDATORY INCONSISTENCY

If there is an inconsistency between a state amendatory endorsement attached to this Policy and any other term or condition of this Policy, the Company shall apply, where permitted by law, those terms and conditions either of such state amendatory endorsement or the Policy form which are more favorable to the **Insured's** coverage.

(5) ADD FOREIGN LIBERALIZATION

The following Section is added as follows:

FOREIGN LIBERALIZATION

Where legally permissible, for **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the Company shall apply to such **Claim** those terms and conditions (and related provisions) of the **Foreign Policy** in such **Foreign Jurisdiction** that are more favorable to such **Insured** than the terms and conditions of this Policy. However, this Section shall not apply to any provision of any policy addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this Policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. J. [unclear]", written above a horizontal line.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 6

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

GLOBAL PROGRAM SOLUTION ENDORSEMENT

In consideration of the premium charged, it is agreed that this Policy is amended as follows solely with respect to the following Coverage Part(s):

☒ Directors & Officers and Entity	☒ Employment Practices
☒ Fiduciary	MPL

1. Section I, Insuring Clauses, of each applicable Coverage Part, is amended to add the following:

Foreign Loss Coverage

- X. To the fullest extent permitted by law, the Company shall reimburse the **Parent Organization** for **Foreign Loss**:

- (i) if such **Foreign Loss** results, or shall result, in a loss to the **Parent Organization** as a result of the **Parent Organization's** insurable interest in the **Foreign Insured**, including but not limited to the **Parent Organization's** ownership, contractual, pecuniary, economic, commercial or strategic interest in such **Foreign Insured**; or
- (ii) if the **Parent Organization** is legally obligated or permitted to indemnify the **Foreign Insured** and has indemnified or represents that it shall indemnify such **Foreign Insured**,

but only if such **Foreign Loss** would have been a covered **Loss** under Insuring Clauses (B) or (C) of Section I of the Directors & Officers and Entity Liability Coverage Part, or the Insuring Clauses in Section I of the Employment Practices, Fiduciary or Miscellaneous Professional Liability Coverage Parts, if applicable, if incurred by the **Parent Organization**.

- Y. Where a natural person **Foreign Insured** incurs loss which would otherwise fall within the definition of **Loss** if such loss had been incurred by an **Insured Person** under Insuring Clause (A) of Section I of the Directors & Officers and Entity Liability Coverage Part, if applicable, the Company will indemnify such natural person **Foreign Insured** by paying such loss in a jurisdiction acceptable to

the natural person **Foreign Insured** and to the Company to the extent such payment is not prohibited by any applicable regulator, government, government body, governmental, judicial or administrative agency.

- Z. Where the Limit of Liability of a **Global Policy** issued to a **Foreign Insured** is exhausted, the Company will pay loss otherwise covered under such **Global Policy** in excess of the Limit of Liability of such **Global Policy**, but only if such loss would have been covered under Insuring Clauses (B) or (C) of Section I of the Directors & Officers and Entity Liability Coverage Part, or the Insuring Clauses in Section I of the Employment Practices, Fiduciary or Miscellaneous Professional Liability Coverage Parts, if applicable, if incurred by the **Parent Organization** and where payment of such loss is not prohibited by any applicable regulator, government, government body, governmental, judicial or administrative agency.

2. Section II, Definitions, of the General Terms and Conditions is amended to add the following:

Foreign Insured means:

- (i) an entity which is a subsidiary or affiliate of the **Parent Organization**, but is domiciled in a country other than the United States, and such country does not permit the purchase of directors and officers, employment practices, fiduciary or miscellaneous professional liability insurance from an insurer that is not a locally authorized insurer in such country; and
- (ii) a natural person of an entity set forth in (i) above, who would otherwise fall within the definition of **Insured Person**, if such natural person held a similar position for the **Parent Organization**.

Foreign Loss means a loss incurred by a **Foreign Insured**, which loss would otherwise fall within the definition of **Loss** in each applicable Coverage Part if such loss had been incurred by the **Parent Organization**.

3. Section III, Limit of Liability, of the General Terms and Conditions is amended to add the following:

U.S. – Global Policy Tie-In Of Limits

Notwithstanding any terms or conditions of this Policy which might be construed otherwise, the maximum aggregate liability of the Company under this Policy and any Directors and Officers Liability, Employment Practices Liability, Fiduciary Liability, or Miscellaneous Professional Liability policy issued by the Company or any of its affiliates to: (a) a **Foreign Insured**; or (b) a **Subsidiary** other than a **Foreign Insured** domiciled in a country other than the United States (“**Global Policies**”), combined, shall be:

- (i) The amount stated in the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if elected (“Combined Policy Limit”); or
- (ii) the sum of the applicable maximum aggregate Limits of Liability set forth in Item 2 of the D&O, EPL, FL or MPL Declarations, if the Combined Policy Limit is not elected.

Any payment of **Loss** under the Directors & Officers and Entity, Employment Practices, Fiduciary or Miscellaneous Professional Liability Coverage Parts, if applicable, shall be treated as follows:

- (A) Any such payment of such **Loss** shall reduce the maximum aggregate Limit of Liability of the Directors & Officers and Entity, Employment Practices, Fiduciary or Miscellaneous Professional Liability Coverage Parts set forth in Item 2 of the Declarations for the applicable Coverage Part

(each, hereinafter, a "Coverage Part Limit"), and if elected, the amount stated in the Combined Policy Limit.

- (B) For those **Claims** where the then-remaining aggregate Limit of Liability of the applicable Coverage Part Limit or the Combined Policy Limit (whichever is less) is greater than the Aggregate Limit of Liability of the **Global Policy**, and payment of **Loss** under this Policy is greater than the difference between the two aggregate Limits of Liability, then that portion of the **Loss** in excess of such difference shall reduce the Aggregate Limit of Liability of the **Global Policy**.
- (C) For those **Claims** where the then-remaining aggregate Limit of Liability of the applicable Coverage Part Limit or the Combined Policy Limit (whichever is less) is equal to or less than the Aggregate Limit of Liability of the **Global Policy**, any **Loss** paid under this Policy shall reduce the Aggregate Limit of Liability of the **Global Policy**.
- (D) Any **Claims** paid under any **Global Policy** shall reduce the maximum aggregate Limit of Liability of the applicable Coverage Part Limit, and will also reduce the Combined Policy Limit.

Nothing in this paragraph shall serve to increase the maximum aggregate Limit of Liability of this Policy, any applicable Coverage Part or any **Global Policy**. If any provision of this section is held to be invalid or unenforceable to any extent in any context or any jurisdiction, it shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts and jurisdictions.

4. Section VII of each of the Directors & Officers and Entity Liability and Fiduciary Liability Coverage Parts, and Section V of each of the Employment Practices Liability and Miscellaneous Professional Liability Coverage Parts, if applicable, are amended to add the following:

Global Program Solutions Retentions:

With respect to the Insuring Clauses X, Y and Z, the Retentions shall be as follows:

Insuring Clause X: The Retention for Insuring Clause X shall be the same as the Retention would be for the **Parent Organization** under Insuring Clauses (B) or (C) of Section I of the Directors & Officers and Entity Liability Coverage Part, or the Insuring Clauses in Section I of the Employment Practices, Fiduciary or Miscellaneous Professional Liability Coverage Parts, as applicable.

Insuring Clause Y: No Retention shall apply.

Insuring Clause Z: Any **Claim** or **Related Claims** for which loss is paid under a **Global Policy** and this Policy shall be subject to a single Retention equal to the highest applicable Retention.

5. Solely with respect to the coverage afforded by this endorsement, the following Sections are added to the General Terms and Conditions as follows:

Global Program

This Policy is part of a global program. This global program is a compilation of different policies consisting of this Policy and the **Global Policies**, which all have one common goal, to cover the **Insureds** of this Policy and the insureds of the **Global Policies** worldwide on terms, conditions and limitations agreed to by the applicable insurers and insureds. Therefore, the **Parent Organization** of this Policy has agreed to special terms and conditions

in this Policy related to, among other things, limits in the **Global Policies**, the tie-in of those limits, and Wolverine Holding Corporation indemnification obligations related to amounts paid by insurers in excess of one or more of those limits, which reflects the overall intent of parties for the entire global program.

Global Liberalization

To the extent not prohibited by applicable law, it is the intention of the parties that with respect to any claim for coverage made or payable in a foreign jurisdiction under a **Global Policy**, the affiliate of the Company shall apply the terms and conditions (and related provisions) of this Policy that are more favorable to the **Foreign Insureds** of such **Global Policy**. This paragraph shall not apply to any provision of this Policy that addresses limits of liability (primary, excess or sublimits), retentions, deductibles, non-renewal, duty to defend, defense within or without limits, taxes, conformance to law, or any claims made provisions.

Indemnification

With respect to Subsection, U.S. – Global Policy Tie-In Of Limits, in Section III, Limit of Liability (as set forth above), in the event that the Company or one or more of the insurers of the **Global Policies** has made, or becomes liable to make, payments under one of the applicable Coverage Parts or any **Global Policy** or any combination thereof that in the aggregate exceed the Company's maximum aggregate Limit of Liability for all **Loss** under a Coverage Part Limit or a Combined Policy Limit, then Wolverine Holding Corporation shall repay the Company all amounts paid, and indemnify the Company in respect of all Company liabilities to make payments in excess of the applicable aggregate Limit of Liability.

Wolverine Holding Corporation shall pay the Company all amounts due by reason of this Indemnification Section no later than thirty days following receipt of notice by the Company that such amounts are due. If any provision of this Indemnification Section is held to be invalid or unenforceable to any extent in any context or any jurisdiction, it shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts and jurisdictions.

Reporting

Solely with respect to Section I, Insuring Clauses, Foreign Loss Coverage, Section VI, Reporting, of the Directors & Officers and Entity or Fiduciary Liability Coverage Parts, or Section IV, Reporting, of the Employment Practices or Miscellaneous Professional Liability Coverage Part, if applicable, shall be applied as if the **Foreign Insured** was an **Insured** under this Policy.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 General Terms and Conditions Policy

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 7

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

GTC AMENDMENT ENDORSEMENT

In consideration of the premium charged, it is agreed that:

(1) AMEND GTC DEFINITIONS

Section II, Definitions, of the General Terms and Conditions is amended as follows

- (i) Section II is amended to add the following definitions:

Affiliated Entity means:

- (A) any pooled investment vehicle formed and controlled by the **Private Equity Firm** for purposes of making a direct or indirect investment in the **Parent Organization**;
- (B) any entity which is a general partner, administrative general partner, managing general partner, managing member, administrative member, sole member, manager, managing shareholder or other sponsor of a pooled investment vehicle described in Subsection (A) above; or
- (C) any entity (including, but not limited to, any holding company, special purpose vehicle or other acquisition vehicle) formed for the sole purpose of holding a direct or indirect interest in the **Parent Organization**, but only if such entity is majority-owned and controlled by a pooled investment vehicle described in Subsection (A) above and/or directly by the **Private Equity Firm**.

Controlled Limited Partnership means any limited partnership in which, and for as long as:

- (A) the **Parent Organization** owns or controls, directly or indirectly, more than fifty percent (50%) of the limited partnership interest of such limited partnership; and
- (B) any **Organization** is the sole general partner of such limited partnership.

Sponsor Company means, with respect to any **Liability Coverage Part** (other than the Third Party Liability Insuring Agreements of the CyberSecurity Coverage Part), Platinum Equity, LLC; Platinum Equity Investment Holdings, LLC ("**Private Equity Firm**") and any **Affiliated Entity** thereof.

- (ii) The definition of **Organization** is amended to include:

- (A) any entity in its capacity as a general partner of a **Parent Organization** or a **Controlled Limited Partnership**; or
- (B) any **Sponsor Company**, but only with respect to **Claims** arising out of the **Sponsor Company's** management control of the **Parent Organization**, and only:
 - (1) for **Wrongful Acts** committed or allegedly committed by an **Insured**, other than the **Sponsor Company**;
 - (2) so long as such **Claim** is brought and maintained concurrently against an **Insured** other than the **Sponsor Company**; and
 - (3) if the same counsel represents the **Sponsor Company** and the **Insureds** in such **Claim**;
- (iii) The definition of **Subsidiary** is amended to include any **Controlled Limited Partnership**.

(2) AMEND COVERAGE PART DEFINITIONS

The Definition provision of each applicable Coverage Part is amended as follows

- (i) The definition of **Insured Person** in each applicable Coverage Part is amended to include the following:

Insured Person shall also mean any directors, officers, or employees of the **Sponsor Company**, in their capacity as a director, officers, advisor, consultant or equivalent position to the **Organization** but only so long as the **Organization** indemnifies such individual to the same extent as any director or officer of the **Organization**.

- (ii) The definition of **Loss** in each applicable Coverage Part is amended to include the following:

Whether any **Insured Person** has incurred **Loss** under any Coverage Part shall be determined without regard to any indemnification provided to such **Insured Person** by any direct or indirect securityholder of the **Organization** (or any direct or indirect affiliate, control person or investment adviser of such securityholder) and without regard to any other insurance coverage that may be available to such **Insured Person** under any insurance policy also providing coverage to any direct or indirect securityholder of the **Parent Organization** (or any direct or indirect affiliate, control person or investment adviser of such securityholder); provided, that nothing in this paragraph shall limit the Company's right to subrogation under Section VIII. Subrogation, except pursuant to any **Insured Person's** right of indemnification against a direct or indirect securityholder of the **Organization** (whether pursuant to the constituent documents of an entity, by direct contract or as a third-party beneficiary under the terms of any contract) and except pursuant to any **Insured Person's** right to insurance coverage.

- (iii) The definition of **Plan** in the Fiduciary Coverage Part, if applicable, is amended to add the following:

Plan shall not include any plan of the **Sponsor Company**.

- (3) Notwithstanding anything to the contrary in this Policy, this Policy shall apply as primary insurance with respect to
 - (i) any private equity or venture capital liability, general partner liability, or other similar management or professional liability insurance providing coverage to any direct or indirect securityholder of an **Organization** (or any director, affiliate, control person or investment adviser of such shareholder or any representative or agent of such shareholder or affiliate);
 - (ii) any indemnification which may be owed to any **Executive** by a direct or indirect securityholder of the **Organization**; or
 - (iii) any personal liability or umbrella liability insurance that may be available to such **Executives**.
- (4) Notwithstanding any Allocation provision in this Policy (including any amendment by endorsement), with respect to any **Sponsor Company**, **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. S.", written over a horizontal line.

Authorized Representative



Chubb Group of Insurance Companies
202B Hall's Mill Road
Whitehouse Station, NJ 08889

ForeFront Portfolio 3.0SM
Directors & Officers and Entity Liability
Coverage Part

D&O DECLARATIONS

FEDERAL INSURANCE COMPANY

A stock insurance company, incorporated under the laws of Indiana, herein called the Company

Capital Center, 251 North Illinois, Suite 1100
Indianapolis, IN 46204-1927

NOTICE: THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD", OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE RETENTION. IN NO EVENT WILL THE COMPANY BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF LIABILITY. READ THE ENTIRE POLICY CAREFULLY.

Item 1. Parent Organization: WOLVERINE HOLDING CORPORATION

Item 2. Maximum Aggregate Limit of Liability for this Coverage Part: \$10,000,000.00

Item 3. Optional Coverage Applicable to this Coverage Part:

☒ Additional Limit of Liability Dedicated for Executives

Item 4. Retentions:

(A) Insuring Clause (A)	
Individual Non-Indemnified Liability Coverage:	None
(B) Insuring Clause (B)	
Individual Indemnified Liability Coverage:	\$150,000.00
(C) Insuring Clause (C)	
Entity Liability Coverage:	\$150,000.00

Item 5. Pending or Prior Proceedings Dates:

(A) Insuring Clauses (A) and (B):	January 09, 2020
(B) Insuring Clause (C):	January 09, 2020

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 Whitehouse Station, NJ 08889

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Coverage Part

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Individual Non-Indemnified Liability Coverage

- (A) The Company shall pay, on behalf of an **Insured Person**, **Loss** on account of a **Claim** first made against the **Insured Person** during the **Policy Period**, or the Extended Reporting Period if applicable, to the extent that such **Loss** is not indemnified by an **Organization**.

Insuring Clause (B): Individual Indemnified Liability Coverage

- (B) The Company shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against an **Insured Person** during the **Policy Period**, or the Extended Reporting Period if applicable, to the extent the **Organization** indemnifies the **Insured Person** for such **Loss** as permitted or required by law.

Insuring Clause (C): Entity Liability Coverage

- (C) The Company shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**, or the Extended Reporting Period if applicable.

II. SECURITYHOLDER DERIVATIVE DEMAND EVALUATION COVERAGE

The Company shall pay, on behalf of an **Organization**, **Securityholder Derivative Demand Evaluation Costs** incurred with the Company's prior written consent which the **Organization** becomes legally obligated to pay on account of any securityholder derivative demand that is first made during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for **Wrongful Acts** by an **Executive** before or during the **Policy Period** in an aggregate amount not to exceed \$500,000 per **Policy Period** which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations and no Retention shall apply to such amount.

III. ADDITIONAL LIMIT OF LIABILITY DEDICATED FOR EXECUTIVES (Optional)

- (A) Notwithstanding anything in this Policy to the contrary, the Additional Limit of Liability Dedicated For Executives, if purchased as set forth in Item 3 of the D&O Declarations, shall be an additional Limit of Liability in an amount not to exceed \$500,000, which amount is in addition to, and not part of, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations.
- (B) The Additional Limit of Liability Dedicated For Executives is available solely for **Loss** resulting from any **Claim** against any **Executive** covered under Insuring Clause (A), Individual Non-Indemnified Liability Coverage.
- (C) The Additional Limit of Liability Dedicated For Executives shall be excess of any insurance available that is specifically excess to this Coverage Part and such excess insurance must be completely exhausted by payment of loss, damages or defense costs thereunder before the Company shall have any obligation to make any payment on account of the Additional Limit of Liability Dedicated For Executives.

IV. DEFINITIONS

For purposes of this Coverage Part:

Application means:

- (A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part; and
- (B) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

Claim means:

- (A) when used in reference to the coverage provided by Insuring Clauses (A), Individual Non-Indemnified Liability Coverage, or (B), Individual Indemnified Liability Coverage, any:
 - (1) written demand first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;
 - (2) civil proceeding commenced by the service of a complaint or similar pleading;
 - (3) criminal proceeding commenced by: (a) an arrest, or (b) a return of an indictment, information or similar document;
 - (4) formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
 - (5) arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document; or
 - (6) official request for **Extradition**,
 against an **Insured Person** for a **Wrongful Act**, including any appeal therefrom;
 - (7) civil, criminal, administrative or regulatory investigation or interview of an **Insured Person** for a **Wrongful Act** once such **Insured Person** is identified in writing by any investigating authority as a target of such investigation or interview, including when such **Insured Person** is served with a target letter or similar document; or
 - (8) written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in Paragraphs (A)(1) through (A)(7) above;
- (B) solely when used in reference to the coverage provided by Insuring Clause (A), Individual Non-Indemnified Liability Coverage, any service of a subpoena or other similar written request upon an **Insured Person** compelling witness testimony or document production in connection with the matters described in Paragraphs (A)(1) through (A)(7) above or with any equivalent action against an **Organization** or **Outside Entity**; in which case, the Company shall pay the **Defense Costs** incurred solely by such **Insured Person** in responding to such subpoena or written request; or
- (C) when used in reference to the coverage provided by Insuring Clause (C), Entity Liability Coverage, any:
 - (1) written demand first received by an **Insured** for monetary damages or non-monetary relief, including injunctive relief;
 - (2) civil proceeding commenced by the service of a complaint or a similar pleading;
 - (3) criminal proceeding commenced by a return of an indictment, information or similar document;
 - (4) formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; but only while such proceeding is also pending against an **Insured Person**; or

- (5) arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document,

against an **Organization** for a **Wrongful Act**, including any appeal therefrom; or

- (6) written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in Paragraph (C)(1) through (C)(5) above.

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing any **Claim** and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service is, was or will be engaged and directed by an **Organization**, including a part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** shall not include any independent contractor.

ERISA means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996), the English Pension Scheme Act 1993 or the English Pensions Act 1995; all as amended; any similar statutory or common law anywhere in the world; or any rule or regulation promulgated under any such Act or law.

Executive means any natural person who is, was or will be:

- (A) a duly elected or appointed director, officer, member of the Advisory Board or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; (2) member of the Advisory Board; or (3) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Extradition means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

Financial Impairment means the status of an **Organization** resulting from:

- (A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (B) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country,

provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Organization**, or other party determined to have standing, for authorization of the **Organization** to indemnify an **Insured Person** for **Loss**; provided further that, the Company may, in its sole discretion, waive the foregoing requirement.

Insured means any **Organization** and any **Insured Person**.

Insured Person means any **Executive** or **Employee** of an **Organization** acting either in his or her capacity as such or in an **Outside Capacity**.

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages;
- (C) civil fines or civil penalties assessed against an **Insured Person**, including civil penalties assessed against an **Insured Person** pursuant to 15 U.S.C. §78dd-2(g)(2)(B) (the Foreign Corrupt Practices Act), if and to the extent such fines or penalties are insurable under the law of the jurisdiction in which such fines or penalties are assessed;
- (D) judgments, including pre-judgment and post-judgment interest;
- (E) settlements; and
- (F) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax, except solely for the purposes of Insuring Clause (A), Individual Non-Indemnified Liability Coverage, any tax imposed upon an **Insured Person** in his or her capacity as such in connection with any bankruptcy, receivership, conservatorship, or liquidation of an **Organization**, to the extent that such tax is insurable under the law pursuant to which this Coverage Part is construed;
- (4) amount (other than **Securityholder Derivative Demand Evaluation Costs**) incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding or demand subsequently gives rise to a **Claim**;
- (5) amount that represents or is substantially equivalent to an increase in the consideration paid (or proposed to be paid) by an **Organization** in connection with its purchase of any securities or assets; or
- (6) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

Outside Capacity means service by an **Insured Person** in an **Outside Entity** as any: (A) director or officer; (B) manager or member of the Board of Managers; (C) trustee, regent, governor; or (D) equivalent executive position of any of the foregoing, but solely during the time that such service is with the knowledge and express consent of an **Organization**.

Outside Entity means:

- (A) any non-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an entity described in Section 501(c)(3), 501(c)(4), 501(c)(7) or 501(c)(10) of the Internal Revenue Code of 1986, as amended, or any other entity organized for a religious or charitable purpose under any non-profit organization act or statute; or
- (B) any other entity specifically added as an **Outside Entity** by written endorsement attached to this Coverage Part,

that is not an **Organization**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Professional Services means services which are performed for others for a fee.

Securityholder Derivative Demand Evaluation Costs means reasonable costs, fees and expenses (other than regular or overtime wages, salaries, fees, or benefits of the directors, officers or employees of an **Organization**) incurred by an **Organization** (including its Board of Directors or any committee of its Board of Directors) solely with respect to an evaluation required to determine whether it is in the best interest of the **Organization** to prosecute the claims alleged in a securityholder derivative demand and prior to any **Claim** first made in connection with such securityholder derivative demand. In no event shall **Securityholder Derivative Demand Evaluation Costs** include any costs, fees or expenses incurred in a **Claim**.

Wrongful Act means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by:

- (A) for purposes of coverage under Insuring Clauses (A), Individual Non-Indemnified Liability Coverage, and (B), Individual Indemnified Liability Coverage, any **Insured Person** while acting in his or her capacity as such or any matter claimed against any **Insured Person** solely by reason of his or her status as such; or
- (B) for purposes of coverage under Insuring Clause (C), Entity Liability Coverage, any **Organization**.

V. EXCLUSIONS

(A) EXCLUSIONS APPLICABLE TO ALL INSURING CLAUSES

The Company shall not be liable for **Loss** on account of any **Claim**:

- (1) Prior Notice
 based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any policy or coverage part of which this Coverage Part is a direct or indirect renewal or replacement;
- (2) Pending or Prior Proceedings
 based upon, arising from or in consequence of any written demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Proceedings Date set forth in Item 5 of the D&O Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (3) Bodily Injury/Property Damage
 for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (A)(3) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress asserted in an employment-related **Claim** afforded coverage under Insuring Clauses (A), Individual Non-Indemnified Liability Coverage, or (B), Individual Indemnified Liability Coverage;
- (4) Pollution
 based upon, arising from or in consequence of any:
 - (a) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
 - (b) treatment, removal or disposal of any **Pollutants**; or
 - (c) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,

including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Subparagraphs (a), (b) or (c) of this Exclusion (A)(4),

provided that this Exclusion (A)(4) shall not apply to **Loss** which an **Insured Person** becomes legally obligated to pay and for which such **Insured Person** is not indemnified by an **Organization** or **Outside Entity** either because the **Organization** or **Outside Entity** is not permitted by common or statutory law to grant such indemnification or because of the **Financial Impairment** of the **Organization** or **Outside Entity**, provided that this exception shall only apply to **Claims** first made during the **Policy Period** or the Extended Reporting Period, if applicable;

- (5) ERISA
 for any violation of the responsibilities, obligations or duties imposed by **ERISA**;
- (6) Insured versus Insured
 - (a) brought by an **Organization** against any other **Organization**;
 - (b) brought by an **Organization** against an **Insured Person** of such **Organization**, provided that this Subparagraph (b) shall not apply to any **Claim** brought:
 - (i) outside the United States of America or Canada;
 - (ii) in the event of **Financial Impairment** of the **Organization**; or
 - (iii) as a securityholder derivative action;
 - (c) brought by an **Insured Person** in any capacity against an **Insured**, except with respect to a **Claim**:
 - (i) for employment-related **Wrongful Acts** against an **Insured Person**;
 - (ii) brought by an **Employee**, other than an **Executive**, in his or her capacity as a shareholder of an **Organization**;
 - (iii) for contribution or indemnity arising from another **Claim** otherwise covered under this Policy;
 - (iv) brought by an **Executive** who has ceased serving in his or her capacity as an **Executive** for at least one (1) year; or
 - (v) brought by a whistleblower pursuant to any federal, state, local or foreign law against an **Insured Person**;
- (7) Publicly Traded Securities
 based upon, arising from or in consequence of (a) any public offering of securities issued by any **Organization** or **Outside Entity**, or (b) the purchase or sale of any publicly traded securities for which the **Organization** is subject to the Securities Exchange Act of 1934, provided that this Exclusion (A)(7) shall not apply to **Loss**:
 - (i) based upon, arising from or in consequence of an offering, sale or purchase of securities that are not required to be registered under the Securities Act of 1933 or any similar foreign law that regulates the offering, sale or purchase of securities;
 - (ii) on account of a **Claim** made by any securityholder of an **Organization** for the failure of the **Organization** to undertake or complete the initial public offering or sale of securities of the **Organization**; or
 - (iii) for any **Wrongful Act** relating to an **Organization's** preparation for any public offering, including any road show presentation to potential investors or other similar presentation, made by the **Organization** and its **Executives** via any medium in connection with such public offering, if such offering does not occur;
- (8) Outside Entity versus Insured
 for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity** where such **Claim** is brought:

- (a) by an **Outside Entity** against an **Insured Person** who is acting in his or her **Outside Capacity** in such **Outside Entity** at the time such **Claim** is first made, except with respect to a **Claim** brought as a securityholder derivative action; or
 - (b) by a director, officer, trustee, governor or equivalent position of the **Outside Entity** in any capacity against an **Insured**, except with respect to a **Claim** for contribution or indemnity arising from another **Claim** otherwise covered under this Policy; or
- (9) Conduct
 based upon, arising from or in consequence of:
- (a) any deliberately fraudulent act or omission, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes such an act or omission or violation; or
 - (b) an **Insured** having gained any profit, remuneration or other advantage to which such **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes the gaining of such profit, remuneration or advantage,
- provided that:
- (i) no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (ii) any conduct pertaining to any past, present, or future chief financial officer, chief executive officer or chief operating officer (or any equivalent position to any of the foregoing) of an **Organization** shall be imputed to such **Organization** and its **Subsidiaries**.

(B) EXCLUSIONS APPLICABLE TO INSURING CLAUSE (C), ENTITY LIABILITY COVERAGE, ONLY

The Company shall not be liable for **Loss** on account of any **Claim** against an **Organization**:

- (1) Contract
 based upon, arising from or in consequence of any liability in connection with any oral or written contract or agreement to which an **Organization** is a party, provided that this Exclusion (B)(1) shall not apply to the extent that such **Organization** would have been liable in the absence of such contract or agreement;
- (2) Employment Practices
 based upon, arising from or in consequence of any employment-related **Wrongful Act**;
- (3) Third Party Discrimination or Sexual Harassment
 based upon, arising from or in consequence of any discrimination against, or sexual harassment of any third party;
- (4) Antitrust
 based upon, arising from or in consequence of price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes; or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;
- (5) Personal Injury
 based upon, arising from or in consequence of any libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; or

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Coverage Part

- (6) Product Defect/Intellectual Property/Professional Services
based upon, arising from or in consequence of:
- (a) any malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;
 - (b) any infringement of copyright, patent, trademark, trade name, trade dress, or service mark; any misappropriation of ideas, trade secrets or other intellectual property rights; any false patent marking; or any violation of a federal, state, local or foreign intellectual property law, or a rule or regulation promulgated under any such intellectual property law; or
 - (c) the rendering of, or failure to render, any **Professional Services** by an **Insured**,
- provided that this Exclusion (B)(6) shall not apply to **Loss** on account of any securities **Claim**, securityholder derivative demand or securityholder derivative action.

VI. REPORTING

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, in-house general counsel, or any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
 - (2) the expiration date of the Extended Reporting Period, if applicable,
- provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.
- (B) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company, then any **Claim** subsequently arising from such circumstances shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances were first reported to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than 90 days after the chief executive officer, chief financial officer, in-house general counsel or any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**.
- (C) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require and shall include in any notice under Subsections (A) or (B) above a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of the actual or potential claimants, and the manner in which such **Insured** first became aware of the **Claim**, circumstances or alleged **Wrongful Act**.

VII. RETENTION AND PRESUMPTIVE INDEMNIFICATION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is in excess of the applicable Retention set forth in Item 4 of the D&O Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Insuring Clauses within this Coverage Part, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (D) **Claims** shall be subject to the Retention(s) applicable to the **Policy Year** during which such **Claims** are first made or first deemed to have been made.
- (E) If an **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify an **Insured Person** for **Loss** to the fullest extent permitted by statutory or common law, then any payment by the Company of such **Loss** shall be excess of the Insuring Clause (B), Individual Indemnified Liability Coverage, Retention set forth in Item 4 of the D&O Declarations.
- (F) For the purposes of determining an **Organization's** indemnification obligation to any Advisory Board Member, each Advisory Board Member shall be deemed a director or officer of such **Organization**. Accordingly, the **Organization** shall be deemed to have granted indemnification to each Advisory Board Member to the fullest extent permitted by statutory or common law to the same extent as any director or officer of the **Organization**.

VIII. DEFENSE AND SETTLEMENT

- (A) The Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) The Company may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.
- (C) No **Insured** shall settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.
- (D) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the premium shall be deemed fully earned.
- (E) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees to do nothing that may prejudice the Company's position or its potential or actual rights of recovery.
- (F) The Company shall not seek repayment from an **Insured Person** of any **Defense Costs** paid by the Company that are deemed uninsured pursuant to Exclusion (A)(9), Conduct, unless the applicable determination standard (whether a final, non-appealable adjudication or other determination standard) set forth in such Exclusion has been met.

IX. ALLOCATION

If an **Insured** who is afforded coverage for a **Claim** incurs an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

- (A) **Defense Costs:** one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to Exclusion (B)(2), Employment Practices, or Subsection XIII(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and
- (B) loss other than **Defense Costs:** all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.

X. PRIORITY OF PAYMENTS

- (A) In the event of **Loss** arising from a **Claim** for which payment is concurrently due under Insuring Clause (A), Individual Non-Indemnified Liability Coverage, and one or more of the other Insuring Clauses of this Coverage Part, the Company shall:
 - (1) first, pay **Loss** for which coverage is provided under Insuring Clause (A), Individual Non-Indemnified Liability Coverage, then
 - (2) with respect to whatever remaining amount of the Limit of Liability is available after payment under Subsection (A) above, pay such **Loss** for which coverage is provided under any other Insuring Clause.
- (B) Except as otherwise provided in Subsection (A) above, the Company may pay covered **Loss** as it becomes due under this Coverage Part without regard to the potential for other future payment obligations under this Coverage Part.

XI. OTHER INSURANCE OR INDEMNITY

- (A) If any **Loss** under this Coverage Part is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Coverage Part), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
- (B) Any coverage afforded under this Coverage Part for a **Claim** in connection with an **Insured Person** serving in an **Outside Capacity** for an **Outside Entity** shall be specifically excess of any indemnity (other than any indemnity provided by an **Organization**) and insurance available to such **Insured Person** by reason of serving in such **Outside Capacity**.
- (C) If any **Claim** made against an **Insured Person** serving in an **Outside Capacity** gives rise to coverage both under this Coverage Part and under any other coverage part or policy issued by the Company or any subsidiary or affiliate of The Chubb Corporation to any other entity, then any payment under such other coverage part or policy shall reduce any applicable Limit of Liability under this Coverage Part by the amount of such payment.

XII. SECURITIES TRANSACTIONS

If, during the **Policy Period**, an **Organization** intends to sell or offers to sell securities that are required to be registered under the Securities Act of 1933, the **Organization** shall, no later than thirty (30) days prior to the effective date of the Registration Statement for such sale or offering, give the Company written notice of the proposed sale or offering and all information requested by the Company relating thereto. The Company shall provide to the **Organization** a quotation for coverage with respect to such sale or offering, including for **Wrongful Acts** occurring in the course of any "road show" presentation to potential investors or other similar presentation; provided any such coverage offered shall be subject to such other terms, conditions, and limitations of coverage and such additional premium as the Company, in its sole discretion, may require.

XIII. REPRESENTATIONS AND SEVERABILITY

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
 - (1) any **Insured Person** who knew of such misrepresentations (whether or not such **Insured Person** knew such **Application** contained such misrepresentations) or any **Organization** to the extent it indemnifies any such **Insured Person**; or
 - (2) any **Organization** if any past or present chief executive officer or chief financial officer (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).
- (D) The Company shall not be entitled under any circumstances to void or rescind this Coverage Part with respect to any **Insured**.

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND ADDITIONAL LIMIT OF LIABILITY DEDICATED FOR EXECUTIVES ENDORSEMENT

In consideration of the premium charged, it is agreed that Subsection (A) of Section III., Additional Limit of Liability Dedicated for Executives, of this Coverage Part is deleted and replaced with the following:

- (A) Notwithstanding anything in this Policy to the contrary, the Additional Limit of Liability Dedicated For Executives, if purchased as set forth in Item 3 of the D&O Declarations, shall be an additional Limit of Liability in an amount not to exceed \$1,000,000, which amount is in addition to, and not part of, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement: July 1, 2021

Federal Insurance Company

Endorsement No. 2

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**CALIFORNIA AMENDATORY ENDORSEMENT
TO THE DIRECTORS & OFFICERS AND ENTITY LIABILITY COVERAGE PART**

In consideration of the premium charged, it is agreed that:

1. Subparagraph (B) in the definition of **Loss** as set forth in of Section IV, Definitions, is deleted and replaced with the following:
 - (B) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; and provided further that, if such jurisdiction is the State of California, then **Loss** does not include punitive, exemplary or multiplied damages;

The Policy will be deemed to have been amended to the extent necessary to effect the purposes and intent of this Amendatory Endorsement.

The regulatory requirements set forth in this Amendatory Endorsement shall supercede and take precedence over any provisions of the Policy or any endorsement to the Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such Policy or endorsement provisions comply with the applicable insurance laws of the State of California.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement: July 1, 2021

Company: Federal Insurance Company

Endorsement No. 3

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRIOR ACTS EXCLUSION ENDORSEMENT

In consideration of the premium charged, it is agreed that the Company shall not be liable under this Coverage Part for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any **Wrongful Act** in whole or in part prior to 01/09/2020.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

FALSE ADVERTISING ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) Subsection (B) of Section V, Exclusions, of this Coverage Part is amended to add the following:

False Advertising

based upon, arising from, or in consequence of any false advertising, misrepresentation in advertising or unfair or deceptive trade practices, with respect to the advertising of the **Insured's** own goods, publications or services; provided that this Exclusion shall not apply to **Loss** on account of any securities **Claim**, securityholder derivative demand or securityholder derivative action.

- (2) Solely with respect to the coverage afforded under this endorsement, Subsection (A) of Section IX, Allocation, of this Coverage Part is deleted and replaced with the following:

- (A) **Defense Costs:** one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to the Exclusion in paragraph (1) of this endorsement, False Advertising, Exclusion (B)(2), Employment Practices, or Subsection XIII(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 5

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

JOBS ACT ENDORSEMENT

In consideration of the premium charged, it is agreed that

- (1) Exclusion (A)(7), Publicly Traded Securities, of this Coverage Part shall not apply to **Loss** on account of any **Claim**:
 - (A) based upon, arising from or in consequence of any general solicitation or general advertising by or on behalf of any **Organization** permitted pursuant to Title II, Access to Capital for Job Creators, of the JOBS Act (as defined below);
 - (B) based upon, arising from or in consequence of any offering, sale or purchase of securities that qualifies for a Securities Act registration exemption created pursuant to Title III, Crowdfunding, of the JOBS Act; or
 - (C) based upon, arising from or in consequence of any offering, sale or purchase of securities that qualifies for a Securities Act registration exemption created pursuant to Title IV, Small Company Capital Formation, of the JOBS Act ("Title IV Small Company Capital Formation Claim").
- (2) The Company's maximum aggregate Limit of Liability for **Loss** on account of all Title IV Small Company Capital Formation Claims shall be \$250,000 which amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in Item 2 of the D&O Declarations.
- (3) For purposes of this Endorsement, JOBS Act means the Jumpstart Our Business Startups Act, any amendments thereto and any rules or regulations promulgated thereunder.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

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Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 6

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND DEFENSE AND SETTLEMENT ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) Section VIII, Defense and Settlement, of this Coverage Part (including any amendment by Endorsement) is deleted and replaced with the following:

VIII. DEFENSE AND SETTLEMENT

(A) The Insured:

- (1) shall have the sole duty to defend **Claims** made against the **Insured**;
- (2) agrees not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent;
- (3) agrees to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agrees that, in the event of a **Claim**, the **Insured** shall not do anything that could prejudice the Company's position or its potential or actual rights of recovery; provided that the failure of any **Insured Person** to give the Company such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this Coverage Part.

(B) The Company:

- (1) shall have the right and shall be given the opportunity to effectively associate with the **Insured** and shall be consulted in advance by the **Insured**, regarding the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part under this Coverage Part, including selecting appropriate defense counsel and negotiating any settlement; and

- (2) shall not be liable for any element of **Loss** incurred in excess of the amount of the applicable Retention, for any obligation assumed, or for any admission made, by any **Insured** without the Company's prior written consent, which the Company shall not unreasonably withhold.
- (C) The Company shall advance covered **Defense Costs** on account of any **Claim** reported pursuant to Section VI, Reporting, on a current basis after receipt by the Company of bills detailing such **Defense Costs** and all other information requested by the Company with respect to such bills until the applicable Limit of Liability set forth in Item 2 of the D&O Declarations has been satisfied.
- (D) Any advancement of **Defense Costs** shall be repaid to the Company by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured under this Policy. However, the Company shall not seek repayment from an **Insured** of advanced **Defense Costs** that are uninsured pursuant to Exclusion V(A)(9), Conduct, unless a final, non-appealable adjudication has occurred.
- (E) Any advancement of **Defense Costs** by the Company shall reduce the Limit of Liability set forth in Item 2 of the D&O Declarations. If the Company recovered any such **Defense Costs** paid, the amount of such **Defense Costs** less all costs incurred by the Company to obtain such recovery shall be reinstated to the Limit of Liability set forth in Item 2 of the D&O Declarations.
- (2) Section IX, Allocation, of this Coverage Part (including any amendment by Endorsement) is deleted and replaced with the following:
- IX. ALLOCATION
- The **Insureds** and the Company shall use their best efforts to determine an allocation between **Loss** that is covered by this Coverage Part and loss, or any other amount, that is not covered by this Coverage Part based on the relative legal and financial exposures of the covered parties to the covered matters.
- (3) The Defense and Settlement and Allocation provisions in this Endorsement shall supersede and take precedence over any Defense and Settlement and Allocation provisions in any other Endorsement.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 7

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

GOVERNMENT FUNDING ENDORSEMENT

In consideration of the premium charged, it is agreed that:

(1) Section IV, Definitions, of this Coverage Part is amended as follows:

(A) The definition of **Loss** is amended to include the following:

Loss shall also not include the return of funds which were received directly or indirectly from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds; provided however, the Company's maximum aggregate liability for all **Loss** on account of all **Government Funding Claims** shall be \$1,000,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations.

(B) The definition of **Government Funding Claim** is added as follows:

Government Funding Claim means any **Claim** for any actual or alleged violation of the Federal False Claims Act or any similar federal, state, or local statutory law or common law anywhere in the world.

(2) Solely with respect to any **Government Funding Claim**, Item 4, Retentions, of the D&O Declarations is deleted and replaced with the following

Item 4: Retentions: \$1,000,000

With respect to all other **Claims**, Item 4 of the Declarations shall remain unchanged.

(3) At such time as the Retention set forth in paragraph (2) of this endorsement, which shall be borne by the **Insureds** uninsured and at their own risk, has been satisfied, the Company shall pay on behalf of the **Insured** fifty percent (50%) ("Covered Percentage") of **Loss** from each **Government Funding Claim** first made against an **Insured** during the **Policy Period**, or if applicable, the Extended Reporting Period. Any amount of **Loss** in excess of the Covered Percentage shall be borne by the **Insureds** uninsured and at their own risk.

- (4) Notwithstanding anything to the contrary in this **Policy**, in the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention shall not exceed the single largest applicable Retention or and such Retention shall apply to all **Loss** covered under this **Policy**.

The title and any headings and subheadings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 8

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**AMENDED DEFINITION OF CLAIM ENDORSEMENT
(ENTITY INVESTIGATION WITH SUBLIMIT)**

In consideration of the premium charged, it is agreed that this Coverage Part is amended as follows:

- (1) The definition of **Claim** in Section IV, Definitions, is amended to add the following:
Claim also means any investigation by an **Enforcement Unit** against an **Organization** for a **Wrongful Act**, commenced by the service of a written request from such **Enforcement Unit** upon an **Insured** compelling witness testimony or document production and identifying such **Organization** as the target of such investigation, including a subpoena, civil investigative demand, grand jury subpoena, Wells Notice search warrant or target letter; provided that the Company shall take into reasonable consideration all extrinsic evidence presented by the **Insured** when determining whether such written request identifies such **Organization** as a target of such investigation.
- (2) For purposes of this Endorsement, the definition of **Enforcement Unit** is added as follows:
Enforcement Unit means any federal, state, local or provincial law enforcement or governmental authority worldwide (including the U.S. Department of Justice or any attorney general).
- (3) The Company's maximum aggregate liability under this Coverage Part for all **Loss** on account of any **Claim** described in Subsection (1) of this Endorsement shall be \$500,000, which amount is part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability set forth in this Item (2) of the D&O Declarations.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

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Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 9

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRE-CLAIM EXPENSE COVERAGE ENDORSEMENT

In consideration of the premium charged, it is agreed that the Directors & Officers and Entity Liability Coverage Part is amended as follows:

(1) Section II, Additional Coverages, is amended to add the following to the end thereof:

(F) **Pre-Claim Expense Coverage**

If the **Insured** gives written notice a circumstance which could give rise to a **Claim** pursuant to Subsection VI(B), Reporting ("Notice of Circumstance"), and if a **Claim** subsequently arises out of such Notice of Circumstance, then any **Pre-Claim Expenses** in an aggregate amount not the exceed the lesser of: (i) \$50,000, or (ii) fifty percent (50%) of the applicable Retention, shall qualify as Loss solely for the purpose of exhaustion of the applicable Retention and subject to the following:

- (1) Coverage provided herein shall apply only to such **Pre-Claim Expenses** incurred on or after the date the **Insured** gives written notice to the Company of the Notice of Circumstance and prior to the time such Notice of Circumstance becomes a **Claim**. Once the applicable Retention has been exhausted, **Pre-Claim Expenses** shall no longer qualify as covered **Loss** under this Coverage Part;
- (2) Coverage provided herein shall not be deemed to waive the Company's rights hereunder or limit the **Insured's** right to receive coverage for **Loss** incurred following the reporting of a **Claim**;
- (3) Coverage provided herein shall not include **Securityholder Derivative Demand Evaluation Costs** or **Defense Costs** incurred as a result of an **Interview** or **Insured Person Investigation**.

(2) Section IV, Definitions, is amended as follows:

(A) The definition of **Loss** is amended to add the following:

Loss shall also not include **Pre-Claim Expenses**, except as provided under Additional Coverages II(F), as set forth in (1) above.

- (B) The definition for **Pre-Claim Expenses** is added as follows:

Pre-Claim Expenses means reasonable costs, charges fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing a Notice of Circumstance.

- (C) The definitions for **Interview** and **Insured Person Investigation** are defined in the D&O Amendment Endorsement (Endorsement No. PF-277856CA (05/2019))

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 10

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

D&O SUPPLEMENTAL ENDORSEMENT

In consideration of the premium charged, it is agreed that the Directors & Officers and Entity Liability Coverage Part is amended as follows:

(1) Section IV, Definitions, is amended as follows:

- (A) The definition of **Claim** is amended include any **Appraisal Claim**.
- (B) With respect to any **Appraisal Claim**, the definition of **Loss** shall only include **Defense Costs** in an aggregate amount not to exceed \$500,000, which amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in Item 2 of the D&O Declarations. **Loss** shall not include any other amounts including but not limited to any costs incurred in connection with an appraisal or any amount representing the amount by which the price of or consideration paid or proposed to be paid by an **Insured** for the acquisition or completion of the acquisition of all or substantially all of the ownership interest, or assets of, an entity was inadequate.
- (C) The following definitions are added as follows:

Appraisal Claim means:

- (i) a written dissenters' rights demand, appraisal demand or similar demand first received by an **Insured**; or
- (ii) an appraisal proceeding commenced by the service of a complaint or similar proceeding,

brought by a securityholder of an **Organization** against an **Insured**, whether or not a **Wrongful Act** is alleged.

TCPA Violation means any violation of any law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, cell or mobile phone, telephone facsimile machine, computer or other telephonic or electronic devices, including but not limited to the United States of America Telephone Consumer Protection Act of 1991, United States of America CAN-SPAM Act of 2003 and any amendments thereto or any rules or regulations

promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world.

- (2) The **Defense Costs** for any **Claim** for any **TCPA Violation** shall not to exceed \$100,000. This amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in the D&O Declarations; and shall supersede and take precedent over any lesser amount set forth in any other endorsement.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 11

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

RETENTIONS AMENDED – MERGER OBJECTION AND AIDING AND ABETTING

In consideration of the premium charged, it is agreed that:

- (1) Item 4 of the Declarations of this Coverage Part is deleted in its entirety and replaced with the following:

Item 4. **Retentions:**

(A)	Insuring Clause (A) Individual Non-Indemnified Liability Coverage:	\$0
(B)	Insuring Clause (B), Individual Indemnified Liability Coverage and Insuring Clause (C), Entity Liability Coverage (Claims other than Merger Objection Claims and Aiding and Abetting Claims):	\$1,000,000
(C)	Insuring Clause (B), Individual Indemnified Liability Coverage and Insuring Clause (C), Entity Liability Coverage (Merger Objection Claims and Aiding and Abetting Claims):	\$1,000,000

- (2) It is agreed that Section IV, Definitions, of this Coverage Part is amended to add the following:

Aiding and Abetting Claim means any securities **Claim**: (A) against an **Organization** for aiding and abetting a violation of any United States securities law; or (B) against an **Organization** for aiding and abetting a common law cause of action, including a breach of fiduciary duty, in connection with an acquisition, or proposed acquisition, of an entity which results in, or would result in, such entity becoming a **Subsidiary**; and brought by a securityholder of such entity, solely with respect to his interest in the securities of the entity; provided that, any coverage afforded for such **Claim** shall be limited to **Defense Costs**.

Merger Objection Claim means any **Claim** based upon, arising from or in consequence of any proposed or actual acquisition as described in Subparagraphs (C)(1)(a) and (C)(1)(b) of Section VI, Changes in Exposure, of the General Terms and Conditions.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. S.", written above a horizontal line.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 12

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

D&O AMENDMENT ENDORSEMENT

In consideration of the premium charged, it is agreed that the Directors & Officers and Entity Liability Coverage Part is amended as follows:

- (1) Section II, is deleted and replaced with the following:

II. ADDITIONAL COVERAGES

(A) Securityholder Derivative Demand Evaluation Coverage

The Company shall pay, on behalf of an **Organization**, **Securityholder Derivative Demand Evaluation Costs** incurred with the Company's prior written consent which the **Organization** becomes legally obligated to pay on account of any securityholder derivative demand that is first made during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for **Wrongful Acts** by an **Executive** before or during the **Policy Period** in an aggregate amount not to exceed \$500,000 per **Policy Period** which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations and no Retention shall apply to such amount. However, in no event shall any coverage be provided under this Subsection II.(A), Securityholder Derivative Demand Evaluation Coverage, if such securityholder derivative demand is brought with the solicitation, assistance, active participation or intervention of the **Organization**, the **Sponsor Company** or any **Executive**.

(B) Interview Coverage

- (1) The Company shall pay, on behalf of an **Insured Person**, **Defense Costs** incurred solely by such **Insured Person** on account of an **Interview** first made during the **Policy Period**, or the Extended Reporting Period, if applicable, to the extent that such **Defense Costs** are not indemnified by the **Organization**.
- (2) The Company shall pay, on behalf of an **Organization**, **Defense Costs** incurred solely by an **Insured Person** on account of an **Interview** first made during the **Policy Period**, or the Extended Reporting Period, if applicable, to the extent the **Organization** indemnifies such **Insured Person** for such **Defense Costs**.

(C) Special Event Management Coverage

The Company shall pay, on behalf of an **Organization**, **Special Event Management Expenses** which the **Organization** becomes legally obligated to pay on account of a **Special Event** occurring during the **Policy Period** in an aggregate amount not to exceed \$25,000 per **Policy Period** which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations and no Retention shall apply to such amount.

(D) **Corporate Homicide Investigation Costs**

The Company shall pay, on behalf of a **Private UK Company**, **Corporate Homicide Investigation Costs** incurred by the **Private UK Company** as a result of the commencement and notice of a **Corporate Homicide Investigation** first received by the **Private UK Company** during the **Policy Period**, or, if exercised, during the Extended Reporting Period, in an aggregate amount not to exceed \$250,000 per **Policy Period**, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declaration and the same Retention set forth in Item 4(C) of the D&O Declarations shall apply to such amount.

(E) **Employed Lawyers Coverage**

The Company shall pay **Loss** on account of a **Claim** first made against an **Employed Lawyer** during the **Policy Period**, or the Extended Reporting Period if applicable, for an **Employed Lawyer Wrongful Act** in an aggregate amount not to exceed \$1,000,000 per **Policy Period**, which amount is part of, and not in addition to the Maximum Aggregate Limit of Liability set forth in Item 2 of the D&O Declarations.

(2) **AMEND DEFINITIONS**

Section IV, Definitions, is amended as follows:

(A) Subsection (A) of the definition of **Application** is deleted and replaced with the following:

(A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** during the twelve (12) months preceding this Policy's inception date for the purposes of the Company's underwriting of this Coverage Part; and

(B) The definition of **Claim** is deleted and replaced with the following:

Claim means any:

(A) written demand (other than (i) a securityholder derivative demand, (ii) **Interview**, or (iii) subpoena or similar document) first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;

(B) civil proceeding commenced by the service of a complaint or similar pleading, or any foreign equivalent thereof;

(C) criminal proceeding commenced by: (i) an arrest; (ii) a return of an indictment, information or foreign equivalent; or (iii) official request for **Extradition**;

(D) administrative or regulatory proceeding commenced by the service of a notice of charges or foreign equivalent; or

(E) arbitration or mediation proceeding commenced by receipt of a demand for arbitration or a demand for mediation,

against an **Insured** for a **Wrongful Act**, including any appeal therefrom;

(F) **Insured Person investigation**; or

(G) written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in Subsections (A) through (F) above,

Claim shall also include any **Aiding and Abetting Claim**, **Merger Objection Claim** and **Securities Claim**. **Claim** shall not include an **Interview** or a **Special Event**

(C) The definition of **Defense Costs** is amended to add the following:

Defense Costs shall also include:

(A) **Asset Protection Costs**;

(B) the reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred as a result of an **Interview**.

(C) **Class Certification Event Study Costs**;

(D) **Special Litigation Committee Costs**;

(E) **Nominal Defendant Derivative Defense Costs**; and

(F) **Books and Records Request Costs**;

provided, the Company's maximum aggregate limit of liability for all **Class Certification Event Study Costs** and **Books and Records Requests Costs**, combined, shall be \$500,000 which amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in Item 2 of the D&O Declarations.

(D) The definition of **Employee** is deleted and replaced with the following:

Employee means any natural person who is, was or will be a full-time, part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** shall not include any independent contractor other than a **Contractual Independent Contractor**.

(E) The definition of **Executive** is amended to include a **Sponsor Company Representative**, any **Shadow Director**, any **De Facto Director** or any **Board Observer** but only with respect to a **Board Observer Claim**.

(F) Subsection (A) of the definition of **Financial Impairment** is deleted and replaced with the following:

(A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator, creditors committee or similar official to take control of, supervise, manage or liquidate such **Organization**; or

(G) The definition of **Insured Person** is amended to add the following:

Insured Person also means any director or officer of an **Organization** acting in his or her capacity as a **Controlling Insured Person**.

(H) The definition of **Loss** is deleted and replaced with the following:

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B) claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a judgment or settlement of a **Claim** against an **Insured**;
- (C) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; and provided further that, if such jurisdiction is the State of California, then **Loss** does not include punitive, exemplary or multiplied damages;
- (D) civil fines or civil penalties assessed against an **Insured Person**, including civil penalties assessed against an **Insured Person** pursuant to 15 U.S.C. §78dd-2(g)(2)(B) (the Foreign Corrupt Practices Act), if and to the extent such fines or penalties are insurable under the law of the jurisdiction in which such fines or penalties are assessed;
- (E) judgments, including pre-judgment and post-judgment interest;
- (F) settlements;
- (G) the premium for a bail bond, if bail is available for an **Extradition** in the country at issue, but the Company shall be under no obligation to provide such bail bond;
- (H) reasonable costs charges and fees and expenses (including the premium or origination fee for a loan or bond) solely to facilitate the return of amounts incurred and required to be repaid by:
 - (i) the chief executive officer or chief financial officer of the **Parent Organization** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002; or
 - (ii) any **Executive** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

provided, however, **Loss** shall not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such persons set forth above pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

(I) **Defense Costs,**

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed; provided that the Company shall not assert that any amount attributable to violations of Sections 11, 12 or 15 of the Securities Act of 1933, as amended, is subject to this Paragraph (2), unless such amount is determined to be uninsurable in a final, non-appealable adjudication in any action or proceeding (other than a declaratory or equivalent action or proceeding brought by or against the Company);
- (3) tax, except: (i) solely for the purposes of Insuring Clause (A), Individual Non-Indemnified Liability Coverage, any tax imposed upon an **Insured Person** in his or her capacity as

such in connection with any bankruptcy, receivership, conservatorship, or liquidation of an **Organization**, to the extent that such tax is insurable under the law pursuant to which this Coverage Part is construed; or (ii) solely for the purposes of Insuring Clause (A), Individual Non-Indemnified Liability Coverage and with respect to any **Claim** against an **Insured Person** venued within the geographic boundaries of Canada, any tax that is or was payable by an **Organization** to a Canadian provincial or Canadian federal governmental taxing authority if an **Insured Person**, based solely on such **Organization's** failure to pay such tax, has become personally liable to make such payment;

- (4) fines and penalties, except as provided in (D) above;
 - (5) amount (other than **Securityholder Derivative Demand Evaluation Costs** or **Defense Costs** incurred on account of an **Interview**) incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding or demand subsequently gives rise to a **Claim**;
 - (6) amount that represents, or is equivalent to, an increase in the consideration paid (or proposed to be paid) in an acquisition (or proposed acquisition) of more than fifty percent (50%) of the outstanding securities or other ownership interest of an entity, or in the right to vote for election of, or to appoint, more than fifty percent (50%) of the directors or limited liability company managers or members, or the equivalent of such positions, of an entity; except for any amount otherwise covered under Insuring Clause (A);
 - (7) dividends or other distribution of profits of an **Organization**;
 - (8) return of any contribution of capital or other ownership interest, including capital or other ownership interest or other amounts for which an **Insured Person** is liable pursuant to any express or implied promise to contribute to an **Organization**;
 - (9) **Special Event Management Costs**; or
 - (10) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.
- (I) The definition of **Outside Entity** is deleted in its entirety and the following is added:

Outside Entity means:

- (A) any non-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an entity described in the Internal Revenue Code of 1986, as amended, or any other entity organized for a religious or charitable purpose under any non-profit organization act or statute; or
- (B) any other entity specifically added as an **Outside Entity** by written endorsement attached to this Coverage Part,

that is not an **Organization**.

- (J) The definition of **Wrongful Act** is amended to include an **Employed Lawyer Wrongful Act**.

- (K) The following definitions are added as follows:

Adverse Publicity means the publication of unfavorable information regarding the **Organization** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Organization** to conduct business. Such publication must occur in a report about an **Insured** appearing in: (A) a daily newspaper of general circulation; or (B) a radio or television news program.

Aiding and Abetting Claim means any **Securities Claim**: (A) against an **Organization** for aiding and abetting a violation of any United States securities law; or (B) against an **Organization** for aiding and abetting a common law cause of action, including a breach of fiduciary duty, in connection with an acquisition, or proposed acquisition, of an entity which results in, or would result in, such entity becoming a **Subsidiary**; and brought by a securityholder of such entity, solely with respect to his interest in the securities of the entity; provided that, any coverage afforded for such **Claim** shall be limited to **Defense Costs**.

Asset Protection Costs means that portion of **Defense Costs** constituting reasonable costs, charges, fees and expenses incurred by an **Executive**, to oppose any efforts by an **Enforcement Unit** to seize or otherwise enjoin the personal assets or real property of such **Executive** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.

Books and Records Request means a written demand by or on behalf of any shareholder of a **Company** pursuant to Section 220 of the Delaware General Corporation Law or any similar statute in any other jurisdiction.

Books and Records Request Costs means that portion of **Defense Costs** constituting reasonable costs, charges and fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred by an **Organization** to respond to that part of a **Books and Records Request**.

Board Observer means any natural person who is, was or will be formally designated or invited to act solely as an observer at formal board meetings or committee meetings of the duly elected or appointed directors of the **Organization** pursuant to a written agreement with the **Organization**.

Board Observer Claim means any **Claim** first made against a **Board Observer** during the **Policy Period** or any applicable Extended Reporting Period for **Wrongful Acts** by an **Insured**, other than a **Board Observer**; provided that such **Claim** is also made and continuously maintained against at least one **Insured**, exclusive of any **Board Observer**; provided further that any **Board Observer** must be represented by the same counsel as the **Insured** against whom such **Claim** is also made and continuously maintained.

Class Certification Event Study Costs means that portion of **Defense Costs** constituting reasonable costs, charges, fees and expenses of an expert witness incurred by an **Insured** to conduct an admissible event study regarding issues of fact relevant to class certification in a **Securities Claim** subsequent to the denial of a motion to dismiss in such **Securities Claim**.

Contractual Independent Contractor means any natural person independent contractor while in the regular service of an **Organization** in the ordinary course of such **Organization's** business, pursuant to an express contract or agreement between such **Organization**, and either (A) such natural person independent contractor, or (B) any other entity acting on behalf of such natural person independent contractor, for services.

Corporate Homicide Investigation means a criminal investigation under the Corporate Manslaughter and Corporate Homicide Act, United Kingdom Statutes 2007, c. 19, sec. 1 et seq., ("Act") against a **Private UK Company**, commenced by the service upon or other receipt by such **Private UK Company** of a written notice or subpoena from the investigating authority of the United Kingdom identifying such **Private UK Company** as an entity whom a criminal proceeding under the Act may be commenced.

Corporate Homicide Investigation Costs means:

- (i) **Defense Costs** incurred by a **Private UK Company** in defending a **Corporate Homicide Investigation**; and
- (ii) **Corporate Homicide Investigation Public Relation Expenses**,

provided **Corporate Homicide Investigation Costs** shall not include any amounts incurred for compliance with a Publicity Order pursuant to Section 10 of the Act.

Corporate Homicide Investigation Public Relation Expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which the **Private UK Company** may, in the reasonable exercise of its discretion, engage with the written consent of the Company, not to be unreasonably withheld or delayed, in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a **Corporate Homicide Investigation**.

De Facto Director means a natural person who is expressly recognized by United States law or by a court of competent jurisdiction as a "de facto" director of an **Organization** and, as result of such recognition, would incur liability as if such natural person were a duly elected or appointed director of such **Organization**.

Employed Lawyer means any **Insured Person** of the **Organization** who is admitted to practice law and who is or was employed as a lawyer for, and salaried by, the **Organization**.

Employed Lawyer Wrongful Act means act, error or omission committed, attempted, or allegedly committed or attempted by an **Employed Lawyer** in the rendering of, or failure to render, professional legal services for an **Organization** while in his or her capacity as a lawyer for such **Organization**.

Enforcement Unit means any federal, state, local or provincial law enforcement or governmental authority worldwide (including the U.S. Department of Justice or any attorney general).

Insured Person Investigation means an investigation by an **Enforcement Unit** against an **Insured Person** for a **Wrongful Act**, commenced by the service of a written request from such **Enforcement Unit** upon an **Insured Person** compelling witness testimony or document production and identifying such **Insured Person** as the target of such investigation, including a subpoena, civil investigative demand, grand jury subpoena, search warrant or target letter; provided that the Company shall take into reasonable consideration all extrinsic evidence presented by the **Insured** when determining whether such written request identifies such **Insured Person** as a target of such investigation.

Interview means a request for an interview, deposition or meeting with, or a sworn statement from, an **Insured Person** by:

- (A) an **Enforcement Unit** in connection with: (1) such **Insured Person** acting in his or her capacity as such; or (2) an **Organization's** business activities;
- (B) an **Organization**, the Board of Directors of an **Organization** or a committee of such Board of Directors in connection with: (1) an inquiry or investigation of the **Organization** by an **Enforcement Unit**; or (2) a securityholder derivative demand, commenced by the first receipt of such request by such **Insured Person**,

provided that an **Interview** does not include: (a) any request for document production or discovery for information in the possession or control of an **Organization** or any other party other than such **Insured Person**; (b) any request by an **Enforcement Unit** that is part of any routine or regularly scheduled **Enforcement Unit** oversight, compliance, audit, inspection or examination; or (c) any request by an **Enforcement Unit** that is part of an employment-related investigation or claim.

Merger Objection Claim means any **Claim** based upon, arising from or in consequence of any proposed or actual acquisition as described in Subparagraphs (C)(1)(a) and (C)(1)(b) of Section VI, Changes in Exposure, of the General Terms and Conditions.

Network Security or Privacy Breach means any:

- (A) unauthorized or unlawful access to, disclosure of, alteration of, theft, collection, storage, use or dissemination of or loss of any personally identifiable information or confidential or

proprietary business information as defined by: (i) applicable federal, state, local (or foreign equivalent) statutory law or common law anywhere in the world, or amendments thereto or rules or regulations promulgated thereunder; or (ii) an **Organization's** publicly stated privacy policy;

- (B) violation of any federal, state or local (or foreign equivalent) privacy or security statutory law or common law anywhere in the world or amendments thereto or rules or regulations promulgated thereunder;
- (C) unauthorized or unlawful access to, alteration of, or damage to any computer, computer program, software, computer network or computer database including but not limited to the infection of any of the foregoing through the transmission of a computer virus, malware, spyware or other fraudulent or unauthorized computer code that: (i) modifies, alters, damages, destroys, deletes, records or transmits information; (ii) contaminates other computer programs, software or computer data; (iii) consumes computer resources or in some fashion usurps the normal operation of a computer system; or (iv) results in a denial of service or delay, disruption, impairment or failure of any computer or computer network, service, hardware or software; and
- (D) violation of any law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, cell or mobile phone, telephone facsimile machine, computer or other telephonic or electronic devices, including but not limited to the United States of America Telephone Consumer Protection Act of 1991, United States of America CAN-SPAM Act of 2003 and any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world ("**TCPA Violation**").

Nominal Defendant Derivative Defense Costs means that portion of **Defense Costs** constituting reasonable costs, charges, fees and expenses incurred through counsel, with the Company's consent, in representing an **Organization** as a nominal plaintiff or nominal defendant in any **Securities Claim**.

Private UK Company is a **Subsidiary** of the **Parent Organization**, where such **Subsidiary** (A) is organized under the laws of the United Kingdom, and (B) is comprised of securities that have not been the subject of a public offering, solicitation, sale, distribution or issuance, and are not publicly traded.

Securities Claim means any **Claim** brought by any securityholder of an **Organization** (other than the **Sponsor Company** or any subsidiary or natural person thereof) in his or her capacity as such, whether directly or derivatively, so long as such **Claim** is brought and maintained without the solicitation, assistance, active participation or intervention of any **Insured**.

Shadow Director means a natural person meeting the definition of shadow director in Section 251 of the United Kingdom Companies Act 2006 or in similar legal provisions in any other jurisdiction.

Special Event means any one of the following events first occurring during the **Policy Period** which results in **Adverse Publicity**:

- (A) the death, incapacity, resignation or federal or state criminal indictment of any **Executive** for whom the **Organization** has purchased and continues to maintain key individual life insurance;
- (B) an **Employee** was the victim of a violent crime while on the premises of the **Organization**;
- (C) a child was abducted or kidnapped while under the care or supervision of the **Organization**; or

- (D) any other material event if such event is specifically added by written endorsement attached to this Coverage Part.

Special Event Management Expenses means the following expenses, incurred with the Company's prior written consent:

- (A) reasonable expenses incurred by a public relations firm, marketing firm, law firm or crisis management firm retained on behalf of **Organization** to make a public communication or prevent or minimize business disruption with respect to a **Special Event**;
- (B) reasonable expenses incurred by the **Organization** for publication and circulation of materials in connection with a **Special Event**;
- (C) reasonable travel expenses incurred by directors, officers and employees of the **Organization** in connection with a **Special Event**; or
- (D) other reasonable expenses incurred by the **Organization**, subject to the Company's prior written approval.

Special Litigation Committee Costs means that portion of **Defense Costs** constituting reasonable costs, charges, fees and expenses incurred by a Special Litigation Committee formed by the Board of Directors of any **Organization** solely to investigate a securityholder derivative demand and evaluate whether a securityholder derivative action is in the best interests of the **Organization**.

Sponsor Company Representative means a representative of a **Sponsor Company** that serves as a director or similar executive of an **Organization**.

(3) **AMEND EXCLUSIONS**

Section V, Exclusions is amended as follows:

- (A) All Exclusions set forth in Section V(A), Exclusions Applicable To All Insuring Clauses, and any other exclusions added by endorsement, shall also apply to any **Defense Costs** coverage afforded under the **Interview** Coverage set forth in Section (1) of this Endorsement.
- (B) Exclusion (A)(1), Prior Notice, is deleted and replaced with the following:

Prior Notice

based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A), Policy Period of the GTC Declarations, was the subject of any written notice given and accepted under any other management liability policy or coverage part of which this Coverage Part is a direct or indirect renewal or replacement;

- (C) Exclusion (A)(3), Bodily Injury/Property Damage, is deleted and replaced with the following:

Bodily Injury/Property Damage/Personal Injury

for: (a) bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; or (b) any libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium, provided that this Exclusion (A)(3) shall not apply to: (i) **Defense Costs** on account of a criminal proceeding for manslaughter (or any similar offense); (ii) **Loss** on account of any **Securities Claim**; or (iii) **Defense Costs** on account of a proceeding against an **Insured** pursuant to Section 32 of the Ontario Health and Safety Act.

(D) Exclusion (A)(4), Pollution, is deleted.

(E) Exclusion (A)(5), ERISA, is deleted and replaced with the following:

ERISA

for any violation of the responsibilities, obligations or duties imposed by **ERISA** with regard to a plan sponsored by an **Organization**;

(F) Exclusion A(6) is deleted and replaced with the following:

Insured versus Insured

- (a) brought by an **Organization** against any other **Organization**;
- (b) brought by an **Organization** against an **Insured Person** of such **Organization**, provided that this Subparagraph (b) shall not apply to any **Claim** brought:
 - (i) outside the United States of America, Canada, or any other common law jurisdiction other than the United States of America, Canada; or
 - (ii) in the event of **Financial Impairment** of the **Organization**;
- (c) brought by an **Insured Person** in any capacity against an **Insured**, except with respect to a **Claim**:
 - (i) brought by an **Employee**, other than an **Executive**, in his or her capacity as a shareholder of an **Organization**;
 - (ii) for contribution or indemnity arising from another **Claim** otherwise covered under this Policy;
 - (iii) brought by an **Executive** who has ceased serving in his or her capacity as an **Executive** for at least one (1) year; or
 - (iv) brought by a whistleblower pursuant to any federal, state, local or foreign law against an **Insured Person**;
- (d) brought by a securityholder, creditor or other interest holder of the **Organization** against an **Insured**, provided this Subparagraph (d) shall not apply to any such **Claim** by a securityholder brought and maintained without the solicitation, assistance, active participation or intervention of the **Organization** or any **Executive**;

(G) Exclusion (A)(9), Conduct, is deleted and replaced with the following:

(9) Conduct

based upon, arising from or in consequence of:

- (a) any deliberate fraudulent act, any deliberate criminal act, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in the underlying proceeding or action (not including any declaratory proceeding or action brought by or against the Company) establishes such a deliberate act or omission or willful violation; provided that, for acts or omissions which are treated

as a criminal violation in a jurisdiction other than the United States of America or any of its territories or possessions ("**Foreign Jurisdiction**") and that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, but itself, be conclusive proof that a deliberate criminal act or deliberate fraud has occurred;

- (b) an **Insured Person** having gained any personal profit, remuneration or other financial advantage to which such **Insured Person** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (not including any declaratory proceeding or action brought by or against the Company) establishes the gaining of such personal profit, remuneration or financial advantage; or
- (c) an **Organization** having gained any profit, remuneration or other financial advantage to which such **Organization** was not legally entitled, if a final, non-appealable adjudication in the underlying proceeding or action (not including any declaratory proceeding or action brought by or against the Company) establishes the gaining of such profit, remuneration or financial advantage;

provided that:

- (i) no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person**;
- (ii) any conduct pertaining to any past, present, or future chief financial officer or chief executive officer (or any equivalent position to any of the foregoing) of the **Parent Organization** shall be imputed to any **Organization** and its **Subsidiaries**; and
- (iii) paragraphs (a) and (b) above shall not apply to that portion of a **Securities Claim** for a violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the extent such amount is insurable under the law pursuant to which this Policy is construed.

- (H) Exclusion (B)(1), Contract, is amended to delete the phrase "oral or";
- (I) Exclusion (B)(2), Employment Practices and Exclusion (B)(3), Third Party Discrimination or Sexual Harassment, are deleted.
- (J) Exclusion (B)(6), Product Defect/Intellectual Property/Professional Services, is deleted and replaced with the following.

(6) Product Defect/Intellectual Property

based upon, arising from or in consequence of:

- (a) any malfunction of any product or failure of any product to perform in any manner as a result of a defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture; or
- (b) any infringement of copyright, patent, trademark, trade name, trade dress or service mark, any misappropriation of ideas, trade secrets or other intellectual property rights; any false patent marking; or any violation of a federal, state, local or foreign intellectual property law, or a rule or regulation promulgated under any such intellectual property law,

provided this Exclusion (B)(6) shall not apply to **Loss** on account of any **Securities Claim**.

(K) Exclusion (A)(7), Publicly Traded Securities, of this Coverage Part shall not apply to **Loss** on account of any **Claim** based upon, arising from or in consequence of any public offering, sale or purchase of debt securities.

(L) The following Exclusions are added as follows:

- (a) The Company shall not be liable for **Loss** on account of any **Claim** against an **Organization** brought or maintained by or on behalf of a direct or indirect customer or client of the **Organization** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client; provided that this Exclusion shall not apply to **Loss** on account of any **Securities Claim**.
- (b) The Company shall not be liable for **Loss** on account of any **Claim** based upon, arising from or in consequence of any: (i) employment-related **Wrongful Act**; or (ii) discrimination against, or harassment of any third party; provided that this Exclusion shall not apply to **Loss** on account of any **Securities Claim**.
- (c) The Company shall not be liable for **Loss** on account of any **Claim** against an **Organization** based upon, arising from or in consequence of any **Network Security or Privacy Breach**; provided that this Exclusion shall not apply to **Loss** on account of any (i) **Securities Claim**; or (ii) **Defense Costs** for any **Claim** for any **TCPA Violation** in an aggregate amount not to exceed \$50,000 which amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in the D&O Declarations.
- (d) The Company shall not be liable for **Loss** on account of any **Claim**:
 - (a) based upon, arising from, or in consequence of any act, error or omission in connection with any activities by an **Employed Lawyer** which:
 - (1) are not related to such **Employed Lawyer's** employment with the **Organization**;
 - (2) are not rendered on the behalf of, for, or to the **Organization**; or
 - (3) are performed by the **Employed Lawyer** for others for a fee;
 - (b) based upon, arising from, or in consequence of any **Employed Lawyer Wrongful Act** while the **Employed Lawyer** was not employed as a lawyer by the **Organization**; or
 - (c) based upon, arising from or in consequence of any activities by an **Employed Lawyer** as an officer or director of any entity other than the **Organization**.

(M) The following is added at the end of Subsections (A) and (B) of Section V:

For the purpose of determining the applicability of the foregoing Exclusions, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by one **Insured** shall not be imputed to any other **Insured Person**, and only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by an **Organization's** past, present or future chief financial officer or chief executive officer (or any equivalent position to any of the foregoing) shall be imputed to such **Organization** and its **Subsidiaries**; provided that this provision shall not apply to any **Absolute Exclusion**. For purposes of this Section, **Absolute Exclusion** means any Exclusion that leads with or includes the wording "based upon, arising from or in consequence of", other than Exclusion (9), Conduct.

(4) **AMEND REPORTING**

Subsections (A) and (B) of Section VI, Reporting, are deleted and replaced with the following:

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer or chief financial officer (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
 - (2) the expiration date of the Extended Reporting Period, if applicable,
- provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.
- (B) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** or an **Interview** and gives written notice of such circumstances or **Interview** to the Company, then any **Claim** subsequently arising from such circumstances or **Interview** shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances or **Interview** were first reported to the Company.

A **Special Event** shall be deemed to have first commenced when an **Insured** becomes aware of a **Special Event**, and gives written notice thereof to the Company, and shall conclude at the earliest point in time when a marketing firm, public relations firm, law firm or crisis management firm retained on behalf of **Organization** advises the **Organization** that such **Special Event** no longer exists or when the **Special Event Management Expenses** sublimit has been exhausted.

If during the **Policy Period**, an **Insured** becomes aware of a **Special Event**, and gives written notice thereof to the Company, then any **Claim** subsequently arising from such **Special Event** shall be deemed to have been first made against the **Insured** during the **Policy Year** in which such written notice was first given by the **Insured** to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, in-house general counsel or any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**.

(5) **AMEND RETENTION AND PRESUMPTIVE INDEMNIFICATION**

Section VII, Retentions and Presumptive Indemnification is amended as follows:

- (A) Subsection (A) is amended to add the following:

The Company shall recognize any payment by an **Insured's** Side A/Difference in Conditions policy with respect to payment of an Insuring Clause (B) Retention and that such payment shall reduce, and may exhaust, the **Organization's** obligation to pay such Retention under this Section VII. Nothing in this Subsection (C) shall preclude the Company from considering any of the terms, conditions, limitations and exclusions of this Policy in determining whether payment by the **Insured's** Side A/Difference in Conditions policy is for an otherwise covered **Claim** under this Coverage Part.

- (B) Subsection (E) is amended to add the following:

Furthermore if an **Organization** refuses in writing to advance, pay or indemnify an **Insured Person** for **Loss** on account of a **Claim**, then upon the reporting of the **Claim** pursuant to Section VI, Reporting, the Company shall advance covered **Defense Costs** until such time that: (i) the **Organization** agrees to advance, pay or indemnify an **Insured Person**; or (ii) the

applicable Retention set forth in Item 4 of the D&O Declarations has been met, whichever occurs first. In no event shall any such advancement by the Company relieve an **Organization** of any duty it may have to advance, pay or indemnify an **Insured Person**. Any payment or advancement by the Company within the applicable Retention shall apply towards the exhaustion of the Limit of Liability. If the Company provides advancement, payment or indemnification owed to any **Insured Person** by an **Organization** within the applicable Retention, then such **Organization** shall reimburse the Company for such amounts and such amounts shall become immediately due as a direct obligation of the **Organization** to the Company.

(C) Section VII is amended to add the following:

For purposes of determining an **Organization's** indemnification obligation to any **Shadow Director, De Facto Director, Board Observer, Contractual Independent Contractor** or leased employee, each **Shadow Director, De Facto Director, Board Observer, Contractual Independent Contractor** or leased employee shall be deemed a director or officer of such **Organization**. Accordingly, the **Organization** shall be deemed to have granted such indemnification to each **Shadow Director, De Facto Director, Board Observer, Contractual Independent Contractor** or leased employee to the fullest extent permitted by statutory or common law to the same extent as any director or officer of the **Organization**.

Notwithstanding anything to the contrary, the Retention applicable to Interview Coverage (B)(2) shall be the same Retention set forth in Item (4)(B) of the D&O Declarations. No Retention shall apply to Interview Coverage (B)(1). Any payment by an **Organization** of a Retention on account of an **Interview** shall reduce any Retention due from the **Organization** on account of a **Claim** subsequently afforded coverage under Insuring Clause (B), Individual Indemnified Liability Coverage, that is based upon, arising from or in consequence of any fact or circumstance that was the subject of such **Interview**.

(6) **AMEND REPRESENTATIONS AND SEVERABILITY**

Paragraph (C)(2) of Section XIII, Representations and Severability, is deleted and replaced with the following:

- (2) the **Parent Organization** if any past or present chief executive officer or chief financial officer (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 13

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

INSURED CHOICE OF COUNSEL ENDORSEMENT

In consideration of the premium charged, it is agreed that Section VIII, Defense and Settlement, of this Coverage Part, or any amendment to this section by endorsement, is amended to add the following

- In the event the **Insured** has the duty to defend or otherwise has the right to independent counsel for the defense of a **Claim** covered by this Coverage Part, the **Insured** may select as defense counsel for such **Claim** a **Panel Counsel Firm**. The Company shall pay such **Panel Counsel Firm** a maximum rate no greater than the standard negotiated panel rates for such firm. However, if the **Insured** does not want to select a **Panel Counsel Firm**, then the **Insured** shall select as defense counsel for such **Claim** a non-**Panel Counsel Firm** ("**Selected Counsel**"), provided that: (a) the Company consents to the retention of such **Selected Counsel**, which the Company shall not unreasonably withhold; and (b) the Company shall pay such **Selected Counsel** a maximum hourly rate of: \$600 per partner, \$400 per associate, and \$100 per paralegal; and (c) any **Defense Costs** incurred in excess of such hourly rates shall be borne by the **Insured** at its own risk and will not be covered under this Coverage Part. However, in no event shall such rate exceed the usual and customary rate of any assigned partner, associate or paralegal of the **Selected Counsel**.

Selected Counsel, as a condition precedent to their rights to payment, must adhere in all respects to the Company's Litigation Management Guidelines for counsel and in no event shall the Company pay, and no coverage will be available under this Policy for any: (i) travel related fees or expense incurred by any firm while traveling to, from or within any state in which such firm does not maintain an office; or (ii) fees or expense incurred by or through the use of local counsel. Such fees and expenses shall be carried borne by the **Insured** at its own risk and will not be covered under this Coverage Part.

