

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

*In re*

**WESCO AIRCRAFT HOLDINGS, INC., et al.,**  
  
Debtors.<sup>1</sup>

Case No. 23-90611 (MI)  
  
Chapter 11  
  
(Jointly Administered)

**WESCO AIRCRAFT HOLDINGS, INC., et al.,**  
  
Plaintiffs,  
  
v.  
  
**SSD INVESTMENTS LTD., et al.,**  
  
Defendants.

Adv. Pro. No. 23-03091

**SSD INVESTMENTS LTD., et al.,**  
  
Counterclaim Plaintiffs,  
  
v.  
  
**WESCO AIRCRAFT HOLDINGS, INC., et al.,**  
  
Counterclaim Defendants.

**NOTICE OF FILING OF 2024/2026 HOLDERS' DEMONSTRATIVES**

**PLEASE TAKE NOTICE** that the 2024/2026 Holders submit the attached demonstratives for use during the 1:30 PM CT hearing on September 23, 2024.

<sup>1</sup> 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.kccellc.net/incora>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



Dated: September 23, 2024

Respectfully submitted,

**KOBRE & KIM LLP**

/s/ Zachary D. Rosenbaum

Zachary D. Rosenbaum

Adam M. Lavine

Darryl G. Stein

Igor Margulyan

Udi Karklinsky

Michael S. Brasky

John G. Conte

Vincent C. Yiu

800 Third Avenue

New York, NY 10022

Tel: 212-488-1200

zachary.rosenbaum@kobrekim.com

adam.lavine@kobrekim.com

Darryl.stein@kobrekim.com

Igor.margulyan@kobrekim.com

udi.karklinsky@kobrekim.com

Michael.brasky@kobrekim.com

john.conte@kobrekim.com

vincent.yiu@kobrekim.com

-and-

**FOLEY & LARNDER LLP**

John P. Melko

Texas Bar No. 24025245

Email: jmelko@foley.com

1000 Louisiana, Suite 2000

Houston, Texas 77002-5011

Telephone: 713-276-5500

Facsimile: 713-276-5555

*Counsel to the 2024/2026 Holders*

**CERTIFICATE OF SERVICE**

I certify that on September 23, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zachary D. Rosenbaum

Zachary D. Rosenbaum



KOBRE & KIM

DISPUTES  
AND INVESTIGATIONS

AMERICAS | NEW YORK . DELAWARE . MIAMI . SAN FRANCISCO . SÃO PAULO . WASHINGTON DC

APAC | HONG KONG . SEOUL . SHANGHAI

CARIBBEAN | BVI . CAYMAN ISLANDS

EMEA | CYPRUS . DUBAI . LONDON . TEL AVIV

# 2024/2026 Holders' Tortious Interference Claims

September 23, 2024



# Elements

1

## Valid Contract

No Dispute

2

## Knowledge of Contract by Interferers

No Dispute

3

## Breach

“[T]he company breached the 2026 indenture by entering the 2022 transaction.”  
*ECF 1474 (Oral Ruling) at 13:22-23*

4

## Intentional Interference Without Justification

Satisfied, as proven at trial

5

## Damages

Satisfied, as *prima facie* harm established at trial,  
but remedy phase has been bifurcated

## *Prima Facie* Harm

ECF 1474 (Oral Ruling) at 37:11-13; *Guard-Life Corp. v. S. Parker Hardware Mfg. Corp.*, 406 N.E.2d 445, 452 n.6 (N.Y. 1980) (“What other damages, if any, might be recovered in an action of this nature, we are not here required to determine[.]”)

kobrekim.com | 4

5 There is no suggestion that any of the other bases for liability as to an unenforceable contract set out in section 786 of the Restatement of Torts 2d relation concerns a matter not within the competition between the parties, the action complained of creates or continues an unlawful restraint of trade, or the purpose of the interference is other than to advance the competitive interest of the one interfering with performance of the contract is applicable in the present case.

be limited to the elements of damage recoverable in a contract action. In an action against the third party for tortious interference, however, the elements of damages, including consequential damages, would be those recognized under the more liberal rules applicable to tort actions ([Restatement, Torts 2d s 774A](#), Comment c ).

The contract was made in New York, and the parties are domiciled in New York. The contract is bound by that determination. A contract may be voidable because of lack of mutuality (Restatement, Torts 2d, § 786, Comment f). The question whether the contract would be enforceable in New York need not be reached (see Prosser, Torts (4th ed.), § 129, p. 932).

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

# Distinct Cause of Action

Singleton Mgt. v. Compere, 243 A.D.2d 213 (1998)

873 N.Y.S.2d 381, 1998 N.Y. Slip Op. 04736, 1998 N.Y. Slip Op. 04740  
v. County of Chimes, 219 A.D.2d 131, 133, 6 denied 89  
NY2d 851; *Norrenberg v. Mather*, 805 Co., 160 A.D.2d 574.)  
The rationale for according preclusive effect to the prior  
settlement of a cause of action is obvious: There would,  
otherwise, be no incentive for a defendant to settle if it could  
not be assured that by doing so it would put to rest the claim  
brought against it and forever bar that claim from again being  
litigated against it.

(1) It is clear, however, that res judicata, or claim preclusion,  
would have no relevance to this case since the cause of  
action against S.W.V., in the action that was settled, was for  
S.W.V.'s breach of contract, while the cause of action asserted  
here against defendant Compere is for Compere's tortious  
interference with that contract. That these are not the same  
or identical causes of action, but, rather, wholly separate and  
distinct legal wrongs, giving rise to different causes of action,  
has long been settled (see, e.g., *Hornstein v. Podwitz*, 254  
NY 443, 449; *Simon v. Noma Elec. Corp.*, 293 NY 171, 177;  
*Anthony v. George T. Bye, Inc.*, 243 App Div 390).

We turn then to the question of whether the settlement  
and discontinuance with prejudice asserted by plaintiff  
in the prior litigation \*217 with S.W.V. can serve as a  
basis for collateral estoppel on the issue of the validity  
or effectiveness of the underlying management agreement.  
The motion court concluded, without amplification, that the  
stipulation resolved those claims in favor of the "Music  
Group".

As indicated, the first essential requirement that must be  
established is that the issue was necessarily decided in the  
prior action and that plaintiff had a full and fair opportunity  
to litigate that particular issue. The motion court's conclusion  
as to the support of the stipulation is rather puzzling in light  
of its acknowledgment that the stipulation was silent as to  
the "validity, effectiveness or breach of the Management  
Agreement". It has been observed that since the consequences  
of a determination that a party is collaterally estopped from  
litigating a particular issue are great, strict requirements for  
application of the doctrine must be satisfied to insure that a  
party not be precluded from obtaining at least one full hearing  
on his or her claim (*Gramatan Home Investors Corp. v. Lopez*,  
*supra*, at 485).

The question as to whether a party had a full and fair  
opportunity to litigate a prior determination involves a  
practical inquiry into the realities of litigation (*Gilberg v.*  
*Barbieri*, 53 NY2d 285, 292). Collateral estoppel effect will

04740

only be a

in a prior

particular

contract

litigated,

v. *Medina*

*El Lelly* v

litigated i

of liability

pleading

*Lilly & C*

to give c

settling a

only be

sufficient

action, th

the court

952, 953;

the entry

regard to

*Knausen*

quoting I

also, *W's*

*Barack*.)

(2) "Whi

a valid o

plaintiff's

*Loma H*

that issue

Plaintiff

of that as

determin

issue that

plaintiff

instant ca

that these

interfere

that this

out, howev

damages th

reduced by

the prior ac

(*Anthony v. George T. Bye, Inc.*, *supra*, 243 App Div, at 391;

*see also*, *Simon v. Noma Elec. Corp.*, *supra*, 293 NY, at 177).

Finally, while we find that the IAS Court erred in

determining the cause of action based on interference with the

management agreement, we do not find that plaintiff's second

cause of action, for tortious interference with prospective

(1) It is clear, however, that res judicata, or claim preclusion, would have no relevance to this case since the cause of action against S.W.V., in the action that was settled, was for S.W.V.'s breach of contract, while the cause of action asserted here against defendant Compere is for Compere's tortious interference with that contract. That these are not the same or identical causes of action, but, rather, wholly separate and distinct legal wrongs, giving rise to different causes of action, has long been settled (see, e.g., *Hornstein v. Podwitz*, 254 NY 443, 449; *Simon v. Noma Elec. Corp.*, 293 NY 171, 177; *Anthony v. George T. Bye, Inc.*, 243 App Div 390).

*Singleton Mgmt., Inc. v. Compere*, 243 A.D.2d 213, 216 (1st Dep't 1998) (breach of contract and tortious interference "are not the same or identical causes of action but, rather, wholly separate and distinct legal wrongs.")

# Damages: *Prima Facie* Harm

Will Wang, Golden Gate

Q. And around this time [in early February, 2022], bonds were trading in the mid eighties, right?

A. I believe that's correct ...

ECF 1062 (Wang, Mar. 27 Tr.) at 249:3-10; ECF 725-26 at 3-4 (Golden Gate Trading Report)

