Docket #1486 Date Filed: 9/18/2024

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS - HOUSTON DIVISION

In re **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*,[1] Debtors.	Case No. 23-90611 (MI) Chapter 11 (Jointly Administered)
WESCO AIRCRAFT HOLDINGS, INC., *et al.*, Plaintiffs, *v.* **SSD INVESTMENTS LTD.**, *et al.*, Defendants.	Adv. Pro. No. 23-03091 (MI)
SSD INVESTMENTS LTD., *et al.*, Counterclaim Plaintiffs, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	
LANGUR MAIZE, L.L.C., Crossclaim Plaintiff, *v.* **PLATINUM EQUITY ADVISORS, LLC**, *et al.*, Crossclaim Defendants.	
LANGUR MAIZE, L.L.C., Third-Party Plaintiff, *v.* **UNNAMED PLATINUM FUNDS c/o PLATINUM EQUITY ADVISORS, LLC**, *et al.*, Third-Party Defendants.	
LANGUR MAIZE, L.L.C., Counterclaim Plaintiff, *v.* **WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*, Counterclaim Defendants.	

NON-DEBTOR COUNTERCLAIM DEFENDANTS' SUPPLEMENTAL POST-TRIAL BRIEF ON 2024/2026 HOLDERS' CLAIM FOR TORTIOUS INTERFERENCE

[1] The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at http://www.kccllc.net/Incora/. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

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1. The Non-Debtor Counterclaim Defendants (the "Counterclaim Defendants") respectfully submit this supplemental brief addressing the tortious interference claims, while incorporating their June 17, 2024 post-trial brief. *See* ECF 1396.

PRELIMINARY STATEMENT

2. In light of the evidence adduced at trial, well-established New York law, and the Court's July 10 partial oral ruling (the "Court's Ruling"), the 2024/2026 Holders' outstanding tortious interference claims must fail. For one, the Court ruled that there was no breach of the 2024 Indenture, and a breach of contract is a necessary element of any tortious interference with contract claim. The Court also ruled that the lien release was not effective as to the 2026 Holders. Accordingly, their contractual rights were not impaired and the Counterclaim Defendants did not cause them any harm. For another, the 2024/2026 Holders have not established that any Counterclaim Defendant intentionally and improperly procured a breach.

3. Further, the 2024/2026 Holders' claims are barred as they have failed to put forward any evidence of malice, fraud or illegality to overcome the Counterclaim Defendants' clear entitlement to New York's economic interest defense as substantial stakeholders in Incora. In *every case* cited concerning "uptier" or "liability management transactions" like the 2022 Transaction, courts have applied the economic interest defense. The 2024/2026 Holders have to date never addressed this line of precedent, which now includes this Court's recent decision in *Robertshaw US Holding Corp. v. Invesco Senior Secured Management Inc.* (*Robertshaw*), 2024 WL 3200467 (Bankr. S.D. Tex. June 20, 2024). For all these reasons, the Court should grant judgment in favor of the Counterclaim Defendants.

ARGUMENT

4. A plaintiff alleging tortious interference with contract under New York law "must show the existence of its valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach, and damages." *White Plains Coat & Apron Co. v. Cintas Corp*., 8 N.Y.3d 422, 426 (2007); ECF 1396 (Counterclaim Defs.' Post-trial Br.) at 73. Neither the 2024 Holders nor the 2026 Holders can meet this standard.

I. The 2024/2026 Holders Failed to Show Injury or Breach

A. The 2024 Holders' Claim Fails Because There Was No Breach

5. A breach is a necessary element of any tortious interference with contract claim. *White Plains*, 8 N.Y.3d at 426 (plaintiff must show "defendant's intentional and improper procuring of a breach"). But the Court found no breach of the two-thirds vote requirement and held that "Section 3.02 of the 2024 indenture was waived." 7/10 Tr. at 37:14-18. Because the Court found no breach of the 2024 Indenture, the 2024 Holders' claim fails.

