

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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)

FIRST LIEN NOTEHOLDER GROUP'S EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) APPOINTING A JUDICIAL MEDIATOR TO MEDIATE VARIOUS DISPUTES WITH RESPECT TO THE PLAN, (II) DIRECTING PARTIES TO PARTICIPATE IN MEDIATION AND (III) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 5:00 p.m. (Central Time) on September 27, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

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 <https://veritaglobal.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



The First Lien Noteholder Group,² by and through its undersigned counsel, respectfully state as follows in support of this motion (the “**Motion**”):

Relief Requested

1. The First Lien Noteholder Group seeks entry of an order, substantially in the form attached hereto (the “**Proposed Order**”), (a) appointing a United States Bankruptcy Judge to serve as mediator (the “**Mediator**”) in connection with certain pending disputes related to the terms of a chapter 11 plan, (b) directing parties to participate in mediation sessions before the Mediator, at the times and in the manner requested by the Mediator, and (c) granting certain related relief contained in the Proposed Order.

Jurisdiction and Venue

2. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are section 105 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9013-1(i) of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”) and Section S of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

² The members of the First Lien Noteholder Group are identified in the Verified Statement of Davis Polk & Wardwell LLP and Porter Hedges LLP Pursuant to Federal Rule of Bankruptcy Procedures 2019 [Dkt. No. 147].

Basis for Relief

4. It has been two weeks since the parties were last before the Court on September 5, 2024 for the hearing to approve the Debtors' *Disclosure Statement for the Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [Dkt. No. 2083] (the "**Disclosure Statement Hearing**"). At the time of the Disclosure Statement Hearing, the First Lien Noteholder Group was optimistic that the parties were on a negotiation path that would result in a consensual plan. And the First Lien Noteholder Group remains hopeful that a near-term consensual plan can still be achieved. However, the First Lien Noteholder Group is also concerned that in the two weeks since the Disclosure Statement Hearing there has not been meaningful progress on the terms of a chapter 11 plan.

5. The First Lien Noteholder Group has consistently demonstrated a willingness to engage with the Debtors' existing proposed plan or alternative plans that would have the support of the Debtors and the 2024/2026 Noteholder Group.³ To that end, since the Court's oral ruling in the adversary proceeding, the First Lien Noteholder Group has provided timely comments to the Debtors' proposed plan and appellate preservation framework, proposed a draft governance proposal and made multiple proposals to the 2024/2026 Noteholder Group for a consensual plan (including a proposed resolution of the 2024/2026 Noteholder Group's adequate protection motion requesting payment of professional fees). The First Lien Noteholder Group has also communicated to all parties that it will engage in good faith, and with flexibility and creativity, on the contours of a mutually agreeable plan.

³ The term "2024/2026 Noteholder Group" refers to the group described in the Rule 2019 statement filed at Dkt. No. 2018.

6. At this juncture, however, it is simply unclear to the First Lien Noteholder Group whether the 2024/2026 Noteholder Group is willing to engage on the Debtors' current proposed plan, or if they would be willing to engage in negotiations around the terms of any other chapter 11 plan that meaningfully preserves the First Lien Noteholder Group's appellate rights with respect to the adversary proceeding, including in a manner consistent with the Court's own suggestion.⁴ Similarly, while the 2024/2026 Noteholder Group has communicated that governance will be a key negotiation point for them, the First Lien Noteholder Group remains in the dark as to what modifications would be required to achieve a consensual chapter 11 plan, as the 2024/2026 Noteholder Group has not yet responded to the proposal that was shared with them a month ago.

7. The First Lien Noteholder Group continues to believe in the value of a consensual plan. However, time is of the essence, and it is critical that parties engage in immediate and focused negotiations in order to reach a resolution of these cases. To that end, the First Lien Noteholder Group has repeatedly sought to facilitate meetings and has specifically requested mediation in order to establish a process by which consensus can hopefully be reached, but to-date those efforts have not resulted in any real negotiation.

8. The First Lien Noteholder Group therefore believes that the best path forward is for the 2024/2026 Noteholder Group, the First Lien Noteholder Group and the Debtors (collectively, the "**Mediation Parties**") to mediate to determine whether there is a path for the

⁴ See June 25, 2024 Hr'g Tr. at 351:24–352:5 (THE COURT: "And just so that you know, a provision in a Plan that says if the decision in an adversary proceeding . . . reverses or modifies the decision in any way, that the capital accounts will be adjusted by the Bankruptcy Court as directed or mandated by any appeal that changes the results. Fine with me."); *see also* July 10, 2024 Hr'g Tr. at 38:11–15 (THE COURT: "I'm going to hold the expectation that the debtors are going to go ahead and proceed now to act on what their capital structure has now been declared to be. I'm not precluding you from appealing it at all, please don't get me wrong."); August 13, 2024 Hr'g Tr. at 28:21–25 (THE COURT: "I want to keep your client's full rights to appeal. I'm not trying to take those away.").

parties to agree on a consensual plan of reorganization and to bring these cases to an efficient conclusion. A brief and targeted mediation in front of a federal bankruptcy judge would ensure that all parties are held accountable to good faith negotiations and timely responses to proposals and would be well worth the time and cost given what is at stake and what could be gained by the estate.