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Description	Transaction Type	Strategy Code	Investment Code	Issuer Name/Line 1	Investment Description	Investment Extended Description	Event Date	Settle Date	Actual Settle Date	Quantity	Price	Location/Account Name/Sort	Tax/Ltd	Broker Name/Line 1
	100 GS, NYC, Swap	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	4/20/2021	4/22/2021	4/22/2021	1,500,000.00	1061970	Robert W Baird & Co		
	99.75 GS, NYC, Swap	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	4/20/2021	4/22/2021	4/22/2021	2,000,000.00	1061971	Bank of America, N.A.		
	99.875 GS, NYC, Swap	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	4/20/2021	4/22/2021	4/22/2021	4,000,000.00	1061972	JPMorgan Chase Bank, N.A.		
	99.5 GS, NYC, Swap	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	4/20/2021	4/26/2021	4/26/2021	2,500,000.00	1062168	Credit Suisse AG, Cayman Islands Branch		
	98 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	5/24/2021	5/24/2021	5/24/2021	1,000,000.00	1064267	JPMorgan Chase Bank, N.A.		
	94.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	9/1/2021	9/3/2021	9/3/2021	2,000,000.00	1071525	Citibank, N.A.		
	92.5 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	9/1/2021	9/3/2021	9/3/2021	2,000,000.00	1071526	Robert W Baird & Co		
	86.5 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	1/31/2022	2/2/2022	2/2/2022	2,000,000.00	1083024	Credit Suisse AG, Cayman Isl		
	88 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	2/7/2022	2/9/2022	2/9/2022	5,000,000.00	1083521	Credit Suisse AG, Cayman Isl		
	86 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	2/7/2022	2/9/2022	2/9/2022	10,000,000.00	1083533	Citibank, N.A.		
	84.5 WELLS	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	2/8/2022	2/10/2022	2/10/2022	10,887,000.00	1083540	Citibank, N.A.		
	84.5 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 8 1/2 11/15/24	8.500% - 11/2024 - 97789LAB2 144A	2/8/2022	2/10/2022	2/10/2022	960,000.00	1083541	Citibank, N.A.		
	90 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/2/2021	9/7/2021	9/7/2021	2,000,000.00	1071648	Deutsche Bank AG, New York		
	88.25 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/7/2021	9/9/2021	9/9/2021	2,000,000.00	1071761	Bank of America, N.A.		
	87 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/8/2021	9/10/2021	9/10/2021	1,000,000.00	1071792	Bank of America, N.A.		
	86.25 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/8/2021	9/10/2021	9/10/2021	2,000,000.00	1071825	Morgan Stanley & Co., Incorp		
	84.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/9/2021	9/13/2021	9/13/2021	1,500,000.00	1071860	Morgan Stanley & Co., Incorp		
	85.25 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/9/2021	9/13/2021	9/13/2021	1,000,000.00	1071861	Bank of America, N.A.		
	86 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/10/2021	9/14/2021	9/14/2021	2,000,000.00	1071910	Citibank, N.A.		
	84.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	9/14/2021	9/16/2021	9/16/2021	200,000.00	1072090	Jefferies Finance, LLC		
	84.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/2/2022	2/4/2022	2/4/2022	2,000,000.00	1083414	Credit Suisse AG, Cayman Isl		
	83.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/3/2022	2/7/2022	2/7/2022	3,000,000.00	1083459	Bank of America, N.A.		
	83.5 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/3/2022	2/7/2022	2/7/2022	2,000,000.00	1083461	JPMorgan Chase Bank, N.A.		
	83.75 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/3/2022	2/7/2022	2/7/2022	1,000,000.00	1083468	UBS AG		
	83.25 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/3/2022	2/7/2022	2/7/2022	1,000,000.00	1083469	Bank of America, N.A.		
	83 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/4/2022	2/8/2022	2/8/2022	1,000,000.00	1083498	UBS AG		
	83 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/4/2022	2/8/2022	2/8/2022	3,000,000.00	1083499	JPMorgan Chase Bank, N.A.		
	83.125 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/4/2022	2/8/2022	2/8/2022	5,000,000.00	1083500	Bank of America, N.A.		
	83.25 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/4/2022	2/8/2022	2/8/2022	3,573,000.00	1083501	Citibank, N.A.		
	87.5 WELLS, GSCO, PB	Buy	COP, PE	97789LAB2	Wolverine Escrow LLC	WAIR 9 11/15/26	9.000% - 11/2026 - 97789LAB2 144A	2/7/2022	2/9/2022	2/9/2022	5,000,000.00	1083520	Bank of America, N.A.		

See *LG Capital Funding, LLC v. CardioGenics Holdings, Inc.*, 787 F. App'x 2, 3 (2d Cir. 2019) ("Where the breach involved the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages.")

# Damages: *Prima Facie* Harm

Case 23-03091 Document 697 Filed in TXSB on 02/05/24 Page 106 of 290

MALIK VORDERWUELBECKE - CROSS BY MR. ROSENBAUM 106

1 You knew, as a Board member, that this transaction  
2 would harm the excluded holders' security interest in the  
3 collateral, correct?  
4 A That is correct.

Malik Vorderwuelbecke, Incora Board Member

**Q.** You knew, as a Board member, that this transaction would harm the excluded holders' security interest in the collateral, correct?

**A.** That is correct.

20 to all holders, right?

21 A Yes.

22 Q And your understanding was that -- was that the  
23 transaction would benefit Platinum, right?

24 (Pause in the proceeding.)

25 THE WITNESS: Well, my understanding was that from

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

## Section 9.02 With Consent of Holder of 2026 Secured Notes

Except as provided below in this Section 9.02, the Issuer, the Guarantors, the Trustee and the Notes Collateral Agent may amend or supplement this Indenture (including, without limitation, Sections 3.09, 4.10 and 4.14 hereof), the Escrow Agreement, the 2026 Secured Notes, the 2026 Secured Note Guarantees, the Security Documents or the Intercreditor Agreements may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding 2026 Secured Notes other than the 2026 Secured Notes beneficially owned by the Issuer or its Affiliates (including, without limitation, Additional Secured Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the 2026 Secured Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium on, if any, or interest, if any, on, the 2026 Secured Notes, except a payment default resulting from an acceleration that has been rescinded or compliance with any provision of this Indenture, the Escrow Agreement, the 2026 Secured Notes, the 2026 Secured Note Guarantees, the Security Documents or the Intercreditor Agreements, may be waived with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding 2026 Secured Notes other than the 2026 Secured Notes beneficially owned by the Issuer or its Affiliates (including, without limitation, Additional Secured Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, 2026 Secured Notes). Sections 2.08 and 2.09 hereof shall determine which 2026 Secured Notes are considered to be "outstanding" for purposes of this Section 9.02.

Upon the request of the Issuer accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders of 2026 Secured Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02, 9.06, 13.02 and 13.03 hereof, the Trustee and Notes Collateral Agent, if applicable, will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture and amendment or supplement to the Security Documents unless such amended or supplemental indenture or amendment or supplement to the Security Documents affects the Trustee's and Notes Collateral Agent's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee and the Notes Collateral Agent may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture and amendment or supplement to the Security Documents.

It is not necessary for the consent of the Holders of 2026 Secured Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer will mail (or with respect to Global Notes, to the extent permitted or required by applicable DTC procedures or regulations, send electronically) to the Holders of 2026 Secured Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to deliver such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the 2026 Secured Notes then outstanding voting as a single class may waive compliance in a particular instance by the Issuer or Guarantors with any provision of this Indenture, the 2026 Secured Notes, any 2026 Secured Note Guarantees, the Escrow Agreement, the Security Documents or the Intercreditor Agreements. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any 2026 Secured Notes held by a non-consenting Holder).

ECF 697 (Vorderwuelbecke, Feb. 1 Tr.) 106:1-4 (emphasis added); see *generally* ECF 601-8 at 130-131 (Section 9.02)

## Damages: *Prima Facie* Harm

Ray Carney, Incora

**Q.** And you indicated, by the early Fall of 2022... the company was already showing signs of liquidity issues in the coming months. Fair?

**A.** Yes.

9 Q And you indicated, by the early Fall  
10 know that you put a month on it, but may  
11 October -- the company was already showing  
12 issues in the coming months. Fair?  
13 A Yes.  
14 Q Okay. So how many months after the  
15 maybe four or five, that there was another liquidity problem?  
16 Is that right?  
17 A Yeah, probably five.  
18 Q Okay.  
19 A Something like that.

ECF 694 (Carney, Jan. 31 Tr.) at 96:9-19 (emphasis added)



## Damages: *Prima Facie* Harm

EDWARD MORRISON - CROSS BY MR. WOLGENHUT

148

1 month time period, correct?

2 A Correct.

3 Q Your report does not attempt to d

4 of the 2022 transaction from the effec

5 that could have happened in that three

6 correct?

7 A Again, if we're focused on Z- and

8 those methodologies.

9 Q Your report doesn't say what caus

10 scores and the rise in O-score bankrupt

11 correct?

12 A Correct.

13 Q And your report doesn't say, like

14 were, for example, on March 27th liter

15 transaction, correct?

16 A Correct.

17 Q Shifting gears a little bit away

18 I'm going to ask you some questions about the but-for world.

19 You assume in the but-for world that Incora would have filed

20 for bankruptcy in March of 2022, correct?

21 A I think the phrasing was about March of 2022.

22 Q Fair enough, fair enough. And your opinion is that the

23 counterclaim plaintiffs would have received somewhere in the

24 neighborhood of a 75 percent recovery if a bankruptcy had

25 happened in or about that time period, correct?

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

**Prof. Ed Morrison**

**Q.** And your opinion is that the [2024/2026 Holders] would have received ... a 75 percent recovery if a bankruptcy had happened [in March of 2022], correct?

**A.** Correct. 75.5 percent was the calculation.

# Probable & Foreseeable Outcome – Breach **Without Justification**



See generally *@Wireless Enters., Inc. v. AI Consulting, LLC*, No. 05–CV–6176 CJS(P), 2011 WL 1871214 (W.D.N.Y. May 16, 2011)