B. The 2026 Holders Cannot Show the Counterclaim Defendants Caused Them Any Impairment

6. In granting relief to the 2026 Holders, the Court ruled that "the rights, liens, and interests that were for the benefit of all of the holders of the 2026 Notes as they existed on March 27th, 2022, remained in full force and effect on March 29th, 2022"—in other words, "the 2022 transaction was not effective to diminish the liens and rights of all of the 2026 holders." 7/10 Tr. at 3:13-16; 6:25-7:1. While the Counterclaim Defendants reserve their right to appeal the Court's Ruling, its import is clear: the 2026 Holders' liens were not taken away. Because the Court held the release was not effective, the 2026 Holders cannot establish their rights were impaired and their claim must fail. *Cf. Lincoln Life & Annuity Co. of New York v. Wittmeyer*, 211 A.D.3d 1564, 1568-69 (4th Dep't 2022) (no "breach" to support a tortious-interference claim if allegedly

breaching conduct was ineffective); *Don King Prods., Inc. v. Douglas*, 742 F. Supp. 741, 772-74 (S.D.N.Y. 1990) (breach element of tortious interference claim could not be satisfied where secondary agreement that would violate exclusivity agreement would not come into effect until exclusivity agreement was terminated or invalidated).

7. Likewise, any breach could not have injured the 2026 Holders because they maintained their liens. *See Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413, 424 (1996) (to succeed on a tortious interference with contract claim, a plaintiff must show "damages resulting" from an "actual breach [] of contract"). New York courts have consistently held that a plaintiff does not suffer damages where the act constituting the purported breach was not legally effective. *See, e.g.*, *Toffel v. Odzer*, 6 A.D.2d 843, 844 (2d Dep't 1958) (tortious interference claim dismissed where complaint did not allege that purported breach "caused appellant to lose any rights under the option agreement"); *In re KG Winddown, LLC*, 632 B.R. 448, 495 (Bankr. S.D.N.Y. 2021) (defendants could not "be liable for tortious interference because no damages resulted from the underlying breach" where amendment was "rescinded [] in its entirety . . . before [an amending party] acted on it to the detriment of [plaintiffs]"); *Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1043 (3d Dep't 1996) (where share transfer did not take effect until the expiration of a voting trust, plaintiff did not suffer any injury upon the share transfer capable of giving rise to a tortious interference claim). Any cognizable injury has already been remedied by the Court's resolution of their breach of contract claim. *See Singleton Mgmt., Inc. v. Compere*, 243 A.D.2d 213, 218 (1st Dep't 1998) (double recovery from tortious interference and breach of contract claims not permitted). Alternatively, their tortious interference claims are moot. *Cf. Grattan v. Societa per Azzioni Cotonifico Cantoni*, 151 N.Y.S. 2d 875, 887 (Sup. Ct. N.Y. Cty. 1956) (dismissing as moot affirmative defense in tortious interference case where predicate for the defense did not exist).

II. The 2024/2026 Holders Failed to Show Intentional Procurement of a Breach

8. The Counterclaim Defendants should also prevail because the 2024/2026 Holders have not shown that Defendants intentionally procured any breach, an element the 2024/2026 Holders have scarcely addressed. ECF 1396 at 73-75. "[I]t is not enough that a defendant engaged in conduct with a third-party that happened to constitute a breach . . . the evidence must show that the defendant's ***objective*** was to procure such a breach." *See, e.g.*, *Roche Diagnostics GmbH v. Enzo Biochem, Inc.*, 992 F. Supp. 2d 213, 221 (S.D.N.Y. 2013) (emphasis added).[2]

9. *Robertshaw* is instructive. There, Judge Lopez applied New York law to the tortious interference claim of a secured creditor against One Rock, Robertshaw's equity sponsor and new money lender, for its alleged interference with a credit agreement through participation in a liability management transaction. 2024 WL 3200467, at *5-6. Despite finding the credit agreement was breached, *see id.* at *10, Judge Lopez rejected the tortious interference claim on multiple grounds, including that each of the parties had their own reasons for agreeing to the deal: "Robertshaw's actions were informed by its advisors and its independent director" and the secured lenders "also independently decided to enter into the December Transactions." *Id.* at *13. One Rock's goal "was to help Robertshaw finance its turnaround plan by providing it necessary liquidity and avoiding the harm caused by a January 2, 2024 bankruptcy filing." *Id.* Thus, "One Rock did not intentionally procure any breach of the [credit agreement], and One Rock was not the but for cause of any such breach by Robertshaw or the Lender Plaintiffs." *Id.*

[2] *See also Wellington Shields & Co. LLC v. Breakwater Inv. Mgmt. LLC,* 2016 WL 5414979, at *5 (S.D.N.Y. Mar. 18, 2016) (argument that defendants financed additional loans to breaching party "to benefit themselves, and gain further control" only "concede[d] that Defendants' objective was to protect [their] own investments, not to procure a breach of contract . . . ").

10. The Court should reach the same conclusion here. Each group engaged with Incora in arm's-length negotiations and/or made meaningful concessions in favor of the Company. *See, e.g.*, ECF 1396 at 56; 7/10 Tr. at 12:10-13 (finding that meaningful concessions were made by the majority group in the course of negotiations).[3] The Company, in consultation with its advisors, then elected to enter into the 2022 Transaction after determining it was in the Company's best interests to do so. ECF 1396 at 56-58, 73-74; 7/10 Tr. at 12:20-22 ("[T]he company and its advisors sincerely believed the 2022 transaction would be in the Company's best interests."); *see also id.* at 13:15-16. There is no evidence that any participant in the 2022 Transaction set out to breach the Indentures or caused the Company to breach the Indentures; to the contrary, the Company formally represented that the Transaction was authorized, and the uncontradicted testimony is that each of the Counterclaim Defendants' commercial understanding, like the Company's advisors, was that the Indentures permitted the 2022 Transaction.[4]

III. The Economic Interest Defense Bars All Tortious Interference Claims

11. *Finally,* as New York courts have repeatedly affirmed in the liability management transaction context, any claim for tortious interference is subject to an economic interest defense. Where that defense applies, plaintiffs must show malice, fraud or illegality. The 2024/2026 Holders have adduced no evidence whatsoever to meet that standard.

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[3] The 2024/2026 Holders' efforts to attribute the 2022 Transaction to "Platinum" are misplaced as a matter of corporate law. Members of the Incora board who were Platinum employees and who voted for the 2022 Transaction were acting as board members, not Platinum employees. To the extent the 2024/2026 Holders' theory is that Platinum intentionally induced a breach by participating in the Unsecured Exchange, the 2024/2026 Holders have failed to show this was a cause of the 2022 Transaction.

[4] ECF 1396 at 57-58, 73-74; *e.g.*, ECF 738 (O'Connell) at 131:1-10; ECF 1013 (Prager) at 16:1-17, 57:13-17; ECF 955 (Dostart) at 14:20-16:17; ECF 827 (Smith) at 88:24-89:21, 90:5-10, 94:18-22; ECF 602-4 (Milbank Opinion, Third Supplemental Indenture); ECF 602-19 (Milbank Opinion, Fourth Supplemental Indenture). There is also no evidence Citadel intentionally procured a breach here. Citadel had no meaningful role in the negotiations and was in no position to induce Incora to do anything. *See* ECF 1142 (Rochard) at 143:14-144:21, 145:2-4, 147:4-13; *see also* ECF 955 (Dostart) at 91:24-92:4; 92:13-93:3.