9. The Court is empowered to grant such relief under section 105(a) of the Bankruptcy Code, which authorizes the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code],” 11 U.S.C. § 105(a), and Section S of the Complex Case Procedures, which empowers the Court to “order mediation of any dispute arising in an adversary proceeding, contested matter or otherwise.” Complex Case Procedures, ¶ 48. Where, as here, not all of the Mediation Parties have agreed to mediate, and the First Lien Noteholder Group seeks appointment of a mediator who is a sitting judge, the First Lien Noteholder Group is required under the Complex Case Procedures to obtain an order of the Court. *Id.*

10. The First Lien Noteholder Group has previewed the relief requested in this Motion with counsel for the Debtors, and understands that the Debtors have indicated that they are supportive of and will participate in the requested mediation.

Emergency Consideration

11. Pursuant to Bankruptcy Local Rule 9013-1(i), the First Lien Noteholder Group respectfully requests emergency consideration of this Motion. As set forth above, the Debtors and their major stakeholders have a need to resolve these disputes and formulate a confirmable chapter 11 plan promptly. The Mediation Parties will need only a short time to prepare for any mediation to ensure that the mediation sessions are as robust and productive as possible. The

First Lien Noteholder Group will therefore seek to schedule a mediation session(s) and begin mediation promptly after entry of the Proposed Order, necessitating the emergency relief sought in this Motion.

Notice

12. Notice of this Motion will be given to all interested parties in the case via the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas. The First Lien Noteholder Group respectfully submits that no other or further notice is required under the circumstances.

WHEREFORE, the First Lien Noteholder Group respectfully requests that the Court enter the Proposed Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

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Dated: September 20, 2024
Houston, Texas

/s/ John F. Higgins

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Counsel to the First Lien Noteholder Group

CERTIFICATE OF ACCURACY

I certify that the foregoing statements are true and accurate to the best of my knowledge.

This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Damian S. Schaible

Damian S. Schaible

CERTIFICATE OF SERVICE

I certify that, on September 20, 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

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

In re:

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(Jointly Administered)

**ORDER (I) APPOINTING A JUDICIAL MEDIATOR TO MEDIATE VARIOUS
DISPUTES WITH RESPECT TO THE PLAN, (II) DIRECTING PARTIES TO
PARTICIPATE IN MEDIATION AND (III) GRANTING RELATED RELIEF**

(Related to Docket No. [])

Upon the motion (the “**Motion**”)² of the First Lien Noteholder Group for entry of an order (this “**Order**”), (a) appointing a United States Bankruptcy Judge to serve as mediator (the “**Mediator**”) in connection with certain pending disputes related to the terms of a chapter 11 plan, (b) directing parties to participate in mediation sessions before the Mediator, at the times and in the manner requested by the Mediator, and (c) granting certain related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, such notice being adequate and appropriate under the circumstances; and after notice and a hearing, as defined in section

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

102 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order; and it appearing that entry of this Order is in the best interests of the Debtors' estates; **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Honorable _____ is hereby appointed as Mediator to conduct a mediation concerning the terms of a chapter 11 plan for the Debtors and such other matters as the Mediator may deem appropriate.

2. Each of the Mediation Parties and/or their respective advisors and other representatives (as instructed by the Mediator) are hereby directed to attend and participate in the mediation at the times and in the manner requested by the Mediator. Without limiting the generality of the foregoing, the Mediator may establish such rules and processes to govern the mediation as the mediator deems appropriate.

3. The applicable terms of the *Agreed Order Appointing Mediator and Governing Mediation Procedure* [Dkt. No. 1437] are incorporated herein *mutatis mutandis*.

4. The Mediation shall terminate on the earlier of (a) the date on which the Mediator determines that the Mediation has terminated and advises the Parties of such determination and (b) [____], 2024, unless extended by agreement of the Mediator, the 2024/2026 Noteholder Group, and the First Lien Noteholder Group (the "**Mediation Termination Date**").

5. The Court retains jurisdiction in connection with this Order and all matters arising from or related thereto.

Dated: _____, 2024
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE