Docket #0387 Date Filed: 07/10/2023

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

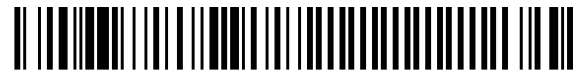
In re:	Chapter 11
WESCO AIRCRAFT HOLDINGS, INC., *et al*,[1]	Case No. 23-90611 (DRJ)
Debtors.	(Jointly Administered)

LANGUR MAIZE, L.L.C.'s SUPPLEMENTAL OBJECTION TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF

Langur Maize, L.L.C. ("Langur Maize"), the holder of a majority of the outstanding 13.125% Senior Notes due 2027 issued by Debtor Wesco Aircraft Holdings, Inc. ("Wesco"), by and through its counsel, hereby submits this Supplemental Objection to the Debtors' *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties; (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [ECF No. 84] (the "DIP Motion").[2]

[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 the 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 is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion. This Supplemental Objection supplements the *Limited Objection And Reservation Of Rights Of Langur Maize, L.L.C. To The Debtors' Emergency Motion For Entry For Interim And Final Orders (I) Authorizing The Debtors To (A)*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SUPPLEMENTAL OBJECTION

1. Unlike the Interim DIP Order entered on June 2, 2023, the Proposed Final DIP Order, first made available to Langur Maize on Friday, July 7, 2023 at 7:08 p.m. ET, would make proceeds of avoidance actions subject to liens and superpriority claims in favor of the First Lien Noteholder Group and Prepetition 1.25L Secured Parties.[3] This is grossly unfair to unsecured creditors and inappropriate.

2. First, the First Lien Noteholder Group and Prepetition 1.25L Secured Parties (both of whom would be beneficiaries of superpriority claims that could be satisfied using proceeds of avoidance actions under the Proposed Final DIP Order) are the very same parties against whom avoidance actions will likely be asserted. As the Court is aware, the First Lien Noteholder Group and Prepetition 1.25L Secured Parties are, respectively, defendants in two distinct New York state court actions that allege insider preference and fraudulent transfer claims in connection with two

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Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Modifying The Automatic Stay, And (V) Granting Related Relief [ECF 289] (the "Limited Objection") and responds to the *Debtors' Omnibus Statement And Reply Regarding Objections To Debtors' Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To (A) Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Modifying The Automatic Stay, And (V) Granting Related Relief* [ECF 383] (the "Debtor Statement"); the *Statement Of The First Lien Noteholder Group In Support Of The Debtors' Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing Them To (A) Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Modifying The Automatic Stay, And (V) Granting Related Relief* [ECF 385] (the "First Lien Noteholder Group Statement"); and the *Proposed Final Order (I) Authorizing The Debtors To (A) Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Modifying The Automatic Stay, And (V) Granting Related Relief* [ECF 382-1] (the "Proposed Final DIP Order").

[3] *See* Proposed Final DIP Order ¶ 5 (DIP Superpriority Claims against Avoidance Proceeds), ¶ 6(a) (DIP Collateral includes Avoidance Proceeds); ¶ 13(a) (Prepetition 1L Notes Secured Parties granted adequate protection liens on DIP Collateral); ¶ 13(b) (Prepetition 1L Notes Secured Parties granted Section 507(b) Claim payable from and with recourse to Avoidance Proceeds); ¶ 13(c) (Prepetition 1.25L Notes Secured Parties granted adequate protection liens on DIP Collateral); ¶ 13(d) (Prepetition 1.25L Notes Secured Parties granted Section 507(b) Claim payable from and with recourse to Avoidance Proceeds); ¶ 13(e) (Prepetition ABL Secured Parties granted adequate protection liens on DIP Collateral); ¶ 13(f) (Prepetition ABL Secured Parties granted 507(b) claim payable from and with recourse to Avoidance Proceeds).

separate prepetition exchange transactions. These avoidance claims now belong to the estate and represent assets that might be the most significant source of recovery for unsecured creditors. Allowing recoveries from these claims to potentially be swallowed up through DIP or adequate protection liens or superpriority claims by the very same defendants who may be contributing these recoveries on account of their prepetition receipt of preferential or fraudulent transfers is clearly unjust. Indeed, the Prepetition 1.25L Secured Parties (one of which is Platinum Equity Advisors, LLC, the Debtors' sponsor) were themselves unsecured noteholders until they participated in a 2022 unsecured notes exchange transaction that improperly upgraded them into "1.25 Lien" noteholders. It would be absurdly inequitable if avoidance actions were successfully prosecuted against these defendants only to have any proceeds swept back into the coffers of those defendants on account of the secured status that they improperly obtained for themselves.[4] Other avoidance actions could well be filed by appropriate estate fiduciaries.