12. Under New York law, where a party "acted to protect its own legal or financial stake in the breaching party's business," a defendant does not act "improperly," and cannot be liable for tortious interference even if it intentionally procured a breach. *White Plains*, 8 N.Y.3d at 426. The economic interest defense applies "where defendant was the breaching party's creditor," *id.*, and offers robust protection: "One who has a financial interest in the business of another possesses a ***privilege to interfere*** with the contract between the other and someone else if his purpose is to protect his own interests and if he does not employ improper means"—meaning "malice" or "fraudulent or illegal means." *Audax Credit Opportunities Offshore Ltd. v. TMK Hawk Parent, Corp.* (*Trimark*), 72 Misc. 3d 1218(A), at *14-15 (N.Y. Sup. Ct. N.Y. Cty. Aug. 16, 2021) (emphasis added) (quotations omitted); *see also Foster v. Churchill*, 87 N.Y.2d 744, 750 (1996). Malice, in this context, requires evidence that the defendant acted with the "***sole purpose*** of inflicting intentional harm" on the plaintiff. *U.S. Bank Nat'l Ass'n v. Triaxx Asset Mgmt. LLC* (*Triaxx*), 2019 WL 4744220, at *10 (S.D.N.Y. Aug. 26, 2019) (emphasis added) (internal citation omitted). It is not enough to show that "the absence of good faith motivated [a defendant's] actions." *Foster*, 87 N.Y.2d at 751.

13. *Robertshaw* is again instructive. Judge Lopez held that One Rock "had a right under New York law to protect its economic interest in Robertshaw by entering into the [transactions] and not allowing what it believed to be a value-destructive bankruptcy filing." 2024 WL 3200467, at *14. With "no meaningful evidence that One Rock acted for any reason other than to protect its economic interest," the Court granted judgment in its favor. *Id.*

14. *Robertshaw* accords with longstanding principles of New York law. Indeed, in each of the *only* three New York cases dealing with liability management transactions, New York courts have dismissed tortious interference claims against defendants who provided financing to

an alleged breaching party in need of liquidity, and done so as a matter of law at the pleading stage.[5] *TriMark*, 72 Misc.3d 1218(A), at *11 (defense applied where liquidity transaction "provided new cash to the company at a precarious time" (cleaned up)); *Ocean Trails CLO VIII v. MLN TopCo Ltd.* (*Mitel*), Index No. 651327/2023 (N.Y. Sup. Ct.), Hr'g Tr. (Dec. 15, 2023) at 56:7-57:10 (dismissing claim against creditor who participated in non-pro rata transaction); *ICG Glob. Loan Fund 1 DAC v. Boardriders, Inc*. (*Boardriders*), 2022 WL 10085886, at *9-10 (N.Y. Sup. Ct. Oct. 17, 2022) (economic interest defense applied given defendant's financial interest in breaching party). The 2024/2026 Holders failure to date to address—much less distinguish—these directly on-point cases, despite Counterclaim Defendants' repeated reliance on them, speaks volumes. Moreover, it cannot seriously be disputed that the defense applies here.

15. PIMCO and Silver Point Noteholders. The PIMCO and Silver Point Noteholders, who held almost one billion dollars in Incora debt and were the Company's largest secured creditors,[6] held a substantial economic interest in the Company and acted to protect their investment by preserving the Company's financial well-being. ECF 1396 at 77.[7] Together with the majority group, the PIMCO and Silver Point Noteholders offered $250 million of much-needed new money, maturity extensions, and cash interest and amortization relief in the hope Incora would

[5] *See* ECF 1396 at 73-79; ECF 701 (PIMCO and Silver Point Noteholders' Opposition to 20242026 Holders' Emergency Motion in Limine) at ¶¶ 16-24; Main Dkt. ECF 1123 (PIMCO and Silver Point's Opposition to 2024/2026 Holders' Motion for Standing) at ¶21; ECF 215 (PIMCO and Silver Point Noteholders' Motion for Summary Judgment) at ¶¶ 55-58; ECF 321 (PIMCO and Silver Point Noteholders' Reply in Support of Motion for Summary Judgment) at ¶¶ 21-26.

