Docket #1509 Date Filed: 10/5/2024

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

| | |
|---|---|
| IN RE:<br><br>WESCO AIRCRAFT HOLDINGS INC., *et al.*,[1]<br>Debtors. | Chapter 11<br><br>Case No. 23-90611 (MI)<br><br>(Jointly Administered) |
| WESCO AIRCRAFT HOLDINGS, INC., *et al.*,<br>Plaintiffs,<br><br>v.<br><br>SSD INVESTMENTS LTD, *et al.*,<br>Defendants. | Adv. Pro. No. 23-03091 (MI) |
| SSD INVESTMENTS, LTD., *et al.*,<br>Counterclaim Plaintiffs,<br><br>v.<br><br>WESCO AIRCRAFT HOLDINGS, INC., *et al.*,<br>Counterclaim Defendants. | |
| LANGUR MAIZE, L.L.C.,<br>Crossclaim Plaintiff,<br><br>v.<br><br>PLATINUM EQUITY ADVISORS, LLC, *et al.*,<br>Crossclaim Defendants. | |

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

2390611241007000000000002

| |
|---|
| LANGUR MAIZE, L.L.C.,<br>Third-Party Plaintiff,<br><br>v.<br><br>UNNAMED PLATINUM FUNDS c/o PLATINUM EQUITY ADVISORS, LLC, *et al.*,<br>Third-Party Defendants. |
| LANGUR MAIZE, L.L.C.,<br>Counterclaim Plaintiff,<br><br>v.<br><br>WESCO AIRCRAFT HOLDINGS, INC., *et al.*,<br>Counterclaim Defendants. |

**NOTICE OF FILING OF PLATINUM'S DEMONSTRATIVES**

PLEASE TAKE NOTICE that Platinum Equity Advisors, LLC; Wolverine Top Holding Corporation; and Platinum Equity Capital Partners International, IV (Cayman) LP hereby submit the demonstratives used during the October 2–3, 2024 hearing in the above-captioned adversary proceeding, attached hereto as Exhibit 1.

Dated: October 5, 2024

WILLIAMS AND CONNOLLY LLP

/s/ Joseph G. Catalanotto

Dane H. Butswinkas (*pro hac vice*)
Ryan T. Scarborough (*pro hac vice*)
Ellen Oberwetter (*pro hac vice*)
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*Attorneys for Platinum Equity Advisors, LLC, Wolverine Top Holding Corporation, and Platinum Equity Capital Partners International, IV (Cayman) LP*

**CERTIFICATE OF SERVICE**

I certify that, on October 5, 2024, a true and correct copy of the foregoing document was served through the Court's Electronic Case Filing System of the United States Bankruptcy Court of the Southern District of Texas, which will send a notification of such filing to all counsel of record.

Date: October 5, 2024

*/s/* Joseph G. Catalanotto
Joseph G. Catalanotto

# EXHIBIT 1

Platinum Equity

# *Wesco Aircraft Holdings, Inc. et al. v. SSD Investments et al.*

*23-ap-3091*
*U.S. Bankruptcy Court for the Southern District of Texas*

October 2, 2024

# Closing Argument of Platinum Equity

| | |
|---|---|
| 1 | Langur Maize Lacks Standing |
| 2 | Platinum Did Not Breach the Unsecured Indenture |
| 3 | Section 13.05 Protects Equity Owners |
| 4 | No Tortious Interference: Platinum Did Not Induce a Breach |
| 5 | The Economic Interest Defense Bars Langur Maize's Tort Claim |
| 6 | No Causation: Langur Maize's Claims Are Inherently Speculative |

# Closing Argument of Platinum Equity

## 1 Langur Maize Lacks Standing

# Langur Maize Lacks Standing

- The Court already held that Langur Maize suffered **no direct injury**: it did not own 2027 Notes at the time of the 2022 Transaction, and it bought its 2027 Notes with knowledge of the 2022 Transaction.

- Langur Maize received **no assignment of claims** from any party injured by a purported breach of the unsecured indenture.

# Langur Maize Suffered No Harm

- Langur Maize **owned and sold out of Incora secured notes** in anticipation of the 2022 Transaction.
- Langur Maize **monitored the 2022 Transaction in real time** as it was happening.
- Langur Maize **purchased its unsecured notes for pennies on the dollar** with **full knowledge**, even **after filing suit and after the Company declared bankruptcy**.

Cimala Dep. Tr. (Dec. 7, 2023) at 52:23-25, 53:2-9; ECF 1238-12 at 12

# Langur Maize Monitored the 2022 Transaction In Real Time

| | |
|---|---|
| **From:** | George Grealy |
| **Sent:** | Tuesday, May 10, 2022 1:30 PM EDT |
| **To:** | Michael McCarney |
| **Subject:** | Wesco Aircraft Transaction Summary |
| **Attachments:** | WAIR 4Q21-3-7.pdf, image001.png, image002.png |

**Wesco Aircraft Post-Uptiering Update:**

We met as a team this week to discuss Wesco Aircraft's bonds post the recent uptiering transaction. The new 1Ls have not yet traded and are held by PIMCO, Silver Point, and (we believe) one other player. These are a lower LTV layer (we view as 16%-66% post the transaction) vs. the old 1Ls (18%-83% LTV prior to the transaction), and we see these as covered paper with attractive carry if we can source them slightly below par.

2/3 vote, the PIMCO/Silver Point group rolled their secured bonds (2/3 of the existing tranches, including additional 2026s issued to dilute a potential blocking group) + $250mm of new money into a new 1L. 81% of the unsecureds rolled up into a 1.25L (Platinum and Carlyle are major holders of the unsecureds), while the left-out "formerly secured bonds" had their liens stripped, making them pari to the unsecureds that were left behind.