# Creditor Interference *Without* Equal or Greater Right = **Tortious**

## *White Plains Coat & Apron Co. v. Cintas Corp.*

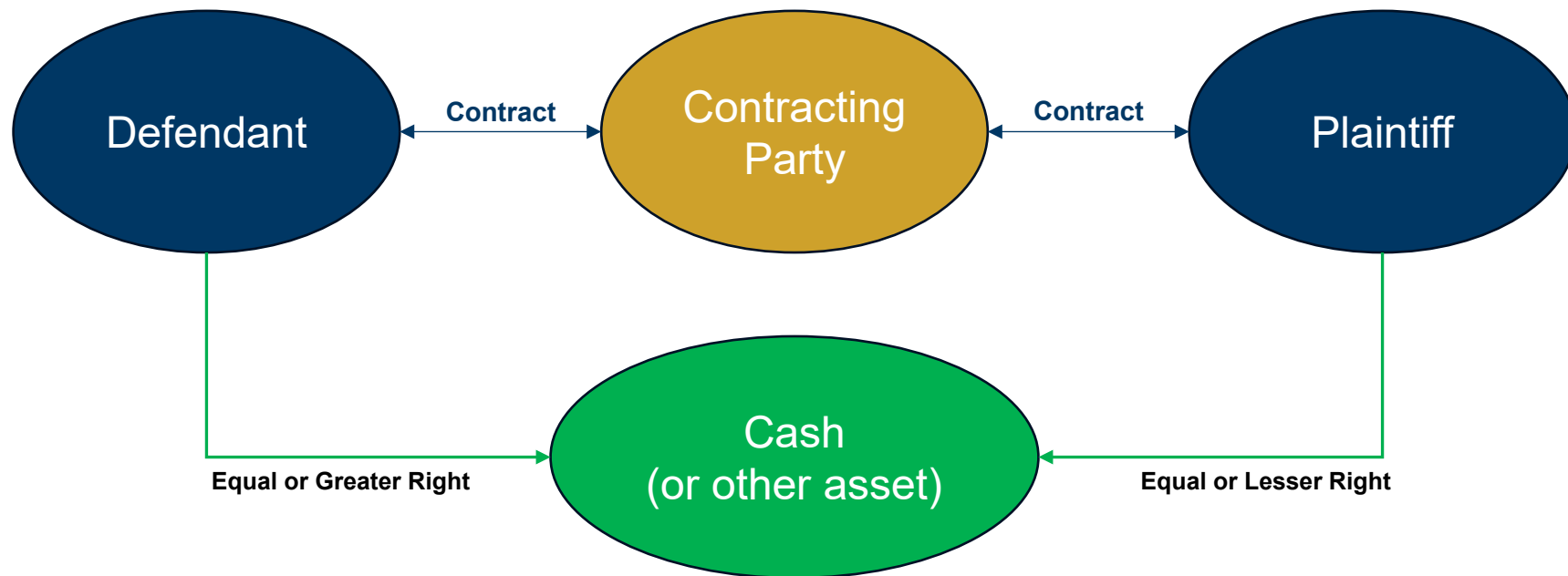
[2] While New York law recognizes the tort of interference with both *prospective* and *existing* contracts, “greater protection is accorded an interest in an existing contract (as to which respect for individual contract rights outweighs the public benefit to be \*426 derived from unfettered competition) than to the less substantive, more speculative interest in a prospective relationship (as to which liability will be imposed only on proof of more culpable conduct on the part of the interferer).”<sup>5</sup>

## *Foster v. Churchill*

\*\*\*587 \*\*157 We concluded in  *Felsen* that “ ‘[p]rocur[ing] the breach of a contract in the exercise of equal or superior right is acting with just cause or excuse and is justification for what would otherwise be an actionable wrong’ ”  (24 N.Y.2d, at 687, 301 N.Y.S.2d 610, 249

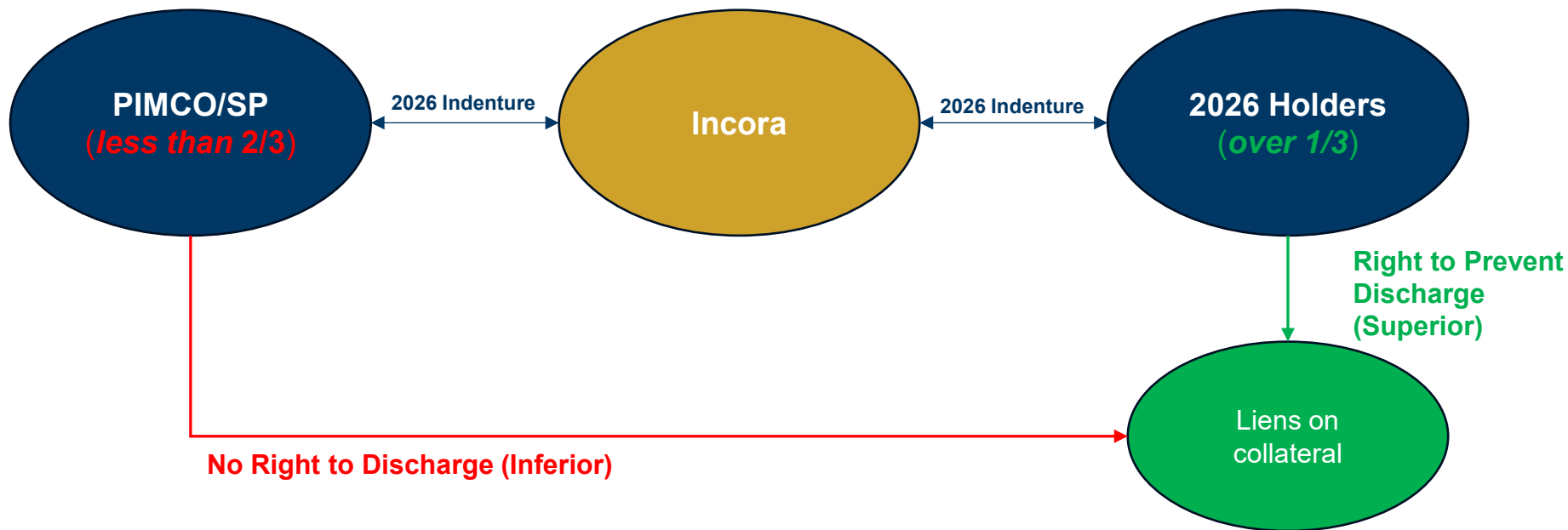
*White Plains Coat & Apron Co. v. Cintas Corp.*, 867 N.E.2d 381, 383-384 (N.Y. 2007) (citing only *Ultramar Energy v. Chase Manhattan Bank*, 579 N.Y.S.2d 353 (N.Y. App. Div. 1st Dep’t 1992) regarding creditors); *Foster v. Churchill*, 87 N.Y.2d 744, 749 (1996)

## Creditors: Right must be Equal or Greater Than Plaintiff's



**Only Four Written Decisions Cited:** *Ultramar Energy v. Chase Manhattan Bank*, 579 N.Y.S.2d 353 (N.Y. App. Div. 1st Dep't 1992); *Abele Tractor & Equip. Co. v. Schaeffer*, 91 N.Y.S.3d 548 (N.Y. App. Div. 3rd Dep't 2018); *U.S. Bank Nat'l Ass'n v. Triaxx Asset Mgmt. LLC*, No. 18-CV-04044 (VM), 2019 WL 4744220 (S.D.N.Y. Aug. 26, 2019); *Bank of New York Mellon, London Branch v. Cart 1, Ltd.*, No. 18-CV-6093 (JPO), 2021 WL 2358695, at \*4 (S.D.N.Y. June 9, 2021)

## This Case: No Right = No Economic Interest = Tort



# Plus: PIMCO – Pure Self-Interest & Intent to Harm 2026 Holders

Samuel Dostart, PIMCO

**Q.** I take you mean that the detriment to nonparticipating holders is that they would lose their liens as a consequence the up-tier.

**A.** Yes.

A I -- I believe that is in reference to the risk of an up-tiering transaction.

Q Okay. So why would it be risky to everyone else in the market if I --

A Well, this -- because part of owning an indenture, especially if you're a small holder, is that large holders may do a transaction that you are not a party to, which may be disadvantageous for holders who do not participate.

Q Okay. And so, when you say, in -- going back up a little bit, where it says:

"However, the 1L Notes permit holders of 2/3rds of the 24s and 26s to up-tier their debt to the detriment of non-participating holders."

I take you mean that holders is that they would lose their liens as a consequence

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

Case 23-03091 Document 700-58 \*SEALED\* Filed in TXSB on 02/05/24 Page 2 of 52

PIMCO

## Executive Summary

Item	Description
<b>General Description of Situation and Overall Investment Thesis</b>	<ul style="list-style-type: none"> <li>Incora is the largest third party C-Class parts distributor in the Aerospace segment (~15% of market), where it benefits from its unparalleled scale</li> <li>Opportunity to participate in attractive 1L risk with potential for up-tiering transaction given significant PIMCO position (reduce detach from ~85% to ~65% of base case valuation, attach remains at ~15% LTV)</li> <li>PIMCO owns \$440mm of 1L risk, including ~50% of the 2024s and ~14% of the 2026s</li> <li>Incora 1L risk currently trades @ ~92.5 (in line with cost basis), ytm of ~11.5%</li> <li>Under a "base case," Incora will have to restructure its balance sheet</li> <li>Sponsor Platinum Equity has so far stood behind the business, including putting in \$50mm of additional uns/equity (despite \$75mm 1L capacity) and has purchased unsecured notes</li> <li>Debt documents are generally tight, with little "wiggle room" provided               <ul style="list-style-type: none"> <li>However, the 1L Notes permit holders of 2/3rds of the 24s and 26s to up-tier their debt to the detriment of non-participating holders (may require consent of RCF &amp; Uns)</li> </ul> </li> <li>In the event that the sponsors exhaust other available liquidity options, Platinum is likely to pursue an up-tiering transaction before filing the company in exchange for additional runway. Per an attorney: <u>Redacted - Privileged</u></li> <li>The market does not generally appear to be aware of this risk</li> </ul>

However, the 1L Notes permit holders of 2/3rds of the 24s and 26s to up-tier their debt to the detriment of non-participating holders (may require consent of RCF & Uns)

September, 2021

A company of Alliance®

HIGHLY CONFIDENTIAL - PROFESSIONALS' EYES ONLY

PIMCOAP\_00021898

ECF 955 (Dostart, Feb. 28 Tr.) at 202:19-203:2 (emphasis added); ECF 700-58 at 3

## Plus: Silver Point – Pure Self-Interest & Intent to Harm 2026 Holders

JASON PRAGER – CROSS BY MR. ROSENDAIN

187

Jason Prager, Silver Point

Q. “Okay. And what were the negative impacts that you came to understand, if any, that would be borne by the non-participating notes?”

“Answer: The notes would likely trade down.”

“Question: Did you measure by how much they would trade down?”

“Answer: At various times, we would have done analyses to understand where all of the security capital structure might trade.

“Question: And that analysis would include non-participating notes in what became the 2022 transaction, right?”

And your answer was “yeah.”

That was accurate testimony when you gave it under oath, correct?

A. Correct.



# Why? 64% IRR

Sam Dostart, PIMCO

**Q.** But as I read this, you looked at comps and then you projected an internal rate of return of 64 percent for PIMCO's holdings. Do I have that right?