For purposes of this section, **Panel Counsel Firm** means any Company approved law firm - list to be provided upon request.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. M.", written above a horizontal line.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Directors & Officers and Entity Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 14

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

ANTITRUST ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that:

- (1) Exclusion (B)(4), Antitrust, of this Coverage Part is deleted.
- (2) Section IV, Definitions, of this Coverage Part is amended to include the following:

Antitrust Claim means: (i) any **Claim** alleging, arising out of, based upon or attributable to, or in any way involving, directly or indirectly, any antitrust violations, including any violation of the Sherman Anti-trust Act, the Clayton Act, the Robinson-Patman Act or any similar federal, state or local statutes or rules; or (ii) any **Claim** alleging, arising out of, based upon or attributable to, or in any way involving, directly or indirectly, any actual or alleged violation of any law, whether statutory, regulatory or common law, involving anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

- (3) The Company's maximum aggregate Limit of Liability under Insuring Clause(s) A,B & C of this Coverage Part for **Loss** on account of any **Antitrust Claim** shall be \$1,000,000 which amount shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for this Coverage Part set forth in Item 2 of the D&O Declarations.
- (4) Solely with respect to any **Antitrust Claim**, Item 4, Retentions of the D&O Declarations is deleted and replaced with the following:

Item 4. Retentions: \$250,000

With respect to all other **Claims**, Item 4 of the Declarations shall remain unchanged.

- (5) With respect to all **Loss** resulting from an **Antitrust Claim** that is excess of any applicable Retention set forth in paragraph (3) of this endorsement, the **Insureds** shall bear uninsured and at their own risk 20% of such **Loss**, and the Company's liability shall apply only to the remaining 80% of such **Loss**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. M.", written over a horizontal line.

Authorized Representative



Chubb Group of Insurance Companies
202B Hall's Mill Road
Whitehouse Station, NJ 08889

ForeFront Portfolio 3.0SM
Employment Practices Liability
Coverage Part

EPL DECLARATIONS

FEDERAL INSURANCE COMPANY

A stock insurance company, incorporated under the laws of Indiana, herein called the Company

Capital Center, 251 North Illinois, Suite 1100
Indianapolis, IN 46204-1927

NOTICE: THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD", OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE RETENTION. IN NO EVENT WILL THE COMPANY BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF LIABILITY. READ THE ENTIRE POLICY CAREFULLY.

Item 1. Parent Organization: WOLVERINE HOLDING CORPORATION

Item 2. Maximum Aggregate Limit of Liability for this Coverage Part: \$5,000,000.00

Item 3. Limits of Liability:

(A) Insuring Clause (A)
Employment Practices Liability Coverage: \$5,000,000.00

(B) Insuring Clause (B)
Third Party Liability Coverage: \$5,000,000.00

Item 4. Retentions:

(A) Insuring Clause (A)
Employment Practices Liability Coverage: \$250,000.00

(B) Insuring Clause (B)
Third Party Liability Coverage: \$250,000.00

Item 5. Pending or Prior Proceedings Dates:

(A) Insuring Clause (A): January 09, 2020

(B) Insuring Clause (B): January 09, 2020

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Employment Practices Liability Coverage

- (A) The Company shall pay, on behalf of an **Insured, Loss** on account of an **Employment Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (A) shall be the Limit of Liability set forth in Item 3(A) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

Insuring Clause (B): Third Party Liability Coverage

- (B) The Company shall pay, on behalf of an **Insured, Loss** on account of a **Third Party Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (B) shall be the Limit of Liability set forth in Item 3(B) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

II. DEFINITIONS

For purposes of this Coverage Part:

Application means:

- (A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part; and
- (B) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, bonuses, **Stock Benefits** or non-deferred cash incentive compensation.

Breach of Employment Contract means any breach of any oral, written or implied contract or contractual obligation including any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

Claim means any **Employment Claim** and any **Third Party Claim**. Except as may otherwise be provided in Section V, Extended Reporting Period, of the General Terms and Conditions, or Section V(C), Reporting, a **Claim** shall be deemed to have first been made when such **Claim** is commenced as set forth in the respective definitions of **Employment Claim** and **Third Party Claim**.

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, benefits of the **Insured Persons**) incurred in defending, opposing or appealing any **Claim**, and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service was, is or will be engaged and directed by an **Organization**, including a part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** shall not include any **Independent Contractor**.

Employment Claim means:

- (A) (1) any:
- (a) written demand first received by an **Insured** for monetary or non-monetary relief, including a written demand for reinstatement, reemployment, re-engagement or injunctive relief;
 - (b) civil proceeding commenced by the service of a complaint or similar pleading;
 - (c) criminal proceeding outside the United States of America commenced by a return of an indictment, information or similar document;
 - (d) arbitration proceeding pursuant to an employment contract, policy or practice of an **Organization**, commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document; or
 - (e) administrative, regulatory or tribunal proceeding commenced by:
 - (i) the issuance of a notice of charge, formal investigative order or similar document; or
 - (ii) in the event the **Insured** is not issued notice as set forth in (e)(i) above, the receipt by an **Insured** of the administrative, regulatory or tribunal proceeding resulting from such notice of charge, formal investigative order or similar document,
 including any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; or
- (2) in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief, commenced by the receipt by an **Insured** of such Notice, Order or written demand,
- which is brought and maintained by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding in the United States of America), including any appeal therefrom; or
- (B) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in Subsection (A) above.

Notwithstanding the foregoing, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, genetic information, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world.

Employment Harassment means:

- (A) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**; or
- (B) workplace harassment, including work related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**.

Employment Practices Wrongful Act means any actual or alleged:

- (A) **Breach of Employment Contract**;
- (B) **Employment Discrimination**;
- (C) **Employment Harassment**;
- (D) **Retaliation**;
- (E) **Workplace Tort**;
- (F) **Wrongful Employment Decision**; or
- (G) **Wrongful Termination**,

committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

Executive means any natural person who was, is or will be:

- (A) a duly elected or appointed director, officer, or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; or (2) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Financial Impairment means the status of an **Organization** resulting from:

- (A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (B) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country,

provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Organization**, or other party determined to have standing, for authorization of the **Organization** to indemnify an **Insured Person** for **Loss**; provided further that, the Company may, in its sole discretion, waive the foregoing requirement.

Independent Contractor means any natural person working for an **Organization** in the capacity of an independent contractor and pursuant to an **Independent Contractor Services Agreement**.

Independent Contractor Services Agreement means any express contract or agreement between an **Independent Contractor**, or any entity on behalf of such **Independent Contractor**, and the **Organization** governing the nature of the **Organization's** engagement of such **Independent Contractor**.

Insured means any **Organization** and any **Insured Person**.

Insured Person means any:

- (A) **Executive** or **Employee** of an **Organization**; or
- (B) **Independent Contractor** working for an **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees to indemnify the **Independent Contractor** in the same manner as provided to the **Organization's Employees** for liability arising out of a **Claim**.

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B) (1) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; or
 - (2) liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Family and Medical Leave Act or Equal Pay Act;
- (C) back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company at the time of or after a final settlement);
- (D) judgments, including pre-judgment and post-judgment interest;
- (E) settlements; and
- (F) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax, fine or penalty imposed by law; except as provided above with respect to punitive, exemplary or multiplied damages, or liquidated damages;
- (4) future salary, wages, commissions, or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution of any **Claim**;
- (5) salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (6) **Benefits** due or to become due or the equivalent value of such **Benefits**, except with respect to any **Employment Claim** for **Wrongful Termination**, or **Stock Benefits**;
- (7) cost associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including, the Americans with Disabilities Act, the Civil Rights Act of 1964, or any amendments to or rules or regulations promulgated under any such law;
- (8) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**; or
- (9) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Potential Claim means a complaint or allegation of a **Wrongful Act** by or on behalf of a potential claimant if such complaint or allegation:

- (A) does not constitute a **Claim** but may subsequently give rise to a **Claim**; and
- (B) is lodged with:
 - (1) any supervisory employee having management-level responsibility for personnel matters with respect to such claimant, if such supervisory employee provides notice of such complaint or allegation to any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department; or
 - (2) any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department.

Retaliation means retaliatory treatment against an **Employee** or **Independent Contractor** of an **Organization** on account of such individual:

- (A) exercising his or her rights under law, refusing to violate any law, or opposing any unlawful practice;
- (B) having assisted or testified in or cooperated with a proceeding or investigation (including any internal investigation conducted by the **Organization's** human resources department or legal department) regarding alleged violations of law by the **Insured**;
- (C) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
- (D) filing any claim against the **Organization** under the Federal False Claims Act, Section 806 of the Sarbanes Oxley Act or any other federal, state, local or foreign whistleblower law.

Stock Benefits means any:

- (A) offering, plan or agreement between an **Organization** and any employee which grants stock, warrants, shares or stock options of the **Organization** to such employee, including grants of stock options, restricted stock, stock warrants, performance stock shares, membership shares, or any other compensation or incentive granted in the form of securities of the **Organization**; or
- (B) payment or instrument the amount or value of which is derived from the value of securities of the **Organization**, including stock appreciation rights or phantom stock plans or arrangements,

provided that **Stock Benefits** shall not include amounts claimed under any employee stock ownership plans or employee stock purchase plans.

Third Party means any natural person who is a customer, vendor, service provider or other business invitee of an **Organization**.

Third Party Claim means any:

- (A) written demand first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;
- (B) civil proceeding commenced by the service of a complaint or similar pleading;
- (C) arbitration proceeding commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document; or
- (D) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of a **Third Party** against an **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or

- (E) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in Subsections (A) through (D) above.

Third Party Wrongful Act means any actual or alleged:

- (A) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, genetic information, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world; or
- (B) harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third Party**,

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** while acting in his or her capacity as such.

Workplace Tort means any:

- (A) employment-related:
- (1) misrepresentation;
 - (2) defamation (including libel and slander);
 - (3) invasion of privacy (including the unauthorized use or disclosure of an **Employee's** (a) medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA"); (b) credit information or related information in violation of the Fair Credit Reporting Act; or (c) other information obtained through an employment-related background check);
 - (4) negligent evaluation;
 - (5) wrongful discipline; or
 - (6) wrongful deprivation of career opportunity; or
- (B) employment-related:
- (1) negligent retention;
 - (2) negligent supervision;
 - (3) negligent hiring;
 - (4) negligent training;
 - (5) wrongful infliction of emotional distress, mental anguish or humiliation;
 - (6) failure to provide or enforce consistent employment-related corporate policies and procedures; or
 - (7) false imprisonment,

but only when alleged as part of an **Employment Claim** for any **Wrongful Employment Decision, Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination**, or any act set forth in Subsection (A) of this definition.

Wrongful Act means an **Employment Practices Wrongful Act** and **Third Party Wrongful Act**.

Wrongful Employment Decision means any wrongful demotion, denial of tenure, or failure or refusal to hire or promote, failure to employ, or wrongful or negligent employee reference.

Wrongful Termination means any wrongful termination, dismissal or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

III. EXCLUSIONS

The Company shall not be liable for **Loss** on account of any **Claim**:

- (A) Prior Notice
 based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 (A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any employment practices liability policy or coverage part or any other liability policy or coverage part that includes coverage for employment practices liability of which this Coverage Part is a direct or indirect renewal or replacement;
- (B) Pending or Prior Proceedings
 based upon, arising from or in consequence of a written demand alleging a **Wrongful Act**, suit, formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, a Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs or arbitration proceeding pending against or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Proceedings Date as set forth in Item 5 of the EPL Declarations or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (C) Pollution
 based upon, arising from or in consequence of any:
- (1) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
 - (2) treatment, removal or disposal of any **Pollutants**; or
 - (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,
- including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (C), provided that this Exclusion (C) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;
- (D) Bodily Injury/ Property Damage
 for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including the loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (D) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress when alleged as part of an otherwise covered **Claim**;
- (E) Workers' Compensation, Unemployment, Social Security, Disability Benefits
 for any obligation of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world, provided that this Exclusion (E) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;
- (F) Breach of Independent Contractor Agreement
 for any breach of any **Independent Contractor Services Agreement**;
- (G) Employee Benefits Program
 for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Employment Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985) or amendments to or regulations promulgated under any such law that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**), including any:
- (1) retirement income or pension benefit program;
 - (2) profit sharing plan, deferred compensation plan, employee stock purchase plan, or employee stock ownership plan;

- (3) vacation, maternity leave, personal leave, or parental leave;
- (4) severance pay arrangement;
- (5) apprenticeship program;
- (6) life insurance plan, welfare plan, supplementary unemployment compensation plan, or pre-paid legal service plan or scholarship plan;
- (7) health, sickness, medical, dental, disability or dependant care plan; or
- (8) similar arrangement, program, plan or scheme,

provided that this Exclusion (G) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

(H) Occupational Safety and Health

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Occupational Safety and Health Act) or amendments to or regulations promulgated under any such law that governs workplace safety and health, including any obligation to maintain a place of employment free from hazards likely to cause physical harm, injury or death, provided that this Exclusion (H) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

(I) Wage and Hour

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act, including:

- (1) the calculation, recordkeeping, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
- (2) the classification of any organization or person for wage and hour purposes;
- (3) garnishments, withholdings or other deductions from wages;
- (4) child labor;
- (5) pay equity or comparable worth; or
- (6) any similar policies or practices,

provided that this Exclusion (I) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

(J) Workforce Notification

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Worker Adjustment and Retraining Notification Act) or amendments to or regulations promulgated under any such law that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, or mass layoff, or any similar obligation, provided that this Exclusion (J) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

(K) Labor Management Relations

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:

- (1) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including union organizing, union elections and other union activities;

- (2) the duty or obligation of an employer to meet, discuss, notify or bargain with any employee or employee representative, collectively or otherwise;
- (3) the enforcement of any collective bargaining agreement, including grievance and arbitration proceedings;
- (4) strikes, work stoppages, boycotts, picketing and lockouts; or
- (5) any similar rights or duties,

provided that this Exclusion (K) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

- (L) Breach of Written Employment Contract
 based upon, arising from or in consequence of any breach of any written employment contract, provided that this Exclusion (L) shall not apply to:

- (1) **Loss** to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract; or
- (2) **Defense Costs**.

IV. REPORTING

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing), or any member of the in-house general counsel or human resources departments, of an **Organization** becomes aware of such **Claim**, but in no event later than:

- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
- (2) the expiration date of the Extended Reporting Period, if applicable,

provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.

- (B) Notwithstanding the foregoing Subsection (A) and solely with respect to an **Employment Claim** that is brought as a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, an **Insured**, shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give written notice thereof to the Company during the **Policy Period**, or, if applicable, in no event later than the earliest of the following dates:

- (1) if this Coverage Part is renewed, 180 days after the end of the **Policy Period**,
- (2) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company and if no Extended Reporting Period is purchased, ninety (90) days after the effective date of such expiration or termination; or
- (3) the expiration date of the Extended Reporting Period, if elected,

provided that if the Company sends written notice to the **Parent Organization**, stating that this Policy is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Employment Claim** prior to the effective date of such termination.

- (C) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of a **Potential Claim** and gives written notice of such **Potential Claim** to the Company, and requests coverage under this Coverage Part for any **Claim** subsequently resulting from such **Potential Claim**, then any **Claim** subsequently arising from the **Potential Claim** shall be deemed made against the **Insured**

during the **Policy Year** in which written notice of such **Potential Claim** was first given to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, any position responsible for the management of insurance claims (or any position equivalent to any of the foregoing), or any member of the in-house general counsel or human resources departments of an **Organization** becomes aware of such **Claim**.

- (D) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require and shall include in any notice under Subsections (A), (B) or (C) above, a description of the **Claim**, request or **Potential Claim**, the nature of any alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, the manner in which such **Insured** first became aware of the **Claim**, **Potential Claim** or alleged **Wrongful Act**, and with respect to notices of **Potential Claims** under Subsection (C) above, the consequences which have resulted or may result from such **Potential Claim**.

V. RETENTION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is excess of the applicable Retention set forth in Item 4 of the EPL Declarations and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Insuring Clauses within this Coverage Part, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (D) **Claims** shall be subject to the Retention(s) applicable to the **Policy Year** during which such **Claims** are first made or first deemed to have been made.
- (E) No Retention shall apply to any **Loss** under this Coverage Part incurred by an **Insured Person** if such **Loss** can not be indemnified by an **Organization** because such **Organization** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is unable to do so by reason of **Financial Impairment**.

VI. DEFENSE AND SETTLEMENT

- (A) Except as provided in Subsection (B) below, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) Notwithstanding Subsection (A) above, it shall be the duty of the **Insureds** and not the duty of the Company to defend any **Claim** which is in part excluded from coverage pursuant to Exclusion III(I), Wage and Hour. For such portion of such **Claim** that is otherwise covered under this Coverage Part, the **Insureds** shall select as defense counsel for such **Claim** a law firm included in the Company's then current list of approved employment defense firms for the jurisdiction in which such **Claim** is pending.
- (C) The Company may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.
- (D) No **Insured** shall settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which

shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.

- (E) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the premium shall be deemed fully earned.
- (F) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

VII. ALLOCATION

If the **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to Exclusion III(I), Wage and Hour, or Subsection X(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and
- (B) loss other than **Defense Costs**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.

VIII. EMPLOYMENT CLAIM ARBITRATION

- (A) Any dispute between any **Insured** and the Company based upon, arising from or in any way involving any actual or alleged coverage under this Coverage Part, or the validity, termination or breach of this Coverage Part, including any dispute sounding in contract or tort, shall be submitted to binding arbitration.
- (B) An **Organization**, however, shall first have the option to resolve the dispute by non-binding mediation pursuant to such rules and procedures, and using such mediator, as the parties may agree. If the parties cannot so agree, the mediation shall be administered by the American Arbitration Association pursuant to its then prevailing commercial mediation rules.
- (C) If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

IX. OTHER INSURANCE

Unless specifically stated otherwise, the coverage afforded under this Coverage Part for:

- (A) **Employment Claims** shall be primary, provided that with respect to that portion of an **Employment Claim** made against any leased or temporary employee or **Independent Contractor**, **Loss**, including **Defense Costs**, payable on behalf of such leased or temporary employee or **Independent Contractor** under this Coverage Part shall be excess of and shall not contribute with any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by the

Coverage Part), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

- (B) **Third Party Claims** shall be excess of and shall not contribute with any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by the Coverage Part), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

X. REPRESENTATIONS AND SEVERABILITY

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
- (1) any **Insured Person** who knew of such misrepresentations (whether or not such **Insured Person** knew such **Application** contained such misrepresentations) or any **Organization** to the extent it indemnifies any such **Insured Person**; or
 - (2) any **Organization** if any past or present director of human resources, chief executive officer, chief financial officer, in-house general counsel (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).
- (D) The Company shall not be entitled under any circumstances to void or rescind this Coverage Part with respect to any **Insured**.
-

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**VIOLATION OF EMPLOYEE PRIVACY ENDORSEMENT
(DEFENSE COSTS ONLY WITH SUBLIMIT)**

In consideration of the premium charged, it is agreed that solely with respect to this Employment Practices Liability Coverage Part, the following shall apply:

- (1) The Company's maximum aggregate liability for all **Defense Costs** on account of all **Employment Claims** for a "Violation of Employee Privacy" (as defined below) shall be \$250,000, which amount is part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations.
- (2) No coverage will be available under this Coverage Part for **Loss**, other than **Defense Costs**, on account of any **Employment Claim** for a Violation of Employee Privacy.
- (3) The definition of **Employment Practices Wrongful Act**, as set forth in Section II. Definitions, of this Coverage Part is amended to include the following:

Employment Practices Wrongful Act shall also mean any actual or alleged Violation of Employee Privacy committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

- (4) Section XII. Coordination of Coverage, of the General Terms and Conditions is amended to include the following:

Additionally, any **Loss** otherwise covered pursuant to the terms of this endorsement and the CyberSecurity Coverage Part, if purchased, shall be first covered under this Coverage Part, subject to its terms, conditions, and limitations.

- (5) For the purposes of this endorsement, the following terms shall have the meanings set forth below:

"Violation of Employee Privacy" means an **Organization's** failure to:

- (i) secure an employee's "Record" (as defined below) from actual or potential unauthorized access by another person or by an organization which results in injury to such employee; or
- (ii) provide notice as required by any state, federal or local statutory law or common law anywhere in the world to an employee whose Record was accessed or may have been accessed by an unauthorized person.

"Record" means an employee's first name or first initial, and last name, in combination with:

- (i) their social security number, driver's license number or other personal identification number (including an employee identification number or student identification number);

- (ii) their financial account number (including a bank account number, retirement account number, or healthcare spending account number);
- (iii) their credit, debit or other payment card number; or
- (iv) any individually identifiable health information, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), held by the **Organization**,

when any such information in (i) through (iv) above is intended by the **Organization** to be accessible only by persons or organizations specifically authorized by the **Organization** to have access to such information.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**WORKPLACE VIOLENCE EXPENSES ENDORSEMENT
(WITH SUBLIMIT)**

In consideration of the premium charged, it is agreed that solely with respect to this Coverage Part, the following shall apply:

- (1) Section I, Insuring Clauses, of this Coverage Part shall be amended to add the following Insuring Clause:

Workplace Violence Expense Coverage

The Company shall reimburse the **Parent Organization** for "Workplace Violence Expenses" (as defined below) incurred by an **Organization** resulting from any "Workplace Violence" (as defined below); provided that the Company's maximum aggregate liability for all Workplace Violence Expenses shall not exceed \$250,000, which amount is part of, and not in addition to, the Company's maximum aggregate Limit of Liability set forth in Item 2 of the EPL Declarations.

- (2) No Retention shall apply to Workplace Violence Expenses; provided however, if different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention as set forth in Item 4 of the EPL Declarations. Such Retention shall be borne by the **Insureds** uninsured and at their own risk.

- (3) For the purposes of this endorsement, Exclusion (D), Bodily Injury/Property Damage, of this Coverage Part is deleted and replaced with the following:

- (D) **Bodily Injury/Property Damage**
based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion (D) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress when alleged as part of an otherwise covered **Claim**;

- (4) The terms and conditions of subsection (A) of Section VI, Defense and Settlement, of this Coverage Part shall not apply to the coverage for "Workplace Violence Expenses" (as defined below) afforded pursuant to the Workplace Violence Expense Coverage Insuring Clause as set forth in paragraph (1) of this endorsement.

- (5) For the purposes of this endorsement, the following terms shall apply:

"Workplace Violence" means any intentional and unlawful act:

- (i) of deadly force involving the use of lethal weapon; or
- (ii) the threat of deadly force involving the display of a lethal weapon,

which occurs on or in the "Premises" (as defined below) and which did or could result in bodily injury or death to an **Insured Person**.

"Workplace Violence Expenses" means the reasonable fees and expenses, or cost of:

- (i) an independent security consultant for ninety (90) days following the date Workplace Violence occurs;
- (ii) an independent public relations consultant for ninety (90) days following the date Workplace Violence occurs;
- (iii) a counseling seminar for all **Employees** conducted by an independent consultant following a Workplace Violence;
- (iv) independent security guard services for up to fifteen (15) days; and
- (v) an independent forensic analyst.

"Premises" means the buildings, facilities or properties occupied by an **Organization** in conducting its business.

- (6) For the purposes of this endorsement, no coverage will be available under this Coverage Part for:
- (a) any Workplace Violence which occurs at any location other than the Premises;
 - (b) **Loss** arising from declared or undeclared war, civil war, insurrection, riot, civil commotion, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization;
 - (c) legal costs, judgments and settlements incurred as the result of any claim, suit or judicial action brought against an **Organization** in connection with Workplace Violence; or
 - (d) **Loss** resulting from the use or threat of force or violence occurring on the Premises for the purpose of demanding money, securities or property.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 3

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND DEFINITION OF LOSS ENDORSEMENT

In consideration of the premium charged, it is agreed that this Coverage Part is amended as follows:

- (1) The definition of **Loss**, as set forth in Section II. Definitions, is amended to include the following:

Solely with respect to a "Mass or Class Action" (as defined below), **Loss** shall also include the reasonable and necessary external costs of training, education, sensitivity or minority development or diversity programs required under the terms of a settlement, judgment or consent decree; provided that the Company's maximum aggregate liability for all such **Loss** on account of all Mass or Class Actions shall be the lesser of either twenty-five percent (25%) of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations or one million dollars (\$1,000,000) and such amount is part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations.

- (2) For the purposes of this endorsement, the term "Mass or Class Action" means any **Claim** brought or maintained:

- (a) by or on behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
- (b) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**, whether or not such natural persons are represented by one or more legal counsel; or
- (c) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. S.", written over a horizontal line.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**IMMIGRATION CLAIM COVERAGE ENDORSEMENT
(WITH SUBLIMIT FOR DEFENSE COSTS)**

In consideration of the premium charged, it is agreed that this Coverage Part is amended as follows:

- (1) Section I. Insuring Clauses, is amended to add the following Insuring Clause:

Immigration Claim Defense Costs Coverage

The Company shall pay **Defense Costs** on behalf of the **Insureds** resulting from any "Immigration Claim" (as defined below) first made against such **Insureds** during the **Policy Year**, or any applicable Extended Reporting Period, for any "Immigration Wrongful Act" (as defined below) committed or allegedly committed prior to the end of the **Policy Year**; provided, that the Company's maximum aggregate limit of liability for any such **Defense Costs** shall be \$50,000, which amount shall be part of and not in addition to the Limit of Liability set forth in Item 3(A) of the EPL Declarations (hereinafter "Immigration Claim Defense Costs Sublimit").

- (2) The Retention set forth in Item 4, Retentions, of the EPL Declarations applicable to Insuring Clause (A), Employment Practices Liability Coverage, shall also be the Retention applicable to the Immigration Claim Defense Costs Coverage set forth in paragraph (1) of this endorsement.
- (3) For purposes of Section III. Exclusions, of this Coverage Part, the term **Claim**, as used therein, shall also include any "Immigration Claim".
- (4) No coverage will be available under this Coverage Part for **Defense Costs** resulting from any Immigration Claim for an Immigration Wrongful Act of which any CEO or CFO of the **Organization** had knowledge prior to 07/01/2021.
- (5) For purposes of this endorsement, the following terms shall apply:

"Immigration Claim" means a criminal investigation of any of the **Insureds** by any governmental agency. "Immigration Claim" shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

"Immigration Wrongful Act" means an actual or alleged violation of the responsibilities, obligations or duties imposed by the Immigration Control Act of 1986 or any other similar federal or state laws or regulations in connection with the actual or alleged hiring or harboring of illegal aliens.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, consisting of a large capital 'P' followed by several loops and a final flourish.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 5

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

MASS OR CLASS ACTION RETENTION ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) Item 4. Retentions, of the EPL Declarations is deleted and replaced with the following:

Item 4. Retentions:

(A)	Insuring Clause (A): Employment Practices Liability Coverage: for a Non-Mass or Non-Class Action :	\$500,000
(B)	Insuring Clause (A): Employment Practices Liability Coverage: for a Mass or Class Action :	\$500,000
(C)	Insuring Clause (B): Third Party Liability Coverage: for a Non-Mass or Non-Class Action :	\$500,000
(D)	Insuring Clause (B): Third Party Liability Coverage: for a Mass or Class Action :	\$500,000

- (2) Section V. Retention, of this Coverage Part is amended to delete Subsection (A) and replace it with the following:

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is in excess of the applicable Retention set forth in Item 4 of the EPL Declarations and such Retention shall be borne by the **Insureds** uninsured and at their own risk.

With respect to the coverage afforded under Insuring Clause (A), Employment Practices Liability Coverage, the Retention applicable to: (a) each **Non-Mass or Non-Class Action** shall be the amount set forth in Item 4(A) of the EPL Declarations; and (b) each **Mass or Class Action** shall be the amount set forth in Item 4(B) of the EPL Declarations.

With respect to the coverage afforded under Insuring Clause (B), Third Party Liability Coverage, the Retention applicable to: (a) each **Non-Mass or Non-Class Action** shall be the amount set forth in Item 4(C) of the EPL Declarations; and (b) each **Mass or Class Action** shall be the amount set forth in Item 4(D) of the EPL Declarations.

If at any time a **Claim** ceases to be a **Mass or Class Action**, and becomes a **Non-Mass or Non-Class Action**, the Retention applicable to such **Claim** shall be the amount set forth in Item 4(A) or (C) of the EPL Declarations, as applicable; however, no Retention borne by the **Insureds** while the **Claim** was a **Mass or Class Action** will be reimbursed or

indemnified by the Company. If at any time a **Claim** ceases to be a **Non-Mass or Non-Class Action**, and becomes a **Mass or Class Action**, the Retention applicable to such **Claim** shall be the amount set forth in Item 4(B) or (D) of the EPL Declarations, as applicable.

- (3) Section II. Definitions, of this Coverage Part is amended to add the following definitions:

Mass or Class Action means any **Claim** brought or maintained:

- (A) by or on behalf of five or more natural persons, whether or not such natural persons are represented by one or more legal counsel;
- (B) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**, whether or not such natural persons are represented by one or more legal counsel; or
- (C) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

Non-Mass or Non-Class Action means any **Claim** brought or maintained by or on behalf of one to four natural persons, whether or not such natural persons are represented by one or more legal counsel, provided that: (i) none of such natural persons are making a pattern and practice or systemic discrimination allegation; and/or (ii) none of such natural persons are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement: July 1, 2021

Federal Insurance Company

Endorsement No. 6

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**CALIFORNIA AMENDATORY ENDORSEMENT
TO THE EMPLOYMENT PRACTICES LIABILITY COVERAGE PART**

In consideration of the premium charged, it is agreed that:

1. Subparagraph (B)(1) in the definition of **Loss** as set forth in of Section II, Definitions, is deleted and replaced with the following:

- (B) (1) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; and provided further that, if such jurisdiction is the State of California, then **Loss** does not include punitive, exemplary or multiplied damages; or

The Policy will be deemed to have been amended to the extent necessary to effect the purposes and intent of this Amendatory Endorsement.

The regulatory requirements set forth in this Amendatory Endorsement shall supercede and take precedence over any provisions of the Policy or any endorsement to the Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such Policy or endorsement provisions comply with the applicable insurance laws of the State of California.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 7

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

CRISIS MANAGEMENT EXPENSES COVERAGE ENDORSEMENT

In consideration of the premium charged, it is agreed that solely with respect to this Employment Practices Liability Coverage Part, the following shall apply:

- (1) Section I. Insuring Clauses, of this Coverage Part, is amended to add the following Insuring Clause:

Crisis Management Expenses

The Company shall reimburse the **Parent Organization** for "Crisis Management Expenses" (as defined below) incurred by an **Organization**, provided that the Company's Maximum Aggregate Limit of Liability for all Crisis Management Expenses shall not exceed \$5,000, which amount is part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability as set forth in Item 2 of the EPL Declarations.

- (2) Solely with respect to the coverage for Crisis Management Expense afforded pursuant to the Crisis Management Expenses Insuring Clause as set forth in paragraph (1) of this endorsement, the following shall apply:
- (i) No Retention shall apply to Crisis Management Expenses; provided however, if different parts of a single **Claim** are subject to different Retentions, the applicable Retention will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention as set forth in Item 4 of the EPL Declarations. Such Retention shall be borne by the **Insureds** uninsured and at their own risk.
 - (ii) The terms and conditions of subsection (A) through (E) of Section VI. Defense and Settlement, shall not apply to the coverage for Crisis Management Expenses.
 - (iii) Any **Insured** shall, as a condition precedent to exercising their rights under the Crisis Management Expenses Insuring Clause, give to the Company written notice as soon as practicable of the Crisis Management Event, but in no event later than thirty (30) days after the commencement of such Crisis Management Event.
 - (iv) The Company shall not be liable under this Coverage Part for:
 - (a) revising or rewriting of personnel policies or procedures;
 - (b) sensitivity or awareness training; or
 - (c) accommodations made by the **Organization** pursuant to the Americans with Disabilities Act.

- (3) For the purposes of this endorsement, the following terms shall apply:

"Crisis Management Expenses" means the reasonable and necessary cost of retaining, for a stipulated period of time with the prior approval of the Company, an independent public relations consultant, media management consultant, investigative firm or law firm, and the cost of advertising and public relations media and activities in connection with a Crisis Management Event.

"Crisis Management Event" means an allegation of: (i) an **Employment Practices Wrongful Act** which the **Organization's** director of Human Resources, in-house general counsel, or equivalent position of the foregoing, reasonably believes that such **Employment Practices Wrongful Act** will result in a "Mass or Class Action" (as defined above); or (ii) **Employment Harassment** by a "Senior Executive" (as defined below), which the **Organization's** director of Human Resources, in-house general counsel, or equivalent position of the foregoing, reasonably believes that such **Employment Harassment** will result in a **Claim**.

"Mass or Class Action" means any **Claim** brought or maintained:

- (a) by or on behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
- (b) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**, whether or not such natural persons are represented by one or more legal counsel; or
- (c) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

"Senior Executive" means a director or corporate officer of the **Organization**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 8

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

LEADERS PREFERRED ENDORSEMENT

In consideration of the premium charged, it is agreed that solely with respect to the coverage afforded hereunder, this Coverage Part is amended as follows:

- (1) The definition of **Application**, as set forth in Section II. Definitions, is deleted.
- (2) The definition of **Benefits**, as set forth in Section II. Definitions, is deleted and replaced with the following:

Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other benefit to an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, bonuses, **Stock Benefits** or non-deferred cash incentive compensation.
- (3) The definition of **Employment Claim**, as set forth in Section II. Definitions, is amended as follows:
 - (a) The qualifying language set forth after paragraph (2) of Subsection (A) is deleted and replaced with the following:

which is brought by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding in the United States of America), including any appeal therefrom; or
 - (b) Subsection (B) is deleted and replaced with the following:
 - (B) a written request first received by an **Insured** to toll or waive a statute of limitations or other potential defense based on timeliness relating to a potential **Employment Claim** as described in Subsection (A) above.
- (4) The definition of **Employment Discrimination**, as set forth in Section II. Definitions, is amended to include any violation of employment discrimination laws including any actual, alleged limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise affect his or her status as an employee based on such person's political affiliation.

- (5) The definition of **Employment Harassment**, as set forth in Section II. Definitions, is deleted and replaced with the following:

Employment Harassment means:

- (A) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**, even if not perpetrated by an **Employee**, **Executive**, or **Independent Contractor**; or
- (B) workplace harassment, including work related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**, even if not perpetrated by an **Employee**, **Executive**, or **Independent Contractor**.

- (6) Subsection (A) of the definition of **Executive**, as set forth in Section II. Definitions, is deleted and replaced with the following:

- (A) a duly elected or appointed director, officer, in-house general counsel, trustee, trustee emeritus, governor, executive director, or management committee members of any **Organization** incorporated in the United States of America;

- (7) The definition of **Loss**, as set forth in Section II. Definitions, is amended as follows:

- (a) Subsection (C) is deleted and replaced with the following:

- (C) back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company);

- (b) Subsection (6) is deleted and replaced with the following:

- (6) (i) **Benefits** due or to become due or the equivalent value of such **Benefits**, except with respect to any **Employment Claim** for **Wrongful Termination**, or

- (ii) **Stock Benefits**;

- (c) The following is added:

Solely with respect to a "Mass or Class Action" (as defined below), **Loss** shall also include the reasonable and necessary external costs of training, education, sensitivity or minority development or diversity programs required under the terms of a settlement, judgment or consent decree; provided that the Company's maximum aggregate liability for all such **Loss** on account of all Mass or Class Actions shall be the lesser of either twenty-five percent (25%) of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations or one million dollars (\$1,000,000) and such amount is part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations.

For the purposes of the foregoing paragraph, the term "Mass or Class Action" means any **Claim** brought or maintained:

- (a) by or on behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
- (b) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a

class or group of complainants in order to resolve such **Claim**, whether or not such natural persons are represented by one or more legal counsel; or

- (c) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

- (8) The lead-in wording of the definition of **Retaliation**, as set forth in Subsection II. Definitions, is deleted and replaced with the following:

Retaliation means retaliatory treatment against any **Employee** or **Independent Contractor** of an **Organization** on account of such individual or another **Employee**:

- (9) The definition of **Third Party**, as set forth in Section II. Definitions, is deleted and replaced with the following:

Third Party means any natural person who is a customer, vendor, service provider or other invitee of an **Organization**.

- (10) Subsection (E) of the definition of **Third Party Claim**, as set forth in Section II. Definitions, is deleted and replaced with the following:

- (E) a written request first received by an **Insured** to toll or waive a statute of limitations or other potential defense based on timeliness relating to a potential **Third Party Claim** as described in Subsections (A) through (D) above.

- (11) The qualifying language set forth after Subsection (D) of the definition of **Third Party Claim**, as set forth in Section II. Definitions, is deleted and replaced with the following:

which is brought by or on behalf of a **Third Party** against an **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or

- (12) The definition of **Third Party Wrongful Act**, as set forth in Section II. Definitions, is amended to include any actual or alleged false imprisonment, but only when alleged as part of a **Third Party Claim** for any act set forth in Subsections (A) or (B) of the definition of **Third Party Wrongful Act**, committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** while acting in his or her capacity as such.

- (13) The definition of **Workplace Tort**, as set forth in Section II. Definitions, is amended as follows:

- (a) Paragraph (1) of Subsection (A) is deleted and replaced with the following:

- (1) misrepresentation (including the inducement to become or remain as an employee based upon an erroneous job description or misrepresentation regarding advancement opportunity),

- (b) Subsection (B) is amended to add the following paragraph (8) after paragraph (7):

- (8) malicious prosecution,

- (14) Exclusion (A), Prior Notice, of Section III. Exclusions, is deleted and replaced with the following:

- (A) Prior Notice

based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 (A), Policy Period, of the GTC Declarations, was the subject of any written notice accepted under any employment practices liability policy or coverage part or any other liability policy or coverage part that includes coverage for employment practices liability of which this Coverage Part is a direct or indirect renewal or replacement;

- (15) With respect to Section III. Exclusions, no fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** to determine if coverage is available.
- (16) Subsections (A) and (C) of Section IV. Reporting, are deleted and replaced with the following:
- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after any person with the responsibility for the management of insurance claims (or any equivalent position thereof), or any member of the in-house general counsel or human resources departments, of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
 - (2) the expiration date of the Extended Reporting Period, if applicable,
- provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.
- (C) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of a **Potential Claim** and gives written notice of such **Potential Claim** to the Company, and requests coverage under this Coverage Part for any **Claim** subsequently resulting from such **Potential Claim**, then any **Claim** subsequently arising from the **Potential Claim** shall be deemed made against the **Insured** during the **Policy Year** in which written notice of such **Potential Claim** was first given to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after any position responsible for the management of insurance claims (or any equivalent position thereof), or any member of the in-house general counsel or human resources departments of an **Organization** becomes aware of such **Claim**.
- (17) Subsection (F) of Section VI. Defense And Settlement, is deleted and replaced with the following:
- (F) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery; provided that the failure of any **Insured Person** to give the Company such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this Coverage Part.
- (18) Subsections (A), (B), and (C) of Section X. Representations And Severability, are deleted and replaced with the following:
- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the written application for this Coverage Part ("Application"). Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The Application for coverage shall be construed as a separate Application for coverage by each **Insured Person**. With respect to the declarations and statements in such Application, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such Application contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
- (1) any **Executive** who knew of such misrepresentations or any **Organization** to the extent it indemnifies any such **Insured Person**; or

- (2) any **Organization** if any past or present director of human resources, president, in-house general counsel (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 9

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND REPORTING ENDORSEMENT

In consideration of the premium charged, it is agreed that Paragraph (B)(1) of Section IV, Reporting, of this Coverage Part is deleted and replaced with the following:

- (1) if this Coverage Part is renewed, 365 days after the end of the **Policy Period**,

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement: July 1, 2021

Company: Federal Insurance Company

Endorsement No. 10

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRIOR ACTS EXCLUSION ENDORSEMENT

In consideration of the premium charged, it is agreed that no coverage will be available under Insuring Clause(s) I.(A), I.(B), I.(C) and/or I. (D) of this Coverage Part for any **Claim** based upon, arising from, or in consequence of any **Wrongful Act** in whole or in part prior to 01/09/2020.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 11

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

NON-PRIVATE EQUITY EPL AMENDMENT ENDORSEMENT

In consideration of the premium charged, it is agreed that the Employment Practices Liability Coverage Part is amended as follows:

(1) AMEND DEFINITIONS

Section II, Definitions, is amended as follows:

(A) Subsection (A) of the definition of **Application** is deleted and replaced with the following:

(A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** during the twelve (12) months preceding this Policy's inception date for the purposes of the Company's underwriting of this Coverage Part; and

(B) The last paragraph in Subsection (A) of the definition of **Employment Claim** is deleted and replaced with the following:

which is brought and maintained by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding in the United States of America) including any **Employment Practices Wrongful Act** that occurs via social media or social networking, including an appeal therefrom.

(C) The following definitions are added as follows:

Administrative Investigation means an administrative or regulatory investigation that is not a **Litigated Matter**, commenced by the Equal Employment Opportunity Commission or by the United States Department of Labor, Veterans Employment and Training Service, Justice Department of Office of Special Counsel of a violation of the Uniformed Services Employment and Reemployment Rights Act, when such investigation is conducted, commenced by the filing of notice of charges or similar document.

Indemnifiable Loss means **Loss** of an **Insured Person** resulting from a **Claim** which the **Organization** is required or permitted by applicable law to indemnify, to the fullest extent so required or permitted, regardless of whether or not such actual indemnification by the **Organization** is made, except and to the extent such indemnification is not made by the **Organization** solely by reason of **Financial Impairment**.

Litigated Matter means any civil, criminal, judicial, administrative, regulatory or arbitration proceeding made against an **Insured** seeking monetary, non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom.

Non-Indemnifiable Loss means **Loss** of an **Insured Person** which is not **Indemnifiable Loss**.

Prior Policy means any valid and collectible employment practice liability policy that provides substantially the same or similar coverage as provided by this Coverage Part, issued to the **Parent Organization** by the Company (or any other insurance company affiliate thereof), of which this **Policy** and Coverage Part is a continuous renewal.

(2) AMEND EXCLUSIONS

Section III, Exclusions, is amended as follows:

- (i) Exclusion (C), Pollution, is deleted.
- (ii) Exclusion (J), Workplace Notification, shall also not apply to **Defense Costs** in aggregate amount not to exceed \$100,000 per **Policy Period**, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of EPL Declarations.
- (iii) The following Exclusions are added as follows:

The Company shall not be liable under this Coverage Part for any **Claim**:

 - (A) which prior to the **Policy Period** was a **Litigated Matter**; or
 - (B) which is a **Claim** or **Related Claim** arising out of the same **Wrongful Act** as a **Claim** that was a **Litigated Matter** prior to the **Policy Period**.

(3) AMEND REPORTING

Subsections (A) and (C) of Section IV, Reporting, are deleted and replaced with the following:

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after any person with the responsibility for the management of insurance claims (or any equivalent position thereof), or any member of the in-house general counsel or human resources departments, of an **Organization** becomes aware of such **Claim**, but in no event later than:
 - (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
 - (2) the expiration date of the Extended Reporting Period, if applicable,provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.
- (C) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of a **Potential Claim** and gives written notice of such **Potential Claim** to the Company, and requests coverage under this Coverage Part for any **Claim** subsequently resulting from such

Potential Claim, then any **Claim** subsequently arising from the **Potential Claim** shall be deemed made against the **Insured** during the **Policy Year** in which written notice of such **Potential Claim** was first given to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after any position responsible for the management of insurance claims (or any equivalent position thereof), or any member of the in-house general counsel or human resources departments of an **Organization** becomes aware of such **Claim**.

(4) **AMEND DEFENSE AND SETTLEMENT**

Subsection (F) of Section VI. Defense And Settlement, is deleted and replaced with the following:

- (F) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery; provided that the failure of any **Insured Person** to give the Company such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this Coverage Part.

(5) **AMEND ALLOCATION**

Subsection (A) of Subsection VII, Allocation, is deleted and replaced with the following:

- (A) **Defense Costs:** one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to: (i) any **Insured** for whom coverage is excluded pursuant to Exclusion III(I), Wage and Hour, or Subsection X(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and

(6) **ADD PRIORITY OF PAYMENTS**

The following Section is added as follows:

PRIORITY OF PAYMENTS

If the amount of any **Loss** which is otherwise due and owing by the Company exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Company shall pay such **Loss**, subject to such Limit of Liability in the following priority:

- (A) first, the Company shall pay covered **Loss** for which an **Organization** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of an **Organization**; and
- (B) second, only if and to the extent the payment under (A) above does not exhaust the applicable Limit of Liability, the Company shall pay any other applicable Loss in excess of the applicable Retention.

(7) **ADD CLAIMS SAVINGS CLAUSE**

The following Section is added as follows:

CLAIMS SAVINGS CLAUSE

Notwithstanding anything to contrary in Section IV, Reporting, solely with respect to any **Claim** which: (A) first becomes a **Litigated Matter** during the **Policy Period**, or any applicable Extended Reporting Period; and (B) is a **Claim** or **Related Claim** arising out of the same **Wrongful Act** with respect to an **Administrative Investigation** first made against an **Insured** prior to the **Policy Period**, the Company

shall not deny coverage for such **Claim** based upon the late notice of such **Claim** or based upon such **Claim** being made prior to the **Policy Period**, provided that:

- (i) such **Claim** was first made against an **Insured** while the **Parent Organization** was covered under a **Prior Policy**;
- (ii) upon such **Claim** first becoming a **Litigated Matter**, the **Claim** was reported in accordance with this Section; and
- (iii) no **Insured** has made a monetary settlement offer to a claimant or responded to a monetary demand from or on behalf of a claimant with respect to such **Claim**.

Any coverage for any **Claim** afforded coverage pursuant to section (7)(ii) of this Endorsement shall be the lesser of:

- (A) the coverage which would have been provided under this Coverage Part for such **Claim** had the **Claim** been made during the **Policy Period** and reported to the Company as required by this Coverage Part; or
- (B) the coverage, if any, which would have been provided under the **Prior Policy** for such **Claim** if the Company had properly provided notice of such **Claim** in accordance with the provisions of the **Prior Policy**.

Nothing in section (7)(ii) of this Endorsement shall be construed to: (a) increase the limit of liability of this Coverage Part; (b) provide coverage under the **Prior Policy**; or (c) provide coverage under this Coverage Part for **Loss** which in fact covered (or would be covered but for the exhaustion of the limit of liability) under the **Prior Policy**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 12

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

EPL SUPPLEMENTAL ENDORSEMENT

In consideration of the premium charged, it is agreed that the Employment Practices Liability Coverage Part is amended as follows:

- (1) The definition of **Application**, as amended in the Leaders Preferred Endorsement, shall supersede and take precedent over any other endorsement.
- (2) The last paragraph of the definition of **Employment Claim**, as amended in the EPL Amendment Endorsement (FL-216872), shall supersede and take precedent over any other endorsement.
- (3) Section IV, Reporting, is amended to add the following:

Notwithstanding the foregoing, the Company shall not assert a failure to notice a **Claim** in a timely manner unless the Company is prejudiced by such untimely notice. In no event, however, shall notice be given later than the expiration date of the **Extended Reporting Period**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3 0 Employment Practices Liability Coverage Part

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 13

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRE-CLAIM EXPENSE COVERAGE ENDORSEMENT (EPL)

In consideration of the premium charged, it is agreed that the Employment Practices Liability Coverage Part is amended as follows:

- (1) Section I, Insuring Clauses, is amended to add the following to the end thereof:

Pre-Claim Expense Coverage

If the **Insured** gives written notice of a **Potential Claim** which could give rise to a **Claim** pursuant to Subsection IV(C), Reporting, and if a **Claim** subsequently arises out of such **Potential Claim**, then any **Pre-Claim Expenses** in an aggregate amount not the exceed the lesser of: (i) \$50,000, or (ii) fifty percent (50%) of the applicable Retention, shall qualify as **Loss** solely for the purpose of exhaustion of the applicable Retention and subject to the following:

- (1) Coverage provided herein shall apply only to such **Pre-Claim Expenses** incurred on or after the date the **Insured** gives written notice to the Company of the **Potential Claim** and prior to the time such **Potential Claim** becomes a **Claim**. Once the applicable Retention has been exhausted, **Pre-Claim Expenses** shall no longer qualify as covered **Loss** under this Coverage Part; and
- (2) Coverage provided herein shall not be deemed to waive the Company's rights hereunder or limit the **Insured's** right to receive coverage for **Loss** incurred following the reporting of a **Claim**.

- (2) Section II, Definitions, is amended as follows:

- (A) The definition of **Loss** is amended to add the following:

Loss shall also not include **Pre-Claim Expenses**, except as provided under **Pre-Claim Expense Coverage**, as set forth in Paragraph (1) above.

- (B) Subsection (8) of the definition of **Loss** shall not apply to any coverage afforded by Paragraph (1) above.

- (C) The definition for **Pre-Claim Expenses** is added as follows:

Pre-Claim Expenses means reasonable costs, charges fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing a **Potential Claim**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Authorized Representative

FL DECLARATIONS**FEDERAL INSURANCE COMPANY**

A stock insurance company, incorporated under the laws of Indiana, herein called the Company

Capital Center, 251 North Illinois, Suite 1100
Indianapolis, IN 46204-1927

NOTICE: THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD", OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE RETENTION. IN NO EVENT WILL THE COMPANY BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF LIABILITY. READ THE ENTIRE POLICY CAREFULLY.

Item 1. Parent Organization: WOLVERINE HOLDING CORPORATION

Item 2. Maximum Aggregate Limit of Liability for this Coverage Part: \$5,000,000.00

Item 3. Retentions:

(A) Insuring Clause (A)
Fiduciary Liability Coverage: \$0.00

(B) Insuring Clause (B)
Voluntary Settlement Program Coverage: \$0.00

Item 4. Pending or Prior Proceedings Dates:

(A) Insuring Clause (A): January 09, 2020

(B) Insuring Clause (B): January 09, 2020

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Fiduciary Liability Coverage

- (A) The Company shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, for a **Wrongful Act** by the **Insured** or by any natural person for whose **Wrongful Acts** the **Insured** is legally liable.

Insuring Clause (B): Voluntary Settlement Program Coverage

- (B) The Company shall pay, on behalf of an **Insured**, **Voluntary Program Loss** and **Defense Costs** with respect to a **Voluntary Program Notice** that is first given to the Company during the **Policy Period**, provided that the Company's maximum liability for all **Voluntary Program Loss** and **Defense Costs** for the **Policy Year** shall be \$150,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations.

II. DEFINITIONS

For purposes of this Coverage Part:

Administration means:

- (A) advising, counseling, or failing to provide proper or timely notice to **Employees**, **Executives**, participants or beneficiaries with respect to any **Plan**;
- (B) providing interpretations with respect to any **Plan**; or
- (C) handling of records or effecting enrollment, termination or cancellation of **Employees**, **Executives**, participants or beneficiaries under any **Plan**.

Application means:

- (A) any portion of an application given to the Company for this Policy including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part;
- (B) all schedules filed with the U.S. Department of the Treasury Internal Revenue Service, the U.S. Department of Labor Employee Benefits Security Administration and the Pension Benefit Guarantee Corporation, and the audited financial statements last filed for all **Sponsored Plans**; and
- (C) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

Claim means any:

- (A) written demand first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;
- (B) civil proceeding commenced by the service of a complaint or similar pleading;
- (C) criminal proceeding commenced by: (1) an arrest, or (2) return of an indictment, information or similar document;
- (D) formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
- (E) arbitration or mediation proceeding commenced by the receipt of a demand for arbitration, demand for mediation, or similar document;

- (F) written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto; or
- (G) official request for **Extradition** of an **Insured Person**,
against an **Insured** for a **Wrongful Act**, including any appeal therefrom; or
- (H) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** as described in Subsections (A) through (G) above.

Committee means any committee established by an **Organization** with respect to a **Sponsored Plan**, which consists only of natural person members who are **Executives** or **Employees**.

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons**) incurred in investigating, defending, opposing or appealing any **Claim** or any **Voluntary Program Notice**, and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service was, is or will be engaged and directed by an **Organization**, including a part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** shall not include any independent contractor.

ERISA means:

- (A) the Employee Retirement Income Security Act of 1974, as amended and any rules or regulations promulgated thereunder (including, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"));
- (B) the English Pension Scheme Act 1993, and the English Pensions Act 1995, as such Acts are amended and any rules or regulations promulgated under such Acts, and

any similar statutory or common law anywhere in the world, and any rules or regulations promulgated thereunder; and

- (C) the privacy provisions under HIPAA.

Executive means any natural person who was, is or will be:

- (A) a duly elected or appointed director, officer, member of the Advisory Board or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager, member of the Board of Managers or equivalent position; (2) member of the Advisory Board; or (3) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Extradition means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

Financial Impairment means the status of an **Organization** resulting from:

- (A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (B) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country,

provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Organization**, or other party determined to have standing, for authorization of the **Organization** to indemnify an **Insured Person** for **Loss**; provided further that, the Company may, in its sole discretion, waive the foregoing requirement.

Insured means any **Organization**, any **Plan**, any **Committee** and any **Insured Person**.

Insured Person means any:

- (A) **Executive** or **Employee** of an **Organization**;
- (B) employee of a **Sponsored Plan**;
- (C) past, present or future natural person trustee of an **Organization** or of the **Sponsored Plan**; and
- (D) past, present or future natural person trustee or fiduciary, when such natural person is added as an **Insured Person** by specific written endorsement to this Coverage Part.

Loss means:

- (A) solely for purposes of Insuring Clause (A), Fiduciary Liability Coverage, the amount which any **Insured** becomes legally obligated to pay as a result of any **Claim**, including:
 - (1) compensatory damages;
 - (2) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or the **Claim** giving rise to such damages;
 - (3) judgments, including pre-judgment and post-judgment interest;
 - (4) settlements; and
 - (5) **Defense Costs**; and
- (B) solely for purposes of Insuring Clause (B), Voluntary Settlement Program Coverage, **Voluntary Program Loss**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax imposed by law;
- (4) fine or penalty imposed by law, except:
 - (a) as provided in Paragraph (A)(2) above with respect to punitive, exemplary or multiplied damages;
 - (b) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
 - (c) solely with respect to Insuring Clause (B), Voluntary Settlement Program Coverage, **Voluntary Program Loss**;
 - (d) civil penalties imposed by:
 - (i) the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or any successor thereto, by the United Kingdom Occupational Pensions Regulatory Authority, or the Pensions Regulator or any successor thereto, pursuant to the Pension Scheme Act 1993, the Pensions Act 1995, the Pensions Act 2004, or rules or regulations thereunder; or
 - (ii) Ireland's Pensions Board or Pensions Ombudsman,

- provided that any coverage for such civil penalties applies only if the funds or assets of the pension scheme are not used to fund, pay or reimburse the premium for this Coverage Part;
- (e) civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of the Employee Retirement Income Security Act of 1974, as amended (including, any amendments pursuant to Section 507 of Title V of the Pension Protection Act of 2006); provided the Company's maximum limit of liability for all such civil penalties on account of all **Claims** first made during the **Policy Year** shall be \$50,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;
 - (f) civil money penalties imposed upon an **Insured** for such **Insured's** violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended; provided the Company's maximum limit of liability for all such civil money penalties on account of all **Claims** first made during the **Policy Year** shall be \$150,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;
- (5) amounts incurred by an **Insured** in the defense or investigation of any action, proceeding, investigation or demand that was not then a **Claim** or a **Voluntary Program Notice**, even if (a) such amount also benefits the defense of a covered **Claim** or **Voluntary Program Notice**; or (b) such action, proceeding, investigation or demand subsequently gives rise to a **Claim** or to a **Voluntary Program Notice**;
 - (6) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**; or
 - (7) (a) benefits due or to become due under any **Plan**, or (b) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, including loss resulting from the payment of plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits, except to the extent that:
 - (i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
 - (ii) a **Claim** made against an **Insured** alleges a loss to the **Plan** and/or to the accounts of such **Plan's** participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as "benefits" or held by a court as "benefits".

Plan means:

- (A) any **Sponsored Plan**; and
- (B) any government-mandated insurance for workers compensation, unemployment, social security or disability benefits for **Employees** and **Executives**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Sponsored Plan means:

- (A) any employee benefit plan, pension benefit plan or welfare benefit plan, as defined in and subject to the Employee Retirement Income Security Act of 1974, as amended, including any **VEBA**, which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of an **Organization**, located anywhere in the world and which existed on or before the inception date of this Policy, or, subject to Section VI, Changes in Exposure, of the General Terms and Conditions, which is created or acquired after such inception date, provided that any coverage with respect to an employee stock ownership plan created or acquired during the **Policy Period** shall be further subject to Section IV, Creation or Acquisition of an ESOP;
- (B) any other employee benefit plan or program not subject to the Employee Retirement Income Security Act of 1974, as amended which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of an **Organization**, including any fringe benefit or excess benefit plan located anywhere in the world and which existed on or before the

inception date of this Policy, or, subject to Section VI, Changes in Exposure, of the General Terms and Conditions, which is created or acquired after such inception date; and

- (C) any other plan, fund, or program specifically included as a **Sponsored Plan** by endorsement to this Coverage Part,

provided that **Sponsored Plan** shall not include any employee stock ownership plan created or acquired by the **Organization** during the **Policy Period** (except as otherwise provided in Section IV, Creation or Acquisition of an ESOP).

VEBA means any Voluntary Employees' Beneficiary Associations as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended and any regulations thereunder, the purpose of which is to provide for life, sick, accident or other benefits for voluntary members who are **Employees**, **Executives**, their dependents or designated beneficiaries.

Voluntary Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or U.S. Department of Labor, including the Delinquent Filer Voluntary Compliance Program, the Voluntary Fiduciary Correction Program and the Employee Plans Compliance Resolution System, or any similar program administered by a governmental authority located outside the United States.

Voluntary Program Loss means fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation, provided that the **Voluntary Program Notice** relating thereto was given to the Company during the **Policy Period**.

Voluntary Program Notice means, with respect to any **Plan**, prior written notice to the Company by any **Insured** of the **Insured's** intent to enter into any **Voluntary Program**, provided that no **Insured Person** knew the **Plan** to be actually or allegedly non-compliant as of the earlier of the inception of this Policy or the inception of the first policy in an uninterrupted series of policies issued by the Company of which this Coverage Part is a direct or indirect renewal or replacement.

Wrongful Act means any actual or alleged:

- (A) breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed, attempted or allegedly committed or attempted by an **Insured** while acting in the **Insured's** capacity as a fiduciary;
- (B) negligent act, error or omission in the **Administration** of any **Plan** committed, attempted or allegedly committed or attempted by an **Insured**; or
- (C) matter, other than as set forth in (A) or (B) above, claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.

III. EXCLUSIONS

The Company shall not be liable for **Loss** on account of any **Claim** or for any **Voluntary Program Notice**:

- (A) Prior Notice:
based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any fiduciary liability or employee benefit liability policy or coverage part of which this Coverage Part is a direct or indirect renewal or replacement;
- (B) Pending or Prior Proceedings:
based upon, arising from or in consequence of a written demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Proceedings Date set forth in Item 4 of the FL Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

- (C) Bodily Injury/Property Damage:
for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (D) Pollution:
based upon, arising from or in consequence of any:
- (1) discharge, emission, release, dispersal or escape of any **Pollutants**, or any threat thereof;
 - (2) treatment, removal or disposal of any **Pollutants**; or
 - (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,
- including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors, or to the **Plan**, based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (D),
- provided that this Exclusion (D) shall not apply:
- (1) to **Loss** on account of any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising from or in consequence of the diminution in value of any securities owned by the **Sponsored Plan** in any organization if such diminution in value is allegedly as a result of the matters described above in this Exclusion (D); or
 - (2) to **Loss** which an **Insured Person** becomes legally obligated to pay and for which such **Insured Person** is not indemnified by an **Organization** either because the **Organization** is not permitted by statutory or common law to grant such indemnification or because of the **Financial Impairment** of the **Organization**, provided that this exception shall only apply to **Claims** first made during the **Policy Period** or the Extended Reporting Period, if applicable;
- (E) Assumed Liability Under Contract:
based upon, arising from or in consequence of liability of others assumed by any **Insured** under any written or oral contract or agreement, provided that this Exclusion (E) shall not apply to **Loss** to the extent that:
- (1) an **Insured** would have been liable in the absence of the contract or agreement; or
 - (2) the liability was assumed under the agreement or declaration of trust pursuant to which the **Plan** was established;
- (F) Workers' Compensation, Unemployment, Social Security, Disability Benefits:
for any failure of any **Insured** to comply with any workers' compensation, unemployment insurance, social security or disability benefits law or any amendments to or rules or regulations promulgated under any such law, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, except, to the extent otherwise covered hereunder, **Wrongful Acts** in connection with: (a) the Consolidated Omnibus Budget Reconciliation Act of 1985, (b) the Health Insurance Portability and Accountability Act of 1996, or (c) any amendments to or any rules or regulations promulgated under such Acts;
- (G) Wage and Hour:
for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices; or
- (H) Conduct:
based upon, arising from or in consequence of:
- (1) any deliberately fraudulent act or omission, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes such an act or omission or violation; or

- (2) an **Insured** having gained any profit, remuneration or other advantage to which such **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes the gaining of such a profit, remuneration or advantage,

provided that,

- (a) no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person** or to any **Plan**; and
- (b) any conduct pertaining to any past, present, or future chief financial officer, chief executive officer, chief operating officer or head of benefits (or any equivalent position to any of the foregoing) of an **Organization** shall be imputed to such **Organization** and its **Subsidiaries**.

IV. CREATION OR ACQUISITION OF AN ESOP

Notwithstanding anything in this Coverage Part to the contrary, if during the **Policy Period** any **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Company written notice thereof together with such other information requested by the Company. The Company shall, at the request of the **Organization**, provide to the **Organization** a quotation for coverage for **Claims** based upon, arising from or in consequence of such ESOP, subject to such terms, conditions, limitations of coverage and such additional premium as the Company, in its sole discretion, may require.

V. TERMINATION OF PLAN

In the event:

- (A) an **Organization** terminates a **Plan** before or after the inception date of this Policy, coverage under this Coverage Part, with respect to such terminated **Plan**, shall continue until termination of this Coverage Part for those who were **Insureds** at the time of such **Plan** termination or who would have been an **Insured** at the time of such termination if this Coverage Part had been in effect, with respect to **Wrongful Acts** prior to or after the date the **Plan** was terminated; or
- (B) the Pension Benefit Guaranty Corporation ("PBGC") becomes the Trustee of a **Plan** before or after the inception date of this Policy, coverage under this Coverage Part, with respect to such **Plan**, shall continue until termination of this Coverage Part for those who were **Insureds** at the time the PBGC became the Trustee of such **Plan** with respect to **Wrongful Acts** prior to the effective date the PBGC became the Trustee of such **Plan**.

VI. REPORTING

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, in-house general counsel, head of benefits, or any person responsible for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
- (2) the expiration date of the Extended Reporting Period, if applicable,

provided that if the Company sends written notice to the **Parent Organization**, stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.

- (B) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company, then any **Claim** subsequently arising from such circumstances shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances were first reported to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, in-house general counsel, head of benefits, or any person responsible for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**.
- (C) If during the **Policy Period** an **Insured** gives a **Voluntary Program Notice** to the Company, then any **Claim** subsequently arising from such **Voluntary Program Notice**, or arising from the same or related facts, circumstances or situations alleged therein, shall be deemed to have been first made during the **Policy Year** in which such **Voluntary Program Notice** was first given to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, in-house general counsel, head of benefits, or any person responsible for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**.
- (D) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require, and shall include in any notice under Subsections (A), (B) or (C) above a description of the **Claim**, circumstances, or **Voluntary Program Notice** (including the facts, circumstances or situations alleged therein), the nature of the alleged **Wrongful Act** or circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants, and the manner in which such **Insured** first became aware of the **Claim**, circumstances, or alleged **Wrongful Act** or **Voluntary Program Notice**.

VII. RETENTION AND PRESUMPTIVE INDEMNIFICATION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is in excess of the applicable Retention set forth in Item 3 of the FL Declarations and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Insuring Clauses within this Coverage Part, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (D) **Claims** and **Voluntary Program Notices** shall be subject to the Retention(s) applicable to the **Policy Year** during which such **Claims** or **Voluntary Program Notices** are made or deemed to have been made.
- (E) No Retention shall apply to:
 - (1) any **Loss** under this Coverage Part incurred by an **Insured Person** if such **Loss** cannot be indemnified by an **Organization** or **Plan** because such **Organization** or **Plan** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is unable to do so by reason of **Financial Impairment**; or
 - (2) any **Loss** constituting civil penalties imposed by law pursuant to Subparagraphs (4)(e) and (4)(f) as set forth within the definition of **Loss**.
- (F) For the purposes of determining an **Organization's** indemnification obligation to any Advisory Board Member, each Advisory Board Member shall be deemed a director or officer of the **Organization**. Accordingly, the **Organization** shall be deemed to have granted indemnification to each Advisory Board Member to the fullest extent permitted by statutory or common law to the same extent as any director or officer of the **Organization**.

VIII. DEFENSE AND SETTLEMENT

- (A) Except as provided in Subsection (B) below, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) Notwithstanding Subsection (A) above, it shall be the duty of the **Insureds** and not the duty of the Company to defend any **Claim** which is in part excluded from coverage pursuant to Exclusion III(G), Wage and Hour. For such portion of such **Claim** that is otherwise covered under this Coverage Part, the **Insureds** shall select as defense counsel for such **Claim** a law firm included in the Company's then current list of approved fiduciary liability defense firms for the jurisdiction in which such **Claim** is pending.
- (C) It shall be the duty of the **Insureds** and not the duty of the Company to defend any **Voluntary Program Notice**, provided that the **Insureds** shall select as defense counsel for such **Voluntary Program Notice** a law firm included in the Company's then current list of approved fiduciary liability defense firms for the jurisdiction applicable to such **Voluntary Program Notice**.
- (D) The Company may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** or **Voluntary Program Notice** it deems appropriate.
- (E) No **Insured** shall settle any **Claim** or **Voluntary Program Notice**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** or **Voluntary Program Notice**, without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.
- (F) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** or **Voluntary Program Notice** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the applicable premium shall be deemed fully earned.
- (G) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agree they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.
- (H) The Company will not seek repayment from an **Insured Person** of any **Defense Costs** paid by the Company that are deemed uninsured pursuant to Exclusion III(H), Conduct, unless the applicable determination standard (whether a final, non-appealable adjudication; or other determination standard) set forth in such Exclusion has been met.

IX. ALLOCATION

If the **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to Exclusion III(G), Wage and Hour, or Subsection XII(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and
 - (B) loss other than **Defense Costs**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.
-

X. PRIORITY OF PAYMENTS

- (A) If a liquidation or reorganization proceeding is commenced by or against an **Organization** pursuant to the United States Bankruptcy Code or any similar state or local law and in the event payment of **Loss** is due under this Coverage Part but, in the sole discretion of the Company, the amount of such **Loss** in the aggregate potentially exceeds the remaining available Limit of Liability for this Coverage Part, the Company shall:
- (1) first pay such covered **Loss** incurred by the **Insured Persons** and the **Plans**; then
 - (2) to the extent of any remaining amount of the Limit of Liability available after payment under Paragraph (1) above, pay such covered **Loss** incurred by an **Organization**.
- (B) Except as otherwise provided in Subsection (A) above, the Company may pay covered **Loss** as it becomes due under this Coverage Part without regard to the potential for other future payment obligations under this Coverage Part.

XI. OTHER INSURANCE

If any **Loss** under this Coverage Part is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Coverage Part), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

XII. REPRESENTATIONS AND SEVERABILITY

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
- (1) any **Insured Person** who knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations) or any **Organization** or **Plan** to the extent it indemnifies any such **Insured Person**; or
 - (2) any **Organization** or **Plan** if any past or present chief executive officer or chief financial officer (or any equivalent position to the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).
- (D) The Company shall not be entitled under any circumstances to rescind this Coverage Part with respect to any **Insured**.
-

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND VOLUNTARY SETTLEMENT PROGRAM COVERAGE ENDORSEMENT

In consideration of the premium charged, it is agreed that Section I. Insuring Clause (B), Voluntary Settlement Program Coverage, of this Coverage Part is deleted and replaced with the following:

- (B) The Company shall pay, on behalf of an **Insured, Voluntary Program Loss** and **Defense Costs** with respect to a **Voluntary Program Notice** that is first given to the Company during the **Policy Period**, provided that the Company's maximum liability for all **Voluntary Program Loss** and **Defense Costs** for the **Policy Year** shall be \$250,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND HIPAA CIVIL MONEY PENALTIES ENDORSEMENT

In consideration of the premium charged, it is agreed that Subparagraph (4)(f) of the definition of **Loss** as set forth in Section II. Definitions, of this Coverage Part is deleted and replaced with the following:

- (f) civil money penalties imposed upon an **Insured** for such **Insured's** violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended; provided the Company's maximum limit of liability for all such civil money penalties on account of all **Claims** first made during the **Policy Year** shall be \$1,000,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 3

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND 502(c) CIVIL PENALTIES ENDORSEMENT

In consideration of the premium charged, it is agreed that Subparagraph (4)(e) of the definition of **Loss** as set forth in Section II. Definitions, of this Coverage Part is deleted and replaced with the following:

- (e) civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of the Employee Retirement Income Security Act of 1974, as amended (including any amendments pursuant to Section 507 of Title V of the Pension Protection Act of 2006); provided the Company's maximum limit of liability for all such civil penalties on account of all **Claims** first made during the **Policy Year** shall be \$ \$250,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PPACA CIVIL MONEY PENALTIES ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) The definition of **Loss** as set forth in Section II. Definitions, of this Coverage Part is amended by adding the following exception to Paragraph (4):

civil money penalties imposed upon an **Insured** for inadvertent violation of the Patient Protection and Affordable Care Act, as amended ("PPACA"), and any rules or regulations promulgated thereunder; provided the Company's maximum limit of liability for all such civil money penalties on account of all **Claims** first made during the **Policy Year** shall be \$250,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;

- (2) No Retention shall apply to **Loss** constituting civil money penalties imposed by law upon an **Insured** for inadvertent violation of PPACA, and any rules or regulations promulgated thereunder.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 5

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

IRS SECTION 4975 COVERAGE ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) The definition of **Loss** as set forth in Section II. Definitions, of this Coverage Part is amended by adding the following exception to Paragraph (4):

with respect to covered judgments, the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986; provided the Company's maximum limit of liability for all such tax penalties on account of all **Claims** first made during the **Policy Year** shall be \$250,000, which amount is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations;
- (2) Solely with respect to the tax penalties described in paragraph (1) of this endorsement, no Retention shall apply.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement: July 1, 2021

Federal Insurance Company

Endorsement No. 6

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**CALIFORNIA AMENDATORY ENDORSEMENT
TO THE FIDUCIARY LIABILITY COVERAGE PART**

In consideration of the premium charged, it is agreed that:

1. Subparagraph (A)(2) in the definition of **Loss** as set forth in of Section II, Definitions, is deleted and replaced with the following:
 - (A) (2) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; and provided further that, if such jurisdiction is the State of California, then **Loss** does not include punitive, exemplary or multiplied damages;

The Policy will be deemed to have been amended to the extent necessary to effect the purposes and intent of this Amendatory Endorsement.

The regulatory requirements set forth in this Amendatory Endorsement shall supercede and take precedence over any provisions of the Policy or any endorsement to the Policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such Policy or endorsement provisions comply with the applicable insurance laws of the State of California.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 7

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRIOR ACTS EXCLUSION ENDORSEMENT

In consideration of the premium charged, it is agreed that no coverage will be available under this Coverage Part for **Loss** on account of any **Claim** or **Voluntary Program Notice** based upon, arising from, or in consequence of any **Wrongful Act** in whole or in part prior to 01/09/2020.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

IdcENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 8

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

**FIDUCIARY LIABILITY COVERAGE ENHANCEMENTS ENDORSEMENT
(FOREFRONT PORTFOLIO 3.0sm)**

In consideration of the premium charged, it is agreed that solely with respect to this Fiduciary Liability Coverage Part, the following shall apply:

(1) AMEND LIMIT OF LIABILITY (of the General Terms and Conditions)

Subsection (A) of Section III. Limit of Liability, of the General Terms and Conditions, is amended to add the following paragraph:

With respect to the Fiduciary Liability Coverage Part and subject in all events to the Combined Maximum Aggregate Limit of Liability, if purchased, as set forth in Item 3 of the GTC Declarations, **Defense Costs** on account of all **Interviews** is part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 2 of the FL Declarations and payment by the Company of such **Defense Costs** shall reduce and may exhaust such Limits of Liability.

(2) AMEND INSURING CLAUSES

Insuring Clause (A), Fiduciary Liability Coverage of Section I. Insuring Clauses, of this Coverage Part is deleted and replaced with the following:

- (A) The Company shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made against the **Insured**:
- (i) during the **Policy Period**, or, if exercised, during the Extended Reporting Period if applicable, for a **Wrongful Act** by the **Insured**, or by any natural person for whose **Wrongful Acts** the **Insured** is legally liable; or
 - (ii) that is a **Pre-Claim Investigation** or **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Company in writing during the **Policy Period**.

(3) INTERVIEW COVERAGE

Interview Coverage

- (A) The Company shall pay, on behalf of an **Insured Person**, **Defense Costs** incurred solely by such **Insured Person** on account of an **Interview** first made during the **Policy Period**, except to the extent that such **Defense Costs** have been paid or indemnified.

- (B) The Company shall pay, on behalf of an **Organization** or a **Plan**, **Defense Costs** incurred solely by an **Insured Person** on account of an **Interview** first made during the **Policy Period**, to the extent the **Organization** or a **Plan** pays or indemnifies such **Defense Costs**; provided that the coverage afforded pursuant to this paragraph (3)(B) shall be subject to the Retention set forth in Item 3(A) of the FL Declarations.

(4) **AMEND DEFINITIONS**

Section II. Definitions, of this Coverage Part, is amended as follows:

A. Amend Definition of Claim

The definition of **Claim** is deleted and replaced with the following:

Claim means any:

- (A) written demand for:
 - (1) monetary or non-monetary (including injunctive) relief; or
 - (2) arbitration or mediation,against an **Insured** for a **Wrongful Act**, commenced by the first receipt of such demand by an **Insured**;
- (B) proceeding, including any appeal therefrom, against an **Insured** for a **Wrongful Act**, commenced by:
 - (1) the service of a civil complaint or similar pleading;
 - (2) the filing of a notice of charges or the entry of a formal order of investigation in connection with a formal civil administrative or formal civil regulatory proceeding;
 - (3) solely with respect to a criminal proceeding: (a) an arrest; (b) the return of an indictment, information or similar document; or (c) the receipt of an official request for **Extradition**;
- (C) written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto, against any **Insured** for a **Wrongful Act**;
- (D) investigation of an **Insured Person**, solely in his or her fiduciary capacity with respect to any **Sponsored Plan**, for a **Wrongful Act**, commenced by the **Insured Person's** receipt of a written document from an **Enforcement Unit** identifying such **Insured Person** as the target of an investigation, including a Wells Notice, target letter or search warrant;
- (E) written request upon an **Insured Person** for witness testimony or document production, commenced by the service of a subpoena or other similar document compelling such testimony or production of documents in connection with any matter described in Subsections (A) through (D) above; provided that in such event the Company shall pay, on behalf of such **Insured Person**, **Defense Costs** incurred solely by such **Insured Person** in responding to such request;
- (F) a written notice of commencement of a **Pre-Claim Investigation** or **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Company in writing during the **Policy Period**; or
- (G) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** as described in Subsections (A) through (C) above.

B. Amend Definition of Defense Costs

The definition of **Defense Costs** is deleted and replaced with the following:

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees, experts' fees, and the cost of **E-Discovery Specialist Services**) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons**) incurred with the Company's prior written consent: (1) in investigating, defending, opposing or appealing any **Claim** or any **Voluntary Program Notice**, and the premium for appeal, attachment or similar bonds; or (2) as a result of an **Interview**.

C. Amend Definition of Insured Person

The definition of **Insured Person** is amended to add the following:

Insured Person shall also include any past **Employees** or **Executives** retained as a fiduciary or plan consultants to the **Sponsored Plan**; provided that for the purposes of determining an **Organization's** indemnification obligation to any such consultants, each consultant shall be deemed a director or officer of the **Organization**. Accordingly, the **Organization** shall be deemed to have granted indemnification to each consultant to the fullest extent permitted by statutory or common law to the same extent as any director or officer of the **Organization**.

Insured Person shall not include any individual in his or her capacity as an employee of any third party, including a service provider.

D. Amend Definition of Loss

The definition of **Loss** is amended as follows:

(1) Paragraph (A) is amended to include the following:

- (6) claimant's attorney's fees awarded by a court pursuant to Section 502(g) of the Employee Retirement Income Security Act of 1974, as amended, against an **Insured**; and
- (7) reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered **Claim** (including reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate that review of such proposed settlement of a covered **Claim**); and

(2) the following Paragraph (C) is added after Paragraph (B):

(C) for purposes of the Interview Coverage, **Defense Costs**,

(3) The section entitled "provided that **Loss** does not include any portion of such amount that constitutes any" is amended as follows:

(a) Paragraph (7) is deleted and replaced with the following:

- (7) (a) benefits due, or to become due, or that portion of any settlement or award in an amount equal to such benefits, under any **Plan**, or (b) benefits which would be due, or that portion of any settlement or award in an amount equal to such benefits, under any **Plan** if such **Plan** complied with all applicable law, including loss resulting from the payment of plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits, except to the extent that:

- (i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
 - (ii) a **Claim** made against an **Insured**:
 - (a) alleges a loss to the **Plan** and/or to the accounts of such **Plan's** participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as "benefits" or held by a court as "benefits"; or
 - (b) seeks amounts that would have been due, but for the failure to enroll in the **Plan**, as set forth in Paragraph (C) of the definition of **Administration**, unless and to the extent the **Plan** is self-funded;
- (b) The following paragraph is added:
- (8) amount constituting any contribution or that portion of any settlement or award in an amount equal to such amount constituting any contribution that is owed to or to fund any **Plan**, except to the extent that an **Insured** is a natural person and the contribution is payable by such **Insured** as a personal obligation, and recovery for the contribution is based upon a covered **Wrongful Act**.

E. Amend Definition of Wrongful Act

The definition of **Wrongful Act** is deleted and replaced with the following:

Wrongful Act means any actual or alleged:

- (A) breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed, attempted or allegedly committed or attempted by an **Insured** while acting in the **Insured's** capacity as a fiduciary;
- (B) negligent act, error or omission in the **Administration** of any **Plan** committed, attempted or allegedly committed or attempted by an **Insured**;
- (C) matter, other than as set forth in (A) or (B) above, claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**; or
- (D) act, error or omission committed, attempted or allegedly committed or attempted by an **Insured**, solely in such **Insured's** settlor capacity with respect to establishing, amending, terminating or funding a **Sponsored Plan**.

F. Add Definitions

The following definitions are added:

Benefit Claim Denial means an appeal of an adverse benefits determination by an **Insured** pursuant to the U.S. Department of Labor's claim procedure regulation 29 C.F.R. Section 2560.503-1(h) or any similar claim procedures pursuant to applicable law.

E-Discovery means the review, development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.

E-Discovery Specialist Services means solely the following services performed by an **E-Specialist Firm**:

- (A) assisting the **Insured** with managing and minimizing the internal and external costs associated with **E-Discovery**;
- (B) assisting the **Insured** in developing or formulating an **E-Discovery** strategy which shall include interviewing qualified and cost effective **E-Discovery** vendors;
- (C) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the Company in executing and monitoring the **E-Discovery** strategy; and
- (D) such other services provided by the **E-Specialist Firm** that the **Insured**, Company, and **E-Specialist Firm** agree are reasonable and necessary given the circumstances of the **Claim**.

E-Specialist Firm means the e-discovery consultant firms approved by the Company.

Enforcement Unit means any federal, state, local or foreign law enforcement or governmental authority (including, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general) or the enforcement unit of any securities exchange or similar self-regulatory body however, **Enforcement Unit** shall not include the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto.