# Langur Maize's Unsecured Note Purchases

| DATE | FACE VALUE | AMOUNT PAID |
|---|---|---|
| **2/9/2023** | $16,904,000 | $1,979,177 |
| **2/10/2023** | $1,300,000 | $152,682 |
| **2/16/2023** | $23,000,000 | $2,760,000 |
| **New York Complaint – March 27, 2023** | | |
| **3/28/2023** | $2,000,000 | $268,438 |
| **3/30/2023** | $16,657,000 | $2,253,900 |
| **4/18/2023** | $580,000 | $82,076 |
| **Bankruptcy Filing – June 1, 2023** | | |
| **6/16/2023** | $8,400,000 | $651,000 |
| **7/6/2023** | $1,604,000 | $64,160 |
| **Total** | **$70,445,000** | **$8,211,433** |

# Langur Maize Knew About the 2022 Transaction

THE COURT: What's [Langur Maize's witness] going to testify about [Langur Maize's] knowledge of the up-tier transaction, whether they knew about it or didn't?

**MR. BENNETT:** **They knew about the transaction**, but we don't think that's definitive, Your Honor. And –

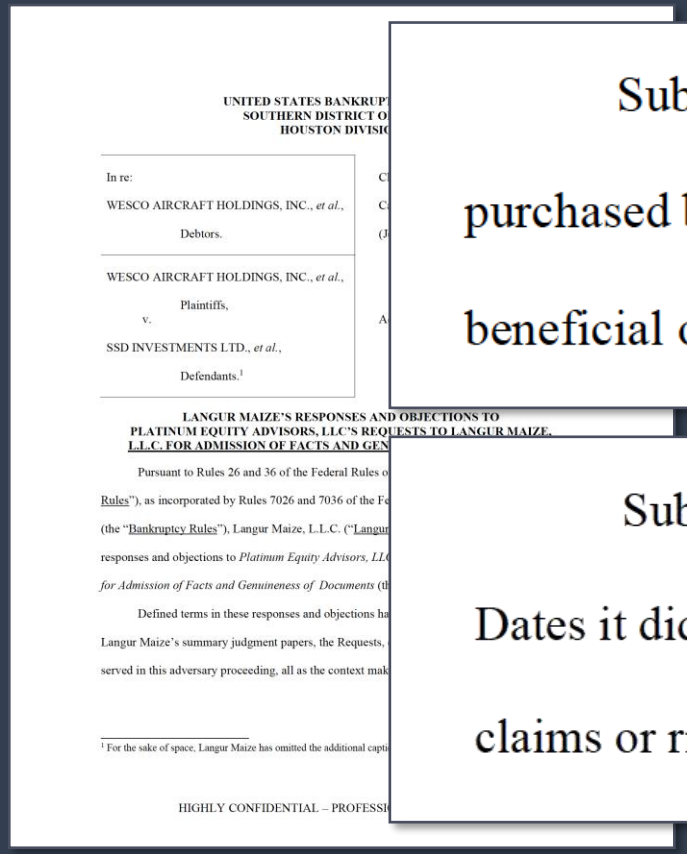
THE COURT: I got it that you may want to say that's not, but –

**MR. BENNETT:** Correct, and –

THE COURT: But he is not going to testify that they didn't have knowledge of the transaction.

**MR. BENNETT:** **He is not going to testify they didn't have knowledge** . . . .

# No Prior Beneficial Owner Assigned Claims to Langur Maize



UNITED STATES BANKRUP
SOUTHERN DISTRICT O
HOUSTON DIVISI

In re:
WESCO AIRCRAFT HOLDINGS, INC., *et al.*,
Debtors.

WESCO AIRCRAFT HOLDINGS, INC., *et al.*,
Plaintiffs,
v.
SSD INVESTMENTS LTD., *et al.*,
Defendants.[1]

**LANGUR MAIZE'S RESPONSES AND OBJECTIONS TO PLATINUM EQUITY ADVISORS, LLC'S REQUESTS TO LANGUR MAIZE, L.L.C. FOR ADMISSION OF FACTS AND GEN**

Pursuant to Rules 26 and 36 of the Federal Rules o
Rules"), as incorporated by Rules 7026 and 7036 of the Fe
(the "Bankruptcy Rules"), Langur Maize, L.L.C. ("Langur
responses and objections to *Platinum Equity Advisors, LL*
*for Admission of Facts and Genuineness of Documents* (th
Defined terms in these responses and objections ha
Langur Maize's summary judgment papers, the Requests,
served in this adversary proceeding, all as the context mak

[1] For the sake of space, Langur Maize has omitted the additional capti

HIGHLY CONFIDENTIAL – PROFESSI

Subject to and without waiving its objections, Langur Maize admits that when it purchased beneficial interests in the 2027 Unsecured Notes, it did not know the identity of the beneficial owners who previously owned those beneficial interests in the 2027 Notes.

Subject to and without waiving its objections, Langur Maize admits that on the Purchase Dates it did not seek or receive from the prior beneficial owners in writing expressly assigning claims or right to sue to Langur Maize. Langur Maize denies this Request to the extent it implies

**Langur Maize's RFA Responses (Jan. 11, 2024)**

# Langur Maize Has No Idea Who Its Predecessor Was or What Claims They Possessed




186:15 Q. Who was the beneficial owner of
186:16 the notes that are referenced in this

# Tort Claims Do Not Ordinarily Travel With Securities

***Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.,***
25 N.Y.3d 543, 550-51 (2015) (citations omitted)

"To be sure, fraud claims are freely assignable in New York. It has long been held, however, that **the right to assert a fraud claim related to a contract or note does not *automatically* transfer** with the respective contract or note. Thus, **where an assignment of fraud or other tort claims is intended in conjunction with the conveyance of a contract or note, there must be some language—although no specific words are required—that evinces that intent and effectuates the transfer of such rights**."