**A.** Yes. I -- I don't recall which comps I was looking at.

20 page -- and it's Page 4 of 52 if you can get there.  
21 A I -- I believe I am there.  
22 Q Okay. And so, here, as I understand your testimony, that  
23 executive summary that we just looked at was prepared  
24 specifically for one particular fund. But this -- is this a  
25 continuation of the executive summary or is this a standalone

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

## WAIR PnL

	Comps*	w/ No Jr Debt	w/ "Hair"
<b>Yield</b>	<b>6.9%</b>	<b>8.0%</b>	<b>8.8%</b>
FVS	468	579	656
<b>Est PX of new Super Senior</b>	<b>114</b>	<b>109</b>	<b>106</b>
<b>PnL Breakdown (\$mm)</b>			
Current Holdings	\$571	\$125	\$95
New Money	\$142	20	13
PIK Fee	1.125%	6	6
1 yr of Coupon	50	50	50
<b>1 yr PnL</b>	<b>\$201</b>	<b>\$163</b>	<b>\$142</b>
<b>1 yr PnL as % of Cost Basis</b>	<b>38%</b>	<b>31%</b>	<b>27%</b>
Less: 1 yr of Coupon	(50)	(50)	(50)
<b>Deal PnL</b>	<b>\$151</b>	<b>\$114</b>	<b>\$92</b>
<b>Deal PnL as % of Cost Basis</b>	<b>29%</b>	<b>22%</b>	<b>18%</b>
<i>Position IRR to Deal @ March 18, 2022</i>	<i>64%</i>	<i>49%</i>	<i>41%</i>

*Position IRR to Deal @ March 18, 2022*

**64%**

\* Includes a 1% yield haircut for "hair"

## Plus: Exclusion of 2026 Holders – Worse for Company

Malik Vorderwuelbecke, Incora Board Member

Q. But it would have been better for the company if more than, you know, let's say the – I'll just use an estimated number, 55 percent of the 2026 notes participated. Cause that would have resulted in more [PIKing] and less cash outflow, correct?

A. That is correct. And I remember us even asking the Majority Group whether more could participate at some point, yes.

1 wouldn't b  
2 Q I'm n  
3 A Yeah.  
4 Q -- wh  
5 better for  
6 A Yes.  
7 Q Right  
8 A Yes,  
9 Q But I  
10 than, you  
11 number, 55  
12 that would  
13 outflow, c  
14 A That  
15 Majority G  
16 yes.  
17 Q And s  
18 (Pause in the proceeding.)  
19 BY MR. ROSENBAUM:  
20 Q -- the page two of that same document, that same slide  
21 deck.  
22 (Pause in the proceeding.)  
23 THE WITNESS: Uh-huh.  
24 BY MR. ROSENBAUM:  
25 Q And so your understanding as majority, I'm sorry, as a

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

5	THE WITNESS: This is a liquidity analysis showing
6	three scenarios. One if we did nothing, a status quo line.
7	Two if just Carlyle and Platinum picked their interested and
8	then the third was if all unsecured picked their interest.
9	BY MR. NOSKOV:
10	Q What does it mean to pick interest?
11	A That means you don't pay it in cash and it gets rolled
12	into the debt.
13	Q And what effect does that have on liquidity?
14	A It helps over time because you don't have to pay the
15	interest payments in cash.
16	Q And so is that why the green line -- the light green line
17	is below the dark green line because if all unsecured picked,
18	the company would have more liquidity?
19	A Yes. The more picking the more cash.
20	Q And that light green line that's only if Carlyle and
21	Platinum pick; is that right?
22	A Yes.
23	Q Where would that line be if only Carlyle picked?
24	A I'm not sure where that line would be. It would be
25	between the two -- the status quo and the light green line.
1	Q And would that line be below the light green line or
2	above the light green line?
3	A It would be below it.
4	Q I'm sorry?
5	A It would be below it.

ECF 697 (Vorderwuelbecke, Feb. 1 Tr.) at 104:9-16; ECF 694 (Carney, Jan. 31 Tr.) at 158:5-159:5

## How? Lure Platinum: **Carrot** then **Stick**

**September  
2021**

**PIMCO & Silver Point  
develop uptier strategy and  
plan to present it through  
Platinum**



**November  
2021**

**PIMCO & Silver Point make  
first outreach — to  
Platinum, not the Company**



**December  
2021**

**PIMCO & Silver Point send  
proposal that specifically  
contemplates Platinum  
participating in uptier**

ECF 700-58 (Sept. 28, 2021 PIMCO deck on Incora); ECF 700-35 at 4; ECF 700-75; 610-3 at 6

# Carrot: Windfall to Unsecureds at Expense of 2026 Holders

Case 23-03091 Document 563-1 "SEALED" Filed in TXSB on 01/25/24 Page 2 of 6

From: Jon Zinman <jzinman@silverpointcapital.com>  
 Sent: Mon, 14 Mar 2022 21:33:16 -0400 (EDT)  
 To: Taylor Montague <tmontague@silverpointcapital.com>  
 Subject: RE: Incora

Not yet but we'll likely be speaking with them before it's over. Currently at odds (as they negotiate for more, it's cash leaving the system to our detriment). Will keep you posted

Sent with BlackBerry Work  
 (www.blackberry.com)

From: Taylor Montague <tmontague@silverpointcapital.com>  
 Date: Monday, Mar 14, 2022, 9:24 PM  
 To: Jon Zinman <jzinman@silverpointcapital.com>  
 Subject: RE: Incora

Do you know who at Carlyle is involved? We should definitely try to use this to build relationship there too

Taylor Montague  
 O: 205-542-4211  
 M: 475-259-4362

From: Jon Zinman <jzinman@silverpointcapital.com>  
 Date: Monday, Mar 14, 2022, 8:51 PM  
 To: Taylor Montague <tmontague@silverpointcapital.com>  
 Subject: RE: Incora

Yes - uptiering bonds trading in the 20s for a 2L the desk values at ~70

Sent with BlackBerry Work  
 (www.blackberry.com)

From: Taylor Montague <tmontague@silverpointcapital.com>  
 Date: Monday, Mar 14, 2022, 8:07 PM  
 To: Jon Zinman <jzinman@silverpointcapital.com>  
 Subject: RE: Incora

I assume if this transacts

From: Taylor Montague <  
 Sent: Monday, March 14,  
 To: Jon Zinman <jzinman@  
 Subject: RE: Incora

Yes, he's always been very positive in the market.

Taylor Montague  
 O: 205-542-4211

From: Jason Prager <jprager@silverpointcapital.com>  
 Sent: Thu, 10 Mar 2022 15:22:10 -0500 (EST)  
 To: Jon Zinman <jzinman@silverpointcapital.com>  
 Cc: Eddie Mishan <emishan@silverpointcapital.com>  
 Subject: RE: Project Elevate - Junior Lien ICA

I told JT you're getting what we want on every point  
 JK I didn't say that. I am free between now and 4, but not necessary on my end, your call - trust you as always to get the

From: Jon Zinman <jzinman@silverpointcapital.com>  
 Sent: Thursday, March 10, 2022 3:21 PM  
 To: Jason Prager <jprager@silverpointcapital.com>  
 Cc: Eddie Mishan <emishan@silverpointcapital.com>  
 Subject: RE: Project Elevate - Junior Lien ICA

Agreed but its multiple open points. There is the MFN (which ties to their cash coupon), the PIKING of their accrued interest and the intercreditor agreement. We're of course pushing on all fronts but there are nuances - let's touch base live when we have time.

From: Jason Prager <jprager@silverpointcapital.com>  
 Sent: Thursday, March 10, 2022 2:28 PM  
 To: Jon Zinman <jzinman@silverpointcapital.com>  
 Cc: Eddie Mishan <emishan@silverpointcapital.com>  
 Subject: FW: Project Elevate - Junior Lien ICA

They're supposed to give here right? We're uptiering them! This is a windfall for them, we should tell them they have to give on both points

**"We're uptiering them! This is a *windfall* for them, we should tell them they have to give on both points"**

From: Jon Zinman <jzinman@silverpointcapital.com>  
 Date: Monday, Mar 14, 2022, 8:51 PM

To: Taylor Montague <tmontague@silverpointcapital.com>  
 Subject: RE: Incora

Yes - uptiering bonds trading in the 20s for a 2L the desk values at ~70

Subject: RE: Incora

CONFIDENTIAL

Yes - uptiering bonds trading in the 20s for a 2L the desk values at ~70

ECF 563-1 at 2 (Mar. 14, 2022 e-mail); ECF 782-10 at 1 (Mar. 10, 2022 e-mail); ECF 1013 (Prager, Feb. 12 Tr.) at 81:1-83:6

## Stick: Economic Pressure – Alternatives on the Table...

**From:** Jason Prager <jprager@silverpointcapital.com>  
**Sent:** Sat, 26 Feb 2022 11:33:29 -0500 (EST)

Case 23-03091

From: Jason Prager &lt;jprager@silverpointcapital.com&gt;

Sent: Sat, 26 Feb 2022

To: Michael Gatto

Cc: Eddie Mishou

Arora's'maroon

Starcinskiy

Zamara's'green

Reganato's'blue

JT Davis's'gold

Anthony D'Onofrio

Subject: RE: Incora

All:

After substantial back and forth between SPC, Pimco and Incora/Platinum over the past few days (including our advisors learning that the minority Akin group was offering to PIK their bonds and put up &gt; \$100mm of low-cost new money, including via moving assets to non-guarantor restricted subs, a solution that was approx. liquidity neutral vs. our proposal), we reached an agreement in principal on economic terms yesterday afternoon (conditional for both sides on achieving a deal with the unsecureds). We are now moving expeditiously to documentation with the goal of closing the transaction by 3/11. The summary terms are below. Please let us know if you have any questions / would like to discuss.