Interview means a request for an interview or meeting with, or a sworn statement from, an **Insured Person** by:

- (A) an **Enforcement Unit** in connection with:
 - (1) such **Insured Person** acting solely in his or her capacity as a fiduciary of a **Sponsored Plan**; or
 - (2) a **Sponsored Plan's** business activities; or
- (B) an **Organization** in connection with an inquiry or investigation of the **Sponsored Plan** by an **Enforcement Unit** commenced by the first receipt of such request by such **Insured Person**,

provided that **Interview** does not include: (i) any request for document production or discovery; (ii) any request by an **Enforcement Unit** that is part of any routine or regularly scheduled **Enforcement Unit** oversight, compliance, audit, inspection or examination; or (iii) any request that is part of an employment-related investigation or claim.

Pre-Claim Investigation means a fact-finding investigation which does not contain any allegation of a **Wrongful Act** in writing, commenced by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto.

(5) **AMEND EXCLUSIONS**

A. Delete Pollution Exclusion

Exclusion (D) Pollution, of Section III. Exclusions, of this Coverage Part, is deleted.

B. Add Exclusions

With respect to the Interview Coverage as set forth in paragraph (3) of this endorsement, the following exclusions shall apply:

The Company shall not be liable for **Defense Costs** on account of any **Interview**:

- (1) based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any fiduciary liability or employee benefit liability policy or coverage section of which this coverage section is a direct or indirect renewal or replacement; or
- (2) based upon, arising from or in consequence of any written demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Proceedings Date set forth in Item 4 of the FL Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein.

(6) **AMEND REPORTING**

Section VI. Reporting, of this Coverage Part, is amended as follows:

- A. Solely with respect to Paragraph (A), including any endorsements to this policy amending such Paragraph (A), the reference to "**Claim**" therein shall not include a **Pre-Claim Investigation** or **Benefit Claim Denial**.
- B. Paragraph (D) is deleted and replaced with the following:
 - (D) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require, and shall include in any notice under Subsections (A), (B) or (C) above, a description of the **Claim**, circumstances, **Interview**, or **Voluntary Program Notice**, (including the facts, circumstances or situations alleged therein), the nature of the alleged **Wrongful Act** or circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants, and the manner in which such **Insured** first became aware of the **Claim**, circumstances, **Interview**, or alleged **Wrongful Act** or **Voluntary Program Notice**.
- C. The following Paragraph is added as follows:

If during the **Policy Period** an **Insured** gives written notice to the Company of an **Interview**, then any **Claim** subsequently arising from such **Interview**, shall be deemed to have been first made during the **Policy Year** in which the **Interview** was first given by an **Insured** to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the **Claim** is made.

(7) **AMEND RETENTION**

Section VII. Retention and Presumptive Indemnification, of this Coverage Part, is amended to add the following paragraphs:

No Retention shall apply to the first \$50,000 in **Defense Costs** incurred for **E-Discovery Specialist Services** on account of a **Claim**.

Any payment by an **Organization** of a Retention on account of an **Interview** shall reduce any Retention due from the **Organization** on account of a **Claim** subsequently afforded coverage under Insuring Clause (A), Fiduciary Liability Coverage, that is based upon, arising from or in consequence of any fact or circumstances that was the subject of such **Interview**.

(8) **AMEND DEFENSE AND SETTLEMENT**

Section VIII. Defense and Settlement, of this Coverage Part is amended as follows:

- A. Subsection (C) is deleted and replaced with the following:
 - (C) It shall be the duty of the **Insureds** and not the duty of the Company to defend any **Voluntary Program Notice** and any **Interview**, provided that the **Insureds** shall select as defense counsel

for such **Voluntary Program Notice** or **Interview** a law firm included in the Company's then current list of approved fiduciary liability defense firms for the jurisdiction applicable to such **Voluntary Program Notice** or **Interview**.

B. Subsection (E) is amended to include the following:

However, the Company may, in its sole discretion, waive the foregoing requirement with respect to **Defense Costs** incurred within ninety (90) days prior to the reporting of a **Claim** pursuant to Section VI. Reporting, of this Coverage Part.

C. Subsection (G) is amended to include the following:

The failure of any **Insured Person** to give the Company the information, assistance or cooperation as it may reasonably require shall not impair the rights of any other **Insured Person** under this Coverage Part.

D. The following paragraphs are added:

Any advancement of **Defense Costs** shall be repaid to the Company by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured under this coverage section.

If an **Organization** refuses in writing, or fails within sixty (60) days of an **Insured Person's** written request for indemnification, to advance, pay or indemnify an **Insured Person** for **Loss** on account of a **Claim**, then, upon the **Insured Person** reporting the **Claim** pursuant to Section VI. Reporting, of this Coverage Part, the Company shall advance **Defense Costs** until such time that the **Organization** accepts the **Insured Person's** request for indemnification or the applicable Retention has been satisfied.

Any advancement of **Defense Costs** by the Company shall reduce the Limit of Liability set forth in Item 2 of the FL Declarations. If the Company recovers any such **Defense Costs** paid, the amount of such **Defense Costs** less all costs incurred by the Company to obtain such recovery shall be reinstated to the Limit of Liability set forth in Item 2 of the FL Declarations.

Notwithstanding Subsection (E) above, with respect to any **Claim** reported pursuant to Section VI. Reporting, of this Coverage Part, the **Insureds** may settle a **Claim** (inclusive of **Defense Costs**) without the Company's prior consent if the amount of such settlement does not exceed the amount of the applicable Retention. However, the Company shall not be liable for any settlement or **Defense Costs** in excess of the amount of the applicable Retention to which it has not consented to in writing. The **Insureds** shall submit to the Company all requested information with respect to any **Claim** settled pursuant to this paragraph upon either the underwriting of a renewal of this Coverage Part or upon expiration of this Coverage Part, whichever first occurs.

(9) **AMEND OTHER INSURANCE**

The following sentence is added after the first paragraph of Section XI. Other Insurance, of this Coverage Part, as a separate paragraph:

In addition to, and not in limitation of, the above paragraph, this Coverage Part shall be specifically excess of, and shall not contribute with, any insurance policy for pollution liability or environmental liability, including any general liability policy.

(10) **INDEMNIFICATION AND SUBROGATION**

Solely with respect to this Coverage Part, Section VIII. Subrogation, of the General Terms and Conditions of this Policy is deemed deleted and replaced with the following:

Indemnification And Subrogation

This Policy has been issued to the **Parent Organization** with the understanding and agreement that each **Organization** agrees to fulfill its indemnification obligations to the fullest extent permitted by: (i) any statutory or common law, or (ii) any contract or agreement providing an indemnification obligation exceeding any such statutory or common law, to any **Insured Person**. If the Company pays as **Loss** any indemnification owed to any **Insured Person** by any **Organization**, the Company does not waive or compromise any of its rights to recover such **Loss** from such **Organization**.

In the event of any payment of **Loss** under this policy, the Company shall be subrogated to the extent of such payment of **Loss** to all of the **Insureds'** rights of recovery, including any such right to indemnification from any **Organization**, other insurance carrier or other source. As a condition precedent to the Company's payment of any **Loss** under this policy, the **Insureds'** agree to execute all papers reasonably required and take all reasonable actions to secure and preserve the Company's rights, including the execution of such documents necessary to enable the Company effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**, including any action against any **Organization** for indemnification.

(11) **CANCELLATION/EXTENDED REPORTING TIME PERIOD LIBERALIZATION**

In the event that any time period relating to notice of cancellation or extended reporting period election provided under this Coverage Part is less than any such time period required by applicable state law, the Company shall apply the applicable state law.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 9

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PATIENT PROTECTION AND AFFORDABLE CARE ACT ENDORSEMENT

In consideration of the premium charged, it is agreed:

- (1) The definition of **Wrongful Act** set forth in Section II, Definitions, of this Coverage Part is amended to include the following:

Wrongful Act also means any **Health Care Exchange Wrongful Act**.

- (2) For purposes of the coverage extension provided in this endorsement, the following definitions are added:

- A. **Health Care Exchange Wrongful Act** means any actual or alleged breach of fiduciary duty by an **Insured**, or any actual or alleged act, error or omission by an **Insured**, in connection with the insurance purchased through, or attempted to be purchased through, a **Health Care Exchange**.
- B. **Health Care Exchange** means the American Health Benefit Exchange, the SHOP Exchange, as such terms are defined in Section 1311 of the Patient Protection and Affordable Care Act, and any other exchange, including any public or private entity established to facilitate the purchase of health insurance coverage in accordance with the Patient Protection and Affordable Care Act, as amended.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, consisting of a large capital 'P' followed by several loops and a final flourish.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 10

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND DEFINITION OF SPONSORED PLAN ENDORSEMENT

In consideration of the premium charged, it is agreed that the definition of **Sponsored Plan** as set forth in Section II, Definitions, of this Coverage Part is amended to include any other plan or program otherwise described in paragraphs (A) or (B) of this definition while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 11

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND ALLOCATION ENDORSEMENT

In consideration of the premium charged, it is agreed that Subsection (B) of Section IX, Allocation, of this Coverage Part is deleted and replaced with the following:

- (B) loss other than **Defense Costs**: the **Insureds** and the Company shall use their best efforts to determine an allocation between covered **Loss** and uncovered loss based upon the relative legal exposures and the relative benefits of the parties to such matters.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement: July 1, 2021

Company: Federal Insurance Company

Endorsement No. 12

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PLAN PURCHASER PROTECTION ENDORSEMENT

In consideration of the premium charged, it is agreed that, solely with respect to the coverage afforded pursuant to Insuring Clause I.(A), Fiduciary Liability Coverage, of this Coverage Part:

- (1) Section II. Definitions, is amended to include the following terms:
 - (a) **"Managed Care Services"** means the administration or management of a health care plan utilizing cost control mechanisms, including but not limited to utilization review, case management, disease management or the use of a preferred provider network; provided, however, that **Managed Care Services** does not include (i) any services provided by a health care plan administered by an **Insured** (a "Self-Administered Plan"), or (ii) any acts, errors or omissions in the rendering of or failure to render **Medical Services** by an **Insured**.
 - (b) **"Medical Services"** means health care, medical care or treatment provided to any person, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; the performance of post-mortem examinations and the handling of human bodies; provided, however, that **Medical Services** shall not include utilization review.
- (2) Exclusion III (C), Bodily Injury/Property Damage, is deleted and replaced with the following:
 - (C) **Bodily Injury/Property Damage**
for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion (C) shall not apply to any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease, exacerbation of existing illness or wrongful death of any person resulting from (a) selection of any **Managed Care Services** provider, or (b) denial or delay of any benefit under a health care plan, other than a "Self-Administered Plan";
- (3) Solely with respect to the coverage afforded pursuant to this Endorsement, the Company shall not be liable for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act**, or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**, which:

- (a) underlies or is alleged in any demand, suit, order, decree, judgment, litigation or administrative or regulatory proceeding brought prior to and/or pending as of 07/01/2021;
- (b) was the subject of any **Claim** made prior to 07/01/2021; or
- (c) was the subject of any notice given prior to 07/01/2021 under any other policy of insurance or plan or program of self-insurance.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Fiduciary Liability Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 13

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

MULTI-EMPLOYER PLAN ENDORSEMENT

In consideration of the premium charged, it is agreed that:

(1) Section II. Definitions, of this Coverage Part is amended as follows:

- A. Solely with respect to **Claims** made against a **Multi-Employer Plan** and its **Insureds**, the definition of **Wrongful Act** is deleted and replaced with the following:

Wrongful Act means any actual or alleged negligent act, error or omission by the **Organization** or its past, present or future directors, officers or **Employees** in the **Administration** of the **Multi-Employer Plan** for the benefit of the **Employees** of the **Organization**. Such coverage shall not extend to any **Multi-Employer Plan** or any **Insured** in the capacity as a fiduciary of any **Multi-Employer Plan**.

- B. The following definition is added:

Multi-Employer Plan means any multiemployer plan, as defined by the Employee Retirement Income Security Act of 1974, as amended, which is operated jointly by the **Organization** and one or more other employers or labor organizations for the benefit of the **Employees** of the **Organization**, among others.

(2) When used in this Coverage Part, the term **Plan** shall be deemed to include any **Multi-Employer Plan**, but only with respect to:

- (a) The definition of **Administration** and **Loss** set forth at Section II. Definitions;
- (b) Section III. Exclusions, of this Coverage Part;
- (c) Section V. Termination of Plan, of this Coverage Part; and
- (d) Section XII. Representations and Severability, of this Coverage Part;

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. S.", written above a horizontal line.

Authorized Representative

CRIME DECLARATIONS**FEDERAL INSURANCE COMPANY**A stock insurance company, incorporated under the laws of
Indiana, herein called the CompanyCapital Center, 251 North Illinois, Suite 1100
Indianapolis, IN 46204-1927**Item 1. Parent Organization:** WOLVERINE HOLDING CORPORATION**Item 2. Limits of Liability and Retentions:****Insuring Clauses Applicable to this
Coverage Part:****Limits of Liability:****Retentions:**

☒ (A) Employee Theft Coverage:	\$3,000,000.00	\$500,000.00
☒ (B) Premises Coverage:	\$3,000,000.00	\$500,000.00
☒ (C) In Transit Coverage:	\$3,000,000.00	\$500,000.00
☒ (D) Forgery Coverage:	\$3,000,000.00	\$500,000.00
☒ (E) Computer Fraud Coverage:	\$3,000,000.00	\$500,000.00
☒ (F) Funds Transfer Fraud Coverage:	\$3,000,000.00	\$500,000.00
☒ (G) Money Order and Counterfeit Currency Fraud Coverage:	\$5,000,000.00	\$500,000.00
☒ (H) Credit Card Fraud Coverage:	\$5,000,000.00	\$500,000.00
☒ (I) Client Coverage	\$5,000,000.00	\$500,000.00
☒ (J) Expense Coverage:	\$250,000.00	None

Item 3. Coverage applies as follows: Loss Discovered

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Employee Theft Coverage

- (A) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities** or **Property** sustained by an **Insured** resulting from **Theft** or **Forgery** committed by an **Employee** acting alone or in collusion with others.

Insuring Clause (B): Premises Coverage

- (B) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from:
- (1) **Robbery, Safe Burglary**, or unlawful taking of **Money** or **Securities** committed by a **Third Party**; or
 - (2) actual destruction or disappearance of **Money** or **Securities**, within or from the **Premises** or **Banking Premises**.

Coverage under this Insuring Clause (B) shall also include:

- (3) loss of or damage to **Property** which results from **Robbery** or attempted **Robbery** within the **Premises**;
- (4) loss of or damage to such **Property** contained within any locked vault or safe which results from **Safe Burglary** or attempted **Safe Burglary** within the **Premises**;
- (5) damage to a locked safe, cash drawer, cash box or cash register within the **Premises** by felonious entry or attempted felonious entry or loss by felonious abstraction of such container from within the **Premises**; and
- (6) damage to the **Premises** or to its exterior resulting from **Safe Burglary** or **Robbery**, committed by a **Third Party**.

Insuring Clause (C): In Transit Coverage

- (C) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from:
- (1) **Robbery** or unlawful taking of **Money** or **Securities** committed by a **Third Party**; or
 - (2) actual destruction or disappearance of **Money** or **Securities**;
- while **In Transit** or while temporarily within the home of an **Employee** or a partner of an **Organization**.

Coverage under this Insuring Clause (C) shall also include:

- (3) damage to **Property** which results from **Robbery** while **In Transit**; and
- (4) loss by the unlawful taking of **Property** temporarily within the home of an **Employee** or a partner of an **Organization**, committed by a **Third Party**.

Insuring Clause (D): Forgery Coverage

- (D) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Forgery** or alteration of a **Financial Instrument** committed by a **Third Party**.

Insuring Clause (E): Computer Fraud Coverage

- (E) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities or Property** sustained by an **Insured** resulting from **Computer Fraud** committed by a **Third Party**.

Insuring Clause (F): Funds Transfer Fraud Coverage

- (F) The Company shall pay the **Parent Organization** for direct loss of **Money or Securities** sustained by an **Insured** resulting from **Funds Transfer Fraud** committed by a **Third Party**.

Insuring Clause (G): Money Orders and Counterfeit Currency Fraud Coverage

- (G) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Money Orders and Counterfeit Currency Fraud** committed by a **Third Party**.

Insuring Clause (H): Credit Card Fraud Coverage

- (H) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Credit Card Fraud** committed by a **Third Party**.

Insuring Clause (I): Client Coverage

- (I) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities or Property** sustained by a **Client** resulting from **Theft or Forgery** committed by an **Employee** not in collusion with such **Client's** employees.

Insuring Clause (J): Expense Coverage

- (J) The Company shall pay the **Parent Organization** for:
- (1) **Investigative Expenses** resulting from any direct loss covered under Insuring Clauses (A), Employee Theft Coverage; (B), Premises Coverage; (C), In Transit Coverage; (D), Forgery Coverage; (E), Computer Fraud Coverage; (F), Funds Transfer Fraud Coverage; (G), Money Orders and Counterfeit Currency Fraud Coverage; (H), Credit Card Fraud Coverage or (I), Client Coverage; or
 - (2) **Computer Violation Expenses** resulting from any direct loss covered under Insuring Clauses (A), Employee Theft Coverage, (E), Computer Fraud Coverage or (I), Client Coverage;

incurred by any **Organization** in the amount set forth in Item 2 of the Crime Declarations, solely if such covered direct loss is in excess of the Retention applicable to such covered loss. Such amount shall be part of and not in addition to the Limit of Liability applicable to such covered loss.

II. DEFINITIONS

For purposes of this Coverage Part:

Banking Premises means the interior portion of a building occupied by, or the night depository chute or safe maintained by, any bank, trust company or similar financial institution.

Client means a customer of an **Organization** to whom an **Organization** provides goods or services under written contract or for a fee.

Computer Fraud means the unlawful taking of **Money, Securities or Property** resulting from a **Computer Violation**.

Computer System means a computer or network of computers, including its input, output, processing, storage and communication facilities, and shall include off-line media libraries.

Computer Violation means an unauthorized:

- (A) entry into or deletion of **Data** from a **Computer System**;
- (B) change to **Data** elements or program logic of a **Computer System**, which is kept in machine readable format; or
- (C) introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**,

directed solely against an **Organization**.

Computer Violation Expenses means reasonable expenses, other than an **Organization's** internal corporate costs (such as **Salary**), incurred by an **Organization** with the Company's prior written consent to reproduce or duplicate damaged or destroyed electronic **Data** or computer programs. If such computer programs cannot be duplicated from other computer programs, then **Computer Violation Expenses** shall also include reasonable costs incurred for computer time, computer programmers, technical experts or consultants to restore the computer programs to substantially the same level of operational capability immediately preceding the covered direct loss. **Computer Violation Expenses** shall not include expenses incurred by any **Client**.

Contractual Independent Contractor means any natural person independent contractor while in the regular service of an **Organization** in the ordinary course of such **Organization's** business, pursuant to a written contract between such **Organization**, and either (A) such natural person independent contractor, or (B) any other entity acting on behalf of such natural person independent contractor, for services.

Credit Card Fraud means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card issued to an **Organization** or at the request of an **Organization**, to any partner, officer or **Employee** of an **Organization**.

Data means information contained in records, manuscripts, accounts, microfilms, tapes or other records, which are processed and stored in a **Computer System**.

Discovery or **Discovered** means knowledge acquired by an **Executive** or **Insurance Representative** of an **Insured** which would cause a reasonable person to believe a covered loss has occurred or an occurrence has arisen that may subsequently result in a covered loss. This includes loss:

- (A) sustained prior to the inception date of any coverage under this Coverage Part;
- (B) which does not exceed the Retention set forth in Item 2 of the Crime Declarations; or
- (C) the exact amount or details of which are unknown,

provided that **Discovery** or **Discovered** shall not include knowledge acquired by an **Executive** or **Insurance Representative** of an **Insured** acting alone or in collusion with an **Employee**, or the knowledge possessed by any **Executive** or **Insurance Representative** who is a participant in the **Theft** or **Forgery**.

Employee means any:

- (A) natural person in the regular service of an **Organization** in the ordinary course of such **Organization's** business, whom such **Organization** governs and directs in the performance of such service, including a part-time, seasonal, leased and temporary employee, intern or volunteer;
- (B) **Executive** while performing acts within the scope of the usual duties of an **Employee**;
- (C) **Contractual Independent Contractor**;
- (D) natural person fiduciary, trustee, administrator or **Employee**, as defined in Subsections (A) and (B) of this definition, of an **ERISA Plan** and any other natural person, who any of which handle **ERISA Plan** assets and are required to be bonded by an **Organization** in connection with such **ERISA Plan** by Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006;

- (E) former or retired **Employee**, as defined in Subsections (A) and (B) of this definition, of the **Organization**, retained as a consultant (as evidenced by a written contract for services) to the **Organization**; or
- (F) **Employee**, as defined in Subsections (A) and (B) of this definition, of the **Organization**, while on leave for military services.

ERISA Plan means any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, defined and required to be bonded under Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006, which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **ERISA Plan** shall not include any multi-employer plan.

Executive means any natural person specified below:

- (A) a duly elected or appointed director, officer, trustee, in-house general counsel or duly constituted committee member of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; (2) duly constituted committee member; (3) in-house general counsel; or (4) trustee, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Financial Instrument means checks, drafts or similar written promises, orders or directions to pay a sum certain in money, that are made, drawn by or drawn upon an **Organization** or by anyone acting as an **Organization's** agent, or that are purported to have been so made or drawn.

Forgery means the signing of another natural person's name with the intent to deceive, but does not mean a signature that includes, in whole or in part, one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated the same as hand-written signatures.

Funds Transfer Fraud means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions (other than **Forgery**), purportedly issued by an **Organization**, and issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by such **Organization** at such institution, without such **Organization's** knowledge or consent.

Insurance Representative means an **Employee**, as defined in Subsections (A) and (B) of the definition of **Employee**, including a risk manager, designated to represent an **Insured** for the purpose of effecting and maintaining insurance.

Insured means any **Organization** and any **Sponsored Plan**.

In Transit means being conveyed outside the **Premises**, from one person or place to another, by the **Organization** within the custody of:

- (A) an **Employee** or a partner of an **Organization**; or
- (B) a person duly authorized by such **Organization** to have custody of **Money**, **Securities** or **Property**,

provided that such conveyance begins immediately upon receipt of **Money**, **Securities** or **Property** by the person(s) described in Subsections (A) or (B) above, from such **Organization**, and ceases immediately upon delivery to the designated recipient or its agent.

Investigative Expenses means reasonable expenses, other than an **Organization's** internal corporate costs (such as **Salary**), incurred by an **Organization** with the Company's prior written consent to establish the existence and amount of a covered loss. **Investigative Expenses** shall not include expenses incurred by any **Client**.

Money means currency, coin, bank notes and bullion.

Money Orders and Counterfeit Currency Fraud means the good faith acceptance by an **Organization**:

- (A) in exchange for merchandise, **Money** or services, of any post office or express money order, issued or purporting to have been issued by any post office or express company, if such money order is not paid upon presentation; or
- (B) in the regular course of business, of counterfeit paper currency.

Non-ERISA Plan means any employee benefit plan not subject to Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006, which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **Non-ERISA Plan** shall not include any multi-employer plan.

Premises means the interior portion of a building occupied by an **Organization** in conducting its business.

Property means tangible property other than **Money** or **Securities**.

Robbery means the unlawful taking of **Money**, **Securities** or **Property** from the custody of an **Employee** or other person (except a person acting as a watchman, porter or janitor) duly authorized by an **Organization** to have custody of such **Money**, **Securities** or **Property**, by violence or threat of violence, committed in the presence and cognizance of such **Employee** or other person.

Safe Burglary means the unlawful taking of **Money**, **Securities** or **Property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **Premises**.

Salary means compensation an **Organization** pays an **Employee**, including bonus, commission, incentive payments, and the cost of health, welfare and pension benefits.

Securities means any negotiable and non-negotiable instruments representing either **Money** or **Property**, including revenue and other stamps in current use, casino chips, tokens and tickets, provided that **Securities** shall not include **Money**.

Sponsored Plan means any **ERISA Plan** and **Non-ERISA Plan**.

Theft means the unlawful taking of **Money**, **Securities** or **Property** to the deprivation of:

- (A) an **Insured**, solely for the purposes of Insuring Clause (A), Employee Theft Coverage; or
- (B) a **Client**, solely for the purposes of Insuring Clause (I), Client Coverage.

Third Party means a natural person other than:

- (A) an **Employee**; or
- (B) a natural person acting in collusion with an **Employee**.

III. EXCLUSIONS

- (A) No coverage will be available for:

- (1) Trading
loss resulting directly or indirectly from any authorized or unauthorized trading of **Money**, **Securities** or **Property**, whether or not in the name of an **Insured** and whether or not in a genuine or fictitious account, provided that this Exclusion (A)(1) shall not apply to direct losses caused by **Theft** or **Forgery** which result in improper financial gain to an **Employee** (direct losses as used herein shall mean only the amount of improper financial gain to such **Employee**, which shall not include **Salary**, commissions, fees or other compensation, including promotions and raises associated with employment, paid by the **Insured** to such **Employee**);

- (2) Trade Secrets/Confidential Information
loss of trade secrets, confidential processing methods or other confidential information of any kind;
- (3) Partner
loss due to **Theft** or **Forgery** committed by a partner of an **Organization**, whether acting alone or in collusion with others, provided that if such **Theft** or **Forgery** would otherwise be covered under Insuring Clause (A), Employee Theft Coverage, or (I), Client Coverage, this Exclusion (A)(3) shall not apply to the extent coverage under this Coverage Part is excess of the amount of such partner's percentage ownership of such **Organization**, on the day immediately preceding the date of **Discovery**, multiplied by such **Organization's** total assets as reflected in such **Organization's** most recent audited financial statements;
- (4) War
loss or damage due to declared or undeclared war, civil war, insurrection, rebellion, revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incident to any of the foregoing;
- (5) Nuclear
loss or damage due to nuclear reaction, nuclear radiation or radioactive contamination, or any act or condition incident to any of the foregoing;
- (6) Potential Income
loss of income not realized as the result of a covered loss;
- (7) Indirect/Consequential
indirect or consequential loss of any kind, provided that this Exclusion (A)(7) shall not apply to:
 - (a) otherwise covered **Investigative Expenses** and **Computer Violation Expenses** under Insuring Clause (J), Expense Coverage; or
 - (b) the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss, provided that the Company's maximum liability for the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss sustained shall be \$25,000, which amount shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.
- (8) Data Fees, Costs or Expenses
fees, costs or expenses incurred or paid:
 - (a) as a result of the reconstitution of **Data** if an **Organization** knowingly used illegal copies of programs;
 - (b) to render the **Data** usable by replacement processing equipment;
 - (c) to design, update or improve software or programs or to perfect their operation or performance; or
 - (d) as a result of an alteration in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the computer or its facilities;
- (9) Fire
loss due to fire, provided that this Exclusion (A)(9) shall not apply to:
 - (a) loss of **Money** or **Securities**; or
 - (b) damage to any safe or vault caused by the application of fire thereto for the purposes of **Safe Burglary**;

- (10) Legal Fees, Costs or Expenses
fees, costs or expenses incurred or paid in defending or prosecuting any legal proceeding or claim, provided that this Exclusion (A)(10) shall not apply to the coverage provided under Section V, Legal Expenses Extension;
- (11) Voluntary Exchange or Purchase
loss due to an **Insured** knowingly having given or surrendered **Money, Securities or Property** in any exchange or purchase with a **Third Party**, not in collusion with an **Employee**, provided that this Exclusion (A)(11) shall not apply to otherwise covered loss under Insuring Clauses (A), Employee Theft Coverage, (G), Money Orders and Counterfeit Currency Fraud Coverage, or (I), Client Coverage, or otherwise covered loss of **Property** under Insuring Clause (E), Computer Fraud Coverage;
- (12) Advantage
loss sustained by one **Insured** to the advantage of any other **Insured**;
- (13) Custodial
loss of or damage to **Money, Securities or Property** while in the custody of any bank, trust company, similar recognized place of safe deposit, armored motor vehicle company or any person who is duly authorized by an **Organization** to have custody of such **Money, Securities or Property**, provided that this Exclusion (A)(13) shall not apply to the extent that coverage under this Coverage Part is excess of the amount recovered or received by such **Organization** under:
- (a) such **Organization's** contract, if any, with, or insurance carried by, any of the foregoing; or
 - (b) any other insurance or indemnity in force which would cover the loss in whole or in part; or
- (14) Authorized Representative
loss or damage due to **Theft, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders And Counterfeit Currency Fraud, Credit Card Fraud** or other fraudulent, dishonest or criminal act (other than **Robbery or Safe Burglary**) committed by any authorized representative of an **Insured**, whether acting alone or in collusion with others, provided that this Exclusion (A)(14) shall not apply to otherwise covered loss under Insuring Clauses (A), Employee Theft Coverage, or (I), Client Coverage, resulting from **Theft or Forgery** committed by an **Employee** acting in collusion with such authorized representative.
- (B) In addition to the Exclusions in Subsection (A) above, no coverage will be available under:
- (1) Insuring Clauses (A), Employee Theft Coverage, or (I), Client Coverage, for:
- (a) Broker/Independent Contractor
loss caused by any broker, factor, commission merchant, consignee, contractor, independent contractor (other than a **Contractual Independent Contractor**), or other agent or representative of the same general character;
 - (b) Prior Dishonesty
loss caused by an **Employee** which is sustained by an **Insured**:
 - (i) after an **Executive or Insurance Representative** becomes aware of a:
 - (1) **Theft**;
 - (2) **Forgery**; or
 - (3) other fraudulent, dishonest or criminal act,which is valued at one thousand dollars (\$1,000) or more, committed by such **Employee** while employed with or in the service of an **Insured**;

- (ii) after an **Executive** or **Insurance Representative** becomes aware of a **Theft, Forgery** or other fraudulent, dishonest or criminal act, involving:
 - (1) **Money**;
 - (2) **Securities**; or
 - (3) other property,which is valued at twenty-five thousand dollars (\$25,000) or more, committed by such **Employee** prior to employment or service with an **Insured**; or
 - (iii) more than ninety (90) days following the termination of such **Employee**;
- (2) Insuring Clause (B), Premises Coverage, or (C), In Transit Coverage, for:
 - (a) Other Insuring Clauses
loss or damage due to **Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders and Counterfeit Currency Fraud** or **Credit Card Fraud**; or
 - (b) Mail/Carrier for Hire
loss of or damage to **Money, Securities** or **Property** while in the mail or in the custody of a carrier for hire other than an armored motor vehicle company;
- (3) Insuring Clauses (B), Premises Coverage, (C), In Transit Coverage, (E), Computer Fraud Coverage, or (F), Funds Transfer Fraud Coverage, for:
 - (a) Kidnap, Ransom or Extortion
loss or damage as a result of a kidnap, ransom or other extortion payment (as distinct from **Robbery**) surrendered to any person as a result of a threat to do bodily harm to any person or a threat to do damage to the **Premises** or other property;
- (4) Insuring Clause (D), Forgery Coverage, for:
 - (a) Forgery or Alteration
loss due to **Forgery** or alteration of:
 - (i) any **Financial Instrument** committed by any **Third Party** in collusion with any **Employee**; or
 - (ii) any registered or coupon obligations issued or purported to have been issued by the **Insured**, or any coupons whether attached or detached; or
- (5) Insuring Clause (H), Credit Card Fraud Coverage, for:
 - (a) Forgery or Alteration (Credit Card)
loss caused by any forgery or alteration of, on or in any written instrument, provided that this Exclusion (B)(5) shall not apply if:
 - (i) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
 - (ii) the **Organization** is legally liable to the issuer of such credit card for such loss.
- (C) Loss Sustained Option
In addition to the Exclusions in Subsections (A) and (B) above and if the Loss Sustained option is purchased, as set forth in Item 3 of the Crime Declarations, no coverage will be available for:
 - (1) loss unless sustained by any **Insured** prior to the termination of this Coverage Part as to such **Insured** and **Discovered** and written notice thereof is given to the Company within sixty (60) days following such termination;

- (2) loss unless sustained prior to the termination of any Insuring Clause or any particular coverage offered under any Insuring Clause and **Discovered** and written notice thereof is given to the Company within sixty (60) days following such termination; or
 - (3) loss unless sustained prior to the termination of this Coverage Part in its entirety, and **Discovered** and written notice thereof is given to the Company:
 - (a) within sixty (60) days following such termination, if this Coverage Part is not renewed with the Company;
 - (b) prior to such termination, if this Coverage Part is renewed with the Company; or
 - (c) within one (1) year following such termination, if the termination results from the voluntary liquidation or voluntary dissolution of the **Parent Organization**.
 - (D) Loss Discovered Option

In addition to the Exclusions in Subsections (A) and (B) above and if the Loss Discovered option is purchased, as set forth in Item 3 of the Crime Declarations, no coverage will be available for:

 - (1) loss unless sustained by any **Insured**, and **Discovered** prior to the termination of this Coverage Part as to such **Insured**;
 - (2) loss unless sustained, and **Discovered** prior to the termination of any Insuring Clause or any particular coverage offered under any Insuring Clause;
 - (3) loss unless sustained, and **Discovered** prior to the termination of this Coverage Part in its entirety;
 - (4) loss unless sustained prior to the termination of this Coverage Part and **Discovered** within one (1) year following such termination if the termination results from the voluntary liquidation or voluntary dissolution of the **Parent Organization**; or
 - (5) any loss that an **Insured** is aware of prior to the inception date of this Policy,

provided that in no event will coverage be available under this Coverage Part for such loss if such loss is covered under any renewal or replacement of this Coverage Part or any Insuring Clause or any particular coverage offered under any Insuring Clause.
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IV. ERISA PLAN EXTENSION

- (A) Solely with respect to loss sustained by an **ERISA Plan**, payment by the Company for covered loss shall be to the **ERISA Plan** sustaining such loss. If such payment is in excess of the amount of coverage required by the Employee Retirement Income Security Act of 1974, as amended, for such **ERISA Plan(s)**, such excess shall be held for the use and benefit of any other named **ERISA Plan(s)** should such **ERISA Plan(s)** also discover loss recoverable hereunder.
- (B) With respect to each **ERISA Plan**:
 - (1) if covered loss is sustained by any **ERISA Plan** which does not have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of:
 - (a) \$1,000; or
 - (b) ten percent (10%) of the **ERISA Plan's** funds handled as of the beginning of such **ERISA Plan's** fiscal year,

up to \$500,000; or

- (2) if covered loss is sustained by any **ERISA Plan** which does have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of;
- (a) \$1,000; or
- (b) ten percent (10%) of the **ERISA Plan's** funds handled as of the beginning of such **ERISA Plan's** fiscal year,
- up to \$1,000,000,

provided that, in all events, if the applicable Limit of Liability set forth in Item 2(A) of the Crime Declarations:

- (i) is less than or equal to the amounts set forth in Paragraphs (B)(1) or (B)(2) above, then the applicable Limit of Liability shall be amended to the respective amounts set forth in Paragraphs (B)(1) or (B)(2) above; or
- (ii) is greater than the amounts set forth in Paragraphs (B)(1) or (B)(2) above, then the applicable Limit of Liability for each **ERISA Plan** shall be the amounts set forth in Paragraphs (B)(1) or (B)(2) above, with the remaining limit in the amount by which the applicable Limit of Liability set forth in Item 2(A) of the Crime Declarations exceeds the amounts in Paragraphs (B)(1) or (B)(2) above to be allocated equally between all **ERISA Plans** sustaining the loss.
- (C) Solely with respect to loss sustained by an **ERISA Plan**:
- (1) Insuring Clause (A), Employee Theft Coverage, is replaced with the following:
- The Company shall pay an **ERISA Plan** for direct loss of **Money, Securities or Property** sustained by such **ERISA Plan** resulting from a fraudulent or dishonest act, including larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion and willful misapplication, committed by an **Employee** acting alone or in collusion with others.
- (2) The words "sixty (60) days" are deleted from the exclusions applicable to this Coverage Part, wherever they appear, and the words "one (1) year" are substituted in place thereof.
- (D) No Retention shall apply to loss sustained by an **ERISA Plan** covered under this Coverage Part.

V. LEGAL EXPENSES EXTENSION

In addition to the Limits of Liability set forth in the Crime Declarations, the Company shall pay the **Parent Organization**:

- (A) as a result of loss covered under Insuring Clause (D), Forgery Coverage, reasonable court costs and attorneys' fees incurred and paid, with the Company's prior written consent, in defending an **Organization** or an **Organization's** bank in any legal proceeding brought against it to enforce payment of a **Financial Instrument**; and
- (B) as a result of loss covered under Insuring Clause (H), Credit Card Fraud Coverage, reasonable court costs and attorneys' fees incurred and paid with the Company's prior written consent in defending an **Organization** in any legal proceeding brought against it to enforce payment of a written instrument, required in connection with any credit card.
-

VI. PROOF OF LOSS AND LEGAL PROCEEDINGS

- (A) Knowledge possessed by any **Insured** or **Discovery** shall be deemed knowledge possessed by or **Discovery** by all **Insureds**.
- (B) It is a condition precedent to coverage hereunder that, upon **Discovery**, the **Parent Organization** will:
 - (1) give written notice to the Company at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
 - (2) furnish affirmative proof of loss with full particulars to the Company at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
 - (3) submit to examination under oath at the Company's request;
 - (4) produce all pertinent records at such reasonable times and places as the Company shall designate; and
 - (5) provide full cooperation with the Company in all matters pertaining to a loss or claim.
- (C) The **Parent Organization** may offer a comparison between an **Organization's** inventory records and actual physical count of its inventory to prove the amount of loss, only where an **Organization** establishes wholly apart from such comparison that it has sustained a covered loss, caused by an **Employee**.
- (D) No **Insured** shall institute legal proceedings against the Company:
 - (1) after two (2) years immediately following any **Discovery**; or
 - (2) to recover a judgment or settlement against it or its bank resulting from **Forgery, Credit Card Fraud** or related legal expenses as set forth in Section V, Legal Expenses Extension, after two (2) years immediately following the date upon which such judgment shall become final or settlement was entered.

VII. LIMITS OF LIABILITY

- (A) The Company's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss set forth in Item 2 of the Crime Declarations, regardless of the number of **Insureds** sustaining the loss, provided that with respect to an **ERISA Plan**, the Limit of Liability shall apply in accordance with the terms of Section IV, ERISA Plan Extension.
- (B) If a direct loss is covered under more than one Insuring Clause, the maximum amount payable under this Coverage Part shall not exceed the largest applicable Limit of Liability of any such Insuring Clause.
- (C) All loss resulting from a single act or any number of acts of the same **Employee** or **Third Party**, and all loss whether such act or acts occurred before or during the **Policy Period**, will be treated as a single loss and the applicable Limit of Liability set forth in Item 2 of the Crime Declarations will apply, subject to Section X, Liability for Prior Losses.

VIII. RETENTION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each loss which is in excess of the applicable Retention set forth in Item 2 of the Crime Declarations.
 - (B) If an **Insured** receives payment under another policy or bond, after applying a deductible or retention, for loss also covered hereunder, then the applicable Retention set forth in Item 2 of the Crime Declarations shall be reduced by the deductible or retention previously applied to such loss.
-

IX. OWNERSHIP

- (A) Solely for the purposes of Insuring Clauses (A), Employee Theft Coverage; (B), Premises Coverage; (C), In Transit Coverage; (D), Forgery Coverage; (E), Computer Fraud Coverage; (F), Funds Transfer Fraud Coverage; (G), Money Orders and Counterfeit Currency Fraud Coverage and (H), Credit Card Fraud Coverage, the Company's liability under this Coverage Part shall only apply to **Money, Securities** or **Property** owned by an **Organization** or for which the **Organization** is legally liable, or held by the **Organization** in any capacity whether or not the **Organization** is liable, provided that:
- (1) the Company's liability will not apply to damage to the **Premises** unless the **Organization** is the owner of such **Premises** or is legally liable for such damage; or
 - (2) with respect to Insuring Clause (A), Employee Theft Coverage, the Company's liability will not apply to **Money, Securities** or **Property** of a **Client**.
- (B) Solely for the purposes of Insuring Clause (I), Client Coverage, the Company's liability under this Coverage Part will only apply to **Money, Securities** or **Property**:
- (1) owned by a **Client**, which is held by an **Organization** in any capacity or for which the **Organization** is legally liable; or
 - (2) held or owned by a **Client**, for which the **Client** is legally liable.

X. LIABILITY FOR PRIOR LOSSES

- (A) If the Loss Sustained option is purchased as set forth in Item 3 of the Crime Declarations:
- (1) coverage will be available for loss sustained prior to the inception date of this Policy, or the effective date of coverage for any additional **Insureds**, or the effective date of any coverage added by endorsement, subject to the following:
 - (a) an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy, which at the time such prior loss was sustained, afforded some or all of the coverage of an Insuring Clause under this Coverage Part applicable to such prior loss;
 - (b) such coverage continued without interruption from the time such loss was sustained until the inception date or effective date(s) specified above;
 - (c) such prior loss was first **Discovered** by an **Insured** after the time allowed for discovery under the last such bond or policy; and
 - (d) some or all of the coverage of an Insuring Clause under this Coverage Part would be applicable to such prior loss;
 - (2) if such prior bond or policy carried by an **Insured** or predecessor in interest of such **Insured** was issued by the Company or any subsidiary or affiliate of The Chubb Corporation, such prior bond or policy shall terminate as of the inception of this Policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Company prior to the inception of this Policy, provided that this Paragraph (2) shall not apply to:
 - (a) any loss (i) sustained in its entirety and discovered prior to the inception date of this Policy, and (ii) notified to the Company in writing on or after the inception date of this Policy, provided such notice is in accordance with any applicable reporting, notice or exclusionary provision of the Crime coverage section of such prior bond or policy; or
 - (b) any loss (i) sustained in its entirety prior to the inception date of this Policy, (ii) and discovered and notified to the Company in writing within sixty (60) days following termination of the Crime coverage section of such prior bond or policy, provided such notice is in accordance with any applicable reporting, notice or exclusionary provision of the Crime coverage section of such prior bond or policy; and

- (3) An **Insured** shall neither be entitled to a separate recovery under each policy in force at the time any part of the prior loss was sustained, nor shall the **Insured** be entitled to recover the sum of the limits of liability of any such policies. The Company's maximum liability for the prior loss shall not exceed the lesser of either the limit of liability of the policy immediately preceding this Coverage Part under which part of the prior loss was sustained, or the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.
- (B) If the Loss Discovered option is purchased as set forth in Item 3 of the Crime Declarations:
- (1) coverage will be available for loss sustained at any time and **Discovered** during the **Policy Period**, provided that coverage for loss sustained prior to the effective date of this Coverage Part, or the effective date of coverage for any additional **Insureds**, or the effective date of any coverage added by endorsement, is subject to the following:
- (a) if an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was not issued by the Company or any subsidiary or affiliate of The Chubb Corporation and such loss was first **Discovered** by an **Insured** prior to the expiration of the time allowed for discovery under the last such policy, then no coverage shall be available under this Coverage Part, unless the total amount of covered loss exceeds the limit of liability of the last such bond or policy carried by the **Organization** or predecessor in interest of such **Organization**, and the Company's Limit of Liability for any such loss will be in excess of the limit of liability of the last bond or policy subject to all of the terms and conditions of this Coverage Part; or
- (b) if an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was issued by the Company or any subsidiary or affiliate of The Chubb Corporation then such prior bond or policy shall terminate as of the inception of this Policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Company prior to the inception of this Policy and then the Company's Limit of Liability for such loss shall be the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.
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XI. NON-ACCUMULATION OF LIABILITY

- (A) When there is more than one **Insured**, the maximum liability of the Company for loss sustained by one or all **Insureds** shall not exceed the amount for which the Company would be liable if all losses were sustained by any one **Insured**.
- (B) Regardless of the number of years this coverage remains in effect and the total premium amounts due or paid, the limit of liability of the Company with respect to any loss shall not be cumulative from **Policy Year** to **Policy Year** or from **Policy Period** to **Policy Period**.
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XII. OTHER INSURANCE

If an **Insured** or any other party in interest in any loss covered by this Coverage Part has any bond, indemnity or insurance which would cover such loss in whole or in part in the absence of this Coverage Part, then this Coverage Part shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Part shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount recoverable or received under such other bond, indemnity or insurance.

XIII. TERMINATION OF PRIOR BONDS OR POLICIES

Any prior bonds or policies issued by the Company or any subsidiary or affiliate of The Chubb Corporation shall terminate, if not already terminated, as of the inception of this Policy.

XIV. VALUATION AND FOREIGN CURRENCY

The Company shall pay:

- (A) the actual market value of lost, damaged or destroyed **Securities** at the closing price of such **Securities** on the business day immediately preceding the day on which a loss is **Discovered**; or the cost of replacing **Securities**, whichever is less, plus the cost to post a Lost Instrument Bond;
 - (B) the cost of blank books, pages or tapes or other blank materials to replace lost or damaged books of account or other records;
 - (C) the least of:
 - (1) the actual cash value of the **Property**; or
 - (2) the cost to repair or replace **Property**, other than precious metals, with that of similar quality and value,
at the time the **Parent Organization** complies with Section VI, Proof of Loss and Legal Proceedings, regarding the furnishing of proof of loss;
 - (D) the United States of America dollar value of foreign currency based on the rate of exchange published in The Wall Street Journal on the day loss involving foreign currency is **Discovered**; or
 - (E) the United States of America dollar value of any precious metals based on the amount published in The Wall Street Journal Cash Prices, Precious Metals, on the day loss involving such precious metals is **Discovered**.
-

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

AMEND LOSS DISCOVERED OPTION EXCLUSION ENDORSEMENT

In consideration of the premium charged, it is agreed that Exclusion (D), Loss Discovered Option, of this Coverage Part is deleted and replaced with the following:

(D) Loss Discovered Option

In addition to the Exclusions in Subsections (A) and (B) above and if the Loss Discovered option is purchased as set forth in Item 3 of the Crime Declarations, no coverage will be available for:

- (1) loss unless sustained by any **Insured** prior to the termination of this Coverage Part as to such **Insured**, and **Discovered** and written notice thereof is given to the Company within one hundred twenty (120) days following such termination of this Coverage Section as to such **Insured**;
- (2) loss unless sustained prior to the termination of any Insuring Clause or any particular coverage offered under any Insuring Clause, and **Discovered** and written notice thereof is given to the Company within one hundred twenty (120) days following such termination of any Insuring Clause or any particular coverage offered under any Insuring Clause;
- (3) loss unless sustained prior to the termination of this Coverage Part in its entirety, and **Discovered** and written notice thereof is given to the Company within one hundred twenty (120) days following such termination of this Coverage Part in its entirety; or
- (4) loss unless sustained prior to the termination of this Coverage Part and **Discovered** and written notice thereof is given to the Company, within one (1) year following such termination if the termination results from the voluntary liquidation or voluntary dissolution of the **Parent Organization**.

However, the foregoing extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the **Insured** to replace, in whole or in part, the insurance afforded by this Coverage Part, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. M.", written above a horizontal line.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

RECOVERIES SECTION ADDED ENDORSEMENT

In consideration of the premium charged, it is agreed that this Coverage Part is amended to include the following section:

RECOVERIES

- (A) Recoveries for any loss covered under this Coverage Part, whether effected by the Company or by an **Insured**, less the cost of recovery, shall be distributed as follows:
- (1) first, to an **Insured** for the amount of such loss, otherwise covered, in excess of the applicable Limits of Liability;
 - (2) second, to the Company for the amount of such loss paid to an **Insured** as covered loss;
 - (3) third, to an **Insured** for the Retention applicable to such loss;
 - (4) fourth, to an **Insured** for the amount of such loss not covered under this coverage section.
- (B) Recovery from reinsurance or indemnity of the Company shall not be deemed a recovery hereunder.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement: July 1, 2021

Company: Federal Insurance Company

Endorsement No. 3

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

PRIVACY AND DATA BREACH EXCLUSIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that:

1. Exclusion (A)(2) of Section III, Exclusions, of this Coverage Part is deleted.
2. No coverage will be available for:
 - (i) loss involving the disclosure of an **Insured's** or another entity or person's confidential or personal information while in the care, custody or control of an **Insured** including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information;
 - (ii) loss involving the use of another entity or person's confidential or personal information while in the care, custody or control of an **Insured** including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information; or
 - (iii) fees, costs, fines, penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of another entity or person's confidential or personal information, including but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information,

provided, however, that the above exclusions 2(i) and 2(ii) shall not apply to loss that is otherwise covered under any Insuring Clause other than Insuring Clause (J), Expense Coverage.

3. The definition of **Property** in Section II, Definitions, of this Coverage Part shall not include any **Insured's** or another entity or person's confidential or personal information.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.

A handwritten signature in black ink, consisting of a large capital 'P' followed by several loops and a final flourish.

Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

SOCIAL ENGINEERING FRAUD COVERAGE ENDORSEMENT

In consideration of the premium charged, it is agreed that solely with respect to the coverage afforded under this endorsement, the following shall apply:

- (1) Item 2. of the Crime Declarations is amended to include the following:

Item 2. Limits of Liability and Retentions:

Insuring Clauses Applicable to this Coverage Part:	Limits of Liability:	Retentions:
Social Engineering Fraud Coverage:	\$250,000.00	\$500,000.00

- (2) The following Insuring Clause is added:

Social Engineering Fraud Coverage Insuring Clause

The Company shall pay the **Parent Organization** for loss resulting from an **Organization** having transferred, paid or delivered any **Money** or **Securities** as the direct result of **Social Engineering Fraud** committed by a person purporting to be a **Vendor**, **Client**, or an **Employee** who was authorized by the **Organization** to instruct other **Employees** to transfer **Money** or **Securities**.

- (3) Section II, Definitions, is amended to include the following terms:

Vendor means any entity or natural person that has provided goods or services to an **Organization** under a legitimate pre-existing arrangement or written agreement. However, **Vendor** does not include any financial institution, asset manager, broker-dealer, armored motor vehicle company, or any similar entity.

Social Engineering Fraud means the intentional misleading of an **Employee**, through misrepresentation of a material fact which is relied upon by an **Employee**, believing it be genuine.

(4) Section III, Exclusions, is amended as follows:

A. Exclusion (A)(11) is deleted.

B. Exclusion (A)(14) is deleted and replaced with the following:

(14) Authorized Representative

loss or damage due to **Theft, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders And Counterfeit Currency Fraud, Credit Card Fraud, Social Engineering Fraud**, or other fraudulent, dishonest or criminal act (other than **Robbery** or **Safe Burglary**) committed by any authorized representative of an **Insured**, whether acting alone or in collusion with others, provided that this Exclusion (A)(14) shall not apply to otherwise covered loss under Insuring Clauses (A), Employee Theft Coverage, or (I), Client Coverage, resulting from **Theft** or **Forgery** committed by an **Employee** acting alone or in collusion with such authorized representative.

C. The lead-in to Exclusion (B)(3) is deleted and replaced with the following:

(3) Insuring Clauses (B), Premises Coverage, (C), In Transit Coverage, (E), Computer Fraud Coverage, (F), Funds Transfer Fraud Coverage, Social Engineering Fraud Coverage Insuring Clause, for:

(5) No coverage will be available under Social Engineering Fraud Coverage Insuring Clause for:

(a) Cause(s) of loss

loss or damage due to **Theft** by an **Employee, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders and Counterfeit Currency Fraud** or **Credit Card Fraud**;

(b) Mail/Carrier For Hire

loss of or damage to **Money** or **Securities** while in the mail or in the custody of any carrier for hire, including but not limited to any armored motor vehicle company;

(c) Investments

loss due to any investment in **Securities**, or ownership in any corporation, partnership, real property, or similar instrument, whether or not such investment is genuine;

(d) Products or Services

loss due to the failure, malfunction, inadequacy or illegitimacy of any product or service;

(e) Performance Under Contract

loss due to the failure of any party to perform, in whole or in part, under any contract;

(f) Loans and Credit

loss due to the extension of any loan, credit or similar promise to pay;

(g) Gambling

loss due to any gambling, game of chance, lottery or similar game;

(h) Property

loss of or damage to any **Property**;

(i) Credit Card loss

loss due to any party's use of or acceptance of any credit card, debit card or similar instrument, whether or not genuine.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Authorized Representative

CHUBB®

IMPORTANT NOTICE TO POLICYHOLDERS

Social Engineering Tips Please read!

HAVE YOU BEEN TRICKED INTO WIRE FRAUD? TAKE IMMEDIATE ACTION!

If you believe you have transferred funds to a criminal posing as a legitimate business associate, you should act quickly:

1. Immediately contact the originating bank and **request a recall of the wire transfer** and confirm that recall in writing.
2. Immediately file a **complaint with the FBI** at www.ic3.gov. This reporting triggers the FBI's Recovery Asset Team and the FBI's assistance seeking return of the wire transfer.
3. Preserve **records of the incident**, including emails sent and received *in their original electronic state*. Correspondence and forensic information contained in these electronic files help investigators shed light on the perpetrator(s), and parties responsible for the incident.
4. Once the above steps are complete, **contact Chubb** per the instructions in your policy.

While neither recalling the wire transfer nor reporting to the FBI guarantees the return of your funds, these steps maximize the opportunity to mitigate your loss, assist the FBI in tracing the funds and help establish any insurance claim.

Simple Steps to Prevent Fraudulently Induced Wire Transfers

Email communication is efficient, but it is not a secure method of communication. Regardless of your familiarity with a contact, that contact's **email may be intercepted, altered and fabricated**. You may reduce the chances of fraud by following these best practices:

1. **Verify Email Requests by Telephone:** Require those responsible for paying invoices or changing bank routing information to verify payment details over the phone, rather than by email or documents sent electronically. Making a phone call to a known, pre-existing telephone number remains the single best protection against fraud.
2. **Segregate Wire Transfer Responsibilities:** Establish a standing policy that requires at least three people to review and approve wire transfer requests, pay an invoice or change a business partner's bank account information. Such requests should be entered by the initiator of the wire and verified by two independent signatories.
3. **Turn on MFA for Cloud Email:** Multifactor Authentication is available from all major email providers. It provides a layer of security to email accounts beyond a user's account name and password, making it harder for criminals to impersonate you, your executives and your employees.

This document is for information only. It is offered as a resource to be used together with your professional insurance advisers in maintaining a loss prevention program. No liability is assumed by reason of the information this document contains.

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 6

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

FRAUDULENT INSTRUCTIONS EXCLUSION

In consideration of the premium charged, it is agreed that:

No coverage will be available under Insuring Clauses (B), (C), (D), (E), and (F) for loss resulting from any transfer, payment or delivery of **Money, Securities, or Property** approved by an **Employee** or arising out of any misrepresentation received by any **Employee**, agent, independent contractor or other representative of the **Insured**, whether such transfer, payment or delivery was made in good faith or as a result of trick, artifice, fraud or false pretenses.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: July 1, 2021

Federal Insurance Company

Endorsement/Rider No. 7

To be attached to and
form a part of Policy No. 8262-1174

Issued to: WOLVERINE HOLDING CORPORATION

ERISA AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is agreed that solely with respect to loss sustained by any **ERISA Plan** included as a **Sponsored Plan**, this Coverage Part is amended as follows:

(1) Section IV, ERISA Plan Extension, is deleted.

(2) Insuring Clause (A) is deleted and replaced with the following:

Insuring Clause (A): Fiduciary Dishonesty Coverage: The Company shall pay the **Insured** for loss of **Money, Securities, or Property** resulting directly from **Fraud or Dishonesty** committed by an **Employee** acting alone or in collusion with others.

(3) Section II, Definitions, is amended as follows:

A. The definition of **Employee(s)** is deleted and replaced with the following:

Employee(s) means any natural person while in the service of any **Insured** who is required to be bonded by Title 1 of **ERISA**, including:

- (a) a fiduciary;
- (b) a trustee;
- (c) an administrator;
- (d) an officer;
- (e) any other natural person who handles **ERISA Plan** assets; or
- (f) any natural person described paragraphs (a) through (e) above during a period not exceeding sixty (60) days following the termination of such natural person's service.

Provided, however, **Employee** shall not include any independent contractor or any agent, broker, factor, commission merchant, consignee, or representative of the same general character or employee thereof.

B. The definition of **ERISA Plan** is deleted and replaced with the following:

ERISA Plan means any Employee Benefit Plan, Pension Benefit Plan, or Welfare Benefit Plan, as defined under **ERISA**, which is operated solely by an **Organization** or jointly by

an **Organization** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this coverage section or which is created or acquired after the inception of this Coverage Part, provided that **ERISA Plan** shall not include any multi-employer plan.

C. The following definitions are added:

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Fraud or Dishonesty means any intentional act of larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion or willful misapplication, or any other intentional fraudulent or dishonest act. **Fraud or Dishonesty** shall also include any intentional act prohibited by Title 18, Section 1954 of the U.S. Code.

(4) Section III, Exclusions, is deleted and replaced with the following:

III. LIMITATIONS

The Company shall not be liable for loss involving:

- (a) the disclosure of confidential or personal information while in the care, custody or control of an **Insured**, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information, provided that this limitation shall not apply to loss that is otherwise covered under this Coverage Part caused by an **Employee's** acts of **Fraud or Dishonesty** through the use of, disclosure of or access to such confidential or personal information; or
- (b) fees, costs, fines, penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of an **Insured's** or another entity's or person's confidential or personal information, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information.

(5) Section VII, Limits of Liability, is deleted and replaced with the following:

The Company's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss, as set forth in Item 2 of the Declarations regardless of the number of **Insureds** sustaining the loss.

The payment of any loss under this Coverage Part shall not reduce the liability of the Company for other losses whenever sustained; provided, however, that the total liability of the Company for all loss resulting from any act or any series of acts committed by the same **Employee** or in which the same **Employee** is concerned or implicated, regardless of whether such act or series of acts was committed before or during the **Policy Period**, will be treated as a single loss and the applicable Limit of Liability of this Coverage Part will apply.

With respect to each **ERISA Plan**:

- (a) if covered loss is sustained by any **ERISA Plan** which does not have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of:
 - (1) \$1,000; or
 - (2) ten percent (10%) of the funds handled by such **ERISA Plan** as of the effective date of this Coverage Part,

up to a maximum limit of liability of \$500,000; or

- (b) if covered loss is sustained by any **ERISA Plan** which does have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of:

- (1) \$1,000; or
- (2) ten percent (10%) of the funds handled by such **ERISA Plan** as of the effective date of this Coverage Part,

up to a maximum limit of liability of \$1,000,000,

provided that, in all events (i) if the Limit of Liability as set forth in Item 2 of the Declarations is less than the amounts set forth in paragraphs (a) or (b) above, then the applicable Limit of Liability shall be equal to the minimum limit of insurance as required by **ERISA**; or (ii) if the Limit of Liability as set forth in Item 2 of the Declarations equals or exceeds the amounts set forth in paragraphs (a) or (b) above, then the Limit of Liability shall be the Limit of Liability as set forth in Item 2 of the Declarations.

- (6) Subsection VIII, Retention is amended to add the following:

No retention shall apply to loss sustained by an **ERISA Plan** covered under this Coverage Part.

- (7) Section IX, Ownership, is amended to the extent that wherever the term **Organization** appears, it is deleted and replaced with **Organization** or **ERISA Plan**.

- (8) The following subsections are added:

- **PAYOVER**

In compliance with Title 1 of **ERISA**, payment by the Company shall be held to the benefit of any **Insured(s)** sustaining a loss. If such payment is in excess of the amount of coverage required by **ERISA** for such **Insured(s)**, such excess shall be held for the use and benefit of any other named **Insured(s)** should such **Insured(s)** also **Discover** loss recoverable hereunder. If **Money**, **Securities**, and other **Property** of two or more **Insureds** is commingled, recovery hereunder for loss of such **Money**, **Securities**, and other **Property** shall be shared by such **Insureds** on a pro rata basis in accordance with the amount of coverage each such **Insured** is required to carry pursuant to **ERISA**.

- **EXTENDED DISCOVERY PERIOD**

This Coverage Part covers loss sustained prior to the termination or cancellation of this Coverage Part and **Discovered**:

- (a) within twelve (12) calendar months following the termination or cancellation of this Coverage Part in its entirety; or
- (b) within twelve (12) calendar months following the termination or cancellation of this Coverage Part as to any **Insured**,

in accordance with Section X, Termination of Policy of the General Terms and Conditions.

Provided that this Extended Discovery Period terminates immediately upon the effective date of any other insurance obtained which replaces the coverage afforded by this Coverage Part in an amount no less than the minimum amount required under **ERISA** and provides coverage for loss sustained prior its effective date.

- **TERMINATION**

This Coverage Part shall terminate as to any **Employee** and no coverage will be available for loss caused by such **Employee**:

- (a) immediately upon **Discovery** by any **Executive** or **Insurance Representative** (not in collusion with such **Employee**) of any fraudulent or dishonest act on the part of such **Employee** while in the service of any **Insured**;
- (b) after an **Executive** or **Insurance Representative** becomes aware of any fraudulent or dishonest act by such **Employee** involving **Money, Securities** or **Property** valued at twenty-five thousand dollars (\$25,000) or more, committed prior to such **Employee's** service with any **Insured**; or
- (c) more than sixty (60) days following the termination of service to any **Insured** of such **Employee**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

EXHIBIT 2



EVEREST EZ™ EXCESS POLICY

THIS IS A CLAIMS MADE POLICY WHICH COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. DEFENSE COSTS ARE INCLUDED AND SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS.

In consideration of the payment of the premium, in reliance on the Application (as defined in the Primary Policy), and subject to the terms, conditions and limitations of this policy, the Insurer and the **Named Insured** agree as follows:

Except as provided herein, this policy shall follow form to the terms and conditions of the Primary Policy. Coverage under this policy shall attach only after the Aggregate Limit of Liability of the Underlying Insurance set forth in **ITEM 4**, has been exhausted by the payment of Loss (as defined in the Primary Policy), by the insurers of the Primary Policy and all policies issued in excess of the Primary Policy which attach below this policy ("Underlying Insurance"), the Named Insured, any excess/DIC insurer, any policy that is tied into any Underlying Insurance, and/or any other source.

In the event of exhaustion of the Aggregate Limit of Liability of the Underlying Insurance, this policy shall continue in force as primary insurance for any subsequent Claim (as defined in the Primary Policy), but shall pay excess of the Primary Policy's retention, if applicable.

This policy shall recognize payment of any sublimit of liability by any Underlying Insurance toward the reduction or exhaustion of such insurance but shall not grant such sub-limited coverage unless added by endorsement to this policy.

No post inception alteration of the Primary Policy shall be recognized unless consented to (such consent not to be unreasonably withheld or delayed) by the Insurer in writing.

NAMED INSURED AND ADDRESS	INSURER
ITEM 1. Wolverine Top Holdings Corporation 360 North Crescent Drive, South Building Beverly Hills, CA 90210 USA	(hereinafter, "Insurer") Everest National Insurance Company 100 Everest Way Warren, NJ 07059
POLICY NUMBER	PRODUCER
PC2EX00007-212 Renewal of: PC2EX00007-211	Marsh USA Inc. 4 Embarcadero Center San Francisco, CA 94111

- ITEM 2. POLICY PERIOD: FROM 07/01/2021 TO 07/01/2022**
POLICY INCEPTS AND EXPIRES AT 12:01 A.M. LOCAL TIME AT THE ADDRESS OF THE **NAMED INSURED** SHOWN ABOVE.
- ITEM 3. AGGREGATE LIMIT OF LIABILITY: \$10,000,000**
(The maximum Aggregate amount the Insurer shall pay under this policy)
- ITEM 4. AGGREGATE LIMIT OF LIABILITY OF THE UNDERLYING INSURANCE** (including Primary Policy): \$10,000,000
- ITEM 5. PRIMARY POLICY:**
- | <u>Insurer</u> | <u>Policy No.</u> | <u>Policy Period</u> | <u>Retention</u> | <u>Limit of Liability</u> |
|---------------------------|-------------------|-------------------------|------------------|---------------------------|
| Federal Insurance Company | 8262-1174 | 07/01/2021 - 07/01/2022 | \$250,000 | \$10,000,000 |
- ITEM 6. POLICY PREMIUM: \$120,000**
- ITEM 7. FORMS AND ENDORSEMENTS EFFECTIVE AT INCEPTION:** (See attached Endorsement)
- ITEM 8. NOTICE TO THE INSURER:** (Notice to the Insurer shall be given to the Insurer at the address shown above or by Email to: everestnationalnjclaim@everestre.com)

THE INSURER SHALL HAVE THE SAME RIGHTS, PRIVILEGES AND PROTECTIONS AFFORDED THE INSURER OF THE PRIMARY POLICY. THIS FORM, ANY ENDORSEMENT(S) AND THE APPLICATION SHALL CONSTITUTE THE ABOVE NUMBERED POLICY.



**SCHEDULE OF FORMS/ENDORSEMENTS****EVEREST**

Named Insured	Policy Number	Policy Period	Writing Company	Endorsement Effective Date
Wolverine Top Holdings Corporation	PC2EX00007-212	07/01/2021 - 07/01/2022	Everest National Insurance Company	07/01/2021

Form Name	Form Number	Endorsement No.
Everest EZ Excess Policy	EZE-CWF300A-2 0517	
Schedule of Forms & Endorsements	EIL-CWF002A-1 0319	
Cap On Losses From Certified Acts Of Terrorism	EIN-CWF102A-1 0118	1
ADVISORY NOTICE REGARDING TRADE OR ECONOMIC SANCTIONS	EIL-CWN010A-1 1020	
Non-Follow Form Endorsement (Specific Coverage Parts And/Or Insuring Agreements) (Non-Recognition Of Erosion)	EZE-CWF009D-1 0117	2
Prior Acts Exclusion Endorsement	EZE-CWF029A-1 0517	3
In Witness	EIL-CWF001A-1 0319	

CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

Parent Company: Wolverine Top Holdings
Corporation

Endorsement No.: 1

Policy No.: PC2EX00007-212

Effective date of Endorsement: 07/01/2021

Issuing Company: Everest National Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

- A. If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Calendar Year and the Insurer has met its insurer deductible under the Terrorism Risk Insurance Act, the Insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

Certified Act of Terrorism means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a **Certified Act of Terrorism** include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for **Loss** that is otherwise excluded under this policy.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date of Issue: 07/01/2021



Authorized Representative

ADVISORY NOTICE REGARDING TRADE OR ECONOMIC SANCTIONS

No coverage is provided by this Notice nor can it be construed to replace any provisions of the policy. Please read the policy and review the Declarations page, if applicable, for complete information on the coverages provided.

This Notice provides information concerning possible impact on insurance coverage due to any applicable trade or economic sanctions law or regulation, including but not limited to, trade or economic sanctions laws or regulations of the United Nations, European Union, Switzerland, United Kingdom, Canada or the United States Treasury Department's Office of Foreign Assets Control.

Please read this Notice carefully.

If it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated any applicable trade or economic sanctions laws or regulations, including but not limited to those of the United Nations, European Union, Switzerland, United Kingdom, Canada or the United States Treasury Department's Office of Foreign Assets Control, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to restrictions. When an insurance policy is considered to be such a blocked or frozen contract, no payments or premium refunds may be made without authorization from the applicable regulator. Other limitations on the premiums and payments also apply.

Endorsement No. 2

NON-FOLLOW FORM ENDORSEMENT
(Specific Coverage Parts and/or Insuring Agreements)
(Non-Recognition of Erosion)



Named Insured	Policy Number	Policy Period	Writing Company	Endorsement Effective Date
Wolverine Top Holdings Corporation	PC2EX00007-212	07/01/2021 - 07/01/2022	Everest National Insurance Company	07/01/2021

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following policy:

EVEREST EZ™ EXCESS POLICY

In consideration of the premium paid, it is hereby understood and agreed that this policy shall not follow form to, apply to, or act in accordance with the Specified Coverage Parts and/or Insuring Agreements of the Primary Policy referenced in the SCHEDULE below, or provide any coverage for any loss, including defense costs, otherwise covered under the Primary Policy by reason of such Specified Coverage Parts and/or Insuring Agreements. The Insurer shall not recognize any payment under the Primary Policy or any other Underlying Insurance pursuant to the terms and conditions thereunder towards the exhaustion or reduction of the Aggregate Limit of Liability of the Underlying Insurance.

SCHEDULE

Specified Coverage Part(s) And/Or Insuring Agreements of The Primary Policy
Employment Practices Liability
Fiduciary Liability
Crime

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative

Endorsement No. 3

**PRIOR ACTS EXCLUSION ENDORSEMENT****EVEREST**

Named Insured	Policy Number	Policy Period	Writing Company	Endorsement Effective Date
Wolverine Top Holdings Corporation	PC2EX00007-212	07/01/2021 - 07/01/2022	Everest National Insurance Company	07/01/2021

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following policy:

EVEREST EZ™ EXCESS POLICY

In consideration of the premium paid, it is hereby understood and agreed that:

The Insurer shall not be liable to make payment for Loss in connection with any Claim made in whole or in part, against any Insured, based upon, arising out of, related to, or alleging, Wrongful Act(s) occurring prior to 01/09/2020, or any Interrelated Wrongful Acts thereto.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

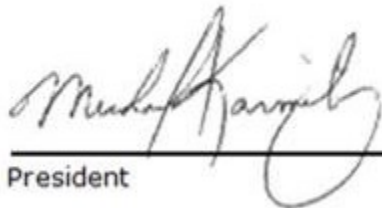
 Authorized Representative



IN WITNESS

IN WITNESS WHEREOF, this policy is signed by officer of the Company shown on the declarations page of this policy.

For: Everest National Insurance Company



President



Secretary

EXHIBIT 3



Endurance Risk Solutions Assurance Co.
Wilmington, Delaware

EXCESS LIABILITY POLICY DECLARATIONS

NOTICE: Depending on the terms and conditions of the Followed Form, this Policy may (1) only provide coverage for Loss from Claims first made or first made and reported during the Policy Period; and (2) have its Limit of Liability reduced by payment for defense costs. Please read the Followed Form and this Policy carefully to determine your rights, duties and what is and what is not covered. In the event of any conflict between the terms and conditions of this Policy and the Underlying Policy(ies), the terms and conditions of this Policy shall control. Terms defined in the Followed Form are used herein with the meaning assigned to them in the Followed Form unless otherwise indicated.

POLICY NUMBER: DOX30008721300

Item 1. Named Insured: Wolverine Top Holding Corporation
Address: 360 North Crescent Drive
South Building
BEVERLY HILLS, CA 90210

Item 2. Policy Period: From: July 01, 2021 To: July 01, 2022
(12:01 AM Standard Time on both dates at the address of the Named Insured noted above.)

Item 3. Limit of Liability: \$10,000,000 excess of \$20,000,000

Item 4. Pending & Prior Litigation
Date: January 9, 2020

Item 5. Premium: \$95,000
TRIA *Premium includes TRIA coverage

Item 6. Producer: Marsh USA, Inc.
Address: 777 South Figueroa Street
Suite 2200
Los Angeles, CA 90017

Item 7. A. Underlying Policy(ies):

Insurer	Policy Number	Limit of Liability	Attachment
Federal Insurance Company	8262-1174	\$10,000,000	Primary
Everest National Insurance Company	PC2EX00007-212	\$10,000,000	\$10,000,000

B. Followed Form:

Insurer	Policy Number	Limit of Liability	Attachment
Federal Insurance Company	8262-1174	\$10,000,000	Primary

Item 8. Forms and Endorsements Effective at Inception:
See attached Forms and Endorsements Schedule, IL 0101.

Item 9. Notice:

A. Claims or Potential Claims: Commercial Management Liability
Attn: Claims Department
1221 Avenue of The Americas
New York, NY 10020
Insuranceclaims@sompo-intl.com
1-877-676-7575

B. All Other: Commercial Management Liability
Attn: Professional Lines Underwriting Department
1221 Avenue of The Americas
New York, NY 10020

This Policy shall constitute the contract between the Insureds and the Insurer.

The Insurer hereby causes this Policy to be signed on the Declarations page by a duly authorized representative of the Insurer.



Authorized Representative

September 23, 2021

Date

EXCESS LIABILITY POLICY

In consideration of the premium paid and in reliance on all statements made and information furnished by the Insureds in the Application or the underwriting of this Policy, and subject to the terms and conditions of this Policy, the Insurer, and the Named Insured, on behalf of all Insureds, agree as follows:

I. INSURING CLAUSE

This Policy shall provide to the Insureds insurance coverage for any covered Loss resulting from covered Claims, and shall attach to the Insurer only after (i) the insurers of the Underlying Policy(ies), the Insureds, and/or any other party shall have paid in legal currency the full amount of the Underlying Limit, and (ii) the Insureds shall have paid any applicable retention or deductible under the Primary Policy. The Limit of Liability set forth in Item 3. of the Declarations shall be the maximum amount payable by the Insurer under this Policy.

II. TERMS AND CONDITIONS

- A. This Policy, except as stated herein, is subject to all terms, conditions and limitations as contained in the Followed Form as of inception of this Policy, and to the extent coverage is further limited or restricted thereby, in any other Underlying Policy(ies).
- B. If any coverage under the Underlying Policy(ies) is subject to a sublimit of liability, this Policy shall not apply to such coverage, but the Insurer shall recognize any Loss paid under such coverage in any manner described in the Insuring Clause as reducing the Underlying Limit by the amount of such paid Loss.
- C. If any Underlying Policy(ies) is changed or terminated the Insurer shall not be liable under this Policy to a greater extent than it would have been had such Underlying Policy(ies) been so maintained, unless the Insurer agrees to the change in writing. The risk of uncollectability of the Underlying Policy(ies) whether because of insolvency of an underlying insurer or for any other reason is expressly retained by the Insureds.
- D. Notice to the Insureds may be given to the Named Insured at the address shown in Item 1. of the Declarations. Notice to the Insurer shall be given to the Insurer at the address shown in Item 9. of the Declarations. Notice to any insurer of an Underlying Policy(ies) shall not constitute notice to the Insurer unless also given to the Insurer as provided above.
- E. The Insurer may, at its sole discretion, participate in the investigation, defense or settlement of any Claim or other matter to which coverage under this Policy could apply even if the Underlying Limit has not been exhausted. No action by any other insurer shall bind the Insurer under this Policy. The Insurer shall not be liable under this Policy for any settlements, stipulated judgments or defense costs to which the Insurer has not consented, which consent shall not be unreasonably withheld.

III. DEFINITIONS

- 1. Followed Form, Underlying Policy(ies) and Limit of Liability have the meanings attributed to them in the Declarations.
- 2. Insureds mean all natural persons and entities insured by the Followed Form.
- 3. Named Insured means the entity named in Item 1. of the Declarations.
- 4. Primary Policy means the first listed policy in Item 7.A. of the Declarations.
- 5. Policy Period means the period of time specified in Item 2. of the Declarations, subject to prior termination in accordance with the Followed Form.
- 6. Underlying Limit means an amount equal to the aggregate of all limits of liability, as set forth in Item 7. of the Declarations, for all Underlying Policy(ies), plus any applicable retention or deductible under the Primary Policy.

FORMS AND ENDORSEMENT SCHEDULE

EXCESS LIABILITY

End. No.	Title	Number
	Excess Liability Policy Declarations	PEO 0001 0413
	Excess Liability Policy	PEO 0201 0413
	Forms and Endorsement Schedule	IL 0101 0712
1	California Changes	PEO 0315 0413 CA
2	Non-Follow Form Endorsement (Non-Recognition of Erosion)	PEO 0387 1219
3	Non-Following Form Endorsement (Recognition of Erosion)	PEO 1312 0413
4	Excess Enhancement Endorsement	PEO 3304 0220
5	Cap on Losses from Certified Acts of Terrorism	IL 1204 0115
6	Disclosure Pursuant to Terrorism Risk Insurance Act	IL 1214 1220
	U.S. Treasury Department's Office of Foreign Assets Control (OFAC)	PN 0001 0712
	Signature Page	IL 1007 0114

The titles of the endorsements listed above are solely for convenience and form no part of the terms and conditions of coverage.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 1

(12:01 AM Standard Time at the address of the
Named Insured as shown in the Declarations)

CALIFORNIA CHANGES

It is agreed that:

1. Notwithstanding anything in this Policy to the contrary, the insurance coverage as is afforded by this Policy, as respects coverage for operations in California, shall conform to the coverage requirements of the applicable insurance laws and regulations of California.
2. This Policy shall not be subject to or follow the cancellation and nonrenewal provisions of the Followed Form. This Policy and the Policy Period shall terminate at the earliest of the effective date of nonrenewal of the Policy Period shown in Item 2 of the Declarations or the effective date of cancellation, as described below.

A. CANCELLATION

1. The Named Insured may cancel this Policy by surrender of this Policy to the Insurer or by giving prior written notice to the Insurer stating when such cancellation shall take effect.
2. The Insurer may cancel this Policy only for reasons a. and b. below, by mailing or delivering to the Named Insured at the mailing address shown in the Policy and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:
 - a. Fifteen (15) days before the effective date of cancellation if the Insurer cancels for nonpayment of premium; or
 - b. Thirty (30) days before the effective date of cancellation if the Insurer cancels upon a determination by the Commissioner of Insurance that the:
 - i. Loss of, or changes in, the Insurer's reinsurance covering all or part of the risk would threaten the Insurer's financial integrity or solvency; or
 - ii. Continuation of the Policy coverage would:
 - (a) Place the Insurer in violation of California law or the laws of the state where the Insurer is domiciled; or
 - (b) Threaten the Insurer's solvency.
3. In the event of cancellation, the Insurer shall refund the unearned premium computed pro rata.

B. NONRENEWAL

If the Insurer elects not to renew this Policy, or to renew this Policy with:

- i) Changed terms or conditions;
- ii) A twenty-five percent (25%) or greater increase in premium;
- iii) Reduction of limits;
- iv) Elimination of coverages; or
- v) Increased retention,

the Insurer will mail or deliver written notice at least sixty (60) days prior to the expiration of the Policy Period stating:

- a. The reason for nonrenewal, if the Policy is not being renewed; or
- b. Item(s) (i) through (v) above, if applicable.

C. NOTICE

The Insurer shall send all notices required under this endorsement by certified mail to the Named Insured at the address in Item 1 of the Declarations, and by mail or electronic mail to the Named Insured's authorized agent, if any. Proof of mailing will be sufficient proof of notice.



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 2

12:01 AM Standard Time at the address of the Named
Insured as shown in the Declarations.

NON-FOLLOW FORM ENDORSEMENT (Non-Recognition of Erosion)

It is agreed that:

This Policy shall not follow, and coverage under this Policy shall not apply in conformance with, the following coverage(s) of the Followed Form set forth below, and the Insurer shall not recognize payment under such coverage(s) as reducing the Underlying Limit:

Antitrust sublimit



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 3

12:01 AM Standard Time at the address of the Named Insured as shown in the Declarations.

NON-FOLLOWING FORM (RECOGNITION OF EROSION)

It is agreed that:

Coverage under this Policy shall not be subject to or follow the provision(s) of the Followed Form referenced below. However, any payment by the insurer(s) of any Underlying Policy(ies) of Loss which is covered thereunder by reason of the provision(s) referenced below shall erode or exhaust the Underlying Limit for purposes of this Policy.

Non-Following Provision(s): Non follow FID & EPL



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 4

12:01 AM Standard Time at the address of the Named Insured as shown in the Declarations.

EXCESS ENHANCEMENT ENDORSEMENT

It is agreed that:

- I. All references to “Standard Time” in this Policy, including any endorsements, are replaced with “Local Time.”
- II. The preamble of this Policy is replaced with the following:

In consideration of premium paid and in reliance upon the Application, and subject to the terms, conditions, and limitations of this Policy, the Named Insured, on behalf of all Insureds, and the Insurer agree as follows:

- III. Section I. INSURING CLAUSE is replaced with the following:

- I. INSURING CLAUSE

This Policy shall provide to the Insureds insurance coverage for any Loss resulting from Claims, and shall attach to the Insurer only after: (i) the insurers of the Underlying Policy(ies), the Insureds, the insurer of any difference-in-conditions policy, or any other source shall have paid in legal currency the full amount of the Underlying Limit; and (ii) the Insureds, the insurer of any difference-in-conditions policy, or any other source shall have paid any applicable retention or deductible under the Primary Policy. The Limit of Liability set forth in Item 3. of the Declarations shall be the maximum amount payable by the Insurer under this Policy.