"At its core then, Commerzbank's argument amounts to little more than an assertion that, in the absence of language to the contrary, DAF's tort claims necessarily transferred to Dresdner with the notes. However, **this is contrary to the law in New York, which requires either some expressed intent or reference to tort causes of action, or some explicit language evidencing the parties' intent to transfer broad and unlimited rights and claims,** in order to effectuate such an assignment."

# Tort Claims Do Not Automatically Pass to Successor Holders

***Dexia SA/NV, Dexia Holdings, Inc. v. Morgan Stanley,***
41 Misc. 3d 1214(A), at *3 (N.Y. Sup. Ct. 2013), *aff'd*, 135 A.D.3d 497 (N.Y. App. Div. 1st Dep't 2016)

"Under New York law, absent language demonstrating an intent to do so, **tort claims do not automatically pass to an assignee**."

# Prior Beneficial Owners Retain Their Tort Claims

***Bluebird Partners, L.P. v. First Fidelity Bank, N.A.,***
85 F.3d 970, 973 (2d Cir. 1996)

"Applying federal law, the courts have held that federal securities law **claims are not automatically assigned to a subsequent purchaser upon the sale of the underlying security**."

"We recognize that **the question of assignability of claims under the Trust Indenture Act is a substantial one**, and we do not suggest that this is an open and shut case. There are respectable arguments on both sides of the issue. However, **the policy underlying the Act is contrary to a rule of automatic assignment**. The Act creates a **uniform scheme of federal regulation to protect those who are injured, including those who have sold their securities at a reduced price after the act has been violated, not those who subsequently purchase securities at the reduced price**.

# Prior Beneficial Owners Retain Their Tort Claims

***Royal Park Invs. SA/NV v. U.S. Bank Nat'l Tr. Ass'n,***
324 F. Supp. 3d 387, 398 (S.D.N.Y. 2018) (citing *Bluebird* 85 F.3d 970, 973 (2d Cir. 1996))

"[U]nder uniform federal law litigation claims are not automatically assigned with the transfer of the security. **Thus, those owners would likely retain their litigation rights when transferring certificates**."

When claims are not automatically assigned upon the sale of a security which, in New York, they are not—**those claims are retained by the seller**.

# There Was No Statutory Assignment of Tort Claims

N.Y. Gen. Oblig. Law § 13-107 only effectuates a transfer of certain enumerated claims.

**1.** Unless expressly reserved in writing, a transfer of any bond shall vest in the transferee all claims or demands of the transferrer, whether or not such claims or demands are known to exist, (a) for damages or rescission against the obligor on such bond, (b) for damages against the trustee or depositary under any indenture under which such bond was issued or outstanding, and (c) for damages against any guarantor of the obligation of such obligor, trustee or depositary.

**2.** As used in this section, "bond" shall mean and include any and all shares and interests in an issue of bonds, notes, debentures or other evidences of indebtedness of individuals, partnerships, associations or corporations, whether or not secured.

**3.** As used in this section, "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which bonds as herein defined are issued or outstanding, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.

# There Can Be No Assignment from the DTC

- As the Court has held, **DTC was not a beneficial owner** of 2027 Notes and thus was not injured by any alleged tortious interference.
  - UCC § 8-503(a): Security interests held by DTC "are **held . . . for the entitlement holders**" and "are **not property of the securities intermediary**."

# There Can Be No Assignment from the DTC

## The Court's Summary Judgment Opinion,

July 10, 2024 (quoting *Diverse Partners, LP v. AgriBank, FCB*, 2017 WL 4119649, at *5 (S.D.N.Y. Sept. 14, 2017))

"Simply put, Langur Maize's injury is an alleged injury experienced by the beneficial holders of the 2027 Notes, not one suffered by the record holder. **DTC, as the record holder, 'has no actual interest in the Notes** beyond just holding them in the form of a Global Security for others.'"

# N.Y. U.C.C. § 3-301 Does Not Demonstrate DTC Owns Third-Party Tort Claims

## N.Y. U.C.C. § 3-301

"'Person entitled to enforce' an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument."

- This provision gives **no indication that pursuing a third-party tort claim is an act of "enforcement of an instrument"** belonging to the custodian of a note.

# DTC Rules Do Not Demonstrate DTC Owns Third-Party Tort Claims

**DTC Rule 9(B) § 2**

"[DTC] shall hold the entire interest in, and shall have the authority of a holder of Securities to act, in its sole discretion, with respect to any Securities Delivered Versus Payment, which are the subject of an Incomplete Transaction, to issue or transfer the entire interest in such Securities . . . ."

- This rule **does not answer the question** of whether having "the entire interest in" a note includes owning third-party tort claims for injuries suffered by beneficial holders.