Thank you

Super scalar first out

Amount: roll-up of AHG bonds plus new money

New money: \$250mm

Rate: 10.5% (7.5% cash)

Maturity: 11/15/26, option

Call schedule

f NC then 11/24

f 11/24-5/25: 107.875

f 5/25-11/25: 104.75

f 11/25-5/26: 102.625

f Par after 5/26

Exchange fee: 1.125% PIK payable pro rata to all AHG bonds (24s and 26s)

Covenants

f \$1.00bn basket for super senior secured debt

HIGHLY CONFIDENTIAL - PROFESSIONAL'S EYES ONLY

SPAP\_00000248

***“minority Akin group ... offering ... solution ... approx. liquidity neutral vs. our proposal”***

## Stick: Economic Pressure – “feet to the fire”...

From: Jon Zinman <jzinman@silverpointcapital.com>  
Sent: Tuesday, February 22, 2022 9:01 PM  
To: Jason Prager <jprager@silverpointcapital.com>  
Cc: Eddie Mishan <emishan@silverpointcapital.com>  
Subject: RE: DRAFT INCORA EMAIL

It's not definite so I think we can discuss live tomorrow - **and he doesn't intend to share with Pimco (to help keep their feet to the fire).**

From: Jason Prager <jprager@silverpointcapital.com<mailto:jprager@silverpointcapital.com>>  
Sent: Tuesday, February 22, 2022 9:00 PM  
To: Jon Zinman <jzinman@silverpointcapital.com<mailto:jzinman@silverpointcapital.com>>  
Cc: Eddie Mishan <emishan@silverpointcapital.com<mailto:emishan@silverpointcapital.com>>  
Subject: RE: DRAFT INCORA EMAIL

Thanks. I actually don't like that / **would rather have their feet to the fire**. Was he strong enough on it that I should change the email? easy to do. Thanks

From: Jon Zinman <jzinman@silverpointcapital.com<mailto:jzinman@silverpointcapital.com>>  
Sent: Tuesday, February 22, 2022 8:59 PM  
To: Jason Prager <jprager@silverpointcapital.com<mailto:jprager@silverpointcapital.com>>  
Cc: Eddie Mishan <emishan@silverpointcapital.com<mailto:emishan@silverpointcapital.com>>  
Subject: RE: DRAFT INCORA EMAIL

FYI I just spoke to Dennis briefly. Sounds like real drop dead is now the US audit on 3/31 (they think they are going to get past the UK audit without a going concern qualification with or without a deal at that time).

Jason Prager, Silver Point

Q. And in parentheses, Mr. Zinman wrote **"To help keep their feet to the fire," and "their" in that sentence, you would understand meant PIMCO, your partner,** correct?

A. **Correct.**

## Stick: Economic Pressure – “power position”...

11

1 vendors shortening their payment periods. For  
2 a vendor reduced its payables, Wesco was \$5 mi  
3 cash.

4 By mid February 2022, another group  
5 organized; that was the Akin group. And at th  
6 Akin group did not have a financial advisor.  
7 Akin group made an offer to Wesco. The Akin p  
8 and eventually provided for \$250 million backe  
9 party letter of credit.

10 But Wesco reasonably concluded that  
11 would have to be backed by assets in excess of  
12 could provide. It also reasonably concluded t  
13 Akin proposals were actionable. Even if the m  
14 could be found and the collateral could be fou  
15 reasonably concerned that PIMCO and Silver Poi  
16 power position that would allow them to prevent the company  
17 from getting the financing from other sources. The board  
18 expected PIMCO and Silver Point would use that power.

19 By mid March 2022, Wesco's liquidity situation was  
20 stressed. Wesco wanted to wait to file their financial  
21 statements until they received a cash injection. But the  
22 United Kingdom would be willing to strike the company off the  
23 records if Wesco did not file its statements. That would have  
24 made it illegal for Wesco to do business in the United Kingdom  
25 and been devastating for the corporation.

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

### Oral Ruling

C. [The Wesco board was] reasonably concerned that **PIMCO and Silver Point** were in a **power position** that would allow them **to prevent the company from getting the financing from other sources. The board expected PIMCO and Silver Point would use that power.**

ECF 1474 (Oral Ruling) at 11:10-18



## Stick: Economic Pressure – “power position”...

Malik Vorderwuelbecke, Incora Board Member

**Q.** ... [PIMCO/Silver Point] group had the ability to prevent the company from getting financing in other ways. Is that right?

**A.** Yeah. They were definitely in a power position. Yes.

**Q.** Okay. And it seems from these -- this presentation, that the expectation of the Board was that they would use that power, correct?

**A.** Yes.

Patrick Bartels, “Independent” Director

**Q.** This third bullet point, majority secured group has the ability to prevent incurrence of debt and liens beyond existing baskets. How did that affect your understanding of the choice you were asked to make at this meeting?

**A.** From my perspective, that they weren’t willing to let others do a deal because they would – if they acquired the incurrence of debt and liens beyond what was already detailed in the documents.

ECF 697 (Vorderwuelbecke, Feb. 1 Tr.) at 107:24-108:7 (emphasis added); ECF 1119 (Bartels, Feb. 13 Tr.) at 238:7-14 (emphasis added)

## Stick: Economic Pressure – “power position”...

Malik Vorderwuelbecke, Incora Board Member

25 Q And so your understanding as majority, I'm sorry, as a  
 1 Board member, was that the PIMCO Silverpoint Group was not  
 2 willing to open up the transaction to all secured  
 3 noteholders, right?  
 4 A That's correct.

14 Q So your understanding, I take it, was that the majority  
 15 secured group, PIMCO Silverpoint, was not willing to provide  
 16 new money on a pari passu basis, right?  
 17 A That's correct.  
 18 Q Okay. And your understanding also was that the PIMCO  
 19 Silverpoint Group was not willing to open up the transaction  
 20 to all holders, right?  
 21 A Yes.

Case 23-03091 Document 536-24 \*SEALED\* Filed in TXSB on 01/23/24 Page 6 of 20  
 Prepared at the Request of Counsel /  
 Highly Confidential

### Executive Summary

#### The Company's Secured/Unsecured transaction remains the best available option

- > Transaction is the result of hard-fought negotiations by management, board members and advisors, following presentation of potential transaction by Majority Secured Group in December 2021
  - Majority Secured Group was not willing to provide new money on a pari passu basis
  - Majority Secured Group was not willing to open up transaction to all secured noteholders
  - Majority Secured Group has the ability to prevent incurrence of debt and liens beyond existing baskets
- > While the Minority Secured Group has made a series of proposals, they are inferior for both economic and execution risk reasons
  - Company must establish new subsidiary as a JV and take aggressive read of indentures' JV debt basket
  - Operationally complex — may take several weeks or longer to identify and negotiate drop-down of assets


#### The Company's Secured/Unsecured transaction remains the best available option

- > Transaction is the result of hard-fought negotiations by management, board members and advisors, following presentation of potential transaction by Majority Secured Group in December 2021
  - Majority Secured Group was not willing to provide new money on a pari passu basis
  - Majority Secured Group was not willing to open up transaction to all secured noteholders
  - Majority Secured Group has the ability to prevent incurrence of debt and liens beyond existing baskets
- > Many vendors have already applied credit holds, leading to service quality that major customers consider unacceptable

The Secured/Unsecured transaction is actionable and available now

Highly Confidential  
Highly Confidential

DX-0076-005

 Milbank PJT Partners 2  
 WES\_00032036  
 WESCO\_QE\_UCC\_2004\_00032036

ECF 697 (Vorderwuelbecke, Feb. 1 Trial Tr.) at 104:25-105:4, 106:14-21; ECF 536-24 at 5 (Mar. 24, 2022 Wolverine Intermediate Holding Corporation Board Minutes).

Probable & Foreseeable Outcome = **Breach**

See generally *Guard-Life Corp. v. S. Parker Hardware Mfg. Corp.*, 406 N.E.2d 445 (N.Y. 1980);  
see also *@Wireless Enters., Inc. v. AI Consulting, LLC*, No. 05-CV-6176 CJS(P), 2011 WL 1871214 (W.D.N.Y. May 16, 2011)

# Intentional Acts: Probable & Foreseeable Outcome

Guard-Life Corp. v. S. Parker Hardware Mfg. Corp., 50 N.Y.2d 183 (1980)  
406 N.E.2d 445, 428 N.Y.S.2d 628

Critical to the determination of the second of the two issues in this case is whether a contract which is voidable for lack of mutuality is to be classified in the category of an existing contract or in that of a prospective contractual relation only. The Restatement (788) expressly places a contract terminable at will in the latter category. Although the similarity <sup>192</sup> between voidable contracts and contracts terminable at will is elsewhere noted, <sup>4</sup> no explicit reference is made in section 768 to voidable contracts. It may be inferred that the reporter thought to classify voidable contracts with existing contracts or perhaps that voidable contracts were not to be classified at all for purposes of this section. For our part, however, we are persuaded that interference with performance of voidable contracts should be treated the same as interference with contracts terminable at will for purposes of imposing liability in tort, and that both fall in the same category with interference with prospective contractual relations. For present purposes there are only superficial distinctions between the <sup>1450</sup> rights and interests under contracts terminable at will and voidable contracts of the parties who claim to have been injured by the interference of the alleged tort-feasor. In both instances the contract will continue to be operational until action on the part of the other contracting party brings it to a halt, and in both instances the other party at his election may bring it abruptly to a halt, by termination in the one instance and by avoidance in the other.

It is not sufficient, we suggest, to make the result hinge on the subjective expectation or state of mind of the parties, as the dissenters appear to think appropriate. They would distinguish between contracts which are terminable at will and those which are voidable. The internalized expectation of the party seeking to recover for an alleged tort, however, may well be the same whichever the form of the contract. Thus, under a contract in form terminable at will, other factors may <sup>193</sup> give reliable assurance that there will likely be no exercise of the right of termination, accordingly fostering an expectation of future relations; a consequence the dissenters would ascribe to voidable contracts. By similar token, although their contract contains no right of termination, one party to a contract may be aware, as the result of legal advice or otherwise, that his contracting <sup>1484</sup> partner has an equivalent right to escape the obligation to perform because the contract is voidable, thus undermining any expectation of continuity a consequence attributable by the dissent to a contract terminable at will.

[3] Not, although the dissenters appear to suggest otherwise, should the state of mind of the interfering tort-feasor be

determinative. "We predicate for an alleged tort-feasor with the third party be totally unaware of legal particulars from its economic ever know what or is entitled to ethical considerations bearing, we pass if any there be, whether it later it was terminable a enforceable. Yet instance (absent later two.