3. Second, the facts of this case, revealed by public disclosures by the Debtors at the time of the commencement of the chapter 11 cases, show that no post-petition liens should be granted on avoiding power actions or their proceeds. These materials, which are admissions and therefore admissible evidence,[5] show that the 1.25 Lien noteholders and the Debtors (who no doubt will point out that they are fiduciaries for all constituents in these chapter 11 cases) have been negotiating a plan that would result in small distributions to holders of 1.25 Lien claims and no distribution at all to unsecured creditors. This is demonstrated by a series of reorganization plan

[4] The First Lien Noteholder Group argues that "[e]ven if avoidance proceeds were to be recovered from a particular party, the fact that such proceeds would continue to secure the remaining valid administrative priority claims of such party on account of the new money DIP Financing and any surviving adequate protection claims in no way roundtrips any such litigation proceeds—it simply means the Debtors' estates are not entitled to recover twice." First Lien Noteholder Group Statement at ¶ 29. This argument simply begs the question by assuming that the DIP liens or super priority claims on Avoidance Proceeds are valid. The point is that they should not be granted in the first place.

[5] *See* Fed. R. Evid. 801; Fed. R. Evid. 807.

proposals (attached hereto as Exhibit 1) that the Debtors publicly disclosed were made by the First Lien Noteholder Group, the Prepetition 1.25L Secured Parties, and the Debtors just before the filing of these chapter 11 cases. All of these proposals provide only limited recoveries to the Prepetition 1.25L Secured Parties. None of the proposals suggests any recovery at all for unsecured claims, which likely reflects the Debtors' views that substantially all of their assets secure the 1L and 1.25L debt.[6]

4. The First Lien Noteholder Group — which seeks to obtain recourse to proceeds of avoiding power actions, property clearly not subject to any pre-petition lien — proposed that the Prepetition 1.25L Secured Parties should receive either 4.5% of the company's common equity or $28 million in cash (at the option of the First Lien Noteholder Group). The proposal, like the others, makes no reference to any distribution to unsecured creditors. The math is simple. According to the Debtors, the total amount owed to holders of 1.25L liens is $533 million.[7] Assuming that the Debtors' assertions concerning the scope of liens granted to the 1L and 1.25L holders is substantially accurate, in order for the 1.25L position to be paid in full and leave a recovery for unsecured creditors, the company would have to be worth more than $11.84 billion ($533 million divided by 0.045). That number is more than three times the Debtors' reported debt. Since that number can't possibly be correct, it is clear that the 1.25L debt would not receive much value at all under any of the plan proposals and the unsecured creditors would receive even less

[6] *See Declaration Of Peter Laurinaitis In Support Of Debtors' Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing Them To (A) Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Modifying The Automatic Stay, And (V) Granting Related Relief* [ECF 87] (the "Laurinaitis Decl.") at ¶ 22 ("[M]y understanding is that substantially all of the Debtors' material assets are effectively encumbered under their existing capital structure and the Debtors' available unencumbered assets are insufficient to secure a financing of this type and structure.").

[7] *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* [ECF 13] ¶ 54 ("As of May 15, 2023, approximately . . . $533 million of 2027 Secured 1.25L Notes are outstanding.").

and likely nothing. Using the $28 million dollar alternative distribution as a guide for the valuation of the 4.5% of the equity that would be offered to the 1.25L holders under the 1L Group's plan puts the total equity value of the reorganized debtors at $622.2 million ($28 million divided by 0.045). The $28 million distribution works out to a recovery to the 1.25L debt of 5.25 cents on the dollar. All of the foregoing demonstrates that the First Lien Noteholders' plan will leave absolutely nothing for unsecured creditors.