# Cede & Co. Letter Supports that the DTC Does Not Own Third-Party Tort Claims





CEDE & CO.
c/o The Depository Trust Company
570 Washington Blvd.
Jersey City, New Jersey 07310

**Bank of New York Mellon**
**500 Grant Street**
**Pittsburgh, PA 15218**

While Cede & Co. is furnishing this authorization as the holder of record of the Subject Notes on the Subject Date, it does so solely at the request of the Participant and only as a nominal party for the Beneficial Owner, which DTC is informed by the Participant was the beneficial owner of the Subject Notes on the Subject Date. Cede & Co. has no interest in this matter other than to take those steps which are necessary to ensure that the Beneficial Owner is not denied its rights and remedies as the beneficial owner of the Subject Notes on the Subject Date. Cede & Co. assumes no further responsibility in this matter.

indenture governing the Subject Notes, which we are informed by the Participant provides in relevant part (Section 2.08):

> The rights of Beneficial Owners in the Global Note shall be exercised only through the Depositary subject to the Applicable Procedures. . . . Notwithstanding the foregoing, with respect to any Global Note, nothing herein shall prevent the Issuer, the Trustee, or



EXHIBIT
Cimala 12

# Langur Maize's Novel Theory

**The alleged torts were committed against and caused "injuries to the Global Note," so the tort claims belong to DTC.**

- DTC is the "Holder" or "Owner" of the Global Note.
- DTC therefore owns all "rights under the Indenture," which includes third-party tort claims.

**This theory rests on the flawed premise that a tort claim can reside in a Global Note.**

- Torts belong to people, not to objects.
- The question remains: who is the victim of the tort?

# Indenture Provisions Langur Maize Cites Do Not Demonstrate DTC Owns Third-Party Tort Claims

**Indenture Section 6.06**
**"Limitation on Suits"**

"Except to enforce the right to receive payment of principal or interest, if any, when due, no Holder of an Unsecured Note may pursue any remedy with respect to this Indenture or the Unsecured Notes unless [certain conditions are satisfied]."

- This provision **does not identify what qualifies as a "remedy with respect to this Indenture or the Unsecured Notes**," and does not identify a third-party tort claim as one such remedy "with respect to this Indenture."

# Indenture Provisions Langur Maize Cites Do Not Demonstrate DTC Owns Third-Party Tort Claims

**Indenture Section 2.08**

"All notices and communications to be given to the Holders and all payment to be made to Holders under the Unsecured Notes and this Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depositary or its nominee in the case of the Global Note). The rights of Beneficial Owners in the Global Note shall be exercised only through the Depositary subject to the Applicable Procedures."

- This provision **does not identify what the "rights of Beneficial Owners in the Global Note" are**, and does not identify third-party tort claims as among them.

# Global Note Provision Langur Maize Cites Does Not Demonstrate DTC Owns Third-Party Tort Claims

**Global Note Section 11**

"The registered Holder of an Unsecured Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture."

- The Global Note **does not identify third-party torts**—which cause losses only felt by beneficial holders—as being part of DTC's "ownership" of the Global Note.
- This provision does not say that ownership of one thing (a security) also includes ownership of another asset (a third-party tort claim).

# The Global Note Is an Unsecured Obligation of The Issuer

Execution Version

WOLVERINE ESCROW, LLC
(to be merged with and into WESCO AIRCRAFT HOLDINGS, INC.),

and

the Guarantors from time to time party hereto

$525,000,000 13.125% SENIOR NOTES DUE 2027

**2027 Unsecured Global Note Section 4**

(4) *INDENTURE*. The Issuer issued the Unsecured Notes under an Indenture dated as of November 27, 2019 (the "*Indenture*") among the Initial Issuer, the Guarantors party thereto from time to time and the Trustee. The terms of the Unsecured Notes include those stated in the Indenture. The Unsecured Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Unsecured Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Unsecured Notes are unsecured obligations of the Issuer. The Indenture does not limit the aggregate principal amount of Unsecured Notes that may be issued thereunder.

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# Section 6.03 Is Directed To Rights Of Payment Or Performance

**Indenture Section 6.03**
**"Other Remedies"**

"If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, premium on, if any, or interest on, the Unsecured Notes or to enforce the performance of any provision of the Unsecured Notes or this Indenture."