[6] ECF 729-53, 729-54, 729-55, 700-58 at 5. PIMCO and Silver Point easily meet the minimal showing required based on the trial evidence. The 2024/2026 Holders' efforts to revive their denied motion in limine should be rejected. *See* ECF 1394 at 37.

[7] *See also Triaxx*, 2019 WL 4744220, at *9 (holding that "PIMCO, as a senior noteholder . . . is entitled to the economic interest defense."); *Ultramar Energy v. Chase Manhattan Bank*, 179 A.D.2d 592, 592-94 (1st Dep't 1992) (defense applied where creditor enforced security agreement against debtor); *Mitel*, Index No. 651327/2023, Hr'g Tr. at 57:2-4 (applying economic interest defense, observing that "case law recognizes a creditor has an interest in repayment of a loan that it has").

avoid a near-term bankruptcy filing. ECF 1396 at 54-56, 60-62, 77-79; *see also* 7/10 Tr. at 8:4-8, 9:10-18 (finding that the PIMCO and Silver Point Noteholders provided critical financing to the Company on the verge of bankruptcy). There is no evidence their proposal was made for any reason other than to protect their substantial investment in the Company or that they did not intend to benefit the Company. *Id*. at 56-57, 77-79.[8] Indeed, Silver Point believed its efforts had helped Incora with such conviction that it purchased *unsecured* notes *after* the 2022 Transaction. *See, e.g.,* ECF 729-53 at 62 (showing trading activity).

16. Platinum. The economic interest defense applies to Platinum as the Company's equity sponsor. *See Robertshaw*, 2024 WL 3200467, at *13-14 (equity sponsor entitled to defense); *White Plains*, 8 N.Y.3d at 426 (same); *Trimark*, 72 Misc. 3d 1218(A), at *11-12 (same). Platinum likewise had the requisite interest as a noteholder. No action conceivably attributable to Platinum was performed for any reason other than to protect those interests by helping the Company to secure liquidity and to avoid bankruptcy. *See, e.g.*, ECF 827 (Smith) at 68:7-25.

17. Citadel. Citadel owned approximately $25 million of Incora bonds, giving it a clear economic interest as a creditor of Incora. Citadel was invited to join the PIMCO and Silver Point group in mid-February 2022, and ultimately contributed approximately 1% of the $250 million injected into Incora. In doing so, Citadel believed it was helping the Company raise additional,

[8] The uptier structure permitted PIMCO and Silver Point to propose a mutually acceptable proposal on terms more favorable to the Company than it could otherwise obtain. ECF 1013 (Prager) at 107:23-108:8 ("[T]he purpose of doing an uptier transaction [is] to lower the interest rate to the company, which is something we were focused on that would make the best offer for the company itself."); ECF 955 (Dostart) at 80:1-8 (an uptier would be "economically advantageous to the company" because of "[n]ew money, liquidity coming in on an economically attractive rate, cash interest relief on the rest of the money that was uptiered, [and the] maturity extension"); *see also* ECF 1396 at 54-56, 77-79.

much-needed capital and to stave off a value-destructive bankruptcy.[9] Citadel's actions fit squarely within the confines of the economic interest defense as defined by New York courts.

18. Senator. By early 2022, Senator held millions of dollars of debt across multiple tranches of secured and unsecured Incora notes, including what the parties refer to as the "Holdco PIK notes." Around February 2022, Senator was told that its consent was required to enable Incora to proceed with the 2022 Transaction. Senator was offered a "take-it-or-leave-it" choice.[10] For Senator, "it was, from an investment case standpoint, a no-brainer," as it believed that the restructuring would help the distressed company survive.[11] Senator acted solely for the purpose of furthering Incora's business, thereby protecting its own investment in the struggling company.