[4] In sum, interference with competitor is a significance of 4 actual, legal, its avoided by the o materially differs contracting party party seeking to is right to performance of future contract been no requirement there is no liability competitor's <sup>1</sup> of wrongful uses competitive assets

The principles of Restatement and this developing area of the law and, in large measure, reflect prior case decisions in this jurisdiction. Thus, in <sup>76</sup> *Hennrich v. Fodoritz*, 254 N.Y. 443, 173 N.E. 674 a case involving a contract neither voidable nor terminable at will this court upheld a verdict for plaintiff in an action for inducement of breach of the contract on proof of the existence of a valid contract, defendant's intentional interference with performance and consequential damages suffered by plaintiff, a party to the contract. With respect to a contract for a definite term, permission to <sup>1481</sup> breach alone, as by an offer of better terms <sup>76</sup> *Gold Medal Farms v. Rutland County Co-*

determinative. While it must be established, as a threshold predicate for any claim of tortious interference, that the alleged tort-feasor knew that his competitor had a contract with the third party, as a practical matter he will usually be totally unaware of, and customarily indifferent to, the legal particulars of that contract (as distinguished, perhaps, from its economic or operational aspects). He will seldom if

*Guard-Life Corp. v. S. Parker Hardware Mfg. Corp.*, 406 N.E.2d 445, 450 (N.Y. 1980)

# Probable & Foreseeable Outcome

ROOPESH SHAH - CROSS BY MR. ROSENBAUM

140

1 Incora debt, two-thirds consent was required under the 2024,  
2 and 2026 indentures, correct?

3 A If I can ask a clarification. Is that am I answering  
4 that based on my understanding of them, or asking that as in  
5 essence that they had first hand knowledge of it because I'm  
6 them?

7 Q I'm asking if sitting here today, it is your belief,  
8 Mr. Roopesh Shah, it is your belief that your clients  
9 understood that in order to effect a transaction involving a  
10 super senior first out position of Incora debt, two-thirds  
11 consent was required under the 2024, and 2026 indentures. Is  
12 that a correct statement?

13 A Yes.

14 Q And you discussed, did you not, with PIMCO and Silver  
15 Point in the fall, 2021, the need for two-thirds consent to  
16 effect a super senior first out transaction of Incora debt,  
17 correct?

18 A Yes.

19 Q And you, yourself, now I'm asking you individually,  
20 understood that to do a super senior first out transaction of  
21 Incora debt, two-thirds consent was required of the 2024, and  
22 2026 secured holders, correct?

23 A Correct.

24 Q Okay. And you talked on direct about PIMCO and Silver  
25 Point's first proposal, and I can show it to you if you need

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

Roopesh Shah, PIMCO/SP

**Q.** [I]t is your belief that your clients understood that in order to effect a transaction involving a super senior first out position, of Incora debt, two-thirds consent was required under the 2024, and 2026 Indentures[?]

**A.** Yes

ECF 939 (Shah, Feb. 27 Tr.) at 140:7-18 (emphasis added)

# Probable & Foreseeable Outcome

SAMUEL DOSTART - CROSS BY MR. ROSENBAUM

33

1 it wouldn't have had the IRR of the pure additional notes  
2 path, and it wouldn't have had the capital, right, what did we  
3 call it? --  
4 THE COURT: NPV.  
5 MR. ROSENBAUM: -- NPV; I keep wanting to say --  
6 anyway --  
7 BY MR. ROSENBAUM:  
8 Q -- NPV of the acquisition path. Is that right?  
9 A Yes.  
10 Q Okay. And so, it's that third path, the co-op path that  
11 for some time PIMCO and Silver Point pursued, correct?  
12 A Yes.  
13 Q Okay. And -- okay. And I just want to tie this out. So  
14 from a pure deal economics standpoint, that would be the least  
15 attractive of the three, fair?  
16 A On direct, yes.  
17 Q And PIMCO and Silver Point entered into cooperating  
18 agreements with a number of holders in order to attempt to  
19 achieve the co-op path, right?  
20 A Yes.  
21 Q Okay. And those were Macquarie, Citadel, and Olympus  
22 Peak. Do I have that right?  
23 A Yes.  
24 Q Okay. And if I also have it right, those co-ops to your  
25 understanding only related to 2026 notes, not 2024 notes,

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

## Samuel Dostart, PIMCO

- Q.** Okay. And so, it's that third path, the **co-op path** that for some time PIMCO and Silver Point pursued, correct?
- A.** Yes.
- Q.** Okay. And -- okay. And I just want to tie this out. So **from a pure deal economics standpoint, that would be the least attractive** of the three, fair?
- A.** On direct, yes.
- Q.** And **PIMCO and Silver Point entered into cooperating agreements with a number of holders in order to attempt to achieve the co-op path**, right?
- A.** **Yes.**

# Probable & Foreseeable Outcome

## Executive Summary

Item	Description
<b>General Description of Situation and Overall Investment Thesis</b>	<ul style="list-style-type: none"> <li>• Incora is the largest third party C-Class parts distributor benefits from its unparalleled scale</li> <li>• Opportunity to participate in attractive 1L risk with potential for upturning transaction given significant PIMCO position (reduce detach from ~85% to ~65% of base case valuation, attach remains at ~15% LTV)</li> <li>• PIMCO owns \$440mm of 1L risk, including ~50% of the 2024s and ~14% of the 2026s</li> <li>• Incora 1L risk currently trades @ ~42.5 (in line with cost basis), ytm of ~11.5%</li> <li>• Under a "base case," Incora will have to restructure its balance sheet</li> <li>• Sponsor Platinum Equity has so far stood behind the business, including putting in \$50mm of additional uns/equity (despite \$75mm 1L capacity) and has purchased unsecured notes</li> <li>• Debt documents are generally tight, with little "wiggle room" provided</li> <li>• However, the 1L Notes permit holders of 2/3rds of non-participating holders may require consent of</li> <li>• In the event that the sponsors exhaust other available liquidity, the company is in exchange for additional transaction before filing the company in exchange for additional</li> <li>• Redacted - Privileged</li> <li>• The market does not generally appear to be aware of this</li> </ul>
<b>Expected Investment Amount</b>	<ul style="list-style-type: none"> <li>• Additional 1L risk available before passing 2/3rds may be</li> <li>• Subsequent liquidity injection may total ~\$200mm, split be</li> </ul>

attach remains at ~15% LTV

## Super Senior Deal – Company Counterproposal

Sources and Uses	
Sources	Uses
Super Senior First Lien Debt - Exchange (Assumes 2/3)	Exchanging 2024 Secured Notes
Super Senior First Lien Debt - New Money	Exchanging 2026 Secured Notes
Super Senior Second-Out Debt	Exchanging 2027 Unsecured Notes
Super Senior Third-Out Debt	Exchanging Unsecured Promissory Note
Debt Discount Captured	Exchange Fees
	Advisor Fees
	Cash to Balance Sheet
<b>Total Sources</b>	<b>Total Uses</b>
\$1,793	\$1,793

Pro Forma Capital Structure									
As of Jan-22									
Pro Forma for First Lien/Second-Out									
(in millions)	Maturity	Rate	Face Value	2022E Net	Cash	Ad.	Face Value	2022E Net	Cash
\$415mm ABL Revolver	Jan-25	L+175/100N	\$430	2.4x	2.4x	\$9	\$430	0.7x	\$9
Katumi Factoring Facility	NA	8.00%	22	2.4x	2.4x	2	22	0.7x	2
New Super Senior First Lien Debt	Nov-26 <sup>(1)</sup>	7.5%/1.5% <sup>(1)</sup>	—	—	—	1,263	1,263	0.7x	9.2x
New Super Senior Second-Out Debt	Nov-26 <sup>(1)</sup>	5%/5% <sup>(1)</sup>	—	—	—	530	530	9.2x	12.8x
\$600mm Secured Notes	Nov-24	8.50%	637 <sup>(1)</sup>	2.4x	12.7x	54	(491)	146	12.8x
\$800mm Secured Notes	Nov-26	9.00%	802 <sup>(1)</sup>	2.4x	12.7x	75	(688)	294	12.8x
<b>Total Secured Debt</b>			<b>\$1,361</b>	<b>12.7x</b>	<b>12.7x</b>	<b>\$144</b>	<b>\$714</b>	<b>\$2,876</b>	<b>16.8x</b>
\$525mm Unsecured Notes	Nov-27	13.13%	525	12.7x	16.4x	69	(439)	86	15.8x
\$25mm Unsecured Promissory Note	NA	13.13%	25	12.7x	16.4x	3	(25)	—	15.8x
<b>Total Insura Debt</b>			<b>\$2,511</b>	<b>16.4x</b>	<b>16.4x</b>	<b>\$218</b>	<b>\$2,781</b>	<b>16.4x</b>	<b>\$182</b>
HoldCo Pk Debt	Apr-28	13.75%	128	16.4x	17.2x	—	—	128	16.4x
<b>Total Debt</b>			<b>\$2,639</b>	<b>17.2x</b>	<b>17.2x</b>	<b>\$218</b>	<b>\$2,909</b>	<b>17.2x</b>	<b>\$182</b>
(1) Cash and Equivalents			(85) <sup>(1)</sup>	—	—	(250)	(345)	—	—
<b>Net Debt</b>			<b>\$2,644</b>	<b>17.2x</b>	<b>17.2x</b>	<b>\$218</b>	<b>\$2,644</b>	<b>17.2x</b>	<b>\$182</b>

Memo: EBITDA  
FY 2022E EBITDA \$147<sup>(1)</sup>

A AHG net attach / detach leverage is reduced from 2.4x and 12.7x to 0.7x and 9.2x, respectively; Non-AHG Secured Noteholder net attach increased from 2.4x to 12.8x

B Participating Unsecured Noteholder net attach / detach improved from 12.7x and 16.4x to 9.2x and 12.8x respectively

JASON PRAGER - DIRECT BY MR. LIEBERMAN 65

Mr. Prager?

THE WITNESS: Sure. Well, can I actually correct Mr. Lieberman that that there was a mental calculation?

THE COURT: No, no, no, no, no, no, no. You've got to --

THE WITNESS: That's --

THE COURT: -- answer the question that's there.

THE WITNESS: -- that is the answer.

THE COURT: You don't -- you've got to answer the question that's there.

Jason Prager, Silver Point

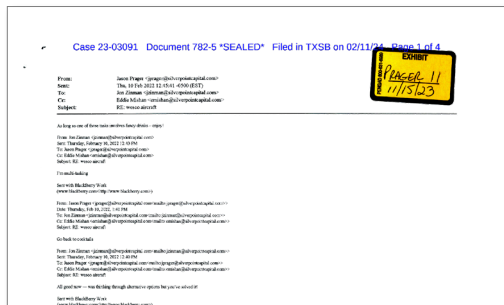
**Q.** How did Silver Point come to the conclusion that there was a lower LTV using the additional notes path than partnering with other holders without calculations?