# Section 6.06 Identifies Restrictions; Section 6.03 Identifies Rights

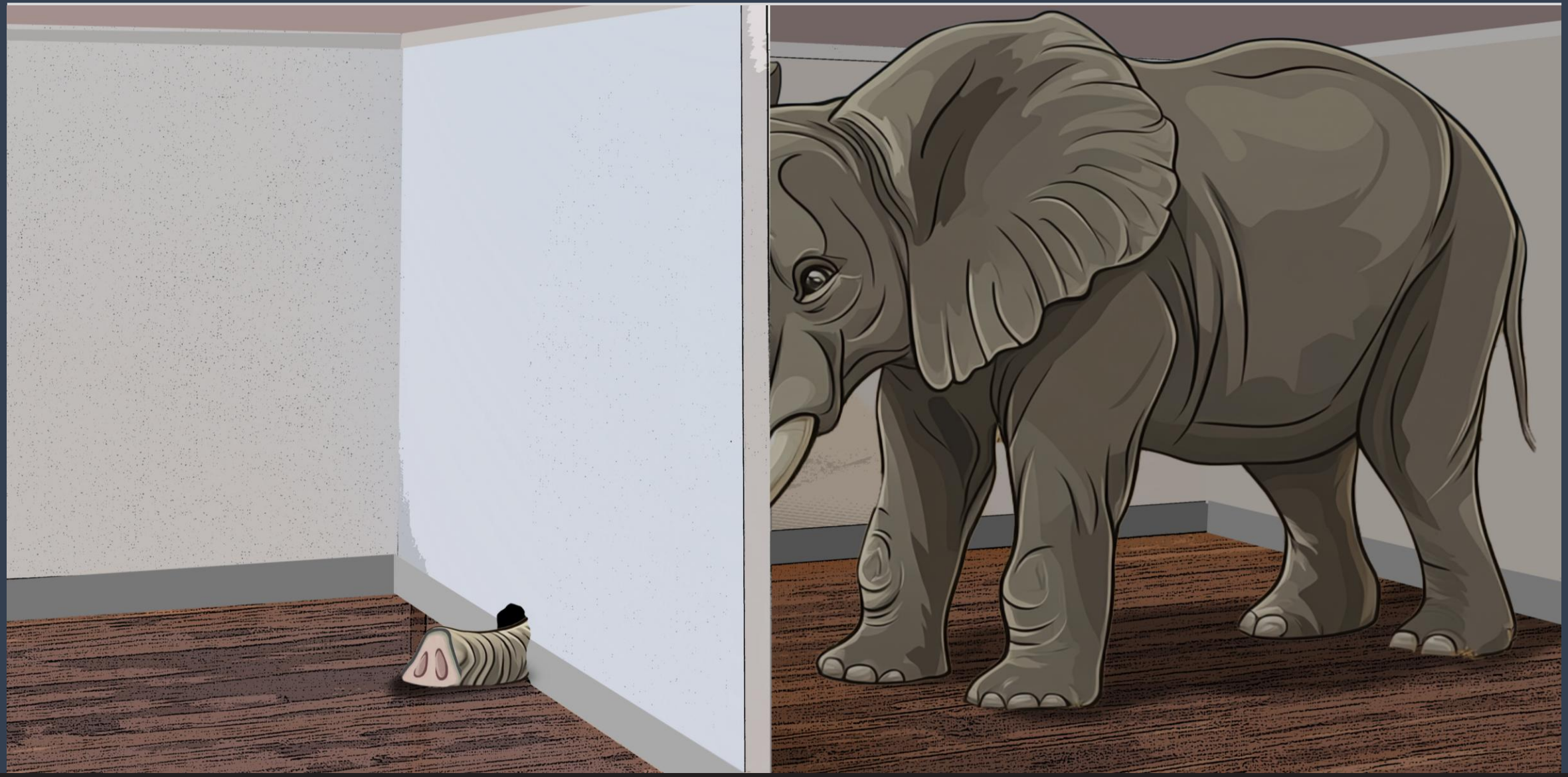
**Indenture Section 6.03**
**"Other Remedies"**

"If an **Event of Default** occurs and is continuing, the **Trustee may pursue any available remedy** to collect the payment of principal of, premium on, if any, or interest on, the Unsecured Notes or to enforce the performance of any provision of the Unsecured Notes or this Indenture."

**Indenture Section 6.06**
**"Limitation on Suits"**

"Except to enforce the right to receive payment of principal or interest, if any, when due, **no Holder of an Unsecured Note may pursue any remedy** with respect to this Indenture or the Unsecured Notes unless [certain conditions are satisfied]."

# The Indenture Doesn't Hide An Elephant In A Mousehole



# Automatic Transfer of Tort Claims Would Have Bizarre Effects

## Any noteholder liquidating its position would forfeit its claims

- Noteholders would be forced to choose between selling their notes and vindicating their rights.
- Purchasers would receive a windfall by purchasing at a discount and then suing for the seller's loss.

# Automatic Transfer of Tort Claims Would Have Bizarre Effects

**Tort claims would transfer differently for different types of security**

- ✗ No automatic transfer upon sale of equity interest.
- ✓ Automatic transfer upon sale of interest in global note.
- ✗ No automatic transfer upon sale of a promissory note.

# Automatic Transfer of Tort Claims Would Have Bizarre Effects

## Choice of law difficulties would arise

- Determining what rights transfer would require complex choice of law analysis.
  - "A **tort claim is not subject to assignment** prior to judgment [in **New Jersey**]." *Cherilus v. Fed. Express*, 435 N.J. Super. 172, 178 (App. Div. 2014).
  - "In **Kansas**, contract claims are assignable, while **tort claims cannot be assigned**." *Zafer Chiropractic & Sports Injuries, P.A. v. Hermann*, 501 S.W.3d 545, 555 (Mo. Ct. App. 2016).
  - "There is no doubt that **under North Carolina law, tort claims** such as unfair and deceptive trade practices, personal injury, bad faith refusal to settle, breach of fiduciary duty, and **tortious breach of contract are personal to a plaintiff and cannot be assigned**." *In re: Griffin Servs., Inc.*, 2005 WL 1287920, at *8 (Bankr. M.D.N.C. Mar. 2, 2005) (citing *Horton v. New S. Ins. Co.*, 122 N.C. App. 265, 269 (1996)).

# Automatic Transfer of Tort Claims Would Have Bizarre Effects

## Failures of proof on elements of tort claims

- Malpractice claims against lawyers for harm to beneficial owners.
- Fraud claims against financial advisors for harm to beneficial owners.
- Other tort claims, e.g., against a party with a vendetta against a specific beneficial owner.

# Global Note Provision Langur Maize Cites Does Not Demonstrate DTC Owns Third-Party Tort Claims

**Global Note Section 11**

"The registered Holder of an Unsecured Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture."