5. Using the $622.2 million equity value implied by the 1L group's own proposal, the Debtors plan proposal gives value of approximately 5.8 cents on the dollar to the 1.25L holders (the Debtors proposed 5% equity to the 1.25L holders, resulting in $31.11 million at a $622.2 million valuation, divided by $533 million). And the initial demand by the 1.25 lenders equity proposed a value of approximately 10.5 cents on the dollar (using the same $622.2 equity valuation assumption $56 million at a $622.2 million valuation, divided by $533 million) and somewhat more in warrant value. No proposal suggests the existence of any recovery for unsecured creditors and no proposal even includes a proposal for unsecured creditors.

6. Clearly then, the First Lien Noteholder Group expects that secured creditors will be the beneficiaries of all collateral that is pledged to them, and that the only assets remaining for unsecured creditors will be (1) unencumbered property and (2) the avoidance actions and their proceeds. As we have seen, the Debtors believe that there is essentially no unencumbered property.[8] That leaves the avoidance actions and their proceeds as the only likely source of recovery for unsecured creditors in this case. That recovery would be available to unsecured creditors even if the Debtors were liquidated today.

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[8] *See* n.8 *infra*.

7. A DIP loan and use of cash collateral will support the operation of collateral and the preservation of that collateral. But in a case where the First Lien Noteholder Group, the 1.25 Lien holders, and the Debtors all believe that the value of the business is insufficient for secured creditors to be paid even close to in full, it makes no sense for the sole remaining assets available to unsecured creditors to be seized and used to offset any diminution in value of the collateral for the benefit of the secured creditors alone.[9] If the First Lien Noteholder Group (with or without the assent of the 1.25L holders) desires to see the Debtors' business operated in order to maximize the value of their pre-petition collateral, they alone must also bear any associated risk, as it appears that they do not believe any unsecured creditor has any opportunity to see any upside from that effort. This is consistent with long-standing and binding authority that proceeds of avoidance actions are to be used for the benefit of unsecured creditors, not the reorganized debtors. *See In re Tex. Gen. Petroleum Corp*., 52 F.3d 1330, 1335-36 (5th Cir. 1995) ("The primary concern is whether a successful recovery by the appointed representative would benefit the debtor's estate and particularly, the debtor's unsecured creditors. . . . The proceeds recovered in avoidance actions should not benefit the reorganized debtor; rather, the proceeds should benefit the unsecured creditors.") (citations omitted); *ASARCO LLC v. Ams. Mining Corp*., 404 B.R. 150, 161 (S.D. Tex. 2009) ("[T]he ultimate purpose of most fraudulent-transfer laws . . . is to protect unsecured creditors and, as far as possible, to make them whole.").

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[9] The First Lien Noteholder Group cites a number of cases to support its claim that courts in this district have repeatedly approved the grant of liens on avoidance proceeds, but makes no mention of whether these cases included facts, like here, showing that unsecured creditors' only source of potential recoveries were avoidance actions and the proceeds thereof. First Lien Noteholder Group Statement at n.9. In any event, there are also numerous cases (including from this district) that have explicitly omitted avoidance proceeds from DIP collateral. *See In re GWG Holdings, Inc.*, No. 22-90032 (MI) (Bankr. S.D. Tex. Dec. 1, 2022) [ECF 1144] (carving out avoidance actions and proceeds from the collateral securing superpriority DIP loans); *In re ION Geophysical Corp.*, No. 22-30987 (MI) (Bankr. S.D. Tex. May 9, 2022) [ECF 230] (same); *see also In re CB Holding Corp.*, 447 B.R. 222, 229 (Bankr. D. Del. 2010) (same); *In re Gen. Growth Props., Inc.*, 412 B.R. 122, 130 (Bankr. S.D.N.Y. 2009) (same).

Arguments that Langur Maize's Objection is untimely are an effort at distraction and have no basis whatsoever.

8. Both the Debtors' Statement and the First Lien Noteholder Group Statement make utterly unfounded objections to the timeliness of the objection stated herein, insisting that it has "consistently" been clear and "unmistakable" that the Final Order would provide for liens on Avoidance Proceeds, and selectively citing portions of the first day hearing transcript in an effort to support their argument.