19. The 2024/2026 Holders have argued that Counterclaim Defendants cannot take advantage of the economic interest defense as they acted in their "direct interest." *See, e.g.*, ECF 1394 (2024/2026 Holders' Post-Trial Brief) at 34-37. But not a single case cited supports their assertion, and accepting this claim would turn the economic interest defense on its head. Self-interested behavior is the very basis of the defense, so much so that New York courts have occasionally dubbed it: "the self-interest privilege." *Imtrac Ind., Inc. v. Glassexport Co., Ltd.* (*Imtrac*), 1996 WL 39294, at *8 (S.D.N.Y. Feb. 1, 1996). Accordingly, the participants were each perfectly entitled to act in their self-interest and to reject any deal they viewed as contrary to that interest. *Cf. Ultramar Energy v. Chase Manhattan Bank*, 179 A.D.2d 592, 592-93 (1st Dep't 1992) (creditor protected where it acted to increase the collateral available to cover its own security

[9] ECF 1142 (Rochard) at 165:12-18 (explaining that Citadel participated "because [Citadel's] view was Incora required additional capital. And we viewed this as a way to inject additional capital into the company in a manner that was commensurate, in terms of value, for the capital that was being provided to Incora.").

[10] ECF 1384-1 (Bharadwa) at 14:24-15:15; 18:16-24; ECF 1363-22; ECF 1384-1 (Bharadwa) at 121:10-22; ECF 738 (O'Connell) at 157:16-20; *see also* ECF 879 (O'Connell) at 347:1-348:2.

[11] ECF 1384-1 (Bharadwa) at 26:23-27:11, 65:25-66:8.

interests, "rendering the debtor financially unable to meet its obligations to the plaintiff"). There is no evidence the Counterclaim Defendants' conduct furthered an extraneous personal objective unconnected to their interest in Incora, like in the cases cited by the 2024/2026 Holders.[12]

20. Nor do the 2024/2026 Holders cite any authority for the proposition that mere foreseeability of harm to a third party undermines the economic interest defense. *Contra E.F. Hutton Int'l Assocs. Ltd. v. Shearson Lehman Bros. Holdings, Inc*., 281 A.D.2d 362, 363 (1st Dep't 2001) (fact that defendant "may have known [its conduct] would negatively affect plaintiffs' ability to do business does not raise an issue of fact as to whether the breach was motivated by malice or accomplished by illegal means."). Accepting this proposition would entirely vitiate the defense, which operates to excuse an intentional interference that causes a breach and damages. Harm to a contractual counterparty is present in *every* tortious interference case, and there is no evidence that the participants' *goal* in the 2022 Transaction was to harm other noteholders.[13]

21. That the participants received new securities in the Transaction is irrelevant. Each participant had an economic interest in Incora and maintained that pre-existing investment following the 2022 Transaction. The fact that Incora ultimately filed for bankruptcy is also

[12] *See Bausch & Lomb Inc. v. Mimetogen Pharms., Inc*., 2016 WL 2622013, at *12 (W.D.N.Y. May 5, 2016) (plaintiff plausibly alleged malice and that defendant acted to protect its interest in plaintiff's *competitor*, not in the breaching company); *Hudson Bay Master Fund Ltd. v. Patriot Nat'l, Inc*., 2019 WL 1649983, at *16 (S.D.N.Y. Mar. 28, 2019) (defense inappropriate where director defendant was "pursuing a personal, and not corporate, interest"); *Dell's Maraschino Cherries Co. v. Shoreline Fruit Growers, Inc*., 887 F. Supp. 2d 459, 484 (E.D.N.Y. 2012) (defendants conceded "that any alleged interference would be in their own interests, not those of [the breaching party]"); *Wells Fargo Bank, N.A. v. ADF Operating Corp*., 50 A.D.3d 280, 280-81 (1st Dep't 2008) (plaintiffs' allegations that defendants entirely sold their interests in business to a third party with "limited [industry] experience" sufficient to overcome defense at motion to dismiss stage); *RBG Mgmt. Corp. v. Village Super Market, Inc*., 692 F. Supp. 3d 135, 145 (S.D.N.Y. 2023) (declining to find entitlement to defense at the pleading stage given allegations that defendant "was acting *against* its financial interests" in the breaching party to further its "own, independent financial interests" by "eliminat[ing] [plaintiff] as competition").