- IV. Section II. TERMS AND CONDITIONS is amended as follows:

- A. Subsection A. is replaced with the following:

- A. This Policy, except as stated herein, is subject to all terms, conditions, and limitations as contained in the Followed Form.

- B. Subsection B. is replaced with the following:

- B. If any coverage under the Underlying Policy(ies) is subject to a sublimit of liability, this Policy shall not apply to that portion of such coverage, but the Insurer shall recognize any Loss paid under such coverage in any manner described in the Insuring Clause as reducing the Underlying Limit by the amount of such paid Loss.

C. Subsection E. is replaced with the following:

E. The Insurer may, at its sole discretion, participate in the investigation, defense, or settlement of any Claim or other matter to which coverage under this Policy could apply even if the Underlying Limit has not been exhausted, provided that such Claim or other matter is reasonably expected to impact this Policy. No action by any other insurer shall bind the Insurer under this Policy. The Insurer shall not be liable under this Policy for any settlements, stipulated judgments, or defense costs to which the Insurer has not consented, which consent shall not be unreasonably withheld or delayed.

D. The following is added:

Notwithstanding any provision in this Policy to the contrary, if an Underlying Policy explicitly recognizes erosion of its limit of liability by payment of loss under another policy issued by the insurer of such Underlying Policy or any of its affiliates to the Named Insured or any of its affiliates that also provides coverage to an Insured under this Policy, then to the extent that such Underlying Policy recognizes erosion of its limits by payment of Loss under such other policy, this Policy shall recognize such payments as eroding the limits of the applicable Underlying Policy.



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 5

12:01 AM Standard Time at the address of the
Named Insured as shown in the Declarations.

CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is agreed that:

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and the Insurer has met its deductible under the Terrorism Risk Insurance Act, the Insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

Notice includes copyrighted material of Insurance Services Office, Inc. with its permission.

ENDORSEMENT

Named Insured: Wolverine Top Holding Corporation

Policy Number: DOX30008721300

Endorsement

Endorsement

Effective Date: July 01, 2021

Number: 6

12:01 AM Standard Time at the address of the
Named Insured as shown in the Declarations.

DISCLOSURE PURSUANT TO THE TERRORISM RISK INSURANCE ACT

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

It is agreed that:

SCHEDULE: Terrorism Premium (Certified Acts): Included in Premium

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium (shown in the Schedule above), if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act as amended and reauthorized. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 80% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

C. Cap On Insurer Participation In Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

ENDORSEMENT

A handwritten signature in cursive script, appearing to read "Lindsay Weiner", is written above a horizontal line.

Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

Notice includes copyrighted material of Insurance Services Office, Inc. with its permission.



**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE**

Named Insured:	Wolverine Top Holding Corporation	Offer Date:	September 23, 2021
Policy Number:	DOX30008721300	Effective Date:	July 01, 2021
Insurance Company:	Endurance Risk Solutions Assurance Co.		

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act:* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury--in consultation with the Secretary of Homeland Security, and the Attorney General of the United States--to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

DISCLOSURE OF FEDERAL PARTICIPATION:

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

DISCLOSURE OF CAP ON LOSSES:

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

ACCEPTANCE OR REJECTION OF TERRORISM INSURANCE COVERAGE:

Your signature and the return of this notice are required prior to binding related commercial insurance coverage. Premium is based on exposures at policy inception and may change if exposures change during the policy term.

☐ I hereby elect to purchase certified acts of terrorism coverage for the prospective premium of: **\$0**

☐ I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

Insured: _____ **Title:** _____ **Date:** _____



ADDITIONAL INFORMATION FOR PROPERTY and INLAND MARINE POLICIES ONLY:

In Standard Fire Policy (SFP) states, the mandated policy language provides some coverage for fire losses resulting from an act of terrorism. You cannot reject this coverage. If you reported exposure in an SFP state and decline to purchase terrorism coverage you will be charged the premium for this coverage as shown below. Premium is based on exposures at policy inception and may change if exposure changes during the policy term.

SFP Premium: N/A

This Notice does **not** form a part of your insurance contract. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

POLICYHOLDER NOTICE

U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.



**SOMPO
INTERNATIONAL**

Endurance Risk Solutions Assurance Co.
1221 Avenue Of the Americas
New York, NY 10020

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Senior Vice President and countersigned where required by law on the Declarations page by its duly authorized representative.

Senior Vice President

President

EXHIBIT 4

**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 (DRJ)

Chapter 11

(Jointly Administered)

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Plaintiffs,
v.

Adv. Pro. No. 23-03091

SSD INVESTMENTS LTD., et al.,

Defendants.

SSD INVESTMENTS LTD., et al.,

Counterclaim Plaintiffs,

v.

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Counterclaim Defendants.

2024/2026 HOLDERS' FIRST AMENDED COUNTERCLAIMS

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.

Adversary Proceeding Defendants listed on Appendix A (the “Original Secured Plaintiffs”) along with additional counterclaim plaintiffs (together with the Original Secured Plaintiffs, the “2024/2026 Holders” or “Counterclaim Plaintiffs”), as holders of certain senior secured notes issued by Debtor Wesco Aircraft Holdings, Inc. (the “Company”) due in 2026 (the “2026 Original Secured Notes”) and 2024 (the “2024 Original Secured Notes” and together with the 2026 Original Secured Notes, the “Original Secured Notes” or the “Notes”), which are governed by their respective indentures (individually, the “2026 Original Secured Note Indenture,” which is filed as Adv. Pro., Docket No. 12-9, and the “2024 Original Secured Note Indenture,” which is filed as Adv. Pro., Docket No. 12-12, and together, the “Governing Indentures”), assert the following first amended counterclaims (the “Amended Counterclaims”) against:

- (i) The Company;
- (ii) Certain of the Company’s debtor affiliates that guaranteed the Notes (the “Guarantor Defendants” and together with the Company, the “Debtors”);
- (iii) Platinum Equity Advisors, LLC (“Platinum Advisors” or the “Platinum Sponsor”)
- (iv) Platinum Equity Capital Partners International, IV (Cayman) LP, (the “Platinum Fund”), a fund controlled by the Platinum Sponsor;
- (v) The Debtors’ indirect owner, Wolverine Top Holding Corporation (the “Platinum-Controlled Parent” and, together with the Platinum Fund, the “Platinum Creditors”); and
- (vi) the “Favored Noteholders” comprising the noteholders favored by the Company and the Platinum Sponsor that participated in the Insider Transaction (as defined herein) and that were managed or advised by, or else are identified as, among others, (a) Silver Point Capital, LP; Silver Point Distressed Opportunities Management, LLC; Silver Point Specialty Credit Fund Management, LLC; and Silver Point Specialty Credit Fund II Management, LLC, (b) Pacific Investment Management Company LLC, (c) The Carlyle Group L.P., (d) Senator GP LLC, (e) Citadel Advisors LLC, (f) Spring Creek Capital LLC, and (g) the Platinum Sponsor (together with the Platinum Creditors, “Platinum”).

In support of these Amended Counterclaims, and subject to the Stipulated Comprehensive Scheduling Order, dated July 31, 2023 (Adv. Pro., Docket No. 141) inclusive of all reservations of rights therein (the “Scheduling Order”), the 2024/2026 Holders allege, as follows:

Nature of the Action

1. On March 28, 2022, the Debtors executed an unprecedented position-enhancing transaction that breached the plain terms of the Governing Indentures—the “Insider Transaction.” The Debtors, under the control of Platinum, and the Favored Noteholders attempted to deprive the 2024/2026 Holders of the bargained-for liens that secured payment of their Notes even though strict supermajority and other consent requirements under the Governing Indentures expressly prohibited this Insider Transaction.

2. At the time of the Insider Transaction, the 2024/2026 Holders held more than one-third of the 2026 Original Secured Notes. This should have been the end of the matter. But the Company, at the behest of Platinum, embarked on a path that would benefit insiders and a select few favored noteholders, while boxing out all competing alternatives. As one observer prophetically said when the Insider Transaction was first described in the press, it is “*obscenely greedy and one can expect substantial legal challenges*.”²

3. The Debtors knew that they required a two-thirds supermajority of existing holders to consummate the Insider Transaction. The Favored Noteholders also knew this, as did the market, and the surging trading prices of the Notes shortly before the Insider Transaction reflected exactly that. Yet, after the Favored Noteholders tried and failed to obtain a bona fide supermajority, the Debtors and the Favored Noteholders devised a sham to circumvent the Governing Indentures’ supermajority consent requirements, knowing that they had only a simple majority (not a supermajority) of the 2026 Original Secured Notes. They purported to—by a single integrated transaction—create new dilutive notes that were simultaneously issued and retired: the “Phantom Notes.”

² Reshmi Basu, *Wesco Aircraft in Talks with Select Holders for Priming Roll-Up and New Capital Injection*, Debtwire (Feb. 7, 2022), <https://www.debtwire.com/intelligence/view/intelcms-whbsmp>.

4. The purpose of the Phantom Notes was to supposedly discharge the 2024/2026 Holders' liens and create new liens for new super-senior notes issued by the Company and made available only to the Favored Noteholders. However, issuing new notes to—“*directly or indirectly*”—“*create, incur, assume or suffer to exist any [l]ien of any kind (other than [p]ermitted [l]iens)*” is prohibited under the Governing Indentures and thus the Phantom Notes violated those express terms.

5. The Company itself, moreover, has conceded through counsel in open court that this was all just “one liquidity transaction.”³

6. The Governing Indentures expressly required supermajority consent—which the Company did not have as to the 2026 Original Secured Notes—for any amendment to: (i) “*have the effect of*” releasing the Liens (defined below), (ii) “*modify*” the security instruments securing the Notes in a manner that would “*adversely affect*” holders, “*or*” (iii) “*modify*” the security instruments or the Governing Indentures in “*any manner adverse*” to such holders. The Insider Transaction therefore breached all of these protective provisions.

7. The Insider Transaction let certain Favored Noteholders, and only them, exchange their Original Secured Notes for approximately \$1.27 billion of new, super-senior secured notes in the so-called “Uptier Exchange.” Further, the Insider Transaction permitted the Platinum Creditors (including the Company’s current owner) and Carlyle (the Company’s prior owner) to exchange on a dollar-for-dollar basis their *unsecured* notes for approximately \$473 million of newly issued *secured* notes in the so-called “Unsecured Roll-up,” in return for the votes required to effectuate the Uptier Exchange. Critically, though, the vote of the Platinum Creditors could not be counted under the Governing Indentures and, therefore, the Platinum Creditors were not needed

³ See Transcript of June 6, 2023 Emergency Motion Hearing, Adv. Pro., Docket. No. 38. at 44:13-16.

to effectuate the Uptier Exchange. The Debtors nonetheless offered the Platinum Creditors the opportunity to exchange their unsecured notes anyway—essentially for no consideration.

8. The Insider Transaction also purported to stack over \$1.7 billion in new senior debt whose maturity would spring ahead of the 2024/2026 Holders' Notes. The Insider Transaction thus modified the "ranking of [the Notes] in respect of right of payment" that "adversely affect[ed]" the 2024/2026 Holders. This breached the 2024/2026 Holders' "sacred rights" under the Governing Indentures and would have required each 2024/2026 Holder's consent.

9. Furthermore, knowing full well that the Insider Transaction would result in this extremely costly litigation, Platinum and its accomplices imposed an indemnity obligation on the Company to cover the costs of their intentional wrongdoing, despite the Governing Indentures not containing any such indemnity. The Insider Transaction likewise included an apparent "settlement basket," which underscores the Company's and Platinum's recognition of their wrongdoing and their knowledge of the future litigation that the Insider Transaction would cause.

10. Because the Favored Noteholders used the Insider Transaction to exit their prior holdings and purportedly create new liens to support their new notes, the 2024/2026 Holders presently own more than 93 percent of the 2026 Original Secured Notes and approximately 36 percent of the 2024 Original Secured Notes.

11. A substantial subset of the 2024/2026 Holders commenced an action in New York state court in October 2022, which the Debtors seek to stay in their Adversary Complaint and which has been stayed on an interim basis by stipulations. *See, e.g.*, Adv. Pro. Docket No. 116.

12. Since that time, the parties negotiated and filed the Scheduling Order, pursuant to which the 2024/2026 Holders stipulated to a further stay of the New York state court action and

agreed with the parties in this action to litigate, as part of the above-captioned adversary proceeding, certain tort claims against several non-Debtor defendants.⁴

13. Accordingly, by these Amended Counterclaims, the 2024/2026 Holders assert claims for equitable lien and equitable subordination, and seek declaratory judgment for: (i) breaches of the Governing Indentures; (ii) breaches of the covenant of good faith and fair dealing implied by those agreements; (iii) tortious interference with the Governing Indentures; (iv) conversion of the 2024/2026 Holders' property; and (v) the 2024/2026 Holders' direct standing to bring these claims.

The Parties

I. Counterclaim Plaintiffs.

14. At the time of the Insider Transaction, each of the 2024/2026 Holders was a holder of the 2026 Original Secured Notes and/or the 2024 Original Secured Notes. Each of the 2024/2026 Holders continues to be a holder of the 2026 Original Secured Notes and/or the 2024 Original Secured Notes.

15. Counterclaim Plaintiff SSD Investments Ltd. is a holder of 2026 Original Secured Notes. SSD Investments Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

16. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by

⁴ The Parties also agreed, pursuant to the Scheduling Order, that counterclaims could be filed and served as free-standing pleadings, separate from an answer.

New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

17. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A., is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

18. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

19. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

20. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A., is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a

Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

21. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global High Yield Bond Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

22. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Income Opportunity Fund, is a holder of 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

23. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

24. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global Income Conservative Fund, is a holder of 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

25. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund US High Yield Plus Bond Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

26. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

27. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Sustainable Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

28. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

29. Counterclaim Plaintiff iShares Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

30. Counterclaim Plaintiff iShares II Public Limited Company, on behalf of its sub-fund iShares \$ High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares II Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

31. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBonds 2026 Term High Yield and Income ETF, is a holder of 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

32. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Broad USD High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

33. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares 0-5 Year High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

34. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBoxx \$ High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

35. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBonds 2024 Term High Yield and Income ETF, is a holder of 2024 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

36. Counterclaim Plaintiff BlackRock Institutional Trust Company, N.A., acting in its capacity as Trustee of the U.S. High Yield Bond Index Non-Lendable Fund B, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. BlackRock Institutional Trust Company, N.A. is a national banking association with its principal place of business in California.

37. Counterclaim Plaintiff iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond GBP Hedged UCITS ETF (Dist), is a holder of 2024 Original Secured Notes. iShares VI Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

38. Counterclaim Plaintiff iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond CHF Hedged UCITS ETF (Dist), is a holder of 2024

Original Secured Notes and 2026 Original Secured Notes. iShares VI Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

39. Counterclaim Plaintiff iShares IV Public Limited Company, on behalf of its sub-fund iShares \$ Short Duration High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares IV Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

40. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Core 1-5 Year USD Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

41. Counterclaim Plaintiff iShares U.S. High Yield Fixed Income Index ETF (CAD-Hedged), (“iShares HY Fixed Income ETF CAD-Hedged”), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited, was a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares HY Fixed Income ETF CAD-Hedged was an Ontarian Trust with its principal place of business in Ontario, Canada. After the filing of the First New York Action, the iShares HY Fixed Income ETF CAD-Hedged merged with Plaintiff iShares U.S. High Yield Bond Index ETF (CAD-Hedged) (“iShares HY Bond Index ETF CAD-Hedged”), which is its successor in interest.

42. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Core Total USD Bond Market ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

43. Counterclaim Plaintiff iShares HY Bond Index ETF CAD-Hedged, by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares HY Bond Index ETF CAD-

Hedged is an Ontarian Trust with its principal place of business in Ontario, Canada. iShares HY Bond Index ETF CAD-Hedged is the successor in interest to iShares HY Fixed Income ETF CAD-Hedged.

44. Counterclaim Plaintiff iShares, Inc., on behalf of its series iShares US & Intl High Yield Corp Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares, Inc. is a Maryland corporation with its principal place of business in California.

45. Counterclaim Plaintiff BlackRock Bank Loan Fund, by its manager BlackRock Asset Management Ireland Limited, is a holder of 2026 Original Secured Notes. BlackRock Bank Loan Fund is an Irish Trust that maintains its registered office in Ireland.

46. Counterclaim Plaintiff BlackRock Floating Rate Income Trust is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Trust is a Delaware statutory trust with its principal place of business in Delaware.

47. Counterclaim Plaintiff BlackRock Limited Duration Income Trust is a holder of 2026 Original Secured Notes. BlackRock Limited Duration Income Trust is a Delaware statutory trust with its principal place of business in Delaware.

48. Counterclaim Plaintiff BlackRock Dynamic High Income Portfolio of BlackRock Funds II is a holder of 2026 Original Secured Notes. BlackRock Dynamic High Income Portfolio of BlackRock Funds II is a Massachusetts business trust with its principal place of business in Delaware.

49. Counterclaim Plaintiff BlackRock Floating Rate Income Portfolio of BlackRock Funds V is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Portfolio of BlackRock Funds V is a Massachusetts business trust with its principal place of business in Delaware.

50. Counterclaim Plaintiff BlackRock Managed Income Fund of BlackRock Funds II is a holder of 2026 Original Secured Notes. BlackRock Managed Income Fund of BlackRock Funds II is a Massachusetts business trust with its principal place of business in Delaware.

51. Counterclaim Plaintiff BlackRock Floating Rate Income Strategies Fund, Inc. is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Strategies Fund, Inc. is a Maryland corporation with its principal place of business in Delaware.

52. Counterclaim Plaintiff PSAM WorldArb Master Fund Ltd. is a holder of 2024 Original Secured Notes. PSAM WorldArb Master Fund Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

53. Counterclaim Plaintiff Rebound Portfolio Ltd. is a holder of 2024 Original Secured Notes. Rebound Portfolio Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

54. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Multi-Manager Alternatives Fund, is a holder of 2024 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

55. Counterclaim Plaintiff Lumyna Specialist Funds (formerly called Viaduct Invest FCP-SIF), on behalf of its sub-fund Event Alternative Fund, is a holder of 2024 Original Secured Notes. Lumyna Specialist Funds is an unincorporated joint ownership of assets – specialized investment fund, registered in Luxembourg.

56. Counterclaim Plaintiff Lumyna Investments Ltd., on behalf of its sub-fund PSAM Global Event UCITS Fund, is a holder of 2024 Original Secured Notes. Lumyna Investments Ltd. is a private limited company, with its registered office in the United Kingdom.

57. Counterclaim Plaintiff Kapitalforeningen PenSam Invest - PSI 84 US High Yield II is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Kapitalforeningen PenSam Invest - PSI 84 US High Yield II is an alternative investment fund (AIF) administered by Nykredit Portefølje Administration A/S, with a registered office in Denmark.

58. Counterclaim Plaintiff The New Zealand Guardian Trust Company Limited, as Trustee for AMP Wholesale High Yield Bond Fund, is the holder of 2024 Original Secured Notes and 2026 Original Secured Notes. AMP Wholesale High Yield Bond Fund is a New Zealand Unit Trust Fund, with a registered office in New Zealand. The New Zealand Guardian Trust Company Limited is a Trustee Company, with a registered office in New Zealand

59. Counterclaim Plaintiff UBS Fund Management (Switzerland) AG is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. UBS Fund Management (Switzerland) AG is a Swiss “Aktiengesellschaft”, with a registered office in Switzerland.

60. Counterclaim Plaintiff JNL Series Trust, on behalf of its series JNL/JPMorgan Global Allocation Fund, is a holder of 2026 Original Secured Notes. JNL Series Trust is a is a Massachusetts business trust with its principal place of business in Michigan.

61. Counterclaim Plaintiff JPMorgan Fund ICVC, on behalf of its sub fund JPM Global High Yield Bond Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Fund ICVC is an open-ended investment company with variable capital with its principal place of business in England.

62. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Income Builder Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

63. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Total Return Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

64. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Strategic Income Opportunities Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

65. Counterclaim Plaintiff JPMorgan Fund ICVC, on behalf of its sub fund JPM Multi-Asset Income Fund, is a holder of 2026 Original Secured Notes. JPMorgan Fund ICVC is an open-ended investment company with variable capital with its principal place of business in England.

66. Counterclaim Plaintiff Lincoln Variable Insurance Products Trust, on behalf of its series LVIP JPMorgan High Yield Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Lincoln Variable Insurance Products Trust is a Delaware statutory trust with its principal place of business in Indiana.

67. Counterclaim Plaintiff Advanced Series Trust, on behalf of its portfolio AST High Yield Portfolio, is a holder of 2026 Original Secured Notes. Advanced Series Trust is an open-ended management investment company with its principal place of business in Connecticut.

68. Counterclaim Plaintiff GIM Trust, on behalf of its series U.S. High Yield Bond Fund, is a holder of 2026 Original Secured Notes. GIM Trust is an open-ended Cayman Islands series trust with its registered office in the Cayman Islands.

69. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Global Allocation Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

70. Counterclaim Plaintiff HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. HSBC Institutional Trust Services (Asia) Limited is a public company limited by shares incorporated in Hong Kong with its principal place of business in Hong Kong. JPMorgan Multi Income Fund is a unit trust authorized as a collective investment scheme by the Hong Kong Securities and Futures Commission.

71. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Global Bond Opportunities Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

72. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Short Duration Core Plus Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

73. Counterclaim Plaintiff IBM 401(k) Plus Plan Trust, on behalf of the IBM 401(k) Plus Plan, is a holder 2026 Original Secured Notes. The IBM 401(k) Plan Trust is a retirement plan with its registered office in New York.

74. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

75. Counterclaim Plaintiff Migros-Pensoinskasse Fonds is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Migros-Pensoinskasse Fonds is a Swiss investment fund with its registered office in Switzerland.

76. Counterclaim Plaintiff J.P. Morgan Exchange-Traded Fund Trust, on behalf of its series JPMorgan Core Plus Bond ETF, is a holder of 2026 Original Secured Notes. J.P. Morgan

Exchange-Traded Fund Trust is a Delaware statutory trust with its principal place of business in New York.

77. Counterclaim Plaintiff HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Balanced Fund, is a holder of 2026 Original Secured Notes. HSBC Institutional Trust Services (Asia) Limited is a public company limited by shares incorporated in Hong Kong with its principal place of business in Hong Kong. JPMorgan Multi Balanced Fund is a unit trust authorized as a collective investment scheme by the Hong Kong Securities and Futures Commission.

78. Counterclaim Plaintiff Zurich American Insurance Company is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Zurich American Insurance Company is a company incorporated under the law of the State of New York with its principal place of business in Illinois.

79. Counterclaim Plaintiff NBI High Yield Bond ETF is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. NBI High Yield Bond ETF is an exchange-traded fund established as a trust under the laws of the Province of Ontario, Canada with its registered office in Canada.

80. Counterclaim Plaintiff Deferred Salary Plan of the Electrical Industry is a holder of 2024 Original Secured Notes. Deferred Salary Plan of the Electrical Industry is a Defined Contribution Profit-Sharing Plan with 401(k) and Roth features with its registered office in New York.

81. Counterclaim Plaintiff NBI Unconstrained Fixed Income ETF is a holder of 2026 Original Secured Notes. NBI Unconstrained Fixed Income ETF is an exchange-traded fund

established as a trust under the laws of the Province of Ontario, Canada with its registered office in Canada.

82. Counterclaim Plaintiff National Employment Savings Trust Corporation, in its capacity as trustee of the National Employment Savings Trust, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. National Employment Savings Trust Corporation is a public corporation established under the law of the United Kingdom with its principal place of business in England.

83. Counterclaim Plaintiff JPMorgan Trust II, on behalf of its series JPMorgan Core Plus Bond Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust II is a Delaware statutory trust with its principal place of business in New York.

84. Counterclaim Plaintiff JPMorgan Trust II, on behalf of its series JPMorgan High Yield Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust II is a Delaware statutory trust with its principal place of business in New York.

85. Counterclaim Plaintiff The Integrity Fund, on behalf of its series Integrity High Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Integrity Fund is a mutual fund managed and/or advised by Viking Fund Management, LLC, headquartered in Minot, North Dakota.

II. Debtor Counterclaim Defendants.

86. Counterclaim Defendant Wesco Aircraft Holdings, Inc. (*i.e.*, the Company) is a Delaware corporation. The Company has its principal place of business and chief executive office in Texas. The Company is the issuer of the Original Senior Secured Notes under the respective Governing Indentures.

87. The Guarantor Defendants that guaranteed the Company's obligations under the Governing Indentures comprise: Adams Aviation Supply Company Limited, a United Kingdom

entity; Flintbrook Limited, a United Kingdom entity; HAAS Chemical Management of Mexico, Inc., a Pennsylvania entity; HAAS Corporation of Canada, a Pennsylvania entity; HAAS Corporation of China, a Pennsylvania entity; HAAS Group International SCM Limited, a United Kingdom entity; HAAS Group International, LLC, a Pennsylvania entity; HAAS Group, LLC, a Delaware entity; HAAS Holdings, LLC, a Delaware entity; HAAS International Corporation, a Pennsylvania entity; HAAS of Delaware LLC, a Delaware entity; HAAS TCM Group of the UK Limited, a United Kingdom entity; HAAS TCM Industries LLC, a Delaware entity; HAAS TCM of Israel Inc., a Delaware entity; Interfast USA Holdings Incorporated, a Delaware entity; Netmro, LLC, a Florida entity; Pattonair Holding, Inc., a Delaware entity; Pattonair (Derby) Limited, a United Kingdom entity; Pattonair Europe Limited, a United Kingdom entity; Pattonair Group Limited, a United Kingdom entity; Pattonair Holdings Limited, a United Kingdom entity; Pattonair Limited, a United Kingdom entity; Pattonair USA, Inc., a Texas entity; Pioneer Finance Corporation, a Delaware entity; Pioneer Holding Corporation, a Delaware entity; Quicksilver Midco Limited, a United Kingdom entity; Uniseal, Inc., an Indiana entity; Wesco 1 LLP, a United Kingdom entity; Wesco 2 LLP, a United Kingdom entity; Wesco Aircraft Canada, LLC, a Delaware entity; Wesco Aircraft EMEA, Ltd., a United Kingdom entity; Wesco Aircraft Europe Limited, a United Kingdom entity; Wesco Aircraft Hardware Corp., a California entity; Wesco Aircraft International Holdings Limited, a United Kingdom entity; Wesco Aircraft SF, LLC, a Delaware entity; Wesco LLC 1, a Delaware entity; Wesco LLC 2, a Delaware entity; Wolverine Intermediate Holding II Corporation, a Delaware entity; and Wolverine UK Holdco Limited, a United Kingdom entity.⁵

⁵ The following debtors in these Chapter 11 proceedings did not guarantee the Company's obligations under the Governing Indentures and, therefore, have not been named as defendants in these Amended Counterclaims: (1) HAAS Group Canada, Inc., (2) Haas TCM de Mexico, S. de R.L. de C.V., (3) Wesco Aircraft Canada, Inc., and (4) Wolverine Intermediate Holding Corporation.

III. Non-Debtor Counterclaim Defendants.

88. Counterclaim Defendant Wilmington Savings Fund Society, FSB (*i.e.*, “WSFS”) is a federal savings bank with its principal place of business in Delaware. WSFS purportedly served as successor indenture trustee and collateral agent under the Governing Indentures from March 14, 2022, until May 26, 2023.

89. Counterclaim Defendant Platinum Equity Advisors, LLC (*i.e.*, the “Platinum Sponsor”) is a Delaware limited liability company with its principal place of business in California. The Platinum Sponsor is the private equity sponsor and a person in control of the Platinum-Controlled Parent and its subsidiaries, including the Company. Upon information and belief, the Platinum Sponsor is also the investment manager or advisor for the Platinum Fund and it often acted as agent for, and on behalf of, the Platinum-Controlled Parent and the Platinum Fund in connection with the Insider Transaction.

90. Counterclaim Defendant Wolverine Top Holding Corporation (*i.e.*, the “Platinum-Controlled Parent”) is a Delaware corporation and the indirect, 100% owner of the Company and its subsidiaries. The Platinum-Controlled Parent is an affiliate and person in control of the Company and the Guarantor Defendants.

91. Counterclaim Defendant Platinum Equity Capital Partners International, IV (Cayman) LP (*i.e.*, the “Platinum Fund”) is an affiliate of the Platinum-Controlled Parent and the Platinum Sponsor that was, upon information and belief, simultaneously invested in the Platinum-Controlled Parent and certain unsecured notes issued by the Company.⁶ The Platinum Fund is an

⁶ Upon information and belief, the Platinum-Controlled Parent also might have held a significant portion of the unsecured notes issued by the Company. In that regard, the Debtors’ statements in their *First Amended Complaint and Counterclaim Answer*, Adv. Pro. Docket No. 63 (the “FAC” or “Answer”), are inconsistent and ambiguous as to whether the Platinum Fund or some other Platinum entity had purchased the unsecured notes and subsequently exchanged them as part of the Insider Transaction. *Compare* FAC at 30 (referring to “Platinum Fund’s Unsecured Notes”) *with* Answer at 23-24 (admitting that “the Platinum Fund, or an affiliate thereof, held Unsecured Notes”). The

affiliate and insider of the Company. The Company’s consolidated financial statements for the three months ending March 31, 2022 have described the Platinum Fund as a “related part[y]” of the Company.

92. Counterclaim Defendants Silver Point Noteholders (the “Silver Point Noteholders”) include Silver Point Capital Fund, L.P.; Silver Point Capital Offshore Master Fund, L.P.; Silver Point Select Opportunities Fund A, L.P.; Silver Point Distressed Opportunities Fund, L.P.; Silver Point Distressed Opportunities Offshore Master Fund, L.P.; Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.; Silver Point Distressed Opportunity Institutional Partners, L.P.; Silver Point SCF CLO I, Ltd.; Silver Point Specialty Lending Fund; and Silver Point Specialty Credit Fund II Mini-Master Fund (Offshore), L.P. The Silver Point Noteholders are those noteholders who participated in the Insider Transaction as holders of 2026 Original Secured Notes and/or 2024 Original Secured Notes and for which Silver Point Capital, L.P.; Silver Point Distressed Opportunities Management, LLC; Silver Point Specialty Credit Fund Management, LLC; and Silver Point Specialty Credit Fund II Management, LLC act as investment or collateral manager.

93. Counterclaim Defendants PIMCO Noteholders (the “PIMCO Noteholders”) include PIMCO Tactical Income Opportunities Fund; PIMCO Global Income Opportunities Fund; PIMCO Tactical Income Fund; PIMCO Global StocksPLUS & Income Fund; PCM Fund, Inc.; PIMCO Strategic Income Fund, Inc.; PIMCO Corporate & Income Opportunity Fund; PIMCO High Income Fund; PIMCO Income Strategy Fund; PIMCO Income Strategy Fund II; PIMCO Corporate & Income Strategy Fund; PIMCO Dynamic Income Opportunities Fund; PIMCO

2024/2026 Holders reserve the right to further amend these Amended Counterclaims if discovery reveals that the Platinum-Controlled Parent held some or all of the unsecured notes that are alleged herein to have been held by the Platinum Fund.

Dynamic Income Fund; PIMCO ETFs plc, PIMCO US Short-Term High Yield Corporate Bond Index UCITS ETF (previously identified as PIMCO Fixed Income Source ETFs plc, PIMCO Short-Term High Yield Corporate Bond Index Source UCITS ETF); PIMCO Flexible Credit Income Fund; PIMCO Funds: PIMCO Low Duration Credit Fund; PIMCO Funds: PIMCO High Yield Spectrum Fund; PIMCO ETF Trust: PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund; OC III LVS I LP; PIMCO Tactical Opportunities Master Fund Ltd.; PIMCO OP Trust Flexible Credit Fund, L.P.; PIMCO DISCO Fund III LP; Texas Children's Hospital Foundation; Bakery and Confectionery Union and Industry International Pension Fund; Employees' Retirement System of the State of Rhode Island; Desjardins Floating Rate Income Fund; Desjardins Global Tactical Bond Fund; and BMO Global Strategic Bond Fund. The PIMCO Noteholders are those noteholders who participated in the Insider Transaction as holders of 2026 Original Secured Notes and/or 2024 Original Secured Notes and for which Pacific Investment Management Company LLC acts as investment manager, adviser, or sub-adviser.

94. Counterclaim Defendants Carlyle Noteholders (the "Carlyle Noteholders") include CCOF Onshore Co-Borrower LLC, CSP IV Acquisitions, L.P., and CCOF Master, L.P. The Carlyle Noteholders are those noteholders who participated in the Insider Transaction as holders of Unsecured Notes (as defined in Paragraph 117, below) issued by the Company and who are managed or advised by The Carlyle Group L.P. or its affiliates.

95. Counterclaim Defendant Senator Global Opportunity Master Fund L.P. (the "Senator Noteholder") participated in the Insider Transaction as a holder of the 2024 Original Secured Notes, the 2026 Original Secured Notes, and Unsecured Notes issued by the Company and is managed or advised by Senator GP LLC.

96. Counterclaim Defendant Citadel Equity Fund Ltd. (the “Citadel Noteholder”) participated in the Insider Transaction as a holder of 2026 Original Secured Notes issued by the Company and is managed or advised by Citadel Advisors LLC.

97. Counterclaim Defendant Spring Creek Capital LLC (the “Spring Creek Noteholder”) participated in the Insider Transaction as a holder of Unsecured Notes issued by the Company and, on information belief, is beneficially owned by SCC Holdings, LLC.

Subject Matter Jurisdiction and Venue

98. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

99. Venue of this adversary proceeding in this Court is proper pursuant to 28 U.S.C. § 1409 because this is the district in which the related bankruptcy case is pending.

100. The 2024/2026 Holders’ claims for equitable subordination and equitable lien are core claims for which the 2024/2026 Holders consent to entry of a final order or judgment by this Court.

101. The 2024/2026 Holders’ declaratory judgment claims are non-core claims for which, pursuant to the Scheduling Order, the 2024/2026 Holders do not consent to entry of a final order or judgment by this Court.

102. Pursuant to Bankruptcy Rule 7008, the 2024/2026 Holders do not consent to the entry of final orders or judgment by this Court in connection with this adversary proceeding if it is determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Personal Jurisdiction

103. All Debtor Counterclaim Defendants are subject to the jurisdiction of this Court as debtors in the related bankruptcy cases.

104. Additionally, each Counterclaim Defendant is subject to personal jurisdiction pursuant to Federal Rule of Bankruptcy Procedure 7004 because each Counterclaim Defendant herein has established minimum contacts with the United States.

105. The Debtor Counterclaim Defendants are parties to the Governing Indentures, which include consent to the jurisdiction of courts in the United States, namely in the State of New York.

106. WSFS was a party to the Governing Indentures, which include consent to the jurisdiction of courts in the United States, namely in the State of New York.

107. The Favored Noteholders are parties to the Exchange Agreement (as defined in Paragraph 162, below), which includes a consent to the jurisdiction of courts in the United States, namely in the State of New York.

108. Where a federal statute or rule provides for nationwide service of process, as does Bankruptcy Rule 7004, a federal court has personal jurisdiction over any defendant having minimum contacts with the United States.

109. Accordingly, this Court has personal jurisdiction over the Counterclaim Defendants based on their contacts with the United States.

Factual Allegations

I. The Company.

110. The Company is the product of a 2020 merger between Wesco and Pattonair, a portfolio company of the Platinum Sponsor.

111. According to the Debtors, “[t]he Company provides customizable and often on-demand supply chain management services to manufacturers and maintenance providers across several industries, with a focus on the commercial and defense aerospace industry.” Declaration

of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions, dated June 1, 2023, (Case No. 23-90611, Docket No. 13) (the “Carney Decl.”) ¶ 20.

112. Since their acquisition of the Company in January 2020, the Platinum-Controlled Parent and the Platinum Sponsor have controlled the Company. The Platinum-Controlled Parent is an indirect parent of the Company. Each year, the Company is obligated to pay the Platinum Sponsor approximately \$7 million in consulting fees, plus other fees and expenses.

113. The Company states that it is owned “by a chain of three holding companies: Wolverine Intermediate Holding II Corporation . . . [is directly owned by] Wolverine Intermediate [Holding Corp.] . . . [which in turn is directly owned by]” the Platinum-Controlled Parent. Carney Decl. ¶ 39.

114. Upon information and belief, the Platinum Fund owns or controls more than 20% of the voting shares of the Platinum-Controlled Parent, and it and the Company are under the common control of the Platinum Sponsor.

115. The board of directors (the “Board”) of Wolverine Intermediate Holding Corp. (“Wolverine Intermediate”) is composed of individuals selected and controlled by the Platinum Sponsor. Except for the later-appointed director Patrick Bartels, whom the Debtors describe as “independent,” the Debtors do not hold out members of the Board as being independent from the Platinum Sponsor or the Debtors.

116. At the time of the Insider Transaction, the Board consisted entirely of the following senior executives and officers of the Platinum Sponsor, apart from Mr. Bartels:

- Mary Ann Sigler, Chief Financial Officer of the Platinum Sponsor;
- John G. Holland, Managing Director and General Counsel of the Platinum Sponsor;
- Louis Samson, Co-President of the Platinum Sponsor;

- Michael Fabiano, Managing Director of the Platinum Sponsor; and
- Malik Vorderwuelbecke, Managing Director of the Platinum Sponsor

(collectively with Mr. Bartels, the “Directors”).

II. The Governing Indentures.

117. To finance the acquisition in January 2020 that led to the 2020 merger between Wesco and Pattonair, the Company sold three debt issuances: (i) \$650 million in 2024 Original Secured Notes; (ii) \$900 million in 2026 Original Secured Notes; and (iii) \$525 million in unsecured notes due 2027 (the “Unsecured Notes”).

118. Platinum could not finance its acquisition of the Company on the terms initially proposed to the market. After Platinum and the Company were unable to obtain a syndicated loan, they turned to the high-yield bond market. By the time the acquisition financing was finalized in the Governing Indentures, it included many terms more favorable to creditors than those initially proposed by the Company. The Governing Indentures were negotiated with purchasers and potential purchasers of the Notes before the issuance and contain protections against position-enhancing transactions of precisely the sort here.

119. To secure payment of principal and interest on the Original Secured Notes, the Company granted liens (the “Liens”) on specifically identified assets of the Company (the “Collateral”) to the holders of the Original Secured Notes. The Liens and Collateral are memorialized in the Governing Indentures and an array of security documents, including intercreditor agreements, pledges, deeds, mortgages, and other instruments securing the Notes (together, the “Security Documents”).

120. Additionally, the Guarantor Defendants guaranteed the Company’s payment obligations under the Governing Indentures as well as under the indenture for the Unsecured Notes (the “Unsecured Indenture”).

121. The Governing Indentures limit the Company’s ability to issue additional 2024 Original Secured Notes or 2026 Original Secured Notes to dilute the rights of existing holders by issuing new debt or creating new liens.

122. Specifically, Section 2.01(e) of the Governing Indentures states that the Company’s “ability to issue Additional Secured Notes *shall be subject to* the Issuer’s compliance with Sections 4.09 and 4.12 hereof.” (Emphasis added.) The Governing Indentures’ definition of “Additional Secured Notes” also refers to Section 2.01(e) and thus, in turn, Section 4.12.⁷

123. Section 4.12(a) of the Governing Indentures—which pursuant to Section 2.01 is a predicate to the issuance of *any* Additional Secured Notes—provides that:

The Issuer *will not*, and will not permit any Subsidiary Guarantor, if any, to, *directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind (other than Permitted Liens)*, securing Indebtedness of the Issuer or such Subsidiary Guarantor, if any, on any property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom.

(Emphasis added.)

124. Permitted Liens are defined in Section 1.01 of the Governing Indentures to include, *inter alia*, the Liens that secured the Original Secured Notes.

125. Section 4.09 of the Governing Indentures—which pursuant to Section 2.01 is also a predicate to the issuance of *any* Additional Secured Notes—protects the Original Secured Notes by restricting the incurrence of additional indebtedness other than “Permitted Indebtedness.”

126. Permitted Indebtedness is defined in Section 4.09(b) of the Governing Indentures to include, *inter alia*, the 2024 Original Secured Notes and 2026 Original Secured Notes.

⁷ All provisions of the 2026 Original Secured Note Indenture and 2024 Original Secured Note Indenture relevant to these Amended Counterclaims are substantively identical. All references to “Section” herein are to the 2026 Original Secured Note Indenture unless otherwise specified.

127. As further protection, the Governing Indentures restrict the Company's ability to amend, supplement or waive certain rights without meeting holder consent thresholds.

128. Under Section 9.02 of the Governing Indentures, supermajority consent is required for any amendments or modifications affecting the Liens, Collateral, or Security Documents. It provides in relevant part that, without consent "of at least 66⅔% in aggregate principal amount of the Secured Notes then outstanding . . . no amendment, supplement, or waiver may":

(1) *have the effect of releasing all or substantially all of the Collateral from the Liens* created pursuant to the Security Documents (except as permitted by the terms of this Indenture, the Security Documents or the Intercreditor Agreements) *or changing or altering the priority of the security interests of the Holders* of the [Originally] Secured Notes in the Collateral under the ABL Intercreditor Agreement or the Pari Passu Intercreditor Agreement,

(2) *make any change* in the Security Documents, the Intercreditor Agreements or the provisions in this Indenture dealing with the application of proceeds of the Collateral that would *adversely affect the Holders* of the [Originally] Secured Notes or

(3) *modify the security Documents or the provisions of this Indenture dealing with Collateral in any manner adverse to the Holders* of [Originally] Secured Notes in any material respect other than in accordance with the terms of this Indenture, the Security Documents or the Intercreditor Agreements.

(Emphasis and paragraph breaks added.)

129. Additionally, the Governing Indentures protect the 2024/2026 Holders' security interests in the Collateral in a variety of other ways. For example, Section 6.01 of the Governing Indentures protects the Liens created for the benefit of the Original Secured Notes. Under Section 6.01, "[e]ach of the following is an 'Event of Default'":

[A]ny material provision of any Security Document or Intercreditor Agreement with respect to the [Original Secured Notes] ceases to be in full force and effect for any reason other than in accordance with the terms of [the Governing Indentures]

* * *

[A]ny Security Document covering a material portion of the Collateral for any reason (other than pursuant to the terms hereof) ceases to create a valid and perfected first-priority or second-priority Lien, as applicable, on, and security interest in, any material Collateral covered thereby with respect to the [Original Secured Notes].

130. Section 9.02 also codifies the 2024/2026 Holders’ “sacred rights” under the Governing Indentures, which include, among other rights, a requirement that each affected holder consent to any amendment that “make[s] any change to, or modif[ies], the ranking of the [Notes] in respect of right of payment that would adversely affect the Holders of the [Notes].”

131. Section 6.06 of the Governing Indentures provides that one group of holders of the Notes “may not use” the Governing Indentures “to prejudice the rights of another or to obtain a preference or priority over another” group of noteholders.

132. Finally, Section 3.02 of the Governing Indentures requires that, unless the company redeems 100% of the Original Secured Notes (which it did not do here), any Original Secured Note to be redeemed or purchased must be selected by the indenture trustee either pro rata, by lottery, or by some other “fair and appropriate” method.

133. Many of the 2024/2026 Holders purchased their Notes at or near the time of their initial issuance and have continued to hold those Notes through today.

III. Origins of the Insider Transaction.

134. As the Company noted in the Carney Declaration:

The COVID-19 pandemic in early 2020 devastated the aerospace industry. The Company’s business was no exception. Travel restrictions were implemented early in the pandemic and grounded most of the global commercial airline fleet, causing customer demand for parts and services to decrease rapidly. Notably, COVID-19 occurred just as the Company was formed through the consolidation of Wesco and Pattonair

Carney Decl. ¶ 8.

135. In July 2020, shortly after that consolidation, the Company revealed that the Platinum Fund had been buying Unsecured Notes on the secondary market. Although the Company failed to disclose how many Unsecured Notes the Platinum Fund purchased, or the prices it paid, market data from the relevant time period reveals an average trading price of 69 cents on the dollar. In November 2020, the Company also issued the Platinum-Controlled Parent a \$25 million unsecured promissory note.

136. The Platinum Fund's motives for acquiring the Unsecured Notes are now clear. Given the financial straits the Company was facing due to COVID-19, and the likelihood that the Platinum-Controlled Parent's equity stake would be wiped out if the Company continued to struggle, the Platinum Fund, upon information and belief, actively sought a position in the Company's debt structure that it and the Platinum Sponsor could monetize in a restructuring by virtue of the Platinum-Controlled Parent's and the Platinum Sponsor's absolute control over the Company. Had any of the Platinum entities sought to support the Company and its various stakeholders, they could have provided significant debt relief by retiring the Unsecured Notes acquired by the Platinum Fund or by forgiving the \$25 million promissory note issued to the Platinum-Controlled Parent. The Platinum Sponsor could also at any time have waived its \$7 million annual consulting fee.

137. In late 2021, Platinum and the Company retained advisors and began exploring an out-of-court recapitalization.

138. Upon information and belief, the Platinum Creditors, the Company, and their advisors did not initiate contact with more than one lending group regarding financing opportunities.

139. The Platinum Creditors and the Company did not disclose its exploration of an out-of-court recapitalization to the market, but the news leaked on February 7, 2022.

140. On that date, Debtwire published an article titled “Wesco Aircraft in talks with select holders for priming roll-up and new capital injection.” The article reported that discussions were ongoing between certain of the Favored Noteholders and the Company about an out-of-court recapitalization, which would eventually become the Insider Transaction. The article described a framework under which the Favored Noteholders would exchange their holdings of Original Secured Notes into a new senior secured debt facility. According to the article, “[s]uch an uptier deal would effectively reduce the economics for existing bondholders by stripping out liens under its bond indentures.”

141. After Debtwire’s report, certain 2024/2026 Holders became part of an ad hoc group that held, among other interests, more than one-third of the 2026 Original Secured Notes (the “Ad Hoc Group”). The Ad Hoc Group immediately hired legal and financial advisors and instructed those advisors to prepare alternative financing proposals that would be open to all secured noteholders, not just a subset of them.

142. Consistent with that mandate, the Ad Hoc Group’s advisors submitted a first proposal to the Company on March 6, 2022 (the “First Bid”). The First Bid contemplated liquidity enhancements through an up-front investment and through cash interest savings achieved through an exchange of Original Secured Notes into new payment-in-kind bonds. Additional savings would be achieved if, as contemplated by the First Bid, (i) the Platinum Fund would agree to convert its Unsecured Notes to payment-in-kind bonds and (ii) the Platinum Sponsor would waive its \$7 million annual consulting fee.

143. The First Bid was what the market has come to refer to as a “pro rata” proposal, which allowed *all* holders of Original Secured Notes to participate in the contemplated transaction, thus eliminating any material risk of litigation.

144. Subsequently, on March 11, 2022, the Ad Hoc Group’s advisors submitted to the Company a second financing proposal (the “Second Bid” and together with the First Bid, the “Bids”), which provided the Company the option of drawing even more capital. The Second Bid was driven by the Company’s changing indications to the Ad Hoc Group’s advisors of the size of its liquidity need. As with the First Bid, the Second Bid was a pro rata proposal that was open to all holders of Original Secured Notes, did not require a complete overhaul of the Company’s capital structure to implement, and did not carry material litigation risk. The Bids did not propose that the Company would have any indemnification obligations.

145. After delivery of the Ad Hoc Group’s Bids, the Ad Hoc Group repeatedly asked the Company for access to material non-public information about the Company to refine its Bids and to help the Company solve its immediate liquidity issues. But then, on March 29, 2022, the Company simply announced the completion of the Insider Transaction without ever formally countering any of the Ad Hoc Group’s Bids or sharing with the Ad Hoc Group the details of the Insider Transaction.

146. The Company did not “engage[] in good faith negotiations with all its stakeholder groups” from the outset, as it claims. Carney Decl. ¶ 10.

147. All of the 2024/2026 Holders held Notes at the time of the Insider Transaction. Many of the 2024/2026 Holders purchased their Notes at or around the time of the initial issuance and have continued to hold those Notes through today.

IV. The Insider Transaction.

148. To implement the Insider Transaction on March 28, 2022, the Company and others simultaneously executed at least ten integrated written agreements, including an unauthorized amendment to the Governing Indentures that was artificially labeled as two amendments: the “Third Supplemental Indenture” and the “Fourth Supplemental Indenture” (together, the “Unauthorized Amendments”).⁸

149. Under the Governing Indentures as they existed without the Unauthorized Amendments, the Company could not issue more than approximately \$75 million in pari passu first lien secured debt.

150. The Unauthorized Amendments purported to modify the Governing Indentures to allow for the issuance by the Company of \$250 million in “Additional Secured Notes”—*i.e.*, the Phantom Notes.

151. Under the Governing Indentures, the issuance of Additional Secured Notes was subject to Section 4.12 and therefore could not “*directly or indirectly create, incur, assume or suffer to exist any Lien of any kind*” other than the Permitted Liens.

152. The Third Supplemental Indenture was not consented to by a supermajority of the 2026 Original Secured Notes then outstanding.

⁸ The Third Supplemental Indenture and the Fourth Supplemental Indenture are a single, integrated amendment executed simultaneously for a singular purpose and, therefore, the Amended Counterclaims’ use of the plural “Unauthorized Amendments” herein is solely for convenience. The Third Supplemental Indenture and Fourth Supplemental Indenture were executed for each of the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture. As with the Governing Indentures, the supplemental indentures for the 2024 Original Secured Notes and the 2026 Original Secured notes are substantially similar to one another for the purposes of these Amended Counterclaims. The Third Supplemental Indenture and Fourth Supplemental Indenture to the 2024 Original Secured Note Indenture were filed as Adv. Pro., Docket Nos. 12-13 and 12-14, respectively. The Third Supplemental Indenture and Fourth Supplemental Indenture to the 2026 Original Secured Note Indenture were filed as Adv. Pro., Docket Nos. 12-10 and 12-11, respectively.

153. The Company purported to issue the Phantom Notes only to certain Favored Noteholders to dilute the Ad Hoc Group's one-third holding in the 2026 Original Secured Notes to give those Favored Noteholders an artificial supermajority.

154. The purpose of the Phantom Notes was not to provide the Company with additional liquidity as the Debtors claim. The Phantom Notes, rather, were an unauthorized means of manufacturing feigned supermajority consent to terminating the Security Documents and discharging all of the 2024/2026 Holders' Liens on Collateral.

155. New liquidity could have been provided in a much more rational fashion by issuing additional super-priority secured debt with supermajority consent and thus without breaching the Governing Indentures. Instead, the Company chose subterfuge and favoritism by issuing Phantom Notes at par and simultaneously exchanging them for New 1L Notes at par, even though the Original Secured Notes were trading as low as 84 cents in the months leading up to the Insider Transaction.

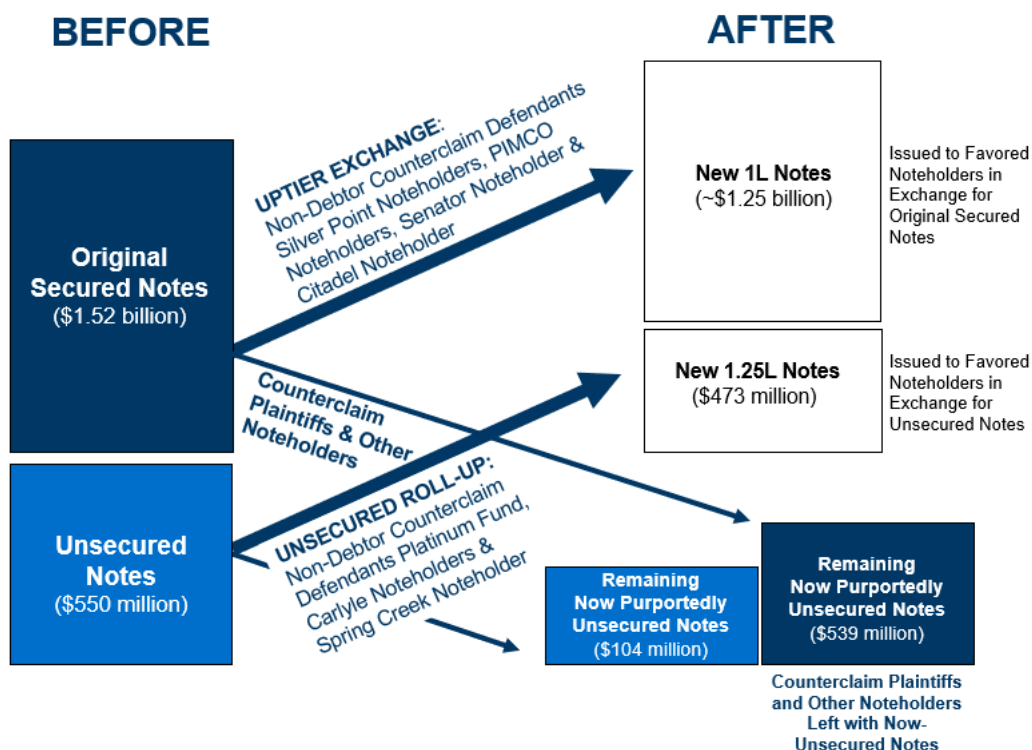
156. The purported effect of the Unauthorized Amendments—and their purpose—was to “release[], terminate[], and discharge[] in full” all of the Liens securing the 2024/2026 Holders' Notes and issue new unpermitted liens such that the 2024/2026 Holders' Notes, supposedly, would “represent unsecured obligations of the Company.”

157. The apparition-like existence of the Phantom Notes—which were simultaneously issued, voted, exchanged, and cancelled as part of one transaction—confirms that their purpose was to subvert the 2024/2026 Holders' supermajority consent rights in violation of the Governing Indentures and underscores the singular, integrated nature of the interwoven agreements comprising the Insider Transaction.

158. In the Uptier Exchange, certain Favored Noteholders exchanged Original Secured Notes and Phantom Notes, at par, for approximately \$1.27 billion of new, first lien secured notes (the “New 1L Notes”), which purportedly rank senior to the 2024/2026 Holders’ now-unsecured notes.

159. In the Unsecured Roll-up, certain Favored Noteholders exchanged Unsecured Notes, together with the \$25 million unsecured promissory note held by the Platinum-Controlled Parent, at par, for approximately \$473 million of newly issued 1.25 lien secured notes (the “New 1.25L Notes”), which also purportedly rank senior to the 2024/2026 Holders’ now-unsecured notes. Prior to the roll-up, the Unsecured Notes were trading at approximately 40 cents on the dollar.

160. A simplified depiction of the Company’s debt structure before and after the Insider Transaction is below:



161. The Insider Transaction purported to rank the Favored Noteholders’ and the Platinum Creditors’ rights to repayment ahead of the 2024/2026 Holders’ Notes. Although the New 1L Notes are nominally due in November 2026, by design they would actually mature in October 2024—*before* both the 2024 Original Secured Notes and the 2026 Original Secured Notes—because the indenture for the New 1L Notes contains a “springing maturity” provision whereby those notes would come due in October 2024 if more than \$50 million of the 2024 Original Secured Notes remained outstanding as of that date. The 2024/2026 Holders own more than that amount of the 2024 Original Secured Notes, practically ensuring that the provision would be triggered. The New 1L Notes would also be paid before the Original Secured Notes are paid from the Collateral because the New 1L Notes are purportedly secured while the Original Secured Notes are purportedly unsecured.

162. In total, to effectuate the Insider Transaction, the Counterclaim Defendants simultaneously executed at least:

- Six amendments to the notes indentures, including the Unauthorized Amendments to the Governing Indentures and two other supplemental indentures for the Unsecured Notes (*see* Adv. Pro., Docket No. 12-7; 12-8; 12-10; 12-11; 12-13; and 12-14);
- One note purchase agreement pursuant to which the Company issued the Phantom Notes (the “Phantom Note Purchase Agreement”) (*see* Adv. Pro., Docket No. 12-15);
- One exchange agreement pursuant to which the Favored Noteholders—including the Platinum Fund and the Platinum-Controlled Parent—exchanged their existing Original Secured Notes (plus the Phantom Notes) and/or their unsecured notes for the New 1L Notes and New 1.25L Notes, respectively (the “Exchange Agreement”) (*see* Adv. Pro., Docket No. 12-18); and
- Two new indentures pursuant to which the Company issued the New 1L Notes and New 1.25L Notes (*see* Adv. Pro., Docket No. 12-16 and 12-17).

(collectively, the “Insider Transaction Documents”).

163. All of the Insider Transaction Documents were, upon information and belief, prepared before March 28, 2022. And the Insider Transaction Documents include signatures that were affixed before March 28, 2022.

164. Likewise, all of the Insider Transaction Documents were prepared and executed with the understanding that they constituted a single transaction and were prearranged to accomplish one purpose: the Insider Transaction. For example:

- The Favored Noteholders provided authorization letters to consent to the Third Supplemental Indenture and the Fourth Supplemental Indenture that *pre-date* March 28, 2022, the date of the Insider Transaction.
- The authorization letters to consent to the Third Supplemental Indenture “make reference” to both the Third Supplemental Indenture *and* the Exchange Agreement.
- The Exchange Agreement specifically recites that it was entered into “in connection with” the Phantom Note Purchase Agreement and “to enter into” the Fourth Supplemental Indenture, and it separately refers to the “Additional 2026 [Original Secured] Notes”—i.e., the Phantom Notes—when reciting the basis for asserting supermajority consent.
- The Favored Noteholders themselves, in their briefing in the First New York Action, labeled the Unauthorized Amendments, and the Insider Transaction, as a “package deal.” *SSD Investments Ltd., et al. v. Wilmington Savings Fund Society, FSB, et al.*, Index No. 654068/2022, Docket No. 117, at 14.
- The Company’s counsel described the Insider Transaction in open court as “one liquidity transaction,” noting that while it consisted of “steps [that] are sequential, they’re all part of the same transaction.” *See* Transcript of June 6, 2023 Emergency Motion Hearing, Case No. 23-03091, Adv. Pro., Docket No. 38, at 44:13-16.

165. The Insider Transaction Documents refer to each other numerous times, and they make no business sense unless they are considered as part of a single, integrated transaction.

166. For example, no rational economic holder of the Original Secured Notes would vote to strip themselves of their security interests in the Collateral without being assured by the Company in advance that their Notes would simultaneously be exchanged for New 1L Notes. Likewise, no rational investor would have purchased the Phantom Notes at or near par but for the

precondition that they would be simultaneously exchanged by the Company for the New 1L Notes given that the Original Secured Notes were trading at approximately 84 cents before news leaked of a potential transaction.

167. In the Unsecured Roll-up, the Carlyle Noteholders exchanged more than half of all Unsecured Notes for new, secured 1.25L notes at par, even though the Unsecured Notes were trading at approximately 40 cents. Platinum and the Company directed this lucrative benefit to the Carlyle Noteholders because, as the holders of a majority of the Unsecured Notes, their consent was necessary to carry out the other aspects of the integrated Insider Transaction. Notably, the Carlyle Group was a previous owner of the Company.

168. The Platinum Fund's participation in the Unsecured Roll-up had no valid business justification for the Company. That is because the Unsecured Indenture provides that Unsecured Notes held by the Company or its affiliates are disregarded for voting purposes. *See* Adv. Pro., Docket No. 12-18 at § 9.02. In turn, "Affiliate" is defined to include entities with control over the Company. The Platinum Fund is therefore an Affiliate and its holdings of Unsecured Notes would not count when calculating voting majorities. Because the Platinum Fund and the Company are "Affiliates," as defined by the Unsecured Indenture, they were prohibited from voting their Unsecured Notes in connection with any proposed amendments, supplements, or waivers. Thus, there was no justification for the Company to extend the Platinum Fund the same opportunity as the Carlyle Noteholders to participate in the Unsecured Roll-up. Nevertheless, the Platinum Fund was able to exchange its Unsecured Notes for the vastly more valuable secured New 1.25L Notes.

169. Similarly, there was no valid business justification for the Company to include the \$25 million unsecured promissory note held by the Platinum-Controlled Parent in the Unsecured Roll-up. Upon information and belief, the consent of the Platinum-Controlled Parent under that

promissory note was not required to amend the Governing Indentures. Nevertheless, as part of the Unsecured Roll-up, the Platinum-Controlled Parent exchanged its \$25 million unsecured promissory note for the vastly more valuable New 1.25L Notes.

170. Moreover, after the Insider Transaction closed, the Company and the Favored Noteholders proceeded to engage in several follow-on exchanges under the Exchange Agreement and the Phantom Note Purchase Agreement that appear to have been done at face value when the Original Secured Notes were generally trading anywhere from 50-70 cents on the dollar, with some exchanges made shortly before the petition date when the notes were trading at less than 12 cents. Through these follow-on exchanges, the Favored Noteholders thus appear to have obtained a further windfall and enhanced their position.

V. Breaches of the Governing Indentures.

a. Breaches of the 2026 Original Secured Note Indenture.

171. Section 2.01(e) of the Governing Indentures requires that the Company’s “ability to issue Additional Secured Notes shall be subject to the [Company’s] compliance with Sections 4.09 and 4.12 hereof.” Section 4.12, in turn, provides that “[t]he [Company] will not, and will not permit any Subsidiary Guarantor, if any, to, *directly or indirectly*, create, incur, assume or suffer to exist any Lien of any kind (other than Permitted Liens), securing Indebtedness of the Issuer.” (Emphasis added.)

172. The Company violated these provisions of the Governing Indentures by issuing Additional Secured Notes—a.k.a., the Phantom Notes— “to *directly or indirectly* create, incur, assume or suffer to exist any Lien of any kind” other than Permitted Liens.

173. The Phantom Notes were issued by the Company, at the direction of the Platinum-Controlled Parent and the Platinum Sponsor and with the approval of the Board and complicity of the Favored Noteholders, in breach of the Governing Indentures.

174. Additionally, Section 9.02 of the 2026 Original Secured Note Indenture provides that, “without the consent of 66⅔ percent in aggregate principal amount of the 2026 Secured Notes *then outstanding*”—which the Company *did not* have—“no amendment, supplement or waiver may (1) *have the effect* of releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents . . . or changing or altering the priority of the security interests of the Holders of the 2026 [Senior] Secured Notes[.]” Section 9.02 also prohibits any amendments that “(2) make *any* change in the Security Documents, the Intercreditor Agreements or the provisions in this Indenture dealing with the application of proceeds of the Collateral *that would adversely affect* the Holders of the 2026 [Senior] Secured Notes or (3) *modify* the Security Documents or the provisions of this Indenture dealing with Collateral *in any manner adverse* to the Holders of the 2026 [Senior] Secured Notes in any material respect[.]”

175. The Phantom Notes could not grant the supermajority consent required to approve the Unauthorized Amendments.

176. For example, under the terms of the Governing Indentures, the phrase “*then outstanding*” can refer only to 2026 Original Secured Notes outstanding *before* consent is given. The Phantom Notes were not “then-outstanding” when the Counterclaim Defendants effected the Insider Transaction, which was executed via multiple documents, but are part of a single integrated agreement under applicable New York law. Furthermore, the Phantom Notes were not “then outstanding” when authorization letters were obtained before March 28, 2022.

177. For these and the other reasons set forth herein, the Phantom Notes are a nullity for purposes of the consent requirement under Section 9.02.

178. The Company did not have supermajority consent for the Insider Transaction, and thus the Company breached all three disjunctive subsections of Section 9.02 requiring

supermajority consent because the Unauthorized Amendments (1) “ha[d] the effect” of “releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents . . . or changing or altering the priority of the security interests of the Holders of the 2026 Secured Notes,” (2) changed provisions in the relevant documents dealing with the application of proceeds of the Collateral that adversely affected the holders of the Original Secured Notes, and (3) modified the relevant documents dealing with the Collateral in a manner materially adverse to the holders of the Original Secured Notes.

179. The Company likewise violated the Governing Indentures by, among other things, authorizing and issuing secured indebtedness that was neither Permitted Indebtedness nor consented to by a supermajority.

180. Any interpretation of the Governing Indentures advanced by the Counterclaim Defendants that purportedly allows supermajority consent requirements to be circumvented by the issuance of Phantom Notes would render Section 9.02, as well as Sections 4.09 and 4.12, meaningless. For example, if the Company, the indenture trustee, and a simple majority of Original Secured Notes could collude to amend the Governing Indentures so that a simple majority of holders could vote as a purported supermajority that was lacking immediately before their scheme (and obtained only because of their scheme), the supermajority consent requirement is meaningless. This would eviscerate supermajority consent rights and the restrictions on issuing additional notes, which are specifically negotiated by sophisticated market participants to protect against transactions like the Insider Transaction.

b. Breaches of both the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture.

181. Section 9.02 of the Governing Indentures provides that without the consent of each “*affected*” holder—which the Company did not have for the Insider Transaction—it cannot “make

any change to, or modify the ranking of the [Original] Secured Notes in respect of right of payment that would adversely affect the Holders of the [Original] Secured Notes[.]”

182. The Insider Transaction made a change to or modified the ranking of the 2024/2026 Holders’ Original Secured Notes in respect of right of payment, including by purporting to strip the 2024/2026 Holders’ Liens and to issue New 1L Notes with a “springing maturity” so that they would come due before the Original Secured Notes. The Insider Transaction thus purported to put the Original Secured Notes at the back of the line for payment, allowing the Favored Noteholders to jump ahead and leave the 2024/2026 Holders holding the proverbial empty bag.

183. The Company did not have the consent of all holders of the Original Secured Notes “affected” by the Insider Transaction.

184. Because the Insider Transaction made a “change to” or “modif[ied]” the “ranking of the Secured Notes in respect of right of payment that would adversely affect the Holder of the Secured Notes” without the consent of all “affected” holders, the Insider Transaction breached both the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture.

185. Additionally, the Original Secured Notes redeemed or purchased in the Insider Transaction were not selected by the indenture trustee pro rata, by lottery, or by any other “fair and appropriate” method, as required by Section 3.02.

c. Complicity of WSFS as successor trustee.

186. The Bank of New York Mellon Trust Company, N.A. (“BNY”) initially served as indenture trustee for the Governing Indentures. Not coincidentally, however, in the run-up to the Insider Transaction, BNY resigned as indenture trustee and was replaced by WSFS with the consent of the Favored Noteholders. Upon information and belief, Platinum and the Favored Noteholders needed a conduit that would violate the Governing Indentures in a manner that favored them and harmed the 2024/2026 Holders. They appointed WSFS.

187. As an initial matter, WSFS was never eligible under the Governing Indentures to serve as indenture trustee. Under Section 7.10 of the Governing Indentures, the indenture trustee must be a “corporation or national banking association organized and doing business under the laws of the United States of America or of any state thereof.” WSFS is a federal savings bank organized under the Home Owners’ Loan Act. WSFS is thus neither a “corporation” nor a “national association.”

188. The Unauthorized Amendments—which WSFS signed purportedly on behalf of all holders of the Original Secured Notes—are violently detrimental to the rights of those Notes. For example, Section 3(b) of the Fourth Supplemental Indenture purported to release the Liens in the Collateral securing the 2024/2026 Holders’ Notes and directs that WSFS as Notes Collateral Agent “take all actions . . . to provide evidence that the Liens shall cease to secure” the 2024/2026 Holders’ Notes. Also, Section 2(a) of the Fourth Supplemental Indenture purported to delete Sections 6.01(9) and (10) of the Governing Indentures, which trigger Events of Default when any material provision of the Security Documents or Intercreditor Agreements cease to be in full force and effect, or if the Liens lose their priority. The Insider Transaction triggered Events of Default under both of those provisions.

189. The Insider Transaction also attempted to entrench WSFS and thereby impede litigation by holders of the Original Secured Notes harmed by the Insider Transaction, such as the 2024/2026 Holders. The Unauthorized Amendments purport to delete the second sentence of Section 7.08(c) of the Governing Indentures, which gives holders with more than 50 percent of each of the 2026 Original Secured Notes and 2024 Original Secured Notes the right to remove and replace any successor trustee (as WSFS was) with a trustee of their choosing within a year of that trustee’s appointment. The Insider Transaction did not, however, similarly delete the first sentence

of Section 7.08(c), which allows the Company itself to appoint a new successor trustee if WSFS were removed for any reason, including by the majority of holders. And tellingly, the Insider Transaction preserved the rights of the Favored Noteholders to select their own replacement trustee: the indentures for their New 1L Notes and the New 1.25L Notes both include the provision purportedly deleted from Section 7.08(c) of the Governing Indentures.

190. Finally, underscoring the damage that WSFS and the Company set out to inflict upon holders of the Original Secured Notes, the Unauthorized Amendments attempted to remove substantially all protective covenants from the Governing Indentures, including:

Section of the Governing Indentures	Description of Covenant	Impact of Amendment on Covenant
4.07 (Restricted Payments)	Restricted Issuer's and its restricted subsidiaries' ability to pay dividends or other distribution payments with respect to equity interests, purchase, redeem or otherwise acquire any equity interests of the Issuer or make voluntary payments on junior secured debt or restricted investments.	COVENANT DELETED
4.08 (Dividend and Other Payment Restricts Affecting Restricted Subsidiaries)	Restricted Issuer's restricted subsidiaries' ability to pay dividends or make distributions, make loans or advances or sell or transfer any of its properties or assets to the Issuer or any Restricted Subsidiaries.	COVENANT DELETED
4.09 (Incurrence of Indebtedness and Issuance of Disqualified Stock or Preferred Stock)	Restricted Issuer's and its restricted subsidiaries' ability to incur or guarantee debt and issue equity.	COVENANT DELETED
4.10 (Asset Sales)	Restricted Issuer's and its restricted subsidiaries' ability to sell assets below fair market value.	COVENANT DELETED
4.11 (Transactions with Affiliates)	Restricted Issuer's and its restricted subsidiaries' ability to sell, lease or transfer its properties or assets or enter into agreements with its affiliates.	COVENANT DELETED
4.12 (Liens)	Restricted Issuer's and its restricted subsidiaries' ability to incur new liens.	COVENANT DELETED

Section of the Governing Indentures	Description of Covenant	Impact of Amendment on Covenant
4.13 (Corporate Existence)	Required Issuer to preserve its corporate existence.	COVENANT DELETED
4.14 (Offer to Repurchase Upon Change of Control)	Gave holders the right to purchase a portion of the secured notes following a change of control.	COVENANT DELETED
4.15 (Permitted Activities of Holdings)	Restricted Holdings ability to engage in business outside of owning the equity interest in Issuer.	COVENANT DELETED
4.16 (Future Guarantees)	Required certain new wholly owned domestic subsidiaries to guaranty the secured notes.	COVENANT DELETED
4.26 (Negative Pledge)	Restricted Issuer's and its restricted subsidiaries' ability to pledge the collateral.	COVENANT DELETED

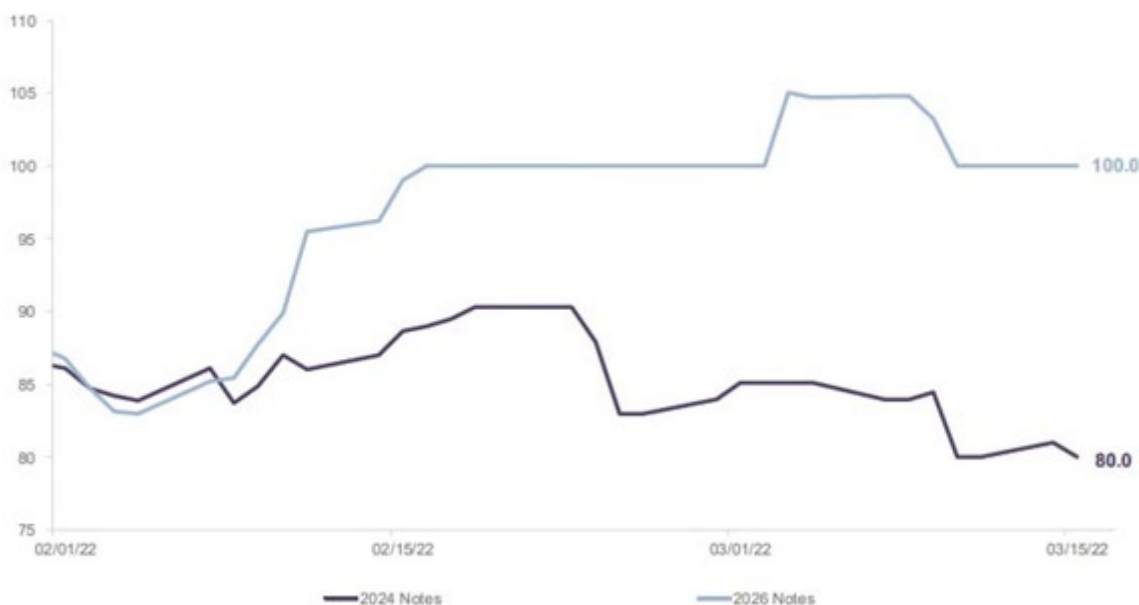
VI. The Market, Platinum, and the Favored Noteholders Share the 2024/2026 Holders' Interpretation of the Supermajority Protections of the Governing Indentures.

191. In February 2022, certain members of the Ad Hoc Group joined together to form a position greater than one-third of outstanding 2026 Original Secured Notes in response to market rumors about a potential out-of-court restructuring. Through its holdings in the 2026 Original Secured Notes, the Ad Hoc Group (as it was then constituted) sought to block any transaction that would release their security interests in the Collateral without their consent.

192. Upon information and belief, when certain Favored Noteholders learned of the formation of the Ad Hoc Group and its goal of securing a blocking position of one-third of the outstanding 2026 Original Secured Notes, those Favored Noteholders rushed to acquire enough 2026 Original Secured Notes in the secondary market to overcome the blocking position. Upon information and belief, the Favored Noteholders did so because they knew that a Lien-stripping transaction of the kind discussed in press reports at the time required the consent of two-thirds of the outstanding 2026 Original Secured Notes.

193. As reflected in the chart below, the 2026 Original Secured Notes and 2024 Original Secured Notes were both trading at roughly 85 cents on the dollar on February 7, 2022, when rumors of a potential transaction first leaked. By early March 2022, the market price of 2026 Original Secured Notes reached 105 cents on the dollar, while the market price of 2024 Original Secured Notes (secured by the exact same Collateral and with an earlier maturity date) remained relatively unchanged.

Trading Prices of Original Secured Notes: February 1, 2022 to March 15, 2022



194. The bidding war for the 2026 Original Secured Notes—to obtain either a one-third blocking position or a two-thirds supermajority position—demonstrated that the Counterclaim Defendants, the 2024/2026 Holders, and the market all understood the supermajority requirements in the 2026 Original Secured Note Indenture required two-thirds consent for the out-of-court restructuring discussed in news reports in February 2022. Said differently, the market and its

sophisticated participants correctly understood that a release of Liens *could not* be consummated without the consent of, at least, a supermajority of the holders of the Original Secured Notes.

195. The Favored Noteholders' scramble to neutralize the Ad Hoc Group by acquiring a supermajority of 2026 Original Secured Notes ultimately failed. By late February 2022, the Ad Hoc Group's aggregate holdings of 2026 Original Secured Notes exceeded one-third of the notes then outstanding. However, upon information and belief, certain Favored Noteholders falsely claimed to other investors, broker-dealers, and the market that they had a supermajority of 2026 Original Secured Notes and could therefore execute a Lien-stripping transaction, again showing that the Counterclaim Defendants understood the importance of holding a supermajority of the 2026 Original Secured Notes.

196. Upon information and belief, Platinum and the Favored Noteholders understood that the transaction contemplated as of February 7, 2022 could not be completed without obtaining the consent of a supermajority of the 2026 Original Secured Notes outstanding as of that date.

197. Upon information and belief, based on the events outlined above, the Company and WSFS—like the rest of the market—understood that the Governing Indentures required a supermajority to release the Liens on Collateral securing the 2024/2026 Holders' Notes. Nevertheless, they proceeded with the Insider Transaction.

198. The Counterclaim Defendants knew that the Insider Transaction would be challenged in court. The terms of the New 1L Notes and 1.25L Notes indentures allowed the Company to issue enough additional New 1.25L Notes to allow it to exchange the Original Secured Notes left outstanding after the Insider Transaction. The main, if not sole, purpose of that provision was apparently to create a "settlement basket" of New 1.25L Notes that could be used to settle claims brought by the Ad Hoc Group or other holders of unexchanged Original Secured

Notes. These New 1.25L Notes, however, would be subordinated: they would rank junior to the New 1L Notes issued to Favored Noteholders (who were previously *pari passu* with the 2024/2026 Holders), and they would rank *pari passu* with the New 1.25L Notes issued to the participants in the Unsecured Roll-up (who were previously junior to the 2024/2026 Holders).

VII. The Preordained and Self-interested Nature of the Insider Transaction Shows the Counterclaim Defendants’ Bad Faith Toward the 2024/2026 Holders.

199. Unbeknownst to the Ad Hoc Group, their proposals for alternative financing were futile from the start. The Company had, upon information and belief, determined under the dominion of Platinum to proceed with a transaction favorable to the Platinum Creditors and the other Favored Noteholders.

200. The lack of engagement by the Company with the Ad Hoc Group makes plain Platinum’s and the Board’s intention to exclusively pursue the Insider Transaction. The information provided by the Company to the Ad Hoc Group under the Confidentiality Agreements was so limited, and so delayed, as to render such information practically useless.

201. Before and after the Insider Transaction, the Company also failed to implement appropriate governance protocols to counteract Platinum’s insider status.

202. For example, instead of taking steps to ensure that an independent Board fulfilled its duties while insolvent, the Board dominated by Platinum appointed only a single supposedly “independent” director—Mr. Bartels. And Mr. Bartels was not appointed to the Board of the Company or any of the Guarantor Defendants. He was instead appointed to the board of Wolverine Intermediate, alongside multiple senior executives and officers of the Platinum Sponsor. And it was not Mr. Bartels who approved the Insider Transaction; rather, it appears that the Board of Wolverine Intermediate as a whole (including its *interested* directors) approved the Insider Transaction. Mr. Carney’s first-day declaration suggests, at paragraph 79, that the entire Board

(consisting of all but one insider), which merely included Mr. Bartels, approved the Insider Transaction, stating:

The board of directors, including Mr. Bartels as an independent director, carefully considered each proposal Incora received in light of all circumstances. Ultimately, the board determined that the best financing terms came from the Majority Noteholders.

203. Although Mr. Bartels had been tasked with overseeing the Company’s increasingly urgent efforts to raise liquidity, upon information and belief, he was not provided with independent legal and financial advisors to advise him in the exercise of his duties. Mr. Bartels was therefore required to rely on the legal and financial advisors engaged by the Company, Wolverine Intermediate, and/or its “interested” directors in approving the Insider Transaction.

204. Furthermore, the Company never engaged in a *bona fide* bidding process for a restructuring. While Mr. Bartels, it appears, was formally engaged by the Company on February 8, 2022, he was contacted about service as an independent director for a potential transaction as early as November 1, 2021. And yet, at no point did the Company or its advisors reach out to the minority holders. Instead, upon information and belief, the Company negotiated with the Platinum Creditors (who were acting through their agent, the Platinum Sponsor) and the other Favored Noteholders behind closed doors until news of a potential transaction leaked in February 2022, more than three months later.

205. The Company’s failure to undertake a fair and competitive financing process aimed at achieving the highest and best proposal can be explained by Platinum’s dominance over the Company and Platinum’s desire to ensure that it protected its own interests through the Insider Transaction to the direct detriment of the 2024/2026 Holders.

206. Platinum, upon information and belief, used its control and insider status to ensure the defeat of any proposal put forward by the Ad Hoc Group as an alternative to the Insider

Transaction. Platinum, at all times, preferred the Insider Transaction because, in contrast to the Ad Hoc Group's Bids, the Insider Transaction gave (i) the Platinum Fund the ability to exchange its Unsecured Notes for newly issued secured notes, and (ii) the Platinum-Controlled Parent the ability to exchange its unsecured promissory note for those same newly issued secured notes, each time for no valid consideration to the Company because the Platinum Fund's votes as an "Affiliate" were not counted and because, upon information and belief, the consent of the Platinum-Controlled Parent under its separate promissory note was not required.⁹

207. The Ad Hoc Group's Bids were less beneficial for Platinum but met the Company's stated liquidity needs at the time, which the Company initially told the Ad Hoc Group were around \$200 million. Subsequently, the Company revised its liquidity needs to \$250 million, without providing the Ad Hoc Group with the underlying data to justify such a change. Under the Ad Hoc Group's Bids, the Company would have had access to the needed liquidity through a combination of new capital, cash interest savings, and minor concessions from the Platinum Sponsor—including its waiver of the \$7 million annual consulting fee.