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# Closing Argument of Platinum Equity

1 Langur Maize Lacks Standing

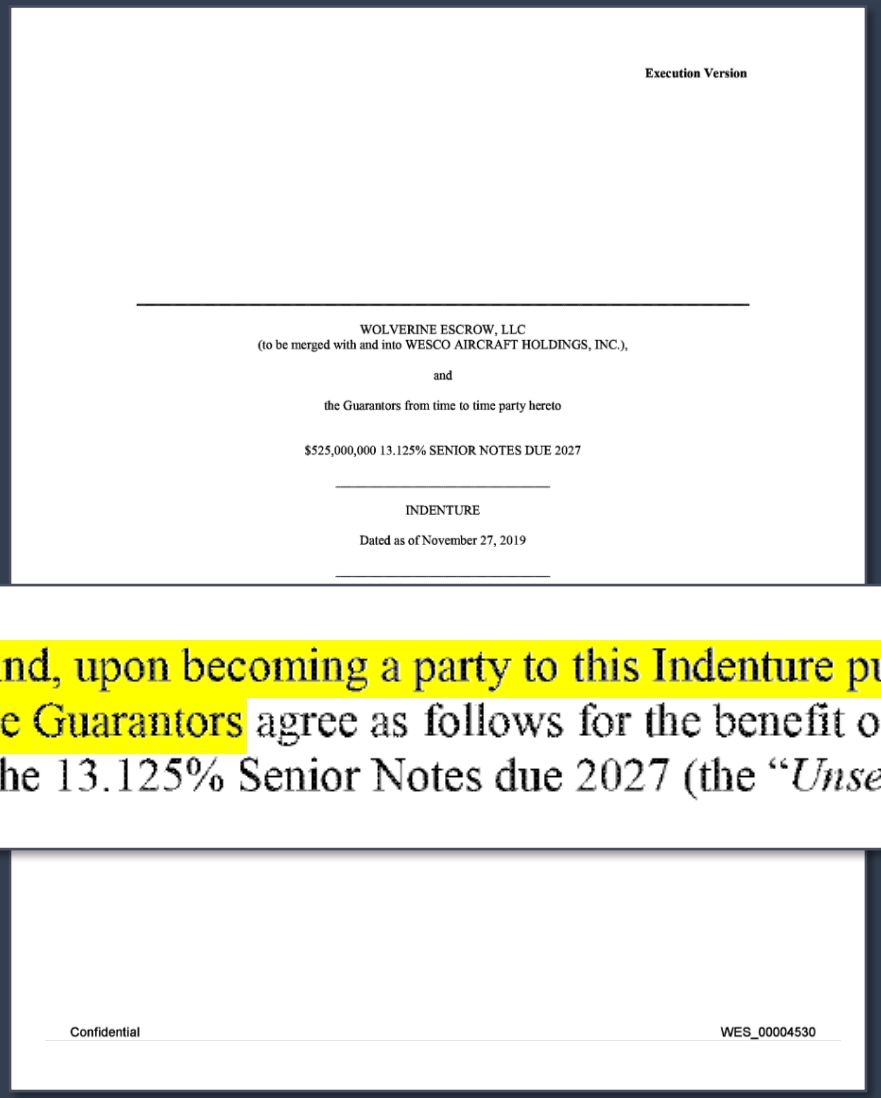
2 Platinum Did Not Breach the Unsecured Indenture

# Platinum Was Not In Privity With Langur Maize's Predecessor(s)

***Gilbane Bldg. Co. v. St. Paul Fire & Marine Ins. Co.,***
143 A.D.3d 146 (N.Y. App. Div. 2016)

To state a claim against a third-party to an original contract, there must be direct contractual privity under New York law; a party does not have the right to enforce a contract "when it did not have a **direct contractual promise** from the [counter-party] to be given that status."

# Platinum Was Not an Issuer, Trustee or Guarantor



Execution Version

WOLVERINE ESCROW, LLC
(to be merged with and into WESCO AIRCRAFT HOLDINGS, INC.),

and

the Guarantors from time to time party hereto

$525,000,000 13.125% SENIOR NOTES DUE 2027

INDENTURE

Dated as of November 27, 2019

The Issuer, the Trustee and, upon becoming a party to this Indenture pursuant to the execution of a supplemental indenture hereto, the Guarantors agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the 13.125% Senior Notes due 2027 (the "*Unsecured Notes*"):

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# Platinum Is Not Liable for Obligations of the Issuer

## The Court's Amended Summary Judgment Order,

ECF 553 (Jan. 23, 2024) at 3-4 (citations omitted)

"With respect to the 2024/2026 Noteholders' claims for a breach of §§ 2.01 and 4.12 of the Indentures, **a plain reading of these sections indicates they apply only to actions of the Issuer. WSFS is not the Issuer, so it cannot be subject to §§ 2.01 and 4.12.** This same reasoning also applies to the Guarantor Defendants. The claims for breach of §§ 2.01 and 4.12 are dismissed against WSFS and the Guarantor Defendants."

# The Court Should Not Conflate Platinum With The Board

**Platinum Equity Advisors, LLC**

Private equity investment firm that serves as advisor to the Platinum Fund

*advises*

**Platinum Equity Capital Partners International, IV (Cayman) LP (the "Platinum Fund")**

Owns the equity of Wolverine Top Holding Corporation

*owns*

**Wolverine Top Holding Corporation ("TopCo")**

Holds equity of Debtor entities

*owns*

incora

**Wolverine Intermediate Holding Corporation**

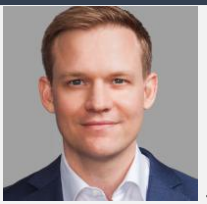
**Subsidiary Debtor Entities**

# Delaware Takes Corporate Formalities "Very Seriously"

***In re HH Liquidation, LLC,***
590 B.R. 211, 256 (Bankr. D. Del. 2018)

"As the Delaware Supreme Court recently explained, 'Delaware courts take the corporate form and corporate formalities **very seriously**,' because it would **'upset the contractual expectations** of the parties to conflate separate entities.' . . . **The certainty allows businesses to determine which risks, and how much risk, they wish to take in new ventures.**"