9. The Court will recall that the first day hearing included an afternoon session and an evening session. At the afternoon session, Mr. Schaible (counsel to the First Lien Noteholder Group) stated that "the liens on the [Avoidance Proceeds] would be subject to the final order." First Day Tr. at 35:11-12. This is the only portion of the transcript that the First Lien Noteholder Group cites in the First Lien Noteholder Group Statement in support of their argument that it "inconceivable" that Langur Maize could argue that the Avoidance Proceeds would not be encumbered.[10] But during the recess after the afternoon session, Langur Maize, the Debtors, and the First Lien Noteholder Group negotiated a change to the Interim DIP Order to make clear that, subject to entry of the Final Order (without saying anything about what the Final Order might or might not provide), liens would *not* be granted on Avoidance Proceeds. Later, during the evening session, counsel for Langur Maize stated on the record:

> [W]hat we had asked for is the parenthetical at the end of Paragraphs — Section 6(a) of the interim DIP order to say "and for the avoidance of doubt, subject to the entry of the final order, unencumbered property ***shall not include avoidance proceeds***." And, you know, our point just being that ***we didn't think it was appropriate to grant relief on avoidance proceeds here where, you know, the proceeds may well be recovered from avoidance actions against the DIP lenders themselves***.

[10] First Lien Noteholder Group Statement ¶ 26.

(First Day Tr. at 132:2-10 (emphasis added)). Counsel for Langur Maize further explained that this same language should be applied to the other relevant provisions of the Interim DIP Order governing Avoidance Proceeds, including with respect to clarifying that superpriority claims would not have recourse to Avoidance Proceeds.

10. Because the consensually entered Interim DIP Order provided that Avoidance Proceeds would not be subject to any liens or superpriority claims unless otherwise stated in a final order, Langur Maize reasonably waited to see the Proposed Final DIP Order.[11] In the meantime, Langur Maize timely filed a Limited Objection, which explicitly states: "As of the time that this Objection is being filed, no Final Order on the DIP Motion has been posted to the docket. Langur Maize therefore files this Objection to reserve its rights to object to the Final Order once it has been posted."[12]

11. In fact, Langur Maize asked the Debtors several times for the Proposed Final DIP Order, but the Debtors did not send it to Langur Maize until *the night of Friday, July 7 at 7:08 p.m. ET*. This was the first time Langur Maize discovered that the Debtors had changed the language to provide that Avoidance Proceeds *would* be subject to liens and superpriority claims. Counsel to Langur Maize informed counsel to the Debtors of the issues raised herein during the weekend. For the forgoing reasons, argument that this Supplemental Objection is untimely must be rejected.

[11] There was no reason for Langur Maize to believe that the language would revert back to granting liens or superpriority claims on Avoidance Proceeds until it saw the Proposed Final DIP Order. For example, it was entirely possible that negotiations with other parties such as the Official Committee of Unsecured Creditors could have resulted in a full carve-out of Avoidance Proceeds from the DIP Collateral.

[12] Limited Objection ¶ 2.

Langur Maize has worked with the Debtors and First Lien Noteholder Group to resolve other objections.

12. Since filing its Limited Objection, the Debtors, Langur Maize and the First Lien Noteholder Group have worked constructively in an effort to resolve the objections set forth in the Limited Objection. Langur Maize appreciates that certain language has been added to the Proposed Final DIP Order to address some of the concerns raised by Langur Maize. Nevertheless, Langur Maize continues to reserve its rights with respect to issues including those raised in this Supplemental Objection and also including if there are any changes to this agreed language in the Final DIP Order.

CONCLUSION

Langur Maize respectfully submits that the Final DIP Order should not make Avoidance Actions subject to any DIP or adequate protection liens or superpriority claims in favor of the secured lenders.

DATED: July 10, 2023

JONES DAY

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed on this July 10, 2023, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ Michael C. Schneidereit
Michael C. Schneidereit (*pro hac vice*)

EXHIBIT 1

1L and 1.25L RSA Negotiation

Side by Side

	1.25L Proposal (May 19th)	1L Proposal (May 24th)	Company Proposal (May 26th)
Common Equity to 1.25L	> 9.0%	> 4.5% – Or $28mm cash at the option of the First Lien Noteholder Group	> 5.0% – N/A
Warrants to 1.25L	> 5.0% > 5-year tenor > Struck at par plus accrued plus makewhole with Black Scholes Protection	> No warrants to the 1.25L	> Agree
Other Terms	> Emergence debt of no more than $600mm	> N/A	> Emergence debt of no more than $700mm
	> Agree to prior 1L proposal of 2.0% warrants to the Unsecureds, struck at par plus accrued (including makewhole) through the 1.25L – Any further economics will be subject to mutual dilution	> Agree	> Agree