208. For their part, the Favored Noteholders, upon information and belief, threatened to block consummation of the Ad Hoc Group's Bids in a coercive manner, by abusing rights those Favored Noteholders otherwise had under the Governing Indentures as holders of a majority, but not a supermajority, of the 2026 Original Secured Indentures—such as directing the indenture trustee and collateral agent to take (or not take) certain actions in furtherance of consummating a transaction advanced by the Ad Hoc Group.

⁹ The waiver by the Platinum Sponsor of its management fee was insignificant in comparison to the lucrative benefits bestowed upon the Platinum Fund and the Platinum-Controlled Parent, i.e. the exchange of unsecured notes for secured notes.

209. Rather, upon information and belief, the Favored Noteholders preferred a deal that caused harm to the minority holders by transferring value from such minority holders to the Favored Noteholders via a non-pro rata transaction, even though opening a transaction to all holders of the Notes as proposed by the Ad Hoc Group would have met the Company's projected liquidity needs communicated at the time, protected the minority holders' Liens, and minimized the risk and expense of follow-on litigation.

210. The Counterclaim Defendants, indeed, knew that litigation was the inevitable outcome of the Insider Transaction and, indeed, was specifically warned of such by counsel for the Ad Hoc Group in writing before the Company proceeded with the Insider Transaction. That knowledge is further demonstrated by the Counterclaim Defendants' attempt to entrench a successor indenture trustee, the off-market provisions in the Confidentiality Agreements (as defined and discussed in Paragraph 218, below), and the "settlement basket" in the new indentures.

211. Yet, knowing this very litigation was certain, the Board, controlled by Platinum, made the litigation exponentially more expensive for the Company, and more favorable to the Platinum Creditors and other Favored Noteholders, by choosing the self-interested proposal that purported to indemnify each of the Platinum entities and the Favored Noteholders in the Exchange Agreement, including for legal fees and expenses arising from the Insider Transaction. That is to say, the Insider Transaction purports to require the Debtors to not only bear their own legal fees and expenses but those for the Platinum Sponsor, the Platinum Creditors, and the other Favored Noteholders.

212. Indemnity provisions are *not* common in high-yield notes indentures, and they are not included in the Governing Indentures, nor were they part of the Ad Hoc Group's Bids. The addition of indemnification provisions to the indentures of the New 1L Notes and New 1.25L

Notes by incorporating the indemnity provisions of the Exchange Agreement is further evidence of the Counterclaim Defendants' bad faith.

213. The Debtors now repeatedly refer to the costs associated with litigation as one of the driving causes of their bankruptcy filings. *See, e.g.*, Carney Decl. ¶ 89 (claiming that the New York litigation “ha[s] placed considerable strain on the Debtors”); Adv. Pro., Docket No. 1 ¶¶ 8, 9; Docket No. 3 ¶ 30. The indemnity does not apply, however, to the willful misconduct of an indemnified person.

214. Platinum and the Debtors were unwilling to make any concessions and were so intent on completing the Insider Transaction that, upon information and belief, they never seriously considered the Ad Hoc Group's Bids that were open to all secured noteholders, which would have reduced, if not altogether avoided, the litigation risk.

215. Rather, Platinum, the Platinum-controlled Board, and the Debtors favored the Insider Transaction that benefitted the Platinum Creditors and the Platinum Sponsor. Indeed, except for Mr. Bartels, every other Board member was a senior executive and/or employee of the Platinum Sponsor. Eventually, the entire Board, including these interested directors, approved the Insider Transaction. Hence, upon information and belief, all members of the Board, including Mr. Bartels, knew the harm the Insider Transaction would inflict upon the 2024/2026 Holders: that is, moving hundreds of millions of dollars of value from the 2024/2026 Holders to the Platinum Creditors and the Favored Noteholders.

216. The pre-ordained nature of the Insider Transaction is further evidenced by, among other things, the confidentiality agreements that the Company insisted that the Ad Hoc Group's advisors sign before being granted access to limited diligence about the Company (the “Confidentiality Agreements”). The Confidentiality Agreements contained an unusual provision

that purported to restrict the Ad Hoc Group’s advisors from using—or ever referring to—certain communications in a subsequent litigation, even if those communications did not constitute “Confidential Information” as defined by those Confidentiality Agreements. That same provision also purported to dictate whether certain communications could be introduced as evidence in a subsequent litigation. In hindsight, if the Company had intended to negotiate with the Ad Hoc Group in good faith, there would have been no need for these draconian, unusual, and off-market provisions. The Confidentiality Agreements thus show the Company’s expectation that a deal with the Platinum Creditors that excluded the Ad Hoc Group was a foregone conclusion and would lead to litigation.

217. The Debtors’ bad faith, moreover, did not end with the Insider Transaction. After the Insider Transaction closed, the Debtors refused the Ad Hoc Group’s request to provide the agreements prepared in connection with the transaction (commonly referred to as a “closing set”) and a list of fiduciaries involved in the transaction’s approval.

VIII. The “No-action” Provision is Not a Barrier to the Amended Counterclaims.

218. Pursuant to the Scheduling Order, all Counterclaim Defendants have waived any defense they might have otherwise asserted based on the “no-action” clauses in the Governing Indentures. Further, and in any event, the consent rights of the 2024/2026 Holder that were breached by the Insider Transaction are unique to each such holder and exempted under applicable law from the Governing Indentures’ no-action provision. And apart from that governing principle, and even if the so-called “no-action” provision in the Governing Indentures had applied to the 2024/2026 Holders’ claims and not been waived by the Scheduling Order, adherence would have been futile because of the Company’s bad faith and the trustees’ conflicts.

a. WSFS.

219. The Company appointed WSFS as successor trustee, and it assumed that role just two weeks before the Insider Transaction closed on March 28, 2022.

220. WSFS accepted the role of indenture trustee for the Original Secured Notes knowing that the Company intended to strip the Liens securing the payment of those Notes.

221. WSFS allowed the 2024/2026 Holders' Liens on the Collateral to be released and transferred to Platinum and other Favored Noteholders without the requisite consent of affected holders. The Ad Hoc Group members who held over one-third of all such votes for the 2026 Original Secured Notes did not consent to the release of their Liens. Nor did all affected holders consent to a modification in the ranking of their rights of payment. The Insider Transaction was therefore not permitted. Yet WSFS and the Company effected the Insider Transaction by issuing additional secured notes in violation of Sections 2.01, 4.09, and 4.12, stripping the Liens without requisite consent in violation of Section 9.02 of the Governing Indentures, and redeeming or purchasing Notes in violation of Section 3.02.

222. Additionally, WSFS entrenched itself as indenture trustee in an attempt to shield itself and the other Counterclaim Defendants from litigation by removing the provision in Section 7.08(c) of the Governing Indentures that would permit the 2024/2026 Holders, now as majority holders of the 2026 Original Secured Notes, to remove and replace WSFS, as successor trustee, with a trustee of their own choosing at any time within the first year of WSFS's tenure. This not only evinces a guilty conscience on the part of WSFS and the Company but was plainly intended to impose a barrier for the 2024/2026 Holders to appoint a new trustee of their choosing that would, in furtherance of its duties under the Governing Indentures, sue the Counterclaim Defendants,

including WSFS, to repair the damage done to the holders of the remaining Original Secured Notes.

223. On or about May 16, 2023, the Company missed its scheduled interest payments under the Original Secured Notes and other funded indebtedness, and it entered a 30-day grace period under its operative agreements, including the Governing Indentures.

224. On May 21, 2023, certain 2024/2026 Holders (among others) wrote to the Company and WSFS to notify them that they were terminating WSFS as trustee of the Original Secured Notes. The 2024/2026 Holders did so pursuant to Section 7.08(b).

225. The writing explained to the Company that its financial distress, as reflected by the missed interest payment, further underscored the conflicts of interest in WSFS purporting to serve as trustee for all or most of the Company's debt instruments.

226. In that letter, the Company and WSFS were also notified that UMB Bank N.A. ("UMB") had expressed that it was ready, willing, and able to serve as successor trustee to WSFS for the Notes under the Governing Indentures. The letter further provided the contact information for a person at UMB.

227. By receipt of that letter, the Debtors knew that the 2024/2026 Holders wanted UMB to serve as successor trustee to WSFS for the Notes under the Governing Indentures.

b. BOKF.

228. On May 30, 2023, counsel for the 2024/2026 Holders that commenced the First New York Action met and conferred with counsel for WSFS about discovery in the First New York Action. Counsel for WSFS did not inform counsel for the 2024/2026 Holders that WSFS had ceased by then to serve as indenture trustee for the 2024/2026 Notes.

229. On June 1, 2023, however, the Debtors' filings in this Court revealed that BOKF had succeeded to the role of indenture trustee for the 2024 Original Secured Notes, the 2026 Original Secured Notes, and the Unsecured Notes on May 26, 2023.

230. Upon information and belief, the Debtors appointed a successor trustee for the 2024 Original Secured Notes, the 2026 Original Secured Notes, and the Unsecured Notes because a conflict prevented WSFS from serving as trustee for those notes while simultaneously serving in that role for the New 1L Notes and New 1.25L Notes.

231. The Debtors knew that the 2024/2026 Holders had commenced litigation to assert their rights as secured noteholders, but the Debtors appointed BOKF to serve as successor trustee for both the Original Secured Notes and the Unsecured Notes, even though the holders of the Unsecured Notes had not asserted (and could not assert) any rights as secured noteholders.

232. After learning that BOKF had succeeded to the role of indenture trustee for the Original Secured Notes, counsel for the 2024/2026 Holders contacted counsel for BOKF.

233. Counsel for BOKF acknowledged that the 2024/2026 Holders had raised a "concern that an actual conflict may exi[s]t under the indentures and that conflict may require BOK[F] as successor trustee to resign from the 2024/2026 or the 2027 debt issues" because there was a conflict between the interests of the Original Secured Notes and the Unsecured Notes. Counsel for BOKF did not state whether they agreed that there was a conflict but instead stated that "BOK[F] is nonetheless giving consideration to your concern."

234. Upon information and belief, the Company chose not to appoint UMB as successor trustee for the Original Secured Notes in order to deprive the 2024/2026 Holders of their choice of successor trustee.

235. The Company appointed BOKF as successor trustee for the Original Secured Notes and the Unsecured Notes knowing that there was an actual or likely conflict between the previously secured Original Secured Notes and the never-secured Unsecured Notes.

236. Upon information and belief, the Company chose to appoint the same successor trustee for the Original Secured Notes and the Unsecured Notes because of (not in spite of) the conflict, and the disclosure of BOKF's appointment as successor trustee was delayed in order to impede the 2024/2026 Holders' ability to appoint a successor trustee. On July 12, 2023, certain 2024/2026 Holders (among others) holding over a majority of each issuance, through counsel, wrote to the Company and BOKF to notify them that they terminated BOKF as trustee of the Original Secured Notes and to seek the appointment of UMB as successor trustee. The 2024/2026 Holders did so pursuant to Section 7.08(b) of the Governing Indentures. That same day, UMB also wrote to the Company and BOKF to state that it was qualified and prepared to serve as successor trustee under the Indentures for each of the Notes.

237. On July 14, 2023, the Company, through counsel, wrote to counsel to the 2024/2026 Holders contending that the 2024/2026 Holders' July 12, 2023 letter was ineffective to initiate BOKF's removal and that the Governing Indentures, as amended by the Insider Transaction, did not allow the 2024/2026 Holders to select a successor trustee.

238. Despite the Company's contention to the contrary, the 2024/2026 Holders' termination of BOKF was effective under the Governing Indentures and the Company is obstructing the installation of the 2024/2026 Holders' choice of successor trustee arbitrarily and in bad faith, to further its, Platinum's and the Favored Noteholders' objectives.

239. In sum, the Counterclaim Defendants purported to amend the Governing Indentures via the Unauthorized Amendments so that the Company could always have a conflicted Trustee

beholden to the Company in a position that purported to represent the interests of the Original Secured Notes that the Company had wrongfully stripped of their Liens. The Company has twice relied on that amendment to ignore the 2024/2026 Holders' selection of UMB as successor trustee.

240. The Governing Indentures' "no-action" provision in Section 6.06 has been waived by the Counterclaim Defendants and is otherwise inapplicable and unenforceable here.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF 2024/2026 HOLDERS' DIRECT STANDING TO BRING CAUSES OF ACTION 2 THROUGH 7 (Against All the Counterclaim Defendants as Named Respectively in such Causes of Action)

241. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 240.

242. Individual creditors such as the 2024/2026 Holders have direct standing to bring claims that are based on injury that is (i) specific and personal to those creditors only and (ii) independent of any injury to the debtor. Here, the 2024/2026 Holders' Causes of Action 2 through 7, as set forth in paragraphs 246 through 309 (below), seek redress for injuries that are unique to a subset of the Debtors' creditors, including the 2024/2026 Holders, and do not arise from an injury to the Debtors.

243. Pursuant to Section 2201 of the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court has the authority to issue declaratory judgments where the facts alleged, under all the circumstances, show that there is an actual controversy, between parties having adverse legal interests, of sufficient immediacy and reality, to warrant the issuance of declaratory judgment.

244. Accordingly, the 2024/2026 Holders seek a judicial declaration that they have direct standing to pursue Causes of Action 2 through 7.

245. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

SECOND CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR BREACH OF CONTRACT (Against the Company, the Guarantor Defendants, and WSFS)

246. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 245.

247. The Company and the Guarantor Defendants are, and WSFS was (at the time of the Insider Transaction), parties to the Governing Indentures. The 2024/2026 Holders who hold the Original Secured Notes are also parties to the Governing Indentures. In the alternative, the 2024/2026 Holders are third-party beneficiaries of the Governing Indentures.

248. In their form prior to the Insider Transaction, the Governing Indentures were valid and enforceable agreements.

249. The 2024/2026 Holders have performed all their obligations under the Governing Indentures.

250. The Unauthorized Amendments, the Phantom Note Purchase Agreement, the Super Senior Indentures, and the Exchange Agreements, together with any other document effecting the Insider Transaction, comprise a single, integrated instrument that is part of the single, integrated Insider Transaction. This single transaction was preordained and executed on or before the date on which each operative document became effective: March 28, 2022. The transaction documents are interwoven, interdependent, were executed by substantially the same parties, and were designed to effectuate one purpose.

251. The Company, the Guarantor Defendants, and WSFS did not have the consent of all necessary holders for the Unauthorized Amendments or any other aspect of the Insider Transaction.

252. The Company, the Guarantor Defendants, and WSFS breached the Governing Indentures, including (i) sections 2.01, 3.02, 4.09, 4.12, and 9.02 of the 2026 Original Secured Note Indenture, and (ii) sections 3.02 and 9.02 of the 2024 Original Secured Note Indenture.

253. Breaches of the Governing Indentures by the Company, the Guarantor Defendants, and WSFS have caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for the Company's, the Guarantor Defendants', and WSFS's breaching conduct.

254. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Debtors and WSFS breached the Governing Indentures as set forth herein.

255. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

THIRD CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (Against the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder)

256. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 255.

257. The Company and the Guarantor Defendants are, and WSFS was (at the time of the Insider Transaction), parties to the Governing Indentures. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder who hold the Original Secured Notes are parties to the Governing Indentures by virtue of having purchased the Notes.

258. Under New York law, every contract contains an implied covenant of good faith and fair dealing, which requires contract parties to refrain from doing anything that will have the effect of destroying or injuring the right of the other parties to receive the fruits of the contract.

Because New York law governs the 2026 Original Secured Note Indenture and the 2024 Original Secured Note Indenture, the covenant of good faith and fair dealing is implied in those contracts.

259. The covenant of good faith and fair dealing requires the parties to deal fairly and in good faith with one another and with any intended third-party beneficiaries, and that each party refrain from destroying or injuring the right of the other parties to receive the benefits of the Governing Indentures. Further, the covenant encompasses promises that a reasonable person in the position of the 2024/2026 Holders would be justified in understanding was included in the Governing Indentures.

260. As set forth above, the Governing Indentures provide various protections to the security interests that the Company promised to the secured noteholders, such as the 2024/2026 Holders, in exchange for those holders' provision of financing to the Company. Those security interests and the protections they have under the Governing Indentures, both express and implied, are a central benefit of the agreement. The Governing Indentures likewise impose duties on co-noteholders not to prejudice rights of another, among other things.

261. The 2024/2026 Holders—many of whom purchased their Notes at or near the time of their initial issuance by the Company—were justified in understanding that the Governing Indentures contained explicit, and if not explicit, implicit, undertakings by the Company, the Guarantor Defendants, WSFS and the other secured noteholders (i.e., the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder) not to, among other things: (1) abuse (or otherwise encourage, aid, abet or endorse the abuse of) the Company's ability to issue new notes with simple majority approval for the purpose of discharging 2024/2026 Holders' Liens and creating new Unpermitted Liens; (2) dilute consent rights and create an artificial supermajority for the purpose of circumventing the supermajority consent requirements;

(3) use the votes of that artificial supermajority to strip the nonvoting noteholders of their Liens; (4) hand those Liens to a group of Favored Noteholders (which included insiders, i.e. the Platinum Creditors); and (5) impose upon those nonvoting noteholders various impediments to challenge the loss of their Liens through legal action.

262. In short, the 2024/2026 Holders reasonably and justifiably expected that a simple majority of holders of the Notes could not purport to transform itself into a supermajority to circumvent the strictures of the Governing Indentures.

263. Through their creation of and/or participation in the Insider Transaction, the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder breached the covenant of good faith and fair dealing by engaging in intentional, coercive and/or bad faith actions to destroy the 2024/2026 Holders' reasonable and justifiable contractual expectations.

264. The actions of the Company, the Guarantor Defendants and WSFS set forth herein, moreover, constitute an arbitrary, irrational, and/or bad-faith exercise of their contractual discretion directed towards the 2024/2026 Holders because, among other things, they set out to destroy the reasonable expectations of the 2024/2026 Holders and to strip the fundamental benefit of their bargain, namely their Liens in the Collateral.

265. Likewise, the actions of the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder constitute an arbitrary, irrational, and/or bad-faith exercise of their contractual discretion directed towards the 2024/2026 Holders because, among other things, they set out to destroy the reasonable expectations of the 2024/2026 Holders and to strip the fundamental benefit of their bargain, namely their Liens in the Collateral. These Counterclaim Defendants did so by, among other things, (i) using their rights as holders of a

majority, but not a supermajority, of the 2026 Original Secured Notes to cause the Company to subvert the Ad Hoc Group's Bids or participation in a *bona fide* process and (ii) approving the issuance of, and subsequently voting, the Phantom Notes in order to strip the 2024/2026 Holders of their Liens.

266. As further evidence of their bad faith conduct, the Silver Point Noteholders, the PIMCO Noteholders, and the Senator Noteholder consented to the Third Supplemental Indenture to the 2024 Original Secured Note Indenture. This amendment purported to authorize the Company to issue the Phantom Notes under the 2026 Original Secured Note Indenture, even though the issuance of additional secured notes under a different indenture would be contrary to their interests as holders of the 2024 Original Secured Notes. They nevertheless provided their consent to the Third Supplemental Indenture because they knew that their 2024 Original Secured Notes (as well as their 2026 Original Secured Notes) would contemporaneously be exchanged for the super-senior New 1L Notes.

267. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder likewise consented to the amendments in the Fourth Supplemental Indentures for the Original Secured Notes. This amendment purported to strip their own liens and those of the 2024/2026 Holders. They provided such consents, which again would otherwise be contrary to their interests, because they had contemporaneously agreed to exchange their Original Secured Notes for the New 1L Notes. In doing so, these Favored Noteholders intentionally caused harm to the 2024/2026 Holders holding the Original Secured Notes.

268. Additionally, these Counterclaim Defendants proceeded in secret, did not seek the consent of the Ad Hoc Group, did not offer the Ad Hoc Group the opportunity to participate in the transaction, and acted for an abusive and improper purpose—to injure the 2024/2026 Holders' by

destroying their right to receive the fruits of the contracts at issue, i.e. the bargained-for first-Lien priority rights under the Notes.

269. The breaches of the implied covenant of good faith and fair dealing by the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder have caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for these Counterclaim Defendants' breaching conduct.

270. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Debtors, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder breached Governing Indentures' implied covenant of good faith and fair dealing, as set forth herein.

271. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the parties to ascertain their rights and obligations.

272. This Third Cause of Action is being asserted in the alternative to the Second Cause of Action as against the Company, the Guarantor Defendants and WSFS, but not in the alternative as to the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder because their bad faith misconduct was complicit with and in furtherance of those other Counterclaim Defendants' breaches of the Governing Indentures.

FOURTH CAUSE OF ACTION

EQUITABLE LIEN

(Against the Company, the Guarantor Defendants, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

273. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 272.

274. By the Governing Indentures, the 2024/2026 Holders, the Debtors, and indenture trustee entered into (or, in the alternative, the 2024/2026 Holders are third-party beneficiaries of) an express agreement that granted Liens for the benefit of the 2024/2026 Holders to secure obligations arising under the Governing Indentures, and thus demonstrated a clear intent to create a security interest to secure the obligation between them.

275. The parties and any third-party beneficiaries to the Governing Indentures intended for those Liens to be granted on specific assets of the Debtors, as defined and identified in the Governing Indentures as the “Collateral.”

276. As a result of the Insider Transaction, the Favored Noteholders converted their Original Secured Notes and Unsecured Notes into far more valuable New 1L Notes and/or New 1.25L Notes, as the case may be, which are purportedly secured by the exact same “Collateral.” The Platinum-Controlled Parent similarly converted its \$25 million unsecured promissory note into New 1.25L Notes secured by the “Collateral.” WSFS was appointed as indenture trustee and compensated for its services.

277. All of these Counterclaim Defendants were enriched at the expense of the 2024/2026 Holders.

278. The Insider Transaction was an illegal and inequitable scheme, and it would be against equity and good conscience for the Counterclaim Defendants to be permitted to retain the fruits of this scheme, including their profits, at the expense of the 2024/2026 Holders.

279. Absent relief sought herein, there exists no adequate remedy at law to restore the 2024/2026 Holders to their rightful position as secured creditors, as they undoubtedly were prior to the Insider Transaction, and avoid an unjust result.

280. Under principles of equity, the 2024/2026 Holders are entitled to equitable liens on the Collateral (as such term is defined in the Governing Indentures) with priority over any liens purportedly held by the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders by virtue of the New 1L Notes and New 1.25L Notes.

FIFTH CAUSE OF ACTION

EQUITABLE SUBORDINATION

(Against the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

281. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 280.

282. The Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders engaged in inequitable conduct by directing and/or participating in the Insider Transaction, through which they intentionally sought to gain an unfair advantage to the detriment of the 2024/2026 Holders.

283. The Platinum-Controlled Parent and the Platinum Fund (i.e., the Platinum Creditors) are insiders of the Debtors. The Platinum-Controlled Parent's insider status is evidenced by, among other things: (i) its 100% indirect ownership of the Company and its subsidiaries; (ii) its status as a person in control of the Company and its subsidiaries; and (iii) it and the Company being under the common control of the Platinum Sponsor, including via the Platinum-related directors appointed to the Board of Wolverine Intermediate. The Platinum Fund's insider status is evidenced by, among other things: (i) its, upon information and belief, indirect ownership of the Company (through the Platinum-Controlled Parent); (ii) it and the Company being under the common control of the Platinum Sponsor; and (iii) its status as an insider of the Platinum-Controlled Parent by reason of its, upon information and belief, direct or indirect ownership or control of over more than 20% of the voting shares of the Platinum-Controlled

Parent. The conduct of the Platinum-Controlled Parent and the Platinum Fund, as insiders, is subject to rigorous scrutiny.

284. Upon information and belief, the Platinum Creditors dominated and controlled the actions of the Debtors and their Board, including through their agent, the Platinum Sponsor, so that the Platinum Creditors could gain an unfair advantage over the 2024/2026 Holders by causing the release of the 2024/2026 Holders' Liens, and the exchange of the Platinum Creditors' unsecured debt for vastly more valuable New 1.25L Notes, which now rank ahead of the 2024/2026 Holders' Original Secured Notes.

285. Upon information and belief, the Platinum Creditors, including through their agent, the Platinum Sponsor, further exerted their influence over the Company to, for example: (i) procure an off-market indemnification for themselves (and the other Favored Noteholders) in the Exchange Agreement, including for legal fees and expenses arising from the Insider Transaction, and (ii) refuse serious consideration of the Ad Hoc Group's proposals. The Platinum Creditors' inequitable conduct and unfair advantage is further evidenced by their acquisitions—only belatedly revealed to the market—of Unsecured Notes and a \$25 million unsecured promissory in 2020, later exchanged for New 1.25L Notes, which on information and belief, the Platinum Creditors acquired to attain a monetizable position in the Company's debt structure as part of a potential restructuring over which the Platinum entities could exercise control.

286. The Favored Noteholders engaged in inequitable conduct by colluding with the Platinum-dominated Debtors to circumvent the protections afforded to the 2024/2026 Holders by the Governing Indentures. Certain Favored Noteholders purchased the Phantom Notes in bad faith to thwart the 2024/2026 Holders' blocking position in the 2026 Original Secured Notes. These Favored Noteholders then used their feigned supermajority of such notes to consent to the release

of all of the 2024/2026 Holders' Liens on their Collateral, and locked in their advantage over the 2024/2026 Holders by exchanging the Phantom Notes for New 1L Notes, which rank ahead of the Original Secured Notes. The Carlyle Noteholders separately engaged in inequitable conduct by consenting to the Insider Transaction and exchanging their Unsecured Notes for vastly more valuable New 1.25L Notes, which likewise rank ahead of the Original Secured Notes, without providing any consideration other than their consent and without providing any new money to the Company.

287. The Insider Transaction stripped the 2024/2026 Holders of their bargained-for Liens and subordinated the 2024/2026 Holders' to more than \$1.7 billion in new senior secured debt. No other class or group of the Debtors' creditors were similarly harmed. As a result of those actions, the claims of the Favored Noteholders and the Platinum-Controlled Parent are poised to be repaid before the 2024/2026 Holders receive payment under the Original Secured Notes.

288. Under principles of equitable subordination, in equity and good conscience, any and all claims of the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders should be subordinated for purposes of distribution, pursuant to Sections 510(c) and 105(a) of the Bankruptcy Code, to the claims of the 2024/2026 Holders.

289. Equitably subordinating the claims of the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders is not inconsistent with the Bankruptcy Code because the equitable subordination requested is necessary to offset the harm to the 2024/2026 Holders.

SIXTH CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR TORTIOUS INTERFERENCE WITH CONTRACT (Against the Platinum Sponsor and, as an Alternative Claim against the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder)

290. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 289.

291. The Platinum Sponsor, as the equity sponsor of the Company, was aware of the Governing Indentures and all of its provisions, including the minority and sacred rights protections discussed herein.

292. The Platinum Sponsor procured the breach of the Governing Indentures, as they existed at the time of the Insider Transaction, by conspiring or coordinating with the Company and its Board, both of which the Platinum Sponsor controlled, and WSFS to complete the Insider Transaction, which, in turn, violated (i) sections 2.01, 3.02, 4.09, 4.12, and 9.02 of the 2026 Original Secured Note Indenture as well as the covenant of good faith and fair dealing implied in the 2026 Original Secured Note Indenture, and (ii) sections 3.02 and 9.02 of the 2024 Original Secured Note Indenture as well as the covenant of good faith and fair dealing implied in the 2024 Original Secured Note Indenture.

293. The Platinum Sponsor's conduct with respect to the Insider Transaction was deceptive and unjustifiable, and motivated by self-interest, bad faith, and malice towards the 2024/2026 Holders. The Platinum Sponsor exercised control over the Company and the Board to ensure approval of the Insider Transaction, and the dismissal of the Ad Hoc Group's Bids, with knowledge that the Insider Transaction would violate the 2024/2026 Holders' rights under the Governing Indentures. The Platinum Sponsor also sought to—and did—cause a transfer of value from 2024/2026 Holders to Platinum.

294. The Platinum Sponsor does not hold a direct ownership interest in the Company. It nevertheless stood on both sides of the Insider Transaction. On the one hand, it served as equity sponsor of the Company and as a person in control of the Company's Platinum-Controlled Parent. On the other hand, it served as investment manager or advisor to the Platinum Creditors that held significant unsecured debt of the Company. As such, the Platinum Sponsor's interests were not aligned with the Company's. Upon information and belief, the Platinum Sponsor improperly exerted its influence over the Company to help procure for the Platinum Creditors a lucrative participation in the Unsecured Roll-up, which the Company had no business reason to provide to the Platinum Creditors and which caused direct harm to the 2024/2026 Holders.

295. If the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder assert that they lack sufficient contractual relationship to the Governing Indentures so as to be liable for breach of contract or the implied covenant of good faith and fair dealing, and such a position is accepted by this Court,¹⁰ they would then be strangers to those contracts, and as such, should be found liable for tortiously interfering with the Governing Indentures to the detriment of the 2024/2026 Holders.

296. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder, as holders of the Notes, were aware of the Governing Indentures and all of their provisions, including the minority and sacred rights protections discussed herein.

297. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder procured the breach of the Governing Indentures as they existed at the time of the Insider Transaction.

¹⁰ This argument was raised by the Silver Point and PIMCO Noteholders in the First New York Action but not adjudicated.

298. The conduct of the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder with respect to the Insider Transaction was deceptive and unjustifiable, and motivated by self-interest, bad faith, and malice towards the 2024/2026 Holders.

299. Tortious interference with the Governing Indentures by the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder has caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for this tort.

300. Further, the actions of the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder in conceiving of, concealing, and executing the Insider Transaction were wanton, malicious, oppressive, and undertaken in gross or reckless disregard of the 2024/2026 Holders' rights.

301. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder tortiously interfered with the Governing Indentures.

302. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

SEVENTH CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR CONVERSION (Against the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

303. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 302.

304. Prior to the Insider Transaction, the 2024/2026 Holders held security interests in the Collateral in the form of Liens. The Liens constituted property interests of the 2024/2026

Holders in specifically identified assets of the Company, and the 2024/2026 Holders had an ownership interest in, and right to possess, such Liens. To the extent of their respective pro rata interests, the 2024/2026 Holders had and have a superior possessory and ownership right in the Liens.

305. Prior to the Insider Transaction, the Platinum-Controlled Parent and certain of the Favored Noteholders (including the Platinum Creditors, the Carlyle Noteholder, and the Spring Creek Noteholder) did not possess any Liens or other security interests in the Collateral.

306. Through the Insider Transaction, and without the 2024/2026 Holders' approval and over their objections, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders caused the release of the 2024/2026 Holders' property rights—i.e., their interests in the Liens on the Collateral—and the simultaneous transfer of such property to the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders. By reason of such release and transfer, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders are in possession of the 2024/2026 Holders' valuable property. They have also improperly interfered with the 2024/2026 Holders' property rights.

307. The Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders' possession of, and interference with, the 2024/2026 Holders' property rights is ongoing, as the Counterclaim Defendants contend that the Collateral previously securing 2024/2026 Holders' Liens has now been pledged as security for the New 1L Notes and New 1.25L Notes.

308. The Platinum Fund's, the Platinum-Controlled Parent's, and the other Favored Noteholders' conversion has caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for this tort.

309. Further, these Counterclaim Defendants' actions in conceiving of, concealing, and executing the Insider Transaction were wanton, malicious, oppressive, and undertaken in gross or reckless disregard of the 2024/2026 Holders' rights.

310. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders converted the 2024/2026 Holders' property rights.

PRAYER FOR RELIEF

WHEREFORE, the 2024/2026 Holders pray for relief as follows:

- i. A declaratory judgment that the 2024/2026 Holders have direct standing to assert Causes of Action 2 through 7 against the Counterclaim Defendants;
- ii. A declaratory judgment that the Company, the Guarantor Defendants and WSFS breached the Governing Indentures or, in the alternative, that those Counterclaim Defendants breached the duty of good faith and fair dealing implied by the Governing Indentures;
- iii. A declaratory judgment that the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder breached the duty of good faith and fair dealing implied by the Governing Indentures;
- iv. An order granting the 2024/2026 Holders equitable liens on "Collateral" securing their Notes (as such term is defined in the Governing Indentures), with such liens taking priority over any liens purportedly held by the Platinum Creditors and the other Favored Noteholders;
- v. An order equitably subordinating the claims of the Platinum Creditors and the other Favored Noteholders to the claims of the 2024/2026 Holders;
- vi. A declaratory judgment that the Platinum Sponsor tortiously interfered with the Governing Indentures, and, in the event that the Silver Point Noteholders, the PIMCO Noteholders, the Citadel Noteholder and the Senator Noteholder are determined not to have breached the duty of good faith and fair dealing implied by the Governing Indentures due to lack of sufficient relationship to those contracts, a declaratory judgment that those Counterclaim Defendants tortiously interfered with the Governing Indentures;
- vii. A declaratory judgment that the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders converted 2024/2026 Holders' property rights;

- viii. An order (i) confirming and/or directing the removal of BOKF as successor trustee under the Governing Indentures and (ii) directing the appointment of an independent non-conflicted successor trustee for the Governing Indentures;
- ix. Reasonable costs and expenses, including attorneys' fees in an amount to be determined; and
- x. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The 2024/2026 Holders hereby respectfully make a demand for a trial by jury.

Dated: July 31, 2023
Houston, Texas

FOLEY & LARDNER LLP

By: /s/ John P. Melko

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Counsel to the 2024/2026 Holders

APPENDIX A

ANSWERING ADVERSARY PROCEEDING DEFENDANTS

A. Original Secured Plaintiff & Answering Defendant

1. DELA Depositary & Asset Management B.V.

B. Counterclaim Plaintiffs, Original Secured Plaintiffs & Answering Defendants

2. SSD Investments Ltd.
3. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A.
4. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A.
5. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A.
6. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A.
7. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A.
8. JPMorgan Investment Funds, on behalf of its sub-fund Global High Yield Bond Fund
9. JPMorgan Investment Funds, on behalf of its sub-fund Income Opportunity Fund
10. JPMorgan Investment Funds, on behalf of its sub-fund Global Income Fund
11. JPMorgan Investment Funds, on behalf of its sub-fund Global Income Conservative Fund
12. JPMorgan Funds, on behalf of its sub-fund US High Yield Plus Bond Fund
13. JPMorgan Funds, on behalf of its sub-fund Income Fund
14. JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Sustainable Fund
15. JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Fund
16. iShares Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond UCITS ETF
17. iShares II Public Limited Company, on behalf of its sub-fund iShares \$ High Yield Corp Bond UCITS ETF
18. iShares Trust, on behalf of its series iShares iBonds 2026 Term High Yield and Income ETF
19. iShares Trust, on behalf of its series iShares Broad USD High Yield Corporate Bond ETF
20. iShares Trust, on behalf of its series iShares 0-5 Year High Yield Corporate Bond ETF
21. iShares Trust, on behalf of its series iShares iBoxx \$ High Yield Corporate Bond ETF
22. iShares Trust, on behalf of its series iShares iBonds 2024 Term High Yield and Income ETF
23. BlackRock Institutional Trust Company, N.A., acting in its capacity as Trustee of the U.S. High Yield Bond Index Non-Lendable Fund B
24. iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond GBP Hedged UCITS ETF (Dist)
25. iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond CHF Hedged UCITS ETF (Dist)

26. iShares IV Public Limited Company, on behalf of its sub-fund iShares \$ Short Duration High Yield Corp Bond UCITS ETF
27. iShares Trust, on behalf of its series iShares Core 1-5 Year USD Bond ETF
28. iShares U.S. High Yield Fixed Income Index ETF (CAD-Hedged), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited
29. iShares Trust, on behalf of its series iShares Core Total USD Bond Market ETF
30. iShares U.S. High Yield Bond Index ETF (CADHedged), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited
31. iShares, Inc., on behalf of its series iShares US & Intl High Yield Corp Bond ETF
32. BlackRock Bank Loan Fund, by its manager BlackRock Asset Management Ireland Limited
33. BlackRock Floating Rate Income Trust
34. BlackRock Limited Duration Income Trust
35. BlackRock Dynamic High Income Portfolio of BlackRock Funds II
36. BlackRock Floating Rate Income Portfolio of BlackRock Funds V
37. BlackRock Managed Income Fund of BlackRock Funds II
38. BlackRock Floating Rate Income Strategies Fund, Inc.
39. PSAM WorldArb Master Fund Ltd.
40. Rebound Portfolio Ltd.
41. JPMorgan Funds, on behalf of its sub-fund Multi-Manager Alternatives Fund
42. Lumyna Specialist Funds (formerly called Viaduct Invest FCP-SIF), on behalf of its sub-fund Event Alternative Fund
43. Lumyna Investments Ltd., on behalf of its sub-fund PSAM Global Event UCITS Fund
44. Kapitalforeningen PenSam Invest - PSI 84 US High Yield II
45. The New Zealand Guardian Trust Company Limited, as Trustee for AMP Wholesale High Yield Bond Fund
46. UBS Fund Management (Switzerland) AG
47. JNL Series Trust, on behalf of its series JNL/JPMorgan Global Allocation Fund

C. Additional Counterclaim Plaintiffs (Not Adversary Proceeding Defendants)

48. The Integrity Fund on behalf of its series, Integrity High Income Fund
49. JPMorgan Trust II on behalf of its series, JPMorgan Core Plus Bond Fund
50. JPMorgan Trust II, on behalf of its series JPMorgan High Yield Fund
51. JPMorgan Fund ICVC, on behalf of its sub fund JPM Global High Yield Bond Fund
52. JPMorgan Trust I, on behalf of its series JPMorgan Income Builder Fund
53. JPMorgan Trust I, on behalf of its series JPMorgan Total Return Fund
54. JPMorgan Trust I, on behalf of its series JPMorgan Strategic Income Opportunities Fund
55. JPMorgan Fund ICVC, on behalf of its sub fund JPM Multi-Asset Income Fund
56. Lincoln Variable Insurance Products Trust, on behalf of its series LVIP JPMorgan High Yield Fund
57. Advanced Series Trust, on behalf of its portfolio AST High Yield Portfolio
58. GIM Trust, on behalf of its series U.S. High Yield Bond Fund
59. JPMorgan Trust I, on behalf of its series JPMorgan Global Allocation Fund
60. HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Income Fund

61. JPMorgan Trust I, on behalf of its series JPMorgan Global Bond Opportunities Fund
62. JPMorgan Trust I, on behalf of its series JPMorgan Short Duration Core Plus Fund
63. IBM 401(k) Plus Plan Trust , on behalf of the IBM 401(k) Plus Plan
64. JPMorgan Trust I, on behalf of its series JPMorgan Income Fund
65. Migros-Pensoinskasse Fonds
66. J.P. Morgan Exchange-Traded Fund Trust, on behalf of its series JPMorgan Core Plus Bond ETF
67. HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Balanced Fund
68. Zurich American Insurance Company
69. NBI High Yield Bond ETF
70. Deferred Salary Plan of the Electrical Industry
71. NBI Unconstrained Fixed Income ETF
72. National Employment Savings Trust Corporation, in its capacity as trustee of the National Employment Savings Trust

COUNTERCLAIM DEFENDANTS

A. Debtor Defendants (Adversary Proceeding Plaintiffs)

1. Wesco Aircraft Holdings, Inc.
2. Adams Aviation Supply Company Limited
3. Flintbrook Limited
4. HAAS Chemical Management of Mexico, Inc.
5. HAAS Corporation of Canada
6. HAAS Corporation of China
7. HAAS Group International SCM Limited
8. HAAS Group International, LLC
9. HAAS Group, LLC
10. HAAS Holdings, LLC
11. HAAS International Corporation
12. HAAS of Delaware LLC
13. HAAS TCM Group of the UK Limited
14. HAAS TCM Industries LLC
15. HAAS TCM of Israel Inc.
16. Interfast USA Holdings Incorporated
17. Netmro, LLC
18. Pattonair Holding, Inc.
19. Pattonair (Derby) Limited
20. Pattonair Europe Limited
21. Pattonair Group Limited
22. Pattonair Holdings Limited
23. Pattonair Limited
24. Pattonair USA, Inc.

25. Pioneer Finance Corporation
26. Pioneer Holding Corporation
27. Quicksilver Midco Limited
28. Uniseal, Inc.
29. Wesco 1 LLP
30. Wesco 2 LLP
31. Wesco Aircraft Canada, LLC
32. Wesco Aircraft EMEA, Ltd.
33. Wesco Aircraft Europe Limited
34. Wesco Aircraft Hardware Corp.
35. Wesco Aircraft International Holdings Limited
36. Wesco Aircraft SF, LLC
37. Wesco LLC 1
38. Wesco LLC 2
39. Wolverine Intermediate Holding II Corporation
40. Wolverine UK Holdco Limited

B. Non-Debtor Defendants (Not Plaintiffs in Adversary Proceeding)

41. Wilmington Savings Fund Society, FSB
42. Platinum Equity Advisors, LLC
43. Wolverine Top Holding Corporation
44. Platinum Equity Capital Partners International, IV (Cayman) LP
45. Silver Point Capital Fund, L.P.
46. Silver Point Capital Offshore Master Fund, L.P.
47. Silver Point Select Opportunities Fund A, L.P.
48. Silver Point Distressed Opportunities Fund, L.P.
49. Silver Point Distressed Opportunities Offshore Master Fund, L.P.
50. Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.
51. Silver Point Distressed Opportunity Institutional Partners, L.P.
52. Silver Point SCF CLO I, Ltd.
53. Silver Point Specialty Lending Fund
54. Silver Point Specialty Credit Fund II Mini-Master Fund (Offshore), L.P.
55. PIMCO Tactical Income Opportunities Fund
56. PIMCO Global Income Opportunities Fund
57. PIMCO Tactical Income Fund
58. PIMCO Global StocksPLUS & Income Fund
59. PCM Fund, Inc.
60. PIMCO Strategic Income Fund, Inc.
61. PIMCO Corporate & Income Opportunity Fund
62. PIMCO High Income Fund
63. PIMCO Income Strategy Fund
64. PIMCO Income Strategy Fund II

65. PIMCO Corporate & Income Strategy Fund
66. PIMCO Dynamic Income Opportunities Fund
67. PIMCO Dynamic Income Fund
68. PIMCO ETFs plc
69. PIMCO US Short-Term High Yield Corporate Bond Index UCITS ETF (previously identified as PIMCO Fixed Income Source ETFs plc, PIMCO Short-Term High Yield Corporate Bond Index Source UCITS ETF)
70. PIMCO Flexible Credit Income Fund
71. PIMCO Funds: PIMCO Low Duration Credit Fund
72. PIMCO Funds: PIMCO High Yield Spectrum Fund
73. PIMCO ETF Trust: PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund
74. OC III LVS I LP
75. PIMCO Tactical Opportunities Master Fund Ltd.
76. PIMCO OP Trust Flexible Credit Fund, L.P.
77. PIMCO DISCO Fund III LP
78. Texas Children's Hospital Foundation
79. Bakery and Confectionery Union and Industry International Pension Fund
80. Employees' Retirement System of the State of Rhode Island
81. Desjardins Floating Rate Income Fund
82. Desjardins Global Tactical Bond Fund
83. BMO Global Strategic Bond Fund
84. CCOF Onshore Co-Borrower LLC
85. CSP IV Acquisitions, L.P.
86. CCOF Master, L.P.
87. Senator Global Opportunity Master Fund L.P.
88. Citadel Equity Fund Ltd.
89. Spring Creek Capital LLC

Certificate of Service

I certify that on July 31, 2023, 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/ John P. Melko

EXHIBIT 5

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS – HOUSTON DIVISION**

<i>In re</i>	)	Case No. 23-90611 (DRJ)
	)	
WESCO AIRCRAFT HOLDINGS, INC., et al.,	)	Chapter 11
	)	
Debtors. ¹	)	(Jointly Administered)
	)	
	)	Adv. Pro. No. 23-03091 (DRJ)
	)	
WESCO AIRCRAFT HOLDINGS, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
SSD INVESTMENTS LTD., et al.,	)	
	)	
Defendants.	)	
	)	
SSD INVESTMENTS LTD., et al.,	)	
	)	
Counterclaim Plaintiffs,	)	
	)	
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.

LANGUR MAIZE, L.L.C.,	)
	)
Crossclaim Plaintiff,	)
	)
v.	)
	)
PLATINUM EQUITY ADVISORS, LLC, <i>et al.</i>,	)
	)
Crossclaim Defendants. ²	)
	)
LANGUR MAIZE, L.L.C.,	)
	)
Third-Party Plaintiff,	)
	)
v.	)
	)
UNNAMED PLATINUM FUNDS c/o	)
PLATINUM EQUITY ADVISORS, LLC, <i>et al.</i>,	)
	)
Third-Party Defendants.	)
	)
LANGUR MAIZE, L.L.C.,	)
	)
Counterclaim Plaintiff,	)
	)
v.	)
	)
WESCO AIRCRAFT HOLDINGS, INC., <i>et al.</i>,	)
	)
Counterclaim Defendants.	)
	)

CROSSCLAIMS, THIRD-PARTY CLAIMS AND COUNTERCLAIM

Crossclaim, third-party and counterclaim plaintiff Langur Maize, L.L.C. (“Langur Maize”), by its attorneys, alleges as follows for its crossclaims, third-party claims and counterclaim:

² A full list of the Crossclaim, Third-Party, and Counterclaim Defendants is set forth in Appendix A to these *Crossclaims, Third-Party Claims and Counterclaim*.

SUMMARY

1. These crossclaims, third-party claims, and counterclaim challenge an illegal self-dealing transaction among Platinum Equity Advisors, LLC and investment funds managed and/or advised by it (collectively, “Platinum”), the private equity owners of Wesco Aircraft Holdings, Inc. (“Wesco”), Wilmington Savings Fund Society, FSB as indenture trustee (“WSFS”), Carlyle Global Credit Investment Management, L.L.C. and investment funds managed and/or advised by it, including CCOF Onshore CoBorrower LLC, CSP IV Acquisitions, L.P. and CCOF Master, L.P. (collectively, “Carlyle”), as the majority owners of unsecured notes due 2027 issued by Wesco (the “2027 Notes”), and Senator Investment Group LP and funds managed and/or advised by it, including Senator Global Opportunity Master Fund L.P. (collectively, “Senator”), as holders of 2027 Notes that participated in the transaction. The transaction purported to exchange specially selected 2027 Notes that were held by Platinum, Carlyle and Senator for more valuable secured debt, while eventually rendering the 2027 Notes that were not selected for exchange (including those held by Langur Maize) nearly worthless (the “Insider Exchange”). Platinum, Carlyle and WSFS were instrumental to the transaction — Platinum because it held 2027 Notes, controlled Wesco and caused it to enter into the Insider Exchange in order to increase the value of its claims against Wesco, Carlyle because it held the majority of votes that were necessary under the Indenture to effectuate the Insider Exchange,³ and WSFS because it breached the provisions in the Indenture that prohibited such an exchange.

³ On information and belief, Carlyle held a majority of the 2027 Notes unaffiliated with Wesco at the time of the Insider Exchange. To the extent that Carlyle did not hold a majority of the 2027 Notes, Carlyle and Senator together held a majority of the 2027 Notes and Senator’s participation was also necessary to effectuate the Insider Exchange.

The Insider Exchange violated the 2027 Notes and the Indenture governing the 2027 Notes (the “Indenture”).⁴

2. Carlyle is a former owner of Wesco, making it at least a former insider. Platinum took Wesco private in January 2020, saddling the company with \$1.5 billion in senior secured notes (the “Secured Notes”) and \$525 million in 2027 Notes, while paying only \$260 million of its own cash. Just two months after the leveraged buyout, the pandemic hit, severely impacting the performance of the company and leading S&P to downgrade the company’s debt in August 2020. As of July 2020, the 2027 Notes were trading at an average of 68 cents on the dollar and Platinum, seeing an opportunity to take advantage of its control over Wesco, had started purchasing 2027 Notes.

3. In March 2022, with the knowledge that Wesco was insolvent, Platinum, Carlyle and WSFS executed the Insider Exchange, which one commentator characterized as “ghastly.”⁵ The transaction sought to boost Platinum’s and Carlyle’s returns by allowing them to exchange their 2027 Notes for new 1.25 Lien secured notes (the “New 1.25L Notes”), which traded at far higher prices than the 2027 Notes and enjoy priority over all unsecured claims in any recoveries in bankruptcy or liquidation. Neither Platinum nor Carlyle invested any new money into Wesco in return.⁶

4. The Insider Exchange violated the terms of the 2027 Notes and the Indenture, which require that, unless Wesco redeems 100% of the 2027 Notes (which did not happen here),

⁴ The Indenture is attached as Exhibit A to these *Crossclaims, Third-Party Claims and Counterclaim*. The form of the 2027 Notes is Exhibit A to the Indenture.

⁵ Matt Levine, *Distressed-Debt Deal Makes People Mad*, <https://www.bloomberg.com/opinion/articles/2022-04-07/distressed-debt-deal-makes-people-mad> (Apr. 7, 2022).

⁶ Moreover, by the time of the Insider Exchange, a subsidiary of Wolverine had issued over \$130 million in debt in the form of 13.750% Senior PIK Notes due 2028. It is unclear whether these notes played any part in the Insider Transaction, but to the extent that they did, Langur Maize reserves all rights with respect to allegations concerning these notes.

the indenture trustee must select any 2027 Notes that are to be purchased or redeemed either *pro rata*, by lot, or by a method the indenture trustee deems “fair and appropriate.” But instead of complying with this requirement, WSFS acceded to Platinum’s direction, issued through Wesco and supported by Carlyle and Senator, to allow the purchase of only those notes held by certain holders hand-picked by Platinum (including Platinum, Carlyle and Senator), while excluding all other holders. This was a clear breach of the 2027 Notes and the Indenture, but not the only one. The Insider Exchange also breached the Indenture’s prohibition on making any change to the ranking of the 2027 Notes in respect of their right of payment by ensuring that the remaining 2027 Notes will only be paid *after* all of Wesco’s other notes. Notably, the original indenture trustee, Bank of New York, resigned rather than have anything to do with this transaction, and Wesco appointed WSFS as a replacement trustee.

5. Not only did the Insider Exchange violate the express terms of the 2027 Notes, the express terms of the Indenture and applicable law, it also violated the covenant of good faith and fair dealing implied in the 2027 Notes and the Indenture. Crossclaim and third-party defendants’ actions suggest an intent to harm holders of 2027 Notes that were not offered an opportunity to participate in the Insider Exchange, and it is clear that the crossclaim and third-party defendants combed through the Indenture in an attempt to delete provisions under which the non-participating holders could potentially avail themselves of a remedy, including provisions that allowed the holders to replace the indenture trustee or notice an Event of Default. The crossclaim and third-party defendants also stripped many protective covenants from the Indenture, further diminishing the value of the non-participating holders’ 2027 Notes. This was a self-dealing abuse of power that exudes bad faith.

THE PARTIES

6. Crossclaim, third-party and counterclaim plaintiff Langur Maize, L.L.C., is a Delaware limited liability company with its principal place of business in New York. Langur Maize owns over 60% of the outstanding 2027 Notes.⁷

7. Crossclaim defendant Platinum Equity Advisors, LLC (“Platinum Advisors”) is a Delaware limited liability company with its principal place of business in California. Platinum Advisors is the private equity sponsor and an affiliate and person in control of Wesco and its direct parent entity, Wolverine.

8. Crossclaim defendant Wolverine Top Holding Corporation (“Wolverine”) is a Delaware corporation and the indirect, 100% owner of Wesco and its subsidiaries. Wolverine is an affiliate and person in control of Wesco. Wolverine now holds New 1.25L Notes.

9. Third-party defendants Unnamed Platinum Funds (“Platinum Funds”), the names of which are unknown at this time, are or were invested in Wesco equity, Wolverine, the 2027 Notes, or all of the foregoing. Some or all of the Platinum Funds now hold New 1.25L Notes. Some or all of the Platinum Funds are affiliates and insiders of Wesco. When the names of the Platinum Funds become known, all subsequent proceedings shall be taken under their names.

10. Third-party defendant Carlyle Global Credit Investment Management, L.L.C. (“Carlyle Management”) is a limited liability company incorporated in Delaware with its principal place of business in New York.⁸ Carlyle Management may be an affiliate and insider of Wesco.

⁷ Under the terms of the Indenture, Langur Maize is a beneficial owner of 2027 Notes holding interests in a Global Note held by DTC. Langur Maize has taken the steps required to exercise the rights and remedies of a beneficial owner directly on its own behalf.

⁸ The managing entity of the Carlyle Funds is identified in Section 4 of the Second Supplemental Indenture for the 13.750% Senior PIK Notes due 2028 as Carlyle Global Credit Management, LLC. If necessary, Langur Maize will amend the crossclaims and third-party claims to reflect the entity’s correct name.

11. Crossclaim defendants CCOF Onshore CoBorrower LLC, CSP IV Acquisitions, L.P. and CCOF Master, L.P. (“Named Carlyle Funds”), were holders of 2027 Notes and now hold New 1.25L Notes.

12. Third-party defendants Unnamed Carlyle Funds, the names of which are unknown at this time, are or were invested in Wolverine, the 2027 Notes, the New 1.25L Notes, or all of the foregoing. When the names of the Unnamed Carlyle Funds become known, all subsequent proceedings shall be taken under their names. Some or all of the Named Carlyle Funds and Unnamed Carlyle Funds (together, the “Carlyle Funds”) may be affiliates and insiders of Wesco.

13. Third-party defendant Senator Investment Group LP (“Senator Investment”) is a limited partnership with its principal place of business in New York.

14. Crossclaim defendant Senator Global Opportunity Master Fund L.P. is or was, on information and belief, invested in Wolverine, the 2027 Notes, the New 1.25L Notes, or all of the foregoing.

15. Third-party defendants Unnamed Senator Funds (“Unnamed Senator Funds”), the names of which are unknown at this time, are or were invested in Wolverine, the 2027 Notes, the New 1.25L Notes, or all of the foregoing. When the names of the Unnamed Senator Funds become known, all subsequent proceedings shall be taken under their names.

16. Crossclaim defendant Wilmington Savings Fund Society, FSB is a federal savings bank with its principal place of business in Delaware. WSFS was the trustee under the Indenture and the trustee and collateral agent under the indentures for the 2024 Notes, 2026 Notes, the New 1.25L Notes and the New 1L Notes (as defined below).

17. Counterclaim defendant Wesco Aircraft Holdings, Inc. is a Delaware corporation with its principal place of business in Texas.

18. Counterclaim defendants that guaranteed Wesco’s obligations under the Indenture and 2027 Notes, and are also Debtors in the chapter 11 cases, are Adams Aviation Supply Co. Ltd.; Flintbrook Ltd.; HAAS Chemical Management of Mexico, Inc.; HAAS Corporation of Canada; HAAS Corporation of China; HAAS Group International SCM Ltd.; HAAS Group International, LLC; HAAS Group, LLC; HAAS Holdings, LLC; HAAS International Corp.; HAAS of Delaware, LLC; HAAS TCM Group of the UK Ltd.; HAAS TCM Industries, LLC; HAAS TCM of Israel, Inc.; Interfast USA Holdings Inc.; NetMRO, LLC; Pattonair Holding, Inc.; Pattonair (Derby) Ltd.; Pattonair Europe Ltd.; Pattonair Group Ltd.; Pattonair Holdings Ltd.; Pattonair Ltd.; Pattonair USA, Inc.; Pioneer Finance Corp.; Pioneer Holding Corp.; Quicksilver Midco Ltd.; UNISEAL, Inc.; Wesco 1 LLP; Wesco 2 LLP; Wesco Aircraft Canada, LLC; Wesco Aircraft EMEA, Ltd.; Wesco Aircraft Europe Ltd.; Wesco Aircraft Hardware Corp.; Wesco Aircraft International Holdings Ltd.; Wesco Aircraft SF, LLC; Wesco LLC 1; Wesco LLC 2; Wolverine Intermediate Holding II Corp.; and Wolverine UK Holdco Ltd. (collectively, the “Guarantor Debtors”).

19. Counterclaim defendants other than Wesco that did not guarantee Wesco’s obligations under the Indenture and the Notes, but which are also Debtors in the chapter 11 cases, are Wolverine Intermediate Holding Corp., Wesco Aircraft Canada Inc., Haas Group Canada Inc. and Haas TCM de Mexico S. de R.L. de C.V. (collectively, the “Other Debtors”).

20. Counterclaim defendants Wesco, the Guarantor Debtors and the Other Debtors are referred to collectively as the “Debtor Defendants.”

21. Langur Maize reserves the right to name additional crossclaim defendants and third-party defendants as their names become known.

JURISDICTION AND VENUE

22. Langur Maize's claims against the crossclaim and third-party defendants are not related to the Debtors' chapter 11 cases, are not subject to the automatic stay of 11 U.S.C. § 362 and should not be enjoined under 11 U.S.C. § 105. However, to the extent and in the event that the Court finds that these claims are related to the Debtors' chapter 11 cases, this Court has subject-matter jurisdiction over these claims pursuant to 28 U.S.C. § 1334.

23. Langur Maize's counterclaim against the Debtor Defendants is not related to the Debtors' chapter 11 cases, but in the event and to the extent that it is determined that the counterclaim is related to the Debtors' chapter 11 cases, the Court would have jurisdiction over it pursuant to 28 U.S.C. § 1334 if there were an actual case or controversy between Langur Maize and the Debtor Defendants under Article III of the U.S. Constitution. However, there is no such case or controversy because resolution of the Debtor Defendants' claims for declaratory relief and Langur Maize's counterclaim will not advance the resolution of any dispute between Langur Maize and the Debtor Defendants. Langur Maize is asserting its counterclaim to the extent and in the event that the Court finds it has jurisdiction over the Debtor Defendants' claims for declaratory relief against Langur Maize because the Court would have jurisdiction over the counterclaim if it has jurisdiction over those claims.

24. To the extent this Court has jurisdiction over this proceeding and this proceeding is related to the Debtors' chapter 11 cases, venue in this Court would be proper pursuant to 28 U.S.C. § 1409 because this is the district in which the related bankruptcy case is pending.

25. To the extent this Court has jurisdiction over this proceeding and this proceeding is related to the Debtors' chapter 11 cases, Langur Maize's claims would be non-core claims for which Langur Maize does not consent to entry of a final order or judgment by this Court.

Pursuant to Bankruptcy Rule 7008, Langur Maize does not consent to the entry of final orders or judgment by this Court in connection with this adversary proceeding if it is determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

26. Though Langur Maize is asserting the crossclaims, third-party claims and counterclaim in this adversary proceeding, asserting these claims in this proceeding shall not (1) in any way prejudice Langur Maize's opposition to the Debtors' motion (the "Stay Motion") for an *Order (I) Declaring that the Automatic Stay Applies to all Claims in the New York State Actions or Extending the Automatic Stay to the Non-Debtor Parties and (II) Preliminarily Enjoining the New York State Actions* [Adv. ECF No. 2], or be construed as a waiver of any argument by Langur Maize in opposition to the Stay Motion; (2) be a basis for any finding, order or argument by any party that the claims that are asserted or alleged in, or could be alleged or asserted in, this adversary proceeding or Langur Maize's New York state court action are subject to the jurisdiction of this Court or that such claims are properly adjudicated by this Court; or (3) waive or curtail any right of Langur Maize to challenge in any way the adjudication, treatment or handling of the claims that are asserted or alleged in, or could be alleged or asserted in, this adversary proceeding, Langur Maize's New York state court action or any other proceeding, by this Court (including without limitation any right to seek abstention (whether permissive or mandatory), withdraw the reference, or seek a trial by jury). Langur Maize further reserves all rights to assert or argue that in the event the Stay Motion is denied on a final basis, any claims asserted against Langur Maize in this adversary proceeding should be immediately dismissed. Langur Maize further reserves all rights to assert or argue that no decision, order or other ruling in this adversary proceeding, or any other adversary proceeding that may be filed, shall have any

res judicata, issue preclusion, collateral estoppel or other preclusive effect on any of the parties in Langur Maize's New York state court action.

27. Each crossclaim, third-party and counterclaim defendant is subject to personal jurisdiction pursuant to Federal Rule of Bankruptcy Procedure 7004 because each crossclaim, third-party and counterclaim defendant has established minimum contacts with the United States.

28. The crossclaim, third-party and counterclaim defendants are parties to the Indenture and the 2027 Notes. Under Section 13.07 of the Indenture and the same provision which is incorporated into the 2027 Notes, all parties to the Indenture consented to the jurisdiction of courts in the United States, namely in the State of New York.

29. Where a federal statute or rule provides for nationwide service of process, as does Bankruptcy Rule 7004, a federal court has personal jurisdiction over any defendant having minimum contacts with the United States.

30. Accordingly, this Court has personal jurisdiction over the crossclaim, third-party and counterclaim defendants based on their contacts with the United States.

SUBSTANTIVE ALLEGATIONS

A. Platinum takes control of Wesco.

31. Wesco provides supply chain management services, primarily to the aerospace and defense industries.

32. Carlyle took a majority stake in Wesco in 2006. In 2011, Carlyle sold some of Wesco's stock on the New York Stock Exchange. Between 2011 and 2020, Carlyle reduced its stockholding in Wesco to 23%, although it remained Wesco's largest stockholder.

33. In 2019, Platinum entered into an agreement to take Wesco private. To finance the leveraged buyout, Platinum caused Wesco to issue over \$2 billion in debt, comprising \$650

million in Secured Notes due in 2024 (the “2024 Notes”), \$900 million in Secured Notes due in 2026 (the “2026 Notes”), and \$525 million in 2027 Notes. Platinum invested only approximately \$260 million of its own cash. The 2024 Notes and 2026 Notes were secured with liens on substantially all of Wesco’s assets. Carlyle subscribed for and purchased over 50% of the 2027 Notes, and continued to hold a majority of the 2027 Notes until the Insider Exchange.⁹

34. Immediately after taking Wesco private, Platinum merged it with one of its portfolio companies, Pattonair, and the combined company began doing business under the name Incora. The transaction closed only two months before the onset of COVID-19. In October 2020, Platinum caused Wesco to issue a \$25 million unsecured promissory note to Wolverine, an entity through which Platinum holds its stock in Wesco, in exchange for cash. By February 2022, the 2024 Notes and 2026 Notes were trading around 85 cents on the dollar, and the 2027 Notes were trading around 60 cents on the dollar.

B. Platinum begins planning the Insider Exchange, and the indenture trustee resigns.

35. Wesco faced interest payments on its notes in May 2022, which it was going to struggle to meet. On February 7, 2022, news leaked that Wesco was planning a transaction to restructure its debt. As the *Wall Street Journal* reported, Wesco was contending with a “cash crunch brought on by low demand in the aerospace sector as a result of the ongoing pandemic.”¹⁰

⁹ Langur Maize alleges on information and belief that Carlyle held over 50% of the 2027 Notes other than those owned by Wesco and its affiliates at the time of the Insider Exchange. To the extent that Senator’s notes were also required to constitute a majority, Langur Maize alleges that Platinum and Wesco also recruited Senator to obtain the over 50% consent necessary to carry out the Insider Exchange.

¹⁰ Alexander Gladstone, *Platinum Equity’s Aerospace Supplier Incora Taps Restructuring Advisers for \$2 Billion Debt Load*, *Wall Street Journal*, <https://www.wsj.com/articles/platinum-equitys-aerospace-supplier-incora-taps-restructuring-advisers-for-2-billion-debt-load-11644261390> (Feb. 7, 2022).

36. It is evident that Wesco’s indenture trustee at the time, Bank of New York, believed that one or more of the transactions Wesco was planning were impermissible, and by late February, was balking at going forward with the Insider Exchange.

37. On March 14, 2022, Bank of New York resigned and Wesco, under Platinum’s control, appointed WSFS as successor trustee.

C. Platinum, Carlyle and WSFS plow ahead with the Insider Exchange.

38. On March 28, 2022, Wesco, at Platinum’s, Carlyle’s and/or Senator’s direction, implemented the Insider Exchange, which was executed at the same time as a separate but contemporaneous transaction that disadvantaged holders of the 2024 Notes and the 2026 Notes (the “Secured Exchange”).

39. Before the Insider Exchange, Wesco had \$550 million of unsecured debt outstanding, comprising \$525 million in 2027 Notes under the Indenture and the \$25 million promissory note payable to Wolverine. The aim of the Insider Exchange was to convert \$421 million of the 2027 Notes — held by Platinum, Carlyle and Senator (collectively, the “Platinum Group”) — into New 1.25L Notes, collateralized by the same assets as, but subordinated to, other new first lien secured notes that were to be issued contemporaneously (the “New 1L Notes”).¹¹ The \$25 million note payable to Wolverine would also be included in this “uptier” transaction. By contrast, \$104 million of 2027 Notes (including those held by Langur Maize)

¹¹ The second supplemental indenture to the indenture governing 2028 PIK notes issued by Wolverine Intermediate Holding Corp., a holding corporation sitting between Wesco and Wolverine, provides that after the Insider Exchange and the Secured Exchange, the “sole holders” of New 1.25L Notes shall be Carlyle Management and the Carlyle Funds, Senator and Senator’s funds, and “Wolverine Top Holding Corporation and/or its managed or advised funds or accounts.” It is unclear whether Wolverine itself received New 1.25L Notes in exchange for 2027 Notes, or whether the Platinum Funds were in fact “managed or advised” by Wolverine. To the extent that Wolverine did receive New 1.25L Notes in exchange for 2027 Notes, it is included in the definition of Platinum Funds. Regardless of whether Wolverine exchanged 2027 Notes for New 1.25L Notes, however, it is clear that Wolverine exchanged its \$25 million promissory note for New 1.25L Notes.

would remain unsecured — and now ranking below \$473 million of New 1.25L Notes (and approximately \$1.25 billion in New 1L Notes) in right of payment.

40. The mechanics were as follows:

Transaction one: Issuing more debt

41. On March 8, 2022, Wesco and WSFS executed a Third Supplemental Indenture to govern the 2026 Notes, which allowed Wesco to issue an additional \$250 million in 2026 Notes to noteholders of its choice, giving those noteholders a two-thirds supermajority of the 2026 Notes.¹² Wesco and WSFS simultaneously issued conforming Third Supplemental Indentures for the 2024 Notes and the 2027 Notes, which amended the covenants in those indentures to allow for the issuance of the additional 2026 Notes.

Transaction two: Releasing the liens

42. Using its new two-thirds majority in both the 2024 Notes and 2026 Notes, Platinum caused Wesco to execute Fourth Supplemental Indentures for each of those series of Secured Notes. The Fourth Supplemental Indentures deleted numerous protections in the indentures that governed the Secured Notes that were not being exchanged, including Section 4.12, which restricted the creation of new liens. The relevant Fourth Supplemental Indentures also replaced Section 12.01 of the 2024 Notes and the 2026 Notes indentures with a new provision stating that “[f]rom and after the date of execution of that certain Fourth Supplemental Indenture . . . the [2024 Notes and 2026 Notes] shall cease to be secured by the Collateral and . . . shall represent unsecured Obligations of the Company.”¹³

¹² Platinum’s allies already held two-thirds of the principal amount of the 2024 Notes, but without executing the Third Supplemental Indenture, Wesco would have been limited to issuing \$75 million in additional debt under the 2026 Notes — not enough to get to the two-thirds mark.

¹³ Fourth Supplemental Indentures for 2024 Notes and 2026 Notes, § 3(b) (Exhibit B to these *Crossclaims, Third-Party Claims and Counterclaim*).

43. Platinum also caused Wesco and the trustee to execute a Fourth Supplemental Indenture for the 2027 Notes,¹⁴ which required the consent only of Carlyle, as the holder of a majority¹⁵ of the 2027 Notes.¹⁶ Platinum and Carlyle purported to take advantage of Section 9.02 of the Indenture, which allows holders of 2027 Notes to take certain actions by majority consent. The Fourth Supplemental Indenture for the 2027 Notes eviscerated the protections that those notes enjoyed with respect to the issuance of new secured debt, including Section 4.12, which limited the creation of new senior liens, and Section 4.09(h), which prevented Wesco from exchanging 2027 Notes for new secured debt unless all holders of 2027 Notes had been offered a lien on the same collateral.

44. The Fourth Supplemental Indenture, which was executed by WSFS, referenced an “Exchange Agreement” pursuant to which the Issuer agreed, subject to the execution, delivery, and effectiveness of the Fourth Supplemental Indenture, to exchange 2027 Notes held by “certain beneficial owners and record holders” as “specified” in the Exchange Agreement for New 1.25L Notes. The Fourth Supplemental Indenture also relied upon several defined terms, including “Exchanged Unsecured Notes” that were not defined in the Fourth Supplemental Indenture, but which were defined in the Exchange Agreement. Upon information and belief, WSFS had a copy of the Exchange Agreement and knew that the purpose of the Fourth Supplemental Indenture was to facilitate purchases of the 2027 Notes in violation of the provisions of the Indenture and the 2027 Notes. Indeed, according to WSFS, the Fourth Supplemental Indenture

¹⁴ The Fourth Supplemental Indenture for the 2027 Notes is attached as Exhibit C to these *Crossclaims, Third-Party Claims and Counterclaim*.

¹⁵ See note 8, *supra*.

¹⁶ Platinum was not entitled to vote its 2027 Notes in connection with the Insider Exchange because, as an “Affiliate” of the company, Platinum’s notes are not included in any calculation of majority consent under the Unsecured Indenture. See Indenture §§ 2.09, 9.02. This is why Platinum needed to include Carlyle in the Insider Exchange.

was “a condition precedent to the exchanges contemplated [in the Exchange Agreement].”¹⁷

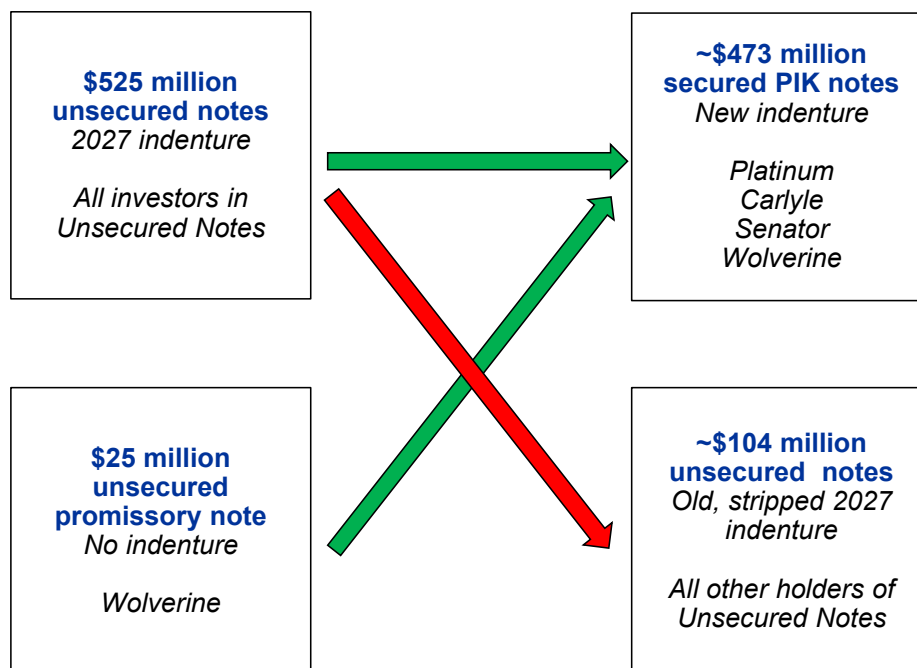
WSFS thus knew that the execution of the Fourth Supplemental Indenture would adversely affect WSFS’s duties (because, by participating in the Insider Exchange, WSFS violated the Indenture) and liabilities (because the Insider Exchange created liabilities for WSFS). WSFS therefore knew that a purchase of the 2027 Notes that violated the terms of the Indenture and the 2027 Notes was contemplated in advance of the consummation of those purchases.

Transaction three: The Insider Exchange

45. The final transaction was the exchanges themselves. In the Insider Exchange, the Platinum Group sold their 2027 Notes and received New 1.25L Notes with a principal amount of 101.125% of the existing face value of their 2027 Notes, plus accrued and unpaid interest. At the same time, Wolverine was permitted to include its \$25 million promissory note in the exchange, even though it was not a 2027 Note. The holders of 2027 Notes who were not part of the Platinum Group got nothing.

46. A diagram of the Insider Exchange is shown below:

¹⁷ WSFS Motion to Dismiss at 9, *Langur Maize* Action, Dkt. No. 89 (N.Y. Sup. Ct. May 26, 2023)



47. Meanwhile, in the Secured Exchange, the holders of 2024 Notes and 2026 Notes aligned with Platinum sold a total of approximately \$1.27 billion in Secured Notes (including the \$250 million in newly-issued 2026 Notes, PIK fees, and accrued interest) and purchased \$1.27 billion in New 1L Notes, due 2026 (representing a principal amount of 100.902% of the face amount of their Secured Notes). \$539 million in 2024 Notes and 2026 Notes held by holders that had not been invited to participate in the Secured Exchange were left behind and rendered unsecured. In total, as a result of the Insider Exchange and Secured Exchange, the company's unsecured debt pile increased by \$94 million to over \$770 million.

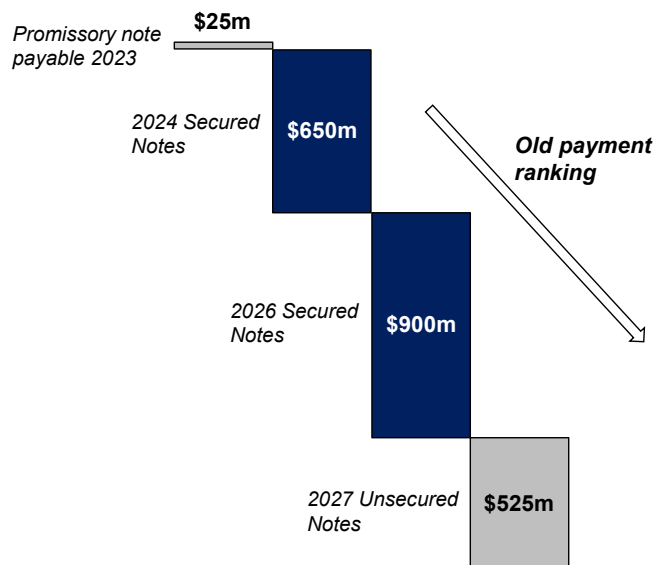
48. The transactions changed the ranking of the 2027 Notes' right of payment relative to Wesco's other debt by placing their payment priority behind all other debt, either temporally or on account of their relative claim on the company's assets. Prior to the Insider Exchange, the 2027 Notes (a) ranked behind \$1.55 billion of secured debt (*i.e.*, the 2024 Notes and 2026 Notes); (b) were temporally ranked behind the unsecured promissory note held by Wolverine, which was payable in 2023; and (c) were *pari passu* with all the other 2027 Notes. After the

Insider Exchange, the 2027 Notes (a) ranked behind \$1.745 billion of secured debt (*i.e.*, the New 1L Notes and the New 1.25L Notes) in terms of the order of their claims on the company's assets; and (b) were temporally ranked behind \$539 million of newly unsecured 2024 Notes and 2026 Notes.

49. Assuming solely for purposes of illustration that Wesco was valued at \$2 billion prepetition and this value remained static through 2027 except with respect to the payment of funded debt obligations. Before the Insider Exchange, upon maturity the 2027 Notes would have shared ratably in \$425 million with other unsecured debt (*i.e.*, \$2 billion less \$1.55 billion of 2024 Notes and 2026 Notes, and the \$25 million promissory note). But after the Insider Exchange, the 2027 Notes would receive nothing because the entire \$2.28 billion of other debt obligations (representing the \$1.27 billion in New 1L Notes, the \$473 million in New 1.25L Notes, and the newly unsecured \$181 million in 2024 Notes and \$358 million in 2026 Notes (both of which mature prior to the 2027 Notes)) ranks above the 2027 Notes in right of payment, whether due to temporal priority, the order of their claims on the company's assets, or both.

50. The company also included a springing maturity provision in the indenture for the New 1L Notes that would have brought forward the maturity of the new 1L Notes due in 2026 to October 2024 if more than \$50 million of the newly unsecured 2024 Notes remained outstanding as of that date. By reason of the filing of the chapter 11 cases, the maturity of the 2027 Notes is accelerated and the entire principal amount, all interest as it accrues as well as other amounts due under the 2027 Notes and the Indenture are now due and payable.

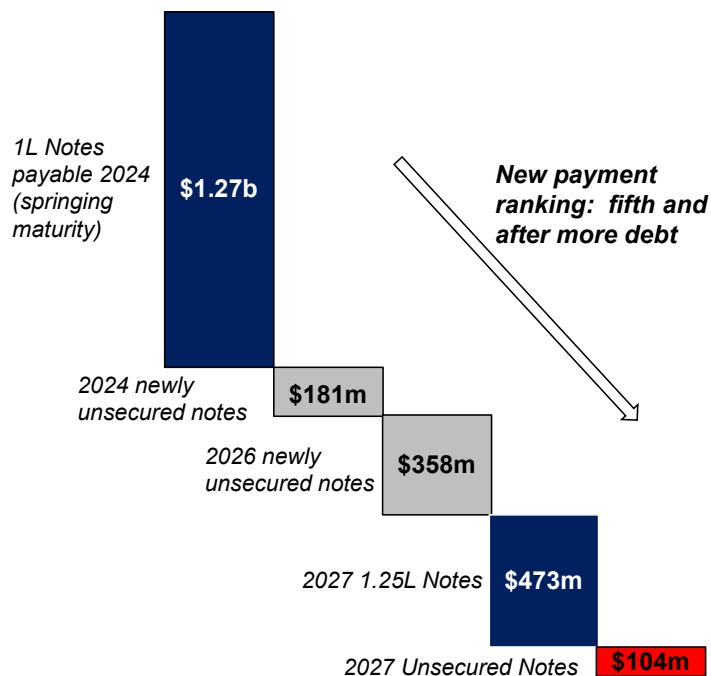
51. The change in ranking of the 2027 Notes' right of payment is illustrated in the following waterfalls. Before the exchanges (and before the Debtors' chapter 11 petitions), the ranking of payments was as follows. The 2027 Notes were payable fourth:¹⁸



52. But after the exchanges (and again, before the Debtors' chapter 11 petitions), the 2027 Notes were payable fifth, and had more debt layered on top:¹⁹

¹⁸ The diagrams show only the classes of debt affected by the exchanges. The exchanges did not affect a senior ABL revolver and a junior class of 2028 PIK notes.

¹⁹ Before the exchanges, in a bankruptcy, the 2027 Notes were payable second, *pari passu* with the promissory note but ranking behind the Secured Notes, which were all in one first lien tranche. Now, after the exchanges and the Debtors' chapter 11 petitions, because all the debt has been accelerated as a result of the bankruptcy, the 2027 Notes are payable third, *pari passu* with the newly unsecured 2024 Notes and 2026 Notes but now behind *two* ranks of secured debt with higher standing: the New 1L Notes and New 1.25L Notes. Thus, even in a bankruptcy, the Insider Exchange changed the 2027 Notes' ranking in right of payment.



53. The Indenture confirms that when the parties referred to “ranking . . . in respect of right of payment,” they meant standing with respect to right of payment relative to other noteholders. In Section 4.09(c), when referring to “subordination in right of payment,” the parties included a proviso that “no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Restricted Subsidiary solely by virtue of being unsecured or by virtue of being unsecured on a junior priority basis.” The parties did *not* include that language anywhere else in the Indenture — including in Section 9.02(10). Rather, Section 9.02(10) is meant to address the situation presented here: where, as a practical matter, one set of noteholders’ standing relative to other noteholders with respect to the time and amount they will be paid on their notes is changed, such a change can only be made with their unanimous consent.

D. Crossclaim and third-party defendants acted in bad faith.

54. All of this was done in bad faith. Platinum recruited Carlyle, itself at least a former insider, to obtain the over 50% consent necessary to carry out the Insider Exchange.

And, in the course of it, they deleted virtually every protection for the holders of 2027 Notes that existed in the 2027 Notes and the Indenture. Crossclaim and third-party defendants stripped the covenants in Section 4.07 that required Wesco to maintain certain financial ratios. Crossclaim and third-party defendants also removed the restrictions on Wesco incurring additional debt in Section 4.09; this was particularly important because Section 4.09(h) prevented Wesco from repaying or redeeming notes owned by Platinum with new secured debt unless the same security was offered to all noteholders. Indeed, Section 4.09(h) was designed precisely to protect against transactions such as the Insider Exchange, and Platinum's removal of it, with the help of WSFS, was integral to its scheme.