# The Debtor Approved the 2022 Transaction



**Malik VORDERWUELBECKE**
Incora Board Member
Platinum Equity

**Q.** Did Platinum Equity Advisors approve the transaction?

**A.** No, they had not.

**Q.** Where was the decision made to approve the transaction?

**A.** At the board.

**Q.** At – at Incora's board?

**A.** Yes.

| Initial Formal Proposal | Noteholder Approval | Board Approval |
|---|---|---|
| PIMCO | PIMCO | Wolverine Intermediate Holding Corporation |
| SILVER POINT CAPITAL | SILVER POINT CAPITAL | |
| | THE CARLYLE GROUP | |
| | CITADEL | |
| | SENATOR | |

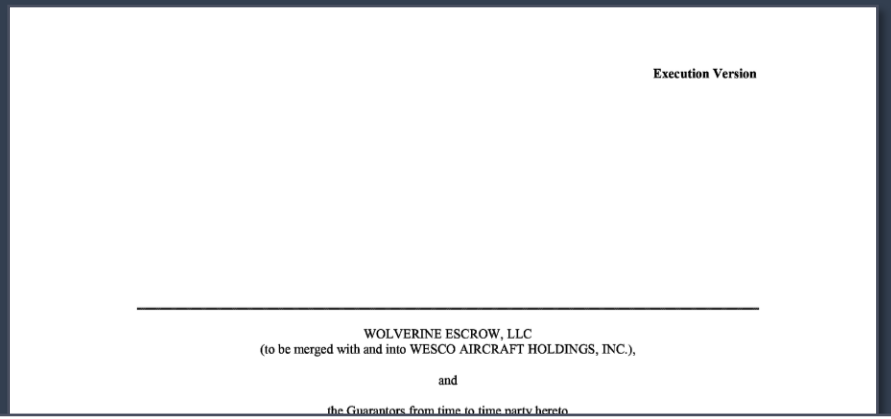
# Closing Argument of Platinum Equity

1 Langur Maize Lacks Standing

2 Platinum Did Not Breach the Unsecured Indenture

3 **Section 13.05 Protects Equity Owners**

# Section 13.05 Provides Protection for Platinum



Execution Version

WOLVERINE ESCROW, LLC
(to be merged with and into WESCO AIRCRAFT HOLDINGS, INC.),

and

the Guarantors from time to time party hereto

Section 13.05 *No Personal Liability of Directors, Officers, Employees and Equity Holders, including Members.*

No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Unsecured Notes, this Indenture, the Unsecured Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Unsecured Notes by accepting an Unsecured Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Unsecured Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

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# Global Note Section 15 Contains Similar Language

Execution Version

WOLVERINE ESCROW, LLC
(to be merged with and into WESCO AIRCRAFT HOLDINGS, INC.),

and

the Guarantors from time to time party hereto

$525,000,000 13.125% SENIOR NOTES DUE 2027

**2027 Unsecured Global Note Section 15**

(15) *NO RECOURSE AGAINST OTHERS.* No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, Holdings, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Unsecured Notes, the Indenture, the Unsecured Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Unsecured Notes by accepting an Unsecured Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Unsecured Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

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# Section 13.05 Provides Protection for Platinum

***Cortland St. Recovery Corp. v. TPG Cap. Mgmt., L.P.,***
76 Misc. 3d 1224(A), 2022 WL 14725934, at *15-16 (Sup. Ct. N.Y. Cty. Oct. 25, 2022)

"Under New York law, no recourse provisions" like 13.05 "**bar . . . contract claims**" against the equity sponsor, among others.

***Caplan v. Unimax Holdings Corp.,***
188 A.D.2d 325, 326 (N.Y. App. Div. 1st Dep't 1992)

"The court also properly held that the Indenture specifically defined those who could seek a remedy for non-payment as holders of record, and that the express terms of the Indenture **providing a limited release against all but defendant corporation is not violative of public policy**."

# A Related Point on Standing

Claims against Platinum clearly do not travel in the Global Note, because **the Global Note itself expressly disclaims the existence of such claims** even for prior holders.

**2027 Unsecured Global Note Section 15**

(15) *NO RECOURSE AGAINST OTHERS.* No manager, managing director, director, officer, employee, incorporator or equity holder, including members, of the Issuer, Holdings, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuer or the Guarantors under the Unsecured Notes, the Indenture, the Unsecured Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Unsecured Notes by accepting an Unsecured Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Unsecured Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

# Closing Argument of Platinum Equity

| | |
|---|---|
| 1 | Langur Maize Lacks Standing |
| 2 | Platinum Did Not Breach the Unsecured Indenture |
| 3 | Section 13.05 Protects Equity Owners |
| 4 | **No Tortious Interference: Platinum Did Not Induce a Breach** |

# Langur Maize Is Suing Platinum Only As Noteholder

## Langur Maize's Response to Platinum's Renewed Motion for Summary Judgment

The critical words "as such" show that Section 13.05 has no application to Langur Maize's tortious interference claim. That provision protects equity holders only if they are being sued "as such" — *i.e.*, in their capacity as equity holders. Langur Maize is not suing Platinum for tortious interference in its capacity as an equity holder, but in its capacity as a *noteholder*. Section 13.05 does not apply.