[13] That participants acknowledged that any uptier would result in some detriment to other noteholders was simply a recognition of the economic reality of uptier transactions. *Cf.* ECF 700-58 at 3.

irrelevant. As the Court has found, the Company "needed to raise approximately $250 million in new capital to remain viable," 7/10 Tr. at 8:4-5, and the 2022 Transaction provided "the required financing," *id.* at 8:7.[14] It was thus clearly consistent with the protection of the Counterclaim Defendants' investments in Incora. *Cf. Mitel*, Index No. 651327/2023 at 56:7–57:10 (applying economic interest defense to participants in refinancing uptier where Debtor needed liquidity); *Robertshaw*, 2024 WL 3200467, at *14 (applying defense where debtor "ended up filing bankruptcy" and the parties to the transaction "understood [debtor] could potentially file"); *TriMark*, 2021 WL 3671541, at *11-12 (same); *Boardriders*, 2022 WL 10085886, at *9-10 (same).

22. Nor does the applicability of the defense hinge on whether the Company obtained the best possible deal. *See Trimark*, 72 Misc. 3d 1218(A), at *11-12, 15 (rejecting argument that company would have benefited by allowing wider participation, as "[a]sking whether a company received the best deal it could secure at the time licenses judicial second-guessing of rational actors' economic decisions") (quotations omitted). Regardless, "[t]he record does not show the existence of any better alternative to the 2022 Transaction." 7/10 Tr. at 9:14-15; *id.* at 12:9-10; *see also* ECF 1396 at 59-62.

23. It is therefore clear that the defense applies, as there is *no* evidence here of malice, fraud or illegality. ECF 1396 at 79. The Court found that while "PIMCO, Silver Point, and Wesco believed that the additional $250 million in bonds could be authorized with a simple majority vote . . . they were wrong about that." 7/10 Tr. at 9:6-9. But a mistake does not equate to malice. Malice requires showing that defendant acted for the "***sole purpose*** of inflicting ***intentional*** harm,"

[14] *See* ECF 1351 (Rule) at 12:9-13 (2022 Transaction "provided the most liquidity for the longest period of time" and scored higher than alternatives on increased debt basket capacity, maturity extensions, amortization reductions, and cash interest reductions"); ECF 1317-4 (Rule demonstrative); ECF 1352 (Steffen) at 25:17-20 (agreeing that 2022 Transaction provided "material cash flow benefits" in "2022, 2023 and first part of 2024").

Triaxx, 2019 WL 4744220, at *10 (emphasis added). "Even bad faith, without more, does not satisfy the malice requirement." *TriMark*, 72 Misc. 3d 1218(A), at *11 (citing *Foster*, 87 N.Y.2d at 750). Nor does "economic gain." *Inn Chu Trading Co. Ltd. v. Sara Lee Corp.*, 810 F. Supp. 501, 506 (S.D.N.Y. 1992). The 2024/2026 Holders have *never* articulated how the record supports a finding of malice or fraud or illegality, except to summarily state that participating in the 2022 Transaction "qualifies." *See* ECF 1394 at 37.

CONCLUSION

24. For the foregoing reasons, the Counterclaim Defendants respectfully request that the Court dismiss the tortious interference claims against them.

Dated: September 18, 2024
New York, New York

/s/ Benjamin F. Heidlage

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CERTIFICATE OF SERVICE

I certify that, on September 18, 2024, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas.

/s/ John F. Higgins

John F. Higgins