55. The limitation on insider transactions in Section 4.11, which prevented Platinum from engaging in material self-dealing transactions on terms that were worse for Wesco than those that could be obtained in an arm's-length transaction, was also removed as part of the Insider Exchange.²⁰ Of course, there would be no need to remove this provision unless Platinum wished to engage in such an unfair transaction. Crossclaim and third-party defendants also removed certain important cross-default provisions in the 2027 Notes and the Indentures, thereby making it harder for Langur Maize to accelerate its debt if Wesco failed to make payments to other debt holders.²¹

56. Crossclaim and third-party defendants also deleted the provision of the 2027 Notes and the Indenture that allowed a majority of the holders of 2027 Notes to appoint their own indenture trustee. Previously, the Indenture gave a majority of the 2027 Noteholders the right to remove the trustee, after which Wesco was permitted to choose the replacement — *but*, if a majority of noteholders were unhappy with Wesco's choice, the noteholders could then replace

²⁰ Fourth Supplemental Indenture § 2(a) (Exhibit C).

²¹ *Id.* at § 2(b).

the replacement. In the Fourth Supplemental Indenture, the crossclaim and third-party defendants removed the provision allowing the noteholders to replace the replacement trustee. Of course, when crossclaim and third-party defendants planned the Insider Exchange, they knew that the remaining holders of 2027 Notes would likely seek to replace the trustee that had been involved in the transaction, WSFS, and would direct a new trustee to sue the Platinum Group and WSFS. Removing the provision allowing the holders of 2027 Notes to choose their own trustee was designed solely to create another obstacle for a lawsuit: the Indenture as amended would purport to require either an aggrieved holder of 2027 Notes to convince WSFS to sue itself, or would deprive the 2027 Noteholders of the right to choose their own agent to bring a lawsuit on their behalf.

57. The Insider Exchange was driven by Platinum, Carlyle, Senator and WSFS, each of which was a necessary participant for the scheme to work. Platinum was needed because it controlled Wesco and could direct it to take the actions needed to elevate Platinum's claims against Wesco to secured claims. Carlyle was needed because it, by itself, held a majority of votes under the Indenture,²² and could therefore purportedly consent to amendments to the Indenture in an effort to allow the Insider Exchange to occur. (As Platinum is an "Affiliate" of Wesco, its notes could not be included in any calculation of majority consent under the Indenture.)²³ Senator was needed to the extent that Carlyle did not hold a majority of the 2027 Notes.²⁴ And WSFS was needed because the Insider Exchange could not be effectuated without its cooperation in ignoring and failing to perform its responsibilities and obligations under the Indenture.

²² See note 8, *supra*.

²³ Indenture §§ 2.09, 9.02.

²⁴ See note 3, *supra*.

E. The Insider Exchange violates the 2027 Notes and the Indenture.

58. The 2027 Notes include all of the terms contained in the Indenture. Section (4) of the 2027 Notes states:

(4) *INDENTURE*. The Issuer issued the Unsecured Notes under an Indenture dated as of November 27, 2019 (the “*Indenture*”) among the Initial Issuer, the Guarantors party thereto from time to time and the Trustee. The terms of the Unsecured Notes include those stated in the Indenture. The Unsecured Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Unsecured Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. . . .

59. The Insider Exchange violated at least two provisions of the 2027 Notes and the Indenture.

1. Section 3.02

60. *First*, Section 3.02 requires that, unless the company redeems 100% of the 2027 Notes (which it did not do here), any 2027 Notes to be “redeemed or purchased” must be selected by the Trustee either *pro rata*, by lottery, or by some other “fair and appropriate” method. The relevant portion of Section 3.02 states:

If less than all of the Unsecured Notes are to be redeemed pursuant to the provisions of Section 3.07 hereof, the Trustee will select Unsecured Notes for redemption or purchase *pro rata*, by lot or by such method as it shall deem fair and appropriate (subject to applicable DTC procedures with respect to the Global Notes, including the Applicable Procedures).

61. Thus, if Wesco wished to purchase 2027 Notes, as it did here, WSFS had to select them “*pro rata*, by lot, or by such method as it shall deem fair and appropriate.”

62. The requirements of Section 3.02 may not be overridden by a direction by even a majority of noteholders because any such direction can only require the trustee to conduct a proceeding “available to the Trustee or exercise[e] any trust or power conferred on it.” Indenture

§ 6.05. Since Section 3.02 expressly delineates the methods by which 2027 Notes may be purchased, no other allocation method was available to WSFS, and no trust or power was conferred on WSFS to act in violation of Section 3.02. As such, the Platinum Group's direction to WSFS to purchase or retire only the Platinum Group's 2027 Notes was an independent breach of the Indenture and the 2027 Notes.

63. The majority holders did not attempt to waive Section 3.02, and nor could they have. First, nothing in the Fourth Supplemental Indenture identifies any amendment, deletion, or waiver of Section 3.02, and the Fourth Supplemental Indenture expressly confirms that “[e]xcept as specifically amended above, the Indenture shall remain in full force and effect and is hereby ratified and confirmed.” Section 3.02 thus remained in full force and effect during the Insider Exchange. Moreover, the majority holders could not have amended Section 3.02 by themselves even if they wanted to. Section 6.07 of the Indenture provides that the right of a holder to receive payment on a 2027 Note, *including in connection with an offer to purchase*, cannot be impaired or affected without that holder's consent, and the waiver provision of Section 9.02 is expressly made subject to Section 6.07.²⁵ Because Section 3.02 grants holders of 2027 Notes the right to receive payment for notes selected either *pro rata*, by lot, or by a fair and appropriate manner in connection with any offer to purchase, this right could not have been waived under Section 9.02 without each affected holder's consent, even if crossclaim and third-party defendants had attempted to do so (which they did not).

²⁵ Section 6.07 provides:

Notwithstanding any other provision of this Indenture, the right of any Holder of an Unsecured Note to receive payment of principal of, or interest on, the Unsecured Note, on or after the respective due dates expressed or provided for in the Unsecured Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

64. Section 3.02 thus protected the holders of 2027 Notes by ensuring that, unless Wesco redeemed 100% of the outstanding notes, any 2027 Notes to be purchased must be selected by the Trustee in a fair manner — either *pro rata* among all the noteholders, by random selection out of all the noteholders (lot), or subject to some other fair and appropriate method. In no event did the Indenture allow WSFS or any other party to hand-pick the notes to be purchased based on their own preference and for their own benefit, and the fact that WSFS did so, and that Platinum, Carlyle and Senator directed it to do so, is a breach of Sections 3.02 and 6.05 of the Indenture and Section (4) of the 2027 Notes. No direction can change this. WSFS acted in bad faith by willfully taking an action in contravention of its duties under the express provisions of the Indenture in order to benefit the Platinum Group.

2. *Section 9.02*

65. *Second*, Section 9.02 enumerates the noteholders’ “sacred rights” — rights that cannot be tampered with unless each noteholder consents. Section 9.02(10) provides that Wesco may not “make any change to, or modify, the ranking of the 2027 Notes in respect of right of payment that would adversely affect the Holders of the 2027 Notes.”

66. But the Insider Exchange did modify the ranking of the right to payment of holders of 2027 Notes. As explained above, because of the Insider Exchange, the remaining holders of the 2027 Notes now rank last in payment priority, after all of Wesco’s other funded debt (including the New 1.25L Notes that were exchanged for the Platinum Group’s 2027 Notes and the Wolverine promissory note). Before the Insider Exchange, the 2027 Notes were ranked *pari passu* with, and had a right to be paid ratably with, all other 2027 Notes and the Wolverine

promissory note. Crossclaim and third-party defendants thus altered the standing of the holders of 2027 Notes in respect of payment relative to Wesco's other noteholders.²⁶

F. Langur Maize commences an action in New York state court.

67. The Insider Exchange damaged the holders of the 2027 Notes. As of February 2023, the 2027 Notes were trading around eight cents on the dollar, reflecting the market's belief that Wesco was insolvent — and that the holders of 2027 Notes would be wiped out in the event of its bankruptcy.

68. On March 27, 2023, Langur Maize commenced an action against the crossclaim and third-party defendants in the Supreme Court of the State of New York, styled as *Langur Maize, L.L.C. v. Platinum Equity Advisors, LLC, et al.*, Index No. 651548/2023 (N.Y. Sup. Ct., N.Y. Cty.) (the “Langur Maize Action,” and, together with the action challenging the Secured Exchange, the “New York Actions”). The *Langur Maize Action* asserts claims substantially similar to the crossclaims and third-party claims asserted here that arise entirely under New York state law and would arise entirely under New York law whether or not the chapter 11 cases were filed. The *Langur Maize Action* also asserted claims for insider preference (which was preserved by the *Langur Maize Action* prior to the expiration of the applicable statute of limitations) and fraudulent transfer. These claims are now property of the estate and Langur Maize supports their prosecution without delay by an appropriate estate fiduciary.

69. The 2027 Notes reflect ownership interests in a global note that is held by the Depository Trust Company, which is the registered holder of the global note. Section 2.08 of the Indenture provides in part:

[W]ith respect to any Global Note, nothing herein shall prevent the Issuer, the Trustee, or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy, or other

²⁶ See ¶¶ 48-53, *supra*.

authorization furnished by any Depositary (or its nominee) as a Holder, with respect to such Global Note or shall impair, as between such Depositary and owners of beneficial interests in such Global Note, the operation of customary practices governing the exercise of the rights of such Depositary (or its nominee) as Holder of such Global Note.

70. In a letter dated March 24, 2023, the Depositary Trust Company’s nominee (Cede & Co.) authorized Langur Maize’s participant “to take any and all actions and exercise any and all rights and remedies that Cede & Co., as the holder of record of the Subject Notes on the Subject Date, is entitled to take . . . under the terms of the Notes, the related guarantees, the related indenture, and any other controlling documents.” Also on March 24, 2023, Langur Maize’s participant in turn authorized Langur Maize to “take any and all actions and exercise any and all rights and remedies, that Cede & Co. as the holder of record of the Notes is entitled to take . . . under the terms of the Notes, the related guarantees, the related indenture, and any other controlling documents.”

71. Neither Wesco nor any other Debtor is a defendant in the *Langur Maize* Action.

G. WSFS is removed as trustee and BOKF is appointed.

72. On May 1, 2023, Langur Maize, as majority holder the 2027 Notes, sent a notice of removal to remove WSFS as indenture trustee for the 2027 Notes. On May 26, 2023, Wesco appointed BOKF, N.A. (“BOKF”) as indenture trustee for both the 2027 Notes *and* the 2024 and 2026 Notes, even though, on information and belief, the 2024 and 2026 Noteholders had not sought to remove WSFS.

H. The Debtors file for bankruptcy.

73. On June 1, 2023, the Debtors commenced cases under chapter 11 of the Bankruptcy Code and also filed the complaint commencing this adversary proceeding, along

with a motion seeking to stay the New York Actions through the pendency of the chapter 11 cases.

74. Under Section 6.02 of the Indenture, the filing of the Debtors' chapter 11 case accelerated the 2027 Notes, such that all of Langur Maize's 2027 Notes became "due and payable immediately without further action or notice."

75. The New York Actions have been temporarily stayed by the Court.

76. On July 9, 2023, the Debtors filed a First Amended Complaint (the "Amended Complaint"), which added claims against Langur Maize seeking a declaratory judgment confirming, among other things, that the Insider Exchange was properly executed under Section 3.07(h) of the Original Secured Indentures and the Original Unsecured Indenture and was not a redemption subject to the limitations in Section 3.02 of the Indenture; that the Insider Exchange did not implicate Section 6.05 of the Indenture; that the Debtors did not violate the covenant of good faith and fair dealing by entering into the Insider Exchange; and that Langur Maize lacks standing to pursue the claims asserted in the *Langur Maize* Action against all non-Debtor parties named therein other than WSFS. By agreement of the parties, Langur Maize's deadline to answer the Amended Complaint was extended to August 8, 2023.

I. The no-action clause of the Indenture does not bar these crossclaims and third-party claims.

77. For numerous reasons, Section 6.06 of the Indenture does not bar Langur Maize's crossclaims and third-party claims.

78. *First*, the no-action clause purports to provide that noteholders must give the trustee notice of the Event of Default and demand that the trustee sue — and that noteholders may only sue if the trustee fails to do so. But this case involves a breach of the 2027 Notes and the Indenture by the trustee. Before WSFS was replaced by BOKF, it would have been absurd

for the 2027 Noteholders to demand that WSFS *sue itself*.²⁷ It would also be absurd for the noteholders to have to demand that WSFS sue the other crossclaim and third-party defendants: a judgment against the other crossclaim and third-party defendants on any of the contract claims, or the claim for unjust enrichment, would also lead to a judgment against WSFS, which is liable for those same claims. Moreover, WSFS was only appointed as trustee as part of a scheme to effectuate the other crossclaim and third-party defendants' wrongdoing, and WSFS would obviously be unable to seek relief against its collaborators.

79. Furthermore, the amendment to the Indenture that prohibits the holders of 2027 Notes from selecting their own replacement Indenture trustee has the obvious effect of blocking the noteholders from choosing their own agent to sue on their behalf. If the no-action clause applies to the 2027 Noteholders' claims, then the noteholders will be forced to sue through BOKF — which has been appointed as indenture trustee by Wesco, and thus, indirectly, by Platinum, one of the defendants. BOKF is also the indenture trustee for the 2024 and 2026 Notes, potentially creating a conflict of interest that will prevent BOKF from vindicating the rights of the 2027 Noteholders. (Wesco appointed BOKF as the indenture trustee for the 2024 and 2026 Notes at the same time as for the 2027 Notes, even though the 2024 and 2026 noteholders had *not* sought to remove WSFS — which suggests that Wesco may have been trying to create a conflict of interest here.)

80. *Second*, the no-action clause by its own terms does not apply in an action “to enforce the right to receive payment of principal or interest . . . when due.” The full amount outstanding under the 2027 Notes has been accelerated by the filing of the chapter 11 cases, and is thus now due. Langur Maize has commenced this action to enforce its right to receive

²⁷ The Indenture does not exculpate WSFS for willful misconduct, which WSFS has committed here. Indeed, the Indenture does not even exculpate WSFS for negligent action. *See* Indenture § 7.01(c).

payment of some of that principal or interest that is now due from the crossclaim and third party defendants. The fact that Langur Maize also holds a claim against the Debtors for principal and interest on the full outstanding amount of the 2027 Notes that it holds (which claim is not being asserted in these counterclaim, crossclaims or third party claims) does not prevent Langur Maize from seeking in this adversary proceeding to recover some of the amounts due on its claim from the crossclaim and third party defendants due to their breaches of the Indenture and the Notes.

81. *Third*, Section 6.07 makes clear that no provision will affect the right of any holder to bring suit to enforce the right to receive payment “in connection with an offer to purchase” when due. As explained above, the crossclaim and third-party defendants’ breach of Section 3.02 impaired and affected the right of those holders that were not a part of the Platinum Group to be paid when due in connection with the Insider Exchange. Section 6.07 thus independently grants Langur Maize the ability to enforce its right to payment.

82. Finally, there is no practical reason for requiring Langur Maize to sue through the no-action clause. Langur Maize owns more than 60% of the outstanding 2027 Notes. The no-action clause requires that “Holders of at least 30% in aggregate principal amount” of the 2027 Notes make a demand upon the trustee and, subject to certain conditions, allows them to proceed with a suit provided that a majority of the noteholders do not block them. *See* Indenture § 6.06. Not only does Langur Maize own more than 30% of the Notes, but it in fact owns a majority — such that it cannot be barred from proceeding with its suit. Given Langur Maize’s majority position in the 2027 Notes, the application to Langur Maize’s crossclaims and third-party claims of the no-action clause, which is designed to bar vexatious lawsuits by small noteholders, would serve no purpose.

FIRST CLAIM FOR RELIEF

(Against Platinum Advisors, Platinum Funds, Wolverine, Carlyle Management, Carlyle Funds, Senator and WSFS)

Breach of Section 3.02 of the Indenture and Section (4) of the 2027 Notes

83. Langur Maize, Platinum Advisors, Platinum Funds, Carlyle Management, Carlyle Funds, Senator and WSFS are, or at the time of the Insider Exchange were, parties to the Indenture and the 2027 Notes.²⁸ In the alternative, Langur Maize is a third-party beneficiary of the Indenture.

84. Section 3.02 of the Indenture provides in relevant part:

If less than all of the Unsecured Notes are to be redeemed pursuant to the provisions of Section 3.07 hereof, the Trustee will select Unsecured Notes for redemption or purchase *pro rata*, by lot or by such method as it shall deem fair and appropriate (subject to applicable DTC procedures with respect to the Global Notes, including the Applicable Procedures).

85. Section (4) of the 2027 Notes states that the 2027 Notes include and are subject to the terms of the Indenture.

86. In the Insider Exchange, less than all of the 2027 Notes were to be redeemed. Thus, Section 3.02 is applicable to the Insider Exchange.

87. Pursuant to Section 1.03(6) of the Indenture, the word “will” is interpreted in the Indenture “to express a command.”

88. WSFS thus violated Section 3.02 by not selecting 2027 Notes for purchase by a method of selection that was either *pro rata*, by lot, or “fair and appropriate,” and instead selecting only those 2027 Notes that were held by the Platinum Group for purchase in the Insider Exchange. This method of selection was obviously neither *pro rata*, nor by lot, and cannot be

²⁸ Claims 1, 2, 3 and 6 are brought against Platinum Advisors, Carlyle Management and Senator Investment to the extent that they held 2027 Notes before the Insider Exchange. These claims are also brought against Wolverine to the extent that Wolverine held notes that participated in the Insider Exchange. *See* note 10, *supra*.

deemed “fair and appropriate” by any trustee. Rather, it was an engineered value transfer to the Platinum Group, and designed to put the Platinum Group in a better position in the event of a bankruptcy filing and otherwise. Moreover, the fact that WSFS included Wolverine’s unsecured promissory note in the exchange, rather than including other holders of 2027 Notes, shows that WSFS allowed the Insider Exchange to benefit members of the Platinum Group at the expense of all other holders of 2027 Notes. There is simply no fair or appropriate reason for WSFS to have selected the Platinum Group’s 2027 Notes for purchase while not selecting other holders’ 2027 Notes.

89. The other crossclaim and third-party defendants breached the Indenture and 2027 Notes because they directed or allowed a breach of Section 3.02 of the Indenture.

90. The no-action clause of the Indenture, Section 6.06, does not apply to this claim for the reasons stated in paragraphs 77 to 82, above.

91. Langur Maize has performed all its obligations under the Indenture and the 2027 Notes.

92. Langur Maize suffered damages as a result of crossclaim and third-party defendants’ breach.

SECOND CLAIM FOR RELIEF

(Against Platinum Advisors, Platinum Funds, Wolverine, Carlyle Management, Carlyle Funds, Senator and WSFS)

Breach of Section 6.05 of the Indenture and Section (4) of the 2027 Notes

93. Langur Maize, Platinum Advisors, Platinum Funds, Carlyle Management, Carlyle Funds, Senator and WSFS are, or at the time of the Insider Exchange were, parties to the Indenture and the 2027 Notes. In the alternative, Langur Maize is a third-party beneficiary of the Indenture.

94. Section 6.05 of the Indenture provides:

Holders of a majority in aggregate principal amount of the then outstanding Unsecured Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it.

95. Section (4) of the 2027 Notes states that the 2027 Notes include and are subject to the terms of the Indenture.

96. Prior to the Insider Exchange, Carlyle and Senator held a majority of the 2027 Notes that were not held by Platinum,²⁹ and directed WSFS to retire only those 2027 Notes that were held by the Platinum Group for purchase in the Insider Exchange. WSFS did not have any trust or power conferred on it to select 2027 Notes for purchase in any method other than as expressly set forth in Section 3.02 of the Indenture. Carlyle's and Senator's direction to WSFS to exercise a power that was not conferred on it, and WSFS's compliance with such direction, violated Section 6.05 and thus breached the Indenture and the 2027 Notes.

97. Platinum's direction and orchestration of the selection of only those 2027 Notes that were held by the Platinum Group for purchase in the Insider Exchange, and WSFS's compliance, violated Section 6.05 of the Indenture and the 2027 Notes.

98. The no-action clause of the Indenture, Section 6.06, does not apply to this claim for the reasons stated in paragraphs 77 to 82, above.

99. Langur Maize has performed all its obligations under the Indenture and the 2027 Notes.

100. Langur Maize suffered damages as a result of crossclaim and third-party defendants' breach.

²⁹ See note 8, *supra*.

THIRD CLAIM FOR RELIEF

(Against Platinum Advisors, Platinum Funds, Wolverine, Carlyle Management, Carlyle Funds, Senator and WSFS)

Breach of Section 9.02(10) of the Indenture and Section (4) of the 2027 Notes

101. Langur Maize, Platinum Advisors, Platinum Funds, Carlyle Management, Carlyle Funds, Senator and WSFS are, or at the time of the Insider Exchange were, parties to the Indenture and the 2027 Notes. In the alternative, Langur Maize is a third-party beneficiary of the Indenture.

102. Section 9.02 of the Indenture provides that

without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Unsecured Notes held by a non-consenting Holder)

...

(10) make any change to, or modify, the ranking of the Unsecured Notes in respect of right of payment that would adversely affect the Holders of the Unsecured Notes.

103. Section (4) of the 2027 Notes states that the 2027 Notes include and are subject to the terms of the Indenture.

104. As a result of the Insider Exchange, the remaining \$104 million in 2027 Notes now rank behind: (a) the New 1L Notes in temporal standing and their standing with respect to the order of their claims on Wesco's assets; (b) the stub 2024 Notes and 2026 Notes in temporal standing, and (c) the New 1.25L Notes —into which the Platinum Group's 2027 Notes and Wolverine's promissory note were exchanged — in standing with respect to the order of their claims on Wesco's assets. And because the New 1.25L Notes are secured by substantially all of the company's assets, it is impossible for the 2027 Notes to be paid until *after* the New 1.25L

Notes have been paid.³⁰ On account of the Insider Exchange, the ranking in respect of payment of the 2027 Notes has been modified.

105. In addition, as a result of the Secured Exchange, the 2027 Notes rank in respect of their right of payment behind the New 1L Notes, which are secured by a lien on all of the company's assets and must also be paid before the 2027 Notes are paid, and after the old 2024 Notes and 2026 Notes that did not participate in the Secured Exchange, which will be paid off before the 2027 Notes. The Secured Exchange also modified the ranking in respect of right of payment of the 2027 Notes.

106. Platinum Advisors, Platinum Funds, Carlyle Management, Carlyle Funds, Senator and WSFS violated the Indenture and the 2027 Notes by modifying the ranking in respect of right of payment of the 2027 Notes without the consent of Langur Maize.

107. Langur Maize has performed all its obligations under the Indenture and the 2027 Notes.

108. Langur Maize suffered damages as a result of crossclaim and third-party defendants' breach.

FOURTH CLAIM FOR RELIEF

**(Against Platinum Advisors, Platinum Funds, Wolverine, Carlyle Management,
Carlyle Funds, and Senator)
(In the alternative to claims 1, 2 and 3)
Tortious interference with contract**

109. The Indenture and the 2027 Notes are valid contracts to which Langur Maize is a party, or of which Langur Maize is a third-party beneficiary.

³⁰ If the 1.25 Lien Notes were oversecured at maturity, they would be paid in full from the available assets before any assets go to pay the 2027 Notes. If the 1.25 Lien Notes were undersecured at maturity, all available assets would go to pay the 1.25 Lien Notes and the 2027 Notes would be left with nothing.

110. Wesco is, and at the time of the Insider Exchange was, a party to the Indenture. WSFS at the time of the Insider Exchange was a party to the Indenture.

111. WSFS breached Sections 3.02 and 6.05 of the Indenture, and both WSFS and Wesco breached 9.02(10) of the Indenture, for the reasons stated above.

112. Platinum Advisors, the Platinum Funds, Wolverine, Carlyle, the Carlyle Funds, and Senator were aware of the existence of the Indenture.

113. Platinum Advisors, the Platinum Funds, Wolverine, Carlyle, the Carlyle Funds, and Senator intentionally caused WSFS and Wesco to violate the Indenture for their own benefit.

114. Platinum Advisors, the Platinum Funds, Wolverine, Carlyle, the Carlyle Funds, and Senator were acting maliciously towards Langur Maize in causing WSFS and Wesco to violate the Indenture. In addition, Platinum Advisors, the Platinum Funds, Wolverine, Carlyle, the Carlyle Funds, and Senator committed independent wrongs in causing WSFS and Wesco to violate the Indenture.

115. Platinum Advisors, the Platinum Funds, Wolverine, Carlyle, the Carlyle Funds, and Senator have caused Langur Maize to suffer damages on account of their tortious interference with contract.

FIFTH CLAIM FOR RELIEF

**(Against all crossclaim and third-party defendants)
Unjust enrichment**

116. As a result of the Insider Exchange, Platinum Advisors, the Platinum Funds, Wolverine, Carlyle Management, the Carlyle Funds, Senator and WSFS were enriched. Platinum, the Platinum Funds, Carlyle Management, the Carlyle Funds, and Senator converted their 2027 Notes into far more valuable New 1.25L Notes. Wolverine similarly converted its

\$25 million unsecured promissory note into New 1.25L Notes. WSFS was appointed indenture trustee and compensated for its services.

117. All of these people and entities were enriched at the expense of Langur Maize.

118. The Insider Exchange was an illegal and inequitable scheme, and it would be against equity and good conscience for crossclaim and third-party defendants to be permitted to retain their profits from this scheme.

SIXTH CLAIM FOR RELIEF

(Against all crossclaim and third-party defendants) Breach of the implied covenant of good faith and fair dealing

119. Langur Maize and crossclaim and third-party defendants are, or at the time of the Insider Exchange were, parties to the Indenture and the 2027 Notes. In the alternative, Langur Maize was a third-party beneficiary of the Indenture.

120. Every contract in New York incorporates the implied covenant of good faith and fair dealing. The Indenture is a contract governed by New York law and likewise includes the implied covenant of good faith and fair dealing.

121. Under the implied covenant of good faith and fair dealing, each party to a contract promises not to act in a way that would deprive its counterparties of the expected benefits of the contract.

122. Crossclaim and third-party defendants violated the implied covenant of good faith and fair dealing by selecting, or directing WSFS to select, 2027 Notes for exchange in a process that WSFS could not have reasonably deemed “fair and appropriate” under Section 3.02 of the Indenture. The implied covenant of good faith and fair dealing prevents WSFS from making an arbitrary or unreasonable determination about what is “fair and appropriate.” WSFS chose to

exchange the Platinum Group's notes solely because Platinum was an insider and it was taking instructions from Platinum, Carlyle, and Senator.

123. Crossclaim and third-party defendants further violated the implied covenant of good faith and fair dealing by directing WSFS to purport to exercise a "power" or "remedy" that they could not reasonably have expected to be available to WSFS, *i.e.*, selecting 2027 Notes for purchase in a fashion that was neither *pro rata*, nor by lot, nor fair and appropriate.

124. In addition, crossclaim and third-party defendants violated the implied covenant of good faith and fair dealing by causing the remaining \$104 million in 2027 Notes to be paid after all the company's other debt. In doing so, crossclaim and third-party defendants violated the implied covenant of good faith and fair dealing inherent in Section 9.02(10) of the Indenture, which prevents WSFS or any other noteholders from modifying the ranking of the right of any of the 2027 Notes to receive payment without the consent of each affected noteholder.

125. Even if crossclaim and third-party defendants had the discretion under the Indenture to take the actions that they did (which, to be clear, they did not), the implied covenant of good faith and fair dealing prevented them from taking such actions, which were designed to harm Langur Maize and its reasonable expectations.

126. The claim of breach of the implied covenant of good faith and fair dealing against WSFS is not abrogated by Section 7.01(b) of the Indenture, which provides that except during an Event of Default, "no implied covenants or obligations shall be read into this Indenture against the Trustee." This Section provides that the trustee is not subject to any agreements not found in the Indenture. By its plain language it does not, and cannot, abrogate the implied covenant of good faith and fair dealing.

127. Langur Maize has suffered damages through crossclaim and third-party defendants' breach of the implied covenant of good faith and fair dealing.

SEVENTH CLAIM FOR RELIEF

(Against all crossclaim and third-party defendants)

Civil conspiracy

128. Each of the crossclaim and third-party defendants formed an agreement to commit illegal acts to effect the Insider Exchange.

129. Platinum Advisors, the Platinum Funds, Wolverine, Carlyle Management, the Carlyle Funds, Senator and WSFS agreed among themselves to violate the Indenture and the 2027 Notes to which each was a party.

130. In the alternative, Platinum Advisors, Platinum Funds, Wolverine, Carlyle Management, the Carlyle Funds, and Senator agreed among themselves to tortiously interfere with the Indenture and the 2027 Notes.

131. Separately and together, these agreements constituted a civil conspiracy to which each crossclaim and third-party defendant was party and in which each intentionally participated, whether or not each participated in a particular wrongful act underlying the conspiracy.

132. Each crossclaim and third-party defendant took overt acts in furtherance of the conspiracy.

133. Langur Maize was harmed by crossclaim and third-party defendants' conspiracy.

EIGHTH CLAIM FOR RELIEF

(Against all counterclaim defendants)

Declaratory relief

134. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court has the authority to issue declaratory judgments where the facts alleged show that there is an actual

controversy, between parties having adverse legal interests, of sufficient immediacy and reality, to warrant the issuance of declaratory judgment.

135. As alleged above, there is no such case or controversy because resolution of the Debtor Defendants' claims for declaratory relief and Langur Maize's counterclaim will not advance the resolution of any dispute between Langur Maize and the Debtor Defendants. Nevertheless, in the event and to the extent that the Court finds that there is an actual controversy between Langur Maize and the Debtor Defendants with respect to the Debtors' declaratory claims against Langur Maize, there would also be an actual controversy between Langur Maize and the Debtor Defendants that warrants the issuance of a declaratory judgment. Among other things, the Debtors have: (a) sought a declaratory judgment that the Insider Exchange did not violate the Indenture; and (b) sought a declaratory judgment that Langur Maize does not have standing to sue parties other than Wesco, WSFS and the Guarantor Defendants for amounts due under the 2027 Notes.

136. Accordingly, to the extent that there is an actual controversy between Langur Maize and the Debtors with respect to the Debtors' declaratory claims against Langur Maize, Langur Maize would be entitled to a declaratory judgment against the Debtor Defendants that: (a) the Insider Exchange violated the terms of the Indenture; and (b) Langur Maize has standing to sue parties other than Wesco, WSFS and the Guarantor Defendants for amounts due under the 2027 Notes.

137. All of these issues have been raised by the Debtors' declaratory claims for relief in this action. To the extent there is an actual controversy between Langur Maize and the Debtors respecting the Debtors' declaratory claims against Langur Maize, declaratory relief against the Debtor Defendants would be appropriate.

PRAYER FOR RELIEF

Langur Maize respectfully requests that the Court enter judgment:

- a. Awarding Langur Maize compensatory and consequential damages against crossclaim and third-party defendants for their breach of the Indenture;
- b. Awarding Langur Maize compensatory and consequential damages against crossclaim and third-party defendants for their tortious interference with the Indenture;
- c. Awarding Langur Maize restitution from the crossclaim and third-party defendants to the extent that crossclaim and third-party defendants were unjustly enriched;
- d. Awarding Langur Maize compensatory and consequential damages against crossclaim and third-party defendants for their breach of the implied covenant of good faith and fair dealing with respect to the Indenture;
- e. Awarding Langur Maize compensatory and consequential damages against crossclaim and third-party defendants for their civil conspiracy;
- f. Awarding Langur Maize punitive damages against crossclaim and third-party defendants;
- g. Awarding Langur Maize pre- and post-judgment interest against crossclaim and third-party defendants on Langur Maize's damages awards;
- h. Declaring that the Insider Exchange violated the Indenture and the Notes, and that Langur Maize has standing to sue parties other than WSFS, Wesco and the Guarantor Defendants for breach of the Indenture and the Notes;

- i. Awarding Langur Maize its costs and expenses, including attorneys' and expert fees; and
- j. Awarding such other relief as the Court may deem just and proper.

Dated: July 31, 2023

JONES DAY

/s/ Michael C. Schneidereit

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Counsel for Langur Maize, L.L.C.

CERTIFICATE OF SERVICE

I certify that, on July 31, 2023, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United State Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by Langur Maize.

/s/ Michael C. Schneidereit
Michael C. Schneidereit (*pro hac vice*)

Counsel for Langur Maize, L.L.C.

APPENDIX A

Crossclaim, Third-Party, and Counterclaim Plaintiff

1. Langur Maize, L.L.C.

Crossclaim Defendants

1. Platinum Equity Advisors, LLC
2. Wolverine Top Holding Corporation
3. Wilmington Savings Fund Society, FSB
4. CCOF Onshore CoBorrower, LLC
5. CSP IV Acquisitions, L.P.
6. CCOF Master, L.P.
7. Senator Global Opportunity Master Fund L.P.

Third-Party Defendants

1. Unnamed Platinum Funds c/o Platinum Equity Advisors, LLC
2. Carlyle Global Credit Investment Management, L.L.C.
3. Unnamed Carlyle Funds c/o Carlyle Global Credit Investment Management, L.L.C.
4. Senator Investment Group LP
5. Unnamed Senator Funds c/o Senator Investment Group LP

Counterclaim Defendants

1. Wesco Aircraft Holdings, Inc.
2. Adams Aviation Supply Co. Ltd.
3. Flintbrook Ltd.
4. HAAS Chemical Management of Mexico, Inc.
5. HAAS Corporation of Canada
6. HAAS Corporation of China
7. HAAS Group International SCM Ltd.
8. HAAS Group International, LLC
9. HAAS Group, LLC
10. HAAS Holdings, LLC
11. HAAS International Corp.
12. HAAS of Delaware, LLC
13. HAAS TCM Group of the UK Ltd.
14. HAAS TCM Industries, LLC
15. HAAS TCM of Israel, Inc.
16. Interfast USA Holdings Inc.
17. NetMRO, LLC
18. Pattonair Holding, Inc.
19. Pattonair (Derby) Ltd.
20. Pattonair Europe Ltd.
21. Pattonair Group Ltd.
22. Pattonair Holdings Ltd.
23. Pattonair Ltd.
24. Pattonair USA, Inc.

25. Pioneer Finance Corp.
26. Pioneer Holding Corp.
27. Quicksilver Midco Ltd.
28. UNISEAL, Inc.
29. Wesco 1 LLP
30. Wesco 2 LLP
31. Wesco Aircraft Canada, LLC
32. Wesco Aircraft EMEA, Ltd.
33. Wesco Aircraft Europe Ltd.
34. Wesco Aircraft Hardware Corp.
35. Wesco Aircraft International Holdings Ltd.
36. Wesco Aircraft SF, LLC
37. Wesco LLC 1
38. Wesco LLC 2
39. Wolverine Intermediate Holding II Corp.
40. Wolverine UK Holdco Ltd.
41. Wolverine Intermediate Holding Corp.
42. Wesco Aircraft Canada Inc.
43. Haas Group Canada Inc.
44. Haas TCM de Mexico S. de R.L. de C.V.

EXHIBIT 6

EXHIBIT A

Proposed Second Amended Counterclaims

**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 (DRJ)

Chapter 11

(Jointly Administered)

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Plaintiffs,

v.

Adv. Pro. No. 23-03091

SSD INVESTMENTS LTD., et al.,

Defendants.

SSD INVESTMENTS LTD., et al.,

Counterclaim Plaintiffs,

v.

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Counterclaim Defendants.

**[PROPOSED] 2024/2026 HOLDERS'
SECOND AMENDED COUNTERCLAIMS**

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.kcellc.net/incora>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

Counterclaim Plaintiffs listed on Appendix A (the “Original Secured Plaintiffs”) along with additional counterclaim plaintiffs (together with the Original Secured Plaintiffs, the “2024/2026 Holders”), as holders of certain senior secured notes issued by Debtor Wesco Aircraft Holdings, Inc. (the “Company”) due in 2026 (the “2026 Original Secured Notes”) and 2024 (the “2024 Original Secured Notes” and together with the 2026 Original Secured Notes, the “Original Secured Notes” or the “Notes”), which are governed by their respective indentures (individually, the “2026 Original Secured Note Indenture,” which is filed as Adv. Pro., Docket No. 12-9, and the “2024 Original Secured Note Indenture,” which is filed as Adv. Pro., Docket No. 12-12, and together, the “Governing Indentures”), assert the following second amended counterclaims (the “Second Amended Counterclaims”) against:

- (i) The Company;
- (ii) Certain of the Company’s debtor affiliates that guaranteed the Notes (the “Guarantor Defendants” and together with the Company, the “Debtors”);
- (iii) Platinum Equity Advisors, LLC (“Platinum Advisors” or the “Platinum Sponsor”)
- (iv) Platinum Equity Capital Partners International, IV (Cayman) LP, (the “Platinum Fund”), a fund controlled by the Platinum Sponsor;
- (v) The Debtors’ indirect owner, Wolverine Top Holding Corporation (the “Platinum-Controlled Parent” and, together with the Platinum Fund, the “Platinum Creditors”); and
- (vi) the “Favored Noteholders” comprising the noteholders favored by the Company and the Platinum Sponsor that participated in the Insider Transaction (as defined herein) and that were managed or advised by, or else are identified as, among others, (a) Silver Point Capital, LP; Silver Point Distressed Opportunities Management, LLC; Silver Point Specialty Credit Fund Management, LLC; and Silver Point Specialty Credit Fund II Management, LLC, (b) Pacific Investment Management Company LLC, (c) The Carlyle Group L.P., (d) Senator GP LLC, (e) Citadel Advisors LLC, (f) Spring Creek Capital LLC, and (g) the Platinum Sponsor (together with the Platinum Creditors, “Platinum”).

In support of these Amended Counterclaims, and subject to the Stipulated Comprehensive Scheduling Order, dated July 31, 2023 (Adv. Pro., Docket No. 141) inclusive of all reservations of rights therein (the “Scheduling Order”), the 2024/2026 Holders allege, as follows:

Nature of the Action

1. On March 28, 2022, the Debtors executed an unprecedented position-enhancing transaction that breached the plain terms of the Governing Indentures—the “Insider Transaction.” The Debtors, under the control of Platinum, and the Favored Noteholders attempted to deprive the 2024/2026 Holders of the bargained-for liens that secured payment of their Notes even though strict supermajority and other consent requirements under the Governing Indentures expressly prohibited this Insider Transaction.

2. At the time of the Insider Transaction, the 2024/2026 Holders held more than one-third of the 2026 Original Secured Notes. This should have been the end of the matter. But the Company, at the behest of Platinum, embarked on a path that would benefit insiders and a select few favored noteholders, while boxing out all competing alternatives. As one observer prophetically said when the Insider Transaction was first described in the press, it is “*obscenely greedy and one can expect substantial legal challenges*.”²

3. The Debtors knew that they required a two-thirds supermajority of existing holders to consummate the Insider Transaction. The Favored Noteholders also knew this, as did the market, and the surging trading prices of the Notes shortly before the Insider Transaction reflected exactly that. Yet, after the Favored Noteholders tried and failed to obtain a bona fide supermajority, the Debtors and the Favored Noteholders devised a sham to circumvent the Governing Indentures’ supermajority consent requirements, knowing that they had only a simple majority (not a supermajority) of the 2026 Original Secured Notes. They purported to—by a single integrated transaction—create new dilutive notes that were simultaneously issued and retired: the “Phantom Notes.”

² Reshmi Basu, *Wesco Aircraft in Talks with Select Holders for Priming Roll-Up and New Capital Injection*, Debtwire (Feb. 7, 2022), <https://www.debtwire.com/intelligence/view/intelcms-whbsmp>.

4. The purpose of the Phantom Notes was to supposedly discharge the 2024/2026 Holders' liens and create new liens for new super-senior notes issued by the Company and made available only to the Favored Noteholders. However, issuing new notes to—“*directly or indirectly*”—“*create, incur, assume or suffer to exist any [l]ien of any kind (other than [p]ermitted [l]iens)*” is prohibited under the Governing Indentures and thus the Phantom Notes violated those express terms.

5. The Company itself, moreover, has conceded through counsel in open court that this was all just “one liquidity transaction.”³

6. The Governing Indentures expressly required supermajority consent—which the Company did not have as to the 2026 Original Secured Notes—for any amendment to: (i) “*have the effect of*” releasing the Liens (defined below), (ii) “*modify*” the security instruments securing the Notes in a manner that would “*adversely affect*” holders, “*or*” (iii) “*modify*” the security instruments or the Governing Indentures in “*any manner adverse*” to such holders. The Insider Transaction therefore breached all of these protective provisions.

7. The Insider Transaction let certain Favored Noteholders, and only them, exchange their Original Secured Notes for approximately \$1.27 billion of new, super-senior secured notes in the so-called “Uptier Exchange.” Further, the Insider Transaction permitted the Platinum Creditors (including the Company’s current owner) and Carlyle (the Company’s prior owner) to exchange on a dollar-for-dollar basis their *unsecured* notes for approximately \$473 million of newly issued *secured* notes in the so-called “Unsecured Roll-up,” in return for the votes required to effectuate the Uptier Exchange. Critically, though, the vote of the Platinum Creditors could not be counted under the Governing Indentures and, therefore, the Platinum Creditors were not needed

³ See Transcript of June 6, 2023 Emergency Motion Hearing, Adv. Pro., Docket. No. 38. at 44:13-16.

to effectuate the Uptier Exchange. The Debtors nonetheless offered the Platinum Creditors the opportunity to exchange their unsecured notes anyway—essentially for no consideration.

8. The Insider Transaction also purported to stack over \$1.7 billion in new senior debt whose maturity would spring ahead of the 2024/2026 Holders' Notes. The Insider Transaction thus modified the "ranking of [the Notes] in respect of right of payment" that "adversely affect[ed]" the 2024/2026 Holders. This breached the 2024/2026 Holders' "sacred rights" under the Governing Indentures and would have required each 2024/2026 Holder's consent.

9. Furthermore, knowing full well that the Insider Transaction would result in this extremely costly litigation, Platinum and its accomplices imposed an indemnity obligation on the Company to cover the costs of their intentional wrongdoing, despite the Governing Indentures not containing any such indemnity. The Insider Transaction likewise included an apparent "settlement basket," which underscores the Company's and Platinum's recognition of their wrongdoing and their knowledge of the future litigation that the Insider Transaction would cause.

10. Because the Favored Noteholders used the Insider Transaction to exit their prior holdings and purportedly create new liens to support their new notes, the 2024/2026 Holders presently own more than 93 percent of the 2026 Original Secured Notes and approximately 36 percent of the 2024 Original Secured Notes.

11. A substantial subset of the 2024/2026 Holders commenced an action in New York state court in October 2022, which the Debtors seek to stay in their Adversary Complaint and which has been stayed on an interim basis by stipulations. *See, e.g.*, Adv. Pro. Docket No. 116.

12. Since that time, the parties negotiated and filed the Scheduling Order, pursuant to which the 2024/2026 Holders stipulated to a further stay of the New York state court action and

agreed with the parties in this action to litigate, as part of the above-captioned adversary proceeding, certain tort claims against several non-Debtor defendants.⁴

13. Accordingly, by these Amended Counterclaims, the 2024/2026 Holders assert claims for equitable lien and equitable subordination, and seek declaratory judgment for: (i) breaches of the Governing Indentures; (ii) breaches of the covenant of good faith and fair dealing implied by those agreements; (iii) tortious interference with the Governing Indentures; (iv) conversion of the 2024/2026 Holders' property; and (v) the 2024/2026 Holders' direct standing to bring these claims.

The Parties

I. Counterclaim Plaintiffs.

14. At the time of the Insider Transaction, each of the 2024/2026 Holders was a holder of the 2026 Original Secured Notes and/or the 2024 Original Secured Notes. Each of the 2024/2026 Holders continues to be a holder of the 2026 Original Secured Notes and/or the 2024 Original Secured Notes.

15. Counterclaim Plaintiff SSD Investments Ltd. is a holder of 2026 Original Secured Notes. SSD Investments Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

16. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by

⁴ The Parties also agreed, pursuant to the Scheduling Order, that counterclaims could be filed and served as free-standing pleadings, separate from an answer.

New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

17. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A., is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

18. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

19. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A., is a holder of 2026 Original Secured Notes. The Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

20. Counterclaim Plaintiff JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A., is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A. is a collective investment trust maintained pursuant to a

Declaration of Trust governed by New York law. JPMorgan Chase Bank, N.A. is a national banking association with its main office in Ohio.

21. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global High Yield Bond Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

22. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Income Opportunity Fund, is a holder of 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

23. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

24. Counterclaim Plaintiff JPMorgan Investment Funds, on behalf of its sub-fund Global Income Conservative Fund, is a holder of 2026 Original Secured Notes. JPMorgan Investment Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

25. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund US High Yield Plus Bond Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

26. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

27. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Sustainable Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

28. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Fund, is a holder of 2026 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

29. Counterclaim Plaintiff iShares Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

30. Counterclaim Plaintiff iShares II Public Limited Company, on behalf of its sub-fund iShares \$ High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares II Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

31. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBonds 2026 Term High Yield and Income ETF, is a holder of 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

32. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Broad USD High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

33. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares 0-5 Year High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

34. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBoxx \$ High Yield Corporate Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

35. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares iBonds 2024 Term High Yield and Income ETF, is a holder of 2024 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

36. Counterclaim Plaintiff BlackRock Institutional Trust Company, N.A., acting in its capacity as Trustee of the U.S. High Yield Bond Index Non-Lendable Fund B, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. BlackRock Institutional Trust Company, N.A. is a national banking association with its principal place of business in California.

37. Counterclaim Plaintiff iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond GBP Hedged UCITS ETF (Dist), is a holder of 2024 Original Secured Notes. iShares VI Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

38. Counterclaim Plaintiff iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond CHF Hedged UCITS ETF (Dist), is a holder of 2024

Original Secured Notes and 2026 Original Secured Notes. iShares VI Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

39. Counterclaim Plaintiff iShares IV Public Limited Company, on behalf of its sub-fund iShares \$ Short Duration High Yield Corp Bond UCITS ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares IV Public Limited Company is an Irish corporation that maintains its registered office in Ireland.

40. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Core 1-5 Year USD Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

41. Counterclaim Plaintiff iShares U.S. High Yield Fixed Income Index ETF (CAD-Hedged), (“iShares HY Fixed Income ETF CAD-Hedged”), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited, was a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares HY Fixed Income ETF CAD-Hedged was an Ontarian Trust with its principal place of business in Ontario, Canada. After the filing of the First New York Action, the iShares HY Fixed Income ETF CAD-Hedged merged with Plaintiff iShares U.S. High Yield Bond Index ETF (CAD-Hedged) (“iShares HY Bond Index ETF CAD-Hedged”), which is its successor in interest.

42. Counterclaim Plaintiff iShares Trust, on behalf of its series iShares Core Total USD Bond Market ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares Trust is a Delaware statutory trust with its principal place of business in California.

43. Counterclaim Plaintiff iShares HY Bond Index ETF CAD-Hedged, by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares HY Bond Index ETF CAD-

Hedged is an Ontarian Trust with its principal place of business in Ontario, Canada. iShares HY Bond Index ETF CAD-Hedged is the successor in interest to iShares HY Fixed Income ETF CAD-Hedged.

44. Counterclaim Plaintiff iShares, Inc., on behalf of its series iShares US & Intl High Yield Corp Bond ETF, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. iShares, Inc. is a Maryland corporation with its principal place of business in California.

45. Counterclaim Plaintiff BlackRock Bank Loan Fund, by its manager BlackRock Asset Management Ireland Limited, is a holder of 2026 Original Secured Notes. BlackRock Bank Loan Fund is an Irish Trust that maintains its registered office in Ireland.

46. Counterclaim Plaintiff BlackRock Floating Rate Income Trust is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Trust is a Delaware statutory trust with its principal place of business in Delaware.

47. Counterclaim Plaintiff BlackRock Limited Duration Income Trust is a holder of 2026 Original Secured Notes. BlackRock Limited Duration Income Trust is a Delaware statutory trust with its principal place of business in Delaware.

48. Counterclaim Plaintiff BlackRock Dynamic High Income Portfolio of BlackRock Funds II is a holder of 2026 Original Secured Notes. BlackRock Dynamic High Income Portfolio of BlackRock Funds II is a Massachusetts business trust with its principal place of business in Delaware.

49. Counterclaim Plaintiff BlackRock Floating Rate Income Portfolio of BlackRock Funds V is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Portfolio of BlackRock Funds V is a Massachusetts business trust with its principal place of business in Delaware.

50. Counterclaim Plaintiff BlackRock Managed Income Fund of BlackRock Funds II is a holder of 2026 Original Secured Notes. BlackRock Managed Income Fund of BlackRock Funds II is a Massachusetts business trust with its principal place of business in Delaware.

51. Counterclaim Plaintiff BlackRock Floating Rate Income Strategies Fund, Inc. is a holder of 2026 Original Secured Notes. BlackRock Floating Rate Income Strategies Fund, Inc. is a Maryland corporation with its principal place of business in Delaware.

52. Counterclaim Plaintiff PSAM WorldArb Master Fund Ltd. is a holder of 2024 Original Secured Notes. PSAM WorldArb Master Fund Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

53. Counterclaim Plaintiff Rebound Portfolio Ltd. is a holder of 2024 Original Secured Notes. Rebound Portfolio Ltd. is a Cayman Islands exempted company with its registered office in the Cayman Islands.

54. Counterclaim Plaintiff JPMorgan Funds, on behalf of its sub-fund Multi-Manager Alternatives Fund, is a holder of 2024 Original Secured Notes. JPMorgan Funds, a société anonyme qualifying as a société d'investissement à capital variable, is incorporated in, and maintains its registered office in, Luxembourg.

55. Counterclaim Plaintiff Lumyna Specialist Funds (formerly called Viaduct Invest FCP-SIF), on behalf of its sub-fund Event Alternative Fund, is a holder of 2024 Original Secured Notes. Lumyna Specialist Funds is an unincorporated joint ownership of assets – specialized investment fund, registered in Luxembourg.

56. Counterclaim Plaintiff Lumyna Investments Ltd., on behalf of its sub-fund PSAM Global Event UCITS Fund, is a holder of 2024 Original Secured Notes. Lumyna Investments Ltd. is a private limited company, with its registered office in the United Kingdom.

57. Counterclaim Plaintiff Kapitalforeningen PenSam Invest - PSI 84 US High Yield II is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Kapitalforeningen PenSam Invest - PSI 84 US High Yield II is an alternative investment fund (AIF) administered by Nykredit Portefølje Administration A/S, with a registered office in Denmark.

58. Counterclaim Plaintiff The New Zealand Guardian Trust Company Limited, as Trustee for AMP Wholesale High Yield Bond Fund, is the holder of 2024 Original Secured Notes and 2026 Original Secured Notes. AMP Wholesale High Yield Bond Fund is a New Zealand Unit Trust Fund, with a registered office in New Zealand. The New Zealand Guardian Trust Company Limited is a Trustee Company, with a registered office in New Zealand

59. Counterclaim Plaintiff UBS Fund Management (Switzerland) AG is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. UBS Fund Management (Switzerland) AG is a Swiss “Aktiengesellschaft”, with a registered office in Switzerland.

60. Counterclaim Plaintiff JNL Series Trust, on behalf of its series JNL/JPMorgan Global Allocation Fund, is a holder of 2026 Original Secured Notes. JNL Series Trust is a is a Massachusetts business trust with its principal place of business in Michigan.

61. Counterclaim Plaintiff JPMorgan Fund ICVC, on behalf of its sub fund JPM Global High Yield Bond Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Fund ICVC is an open-ended investment company with variable capital with its principal place of business in England.

62. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Income Builder Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

63. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Total Return Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

64. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Strategic Income Opportunities Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

65. Counterclaim Plaintiff JPMorgan Fund ICVC, on behalf of its sub fund JPM Multi-Asset Income Fund, is a holder of 2026 Original Secured Notes. JPMorgan Fund ICVC is an open-ended investment company with variable capital with its principal place of business in England.

66. Counterclaim Plaintiff Lincoln Variable Insurance Products Trust, on behalf of its series LVIP JPMorgan High Yield Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Lincoln Variable Insurance Products Trust is a Delaware statutory trust with its principal place of business in Indiana.

67. Counterclaim Plaintiff Advanced Series Trust, on behalf of its portfolio AST High Yield Portfolio, is a holder of 2026 Original Secured Notes. Advanced Series Trust is an open-ended management investment company with its principal place of business in Connecticut.

68. Counterclaim Plaintiff GIM Trust, on behalf of its series U.S. High Yield Bond Fund, is a holder of 2026 Original Secured Notes. GIM Trust is an open-ended Cayman Islands series trust with its registered office in the Cayman Islands.

69. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Global Allocation Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

70. Counterclaim Plaintiff HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. HSBC Institutional Trust Services (Asia) Limited is a public company limited by shares incorporated in Hong Kong with its principal place of business in Hong Kong. JPMorgan Multi Income Fund is a unit trust authorized as a collective investment scheme by the Hong Kong Securities and Futures Commission.

71. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Global Bond Opportunities Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

72. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Short Duration Core Plus Fund, is a holder 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

73. Counterclaim Plaintiff IBM 401(k) Plus Plan Trust, on behalf of the IBM 401(k) Plus Plan, is a holder 2026 Original Secured Notes. The IBM 401(k) Plan Trust is a retirement plan with its registered office in New York.

74. Counterclaim Plaintiff JPMorgan Trust I, on behalf of its series JPMorgan Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust I is a Delaware statutory trust with its principal place of business in New York.

75. Counterclaim Plaintiff Migros-Pensoinskasse Fonds is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Migros-Pensoinskasse Fonds is a Swiss investment fund with its registered office in Switzerland.

76. Counterclaim Plaintiff J.P. Morgan Exchange-Traded Fund Trust, on behalf of its series JPMorgan Core Plus Bond ETF, is a holder of 2026 Original Secured Notes. J.P. Morgan

Exchange-Traded Fund Trust is a Delaware statutory trust with its principal place of business in New York.

77. Counterclaim Plaintiff HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Balanced Fund, is a holder of 2026 Original Secured Notes. HSBC Institutional Trust Services (Asia) Limited is a public company limited by shares incorporated in Hong Kong with its principal place of business in Hong Kong. JPMorgan Multi Balanced Fund is a unit trust authorized as a collective investment scheme by the Hong Kong Securities and Futures Commission.

78. Counterclaim Plaintiff Zurich American Insurance Company is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. Zurich American Insurance Company is a company incorporated under the law of the State of New York with its principal place of business in Illinois.

79. Counterclaim Plaintiff NBI High Yield Bond ETF is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. NBI High Yield Bond ETF is an exchange-traded fund established as a trust under the laws of the Province of Ontario, Canada with its registered office in Canada.

80. Counterclaim Plaintiff Deferred Salary Plan of the Electrical Industry is a holder of 2024 Original Secured Notes. Deferred Salary Plan of the Electrical Industry is a Defined Contribution Profit-Sharing Plan with 401(k) and Roth features with its registered office in New York.

81. Counterclaim Plaintiff NBI Unconstrained Fixed Income ETF is a holder of 2026 Original Secured Notes. NBI Unconstrained Fixed Income ETF is an exchange-traded fund

established as a trust under the laws of the Province of Ontario, Canada with its registered office in Canada.

82. Counterclaim Plaintiff National Employment Savings Trust Corporation, in its capacity as trustee of the National Employment Savings Trust, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. National Employment Savings Trust Corporation is a public corporation established under the law of the United Kingdom with its principal place of business in England.

83. Counterclaim Plaintiff JPMorgan Trust II, on behalf of its series JPMorgan Core Plus Bond Fund, is a holder of 2026 Original Secured Notes. JPMorgan Trust II is a Delaware statutory trust with its principal place of business in New York.

84. Counterclaim Plaintiff JPMorgan Trust II, on behalf of its series JPMorgan High Yield Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. JPMorgan Trust II is a Delaware statutory trust with its principal place of business in New York.

85. Counterclaim Plaintiff The Integrity Fund, on behalf of its series Integrity High Income Fund, is a holder of 2024 Original Secured Notes and 2026 Original Secured Notes. The Integrity Fund is a mutual fund managed and/or advised by Viking Fund Management, LLC, headquartered in Minot, North Dakota.

II. Debtor Counterclaim Defendants.

86. Counterclaim Defendant Wesco Aircraft Holdings, Inc. (*i.e.*, the Company) is a Delaware corporation. The Company has its principal place of business and chief executive office in Texas. The Company is the issuer of the Original Senior Secured Notes under the respective Governing Indentures.

87. The Guarantor Defendants that guaranteed the Company's obligations under the Governing Indentures comprise: Adams Aviation Supply Company Limited, a United Kingdom

entity; Flintbrook Limited, a United Kingdom entity; HAAS Chemical Management of Mexico, Inc., a Pennsylvania entity; HAAS Corporation of Canada, a Pennsylvania entity; HAAS Corporation of China, a Pennsylvania entity; HAAS Group International SCM Limited, a United Kingdom entity; HAAS Group International, LLC, a Pennsylvania entity; HAAS Group, LLC, a Delaware entity; HAAS Holdings, LLC, a Delaware entity; HAAS International Corporation, a Pennsylvania entity; HAAS of Delaware LLC, a Delaware entity; HAAS TCM Group of the UK Limited, a United Kingdom entity; HAAS TCM Industries LLC, a Delaware entity; HAAS TCM of Israel Inc., a Delaware entity; Interfast USA Holdings Incorporated, a Delaware entity; Netmro, LLC, a Florida entity; Pattonair Holding, Inc., a Delaware entity; Pattonair (Derby) Limited, a United Kingdom entity; Pattonair Europe Limited, a United Kingdom entity; Pattonair Group Limited, a United Kingdom entity; Pattonair Holdings Limited, a United Kingdom entity; Pattonair Limited, a United Kingdom entity; Pattonair USA, Inc., a Texas entity; Pioneer Finance Corporation, a Delaware entity; Pioneer Holding Corporation, a Delaware entity; Quicksilver Midco Limited, a United Kingdom entity; Uniseal, Inc., an Indiana entity; Wesco 1 LLP, a United Kingdom entity; Wesco 2 LLP, a United Kingdom entity; Wesco Aircraft Canada, LLC, a Delaware entity; Wesco Aircraft EMEA, Ltd., a United Kingdom entity; Wesco Aircraft Europe Limited, a United Kingdom entity; Wesco Aircraft Hardware Corp., a California entity; Wesco Aircraft International Holdings Limited, a United Kingdom entity; Wesco Aircraft SF, LLC, a Delaware entity; Wesco LLC 1, a Delaware entity; Wesco LLC 2, a Delaware entity; Wolverine Intermediate Holding II Corporation, a Delaware entity; and Wolverine UK Holdco Limited, a United Kingdom entity.⁵

⁵ The following debtors in these Chapter 11 proceedings did not guarantee the Company's obligations under the Governing Indentures and, therefore, have not been named as defendants in these Amended Counterclaims: (1) HAAS Group Canada, Inc., (2) Haas TCM de Mexico, S. de R.L. de C.V., (3) Wesco Aircraft Canada, Inc., and (4) Wolverine Intermediate Holding Corporation.

III. Non-Debtor Counterclaim Defendants.

88. Counterclaim Defendant Wilmington Savings Fund Society, FSB (*i.e.*, “WSFS”) is a federal savings bank with its principal place of business in Delaware. WSFS purportedly served as successor indenture trustee and collateral agent under the Governing Indentures from March 14, 2022, until May 26, 2023.

89. Counterclaim Defendant Platinum Equity Advisors, LLC (*i.e.*, the “Platinum Sponsor”) is a Delaware limited liability company with its principal place of business in California. The Platinum Sponsor is the private equity sponsor and a person in control of the Platinum-Controlled Parent and its subsidiaries, including the Company. Upon information and belief, the Platinum Sponsor is also the investment manager or advisor for the Platinum Fund and it often acted as agent for, and on behalf of, the Platinum-Controlled Parent and the Platinum Fund in connection with the Insider Transaction.

90. Counterclaim Defendant Wolverine Top Holding Corporation (*i.e.*, the “Platinum-Controlled Parent”) is a Delaware corporation and the indirect, 100% owner of the Company and its subsidiaries. The Platinum-Controlled Parent is an affiliate and person in control of the Company and the Guarantor Defendants.

91. Counterclaim Defendant Platinum Equity Capital Partners International, IV (Cayman) LP (*i.e.*, the “Platinum Fund”) is an affiliate of the Platinum-Controlled Parent and the Platinum Sponsor that was, upon information and belief, simultaneously invested in the Platinum-Controlled Parent and certain unsecured notes issued by the Company.⁶ The Platinum Fund is an

⁶ Upon information and belief, the Platinum-Controlled Parent also might have held a significant portion of the unsecured notes issued by the Company. In that regard, the Debtors’ statements in their *First Amended Complaint and Counterclaim Answer*, Adv. Pro. Docket No. 63 (the “FAC” or “Answer”), are inconsistent and ambiguous as to whether the Platinum Fund or some other Platinum entity had purchased the unsecured notes and subsequently exchanged them as part of the Insider Transaction. *Compare* FAC at 30 (referring to “Platinum Fund’s Unsecured Notes”) *with* Answer at 23-24 (admitting that “the Platinum Fund, or an affiliate thereof, held Unsecured Notes”). The

affiliate and insider of the Company. The Company's consolidated financial statements for the three months ending March 31, 2022 have described the Platinum Fund as a "related part[y]" of the Company.

92. Counterclaim Defendants Silver Point Noteholders (the "Silver Point Noteholders") include Silver Point Capital Fund, L.P.; Silver Point Capital Offshore Master Fund, L.P.; Silver Point Select Opportunities Fund A, L.P.; Silver Point Distressed Opportunities Fund, L.P.; Silver Point Distressed Opportunities Offshore Master Fund, L.P.; Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.; Silver Point Distressed Opportunity Institutional Partners, L.P.; Silver Point SCF CLO I, Ltd.; Silver Point Specialty Lending Fund; and Silver Point Specialty Credit Fund II Mini-Master Fund (Offshore), L.P. The Silver Point Noteholders are those noteholders who participated in the Insider Transaction as holders of 2026 Original Secured Notes and/or 2024 Original Secured Notes and for which Silver Point Capital, L.P.; Silver Point Distressed Opportunities Management, LLC; Silver Point Specialty Credit Fund Management, LLC; and Silver Point Specialty Credit Fund II Management, LLC act as investment or collateral manager.

93. Counterclaim Defendants PIMCO Noteholders (the "PIMCO Noteholders") include PIMCO Tactical Income Opportunities Fund; PIMCO Global Income Opportunities Fund; PIMCO Tactical Income Fund; PIMCO Global StocksPLUS & Income Fund; PCM Fund, Inc.; PIMCO Strategic Income Fund, Inc.; PIMCO Corporate & Income Opportunity Fund; PIMCO High Income Fund; PIMCO Income Strategy Fund; PIMCO Income Strategy Fund II; PIMCO Corporate & Income Strategy Fund; PIMCO Dynamic Income Opportunities Fund; PIMCO

2024/2026 Holders reserve the right to further amend these Amended Counterclaims if discovery reveals that the Platinum-Controlled Parent held some or all of the unsecured notes that are alleged herein to have been held by the Platinum Fund.

Dynamic Income Fund; PIMCO ETFs plc, PIMCO US Short-Term High Yield Corporate Bond Index UCITS ETF (previously identified as PIMCO Fixed Income Source ETFs plc, PIMCO Short-Term High Yield Corporate Bond Index Source UCITS ETF); PIMCO Flexible Credit Income Fund; PIMCO Funds: PIMCO Low Duration Credit Fund; PIMCO Funds: PIMCO High Yield Spectrum Fund; PIMCO ETF Trust: PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund; OC III LVS I LP; PIMCO Tactical Opportunities Master Fund Ltd.; PIMCO OP Trust Flexible Credit Fund, L.P.; PIMCO DISCO Fund III LP; Texas Children's Hospital Foundation; Bakery and Confectionery Union and Industry International Pension Fund; Employees' Retirement System of the State of Rhode Island; Desjardins Floating Rate Income Fund; Desjardins Global Tactical Bond Fund; and BMO Global Strategic Bond Fund. The PIMCO Noteholders are those noteholders who participated in the Insider Transaction as holders of 2026 Original Secured Notes and/or 2024 Original Secured Notes and for which Pacific Investment Management Company LLC acts as investment manager, adviser, or sub-adviser.

94. Counterclaim Defendants Carlyle Noteholders (the "Carlyle Noteholders") include CCOF Onshore Co-Borrower LLC, CSP IV Acquisitions, L.P., and CCOF Master, L.P. The Carlyle Noteholders are those noteholders who participated in the Insider Transaction as holders of Unsecured Notes (as defined in Paragraph 117, below) issued by the Company and who are managed or advised by The Carlyle Group L.P. or its affiliates.

95. Counterclaim Defendant Senator Global Opportunity Master Fund L.P. (the "Senator Noteholder") participated in the Insider Transaction as a holder of the 2024 Original Secured Notes, the 2026 Original Secured Notes, and Unsecured Notes issued by the Company and is managed or advised by Senator GP LLC.

96. Counterclaim Defendant Citadel Equity Fund Ltd. (the “Citadel Noteholder”) participated in the Insider Transaction as a holder of 2026 Original Secured Notes issued by the Company and is managed or advised by Citadel Advisors LLC.

97. Counterclaim Defendant Spring Creek Capital LLC (the “Spring Creek Noteholder”) participated in the Insider Transaction as a holder of Unsecured Notes issued by the Company and, on information belief, is beneficially owned by SCC Holdings, LLC.

98. Counterclaim Defendant Patrick J. Bartels, Jr. is a member of the Board of Directors of Wolverine Intermediate Holding Corp (“Wolverine Intermediate”), and upon information and belief was a member of that Board of Directors at the time of the Insider Transaction.

99. Upon information and belief, Counterclaim Defendant Mary Ann Sigler was a member of the Board of Directors of Wolverine Intermediate at the time of the Insider Transaction. At that same time, on information and belief, Sigler was the Chief Financial Officer of the Platinum Sponsor.

100. Upon information and belief, Counterclaim Defendant John G. Holland was a member of the Board of Directors of Wolverine Intermediate at the time of the Insider Transaction. At that same time, on information and belief, Holland was a Managing Director and General Counsel of the Platinum Sponsor.

101. Upon information and belief, Counterclaim Defendant Louis Samson was a member of the Board of Directors of Wolverine Intermediate at the time of the Insider Transaction. At that same time, on information and belief, Samson was a Co-President of the Platinum Sponsor.

102. Upon information and belief, Counterclaim Defendant Michael Fabiano was a member of the Board of Directors of Wolverine Intermediate at the time of the Insider Transaction.

At that same time, on information and belief, Fabiano was a Managing Director at the Platinum Sponsor.

103. Upon information and belief, Counterclaim Defendant Malik Vorderwuelbecke was a member of the Board of Directors of Wolverine Intermediate at the time of the Insider Transaction. At that same time, on information and belief, Vorderwuelbecke was a Managing Director at the Platinum Sponsor.

Subject Matter Jurisdiction and Venue

104. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

105. Venue of this adversary proceeding in this Court is proper pursuant to 28 U.S.C. § 1409 because this is the district in which the related bankruptcy case is pending.

106. The 2024/2026 Holders' claims for equitable subordination and equitable lien are core claims for which the 2024/2026 Holders consent to entry of a final order or judgment by this Court.

107. The 2024/2026 Holders' declaratory judgment claims are non-core claims for which, pursuant to the Scheduling Order, the 2024/2026 Holders do not consent to entry of a final order or judgment by this Court.

108. Pursuant to Bankruptcy Rule 7008, the 2024/2026 Holders do not consent to the entry of final orders or judgment by this Court in connection with this adversary proceeding if it is determined that, absent consent of the parties, the Court cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Personal Jurisdiction

109. All Debtor Counterclaim Defendants are subject to the jurisdiction of this Court as debtors in the related bankruptcy cases.

110. Additionally, each Counterclaim Defendant is subject to personal jurisdiction pursuant to Federal Rule of Bankruptcy Procedure 7004 because each Counterclaim Defendant herein has established minimum contacts with the United States.

111. The Debtor Counterclaim Defendants are parties to the Governing Indentures, which include consent to the jurisdiction of courts in the United States, namely in the State of New York.

112. WSFS was a party to the Governing Indentures, which include consent to the jurisdiction of courts in the United States, namely in the State of New York.

113. The Favored Noteholders are parties to the Exchange Agreement (as defined in Paragraph 162, below), which includes a consent to the jurisdiction of courts in the United States, namely in the State of New York.

114. Where a federal statute or rule provides for nationwide service of process, as does Bankruptcy Rule 7004, a federal court has personal jurisdiction over any defendant having minimum contacts with the United States.

115. Accordingly, this Court has personal jurisdiction over the Counterclaim Defendants based on their contacts with the United States.

Factual Allegations

I. The Company.

116. The Company is the product of a 2020 merger between Wesco and Pattonair, a portfolio company of the Platinum Sponsor.

117. According to the Debtors, “[t]he Company provides customizable and often on-demand supply chain management services to manufacturers and maintenance providers across several industries, with a focus on the commercial and defense aerospace industry.” Declaration

of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions, dated June 1, 2023, (Case No. 23-90611, Docket No. 13) (the “Carney Decl.”) ¶ 20.

118. Since their acquisition of the Company in January 2020, the Platinum-Controlled Parent and the Platinum Sponsor have controlled the Company. The Platinum-Controlled Parent is an indirect parent of the Company. Each year, the Company is obligated to pay the Platinum Sponsor approximately \$7 million in consulting fees, plus other fees and expenses.

119. The Company states that it is owned “by a chain of three holding companies: Wolverine Intermediate Holding II Corporation . . . [is directly owned by] Wolverine Intermediate [Holding Corp.] . . . [which in turn is directly owned by]” the Platinum-Controlled Parent. Carney Decl. ¶ 39.

120. Upon information and belief, the Platinum Fund owns or controls more than 20% of the voting shares of the Platinum-Controlled Parent, and it and the Company are under the common control of the Platinum Sponsor.

121. The board of directors (the “Board”) of Wolverine Intermediate Holding Corp. (“Wolverine Intermediate”) is composed of individuals selected and controlled by the Platinum Sponsor. Except for the later-appointed director Patrick Bartels, whom the Debtors describe as “independent,” the Debtors do not hold out members of the Board as being independent from the Platinum Sponsor or the Debtors.

122. At the time of the Insider Transaction, the Board consisted entirely of the following senior executives and officers of the Platinum Sponsor, apart from Mr. Bartels:

- Mary Ann Sigler, Chief Financial Officer of the Platinum Sponsor;
- John G. Holland, Managing Director and General Counsel of the Platinum Sponsor;
- Louis Samson, Co-President of the Platinum Sponsor;

- Michael Fabiano, Managing Director of the Platinum Sponsor; and
- Malik Vorderwuelbecke, Managing Director of the Platinum Sponsor.

II. The Governing Indentures.

123. To finance the acquisition in January 2020 that led to the 2020 merger between Wesco and Pattonair, the Company sold three debt issuances: (i) \$650 million in 2024 Original Secured Notes; (ii) \$900 million in 2026 Original Secured Notes; and (iii) \$525 million in unsecured notes due 2027 (the “Unsecured Notes”).

124. Platinum could not finance its acquisition of the Company on the terms initially proposed to the market. After Platinum and the Company were unable to obtain a syndicated loan, they turned to the high-yield bond market. By the time the acquisition financing was finalized in the Governing Indentures, it included many terms more favorable to creditors than those initially proposed by the Company. The Governing Indentures were negotiated with purchasers and potential purchasers of the Notes before the issuance and contain protections against position-enhancing transactions of precisely the sort here.

125. To secure payment of principal and interest on the Original Secured Notes, the Company granted liens (the “Liens”) on specifically identified assets of the Company (the “Collateral”) to the holders of the Original Secured Notes. The Liens and Collateral are memorialized in the Governing Indentures and an array of security documents, including intercreditor agreements, pledges, deeds, mortgages, and other instruments securing the Notes (together, the “Security Documents”).

126. Additionally, the Guarantor Defendants guaranteed the Company’s payment obligations under the Governing Indentures as well as under the indenture for the Unsecured Notes (the “Unsecured Indenture”).

127. The Governing Indentures limit the Company’s ability to issue additional 2024 Original Secured Notes or 2026 Original Secured Notes to dilute the rights of existing holders by issuing new debt or creating new liens.

128. Specifically, Section 2.01(e) of the Governing Indentures states that the Company’s “ability to issue Additional Secured Notes ***shall be subject to*** the Issuer’s compliance with Sections 4.09 and 4.12 hereof.” (Emphasis added.) The Governing Indentures’ definition of “Additional Secured Notes” also refers to Section 2.01(e) and thus, in turn, Section 4.12.⁷

129. Section 4.12(a) of the Governing Indentures—which pursuant to Section 2.01 is a predicate to the issuance of ***any*** Additional Secured Notes—provides that:

The Issuer ***will not***, and will not permit any Subsidiary Guarantor, if any, to, ***directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind (other than Permitted Liens)***, securing Indebtedness of the Issuer or such Subsidiary Guarantor, if any, on any property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom.

(Emphasis added.)

130. Permitted Liens are defined in Section 1.01 of the Governing Indentures to include, *inter alia*, the Liens that secured the Original Secured Notes.

131. Section 4.09 of the Governing Indentures—which pursuant to Section 2.01 is also a predicate to the issuance of ***any*** Additional Secured Notes—protects the Original Secured Notes by restricting the incurrence of additional indebtedness other than “Permitted Indebtedness.”

132. Permitted Indebtedness is defined in Section 4.09(b) of the Governing Indentures to include, *inter alia*, the 2024 Original Secured Notes and 2026 Original Secured Notes.

⁷ All provisions of the 2026 Original Secured Note Indenture and 2024 Original Secured Note Indenture relevant to these Amended Counterclaims are substantively identical. All references to “Section” herein are to the 2026 Original Secured Note Indenture unless otherwise specified.

133. As further protection, the Governing Indentures restrict the Company's ability to amend, supplement or waive certain rights without meeting holder consent thresholds.

134. Under Section 9.02 of the Governing Indentures, supermajority consent is required for any amendments or modifications affecting the Liens, Collateral, or Security Documents. It provides in relevant part that, without consent "of at least 66⅔% in aggregate principal amount of the Secured Notes then outstanding . . . no amendment, supplement, or waiver may":

(1) *have the effect of releasing all or substantially all of the Collateral from the Liens* created pursuant to the Security Documents (except as permitted by the terms of this Indenture, the Security Documents or the Intercreditor Agreements) *or changing or altering the priority of the security interests of the Holders* of the [Originally] Secured Notes in the Collateral under the ABL Intercreditor Agreement or the Pari Passu Intercreditor Agreement,

(2) *make any change* in the Security Documents, the Intercreditor Agreements or the provisions in this Indenture dealing with the application of proceeds of the Collateral that would *adversely affect the Holders* of the [Originally] Secured Notes or

(3) *modify the security Documents or the provisions of this Indenture dealing with Collateral in any manner adverse to the Holders* of [Originally] Secured Notes in any material respect other than in accordance with the terms of this Indenture, the Security Documents or the Intercreditor Agreements.

(Emphasis and paragraph breaks added.)

135. Additionally, the Governing Indentures protect the 2024/2026 Holders' security interests in the Collateral in a variety of other ways. For example, Section 6.01 of the Governing Indentures protects the Liens created for the benefit of the Original Secured Notes. Under Section 6.01, "[e]ach of the following is an 'Event of Default'":

[A]ny material provision of any Security Document or Intercreditor Agreement with respect to the [Original Secured Notes] ceases to be in full force and effect for any reason other than in accordance with the terms of [the Governing Indentures] . . .

* * *

[A]ny Security Document covering a material portion of the Collateral for any reason (other than pursuant to the terms hereof) ceases to create a valid and perfected first-priority or second-priority Lien, as applicable, on, and security interest in, any material Collateral covered thereby with respect to the [Original Secured Notes].

136. Section 9.02 also codifies the 2024/2026 Holders’ “sacred rights” under the Governing Indentures, which include, among other rights, a requirement that each affected holder consent to any amendment that “make[s] any change to, or modif[ies], the ranking of the [Notes] in respect of right of payment that would adversely affect the Holders of the [Notes].”

137. Section 6.06 of the Governing Indentures provides that one group of holders of the Notes “may not use” the Governing Indentures “to prejudice the rights of another or to obtain a preference or priority over another” group of noteholders.

138. Finally, Section 3.02 of the Governing Indentures requires that, unless the company redeems 100% of the Original Secured Notes (which it did not do here), any Original Secured Note to be redeemed or purchased must be selected by the indenture trustee either pro rata, by lottery, or by some other “fair and appropriate” method.

139. Many of the 2024/2026 Holders purchased their Notes at or near the time of their initial issuance and have continued to hold those Notes through today.

III. Origins of the Insider Transaction.

140. As the Company noted in the Carney Declaration:

The COVID-19 pandemic in early 2020 devastated the aerospace industry. The Company’s business was no exception. Travel restrictions were implemented early in the pandemic and grounded most of the global commercial airline fleet, causing customer demand for parts and services to decrease rapidly. Notably, COVID-19 occurred just as the Company was formed through the consolidation of Wesco and Pattonair

Carney Decl. ¶ 8.

141. In July 2020, shortly after that consolidation, the Company revealed that the Platinum Fund had been buying Unsecured Notes on the secondary market. Although the Company failed to disclose how many Unsecured Notes the Platinum Fund purchased, or the prices it paid, market data from the relevant time period reveals an average trading price of 69 cents on the dollar. In November 2020, the Company also issued the Platinum-Controlled Parent a \$25 million unsecured promissory note.

142. The Platinum Fund's motives for acquiring the Unsecured Notes are now clear. Given the financial straits the Company was facing due to COVID-19, and the likelihood that the Platinum-Controlled Parent's equity stake would be wiped out if the Company continued to struggle, the Platinum Fund, upon information and belief, actively sought a position in the Company's debt structure that it and the Platinum Sponsor could monetize in a restructuring by virtue of the Platinum-Controlled Parent's and the Platinum Sponsor's absolute control over the Company. Had any of the Platinum entities sought to support the Company and its various stakeholders, they could have provided significant debt relief by retiring the Unsecured Notes acquired by the Platinum Fund or by forgiving the \$25 million promissory note issued to the Platinum-Controlled Parent. The Platinum Sponsor could also at any time have waived its \$7 million annual consulting fee.

143. In late 2021, Platinum and the Company retained advisors and began exploring an out-of-court recapitalization.

144. Upon information and belief, the Platinum Creditors, the Company, and their advisors did not initiate contact with more than one lending group regarding financing opportunities.

145. The Platinum Creditors and the Company did not disclose its exploration of an out-of-court recapitalization to the market, but the news leaked on February 7, 2022.

146. On that date, Debtwire published an article titled “Wesco Aircraft in talks with select holders for priming roll-up and new capital injection.” The article reported that discussions were ongoing between certain of the Favored Noteholders and the Company about an out-of-court recapitalization, which would eventually become the Insider Transaction. The article described a framework under which the Favored Noteholders would exchange their holdings of Original Secured Notes into a new senior secured debt facility. According to the article, “[s]uch an uptier deal would effectively reduce the economics for existing bondholders by stripping out liens under its bond indentures.”

147. After Debtwire’s report, certain 2024/2026 Holders became part of an ad hoc group that held, among other interests, more than one-third of the 2026 Original Secured Notes (the “Ad Hoc Group”). The Ad Hoc Group immediately hired legal and financial advisors and instructed those advisors to prepare alternative financing proposals that would be open to all secured noteholders, not just a subset of them.

148. Consistent with that mandate, the Ad Hoc Group’s advisors submitted a first proposal to the Company on March 6, 2022 (the “First Bid”). The First Bid contemplated liquidity enhancements through an up-front investment and through cash interest savings achieved through an exchange of Original Secured Notes into new payment-in-kind bonds. Additional savings would be achieved if, as contemplated by the First Bid, (i) the Platinum Fund would agree to convert its Unsecured Notes to payment-in-kind bonds and (ii) the Platinum Sponsor would waive its \$7 million annual consulting fee.

149. The First Bid was what the market has come to refer to as a “pro rata” proposal, which allowed *all* holders of Original Secured Notes to participate in the contemplated transaction, thus eliminating any material risk of litigation.

150. Subsequently, on March 11, 2022, the Ad Hoc Group’s advisors submitted to the Company a second financing proposal (the “Second Bid” and together with the First Bid, the “Bids”), which provided the Company the option of drawing even more capital. The Second Bid was driven by the Company’s changing indications to the Ad Hoc Group’s advisors of the size of its liquidity need. As with the First Bid, the Second Bid was a pro rata proposal that was open to all holders of Original Secured Notes, did not require a complete overhaul of the Company’s capital structure to implement, and did not carry material litigation risk. The Bids did not propose that the Company would have any indemnification obligations.

151. After delivery of the Ad Hoc Group’s Bids, the Ad Hoc Group repeatedly asked the Company for access to material non-public information about the Company to refine its Bids and to help the Company solve its immediate liquidity issues. But then, on March 29, 2022, the Company simply announced the completion of the Insider Transaction without ever formally countering any of the Ad Hoc Group’s Bids or sharing with the Ad Hoc Group the details of the Insider Transaction.

152. The Company did not “engage[] in good faith negotiations with all its stakeholder groups” from the outset, as it claims. Carney Decl. ¶ 10.

153. All of the 2024/2026 Holders held Notes at the time of the Insider Transaction. Many of the 2024/2026 Holders purchased their Notes at or around the time of the initial issuance and have continued to hold those Notes through today.

IV. The Insider Transaction.

154. To implement the Insider Transaction on March 28, 2022, the Company and others simultaneously executed at least ten integrated written agreements, including an unauthorized amendment to the Governing Indentures that was artificially labeled as two amendments: the “Third Supplemental Indenture” and the “Fourth Supplemental Indenture” (together, the “Unauthorized Amendments”).⁸

155. Under the Governing Indentures as they existed without the Unauthorized Amendments, the Company could not issue more than approximately \$75 million in pari passu first lien secured debt.

156. The Unauthorized Amendments purported to modify the Governing Indentures to allow for the issuance by the Company of \$250 million in “Additional Secured Notes”—*i.e.*, the Phantom Notes.

157. Under the Governing Indentures, the issuance of Additional Secured Notes was subject to Section 4.12 and therefore could not “*directly or indirectly create, incur, assume or suffer to exist any Lien of any kind*” other than the Permitted Liens.

158. The Third Supplemental Indenture was not consented to by a supermajority of the 2026 Original Secured Notes then outstanding.

⁸ The Third Supplemental Indenture and the Fourth Supplemental Indenture are a single, integrated amendment executed simultaneously for a singular purpose and, therefore, the Amended Counterclaims’ use of the plural “Unauthorized Amendments” herein is solely for convenience. The Third Supplemental Indenture and Fourth Supplemental Indenture were executed for each of the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture. As with the Governing Indentures, the supplemental indentures for the 2024 Original Secured Notes and the 2026 Original Secured notes are substantially similar to one another for the purposes of these Amended Counterclaims. The Third Supplemental Indenture and Fourth Supplemental Indenture to the 2024 Original Secured Note Indenture were filed as Adv. Pro., Docket Nos. 12-13 and 12-14, respectively. The Third Supplemental Indenture and Fourth Supplemental Indenture to the 2026 Original Secured Note Indenture were filed as Adv. Pro., Docket Nos. 12-10 and 12-11, respectively.

159. The Company purported to issue the Phantom Notes only to certain Favored Noteholders to dilute the Ad Hoc Group's one-third holding in the 2026 Original Secured Notes to give those Favored Noteholders an artificial supermajority.

160. The purpose of the Phantom Notes was not to provide the Company with additional liquidity as the Debtors claim. The Phantom Notes, rather, were an unauthorized means of manufacturing feigned supermajority consent to terminating the Security Documents and discharging all of the 2024/2026 Holders' Liens on Collateral.

161. New liquidity could have been provided in a much more rational fashion by issuing additional super-priority secured debt with supermajority consent and thus without breaching the Governing Indentures. Instead, the Company chose subterfuge and favoritism by issuing Phantom Notes at par and simultaneously exchanging them for New 1L Notes at par, even though the Original Secured Notes were trading as low as 84 cents in the months leading up to the Insider Transaction.

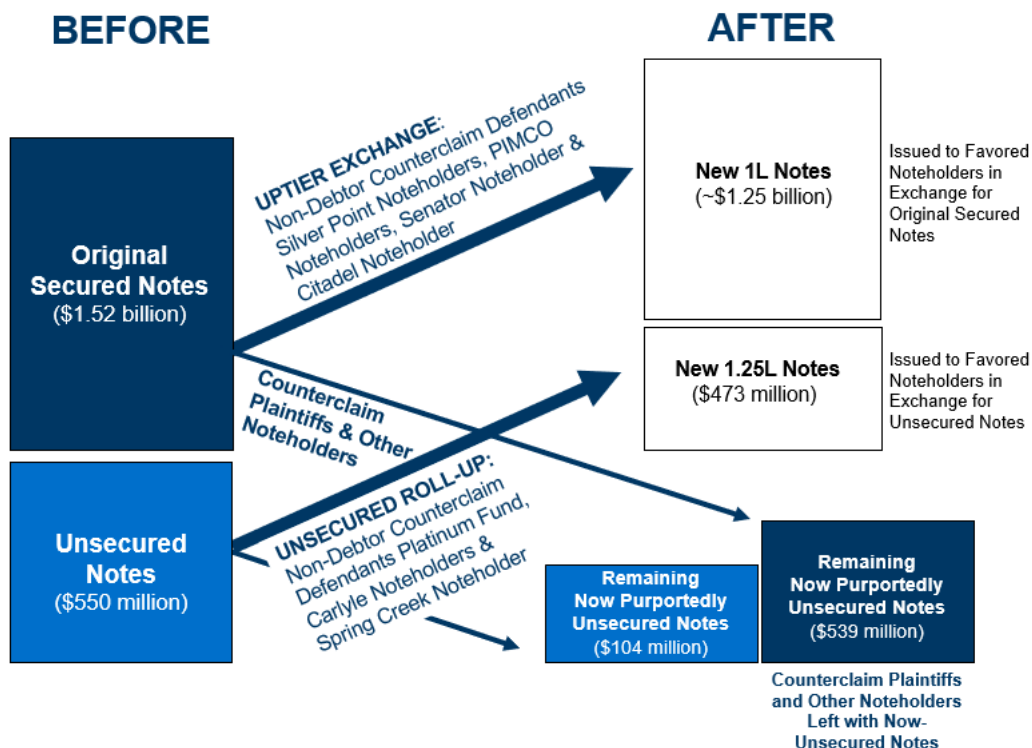
162. The purported effect of the Unauthorized Amendments—and their purpose—was to “release[], terminate[], and discharge[] in full” all of the Liens securing the 2024/2026 Holders' Notes and issue new unpermitted liens such that the 2024/2026 Holders' Notes, supposedly, would “represent unsecured obligations of the Company.”

163. The apparition-like existence of the Phantom Notes—which were simultaneously issued, voted, exchanged, and cancelled as part of one transaction—confirms that their purpose was to subvert the 2024/2026 Holders' supermajority consent rights in violation of the Governing Indentures and underscores the singular, integrated nature of the interwoven agreements comprising the Insider Transaction.

164. In the Uptier Exchange, certain Favored Noteholders exchanged Original Secured Notes and Phantom Notes, at par, for approximately \$1.27 billion of new, first lien secured notes (the “New 1L Notes”), which purportedly rank senior to the 2024/2026 Holders’ now-unsecured notes.

165. In the Unsecured Roll-up, certain Favored Noteholders exchanged Unsecured Notes, together with the \$25 million unsecured promissory note held by the Platinum-Controlled Parent, at par, for approximately \$473 million of newly issued 1.25 lien secured notes (the “New 1.25L Notes”), which also purportedly rank senior to the 2024/2026 Holders’ now-unsecured notes. Prior to the roll-up, the Unsecured Notes were trading at approximately 40 cents on the dollar.

166. A simplified depiction of the Company’s debt structure before and after the Insider Transaction is below:



167. The Insider Transaction purported to rank the Favored Noteholders’ and the Platinum Creditors’ rights to repayment ahead of the 2024/2026 Holders’ Notes. Although the New 1L Notes are nominally due in November 2026, by design they would actually mature in October 2024—*before* both the 2024 Original Secured Notes and the 2026 Original Secured Notes—because the indenture for the New 1L Notes contains a “springing maturity” provision whereby those notes would come due in October 2024 if more than \$50 million of the 2024 Original Secured Notes remained outstanding as of that date. The 2024/2026 Holders own more than that amount of the 2024 Original Secured Notes, practically ensuring that the provision would be triggered. The New 1L Notes would also be paid before the Original Secured Notes are paid from the Collateral because the New 1L Notes are purportedly secured while the Original Secured Notes are purportedly unsecured.

168. In total, to effectuate the Insider Transaction, the Counterclaim Defendants simultaneously executed at least:

- Six amendments to the notes indentures, including the Unauthorized Amendments to the Governing Indentures and two other supplemental indentures for the Unsecured Notes (*see* Adv. Pro., Docket No. 12-7; 12-8; 12-10; 12-11; 12-13; and 12-14);
- One note purchase agreement pursuant to which the Company issued the Phantom Notes (the “Phantom Note Purchase Agreement”) (*see* Adv. Pro., Docket No. 12-15);
- One exchange agreement pursuant to which the Favored Noteholders—including the Platinum Fund and the Platinum-Controlled Parent—exchanged their existing Original Secured Notes (plus the Phantom Notes) and/or their unsecured notes for the New 1L Notes and New 1.25L Notes, respectively (the “Exchange Agreement”) (*see* Adv. Pro., Docket No. 12-18); and
- Two new indentures pursuant to which the Company issued the New 1L Notes and New 1.25L Notes (*see* Adv. Pro., Docket No. 12-16 and 12-17).

(collectively, the “Insider Transaction Documents”).

169. All of the Insider Transaction Documents were, upon information and belief, prepared before March 28, 2022. And the Insider Transaction Documents include signatures that were affixed before March 28, 2022.

170. Likewise, all of the Insider Transaction Documents were prepared and executed with the understanding that they constituted a single transaction and were prearranged to accomplish one purpose: the Insider Transaction. For example:

- The Favored Noteholders provided authorization letters to consent to the Third Supplemental Indenture and the Fourth Supplemental Indenture that *pre-date* March 28, 2022, the date of the Insider Transaction.
- The authorization letters to consent to the Third Supplemental Indenture “make reference” to both the Third Supplemental Indenture *and* the Exchange Agreement.
- The Exchange Agreement specifically recites that it was entered into “in connection with” the Phantom Note Purchase Agreement and “to enter into” the Fourth Supplemental Indenture, and it separately refers to the “Additional 2026 [Original Secured] Notes”—i.e., the Phantom Notes—when reciting the basis for asserting supermajority consent.
- The Favored Noteholders themselves, in their briefing in the First New York Action, labeled the Unauthorized Amendments, and the Insider Transaction, as a “package deal.” *SSD Investments Ltd., et al. v. Wilmington Savings Fund Society, FSB, et al.*, Index No. 654068/2022, Docket No. 117, at 14.
- The Company’s counsel described the Insider Transaction in open court as “one liquidity transaction,” noting that while it consisted of “steps [that] are sequential, they’re all part of the same transaction.” *See* Transcript of June 6, 2023 Emergency Motion Hearing, Case No. 23-03091, Adv. Pro., Docket No. 38, at 44:13-16.

171. The Insider Transaction Documents refer to each other numerous times, and they make no business sense unless they are considered as part of a single, integrated transaction.

172. For example, no rational economic holder of the Original Secured Notes would vote to strip themselves of their security interests in the Collateral without being assured by the Company in advance that their Notes would simultaneously be exchanged for New 1L Notes. Likewise, no rational investor would have purchased the Phantom Notes at or near par but for the

precondition that they would be simultaneously exchanged by the Company for the New 1L Notes given that the Original Secured Notes were trading at approximately 84 cents before news leaked of a potential transaction.

173. In the Unsecured Roll-up, the Carlyle Noteholders exchanged more than half of all Unsecured Notes for new, secured 1.25L notes at par, even though the Unsecured Notes were trading at approximately 40 cents. Platinum and the Company directed this lucrative benefit to the Carlyle Noteholders because, as the holders of a majority of the Unsecured Notes, their consent was necessary to carry out the other aspects of the integrated Insider Transaction. Notably, the Carlyle Group was a previous owner of the Company.

174. The Platinum Fund's participation in the Unsecured Roll-up had no valid business justification for the Company. That is because the Unsecured Indenture provides that Unsecured Notes held by the Company or its affiliates are disregarded for voting purposes. *See* Adv. Pro., Docket No. 12-18 at § 9.02. In turn, "Affiliate" is defined to include entities with control over the Company. The Platinum Fund is therefore an Affiliate and its holdings of Unsecured Notes would not count when calculating voting majorities. Because the Platinum Fund and the Company are "Affiliates," as defined by the Unsecured Indenture, they were prohibited from voting their Unsecured Notes in connection with any proposed amendments, supplements, or waivers. Thus, there was no justification for the Company to extend the Platinum Fund the same opportunity as the Carlyle Noteholders to participate in the Unsecured Roll-up. Nevertheless, the Platinum Fund was able to exchange its Unsecured Notes for the vastly more valuable secured New 1.25L Notes.

175. Similarly, there was no valid business justification for the Company to include the \$25 million unsecured promissory note held by the Platinum-Controlled Parent in the Unsecured Roll-up. Upon information and belief, the consent of the Platinum-Controlled Parent under that

promissory note was not required to amend the Governing Indentures. Nevertheless, as part of the Unsecured Roll-up, the Platinum-Controlled Parent exchanged its \$25 million unsecured promissory note for the vastly more valuable New 1.25L Notes.

176. Moreover, after the Insider Transaction closed, the Company and the Favored Noteholders proceeded to engage in several follow-on exchanges under the Exchange Agreement and the Phantom Note Purchase Agreement that appear to have been done at face value when the Original Secured Notes were generally trading anywhere from 50-70 cents on the dollar, with some exchanges made shortly before the petition date when the notes were trading at less than 12 cents. Through these follow-on exchanges, the Favored Noteholders thus appear to have obtained a further windfall and enhanced their position.

V. Breaches of the Governing Indentures.

a. Breaches of the 2026 Original Secured Note Indenture.

177. Section 2.01(e) of the Governing Indentures requires that the Company’s “ability to issue Additional Secured Notes shall be subject to the [Company’s] compliance with Sections 4.09 and 4.12 hereof.” Section 4.12, in turn, provides that “[t]he [Company] will not, and will not permit any Subsidiary Guarantor, if any, to, *directly or indirectly*, create, incur, assume or suffer to exist any Lien of any kind (other than Permitted Liens), securing Indebtedness of the Issuer.” (Emphasis added.)

178. The Company violated these provisions of the Governing Indentures by issuing Additional Secured Notes—a.k.a., the Phantom Notes— “to *directly or indirectly* create, incur, assume or suffer to exist any Lien of any kind” other than Permitted Liens.

179. The Phantom Notes were issued by the Company, at the direction of the Platinum-Controlled Parent and the Platinum Sponsor and with the approval of the Board and complicity of the Favored Noteholders, in breach of the Governing Indentures.

180. Additionally, Section 9.02 of the 2026 Original Secured Note Indenture provides that, “without the consent of 66⅔ percent in aggregate principal amount of the 2026 Secured Notes *then outstanding*”—which the Company *did not* have—“no amendment, supplement or waiver may (1) *have the effect* of releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents . . . or changing or altering the priority of the security interests of the Holders of the 2026 [Senior] Secured Notes[.]” Section 9.02 also prohibits any amendments that “(2) make *any* change in the Security Documents, the Intercreditor Agreements or the provisions in this Indenture dealing with the application of proceeds of the Collateral *that would adversely affect* the Holders of the 2026 [Senior] Secured Notes or (3) *modify* the Security Documents or the provisions of this Indenture dealing with Collateral *in any manner adverse* to the Holders of the 2026 [Senior] Secured Notes in any material respect[.]”

181. The Phantom Notes could not grant the supermajority consent required to approve the Unauthorized Amendments.

182. For example, under the terms of the Governing Indentures, the phrase “*then outstanding*” can refer only to 2026 Original Secured Notes outstanding *before* consent is given. The Phantom Notes were not “then-outstanding” when the Counterclaim Defendants effected the Insider Transaction, which was executed via multiple documents, but are part of a single integrated agreement under applicable New York law. Furthermore, the Phantom Notes were not “then outstanding” when authorization letters were obtained before March 28, 2022.

183. For these and the other reasons set forth herein, the Phantom Notes are a nullity for purposes of the consent requirement under Section 9.02.

184. The Company did not have supermajority consent for the Insider Transaction, and thus the Company breached all three disjunctive subsections of Section 9.02 requiring

supermajority consent because the Unauthorized Amendments (1) “ha[d] the effect” of “releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents . . . or changing or altering the priority of the security interests of the Holders of the 2026 Secured Notes,” (2) changed provisions in the relevant documents dealing with the application of proceeds of the Collateral that adversely affected the holders of the Original Secured Notes, and (3) modified the relevant documents dealing with the Collateral in a manner materially adverse to the holders of the Original Secured Notes.

185. The Company likewise violated the Governing Indentures by, among other things, authorizing and issuing secured indebtedness that was neither Permitted Indebtedness nor consented to by a supermajority.

186. Any interpretation of the Governing Indentures advanced by the Counterclaim Defendants that purportedly allows supermajority consent requirements to be circumvented by the issuance of Phantom Notes would render Section 9.02, as well as Sections 4.09 and 4.12, meaningless. For example, if the Company, the indenture trustee, and a simple majority of Original Secured Notes could collude to amend the Governing Indentures so that a simple majority of holders could vote as a purported supermajority that was lacking immediately before their scheme (and obtained only because of their scheme), the supermajority consent requirement is meaningless. This would eviscerate supermajority consent rights and the restrictions on issuing additional notes, which are specifically negotiated by sophisticated market participants to protect against transactions like the Insider Transaction.

b. Breaches of both the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture.

187. Section 9.02 of the Governing Indentures provides that without the consent of each “*affected*” holder—which the Company did not have for the Insider Transaction—it cannot “make

any change to, or modify the ranking of the [Original] Secured Notes in respect of right of payment that would adversely affect the Holders of the [Original] Secured Notes[.]”

188. The Insider Transaction made a change to or modified the ranking of the 2024/2026 Holders’ Original Secured Notes in respect of right of payment, including by purporting to strip the 2024/2026 Holders’ Liens and to issue New 1L Notes with a “springing maturity” so that they would come due before the Original Secured Notes. The Insider Transaction thus purported to put the Original Secured Notes at the back of the line for payment, allowing the Favored Noteholders to jump ahead and leave the 2024/2026 Holders holding the proverbial empty bag.

189. The Company did not have the consent of all holders of the Original Secured Notes “affected” by the Insider Transaction.

190. Because the Insider Transaction made a “change to” or “modif[ied]” the “ranking of the Secured Notes in respect of right of payment that would adversely affect the Holder of the Secured Notes” without the consent of all “affected” holders, the Insider Transaction breached both the 2024 Original Secured Note Indenture and the 2026 Original Secured Note Indenture.

191. Additionally, the Original Secured Notes redeemed or purchased in the Insider Transaction were not selected by the indenture trustee pro rata, by lottery, or by any other “fair and appropriate” method, as required by Section 3.02.

c. Complicity of WSFS as successor trustee.

192. The Bank of New York Mellon Trust Company, N.A. (“BNY”) initially served as indenture trustee for the Governing Indentures. Not coincidentally, however, in the run-up to the Insider Transaction, BNY resigned as indenture trustee and was replaced by WSFS with the consent of the Favored Noteholders. Upon information and belief, Platinum and the Favored Noteholders needed a conduit that would violate the Governing Indentures in a manner that favored them and harmed the 2024/2026 Holders. They appointed WSFS.

193. As an initial matter, WSFS was never eligible under the Governing Indentures to serve as indenture trustee. Under Section 7.10 of the Governing Indentures, the indenture trustee must be a “corporation or national banking association organized and doing business under the laws of the United States of America or of any state thereof.” WSFS is a federal savings bank organized under the Home Owners’ Loan Act. WSFS is thus neither a “corporation” nor a “national association.”

194. The Unauthorized Amendments—which WSFS signed purportedly on behalf of all holders of the Original Secured Notes—are violently detrimental to the rights of those Notes. For example, Section 3(b) of the Fourth Supplemental Indenture purported to release the Liens in the Collateral securing the 2024/2026 Holders’ Notes and directs that WSFS as Notes Collateral Agent “take all actions . . . to provide evidence that the Liens shall cease to secure” the 2024/2026 Holders’ Notes. Also, Section 2(a) of the Fourth Supplemental Indenture purported to delete Sections 6.01(9) and (10) of the Governing Indentures, which trigger Events of Default when any material provision of the Security Documents or Intercreditor Agreements cease to be in full force and effect, or if the Liens lose their priority. The Insider Transaction triggered Events of Default under both of those provisions.

195. The Insider Transaction also attempted to entrench WSFS and thereby impede litigation by holders of the Original Secured Notes harmed by the Insider Transaction, such as the 2024/2026 Holders. The Unauthorized Amendments purport to delete the second sentence of Section 7.08(c) of the Governing Indentures, which gives holders with more than 50 percent of each of the 2026 Original Secured Notes and 2024 Original Secured Notes the right to remove and replace any successor trustee (as WSFS was) with a trustee of their choosing within a year of that trustee’s appointment. The Insider Transaction did not, however, similarly delete the first sentence

of Section 7.08(c), which allows the Company itself to appoint a new successor trustee if WSFS were removed for any reason, including by the majority of holders. And tellingly, the Insider Transaction preserved the rights of the Favored Noteholders to select their own replacement trustee: the indentures for their New 1L Notes and the New 1.25L Notes both include the provision purportedly deleted from Section 7.08(c) of the Governing Indentures.

196. Finally, underscoring the damage that WSFS and the Company set out to inflict upon holders of the Original Secured Notes, the Unauthorized Amendments attempted to remove substantially all protective covenants from the Governing Indentures, including:

Section of the Governing Indentures	Description of Covenant	Impact of Amendment on Covenant
4.07 (Restricted Payments)	Restricted Issuer's and its restricted subsidiaries' ability to pay dividends or other distribution payments with respect to equity interests, purchase, redeem or otherwise acquire any equity interests of the Issuer or make voluntary payments on junior secured debt or restricted investments.	COVENANT DELETED
4.08 (Dividend and Other Payment Restricts Affecting Restricted Subsidiaries)	Restricted Issuer's restricted subsidiaries' ability to pay dividends or make distributions, make loans or advances or sell or transfer any of its properties or assets to the Issuer or any Restricted Subsidiaries.	COVENANT DELETED
4.09 (Incurrence of Indebtedness and Issuance of Disqualified Stock or Preferred Stock)	Restricted Issuer's and its restricted subsidiaries' ability to incur or guarantee debt and issue equity.	COVENANT DELETED
4.10 (Asset Sales)	Restricted Issuer's and its restricted subsidiaries' ability to sell assets below fair market value.	COVENANT DELETED
4.11 (Transactions with Affiliates)	Restricted Issuer's and its restricted subsidiaries' ability to sell, lease or transfer its properties or assets or enter into agreements with its affiliates.	COVENANT DELETED
4.12 (Liens)	Restricted Issuer's and its restricted subsidiaries' ability to incur new liens.	COVENANT DELETED

Section of the Governing Indentures	Description of Covenant	Impact of Amendment on Covenant
4.13 (Corporate Existence)	Required Issuer to preserve its corporate existence.	COVENANT DELETED
4.14 (Offer to Repurchase Upon Change of Control)	Gave holders the right to purchase a portion of the secured notes following a change of control.	COVENANT DELETED
4.15 (Permitted Activities of Holdings)	Restricted Holdings ability to engage in business outside of owning the equity interest in Issuer.	COVENANT DELETED
4.16 (Future Guarantees)	Required certain new wholly owned domestic subsidiaries to guaranty the secured notes.	COVENANT DELETED
4.26 (Negative Pledge)	Restricted Issuer's and its restricted subsidiaries' ability to pledge the collateral.	COVENANT DELETED

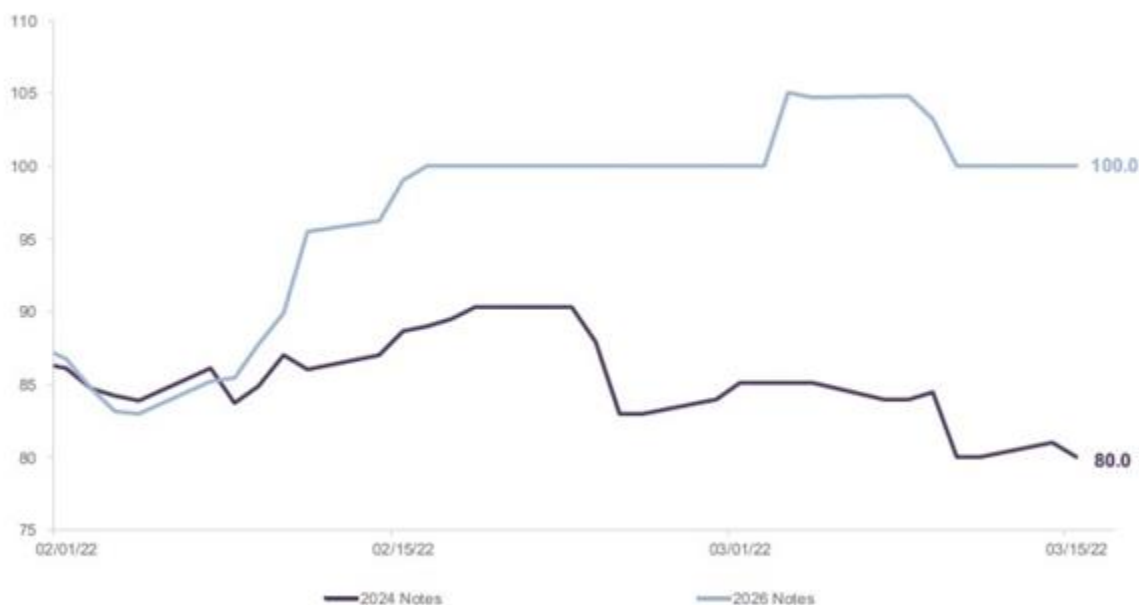
VI. The Market, Platinum, and the Favored Noteholders Share the 2024/2026 Holders' Interpretation of the Supermajority Protections of the Governing Indentures.

197. In February 2022, certain members of the Ad Hoc Group joined together to form a position greater than one-third of outstanding 2026 Original Secured Notes in response to market rumors about a potential out-of-court restructuring. Through its holdings in the 2026 Original Secured Notes, the Ad Hoc Group (as it was then constituted) sought to block any transaction that would release their security interests in the Collateral without their consent.

198. Upon information and belief, when certain Favored Noteholders learned of the formation of the Ad Hoc Group and its goal of securing a blocking position of one-third of the outstanding 2026 Original Secured Notes, those Favored Noteholders rushed to acquire enough 2026 Original Secured Notes in the secondary market to overcome the blocking position. Upon information and belief, the Favored Noteholders did so because they knew that a Lien-stripping transaction of the kind discussed in press reports at the time required the consent of two-thirds of the outstanding 2026 Original Secured Notes.

199. As reflected in the chart below, the 2026 Original Secured Notes and 2024 Original Secured Notes were both trading at roughly 85 cents on the dollar on February 7, 2022, when rumors of a potential transaction first leaked. By early March 2022, the market price of 2026 Original Secured Notes reached 105 cents on the dollar, while the market price of 2024 Original Secured Notes (secured by the exact same Collateral and with an earlier maturity date) remained relatively unchanged.

Trading Prices of Original Secured Notes: February 1, 2022 to March 15, 2022



200. The bidding war for the 2026 Original Secured Notes—to obtain either a one-third blocking position or a two-thirds supermajority position—demonstrated that the Counterclaim Defendants, the 2024/2026 Holders, and the market all understood the supermajority requirements in the 2026 Original Secured Note Indenture required two-thirds consent for the out-of-court restructuring discussed in news reports in February 2022. Said differently, the market and its

sophisticated participants correctly understood that a release of Liens *could not* be consummated without the consent of, at least, a supermajority of the holders of the Original Secured Notes.

201. The Favored Noteholders' scramble to neutralize the Ad Hoc Group by acquiring a supermajority of 2026 Original Secured Notes ultimately failed. By late February 2022, the Ad Hoc Group's aggregate holdings of 2026 Original Secured Notes exceeded one-third of the notes then outstanding. However, upon information and belief, certain Favored Noteholders falsely claimed to other investors, broker-dealers, and the market that they had a supermajority of 2026 Original Secured Notes and could therefore execute a Lien-stripping transaction, again showing that the Counterclaim Defendants understood the importance of holding a supermajority of the 2026 Original Secured Notes.

202. Upon information and belief, Platinum and the Favored Noteholders understood that the transaction contemplated as of February 7, 2022 could not be completed without obtaining the consent of a supermajority of the 2026 Original Secured Notes outstanding as of that date.

203. Upon information and belief, based on the events outlined above, the Company and WSFS—like the rest of the market—understood that the Governing Indentures required a supermajority to release the Liens on Collateral securing the 2024/2026 Holders' Notes. Nevertheless, they proceeded with the Insider Transaction.

204. The Counterclaim Defendants knew that the Insider Transaction would be challenged in court. The terms of the New 1L Notes and 1.25L Notes indentures allowed the Company to issue enough additional New 1.25L Notes to allow it to exchange the Original Secured Notes left outstanding after the Insider Transaction. The main, if not sole, purpose of that provision was apparently to create a "settlement basket" of New 1.25L Notes that could be used to settle claims brought by the Ad Hoc Group or other holders of unexchanged Original Secured

Notes. These New 1.25L Notes, however, would be subordinated: they would rank junior to the New 1L Notes issued to Favored Noteholders (who were previously pari passu with the 2024/2026 Holders), and they would rank pari passu with the New 1.25L Notes issued to the participants in the Unsecured Roll-up (who were previously junior to the 2024/2026 Holders).

VII. The Preordained and Self-interested Nature of the Insider Transaction Shows the Counterclaim Defendants' Bad Faith Toward the 2024/2026 Holders.

205. Unbeknownst to the Ad Hoc Group, their proposals for alternative financing were futile from the start. The Company had, upon information and belief, determined under the dominion of Platinum to proceed with a transaction favorable to the Platinum Creditors and the other Favored Noteholders.

206. The lack of engagement by the Company with the Ad Hoc Group makes plain Platinum's and the Board's intention to exclusively pursue the Insider Transaction. The information provided by the Company to the Ad Hoc Group under the Confidentiality Agreements was so limited, and so delayed, as to render such information practically useless.

207. Before and after the Insider Transaction, the Company also failed to implement appropriate governance protocols to counteract Platinum's insider status.

208. For example, instead of taking steps to ensure that an independent Board fulfilled its duties while insolvent, the Board dominated by Platinum appointed only a single supposedly "independent" director—Mr. Bartels. And Mr. Bartels was not appointed to the Board of the Company or any of the Guarantor Defendants. He was instead appointed to the board of Wolverine Intermediate, alongside multiple senior executives and officers of the Platinum Sponsor. And it was not Mr. Bartels who approved the Insider Transaction; rather, it appears that the Board of Wolverine Intermediate as a whole (including its *interested* directors) approved the Insider Transaction. Mr. Carney's first-day declaration suggests, at paragraph 79, that the entire Board

(consisting of all but one insider), which merely included Mr. Bartels, approved the Insider Transaction, stating:

The board of directors, including Mr. Bartels as an independent director, carefully considered each proposal Incora received in light of all circumstances. Ultimately, the board determined that the best financing terms came from the Majority Noteholders.

209. Although Mr. Bartels had been tasked with overseeing the Company's increasingly urgent efforts to raise liquidity, upon information and belief, he was not provided with independent legal and financial advisors to advise him in the exercise of his duties. Mr. Bartels was therefore required to rely on the legal and financial advisors engaged by the Company, Wolverine Intermediate, and/or its "interested" directors in approving the Insider Transaction.

210. Furthermore, the Company never engaged in a *bona fide* bidding process for a restructuring. While Mr. Bartels, it appears, was formally engaged by the Company on February 8, 2022, he was contacted about service as an independent director for a potential transaction as early as November 1, 2021. And yet, at no point did the Company or its advisors reach out to the minority holders. Instead, upon information and belief, the Company negotiated with the Platinum Creditors (who were acting through their agent, the Platinum Sponsor) and the other Favored Noteholders behind closed doors until news of a potential transaction leaked in February 2022, more than three months later.

211. The Company's failure to undertake a fair and competitive financing process aimed at achieving the highest and best proposal can be explained by Platinum's dominance over the Company and Platinum's desire to ensure that it protected its own interests through the Insider Transaction to the direct detriment of the 2024/2026 Holders.

212. Platinum, upon information and belief, used its control and insider status to ensure the defeat of any proposal put forward by the Ad Hoc Group as an alternative to the Insider

Transaction. Platinum, at all times, preferred the Insider Transaction because, in contrast to the Ad Hoc Group's Bids, the Insider Transaction gave (i) the Platinum Fund the ability to exchange its Unsecured Notes for newly issued secured notes, and (ii) the Platinum-Controlled Parent the ability to exchange its unsecured promissory note for those same newly issued secured notes, each time for no valid consideration to the Company because the Platinum Fund's votes as an "Affiliate" were not counted and because, upon information and belief, the consent of the Platinum-Controlled Parent under its separate promissory note was not required.⁹

213. The Ad Hoc Group's Bids were less beneficial for Platinum but met the Company's stated liquidity needs at the time, which the Company initially told the Ad Hoc Group were around \$200 million. Subsequently, the Company revised its liquidity needs to \$250 million, without providing the Ad Hoc Group with the underlying data to justify such a change. Under the Ad Hoc Group's Bids, the Company would have had access to the needed liquidity through a combination of new capital, cash interest savings, and minor concessions from the Platinum Sponsor—including its waiver of the \$7 million annual consulting fee.

214. For their part, the Favored Noteholders, upon information and belief, threatened to block consummation of the Ad Hoc Group's Bids in a coercive manner, by abusing rights those Favored Noteholders otherwise had under the Governing Indentures as holders of a majority, but not a supermajority, of the 2026 Original Secured Indentures—such as directing the indenture trustee and collateral agent to take (or not take) certain actions in furtherance of consummating a transaction advanced by the Ad Hoc Group.

⁹ The waiver by the Platinum Sponsor of its management fee was insignificant in comparison to the lucrative benefits bestowed upon the Platinum Fund and the Platinum-Controlled Parent, i.e. the exchange of unsecured notes for secured notes.

215. Rather, upon information and belief, the Favored Noteholders preferred a deal that caused harm to the minority holders by transferring value from such minority holders to the Favored Noteholders via a non-pro rata transaction, even though opening a transaction to all holders of the Notes as proposed by the Ad Hoc Group would have met the Company's projected liquidity needs communicated at the time, protected the minority holders' Liens, and minimized the risk and expense of follow-on litigation.

216. The Counterclaim Defendants, indeed, knew that litigation was the inevitable outcome of the Insider Transaction and, indeed, was specifically warned of such by counsel for the Ad Hoc Group in writing before the Company proceeded with the Insider Transaction. That knowledge is further demonstrated by the Counterclaim Defendants' attempt to entrench a successor indenture trustee, the off-market provisions in the Confidentiality Agreements (as defined and discussed in Paragraph 218, below), and the "settlement basket" in the new indentures.

217. Yet, knowing this very litigation was certain, the Board, controlled by Platinum, made the litigation exponentially more expensive for the Company, and more favorable to the Platinum Creditors and other Favored Noteholders, by choosing the self-interested proposal that purported to indemnify each of the Platinum entities and the Favored Noteholders in the Exchange Agreement, including for legal fees and expenses arising from the Insider Transaction. That is to say, the Insider Transaction purports to require the Debtors to not only bear their own legal fees and expenses but those for the Platinum Sponsor, the Platinum Creditors, and the other Favored Noteholders.

218. Indemnity provisions are *not* common in high-yield notes indentures, and they are not included in the Governing Indentures, nor were they part of the Ad Hoc Group's Bids. The addition of indemnification provisions to the indentures of the New 1L Notes and New 1.25L

Notes by incorporating the indemnity provisions of the Exchange Agreement is further evidence of the Counterclaim Defendants' bad faith.

219. The Debtors now repeatedly refer to the costs associated with litigation as one of the driving causes of their bankruptcy filings. *See, e.g.*, Carney Decl. ¶ 89 (claiming that the New York litigation “ha[s] placed considerable strain on the Debtors”); Adv. Pro., Docket No. 1 ¶¶ 8, 9; Docket No. 3 ¶ 30. The indemnity does not apply, however, to the willful misconduct of an indemnified person.

220. Platinum and the Debtors were unwilling to make any concessions and were so intent on completing the Insider Transaction that, upon information and belief, they never seriously considered the Ad Hoc Group's Bids that were open to all secured noteholders, which would have reduced, if not altogether avoided, the litigation risk.

221. Rather, Platinum, the Platinum-controlled Board, and the Debtors favored the Insider Transaction that benefitted the Platinum Creditors and the Platinum Sponsor. Indeed, except for Mr. Bartels, every other Board member was a senior executive and/or employee of the Platinum Sponsor. Eventually, the entire Board, including these interested directors, approved the Insider Transaction. Hence, upon information and belief, all members of the Board, including Mr. Bartels, knew the harm the Insider Transaction would inflict upon the 2024/2026 Holders: that is, moving hundreds of millions of dollars of value from the 2024/2026 Holders to the Platinum Creditors and the Favored Noteholders.

222. The pre-ordained nature of the Insider Transaction is further evidenced by, among other things, the confidentiality agreements that the Company insisted that the Ad Hoc Group's advisors sign before being granted access to limited diligence about the Company (the “Confidentiality Agreements”). The Confidentiality Agreements contained an unusual provision

that purported to restrict the Ad Hoc Group’s advisors from using—or ever referring to—certain communications in a subsequent litigation, even if those communications did not constitute “Confidential Information” as defined by those Confidentiality Agreements. That same provision also purported to dictate whether certain communications could be introduced as evidence in a subsequent litigation. In hindsight, if the Company had intended to negotiate with the Ad Hoc Group in good faith, there would have been no need for these draconian, unusual, and off-market provisions. The Confidentiality Agreements thus show the Company’s expectation that a deal with the Platinum Creditors that excluded the Ad Hoc Group was a foregone conclusion and would lead to litigation.

223. The Debtors’ bad faith, moreover, did not end with the Insider Transaction. After the Insider Transaction closed, the Debtors refused the Ad Hoc Group’s request to provide the agreements prepared in connection with the transaction (commonly referred to as a “closing set”) and a list of fiduciaries involved in the transaction’s approval.

VIII. The “No-action” Provision is Not a Barrier to the Amended Counterclaims.

224. Pursuant to the Scheduling Order, all Counterclaim Defendants have waived any defense they might have otherwise asserted based on the “no-action” clauses in the Governing Indentures. Further, and in any event, the consent rights of the 2024/2026 Holder that were breached by the Insider Transaction are unique to each such holder and exempted under applicable law from the Governing Indentures’ no-action provision. And apart from that governing principle, and even if the so-called “no-action” provision in the Governing Indentures had applied to the 2024/2026 Holders’ claims and not been waived by the Scheduling Order, adherence would have been futile because of the Company’s bad faith and the trustees’ conflicts.

a. WSFS.

225. The Company appointed WSFS as successor trustee, and it assumed that role just two weeks before the Insider Transaction closed on March 28, 2022.

226. WSFS accepted the role of indenture trustee for the Original Secured Notes knowing that the Company intended to strip the Liens securing the payment of those Notes.

227. WSFS allowed the 2024/2026 Holders' Liens on the Collateral to be released and transferred to Platinum and other Favored Noteholders without the requisite consent of affected holders. The Ad Hoc Group members who held over one-third of all such votes for the 2026 Original Secured Notes did not consent to the release of their Liens. Nor did all affected holders consent to a modification in the ranking of their rights of payment. The Insider Transaction was therefore not permitted. Yet WSFS and the Company effected the Insider Transaction by issuing additional secured notes in violation of Sections 2.01, 4.09, and 4.12, stripping the Liens without requisite consent in violation of Section 9.02 of the Governing Indentures, and redeeming or purchasing Notes in violation of Section 3.02.

228. Additionally, WSFS entrenched itself as indenture trustee in an attempt to shield itself and the other Counterclaim Defendants from litigation by removing the provision in Section 7.08(c) of the Governing Indentures that would permit the 2024/2026 Holders, now as majority holders of the 2026 Original Secured Notes, to remove and replace WSFS, as successor trustee, with a trustee of their own choosing at any time within the first year of WSFS's tenure. This not only evinces a guilty conscience on the part of WSFS and the Company but was plainly intended to impose a barrier for the 2024/2026 Holders to appoint a new trustee of their choosing that would, in furtherance of its duties under the Governing Indentures, sue the Counterclaim Defendants,

including WSFS, to repair the damage done to the holders of the remaining Original Secured Notes.

229. On or about May 16, 2023, the Company missed its scheduled interest payments under the Original Secured Notes and other funded indebtedness, and it entered a 30-day grace period under its operative agreements, including the Governing Indentures.

230. On May 21, 2023, certain 2024/2026 Holders (among others) wrote to the Company and WSFS to notify them that they were terminating WSFS as trustee of the Original Secured Notes. The 2024/2026 Holders did so pursuant to Section 7.08(b).

231. The writing explained to the Company that its financial distress, as reflected by the missed interest payment, further underscored the conflicts of interest in WSFS purporting to serve as trustee for all or most of the Company's debt instruments.

232. In that letter, the Company and WSFS were also notified that UMB Bank N.A. ("UMB") had expressed that it was ready, willing, and able to serve as successor trustee to WSFS for the Notes under the Governing Indentures. The letter further provided the contact information for a person at UMB.

233. By receipt of that letter, the Debtors knew that the 2024/2026 Holders wanted UMB to serve as successor trustee to WSFS for the Notes under the Governing Indentures.

b. BOKF.

234. On May 30, 2023, counsel for the 2024/2026 Holders that commenced the First New York Action met and conferred with counsel for WSFS about discovery in the First New York Action. Counsel for WSFS did not inform counsel for the 2024/2026 Holders that WSFS had ceased by then to serve as indenture trustee for the 2024/2026 Notes.

235. On June 1, 2023, however, the Debtors' filings in this Court revealed that BOKF had succeeded to the role of indenture trustee for the 2024 Original Secured Notes, the 2026 Original Secured Notes, and the Unsecured Notes on May 26, 2023.

236. Upon information and belief, the Debtors appointed a successor trustee for the 2024 Original Secured Notes, the 2026 Original Secured Notes, and the Unsecured Notes because a conflict prevented WSFS from serving as trustee for those notes while simultaneously serving in that role for the New 1L Notes and New 1.25L Notes.

237. The Debtors knew that the 2024/2026 Holders had commenced litigation to assert their rights as secured noteholders, but the Debtors appointed BOKF to serve as successor trustee for both the Original Secured Notes and the Unsecured Notes, even though the holders of the Unsecured Notes had not asserted (and could not assert) any rights as secured noteholders.

238. After learning that BOKF had succeeded to the role of indenture trustee for the Original Secured Notes, counsel for the 2024/2026 Holders contacted counsel for BOKF.

239. Counsel for BOKF acknowledged that the 2024/2026 Holders had raised a "concern that an actual conflict may exi[s]t under the indentures and that conflict may require BOK[F] as successor trustee to resign from the 2024/2026 or the 2027 debt issues" because there was a conflict between the interests of the Original Secured Notes and the Unsecured Notes. Counsel for BOKF did not state whether they agreed that there was a conflict but instead stated that "BOK[F] is nonetheless giving consideration to your concern."

240. Upon information and belief, the Company chose not to appoint UMB as successor trustee for the Original Secured Notes in order to deprive the 2024/2026 Holders of their choice of successor trustee.

241. The Company appointed BOKF as successor trustee for the Original Secured Notes and the Unsecured Notes knowing that there was an actual or likely conflict between the previously secured Original Secured Notes and the never-secured Unsecured Notes.

242. Upon information and belief, the Company chose to appoint the same successor trustee for the Original Secured Notes and the Unsecured Notes because of (not in spite of) the conflict, and the disclosure of BOKF's appointment as successor trustee was delayed in order to impede the 2024/2026 Holders' ability to appoint a successor trustee. On July 12, 2023, certain 2024/2026 Holders (among others) holding over a majority of each issuance, through counsel, wrote to the Company and BOKF to notify them that they terminated BOKF as trustee of the Original Secured Notes and to seek the appointment of UMB as successor trustee. The 2024/2026 Holders did so pursuant to Section 7.08(b) of the Governing Indentures. That same day, UMB also wrote to the Company and BOKF to state that it was qualified and prepared to serve as successor trustee under the Indentures for each of the Notes.

243. On July 14, 2023, the Company, through counsel, wrote to counsel to the 2024/2026 Holders contending that the 2024/2026 Holders' July 12, 2023 letter was ineffective to initiate BOKF's removal and that the Governing Indentures, as amended by the Insider Transaction, did not allow the 2024/2026 Holders to select a successor trustee.

244. Despite the Company's contention to the contrary, the 2024/2026 Holders' termination of BOKF was effective under the Governing Indentures and the Company is obstructing the installation of the 2024/2026 Holders' choice of successor trustee arbitrarily and in bad faith, to further its, Platinum's and the Favored Noteholders' objectives.

245. In sum, the Counterclaim Defendants purported to amend the Governing Indentures via the Unauthorized Amendments so that the Company could always have a conflicted Trustee

beholden to the Company in a position that purported to represent the interests of the Original Secured Notes that the Company had wrongfully stripped of their Liens. The Company has twice relied on that amendment to ignore the 2024/2026 Holders' selection of UMB as successor trustee.

246. The Governing Indentures' "no-action" provision in Section 6.06 has been waived by the Counterclaim Defendants and is otherwise inapplicable and unenforceable here.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF 2024/2026 HOLDERS' DIRECT STANDING TO BRING CAUSES OF ACTION 2 THROUGH 11 (Against All the Counterclaim Defendants as Named Respectively in such Causes of Action)

247. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 240.

248. Individual creditors such as the 2024/2026 Holders have direct standing to bring claims that are based on injury that is (i) specific and personal to those creditors only and (ii) independent of any injury to the debtor. Here, the 2024/2026 Holders' Causes of Action 2 through 7, as set forth in paragraphs 246 through 309 (below), seek redress for injuries that are unique to a subset of the Debtors' creditors, including the 2024/2026 Holders, and do not arise from an injury to the Debtors.

249. Pursuant to Section 2201 of the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court has the authority to issue declaratory judgments where the facts alleged, under all the circumstances, show that there is an actual controversy, between parties having adverse legal interests, of sufficient immediacy and reality, to warrant the issuance of declaratory judgment.

250. Accordingly, the 2024/2026 Holders seek a judicial declaration that they have direct standing to pursue Causes of Action 2 through 7.

251. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

SECOND CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR BREACH OF CONTRACT (Against the Company, the Guarantor Defendants, and WSFS)

252. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 245.

253. The Company and the Guarantor Defendants are, and WSFS was (at the time of the Insider Transaction), parties to the Governing Indentures. The 2024/2026 Holders who hold the Original Secured Notes are also parties to the Governing Indentures. In the alternative, the 2024/2026 Holders are third-party beneficiaries of the Governing Indentures.

254. In their form prior to the Insider Transaction, the Governing Indentures were valid and enforceable agreements.

255. The 2024/2026 Holders have performed all their obligations under the Governing Indentures.

256. The Unauthorized Amendments, the Phantom Note Purchase Agreement, the Super Senior Indentures, and the Exchange Agreements, together with any other document effecting the Insider Transaction, comprise a single, integrated instrument that is part of the single, integrated Insider Transaction. This single transaction was preordained and executed on or before the date on which each operative document became effective: March 28, 2022. The transaction documents are interwoven, interdependent, were executed by substantially the same parties, and were designed to effectuate one purpose.

257. The Company, the Guarantor Defendants, and WSFS did not have the consent of all necessary holders for the Unauthorized Amendments or any other aspect of the Insider Transaction.

258. The Company, the Guarantor Defendants, and WSFS breached the Governing Indentures, including (i) sections 2.01, 3.02, 4.09, 4.12, and 9.02 of the 2026 Original Secured Note Indenture, and (ii) sections 3.02 and 9.02 of the 2024 Original Secured Note Indenture.

259. Breaches of the Governing Indentures by the Company, the Guarantor Defendants, and WSFS have caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for the Company's, the Guarantor Defendants', and WSFS's breaching conduct.

260. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Debtors and WSFS breached the Governing Indentures as set forth herein.

261. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

262. In addition, to effectuate their declaratory relief, the 2024/2026 Holders seek an order (i) declaring that the Unauthorized Amendments are invalid and void ab initio, and (ii) requiring that Counterclaim Defendants undertake all actions necessary to restore the 2024/2026 Holders' Liens to the same position as if the Insider Transaction were never undertaken. The 2024/2026 Holders are entitled to such relief because, money damages will not fully remedy the harm inflicted by Counterclaim Defendants. The 2024/2026 Holders, for example, would otherwise remain unsecured, and an allowed unsecured claim would neither compensate them for the nature of the harm inflicted (i.e., the loss of their security), nor put them on equal footing with the non-Debtor beneficiaries of the Debtors' breaches.

THIRD CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (Against the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder)

263. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 255.

264. The Company and the Guarantor Defendants are, and WSFS was (at the time of the Insider Transaction), parties to the Governing Indentures. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder who hold the Original Secured Notes are parties to the Governing Indentures by virtue of having purchased the Notes.

265. Under New York law, every contract contains an implied covenant of good faith and fair dealing, which requires contract parties to refrain from doing anything that will have the effect of destroying or injuring the right of the other parties to receive the fruits of the contract. Because New York law governs the 2026 Original Secured Note Indenture and the 2024 Original Secured Note Indenture, the covenant of good faith and fair dealing is implied in those contracts.

266. The covenant of good faith and fair dealing requires the parties to deal fairly and in good faith with one another and with any intended third-party beneficiaries, and that each party refrain from destroying or injuring the right of the other parties to receive the benefits of the Governing Indentures. Further, the covenant encompasses promises that a reasonable person in the position of the 2024/2026 Holders would be justified in understanding was included in the Governing Indentures.

267. As set forth above, the Governing Indentures provide various protections to the security interests that the Company promised to the secured noteholders, such as the 2024/2026 Holders, in exchange for those holders' provision of financing to the Company. Those security

interests and the protections they have under the Governing Indentures, both express and implied, are a central benefit of the agreement. The Governing Indentures likewise impose duties on noteholders not to prejudice rights of another, among other things.

268. The 2024/2026 Holders—many of whom purchased their Notes at or near the time of their initial issuance by the Company—were justified in understanding that the Governing Indentures contained explicit, and if not explicit, implicit, undertakings by the Company, the Guarantor Defendants, WSFS and the other secured noteholders (i.e., the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder) not to, among other things: (1) abuse (or otherwise encourage, aid, abet or endorse the abuse of) the Company's ability to issue new notes with simple majority approval for the purpose of discharging 2024/2026 Holders' Liens and creating new Unpermitted Liens; (2) dilute consent rights and create an artificial supermajority for the purpose of circumventing the supermajority consent requirements; (3) use the votes of that artificial supermajority to strip the nonvoting noteholders of their Liens; (4) hand those Liens to a group of Favored Noteholders (which included insiders, i.e. the Platinum Creditors); and (5) impose upon those nonvoting noteholders various impediments to challenge the loss of their Liens through legal action.

269. In short, the 2024/2026 Holders reasonably and justifiably expected that a simple majority of holders of the Notes could not purport to transform itself into a supermajority to circumvent the strictures of the Governing Indentures.

270. Through their creation of and/or participation in the Insider Transaction, the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder breached the covenant of good

faith and fair dealing by engaging in intentional, coercive and/or bad faith actions to destroy the 2024/2026 Holders' reasonable and justifiable contractual expectations.

271. The actions of the Company, the Guarantor Defendants and WSFS set forth herein, moreover, constitute an arbitrary, irrational, and/or bad-faith exercise of their contractual discretion directed towards the 2024/2026 Holders because, among other things, they set out to destroy the reasonable expectations of the 2024/2026 Holders and to strip the fundamental benefit of their bargain, namely their Liens in the Collateral.

272. Likewise, the actions of the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder constitute an arbitrary, irrational, and/or bad-faith exercise of their contractual discretion directed towards the 2024/2026 Holders because, among other things, they set out to destroy the reasonable expectations of the 2024/2026 Holders and to strip the fundamental benefit of their bargain, namely their Liens in the Collateral. These Counterclaim Defendants did so by, among other things, (i) using their rights as holders of a majority, but not a supermajority, of the 2026 Original Secured Notes to cause the Company to subvert the Ad Hoc Group's Bids or participation in a *bona fide* process and (ii) approving the issuance of, and subsequently voting, the Phantom Notes in order to strip the 2024/2026 Holders of their Liens.

273. As further evidence of their bad faith conduct, the Silver Point Noteholders, the PIMCO Noteholders, and the Senator Noteholder consented to the Third Supplemental Indenture to the 2024 Original Secured Note Indenture. This amendment purported to authorize the Company to issue the Phantom Notes under the 2026 Original Secured Note Indenture, even though the issuance of additional secured notes under a different indenture would be contrary to their interests as holders of the 2024 Original Secured Notes. They nevertheless provided their

consent to the Third Supplemental Indenture because they knew that their 2024 Original Secured Notes (as well as their 2026 Original Secured Notes) would contemporaneously be exchanged for the super-senior New 1L Notes.

274. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder likewise consented to the amendments in the Fourth Supplemental Indentures for the Original Secured Notes. This amendment purported to strip their own liens and those of the 2024/2026 Holders. They provided such consents, which again would otherwise be contrary to their interests, because they had contemporaneously agreed to exchange their Original Secured Notes for the New 1L Notes. In doing so, these Favored Noteholders intentionally caused harm to the 2024/2026 Holders holding the Original Secured Notes.

275. Additionally, these Counterclaim Defendants proceeded in secret, did not seek the consent of the Ad Hoc Group, did not offer the Ad Hoc Group the opportunity to participate in the transaction, and acted for an abusive and improper purpose—to injure the 2024/2026 Holders’ by destroying their right to receive the fruits of the contracts at issue, i.e. the bargained-for first-Lien priority rights under the Notes.

276. The breaches of the implied covenant of good faith and fair dealing by the Company, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder have caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for these Counterclaim Defendants’ breaching conduct.

277. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Debtors, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the

Citadel Noteholder breached Governing Indentures' implied covenant of good faith and fair dealing, as set forth herein.

278. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the parties to ascertain their rights and obligations.

279. In addition, to effectuate their declaratory relief, the 2024/2026 Holders seek an order (i) declaring that the Unauthorized Amendments are invalid and void ab initio, and (ii) requiring that Counterclaim Defendants undertake all actions necessary to restore the 2024/2026 Holders' Liens to the same position as if the Insider Transaction were never undertaken. The 2024/2026 Holders are entitled to such relief because, money damages will not fully remedy the harm inflicted by Counterclaim Defendants. The 2024/2026 Holders, for example, would otherwise remain unsecured, and an allowed unsecured claim would neither compensate them for the nature of the harm inflicted (i.e., the loss of their security), nor put them on equal footing with the non-Debtor beneficiaries of the Debtors' breaches.

280. This Third Cause of Action is being asserted in the alternative to the Second Cause of Action as against the Company, the Guarantor Defendants and WSFS, but not in the alternative as to the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder because their bad faith misconduct was complicit with and in furtherance of those other Counterclaim Defendants' breaches of the Governing Indentures.

FOURTH CAUSE OF ACTION

EQUITABLE LIEN

(Against the Company, the Guarantor Defendants, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

281. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 272.

282. By the Governing Indentures, the 2024/2026 Holders, the Debtors, and indenture trustee entered into (or, in the alternative, the 2024/2026 Holders are third-party beneficiaries of) an express agreement that granted Liens for the benefit of the 2024/2026 Holders to secure obligations arising under the Governing Indentures, and thus demonstrated a clear intent to create a security interest to secure the obligation between them.

283. The parties and any third-party beneficiaries to the Governing Indentures intended for those Liens to be granted on specific assets of the Debtors, as defined and identified in the Governing Indentures as the “Collateral.”

284. As a result of the Insider Transaction, the Favored Noteholders converted their Original Secured Notes and Unsecured Notes into far more valuable New 1L Notes and/or New 1.25L Notes, as the case may be, which are purportedly secured by the exact same “Collateral.” The Platinum-Controlled Parent similarly converted its \$25 million unsecured promissory note into New 1.25L Notes secured by the “Collateral.” WSFS was appointed as indenture trustee and compensated for its services.

285. All of these Counterclaim Defendants were enriched at the expense of the 2024/2026 Holders.

286. The Insider Transaction was an illegal and inequitable scheme, and it would be against equity and good conscience for the Counterclaim Defendants to be permitted to retain the fruits of this scheme, including their profits, at the expense of the 2024/2026 Holders.

287. Absent relief sought herein, there exists no adequate remedy at law to restore the 2024/2026 Holders to their rightful position as secured creditors, as they undoubtedly were prior to the Insider Transaction, and avoid an unjust result.

288. Under principles of equity, the 2024/2026 Holders are entitled to equitable liens on the Collateral (as such term is defined in the Governing Indentures) with priority over any liens purportedly held by the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders by virtue of the New 1L Notes and New 1.25L Notes.

FIFTH CAUSE OF ACTION

EQUITABLE SUBORDINATION

(Against the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

289. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 280.

290. The Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders engaged in inequitable conduct by directing and/or participating in the Insider Transaction, through which they intentionally sought to gain an unfair advantage to the detriment of the 2024/2026 Holders.

291. The Platinum-Controlled Parent and the Platinum Fund (i.e., the Platinum Creditors) are insiders of the Debtors. The Platinum-Controlled Parent's insider status is evidenced by, among other things: (i) its 100% indirect ownership of the Company and its subsidiaries; (ii) its status as a person in control of the Company and its subsidiaries; and (iii) it and the Company being under the common control of the Platinum Sponsor, including via the Platinum-related directors appointed to the Board of Wolverine Intermediate. The Platinum Fund's insider status is evidenced by, among other things: (i) its, upon information and belief, indirect ownership of the Company (through the Platinum-Controlled Parent); (ii) it and the Company being under the common control of the Platinum Sponsor; and (iii) its status as an insider of the Platinum-Controlled Parent by reason of its, upon information and belief, direct or indirect ownership or control of over more than 20% of the voting shares of the Platinum-Controlled

Parent. The conduct of the Platinum-Controlled Parent and the Platinum Fund, as insiders, is subject to rigorous scrutiny.

292. Upon information and belief, the Platinum Creditors dominated and controlled the actions of the Debtors and their Board, including through their agent, the Platinum Sponsor, so that the Platinum Creditors could gain an unfair advantage over the 2024/2026 Holders by causing the release of the 2024/2026 Holders' Liens, and the exchange of the Platinum Creditors' unsecured debt for vastly more valuable New 1.25L Notes, which now rank ahead of the 2024/2026 Holders' Original Secured Notes.

293. Upon information and belief, the Platinum Creditors, including through their agent, the Platinum Sponsor, further exerted their influence over the Company to, for example: (i) procure an off-market indemnification for themselves (and the other Favored Noteholders) in the Exchange Agreement, including for legal fees and expenses arising from the Insider Transaction, and (ii) refuse serious consideration of the Ad Hoc Group's proposals. The Platinum Creditors' inequitable conduct and unfair advantage is further evidenced by their acquisitions—only belatedly revealed to the market—of Unsecured Notes and a \$25 million unsecured promissory in 2020, later exchanged for New 1.25L Notes, which on information and belief, the Platinum Creditors acquired to attain a monetizable position in the Company's debt structure as part of a potential restructuring over which the Platinum entities could exercise control.

294. The Favored Noteholders engaged in inequitable conduct by colluding with the Platinum-dominated Debtors to circumvent the protections afforded to the 2024/2026 Holders by the Governing Indentures. Certain Favored Noteholders purchased the Phantom Notes in bad faith to thwart the 2024/2026 Holders' blocking position in the 2026 Original Secured Notes. These Favored Noteholders then used their feigned supermajority of such notes to consent to the release

of all of the 2024/2026 Holders' Liens on their Collateral, and locked in their advantage over the 2024/2026 Holders by exchanging the Phantom Notes for New 1L Notes, which rank ahead of the Original Secured Notes. The Carlyle Noteholders separately engaged in inequitable conduct by consenting to the Insider Transaction and exchanging their Unsecured Notes for vastly more valuable New 1.25L Notes, which likewise rank ahead of the Original Secured Notes, without providing any consideration other than their consent and without providing any new money to the Company.

295. The Insider Transaction stripped the 2024/2026 Holders of their bargained-for Liens and subordinated the 2024/2026 Holders' to more than \$1.7 billion in new senior secured debt. No other class or group of the Debtors' creditors were similarly harmed. As a result of those actions, the claims of the Favored Noteholders and the Platinum-Controlled Parent are poised to be repaid before the 2024/2026 Holders receive payment under the Original Secured Notes.

296. Under principles of equitable subordination, in equity and good conscience, any and all claims of the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders should be subordinated for purposes of distribution, pursuant to Sections 510(c) and 105(a) of the Bankruptcy Code, to the claims of the 2024/2026 Holders.

297. Equitably subordinating the claims of the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders is not inconsistent with the Bankruptcy Code because the equitable subordination requested is necessary to offset the harm to the 2024/2026 Holders.

SIXTH CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR TORTIOUS INTERFERENCE WITH CONTRACT (Against the Platinum Sponsor and, as an Alternative Claim against the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder)

298. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 289.

299. The Platinum Sponsor, as the equity sponsor of the Company, was aware of the Governing Indentures and all of its provisions, including the minority and sacred rights protections discussed herein.

300. The Platinum Sponsor procured the breach of the Governing Indentures, as they existed at the time of the Insider Transaction, by conspiring or coordinating with the Company and its Board, both of which the Platinum Sponsor controlled, and WSFS to complete the Insider Transaction, which, in turn, violated (i) sections 2.01, 3.02, 4.09, 4.12, and 9.02 of the 2026 Original Secured Note Indenture as well as the covenant of good faith and fair dealing implied in the 2026 Original Secured Note Indenture, and (ii) sections 3.02 and 9.02 of the 2024 Original Secured Note Indenture as well as the covenant of good faith and fair dealing implied in the 2024 Original Secured Note Indenture.

301. The Platinum Sponsor's conduct with respect to the Insider Transaction was deceptive and unjustifiable, and motivated by self-interest, bad faith, and malice towards the 2024/2026 Holders. The Platinum Sponsor exercised control over the Company and the Board to ensure approval of the Insider Transaction, and the dismissal of the Ad Hoc Group's Bids, with knowledge that the Insider Transaction would violate the 2024/2026 Holders' rights under the Governing Indentures. The Platinum Sponsor also sought to—and did—cause a transfer of value from 2024/2026 Holders to Platinum.

302. The Platinum Sponsor does not hold a direct ownership interest in the Company. It nevertheless stood on both sides of the Insider Transaction. On the one hand, it served as equity sponsor of the Company and as a person in control of the Company's Platinum-Controlled Parent. On the other hand, it served as investment manager or advisor to the Platinum Creditors that held significant unsecured debt of the Company. As such, the Platinum Sponsor's interests were not aligned with the Company's. Upon information and belief, the Platinum Sponsor improperly exerted its influence over the Company to help procure for the Platinum Creditors a lucrative participation in the Unsecured Roll-up, which the Company had no business reason to provide to the Platinum Creditors and which caused direct harm to the 2024/2026 Holders.

303. If the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder assert that they lack sufficient contractual relationship to the Governing Indentures so as to be liable for breach of contract or the implied covenant of good faith and fair dealing, and such a position is accepted by this Court,¹⁰ they would then be strangers to those contracts, and as such, should be found liable for tortiously interfering with the Governing Indentures to the detriment of the 2024/2026 Holders.

304. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder, as holders of the Notes, were aware of the Governing Indentures and all of their provisions, including the minority and sacred rights protections discussed herein.

305. The Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder procured the breach of the Governing Indentures as they existed at the time of the Insider Transaction.

¹⁰ This argument was raised by the Silver Point and PIMCO Noteholders in the First New York Action but not adjudicated.

306. The conduct of the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder with respect to the Insider Transaction was deceptive and unjustifiable, and motivated by self-interest, bad faith, and malice towards the 2024/2026 Holders.

307. Tortious interference with the Governing Indentures by the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder has caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for this tort.

308. Further, the actions of the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder in conceiving of, concealing, and executing the Insider Transaction were wanton, malicious, oppressive, and undertaken in gross or reckless disregard of the 2024/2026 Holders' rights.

309. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Platinum Sponsor, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder tortiously interfered with the Governing Indentures.

310. Such judicial determination of the foregoing is necessary and appropriate at this time and under these circumstances for the Parties to ascertain their rights and obligations.

SEVENTH CAUSE OF ACTION

DECLARATORY JUDGMENT - DECLARATION OF LIABILITY FOR CONVERSION (Against the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

311. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 302.

312. Prior to the Insider Transaction, the 2024/2026 Holders held security interests in the Collateral in the form of Liens. The Liens constituted property interests of the 2024/2026

Holders in specifically identified assets of the Company, and the 2024/2026 Holders had an ownership interest in, and right to possess, such Liens. To the extent of their respective pro rata interests, the 2024/2026 Holders had and have a superior possessory and ownership right in the Liens.

313. Prior to the Insider Transaction, the Platinum-Controlled Parent and certain of the Favored Noteholders (including the Platinum Creditors, the Carlyle Noteholder, and the Spring Creek Noteholder) did not possess any Liens or other security interests in the Collateral.

314. Through the Insider Transaction, and without the 2024/2026 Holders' approval and over their objections, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders caused the release of the 2024/2026 Holders' property rights—i.e., their interests in the Liens on the Collateral—and the simultaneous transfer of such property to the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders. By reason of such release and transfer, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders are in possession of the 2024/2026 Holders' valuable property. They have also improperly interfered with the 2024/2026 Holders' property rights.

315. The Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders' possession of, and interference with, the 2024/2026 Holders' property rights is ongoing, as the Counterclaim Defendants contend that the Collateral previously securing 2024/2026 Holders' Liens has now been pledged as security for the New 1L Notes and New 1.25L Notes.

316. The Platinum Fund's, the Platinum-Controlled Parent's, and the other Favored Noteholders' conversion has caused damages to the 2024/2026 Holders or otherwise should be remedied in a manner to be determined after a finding of liability for this tort.

317. Further, these Counterclaim Defendants' actions in conceiving of, concealing, and executing the Insider Transaction were wanton, malicious, oppressive, and undertaken in gross or reckless disregard of the 2024/2026 Holders' rights.

318. Accordingly, the 2024/2026 Holders seek a judicial declaration that the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders converted the 2024/2026 Holders' property rights.

EIGHTH CAUSE OF ACTION

INTENTIONAL FRAUDULENT TRANSFER (Against the Company, the Guarantor Defendants, the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders)

319. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 318.

320. Prior to, at the time of, and following the Insider Transaction, the 2024/2026 Holders were creditors of the Company and the Guarantor Defendants by virtue of their claims against those entities arising under, and in connection with, the Governing Indentures.

321. The Insider Transaction included the incurrence of obligations by the Company and the Guarantor Defendants in the form of indebtedness, including the Phantom Notes, the New 1L Notes, the New 1.25L Notes, and guarantees related to same.

322. The Insider Transaction also included transfers from the Company and the Guarantor Defendants to the Platinum Fund, the Platinum-Controlled Sponsor, and the other Favored Noteholders in the form of new liens created to secure the fraudulently incurred obligations.

323. By the Insider Transaction, the Company and the Guarantor Defendants made transfers and incurred obligations with the intent to hinder, delay, or defraud their creditors,

including the 2024/2026 Holders. Such intent is evident from the presence of multiple badges of fraud expressly recognized by TUFTA and by state and federal courts across the country.

324. *First*, the Insider Transaction involved transfers to insiders. The Platinum-Controlled Parent's insider status is evidenced by, among other things, its 100% indirect ownership of the Company and its subsidiaries, its status as a person in control of the Company and its subsidiaries, and it and the Company being under the common control of the Platinum Sponsor. The Platinum Fund's insider status is evidenced by, among other things: (i) its indirect ownership of the Company (through the Platinum-Controlled Parent); (ii) them and the Company being under the common control of the Platinum Sponsor; and (iii) its status as insiders of the Platinum-Controlled Parent by reason of its, upon information and belief, direct or indirect ownership or control over more than 20% of the voting shares of the Platinum-Controlled Parent.

325. The Platinum Sponsor, in its dual capacities as equity sponsor of the Company, and investment manager or advisor to Platinum, stood on both sides of the Insider Transaction and engaged in self-dealing. As equity sponsor, the Platinum Sponsor exercised control over the Company to ensure the completion of the Insider Transaction to the exclusion of potential financing alternatives. As investment manager or advisor to Platinum, which held significant debt positions in the Company, the Platinum Sponsor ensured that the Platinum Creditors benefitted directly from exchanging less valuable unsecured debt for newly-issued, vastly more valuable New 1.25L Notes through the Unsecured Roll-up.

326. *Second*, the transfers made and obligations incurred by the Company and the Guarantor Defendants were concealed. Had reports not leaked regarding the existence of negotiations between the Company and certain of the Favored Noteholders, the Insider Transaction would have remained a secret through the closing date. Even with the leaked information, the

specifics of the Insider Transaction remained concealed. Further, even after the consummation of the Insider Transaction, the Company refused to grant members of the Ad Hoc Group or their advisors full access to materials evidencing the transaction.

327. *Third*, the Company utilized the Insider Transaction to transfer assets. Prior to the Insider Transaction, holders of Original Secured Notes enjoyed the protection of Liens on substantially all assets owned by the Company and the Guarantor Defendants. However, by eliminating those Liens and creating new identical liens in favor of the New 1L Notes and New 1.25L Notes, the Company transferred property previously available to all holders of Original Senior Secured Notes and gave them exclusively to the Favored Noteholders.

328. *Fourth*, the Insider Transaction occurred when the Company was insolvent.

329. That the Company was insolvent by or before the first quarter of 2022 was reflected in its financial statements, which showed liabilities in excess of assets, and by its inability to pay its debts when due. Distressed trading prices of the Unsecured Notes support the same conclusion.

330. As shown through multiple badges of fraud, the transfers made and obligations incurred by the Company and the Guarantor Defendants in connection with the Insider Transaction, all of which comprised a single integrated transaction, were made with the intent to hinder, delay, or defraud the 2024/2026 Holders. The Insider Transaction is therefore in violation of and voidable under section 24.005 of TUFTA.

331. The transfers made and obligations incurred by the Company and the Guarantor Defendants in violation of TUFTA have caused damages to the 2024/2026 Holders and should be remedied, in accordance with section 24.008(3)(c) of TUFTA, in a manner to be determined after a finding of liability.

NINTH CAUSE OF ACTION

INSIDER PREFERENTIAL TRANSFER (Against the Company, the Guarantor Defendants, the Platinum Fund and the Platinum-Controlled Parent)

332. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 332.

333. Prior to, at the time of, and following the Insider Transaction, the 2024/2026 Holders were creditors of the Company and the Guarantor Defendants by virtue of their claims against those entities arising under, and in connection with, the Governing Indentures.

334. The Platinum-Controlled Parent is an insider of Incora. The Platinum-Controlled Parent's insider status is evidenced by, among other things, its 100% indirect ownership of the Company and its subsidiaries, its status as a person in control of Incora and its subsidiaries, and it and Incora being under the common control of the Platinum Sponsor.

335. The Platinum Fund is an insider of the Company. The Platinum Fund's insider status is evidenced by, among other things: (i) its indirect ownership of Incora (through the Platinum-Controlled Sponsor); it and the Company being under the common control of the Platinum Sponsor; and (iii) their status as insiders of the Platinum-Controlled Parent by reason of their, upon information and belief, direct or indirect ownership or control over more than 20% of the voting shares of the Platinum-Controlled Parent.

336. Prior to the Insider Transaction, the Company was indebted to the Platinum-Controlled Sponsor on account of the \$25 million unsecured promissory note issued by the Company to the Platinum-Controlled Parent. Through the Unsecured Roll-up, the Company and the Guarantor Defendants transferred and granted liens to the Platinum-Controlled Parent in connection with the issuance of the New 1.25L Notes. Such transfers were on account of the Company's antecedent debt to the Platinum-Controlled Parent.

337. Prior to the Insider Transaction, the Company and the Guarantor Defendants were indebted to the Platinum Fund and/or the Platinum-Controlled Parent on account of their holdings of Unsecured Notes. Through the Unsecured Roll-up, Incora and the Guarantor Defendants released the Liens and simultaneously transferred and granted liens to the Platinum Fund and/or the Platinum-Controlled Parent in connection with the issuance of the New 1.25L Notes. Such transfers (the “Insider Preferential Transfers”) were on account of Incora’s and the Guarantor Defendant’s antecedent debt to those Platinum Creditors.

338. The Unsecured Roll-up was a core component of the Insider Transaction which, as alleged herein, comprises a single integrated transaction.

339. The Company and the Guarantor Defendants were insolvent at the time that the Insider Transaction was negotiated and executed. As insiders and affiliates of the Company, and also through the Platinum Sponsor, the Platinum-Controlled Parent and the Platinum Fund had access to the Company’s financial information, including information regarding the Company’s assets, liabilities, and its inability to pay its debts as they came due. As such, the Platinum-Controlled Parent and the Platinum Fund were fully apprised of the Company’s financial condition and performance at all relevant times. The Platinum-Controlled Parent and the Platinum Fund therefore knew or had reasonable cause to believe that Company and the Guarantor Defendants were insolvent at the time of the Insider Transaction.

340. The Insider Transaction is therefore in violation of, and voidable under, section 24.006(b) of TUFTA.

341. The transfers made and obligations incurred by the Company and the Guarantor Defendants in violation of TUFTA have caused damages to the 2024/2026 Holders and should be

remedied, in accordance with section 24.008(3)(c) of TUFTA, in a manner to be determined after a finding of liability.

TENTH CAUSE OF ACTION

CONSPIRACY TO COMMIT FRAUDULENT TRANSFER (Against the Company, the Guarantor Defendants, the Platinum Sponsor and Members of the Board)

342. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 343.

343. As set forth in the Eighth Cause of Action, as part of the Insider Transaction, the Company and the Guarantor Defendants made transfers and incurred obligations with actual intent to hinder, delay, or defraud the 2024/2026 Holders, including by incurring the Phantom Notes, the New 1L Notes, the New 1.25L Notes, and guarantees related to same, and by making transfers to the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders in the form of new liens created to secure the fraudulently incurred obligations.

344. The Platinum Sponsor and the members of the Board agreed with, or otherwise had a meeting of the minds with, the Company and the Guarantor Defendants to incur such liabilities, and to make such transfers, with the actual intent to hinder, delay, or defraud the 2024/2026 Holders. Indeed, the Platinum Sponsor and the Members of the Board understood and agreed to the injury to be accomplished, namely the release of the 2024/2026 Holders' Liens and the transfer of hundreds of million of dollars of value from the 2024/2026 Holders to the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders. Such lien strip and transfer of value was the object to be accomplished through the conspiracy.

345. By reason of the foregoing, the Company, the Guarantor Defendants, the Platinum Sponsor and the Board were members of a group of two or more persons seeking to accomplish a course of action (*i.e.*, the Insider Transaction), whereby, in pursuance of that course of action, (i) at

least one member of the group committed an unlawful overt act in connection with the conspiracy to commit a fraudulent conveyance, namely the wrongful release of the 2024/2026 Holders' Liens and the creation of new debt and liens ranking ahead of the 2024/2026 Holders' Notes, and (ii) other members of the group engaged in additional overt acts by planning, assisting or encouraging the commission of the unlawful conduct, which included the following:

- The Platinum Sponsor and the Board ignored warnings from the Ad Hoc Group that a transaction involving the release of liens would require, among other things, the consent of at least two-thirds of the aggregate outstanding principal amount of each of the Original Secured Notes;
- The Platinum Sponsor exercised control over the Company and the Board, including through its designees to the Board, to ensure approval of the Insider Transaction, and the dismissal of the Ad Hoc Group's Bids, with knowledge that the Insider Transaction would violate the 2024/2026 Holders' rights under the Governing Indentures;
- The Board members approved, or accepted Bartels' recommendation of the approval of, the Insider Transaction with the knowledge and intent that the transaction would inure to the unique benefit of Platinum and a select group of Favored Noteholders and injure the 2024/2026 Holders; and
- The Board members failed to undertake a fair and competitive financing process aimed at achieving the highest and best proposal for a restructuring, permitted the illicit manipulation of its deliberative process by Platinum, failed to disclose or remedy Bartels' status as a conflicted, interested, or dependent director, and failed to secure independent legal and financial advisors apart from those utilized by the interested directors.

346. The 2024/2026 Holders held valid Liens in the Collateral and, thus, were secured creditors of the Company and the Guarantor Defendants.

347. As a result of the conspiracy to commit a fraudulent conveyance, the 2024/2026 Holders were damaged by, among other things, the discharge of their Liens and the creation of new liens.

348. Members of the Board, other than Bartels, were not independent of the Company and, instead, were senior executives and officers of the Platinum Sponsor. In their capacities as

senior executives and officers of the Platinum Sponsor, these members of the Board also enjoyed the fruits of the Insider Transaction, which permitted the Platinum Creditors to exchange their unsecured debt for the vastly more valuable New 1.25L Notes.

ELEVENTH CAUSE OF ACTION

AIDING AND ABETTING CONVERSION (Against the Members of the Board)

349. The 2024/2026 Holders repeat, reallege, and incorporate by reference herein the allegations of paragraphs 1 through 350.

350. As set forth in the Seventh Cause of Action, the Platinum-Controlled Parent and the Favored Noteholders converted the 2024/2026 Holders' property by causing the release of their property rights—*i.e.*, their interests in the Liens on the Collateral—and the simultaneous transfer of such property to the Platinum-Controlled Parent and the Favored Noteholders.

351. Defendants Bartels and the other members of the Board knowingly provided substantial assistance to, and indeed enabled, the conversion.

- Bartels approved the Insider Transaction on behalf of the Company with knowledge that the transaction inured to the unique benefit of Platinum and a select group of Favored Noteholders while injuring the 2024/2026 Holders;
- The Board either approved the Insider Transaction at the recommendation of Bartels, and with the same such knowledge as Bartels, or otherwise assisted in the approval of the Insider Transaction through their participation in the appointment of, and influence over, Bartels;
- The Board members knew that the Insider Transaction was intended to effect a transfer of hundreds of millions of dollars of value from the 2024/2026 Holders to Platinum and the other Favored Noteholders;
- The Board members failed to undertake a fair and competitive financing process aimed at achieving the highest and best proposal for a restructuring;
- The Board members permitted the illicit manipulation of its deliberative process by Platinum;

- The Board members failed to disclose or remedy Bartels' status as a conflicted, interested, or dependent director; and
- The Board members failed to secure independent legal and financial advisors for Bartels apart from those utilized by the interested directors.

352. By virtue of their substantial assistance, the Board acquired actual knowledge of the conversion of the 2024/2026 Holders' liens by the Platinum-Controlled Parent and the Favored Noteholders. Defendant Bartels necessarily knew that the 2024/2026 Holders' liens would be converted because he approved the Insider Transaction. Upon information and belief, notwithstanding the purported delegation of their responsibility for evaluating and approving the Insider Transaction to the nominally independent Defendant Bartels, the other Board members, each or most of whom were hand-selected by the Platinum Sponsor to serve as the Company's directors, acquired actual knowledge of the Insider Transaction and the resulting conversion of the 2024/2026 Holders' liens. And, but for the actions and omissions of the Board members, the conversion would not have taken place.