**A.** I believe ... we did have a ... calculation. It was simple mental math.

ECF 1013 (Prager, Feb. 12 Tr.) at 65:14-19 (emphasis added);  
ECF 700-58 at 3 ("attach remains at ~15% LTV");  
ECF 623-5 at 15 ("Non-AHG Secured Noteholder net attach increased from 2.4x to 12.8x")



# February 9: Panic



*“[Dostart is] enough **worried** where he wants to be a bit over. But he’s def **much more stressed** than we are about this. **He called me every 5 mins up to 11 last night.**”*

Jason Prager, Silver Point

**Q.** So your impression given you [by] Mr. [Dostart] that he was stressed and worried that there would not be the ability of the co-op members to vote 66 and two-thirds of the 2026 bonds, correct?

**A.** Yeah he was worried that they would not be able (indiscernible) votes of their bonds back (indiscernible) have two-thirds of the bonds in the co-op.

**Q.** Two-thirds of the 2026 bonds, right?

**A.** Yes.

18 Q And so, during this time -- around this time PIMCO and  
19 SilverPoint entered into co-op agreements with Citadel,  
20 McQuary (phonetic) and Olympus Peak (phonetic). Do you recall  
21 that?  
22 A I do.  
23 Q And just so we have it and I think we established this  
24 yesterday too. Waddell became McQuary, right?  
25 A (Indiscernible) whether or not it was McQuary.

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

ECF 782-5 at 1 (emphasis added); ECF 868 (Prager, Feb. 13 Tr.) at 18:9-17 (emphasis added)

# February 21: Pivot

JOHN JAMES O'CONNELL III - CROSS BY MR. LEVINE 262

1 to the company?

2 A Correct.

3 Q Mr. O'Connell, isn't it also true that as of February 21,

4 2022, the company and its advisors had not had conversations

5 with the PIMCO, Silver Point group advisors about sequencing

6 the proposed transaction such that parties would enter into a

7 third supplemental indenture followed by a fourth supplemental

8 indenture?

9 A That's right, not to my knowledge.

10 Q In fact, it wasn't until after Akin sent its February 21,

11 '22, letter that the advisors on both sides commenced

12 conversations about executing a transaction via a third

13 supplemental indenture followed by a fourth supplemental

14 indenture, right?

15 A Yes, that's my understanding.

16 Q And it was advisors to the group led by PIMCO and Silver

17 Point that first suggested using a transaction structure with

18 a third supplemental indenture and a fourth supplemental

19 indenture, correct?

20 A Yes. This was the point in the deposition that we had

21 circled back on after I had conferred with Milbank.

22 Q So when you were conferring with Milbank, prior to

23 providing these answers, was it to inform yourself in your

24 capacity as a 30(B)(6) representative for the company?

25 A I believe so, yes.

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

Jamie O'Connell, PJT Partners

**Q.** In fact, it wasn't until after Akin sent its February 21, '22, letter that the advisors on both sides commenced conversations about executing a transaction via a third supplemental indenture followed by a fourth supplemental indenture, right?

**A.** Yes, that's my understanding.

**Q.** And it was advisors to the group led by PIMCO and Silver Point that first suggested using a transaction structure with a third supplemental indenture and a fourth supplemental indenture, correct?

**A.** Yes. This was the point in the deposition that we had circled back on after I had conferred with Milbank.

**Q.** So when you were conferring with Milbank, prior to providing these answers, was it to inform yourself in your capacity as a 30(B)(6) representative for the company?

**A.** I believe so, yes.

ECF 879 (O'Connell, Feb. 21 Tr.)  
at 262:10-25 (emphasis added)

## February 23: Platinum Warns BNY

Kevin Smith, Platinum

- Q.** And you reached out to Bank of New York Mellon, on February 23rd, the day after that investment committee meeting that you think you attended, correct?
- A.** I reached out on February 23rd, correct.

6 MR. ROSENBAUM: Do you have any reason to doubt that  
7 on February 21, the day before the Platinum investment  
8 committee meeting that you were called in to, that a group of  
9 holders, represented by the law firm of Akin Gump indicated to  
10 the company's counsel at Milbank, that that group held over  
11 one-third of the 2026 notes? My question was do you have any  
12 reason to disagree with that?

13 FEMALE SPEAKER: Objection, Your Honor, no  
14 foundation.

15 THE COURT: Sustained.

16 BY MR. ROSENBAUM:  
17 Q Did you hear in words or substance around February 21, or  
18 22, that a group had indicated to Milbank that it had over  
19 one-third of the 2026 notes?

20 A I don't recall that.

21 Q You don't recall ever hearing that?

22 A I don't.

23 Q And is it your testimony that that subject did not come  
24 up at the -- well, let me back up. Did you attend the  
25 investment committee meeting on February 22, 2022?

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

Case 23-03091 Document 1379-3 "SEALED" Filed in TXSB on 06/17/24 Page 28 of 81

27

1 10:30:09 1 up with you on Ankura/Wesco when you have a  
2 10:30:12 2 moment. Let me know if you have some time  
3 10:30:14 3 today between 1 and 3."

4 10:30:17 4 Do you know why Kevin Smith  
5 10:30:19 5 wanted to have a call with Rob McIntyre?  
6 10:30:22 6 MS. OBERWETTER: Object to the  
7 10:30:23 7 form.

8 10:30:24 8 MR. WEINSTEIN: And also it's the  
9  
10

Gary Bush, Bank of New York

- Q.** Did Rob McIntyre tell you why Platinum was suggesting this?
- A.** Platinum -- yes. He -- we were told that Platinum was suggesting this because it, it appreciated and respected its relationship with the Bank of New York Mellon, didn't want to do anything to harm that relationship, and that there was plan to be a transaction involving Wesco that would involve a major dispute among noteholders and didn't want his, BNY Mellon, to get into that dispute and possibly taint the relationship between Platinum and BNY Mellon.

ECF 827 (Smith, Feb. 9 Tr.) at 183:18-21 (emphasis added); ECF 1379-3 (Bush Dep. Tr.) at 29:4-17 (emphasis added)

# Unprecedented Transaction...

## REQUEST FOR ADMISSION NO. 4:

Admit that You are not aware of any transactions (other than the 2022 Transaction) involving the issuance of additional bonds or notes under an indenture that are voted in favor of an amendment, exchanged, and cancelled on the same day.

Roopesh Shah, PIMCO/SP

**Q.** I just want to make sure I have your answer. Is that statement correct, that you were not aware of any other liability management transaction where the combination of these things occurred, additional notes were issued, voted in favor of an amendment, exchanged and canceled on the same day?

**A.** I think that's right.

See also, ECFs 782-19 at 5, 783-1 at 2, 783-2 at 4, 783-3 at 3, 783-4 at 2, 783-5 at 3, 783-6 at 2, and 783-7 at 3 (Counterclaim Defendants admit they are aware of no other transaction involving the purported issuance, vote, and cancellation of notes on the same day).

the Debtors agree with this Request as stated.

PIMCO agrees with this Request as stated.

Silver Point agrees with this Request as stated.

Senator agrees with this Request as stated.

Platinum responds as follows: Admitted that Platinum is not presently aware of a transaction involving the issuance of additional bonds or notes under an indenture that are voted in favor of an amendment, exchanged, and canceled, on the same day.

# Silver Point & PIMCO believed they needed Senator's consent

Roopesh Shah, PIMCO/SP

- Q.** Why did the proposal include the unsecured Holdco Note Holders including notes held by Platinum and affiliates, if any, potentially offered the opportunity to exchange into [PIK'd] super senior secured second out debt?
- A.** Really just opening the door that unsecureds and Holdcos **[Senator] whose consent we know we needed** could be offered the opportunity to exchange into uptier as well. And we thought, in addition to those other holders, Platinum may hold those. So we sort of be inclusive, right, that unsecured holders and Holdco holders, whoever they are, **including Platinum**, as far as we were concerned, could be potentially offered the opportunity to uptier as well.

ROOPESH SHAH - DIRECT BY MR. LIEBERMAN

63

MR. LIEBERMAN: I think it's a fact.

MALE SPEAKER: Well, then foundation.

THE COURT: Sustain the objection.

(Pause in the proceeding.)

BY MR. LIEBERMAN:

Q If you go to the bottom of the proposal on page 6 of 7, Tab 4. Why did the proposal include the unsecured Holdco Note Holders including notes held by Platinum and affiliates, if any, potentially offered the opportunity to exchange into pick super senior secured second out debt?

A Really just opening the door that unsecureds and Holdco's who's consent we know we needed could be offered the opportunity to exchange into uptier as well. And we thought, in addition to other holders, Platinum may hold those. So we sort of be inclusive, right, that unsecured holders and Holdco holders, whoever they are, including Platinum, as far as we were concerned, could be potentially offered the opportunity to uptier as well.

Q Does this proposal identify a specific path or structure pursuant to which PIMCO and Silver Point would reach the 66 and two thirds threshold for the 2026 notes?

A No.

Q Did you think it was necessary to include that in this proposal?

A No, we didn't include it.

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

# Senator: "Perfect Recipe for Litigation"

Case 23-03091 Document 1384-1 Filed in TXSB on 06/17/24 Page 136 of 216

Transcript of Jay Bharadwa, Corporate Designee  
Conducted on October 25, 2023

135

1 BHARADWA  
2 at this time on March 2nd, 2022, which is the 03:51:14  
3 date of this exchange in Exhibit 24 that we're 03:51:16  
4 looking at, whether at that time in March  
5 2022, Senator anticipated that the 2022 18  
6 transaction would be challenged in court  
7 A. I don't know that we had a w  
8 way or the other, but we definitely had 19  
9 yeah, we -- we assumed that it -- yeah, 20  
10 was a possibility. As I said, we consid  
11 outcomes, and this was clearly something  
12 there was a possibility of it being chal 21  
13 Q. And what was the basis for  
14 Senator's thinking that there was a  
15 possibility -- 22  
16 THE COURT REPORTER: I'm sor  
17 what was the basis for that? 23  
18 Q. What was the basis for Senat  
19 thinking that there was a possibility th  
20 2022 transaction could be challenged in 24  
21 A. Because it's an aggressive  
22 liability management exercise transac  
23 clearly some constituents would be advan  
24 and some disadvantaged, and that's a perfect  
25 recipe for litigation. 03:52:25  
03:52:27

Jay Bharadwa, Senator

Q. What was the basis for Senator's

thinking that there was a possibility that the  
2022 transaction could be challenged in court?

A. Because it's an aggressive

liability management exercise transaction where  
clearly some constituents would be advantaged  
and some disadvantaged, and that's a perfect  
recipe for litigation.

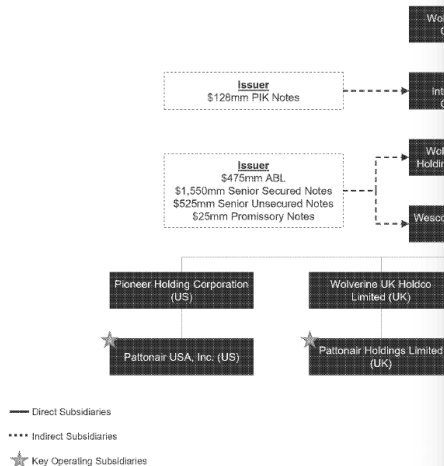
PLANET DEPOS

ECF 1384-1 (Bharadwa Dep. Tr.) at 135:18-25

# Platinum

## Simplified Corporate Structure

Case 23-03091 Document 1490 Filed 09/23/24 Page 39 of 44



Privileged and Confidential

49

WESCO\_AP\_PO\_00061692

Confidential –  
Professional  
Eyes Only

Platinum Equity  
Advisors LLC  
(Interferer)

ECF 538-16 (Jan. 2022 Noteholder Advisor Presentation) at 50

# Platinum's Self-Interest – April 19, 2020

## Situation Overview

### Big Picture Investment Thesis

- Our business will not only be affected in the short-term, but it will also be in the mid-term. It's impossible to really assess how long in the mid-term at this juncture.
- We have ample liquidity - to last us 4 years even if things turn out somewhat bad so we are not in a very precarious position.
- We have purposely under-capitalized the acquisition of Wesco (14% equity for a \$1.9b deal<sup>1</sup>) hoping we could release liquidity via working capital, over-achieve on O and equitize the balance sheet by going public relatively quickly / within 2 years (also knowing we could always inject equity later)
- If the pain of the next few years ends up being mild to pretty bad, we will be fine. If it gets worse than that or lasts for many more years, then we would likely run into trouble

*The Company entered into the acquisition agreement in which to acquire Wesco, which is a public company. The deal was*

- This investment thesis revolves around positioning ourselves for defense first in case the unknown of the next few years plays out negatively – aiming at the possible fulcrum security but doing so knowing that we don't have to sweat too much the economics if the difficult environment turns out being mild and this debt investment ends up being offensive because there is enough rate and our hold is now likely to be long enough to make math attractive

*1. \$266m of equity on \$1.9bn EV*

- This investment thesis revolves around positioning ourselves for defense first in case the unknown of the next few years plays out negatively – aiming at the possible fulcrum security but doing so knowing that we don't have to sweat too much the economics if the difficult environment turns out being mild and this debt investment ends up being offensive because there is enough rate and our hold is now likely to be long enough to make math attractive
- In other words, we believe that we should look at where we invest in the capital structure and at returns with an eye towards defense (be more accommodating on returns and build protection where there is risk first) and do so with the benefit of bad financing market coupons...

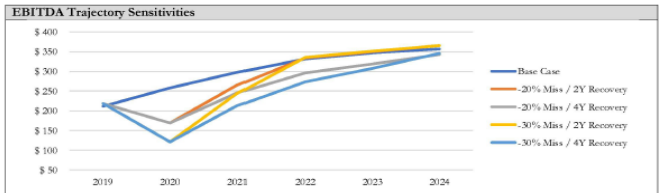
<sup>1</sup> \$266m of equity on \$1.9bn EV



# Platinum viewed its equity and debt returns as a whole

Case 23-03091 Document 595-2 \*SEALED\* Filed in TXSB on 01/29/24 Page 4 of 18  
Incora  
Deal Update / Debt Investment Discussion April 19, 2020

- Equity Returns**
- Original base case exit EBITDA was \$348m for Dec-2023, with cumulative FCF of -\$169m (due to heightened use of cash in 2020)
  - Across the 4 recovery scenarios, a 10.0x exit multiple results in the 2.0x area (+/- 0.2x), while 11.0x results in 2.5x-2.9x
    - 10.0x and 11.0x are below Wesco's ~12.5x LTM trading average while it was publicly listed (KLX's equivalent was also ~12.5x) and the most relevant precedents (Boeing-KLX) was done at 14.8x and Wesco acquired Hass (our chemical business) for 12.6x (see Appendix)



Return Sensitivities	-20% Sales / 2Y Recovery	-20% Sales / 4Y Recovery	-30% Sales / 2Y Recovery	-30% Sales / 4Y Recovery
Exit Year	2023	2024	2023	2024
Exit EBITDA				
Cumulative				

While we believe the road to decent and even good equity returns is relatively credible based on information we know today, it will be characterized by a challenging short and medium term period in which our key debt ratios will likely be scary to look at. This window should provide us with an attractive opportunity to make wise debt investments (insurance) that could very well turn out to be lucrative.

# Platinum Investment Committee Deck: ~ February 2022

Case 23-03091 Document 655-1 \*SEALED\* Filed in TXSB on 02/01/24 Page 42 of 20

the Request of Counsel  
Draft – Subject to Material Change  
Attorney Client Privilege

## Ad Hoc Secured Noteholder Group Proposal

Sources and Uses			
Sources		Uses	
Super Senior First Lien Debt - Exchange (Assumes 2/3)	\$1,013	Exchanging 2024 Secured Notes	\$425
Super Senior First Lien Debt - New Money	200	Exchanging 2026 Secured Notes	568
Super Senior Second-Out Debt	-	Exchanging 2027 Unsecured Notes	-
Super Senior Third-Out Debt	-	Exchanging Unsecured Promissory Note	-
Debt Discount Captured	-	Exchange Fees	0
		Advisor Fees	0
		Cash to Balance Sheet	200
<b>Total Sources</b>	<b>\$1,213</b>	<b>Total Uses</b>	<b>\$1,213</b>

### Pro Forma Capital Structure

		As of Jan-22				Pro Forma for First Lien/Second-Out			
		Face Value	2022E Net Attach	2022E Net Detach	Cash Interest	Adj.	Face Value	2022E Net Attach	2022E Net Detach
(\$ in millions)									
42751m ABL Revolver	Jan-25	1,175,000 <sup>(1)</sup>	\$421	-	3.2x	99	-	\$421	-
Katsun Factoring Facility	NA	6,000 <sup>(2)</sup>	37	-	2.2x	3	-	37	-
New Super Senior First Lien Debt	Nov-26 <sup>(3)</sup>	7,500,000 <sup>(4)</sup>	-	-	-	-	3,213	1,213	1,54
9450mm Secured Notes	Nov-24	8,500 <sup>(5)</sup>	639 <sup>(6)</sup>	1	3.2x	16.0x	54	(403)	112
9900mm Secured Notes	Nov-26	9,000 <sup>(6)</sup>	682 <sup>(6)</sup>	1	3.2x	16.0x	70	(580)	264
<b>Total Secured Debt</b>			<b>\$1,977</b>	<b>16.6x</b>	<b>16.6x</b>	<b>\$145</b>	<b>\$206</b>	<b>\$2,177</b>	<b>16.6x</b>
9520mm Unsecured Notes	Nov-27	13,125	525	16.0x	20.6x	69	-	525	16.0x
5250mm Unsecured Promissory Note	NA	13,125	25	16.0x	20.6x	3	-	25	16.0x
<b>Total Unsecured Debt</b>			<b>\$2,577</b>	<b>20.6x</b>	<b>20.6x</b>	<b>\$218</b>	<b>\$200</b>	<b>\$2,727</b>	<b>20.6x</b>
HoldCo PIK Notes	Apr-26	13,750	128	20.6x	21.6x	-	-	128	20.6x
<b>Total Debt</b>			<b>\$2,578</b>	<b>21.6x</b>	<b>21.6x</b>	<b>\$218</b>	<b>\$200</b>	<b>\$2,825</b>	<b>21.6x</b>
(1) Cash and Equivalents			(777) <sup>(6)</sup>				(200)	(377)	
<b>Net Debt</b>			<b>\$2,578</b>	<b>21.6x</b>	<b>21.6x</b>	<b>\$218</b>	<b>\$-</b>	<b>\$2,570</b>	<b>21.6x</b>

### Memo: EBITDA

FY 2022E EBITDA \$11.9<sup>(6)</sup>

(A) AHG net attach / detach leverage is reduced from 3.2x and 16.0x to 1.5x and 11.7x, respectively; Non-AHG secured Noteholder attach increased from 3.2x to 11.7x

- (1) Reflects PILO Impairment
- (2) Nov-26 maturity date
- (3) Cash interest rate / PIK
- (4) Debt balance adjusted
- (5) Estimated cash balance
- (6) 2022 EBITDA from com

Highly Confidential - F



AHG net attach / detach leverage is reduced from 3.2x and 16.0x to 1.5x and 11.7x, respectively; Non-AHG secured Noteholder attach increased from 3.2x to 11.7x

ECF 655-1 at 11 (“Non-AHG secured Noteholder attach increased from 3.2x to 11.7x”)

## Platinum's Self-Interest

---

14                   On March 24th of 2022, the board unanimously voted  
15                   to approve the majority group's proposal, the PIMCO/Silver  
16                   Point proposal. At the time of the vote, everyone left the  
17                   meeting, other than the board's advisors and Patrick Bartels.

18                   The company had brought Mr. Bartels on as an  
19                   independent director, but it does not appear to the Court that  
20                   Bartels acted as a truly independent director. Despite this,  
21                   the company and its advisors sincerely believed the 2022  
22                   transaction would be in the company's best interests.

ECF 1474 (Oral Ruling) at 12:14-22



KOBRE & KIM

DISPUTES  
AND INVESTIGATIONS

AMERICAS | NEW YORK . DELAWARE . MIAMI . SAN FRANCISCO . SÃO PAULO . WASHINGTON DC

APAC | HONG KONG . SEOUL . SHANGHAI

CARIBBEAN | BVI . CAYMAN ISLANDS

EMEA | CYPRUS . DUBAI . LONDON . TEL AVIV

# Thank You