353. As a direct result of the conversion of the 2024/2026 Holders' property interests in the Collateral, and of the aiding and abetting that conversion by the Board, the 2024/2026 Holders have suffered damages in an amount to be determined at trial, including punitive damages.

354. Further, these Counterclaim Defendants' actions in conceiving of, concealing, and executing the Insider Transaction were wanton, malicious, oppressive, and undertaken in gross or reckless disregard of Plaintiffs' rights.

PRAYER FOR RELIEF

WHEREFORE, the 2024/2026 Holders pray for relief as follows:

- i. A declaratory judgment that the 2024/2026 Holders have direct standing to assert Causes of Action 2 through 11 against the Counterclaim Defendants;
- ii. A declaratory judgment that the Company, the Guarantor Defendants and WSFS breached the Governing Indentures or, in the alternative, that those

Counterclaim Defendants breached the duty of good faith and fair dealing implied by the Governing Indentures;

- iii. A declaratory judgment that the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder breached the duty of good faith and fair dealing implied by the Governing Indentures;
- iv. An order declaring that the Third Supplemental Indenture and the Fourth Supplemental Indenture are invalid and requiring that Counterclaim Defendants undertake all actions necessary to restore the 2024/2026 Holders' Liens to the same position as if the Insider Transaction were never undertaken;
- v. An order equitably subordinating the claims of the Platinum Creditors and the other Favored Noteholders to the claims of the 2024/2026 Holders;
- vi. An order granting the 2024/2026 Holders equitable liens on "Collateral" securing their Notes (as such term is defined in the Governing Indentures), with such liens taking priority over any liens purportedly held by the Platinum Creditors and the other Favored Noteholders;
- vii. A declaratory judgment that the Platinum Sponsor tortiously interfered with the Governing Indentures, and, in the event that the Silver Point Noteholders, the PIMCO Noteholders, the Citadel Noteholder and the Senator Noteholder are determined not to have breached the duty of good faith and fair dealing implied by the Governing Indentures due to lack of sufficient relationship to those contracts, a declaratory judgment that those Counterclaim Defendants tortiously interfered with the Governing Indentures;
- viii. A declaratory judgment that the Platinum Fund, the Platinum-Controlled Parent, and the other Favored Noteholders converted 2024/2026 Holders' property rights;
- ix. Avoidance and unwinding of the Insider Transaction as an intentional fraudulent transfer;
- x. Avoidance and unwinding of the Insider Preferential Transfer;
- xi. An order (i) confirming and/or directing the removal of BOKF as successor trustee under the Governing Indentures and (ii) directing the appointment of an independent non-conflicted successor trustee for the Governing Indentures;
- xii. Compensatory, consequential, and punitive damages against all Counterclaim Defendants in amounts to be determined, together with pre- and post-

judgment interest at the maximum rate allowed by law;¹¹

- xiii. Reasonable costs and expenses, including attorneys' fees in an amount to be determined; and
- xiv. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The 2024/2026 Holders hereby respectfully make a demand for a trial by jury.

¹¹ The 2024/2026 Holders include a request for damages in this proposed form of Second Amended Counterclaims only an abundance of caution and without prejudice in all respects to not bringing such damages claims in the Adversary Proceeding as they reserve all rights to have damages or other remedies determined after a finding of liability in a separate proceeding, consistent with the *Stipulated Comprehensive Scheduling Order*. Docket No. 141.

Dated: _____, 2023
Houston, Texas

KOBRE & KIM LLP

By: _____

Zachary D. Rosenbaum
Adam M. Lavine
Darryl G. Stein
Igor Margulyan
Michael S. Brasky
John G. Conte
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-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

APPENDIX A

ANSWERING ADVERSARY PROCEEDING DEFENDANTS

A. Original Secured Plaintiff & Answering Defendant

1. DELA Depositary & Asset Management B.V.

B. Counterclaim Plaintiffs, Original Secured Plaintiffs & Answering Defendants

2. SSD Investments Ltd.
3. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Core Plus Bond) of JPMorgan Chase Bank, N.A.
4. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Short Duration Core Plus) of JPMorgan Chase Bank, N.A.
5. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Income) of JPMorgan Chase Bank, N.A.
6. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (Corporate High Yield) of JPMorgan Chase Bank, N.A.
7. JPMorgan Chase Bank, N.A., as Trustee of the Commingled Pension Trust Fund (High Yield) of JPMorgan Chase Bank, N.A.
8. JPMorgan Investment Funds, on behalf of its sub-fund Global High Yield Bond Fund
9. JPMorgan Investment Funds, on behalf of its sub-fund Income Opportunity Fund
10. JPMorgan Investment Funds, on behalf of its sub-fund Global Income Fund
11. JPMorgan Investment Funds, on behalf of its sub-fund Global Income Conservative Fund
12. JPMorgan Funds, on behalf of its sub-fund US High Yield Plus Bond Fund
13. JPMorgan Funds, on behalf of its sub-fund Income Fund
14. JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Sustainable Fund
15. JPMorgan Funds, on behalf of its sub-fund Global Bond Opportunities Fund
16. iShares Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond UCITS ETF
17. iShares II Public Limited Company, on behalf of its sub-fund iShares \$ High Yield Corp Bond UCITS ETF
18. iShares Trust, on behalf of its series iShares iBonds 2026 Term High Yield and Income ETF
19. iShares Trust, on behalf of its series iShares Broad USD High Yield Corporate Bond ETF
20. iShares Trust, on behalf of its series iShares 0-5 Year High Yield Corporate Bond ETF
21. iShares Trust, on behalf of its series iShares iBoxx \$ High Yield Corporate Bond ETF
22. iShares Trust, on behalf of its series iShares iBonds 2024 Term High Yield and Income ETF
23. BlackRock Institutional Trust Company, N.A., acting in its capacity as Trustee of the U.S. High Yield Bond Index Non-Lendable Fund B
24. iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond GBP Hedged UCITS ETF (Dist)
25. iShares VI Public Limited Company, on behalf of its sub-fund iShares Global High Yield Corp Bond CHF Hedged UCITS ETF (Dist)

26. iShares IV Public Limited Company, on behalf of its sub-fund iShares \$ Short Duration High Yield Corp Bond UCITS ETF
27. iShares Trust, on behalf of its series iShares Core 1-5 Year USD Bond ETF
28. iShares U.S. High Yield Fixed Income Index ETF (CAD-Hedged), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited
29. iShares Trust, on behalf of its series iShares Core Total USD Bond Market ETF
30. iShares U.S. High Yield Bond Index ETF (CADHedged), by its trustee, manager and portfolio adviser BlackRock Asset Management Canada Limited
31. iShares, Inc., on behalf of its series iShares US & Intl High Yield Corp Bond ETF
32. BlackRock Bank Loan Fund, by its manager BlackRock Asset Management Ireland Limited
33. BlackRock Floating Rate Income Trust
34. BlackRock Limited Duration Income Trust
35. BlackRock Dynamic High Income Portfolio of BlackRock Funds II
36. BlackRock Floating Rate Income Portfolio of BlackRock Funds V
37. BlackRock Managed Income Fund of BlackRock Funds II
38. BlackRock Floating Rate Income Strategies Fund, Inc.
39. PSAM WorldArb Master Fund Ltd.
40. Rebound Portfolio Ltd.
41. JPMorgan Funds, on behalf of its sub-fund Multi-Manager Alternatives Fund
42. Lumyna Specialist Funds (formerly called Viaduct Invest FCP-SIF), on behalf of its sub-fund Event Alternative Fund
43. Lumyna Investments Ltd., on behalf of its sub-fund PSAM Global Event UCITS Fund
44. Kapitalforeningen PenSam Invest - PSI 84 US High Yield II
45. The New Zealand Guardian Trust Company Limited, as Trustee for AMP Wholesale High Yield Bond Fund
46. UBS Fund Management (Switzerland) AG
47. JNL Series Trust, on behalf of its series JNL/JPMorgan Global Allocation Fund

C. Additional Counterclaim Plaintiffs (Not Adversary Proceeding Defendants)

48. The Integrity Fund on behalf of its series, Integrity High Income Fund
49. JPMorgan Trust II on behalf of its series, JPMorgan Core Plus Bond Fund
50. JPMorgan Trust II, on behalf of its series JPMorgan High Yield Fund
51. JPMorgan Fund ICVC, on behalf of its sub fund JPM Global High Yield Bond Fund
52. JPMorgan Trust I, on behalf of its series JPMorgan Income Builder Fund
53. JPMorgan Trust I, on behalf of its series JPMorgan Total Return Fund
54. JPMorgan Trust I, on behalf of its series JPMorgan Strategic Income Opportunities Fund
55. JPMorgan Fund ICVC, on behalf of its sub fund JPM Multi-Asset Income Fund
56. Lincoln Variable Insurance Products Trust, on behalf of its series LVIP JPMorgan High Yield Fund
57. Advanced Series Trust, on behalf of its portfolio AST High Yield Portfolio
58. GIM Trust, on behalf of its series U.S. High Yield Bond Fund
59. JPMorgan Trust I, on behalf of its series JPMorgan Global Allocation Fund
60. HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Income Fund

61. JPMorgan Trust I, on behalf of its series JPMorgan Global Bond Opportunities Fund
62. JPMorgan Trust I, on behalf of its series JPMorgan Short Duration Core Plus Fund
63. IBM 401(k) Plus Plan Trust , on behalf of the IBM 401(k) Plus Plan
64. JPMorgan Trust I, on behalf of its series JPMorgan Income Fund
65. Migros-Pensoinskasse Fonds
66. J.P. Morgan Exchange-Traded Fund Trust, on behalf of its series JPMorgan Core Plus Bond ETF
67. HSBC Institutional Trust Services (Asia) Limited, as trustee of JPMorgan Multi Balanced Fund
68. Zurich American Insurance Company
69. NBI High Yield Bond ETF
70. Deferred Salary Plan of the Electrical Industry
71. NBI Unconstrained Fixed Income ETF
72. National Employment Savings Trust Corporation, in its capacity as trustee of the National Employment Savings Trust

COUNTERCLAIM DEFENDANTS

A. Debtor Defendants (Adversary Proceeding Plaintiffs)

1. Wesco Aircraft Holdings, Inc.
2. Adams Aviation Supply Company Limited
3. Flintbrook Limited
4. HAAS Chemical Management of Mexico, Inc.
5. HAAS Corporation of Canada
6. HAAS Corporation of China
7. HAAS Group International SCM Limited
8. HAAS Group International, LLC
9. HAAS Group, LLC
10. HAAS Holdings, LLC
11. HAAS International Corporation
12. HAAS of Delaware LLC
13. HAAS TCM Group of the UK Limited
14. HAAS TCM Industries LLC
15. HAAS TCM of Israel Inc.
16. Interfast USA Holdings Incorporated
17. Netmro, LLC
18. Pattonair Holding, Inc.
19. Pattonair (Derby) Limited
20. Pattonair Europe Limited
21. Pattonair Group Limited
22. Pattonair Holdings Limited
23. Pattonair Limited
24. Pattonair USA, Inc.

25. Pioneer Finance Corporation
26. Pioneer Holding Corporation
27. Quicksilver Midco Limited
28. Uniseal, Inc.
29. Wesco 1 LLP
30. Wesco 2 LLP
31. Wesco Aircraft Canada, LLC
32. Wesco Aircraft EMEA, Ltd.
33. Wesco Aircraft Europe Limited
34. Wesco Aircraft Hardware Corp.
35. Wesco Aircraft International Holdings Limited
36. Wesco Aircraft SF, LLC
37. Wesco LLC 1
38. Wesco LLC 2
39. Wolverine Intermediate Holding II Corporation
40. Wolverine UK Holdco Limited

B. Non-Debtor Defendants (Not Plaintiffs in Adversary Proceeding)

41. Wilmington Savings Fund Society, FSB
42. Platinum Equity Advisors, LLC
43. Wolverine Top Holding Corporation
44. Platinum Equity Capital Partners International, IV (Cayman) LP
45. Silver Point Capital Fund, L.P.
46. Silver Point Capital Offshore Master Fund, L.P.
47. Silver Point Select Opportunities Fund A, L.P.
48. Silver Point Distressed Opportunities Fund, L.P.
49. Silver Point Distressed Opportunities Offshore Master Fund, L.P.
50. Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.
51. Silver Point Distressed Opportunity Institutional Partners, L.P.
52. Silver Point SCF CLO I, Ltd.
53. Silver Point Specialty Lending Fund
54. Silver Point Specialty Credit Fund II Mini-Master Fund (Offshore), L.P.
55. PIMCO Tactical Income Opportunities Fund
56. PIMCO Global Income Opportunities Fund
57. PIMCO Tactical Income Fund
58. PIMCO Global StocksPLUS & Income Fund
59. PCM Fund, Inc.
60. PIMCO Strategic Income Fund, Inc.
61. PIMCO Corporate & Income Opportunity Fund
62. PIMCO High Income Fund
63. PIMCO Income Strategy Fund
64. PIMCO Income Strategy Fund II

65. PIMCO Corporate & Income Strategy Fund
66. PIMCO Dynamic Income Opportunities Fund
67. PIMCO Dynamic Income Fund
68. PIMCO ETFs plc
69. PIMCO US Short-Term High Yield Corporate Bond Index UCITS ETF (previously identified as PIMCO Fixed Income Source ETFs plc, PIMCO Short-Term High Yield Corporate Bond Index Source UCITS ETF)
70. PIMCO Flexible Credit Income Fund
71. PIMCO Funds: PIMCO Low Duration Credit Fund
72. PIMCO Funds: PIMCO High Yield Spectrum Fund
73. PIMCO ETF Trust: PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund
74. OC III LVS I LP
75. PIMCO Tactical Opportunities Master Fund Ltd.
76. PIMCO OP Trust Flexible Credit Fund, L.P.
77. PIMCO DISCO Fund III LP
78. Texas Children's Hospital Foundation
79. Bakery and Confectionery Union and Industry International Pension Fund
80. Employees' Retirement System of the State of Rhode Island
81. Desjardins Floating Rate Income Fund
82. Desjardins Global Tactical Bond Fund
83. BMO Global Strategic Bond Fund
84. CCOF Onshore Co-Borrower LLC
85. CSP IV Acquisitions, L.P.
86. CCOF Master, L.P.
87. Senator Global Opportunity Master Fund L.P.
88. Citadel Equity Fund Ltd.
89. Spring Creek Capital LLC

Certificate of Service

I certify that on August __, 2023, 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.

EXHIBIT 7

From: Neeta Jadhav <m600attach@riskconnectclearsight.com>
Sent: Tuesday, April 26, 2022 10:24 PM
Cc: dawn.landry@incora.com; Rogan, Matt; Zhu-Thompson, Julia; Reed, Philip J; Sweetman, Erica
Subject: ***22LA__423252*** WOLVERINE TOP HOLDING CORPORATION Loss Notification of Ad Hoc Group
Attachments: Wesco - Letter (4.18.22).pdf

CAUTION: This email originated outside the company. Do not click links or open attachments unless you are expecting them from the sender.

INSURED: WOLVERINE TOP HOLDING CORPORATION

MATTER: Ad Hoc Group

MARSH FILE NUMBER: 22LA__423252

On behalf of the insured, and in accordance with the reporting provisions of the referenced Policy, we give notice of the referenced matter. A copy of correspondence received from the insured is attached for your review.

Carriers noted in the below table are receiving this First Notice of Loss by way of blind copy. Carriers, please send your acknowledgement, including claim number and adjuster contact information to Claimacks@Marsh.com and include the Marsh File Number referenced in the above header.

Please refer to the following for your policy information:

Carrier	Policy Number	Policy Term	Layer	Participation

Federal Insurance Company	82621174	01-JUL-21 - 01-JUL-22	\$10,000,000 Primary	\$10,000,000
EVEREST NATIONAL INSURANCE CO	PC2EX00007212	01-JUL-21 - 01-JUL-22	\$10,000,000 x 10,000,000	\$10,000,000
Endurance Risk Solutions Assurance Co.	DOX30008721300	01-JUL-21 - 01-JUL-22	\$10,000,000 x 20,000,000	\$10,000,000

This matter is reported under any and all applicable policies whether or not cited.

Please address all further inquiries and correspondence to the insured contact, Dawn Landry at dawn.landry@incora.com, and to the Marsh Claim Advocate, Erica Sweetman at erica.sweetman@marsh.com, 415-743-8297.

Please include the Marsh file number on all correspondence related to the above matter.

Sincerely,

Marsh Claims Operations

Reply To: ClaimAcks@marsh.com

California License #: 0437153

The Information contained in this document is confidential, may be privileged and is intended for the use of the individual or entity named above. If you are not the intended recipient, please do not read, copy, forward, use, or store this document or any of the information contained herein.

CC:

Erica Sweetman

VP, Claim Advisor

Marsh

Four Embarcadero Center, Suite 1100

San Francisco,CA 94111

415-743-8297

erica.sweetman@marsh.com

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Julia Zhu-Thompson

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Matt Rogan

Marsh

Matt.Rogan@marsh.com

Dawn Landry

Wolverine

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-----Please do not modify the following reference information-----

EAMREF: 080dcca-ca05-62cb-e87b-0b5e795d1fe3~030eaa0f-881f-36bf-1989-bb4625da3509~951f0267-898f-8c6f-1746-79fd09ed5605~8e8ad002-c78e-24a3-87be-594d55d81c0e

Akin Gump

STRAUSS HAUER & FELD LLP

MICHAEL S. STAMER

+1 212.872.1025/fax: +1 212.872.1002

mstamer@akingump.com

April 18, 2022

VIA EMAIL

Dennis F. Dunne
Milbank LLP
55 Hudson Yards
New York, NY 10001

Re: Wesco Aircraft Holdings, Inc. / Incora (the “Company”)

Dear Dennis:

We write regarding the purported refinancing transaction that the Company announced in its March 29, 2022 press release (the “Priming Transaction”),¹ which the Company consummated despite (i) the Ad Hoc Group’s clear warnings that the Priming Transaction would be an unprecedented and impermissible assault on minority noteholder rights, and (ii) the fact that the Ad Hoc Group provided the Company with an alternative Proposal, which would have complied with the relevant indentures and been offered to all of the Company’s secured noteholders, to meet its liquidity needs.

In light of the Company’s decision to choose the value-destructive path inherent in the Priming Transaction, the Company is on notice as follows:

First, the Ad Hoc Group is prepared to assert all available rights, remedies and causes of action against the Company, its Board, its equity sponsor, other noteholders and capital market participants, and the Indenture Trustee and Notes Collateral Agent, as well as any advisors of the above. Such claims include, but are not limited to, claims that the Priming Transaction:

- violates the 2024 Notes indenture and 2026 Notes indenture;
- violates the implied covenant of good faith and fair dealing in the 2024 Notes indenture and 2026 Notes indenture;

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Ad Hoc Group’s letters to you dated February 14, 2022, February 21, 2022, and March 6, 2022 (the “Ad Hoc Group Letters”).

- constitutes an avoidable, intentionally fraudulent conveyance; and
- gives rise to tort claims against parties that induced, enabled, approved, and executed the Priming Transaction.

Second, in light of impending litigation in connection with the Priming Transaction, the Company must preserve documents and information (in the broadest sense) concerning, among other topics, the Priming Transaction and any other potential refinancing transaction proposed to the Company. This obligation extends to the Board, the Company's equity sponsor, and their legal and financial advisors. Please confirm in writing as soon as possible that you are indeed preserving all documents and information at issue here.

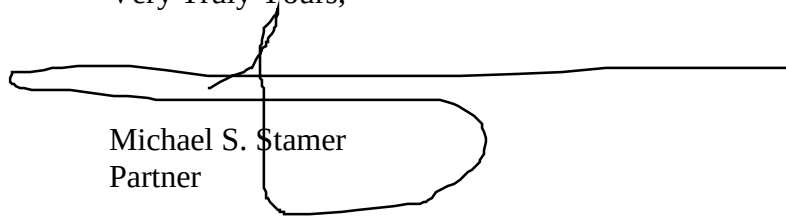
Third, the Ad Hoc Group again requests that the Company provide: (i) a complete set of closing documents for the Priming Transaction;² and (ii) the identities of the Board's members, as well as any other fiduciaries of the Company or its subsidiaries involved in any deliberations or decision-making respecting the Priming Transaction or the Ad Hoc Group's alternative Proposal. Since the Priming Transaction closed over two weeks ago, we have asked the Company twice for the complete closing set. To date, the Company has refused to respond. The Company's unwillingness to provide such basic information to one of its core groups of lenders is the latest example of the Company's failure to engage with the Ad Hoc Group in good faith or in the best interest of its stakeholders.

² For the avoidance of doubt, such closing documents for the Priming Transaction that the Ad Hoc Group is entitled to include, but are not limited to, (i) that certain **Notes Security Agreement** and any amendments thereto as referenced in the Fourth Supplemental Indenture to the 2026 Notes; (ii) that certain **Note Purchase Agreement**, by and among the Issuer, the Guarantors, certain beneficial owners (the "**Purchasers**") of 2026 Secured Notes and the Issuer's 8.50% Senior Secured Notes due 2024, pursuant to which the Issuer issued and sold to the Purchasers, and the Purchasers purchased from the Issuer, additional 2026 Secured Notes; (iii) that certain **Exchange Agreement** by and among the Issuer, the Guarantors, certain beneficial owners and record holders (collectively, the "**Exchanging Holders**") of various notes, pursuant to which, the Issuer agreed, subject to the execution, delivery and effectiveness of the Fourth Supplemental Indenture, to exchange (i) the Exchanging Holders' 2024 Notes and 2026 Notes specified therein for new 10.50% Senior Secured 1st Lien PIK Notes due 2026 and (ii) the Exchanging Holders' 2027 Notes specified therein for new 13.125% Senior Secured 1.25 Lien PIK Notes due 2027; and (iv) any Consents or Consent Letters delivered to the Issuer and Trustee relating to the Priming Transaction in any way.

We will make ourselves available at your convenience to discuss the matters raised in this letter and any other issues related to the Company, and we expect a written response to the requests made herein as soon as reasonably practicable.

Please ensure that a copy of this letter is sent promptly to the Company and the Board.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Michael S. Stamer", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Michael S. Stamer
Partner

cc: Sam Khalil, Milbank
Jamie O'Connell, PJT Partners
Josh Abramson, PJT Partners
Meredith A. Lahaie, Esq.
Abid Qureshi, Esq.

EXHIBIT 8



North American Financial Lines Claims
82 Hopmeadow Street, Simsbury CT 06035
Phone: 860-408-2024
E-mail: sglackin@chubb.com

February 24, 2023

Dawn Landry
Chief Administrative Officer

INCORA

via email and certified mail

2601 Meacham Blvd Suite 400
Fort Worth, Texas 76137

Re: Insured : Wolverine Top Holding Company
Policy No.: 000082621174
Underwriting Company: Federal Insurance Company
Claim No.: KY22K2350029
Broker Ref. No.: 22LA__423252
Subject: SSD Investments Ltd; et al. v. Wilmington Savings Fund Society, FSB;
Wesco Aircraft Holdings, Inc. et al.

Dear Ms. Landry,

This letter follows our previous correspondence which acknowledged receipt of the complaint on behalf of Federal Insurance Company ("Federal"). Please allow this correspondence to follow our letter issued May 6, 2022 and January 31, 2023. This correspondence will amend and supersede Federal's correspondence dated January 31, 2023. Based on our review of the complaint and the Policy, we respectfully advise that there is no coverage under the Policy as to any **Organization** given the applicability of the contract exclusion as set forth more fully herein.

Subject to our on-going investigation, the Policy will regard for Patrick Bartels as set forth more fully herein. Kindly note **bold** terms are defined in the Policy.

Information considered by Federal

Federal received a copy of the complaint in the subject litigation. There was a leveraged buyout of the Incora entity and Pattonair – Platinum Advisory Portfolio Company which closed on January 9, 2020. To finance the buyout, Incora issued three series of notes: (i) \$650 million in 2024 Senior Secured Notes; (ii) \$900 million in 2026 Senior Secured Notes; and (iii) \$525 million in unsecured notes due 2027. The senior secured noteholders were granted liens on substantially all of its assets of Incora and its guarantors. The plaintiffs own more than 75 percent of the 2026 senior secured notes and more than 30 percent of the 2024 senior secured notes. Despite the governing indentures requirements and multiple statutory & common law duties, the complaint alleges defendants entered super senior priming transactions with a group of secured noteholders to the detriment of the plaintiffs.

The complaint contains the following causes of action: declaratory judgment; breach of contract; breach of implied covenant of good faith and fair dealing; breach of implied covenant of good faith and fair dealing, tortious interference with contract (Platinum Advisors); intentional fraudulent transfer, insider preferential transfer, conversion and aiding and abetting conversion. The complaint seeks declaratory judgment, an order to restore the status quo of the liens, collateral rights and securities documents; avoidance and unwinding of the sham transaction. The complaint also seeks compensatory, consequential and punitive damages, attorney fees and other costs.

The Policy

Federal issued Forefront Portfolio 3.0 Policy no. 8261-3426 for **Policy Period** July 1, 2021 to July 1, 2022 to Wolverine Top Holding Corporation. The Directors & Officers and Entity Liability Coverage limit of liability is \$10 million. A **Claim** pursuant to Insuring Clause (C) Entity Liability Coverage and / or Insuring Clause (B) Individual Indemnified Liability Coverage is \$150,000.

Entity Liability Coverage

Subject to all terms and condition, Insuring Clause (C): Entity Liability Coverage provides Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**, or the **Extended Reporting Period** if applicable. *See, D&O Section I. (C).* Additionally, Insuring Clause (B): Individual Indemnified Liability Coverage provides Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against an **Insured Person** during the **Policy Period**, or the **Extended Reporting Period** if applicable, to the extent the **Organization** indemnifies the **Insured Person** for such **Loss** as permitted or required by law. *See, D&O Section I. (C).* **Claim** includes civil proceeding commenced by the service of a complaint. *See, D&O Section IV as deleted and replace at End. 12(2)(B).*

Insured means any **Organization** and any **Insured Person**. *See, D&O Section IV* **Organization** includes the **Parent Organization**, **Affiliated Entities** and a **Subsidiary**. We understand Wolverine Top Holding Corporation is the **Parent Organization**. *See, General Terms and Conditions End. dated May 5, 2022 effective July 1, 2021.* Patton Air is an **Organization**. *See, General Terms and Conditions Section II, as amended at End. 4 (1).* We additionally understand the following entities are **Subsidiaries** of Wolverine Top Holding Corporation and **Organizations**: Adams Aviation Supply Company; Adams Aviation Supply Company Limited; Flintbrook Limited; HAAS Chemical Management of Mexico, Inc.; HAAS Corporation of Canada; HAAS Corporation of China; HAAS Group International SCM Limited; HAAS Group International, LLC; HAAS Group, LLC; HAAS Holdings, LLC; HAAS International Corporation; HAAS of Delaware, LLC; HAAS TCM Group of the UK Limited; HAAS TCM Industries, LLC; HAAS TCM of Israel, Inc.; Interfast USA Holdings Incorporated; Netmro, LLC; Pattonair Holding Inc.; Pattonair (Derby) Limited; Pattonair Europe Limited; Pattonair Group Limited; Pattonair Holdings Limited; Pattonair Limited; Pattonair USA, Inc.; Pioneer Finance Corporation; Pioneer Holding Corporation; Quicksilver Midco Limited; Uniseal Inc.; Wesco 1 LLP; Wesco 2 LLP; Wesco Aircraft Canada, LLC; Wesco Aircraft EMEA, Ltd.; Wesco Aircraft Europe Limited; Wesco Aircraft Hardware CO 1.; Wesco Aircraft International Holdings Limited; Wesco Aircraft SF LLC; Wesco LLC 1; Wesco LLC 2; Wolverine Intermediate Holding II Corporation; Wolverine UK Holdco Limited.

The complaint may be a **Claim** as to Insuring Clause (C) for the **Organizations**. Despite this, the D&O Section will not respond given the applicability of the contract exclusion.

The plaintiffs are creditors holding the 2026 Secure Note Indenture & 2024 Secure Note Indenture (herein "Notes"). Each and every cause of action against the **Organizations** arises from is based upon or is in consequence of the Notes. Federal shall not be liable for **Loss** on account of any Claim against an **Organization**: (1) Contract based upon, arising from or in consequence of any liability in connection with any written contract or agreement to which an **Organization** is a party, provided that this Exclusion (B)(1) shall not apply to the extent that such **Organization** would have been liable in the absence of such contract or agreement. *See, D&O Section V (B)(1) as amended at End. 12 (H) contract exclusion.* The contract exclusion is applicable to the allegations against the **Organizations**. Accordingly, the D&O Section will not respond for the **Organizations**, which include, Wolverine Top Holding Corporation; Adams Aviation Supply Company; Adams Aviation Supply Company Limited; Flintbrook Limited; HAAS Chemical Management of Mexico, Inc.; HAAS Corporation of Canada; HAAS Corporation of China; HAAS Group International SCM Limited; HAAS Group International, LLC; HAAS Group, LLC; HAAS Holdings, LLC; HAAS International Corporation; HAAS of Delaware, LLC; HAAS TCM Group of the UK Limited; HAAS TCM Industries, LLC; HAAS TCM of Israel, Inc.; Interfast USA Holdings Incorporated; Netmro, LLC; Pattonair Holding Inc.; Pattonair (Derby) Limited; Pattonair Europe

Limited; Pattonair Group Limited; Pattonair Holdings Limited; Pattonair Limited; Pattonair USA, Inc.; Pioneer Finance Corporation; Pioneer Holding Corporation; Quicksilver Midco Limited; Uniseal Inc.; Wesco 1 LLP; Wesco 2 LLP; Wesco Aircraft Canada, LLC; Wesco Aircraft EMEA, Ltd.; Wesco Aircraft Europe Limited; Wesco Aircraft Hardware C0 1.; Wesco Aircraft International Holdings Limited; Wesco Aircraft SF LLC; Wesco LLC 1; Wesco LLC 2; Wolverine Intermediate Holding II Corporation; Wolverine UK Holdco Limited.

Platinum Equity Advisors, LLC and Platinum Equity Investment Holdings, LLC together are the **Sponsor Company** and an **Organization** only to the extent there may be **Claims** arising out of the **Sponsor Company's** management control of the **Parent Organization**. In the subject complaint, the allegations related to the control of Wesco Aircraft Holdings, Inc. dba Incora which is a **Subsidiary**. Platinum Equity Advisors, LLC and Platinum Equity Investment Holdings are not **Organizations**. Additionally, we understand Silver Point Capital, LLC, Pacific Investment Management Company LLC, The Carlyle Group L.P., Wilmington Savings Fund Society, FSB and Platinum Fund are not **Organizations**. Accordingly, the Policy does not respond for Platinum Equity Advisors, LLC and Platinum Equity Investment Holdings, LLC, Silver Point Capital, LLC, Pacific Investment Management Company LLC, The Carlyle Group L.P., Wilmington Savings Fund Society, FSB and Platinum Fund.

Individual Indemnified Liability Coverage

Subject to all terms and provisions, Insuring Clause (B): Individual Indemnified Liability Coverage provides Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against an **Insured Person** during the **Policy Period**, or the **Extended Reporting Period** if applicable, to the extent the **Organization** indemnifies the **Insured Person** for such **Loss** as permitted or required by law. *See, D&O Section I. (C).*

Insured Person means any **Executive** or **Employee** of an **Organization** acting either in his or her capacity as such. *See, D&O Section IV.* The definition of **Executive** is amended to include a **Sponsor Company** Representative, any **Shadow Director**, any **De Facto Director** or any **Board Observer** but only with respect to a **Board Observer Claim**. *See, D&O Section IV as deleted and replaced at End. 12 (2) (E).* Patrick Bartels is an **Insured Person** to the extent of his capacity as a member of Incora's Board of Directors at the time of the allegations. **Claim** includes civil proceeding commenced by the service of a complaint. *See, D&O Section IV as deleted and replace at End. 12(2)(B).* The complaint alleges aiding and abetting by Mr. Bartels and may be a **Claim** Insuring Clause (B) as to the **Insured Person**.

Defense Arrangements

The **Insured** has the sole duty to defend **Claims** made against the **Insured**. Federal shall advance covered **Defense Costs** on account of any Claim reported pursuant to Section VI, Reporting, on a current basis after receipt by the Company of bills detailing such **Defense Costs** and all other information requested by the Federal with respect to such bills until the applicable Limit of Liability set forth in Item 2 of the D&O Declarations has been satisfied. (D) Any advancement of **Defense Costs** shall be repaid to the Federal by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured under this Policy. However, the Federal shall not seek repayment from an **Insured** of advanced **Defense Costs** that are uninsured pursuant to Exclusion V(A)(9), Conduct, unless a final, non-appealable adjudication has occurred. *See, D&O Section VIII (A, C & D) as deleted and replaced at End. 6.*

In the event the **Insured** has the duty to defend or otherwise has the right to independent counsel for the defense of a **Claim** covered by this Coverage Part, the **Insured** may select as defense counsel for such **Claim** a Panel Counsel Firm. The Federal shall pay such Panel Counsel Firm a maximum rate no greater than the standard negotiated panel rates for such firm. However, if the **Insured** does not want to select a **Panel Counsel Firm**, then the **Insured** shall select as defense counsel for such **Claim** a non-Panel Counsel Firm ("**Selected Counsel**"),

provided that: (a) the Company consents to the retention of such Selected Counsel, which the Company shall not unreasonably withhold; and (b) the Company shall pay such Selected Counsel a maximum hourly rate of: \$600 per partner, \$400 per associate, and \$100 per paralegal; and (c) any **Defense Costs** incurred in excess of such hourly rates shall be borne by the Insured at its own risk and will not be covered under this Coverage Part. However, in no event shall such rate exceed the usual and customary rate of any assigned partner, associate or paralegal of the **Selected Counsel**. **Selected Counsel**, as a condition precedent to their rights to payment, must adhere in all respects to the Company's Litigation Management Guidelines for counsel and in no event shall the Company pay, and no coverage will be available under this Policy for any: (i) travel related fees or expense incurred by any firm while traveling to, from or within any state in which such firm does not maintain an office; or (ii) fees or expense incurred by or through the use of local counsel. Such fees and expenses shall be carried borne by the **Insured** at its own risk and will not be covered under this Coverage Part. *See, D&O Section VIII, as amended at End. 13.*

Kindly provide the information regarding Mr. Bartel's counsel.

Potential Coverage Issues

As the **Claim** proceeds, additional facts and or defenses may be developed which may affect coverage under the Policy. Should this occur, we will forward a supplemental letter advising of any change in our position. In the meantime, there are certain coverage issues raised by this **Claim** that we would like to bring to your attention, as follows.

The complaint alleges Mr. Bartels violated plaintiffs' rights in a manner described as wanton, malicious, oppressive, and with gross disregard. Kindly note Federal will not for **Loss** based upon, arising from or in consequence of: (a) any deliberate fraudulent act, any deliberate criminal act, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in the underlying proceeding or action (not including any declaratory proceeding or action brought by or against the Company) establishes such a deliberate act or omission or willful violation. *See, D&O Section V (A)(9) as deleted and replaced at End. 11 (G).*

The complaint seeks declaratory judgment, order requiring restoration of the status quo, avoidance and unwinding of the transaction

Kindly note the definition of **Loss** does not include any portion of such amount that constitutes any cost of compliance with any order for, grant of or agreement to provide non – monetary relief, including injunctive relief. *See, D&O Section IV definition of Loss (1) as deleted and replaced at End. 12 (2) (H).* Federal reserves all rights regards the definition of **Loss**.

The complaint may be read to infer Mr. Bartels acted in a manner to profit himself. Kindly note Federal will not respond for **Loss** based upon, arising from or in consequence of an **Insured Person** having gained any personal profit, remuneration or other financial advantage to which such **Insured Person** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (not including any declaratory proceeding or action brought by or against the Company) establishes the gaining of such personal profit, remuneration or financial advantage.

The prayer for relief seeks punitive damages. Kindly note the definition of **Loss** includes punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, Federal, or to the **Claim** giving rise to such damages; and provided further that, if such jurisdiction is the State of California, then **Loss** does not include punitive, exemplary or multiplied damages. *See, D&O Section IV as deleted and replaced at End. 2.* Federal reserves all rights regards the definition of **Loss** regards punitive damages are any other relief sought that is not included in the definition.

Mutual Obligations Going Forward

The **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Federal's prior written consent; and agrees to provide the Federal with all information, assistance and cooperation which Federal may reasonably require and agrees that, in the event of a **Claim**, the **Insured** shall not do anything that could prejudice the Federal position or its potential or actual rights of recovery; provided that the failure of any **Insured Person** to give the Company such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this Coverage Part. *See, Defense and Settlement D&O Section VIII (A) as deleted and replaced at End. 6.*

We are investigating the other insurance or indemnity available to Mr. Bartels. Kindly note if any **Loss** under this Coverage Part is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Coverage Part), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. Any coverage afforded under this Coverage Part for a **Claim** in connection with an **Insured Person** serving in an **Outside Capacity** for an **Outside Entity** shall be specifically excess of any indemnity (other than any indemnity provided by an **Organization**) and insurance available to such **Insured Person** by reason of serving in such Outside Capacity. (C) If any **Claim** made against an **Insured Person** serving in an **Outside Capacity** gives rise to coverage both under this Coverage Part and under any other coverage part or policy issued by the Company or any subsidiary or affiliate of The Chubb Corporation to any other entity, then any payment under such other coverage part or policy shall reduce any applicable Limit of Liability under this Coverage Part by the amount of such payment. *See, D&O Section XI (A-C).* Kindly provide all insurance policies responding for Mr. Bartels.

Closing

This letter addresses only those Policy provisions that appear pertinent at this time in light of the facts currently known and available to us, without accepting or implying that the allegations have any factual or legal merit. We reserve the right to review all coverage issues and not merely those raised by any additional information or evidence. By limiting Policy references to those cited, we do not waive any other Policy provisions. We will re-evaluate our coverage position if there are any material changes in the allegations or in the facts. If you have any additional information that you believe may have bearing upon our analysis of coverage in this matter, please advise us immediately.

Please note that if you do not agree with this decision or believe all or part of your claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance, Consumer Services Division located at 300 South Spring Street, South Tower, Los Angeles, CA 90013 or call (800) 927-HELP. This notice is provided to you pursuant to California Code of Regulations, Title No. 10, Chapter No. 5, Section 2695.7(b).

Under California Law, we have a duty to notify you of the Statute of Limitations. There is a three (3) year Statute of Limitations for property damage claims and a two (2) year Statute of Limitations for bodily injury claims. For your protection California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

We ask that all mailed correspondence be sent to Chubb North American Claims, P.O. Box 5105, Scranton, PA 18505-0518, where it will be scanned and electronically transmitted to the appropriate individuals. Please include the claim number – KY22K2350029 - on all correspondence. Email correspondence can be directed to my attention.

Thank you for your attention to this matter.

Sincerely,

Sheila Glackin

Sheila Glackin

AVP, Executive Director, Claims

Chubb North American Financial Lines

Cc: Erica Sweetman, Esq. Marsh

EXHIBIT 9



North American Financial Lines Claims
82 Hopmeadow Street, Simsbury CT 06035
Phone: 860-408-2024
E-mail: sglackin@chubb.com

May 4, 2023

Dawn Landry
Chief Administrative Officer
INCORA
2601 Meacham Blvd Suite 400
Fort Worth, Texas 76137

via email and certified mail

Re: Insured : Wolverine Top Holding Company
Policy No.: 000082621174
Underwriting Co: Federal Insurance Company
Claim No.: KY22K2350029
Broker Ref. No.: 22LA_423252
Subject: Langur Maize, LLC v. Platinum Equity Advisors, LLC, unnamed Platinum Funds, Wolverine Top Holding Corporation, Wilmington Savings Fund Society, FSB; Carlyle Global Credit Investment Management, LLC, CCOF Onshore CoBorrower LLC, CSP IV Acquisitions, LP, CCOF Master, LP; Unnamed Carlyle Funds; Senator Investment Group LP and unnamed Senator Funds. Supreme Court, County of New York Index no. 651548/2023

Dear Ms. Landry,

Please allow this correspondence to follow our correspondence dated May 6, 2022 and February 24, 2023 on behalf of Federal Insurance Company ("Federal") and the receipt of the complaint in the subject litigation ("Langur Maize complaint"). Based on our review, the Langur Maize complaint is a **Related Claim** to the complaint entitled SSD Investments Ltd; et al. v. Wilmington Savings Fund Society, FSB; Wesco Aircraft Holdings, Inc. et al. (the "SSD Investment complaint") previously reviewed in our February 24, 2023 correspondence (attached). Despite being a **Related Claim**, the Policy will not respond to the Langur Maize complaint given the applicability of the contract exclusion as discussed more fully herein. Kindly note that words that appear in **bold** are defined in the policy.

Information considered by Federal

The Langur Maize complaint discusses Platinum Equity Advisors, LLC entered into an agreement to take Wesco Aircraft Holdings, Inc. ("Wesco") private. To finance the leveraged buyout, Platinum caused Wesco to issue over \$2 billion in debt, comprising \$650 million in Secured Notes due in 2024 (the "2024 Secured Notes"), \$900 million in Secured Notes due in 2026 (the "2026 Secured Notes"), and \$525 million in Unsecured Notes due in 2027. Carlyle subscribed for and purchased over 50% of the Unsecured Notes. The plaintiff purchased 30% of the Unsecured Notes. In October 2020, Platinum caused Wesco to issue a \$25 million unsecured promissory note to Wolverine Top Holding Corporation in exchange for a cash infusion.

Despite the governing indenture requirements of the Unsecured Notes and statutory & common law duties, the Langur Maize complaint alleges there were super senior priming transactions to the benefit of the defendants and the detriment of plaintiff ("transaction"). The aim of the transaction was to convert \$421 million of the Unsecured Notes — held by Platinum, Carlyle and Senator — into New 1.25L Notes, collateralized by the same assets as, but subordinated to, other new first lien secured notes that were to be issued contemporaneously (the "New 1L Notes"). A \$25 million note payable to Wolverine Top Holding would also be included in this up tier transaction. By contrast, \$104 million of Unsecured Notes (including those held by plaintiff) would remain unsecured — and now ranking below \$473 million of New 1.25L Notes (and approximately \$1.25 billion in New 1L Notes). By contrast, \$104 million of Unsecured Notes (including those held by plaintiff) would remain unsecured — and

now ranking below \$473 million of New 1.25L Notes (and approximately \$1.25 billion in New 1L Notes) in right of payment.

The Langur Maize complaint alleges breach of section 3.02, 6.05 and 9.02 of the Indenture and section (4) of the Unsecured Notes; unjust enrichment; breach of the implied covenant of good faith and fair dealing; preferential transfer in violation of the Texas Uniform Fraudulent Transfer Act § 24.006; civil conspiracy. The Langur Maize complaint seeks an order avoiding and unwinding the transaction. Plaintiff seeks compensatory, consequential, and punitive damages, attorney fees, interest and experts' fees and other relief.

The Policy

Federal issued Forefront Portfolio 3.0 Policy no. 8261-3426 for **Policy Period** July 1, 2021 to July 1, 2022 to Wolverine Top Holding Corporation. The Directors & Officers and Entity Liability Coverage limit of liability is \$10 million. A **Claim** pursuant to Insuring Clause (C) Entity Liability Coverage is subject to a retention of \$150,000.

Subject to all terms and condition, Insuring Clause (C): Entity Liability Coverage provides Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**, or the **Extended Reporting Period** if applicable. *See, D&O Section I. (C)*. Additionally, Insuring Clause (B): Individual Indemnified Liability Coverage provides Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against an **Insured Person** during the **Policy Period**, or the **Extended Reporting Period** if applicable, to the extent the **Organization** indemnifies the **Insured Person** for such **Loss** as permitted or required by law. *See, D&O Section I. (B)*.

Insured means any **Organization**. *See, D&O Section IV* **Organization** includes the **Parent Organization**, **Affiliated Entities** and a **Subsidiary**. Wolverine Top Holding Corporation ("Wolverine") is the **Parent Organization**. *See, General Terms and Conditions End. dated May 5, 2022 effective July 1, 2021*. **Claim** includes civil proceeding commenced by the service of a complaint. *See, D&O Section IV as deleted and replace at End. 12(2)(B)*. The Langur Maize complaint alleges may be a **Claim** as to Insuring Clause (C) for Wolverine Top Holding Corporation. The Langur Maize complaint and the SSD Investment complaint are based upon, arising from or in consequence of the transaction or series of transactions and are **Related Claims**. *See, General Terms and Conditions Section II*.

Despite this the existence of a **Related Claims**, the D&O Section will not respond to the Langur Maize complaint given the applicability of the contract exclusion as set forth here.

Federal shall not be liable for **Loss** on account of any **Claim** against an **Organization**:

Contract based upon, arising from or in consequence of any liability in connection with any written contract

or agreement to which an **Organization** is a party, provided that this Exclusion (B)(1) shall not apply to the

extent that such **Organization** would have been liable in the absence of such contract or agreement. *See, D&O Section V (B)(1) as amended at End. 12 (H) contract exclusion*.

The Langur Maize complaint alleges breach of Section 3.02, 6.05, and 9.02(10) of the Indenture; Section (4) of the Unsecured Notes; and breach of good faith and fair dealing against Wolverine to the extent Wolverine held notes that participated in the transaction. Plaintiff alleges Wolverine converted its \$25 million unsecured promissory note into New 1.25L Notes and were enriched at the expense of the plaintiff. The Langur Maize complaint alleges Wolverine intentionally caused Wecso and the WSFS to violate the Indenture and to make an insider preferential transfer and fraudulent transfer for Wolverine's own benefit. Plaintiffs allege preferential

and/or fraudulent transfer in violation Texas state law so that Wesco would transfer Wolverine liens and encumbrances over Wesco's assets on account of the \$25 million promissory note in connection with the issuance of the New1.25L Notes. Last, the Langur Maize complaint agreed among themselves to violate the Indenture to which each was a party, to tortiously interfere with the Indenture; and to commit a preferential and/ or transfer in violation of TUFTA . Separately and together, it is alleged the agreement is civil conspiracy. Each allegation against Wolverine is based upon, arising from and in consequence of the Wolverine \$25 million promissory note.

The contract exclusion applies to the allegations against Wolverine.

Platinum Equity Advisors, LLC is the **Sponsor Company** and an **Organization** only to the extent there may be **Claims** arising out of the **Sponsor Company's** management control of the **Parent Organization**. In the Langur Maize complaint, the allegations relate to the control of Wesco Aircraft Holdings, Inc. dba Incora which is a **Subsidiary**. Platinum Equity Advisors, LLC is not an **Organization**. We understand the following entities are not **Subsidiaries** of Wolverine Top Holding Corporation and are not **Organizations**: Wilmington Savings Fund Society, FSB; Carlyle Global Credit Investment Management, LLC; CCOF Onshore CoBorrower LLC; CSP IV Acquisitions, LP; CCOF Master, LP; and Senator Investment Group LP. The Policy will not respond for Platinum Equity Advisors, LLC, Wilmington Savings Fund Society, FSB; Carlyle Global Credit Investment Management, LLC; CCOF Onshore CoBorrower LLC; CSP IV Acquisitions, LP; CCOF Master, LP; and Senator Investment Group LP.

The conduct exclusion, D&O Section V (9), and the definition of **Loss**, D&O Section II may further limit or preclude coverage.

Accordingly, the Policy will not respond to the Langur Maize complaint.

Closing

This letter addresses only those Policy provisions that appear pertinent at this time in light of the facts currently known and available to us, without accepting or implying that the allegations have any factual or legal merit. We reserve the right to review all coverage issues and not merely those raised by any additional information or evidence. By limiting Policy references to those cited, we do not waive any other Policy provisions. We will re-evaluate our coverage position if there are any material changes in the allegations or in the facts. If you have any additional information that you believe may have bearing upon our analysis of coverage in this matter, please advise us immediately.

Please note that if you do not agree with this decision or believe all or part of your claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance, Consumer Services Division located at 300 South Spring Street, South Tower, Los Angeles, CA 90013 or call (800) 927-HELP. This notice is provided to you pursuant to California Code of Regulations, Title No. 10, Chapter No. 5, Section 2695.7(b).

Under California Law, we have a duty to notify you of the Statute of Limitations. There is a three (3) year Statute of Limitations for property damage claims and a two (2) year Statute of Limitations for bodily injury claims. For your protection California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

We ask that all mailed correspondence be sent to Chubb North American Claims, P.O. Box 5105, Scranton, PA 18505-0518, where it will be scanned and electronically transmitted to the appropriate individuals. Please include the claim number – KY22K2350029 - on all correspondence. Email correspondence can be directed to my attention.

Thank you for your attention to this matter.

Sincerely,
Sheila Glackin
Sheila Glackin
AVP, Executive Director, Claims
Chubb North American Financial Lines

cc: Erica Sweetman, Vice President, Marsh via email: Erica.Sweetman@marsh.com

EXHIBIT 10



Werner Ahari Mangel LLP
2112 Pennsylvania Ave., NW, Ste. 200
Washington, DC 20037

Leslie S. Ahari
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Alexandra N Kajari
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February 16, 2024

Via Email

David A. Barrett, Esq.
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington D.C. 20004
David.barrett@lw.com

Re:	Insured:	Wolverine Top Holding Corporation
	Policy No.:	000082621174
	Underwriting Co.:	Federal Insurance Company
	Claim No.:	KY22K2350029
	Matters:	<u>SSD Investments Ltd., et al.; Langur Maize, LLC</u>

Dear Mr. Barrett:

We represent Federal Insurance Company (“Federal”) in connection with the Federal Forefront Portfolio 3.0 Policy No. 8262-1174 (the “Policy”) issued to Wolverine Top Holding Corporation (“Wolverine TopCo”) for the period July 1, 2021 to July 1, 2022. We are forwarding this letter to you as coverage counsel for all of the **Insureds**¹ under the Policy. If you are not acting on behalf of one or more of the **Insureds** under the Policy, please let us know and advise us with whom to communicate.

By Federal’s letters dated May 6, 2022, February 24, 2023 and May 4, 2023, and our August 17, 2023 letter, Federal previously addressed coverage under the Policy for two lawsuits, SSD Investments Ltd., et al. v. Wilmington Savings Fund Society, FSB, et al., Index No. 654068/2022 (Sup. Ct. N.Y., County of N.Y.) (the “SSD Action”) and Langur Maize, LLC v. Platinum Equity Advisors, LLC, et al., Index No. 651548/2023 (Sup. Ct. of N.Y., County of N.Y.) (the “Langur Maize Action”).

On Federal’s behalf, this acknowledges its receipt on January 9, 2024, of the following pleadings relating to the SSD and Langur Maize Actions that were filed in the bankruptcy proceeding, Wesco Aircraft Holdings, Inc. v. SSD Investments Ltd., et al., Adv. Proc. 23-03091 (Bankr. S.D. Tex.) (the “Adversary Proceeding”): (1) Crossclaims, Third-Party Claims, and

¹ Words appearing in bold are defined terms in the Policy.

David A. Barrett, Esq.

February 16, 2024

Page 2

Counterclaim of Langur Maize, L.L.C., filed on July 31, 2023 (ECF No. 142) (the “Langur Maize Counterclaim”); and (2) the 2024/2026 Holders’ First Amended Counterclaims filed on July 31, 2023 (ECF No. 144) (the “2024/2026 Holders’ Amended Counterclaim”). Federal has reviewed these matters for coverage under the Policy. For the reasons discussed below, there is no coverage under the Policy for the counterclaims filed by Langur Maize or the 2024/2026 Holders.

I. The Litigation

Federal understands that on June 1, 2023, Wesco Aircraft Holdings, Inc. (“Wesco”) dba Incora and various affiliated entities (the “Debtors”) filed for bankruptcy. See In re Wesco Aircraft Holdings, Inc., et al., Case No. 23-90611 (DRJ) (Jointly Administered) (Bankr. S.D. Tex.). On June 1, 2023, Wesco filed its original complaint in the Adversary Proceeding against various secured and unsecured noteholders, including SSD Investments Ltd. (“SSD”) and Langur Maize LLC (“Langur Maize”). Various noteholders filed counterclaims in response to Wesco’s complaint.

On July 9, 2023, the Debtors filed their First Amended Complaint (the “FAC”). The FAC names as defendants a group of formerly secured noteholders (including SSD) who were plaintiffs in the SSD Action and Langur Maize, an unsecured noteholder. The FAC asks the Bankruptcy Court to stay the SSD and Langur Maize Actions filed in New York state court as to all parties (including non-debtors). The FAC also seeks declaratory relief regarding the propriety of the debt restructuring and recapitalization transaction in March 2022 (the “March 2022 Transaction”). Federal understands that the SSD and Langur Maize Actions currently are stayed as a consequence of the bankruptcy filing.

In the Adversary Proceeding, former secured noteholders and Langur Maize filed counterclaims and third-party claims in connection with the March 2022 Transaction. Federal understands that the 2024/2026 Holders’ Amended Counterclaim and the Langur Maize Counterclaim are the operative documents.

A. The 2024/2026 Holders’ Counterclaim

The 2024/2026 Holders’ Amended Counterclaim was filed on behalf of 72 entities who formerly were secured holders of certain senior secured notes issued by Wesco due in 2026 and 2024 (the “Original Secured Notes”). The 2024/2026 Holders’ Amended Counterclaim asserts counterclaims and third-party claims against 89 entities, including Wesco, several Wesco debtor affiliates (the “Guarantor Defendants”), Wolverine TopCo, Wolverine Intermediate Holding II Corporation, Wolverine US Holdco Limited, Platinum Equity Advisors Capital and related entities (“Platinum”), various entities that purportedly were noteholders favored by Wesco. No individuals are named.

The 2024/2026 Holders’ Amended Counterclaim generally alleges that the March 2022 Transaction breached the Governing Indentures. The Debtors, under the control of Platinum, and the favored noteholders allegedly attempted to deprive the secured noteholders of the bargained for liens that secured payment of their notes. The formerly secured noteholders allege that Debtors and favored noteholders devised a sham transaction to circumvent the Governing

David A. Barrett, Esq.

February 16, 2024

Page 3

Indentures' supermajority consent requirements applicable to the 2026 Original Secured Notes by creating new dilutive notes that were simultaneously issued and returned (the so-called "Phantom Notes"). The purpose of the Phantom Notes allegedly was to discharge the 2024/2026 Holders' liens for new super-senior notes made available only to the favored noteholders. The formerly secured noteholders allege that the issuance of new notes was prohibited by the Governing Indentures. The March 2022 Transaction let the favored noteholders exchange their original secured notes for approximately \$1.27 billion in new, super-senior notes (the "Uptier Exchange"). The March 2022 Transaction allowed the Platinum Creditors (including Wolverine TopCo as Wesco's current owner) and Caryle (Wesco's former owner) to exchange their unsecured notes for about \$473 million of newly issued secured notes (the "Unsecured Roll-up") in return for the votes needed to effectuate the Uptier Exchange. Although the votes of the Platinum Creditors would not count under the Governing Indentures, the Debtors nonetheless offered the Platinum Creditors the opportunity to exchange their unsecured notes for secured notes for essentially no consideration.

The counterclaimants further allege that the March 2022 Transaction purported to stack \$1.7 billion in new senior debt whose maturity would spring ahead of the 2024/2026 Holders' notes, in breach of their rights under the Governing Indentures. Platinum also allegedly imposed an indemnity obligation on Wesco in connection with the March 2022 Transaction to protect itself against its own intentional wrongdoing.

The 2024/2026 Holders' Amended Counterclaim asserts five causes of action: (1) for a declaratory judgment that the 2024/2026 Holders have standing to assert causes of action 2 through 7; (2) for a declaratory judgment of liability for breach of contract against Wesco, the Guarantor Defendants and Wilmington Savings Fund Society ("WSFS"); (3) for a declaratory judgment of liability for breach of the implied covenant of good faith and fair dealing against Wesco, the Guarantor Defendants, WSFS, the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder based on the Governing Indentures; (4) for an equitable lien on the collateral (as defined by the Governing Indentures) against Wesco, the Guarantor Defendants, the Platinum Fund, Wolverine TopCo, and the other favored noteholders; (5) equitable subordination of the claims of the Platinum Fund, Wolverine TopCo and other favored noteholders based on their more senior notes; (6) for a declaratory judgment of liability for tortious interference with contract against the Platinum Sponsor and as an alternative claim against the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder and the Citadel Noteholder; and (7) for a declaratory judgment of liability for conversion against the Platinum Fund, Wolverine TopCo, and other favored noteholders.

B. The Langur Maize Counterclaim

The Langur Maize Counterclaim is asserted solely on behalf of Langur Maize, who claims to beneficially own 60% of the outstanding unsecured notes issued by Wesco due in 2027. The counterclaim/crossclaim names as defendants Platinum and various Platinum funds, Wesco, Wesco affiliates that guaranteed Wesco's obligations under the Governing Indentures and 2027

David A. Barrett, Esq.

February 16, 2024

Page 4

Notes (the “Guarantor Defendants”), Wolverine TopCo, WSFS, Carlyle Management and related Carlyle funds, and other noteholders.

The Langur Maize Counterclaim concerns the same March 2022 Transaction. Langur Maize alleges that, with the knowledge that Wesco was insolvent, Platinum, Carlyle and WSFS executed an exchange of specially selected 2027 Notes that were held by Platinum, Carlyle and Senator for new, more valuable 1.25L secured notes, while eventually rendering the 2027 Notes that were not selected for exchange (including notes held by Langur Maize) nearly worthless (the so-called “Insider Exchange”). Langur Maize alleges that the Insider Exchange violated the 2027 Notes and the indenture governing those notes. It contends that the notes and the indenture required that unless Wesco redeemed 100% of the 2027 notes, the indenture trustee must select any 2027 notes that are to be purchased or redeemed either pro rata, by lot, or by a method that the indenture trustee deems fair and appropriate. WSFS allegedly acceded to Platinum’s direction, issued through Wesco, to allow the purchase only of those notes held by certain favored investors (including Platinum, Senator and Carlyle), while excluding all other holders. The Insider Exchange also allegedly breached the indenture’s prohibition on making any change to the ranking of the 2027 Notes in respect of their right of payment by enduring that the remaining notes would only be paid after all of Wesco’s other notes. The crossclaim/counterclaim defendants allegedly stripped many protective covenants from the indenture, further diminishing the value of the non-participating holders’ 2027 notes.

The Langur Maize Counterclaim asserts eight counts: (1) breach of Section 3.02 of the Indenture and Section 4 of the 2027 Notes against Platinum Advisors, Platinum Funds, Wolverine TopCo, Carlyle Management, Carlyle Funds, Senator and WSFS; (2) breach of Section 6.05 of the Indenture and Section 4 of the 2027 Notes against Platinum Advisors, Platinum Funds, Wolverine TopCo, Carlyle Management, Carlyle Funds, Senator and WSFS; (3) breach of Section 9.02(10) of the Indenture and Section 4 of the 2027 Notes against Platinum Advisors, Platinum Funds, Wolverine TopCo, Carlyle Management, Carlyle Funds, Senator and WSFS; (4) in the alternative to (1), (2) and (3), tortious interference with contract against Platinum Advisors, Platinum Funds, Wolverine TopCo, Carlyle Management, Carlyle Funds and Senator; (5) unjust enrichment against all crossclaim and counterclaim defendants; (6) breach of the implied covenant of good faith and fair dealing against all crossclaim and counterclaim defendants; (7) civil conspiracy against all crossclaim and counterclaim defendants; and (8) for declaratory relief that Langur Maize has standing to sue the non-debtor parties.

II. Coverage Discussion

Subject to all of its terms and conditions, the Policy’s Directors & Officers and Entity Liability Coverage Part (“D&O Coverage Part”) provides a \$10 million limit of liability, inclusive of **Defense Costs**. Coverage under Insuring Clause (C), applicable to Entity Liability Coverage, is subject to a \$150,000 Retention, which retention applies to **Defense Costs**. See Policy D&O Coverage Part Declarations Items 2, 4; Section VII(A).

David A. Barrett, Esq.

February 16, 2024

Page 5

Federal has reviewed the counterclaims asserted by the 2024/2026 Holders and Langur Maize for potential coverage under the Policy. The discussion herein is not intended to be exhaustive or exclusive, and Federal reserves the right to supplement or amend its coverage analysis as additional information is provided or as developments may warrant. Federal invites the **Insureds** to provide any additional information or documents that they believe may be relevant to Federal's review of these matters for coverage. Further, Federal recognizes that the allegations in the counterclaims are unsubstantiated, and by discussing them herein, does not intend to suggest that such allegations have merit.

As a preliminary matter, although the 2024/2026 Holders' Amended Counterclaim and the Langur Maize Counterclaim were filed in 2023, Federal is reviewing these matters for coverage under the Policy issued for the claims made period July 1, 2021 to July 1, 2022. As discussed in its May 6, 2022 letter, during the 2021-2022 **Policy Year**, Federal received notice of circumstances that could give rise to a **Claim** by secured and unsecured noteholders pursuant to Section VI(B) of the D&O Coverage Part. The counterclaims and crossclaims by the 2024/2026 Holders and Langur Maize arise from the previously noticed circumstances and therefore are deemed to have been first made during the 2021-2022 **Policy Year**.

Federal is reviewing these matters under Insuring Clause I(C) in the D&O Coverage Part.² Insuring Clause (C), states that Federal shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Organization** during the **Policy Period**, or the Extended Reporting Period if applicable.

Insured includes, in relevant part, any **Organization**. See Policy D&O Coverage Part Section IV. **Organization** includes the **Parent Organization**, **Affiliated Entities** and a **Subsidiary**, including any such entity as a debtor in possession. See Policy General Terms & Condition Section II, Endorsement No. 7. The **Parent Organization** is Wolverine TopCo. See Policy General Terms & Conditions Endorsement dated May 5, 2022 effective July 1, 2021. Patton Air is an **Organization**. See id. at Endorsement No. 4 ¶1. Federal understands that the following entities are **Subsidiaries** of Wolverine TopCo and other **Organizations**: Adams Aviation Supply Company; Adams Aviation Supply Company Limited; Flintbrook Limited; HAAS Chemical Management of Mexico, Inc.; HAAS Corporation of Canada; HAAS Corporation of China; HAAS Group International SCM Limited; HAAS Group International, LLC; HAAS Group, LLC; HAAS Holdings, LLC; HAAS International Corporation; HAAS of Delaware, LLC; HAAS TCM Group of the UK, Limited; HAAS TCM Industries, LLC; HAAS TCM of Israel, Inc.; Interfast USA Holdings Incorporated; NetMRO, LLC; Pattonair Holding, Inc.; Pattonair (Derby) Limited; Pattonair Europe Limited; Pattonair Group Limited; Pattonair Holdings Limited; Pattonair Limited; Pattonair USA, Inc.; Pioneer Finance Corporation; Pioneer Holding Corporation; Quicksilver Midco Limited; Uniseal, Inc.; Wesco 1 LLP; Wesco 2 LLP; Wesco Aircraft Canada LLC; Wesco Aircraft EMEA Ltd.; Wesco Aircraft Europe Limited; Wesco Aircraft Hardware, Co.; Wesco Aircraft Holdings, Inc.; Wesco Aircraft

² Insuring Clauses I(A) and I(B) do not apply because no **Insured Person** is named a counterclaim or cross claim defendant.

David A. Barrett, Esq.

February 16, 2024

Page 6

International Holdings Limited; Wesco Aircraft SF LLC; Wesco LLC1; Wesco LLC 2; Wolverine Intermediate Holding Corp.; Wolverine Intermediate Holding II Corporation; Wolverine UK Holdco Limited; and Haas TCM de Mexico S. de R.L. de C.V. However, none of the following entities appear to be **Insureds** under the Policy: WSFB; Platinum Equity Advisors and its related entities; Carlyle Management and its related entities; PIMCO and its related entities; Senator Investment Group; the Silver Point entities; Spring Creek Capital LLC; and Citadel Advisors and its related entities; and the other non-debtor defendants. Federal reserves all rights based on the Policy's definitions of **Organization**, **Affiliated Entities** and **Subsidiary**, and to deny coverage for any person or entity who is not an **Insured**.

Coverage under Insuring Clause I(C) for the Organization is subject to Exclusion B(1), the contract exclusion, which is applicable here. That exclusion states that Federal shall not be liable for **Loss** on account of any **Claim** against an **Organization**:

based upon, arising from or in consequence of any liability in connection with any written contract or agreement to which an **Organization** is a party, provided that this Exclusion (B)(1) shall not apply to the extent that such **Organization** would have been liable in the absence of such contract or agreement;

Policy D&O Coverage Part Section V(B)(1), as amended by Endorsement No. 12 ¶3(H).

For the same reasons detailed in our August 17, 2023 letter to you, the contract exclusion applies to bar coverage for the counterclaims asserted by the 2024/2026 Holders and Langur Maize in their entirety. Both counterclaims, and all causes of action asserted by them, are based upon, arise out of and are in consequence of the written Governing Indentures and related agreements and other agreements governing and securing the notes. The contract exclusion applies to bar coverage for the causes of action expressly based on the alleged breaches of contract. The exclusion also bars coverage for the remaining causes of action for breach of the implied covenant of good faith and fair dealing, tortious interference, equitable subordination and equitable lien, conversion, unjust enrichment, and conspiracy, because all of those counts arise from, and would not exist but for, the Governing Indentures and related agreements governing the relationships between Wesco, the other Debtors, the noteholders and other creditors.³ Accordingly, the contract exclusion bars coverage for the counterclaims asserted by the 2024/2026 Holders and Langur Maize in the Adversary Proceeding in their entirety.

³ Federal understands that on January 14, 2024, the Bankruptcy Court dismissed the causes of action asserted in the 2024/2026 Holders' Amended Counterclaim for breach of the implied covenant of good faith, equitable lien, equitable subrogation, and conversion against all defendants. The Bankruptcy Court also dismissed the causes of action for unjust enrichment and breach of the implied covenant asserted in the Langur Maize Counterclaim against all defendants. See Adversary Proceeding ECF Nos. 508, 509.

David A. Barrett, Esq.

February 16, 2024

Page 7

Without prejudice to the foregoing, Federal is reserving all rights to deny or limit coverage on additional grounds.

First, as noted above, under Insuring Clause I(C), coverage is provided only for a **Claim** made *against* the **Organization**. See Policy D&O Coverage Part Section I(C). Here, Wesco and the other Debtors filed their own affirmative complaint against various noteholders seeking declaratory and injunctive relief. Federal reserves the right to deny coverage for affirmative **Claims** made by the **Insureds**.

Second, covered **Loss** under the D&O Coverage Part means the amount which an **Insured** becomes legally obligated to pay as a result of any Claim, including compensatory damages, claimant's attorneys' fees, judgments, pre- and post-judgment interest, settlements, and **Defense Costs**. However, **Loss** does not include any portion of such amount that constitutes any: (1) cost of compliance with any order or agreement to provide non-monetary relief, including injunctive relief; (2) amount that is uninsurable under the law pursuant to which the D&O Coverage Part is construed; or (5) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding or demand subsequently gives rise to a **Claim**. As discussed above, the counterclaimants allege intentional wrongdoing and seek disgorgement, which may be uninsurable under California law. Federal therefore reserves all rights to deny coverage for an amount that does not constitute **Loss**, including amounts due for intentional wrongdoing, amounts in the nature of disgorgement or restitution, and amounts due and owed under a contract or agreement.

Third, Exclusion A(9) states that Federal shall not be liable for **Loss** on account of any **Claim** based upon, arising from or in consequence of: (1) any deliberately fraudulent act, any deliberate criminal act, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against Federal) establishes such a deliberate act or omission or a willful violation; or (c) an **Organization** having gained any profit, remuneration or other financial advantage to which such **Organization** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against Federal) establishes the gaining of such profit, remuneration or financial advantage. See Policy D&O Coverage Part Section V(A)(9), as amended by Endorsement No. 12 ¶3(G). As discussed above, the counterclaims allege intentional wrongdoing and improper profit and financial advantage gained by **Insureds**. Federal therefore reserves all rights in the event of a final, non-appealable adjudication of conduct or profit within the scope of Exclusion A(9).

Fourth, Federal reserves rights based on the Other Insurance clause. That clause states that if any **Loss** under the D&O Coverage Part is insurance under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess to the insurance afforded by the D&O Coverage Part), this coverage part shall be excess of and shall not contribute with

David A. Barrett, Esq.

February 16, 2024

Page 8

such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess contingent or otherwise. See Policy D&O Coverage Part Section XI(A).

Fifth, Federal reserves all rights under the Allocation clause. That clause states that the **Insureds** and Federal shall use their best efforts to determine an allocation between **Loss** that is covered by the D&O Coverage Part and loss, or any other amount, that is not covered by this Coverage Part based on the relative legal and financial exposures of the covered parties to the covered matters. See Policy D&O Coverage Part Section IX(A), amended by Endorsement No. 6 ¶(2). Even assuming any portion of the counterclaims by the 2024/2026 Holders or Langur Maize were covered (and they are not), an allocation between covered and uncovered loss based on relative legal and financial exposure would be required, including for **Defense Costs**.

In closing, please note that this letter addresses only those Policy provisions that appear pertinent at this time in light of the facts currently know and available to Federal. Federal reserves the right to review all coverage issues and not limited to those raised by any additional information or new developments. By limiting the Policy references to those cited, Federal does not waive any other Policy provision. Federal will re-evaluate its coverage position if there any material changes in the allegations or the facts. Please let us know if the **Insureds** have additional information that may be relevant to Federal's review or if you believe we have misapprehended any aspect of this matter.

If an **Insured** believes that all or part of a claim has been wrongfully denied or rejected, it may have the matter reviewed by the California Department of Insurance, Consumer Services Division located at 300 South Spring Street, South Tower, Los Angeles, CA 90013 or call (800) 927-HELP. This notice is provided to you pursuant to California Code of Regulations, Title No. 10, Chapter No. 5, Section 2695.7(b).

Federal continues to proceed in this matter subject to a full reservation of rights under the Policy and applicable law.

Sincerely,

WERNER AHARI MANGEL, LLP

By 

Leslie S. Ahari

Alexandra N. Kajari

cc: Sheila Glackin (sglackin@chubb.com)

Chubb Ref. No. KY22K2350029

Erica Sweetman (erica.sweetman@marsh.com)

Marsh No. 22LA_423252

EXHIBIT 11

BAILEY | CAVALIERI

R. STACY LANE
E slane@baileycav.com
D 614.229.3203

October 24, 2023

David A. Barrett, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
(David.barrett@lw.com)

BY EMAIL and
U.S. FIRST CLASS MAIL

Re: Insured: Wolverine Top Holding Corporation
Insurer: Everest National Insurance Company
Policy No.: PC2EX00007-212
Matters: (1) SSD Investments
(2) Langur Maize
File No.: 8-6620

Dear Mr. Barrett:

This law firm has been retained to represent the interests of Everest National Insurance Company (“Everest”) with respect to the above-referenced matters reported to Everest under Everest EZ Excess Policy No. PC2EX00007-212 (the “Excess Policy”) which was issued to Wolverine Top Holding Corporation (“Wolverine”). On behalf of Everest, this letter acknowledges receipt of copies of complaints in the following lawsuits:

- (1) SSD Investments Ltd, et al. v. Wilmington Savings Fund Society, FSB, et al., Index No. 654068/2022, Supreme Court of New York, County of New York (the “SSD Lawsuit”); and
- (2) Langur Maize, L.L.C. v. Platinum Equity Advisors, LLC, et al., Index No. 651548/2023, Supreme Court of New York, County of New York (the “Langur Maize Lawsuit,” and collectively with the SSD Lawsuit, the “Lawsuits”)

This letter also acknowledges receipt of copies of letters from Federal Insurance Company (“Federal”) and its counsel dated February 24, May 4 and August 17, 2023 which addressed coverage issues and defenses for the Lawsuits and which fully reserved Federal’s rights.

We are directing this letter to you as the authorized representative of Wolverine and its Subsidiaries who are named as defendants in the Lawsuits, and of Patrick Bartels who is named as a defendant in the SSD Lawsuit. To the extent you are not acting on behalf of Wolverine, its Subsidiaries and Mr. Bartels for insurance coverage purposes, we request that you forward a copy

Nathaniel McKitterick, Esq.

October 24, 2023

Page 2

of this letter to them or to their authorized insurance representative for his/her information, and inform us with whom we should communicate in the future regarding this matter.

A. The Excess Policy

Everest issued the Excess Policy to Wolverine for the period July 1, 2021 through July 1, 2022 (the “Policy Period”). The Excess Policy affords up to \$10 million in coverage excess of a retention and \$10 million in underlying coverage afforded by Federal.

Subject to the terms, conditions and limitations of the Excess Policy, the Excess Policy shall follow form to the terms and conditions of the Primary Policy. Coverage shall attach only after the Aggregate Limit of Liability of the Underlying Insurance has been exhausted by the payment of Loss (as defined in the Primary Policy) by the insurer of the Primary Policy, the Named Insured, any excess/DIC insurer, any policy that is tied into any Underlying Insurance, and/or any other source.

C. Coverage Issues/Defenses

Because the Excess Policy is subject to the same terms and conditions as the primary policy issued by Federal, Everest adopts and incorporates herein each and every coverage defense/issue asserted by Federal in its February 24 and May 4, 2023 letters and in its counsel’s letter dated August 17, 2023 as the coverage position of Everest. Specifically, Everest denies coverage to the entity insured defendants for the Lawsuits based on the contract exclusion, and reserves its rights as to all insureds based on, without limitation, the following: (i) the definition of Organization; (ii) the definition of Insured Person; (iii) insured capacity/definition of Wrongful Acts; (iv) the definition of Loss; (v) the fraud/dishonesty exclusion; (vi) the personal profit exclusion; (vi) other insurance; and (vii) allocation.

D. Reservation of Rights

In addition to the coverage issues and defenses discussed above, Everest fully reserves all of its rights and defenses under the Excess Policy, the Primary Policy, and available at law with respect to coverage for this matter, including but not limited to the right to deny coverage or to raise additional policy terms, conditions, and defenses as additional facts come to our attention. Nothing herein shall be construed as a waiver of any rights or defenses Everest now has or hereafter may have under the Excess Policy, the Primary Policy and available at law.

While we encourage you to first contact the undersigned with any questions or concerns you may have with regard to the positions expressed in this letter, you may be entitled to have your claim reviewed by the California Department of Insurance to the extent that you disagree with any or all of the positions we have expressed herein. Your inquiry should be directed as follows:

Nathaniel McKitterick, Esq.

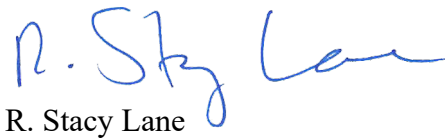
October 24, 2023

Page 3

California Department of Insurance
Claims Service Bureau
300 South Spring Street
Los Angeles, CA 90013
1-800-927-4357 (in state)
1-213-897-8921 (out of state)

Very truly yours,

BAILEY CAVALIERI LLC



R. Stacy Lane

cc: Lindsay Goodloe, Esq. (Lindsay.Goodloe@everestglobal.com)
Erica Sweetman, Esq. (Erica.Sweetman@marsh.com)

EXHIBIT 12

BAILEY | CAVALIERI

R. STACY LANE
E slane@baileycav.com
D 614.229.3203

May 21, 2024

David A. Barrett, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
(David.barrett@lw.com)

BY EMAIL and
U.S. FIRST CLASS MAIL

Re: Insured: Wolverine Top Holding Corporation
Insurer: Everest National Insurance Company
Policy No.: PC2EX00007-212
Matters: (1) Langur Maize/Noteholder Counterclaims
(2) Creditors Committee Claims¹
File No.: 8-6620

Dear Mr. Barrett:

This law firm has been retained to represent the interests of Everest National Insurance Company (“Everest”) with respect to the above-referenced matter reported to Everest under Everest EZ Excess Policy No. PC2EX00007-212 (the “Excess Policy”) which was issued to Wolverine Top Holding Corporation (“Wolverine”). On behalf of Everest, this letter acknowledges receipt of:

- (i) a November 9, 2023 email from the broker which provided notice and copies of crossclaims, third-party claims and counterclaims asserted by Langur Maize and the 2024/2026 Noteholders in the Wesco bankruptcy proceeding (the “Counterclaims”);² and
- (ii) a December 28, 2023 email from the broker which provided notice of, and a heavily redacted copy of, a Corrected Omnibus Motion of the Official Committee of Unsecured Creditors for exclusive leave, standing and authority to prosecute and settle certain claims, causes of action, and claim objections on behalf of the debtors’ estates and claim objection, as well as a heavily redacted proposed

¹ This matter was initially set-up as Everest File No. 11-8243.

² In re. Wesco Aircraft Holdings, Inc., et al., Case No. 23-90611, United States Bankruptcy Court, Southern District of Texas (the “Bankruptcy Proceeding”).

David A. Barrett, Esq.

May 21, 2024

Page 2

adversary proceeding complaint, filed in the Bankruptcy Proceeding (the “Creditors’ Claims”).

Everest also is in receipt of a copy of a February 16, 2024 letter from counsel for Federal Insurance Company (“Federal”) which provided Federal’s coverage position with respect to the Counterclaims, as well as a January 10, 2024 email from the broker advising Everest that the Creditors’ Claims have been resolved. If the Creditors’ Claims have not been resolved, please so advise us as this letter does not address coverage issues for the Creditors’ Claims under the Excess Policy.

We are directing this letter to you as the authorized representative of Wolverine and its Subsidiaries who were named as defendants in connection with the Counterclaims. To the extent you are not acting on behalf of Wolverine or its Subsidiaries for insurance coverage purposes, we request that you forward a copy of this letter to them or to their authorized insurance representative for his/her information, and inform us with whom we should communicate in the future regarding this matter.

A. The Excess Policy

Everest issued the Excess Policy to Wolverine for the period July 1, 2021 through July 1, 2022 (the “Policy Period”). The Excess Policy affords up to \$10 million in coverage excess of a retention and \$10 million in underlying coverage afforded by Federal.

Subject to the terms, conditions and limitations of the Excess Policy, the Excess Policy shall follow form to the terms and conditions of the primary policy issued by Federal (the “Primary Policy”). Coverage shall attach only after the Aggregate Limit of Liability of the Underlying Insurance has been exhausted by the payment of Loss (as defined in the Primary Policy) by the insurer of the Primary Policy, the Named Insured, any excess/DIC insurer, any policy that is tied into any Underlying Insurance, and/or any other source.

C. Coverage Issues/Defenses

Because the Excess Policy is subject to the same terms and conditions as the Primary Policy issued by Federal, Everest adopts and incorporates herein each and every coverage defense/issue asserted by Federal in its February 16, 2024 letter as the coverage position of Everest. Specifically, Everest denies coverage to the entity insured defendants for the Counterclaims based on the contract exclusion, and reserves its rights based on, without limitation, the following: (i) the definition of Organization; (ii) non-coverage for affirmative claims; (iii) the definition of Wrongful Acts; (iv) the definition of Loss; (v) the fraud/dishonesty exclusion; (vi) the personal profit exclusion; (vi) other insurance; and (vii) allocation.

David A. Barrett, Esq.

May 21, 2024

Page 3

D. Reservation of Rights

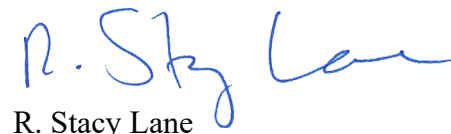
In addition to the coverage issues and defenses discussed above, Everest fully reserves all of its rights and defenses under the Excess Policy, the Primary Policy, and available at law with respect to coverage for this matter, including but not limited to the right to deny coverage or to raise additional policy terms, conditions, and defenses as additional facts come to our attention. Nothing herein shall be construed as a waiver of any rights or defenses Everest now has or hereafter may have under the Excess Policy, the Primary Policy and available at law.

While we encourage you to first contact the undersigned with any questions or concerns you may have with regard to the positions expressed in this letter, you may be entitled to have your claim reviewed by the California Department of Insurance to the extent that you disagree with any or all of the positions we have expressed herein. Your inquiry should be directed as follows:

California Department of Insurance
Claims Service Bureau
300 South Spring Street
Los Angeles, CA 90013
1-800-927-4357 (in state)
1-213-897-8921 (out of state)

Very truly yours,

BAILEY CAVALIERI LLC



R. Stacy Lane

cc: Lindsay Goodloe, Esq. (Lindsay.Goodloe@everestglobal.com)
Erica Sweetman, Esq. (Erica.Sweetman@marsh.com)