## Langur Maize's Post-Trial Brief

(emphasis added); *see also* Global Note § 15 (same). Sections 13.05 and 15 apply only if Platinum is sued "as such" — *i.e.*, in its capacity as an equity holder or parent of Wesco. And these sections provide protections only for acts that predate the notes' issuance. *See Small v. Sullivan*, 245 N.Y. 343, 357 (1927) (holding similar provision in indenture does not cover "future acts"). Langur Maize is suing Platinum in its capacity as a ***noteholder, party to the Exchange Agreement***, and for the actions of its employees taken after the 2027 Notes' issuance and not in its capacity as an equity holder or parent of Wesco. Neither Section 13.05 of the Indenture nor Section 15 of the Global Note can excuse Platinum from liability[25].

ECF 898 (Langur Maize Opp'n to Platinum's Renewed MSJ) at 10; ECF 1395 (Langur Maize Post-Trial Brief) at 12

# Platinum Did Not Negotiate to Exclude Others

**Jamie O'CONNELL**

Partner, Restructuring and Special Situations Group

**PJT Partners**

**Q.** Which human being acted as Platinum for purposes of dealing with Platinum's 2027 notes[?]

**A.** In what context?

**Q.** In your 2022—in negotiations of the unsecured exchange.

**A.** **Platinum was not negotiating in that context**, Carlyle was negotiating. And as you'll recall in the prior testimony, we worked through this that Carlyle, really Greenhill, wouldn't accept the construct that we came to with the secured noteholders of 10 percent all PIK. **Platinum was a price t[a]ker, they were not negotiating in that context.**

# Platinum Did Not Negotiate to Exclude Others

**Evercore Proposal**
(Feb. 17, 2022)

## Term Sheet Summary (Cont'd)

| | | Ad Hoc Group Proposal (12/23/21) | Company Counter (2/12/22) | Ad Hoc Group Counter (2/17/22) |
|---|---|---|---|---|
| Super Senior Second-Out Debt | Amount | N/A | $750mm which includes exchange debt and basket for future incurrence | $1,250mm which includes exchange debt and basket for future incurrence |
| | Rate | Rate TBD, all-PIK | Rate TBD, discuss cash vs. PIK split | 10%, all-PIK |
| | Maturity | N/A | Same as Super Senior First-Out facility | 3 months outside Super Senior First-Out facility |
| | Eligible Participants | Unsecured / HoldCo Noteholders (incl. Platinum held amounts) may exchange into Super Senior Second-Out Debt | Agree | Agree |
| | Covenants | N/A | | Financial Covenants: None<br>Negative Covenants:<br>➢ Incremental Second-Out basket equal to $1,250mm less initial exchange amount<br>➢ TBD basket for Super Senior Secured Third-Out Debt<br>➢ TBD RP limitations |
| | Other | N/A | TBD exit covenant amendments on Secured and Unsecured Notes | Elimination of all material negative covenants on Unsecured Notes |
| Super Senior Third-Out Debt | Structure | N/A | TBD to facilitate future exchanges; resulting cash interest in such exchanges shall not exceed existing cash interest on exchanging paper | [Sizing and usage to be discussed]<br>Interest must be 100% PIK |

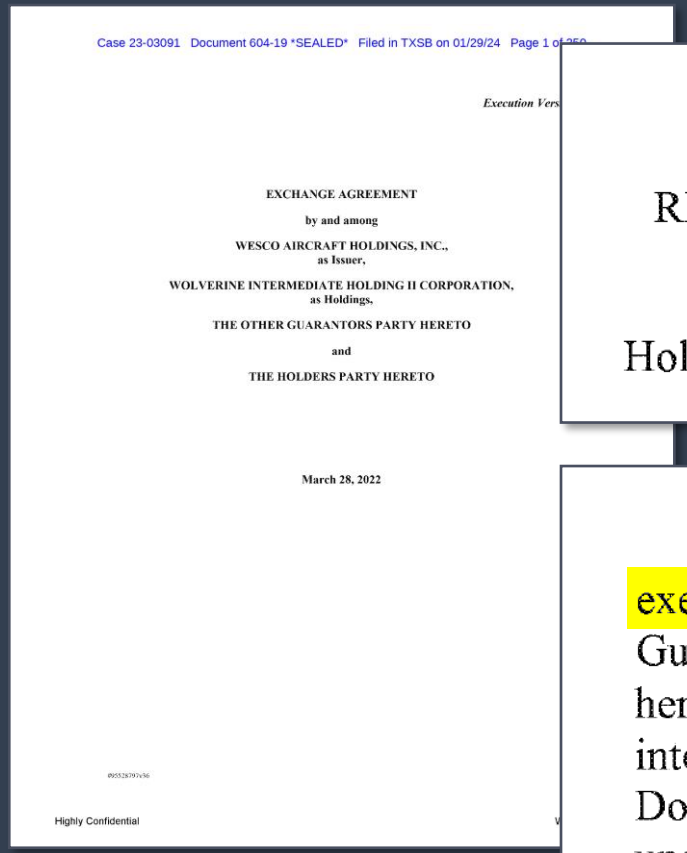
**Dec. 23, 2021:** Majority Group proposes open unsecured exchange

**Feb. 12, 2022:** Company agrees

**Feb. 17, 2022:** Majority Group agrees

# Signing the Exchange Agreement Did Not Induce a Breach of Section 3.02







*Execution Vers*

EXCHANGE AGREEMENT

by and among

WESCO AIRCRAFT HOLDINGS, INC.,
as Issuer,

WOLVERINE INTERMEDIATE HOLDING II CORPORATION,
as Holdings,

THE OTHER GUARANTORS PARTY HERETO

and

THE HOLDERS PARTY HERETO

March 28, 2022

Highly Confidential

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE ISSUER AND THE GUARANTORS

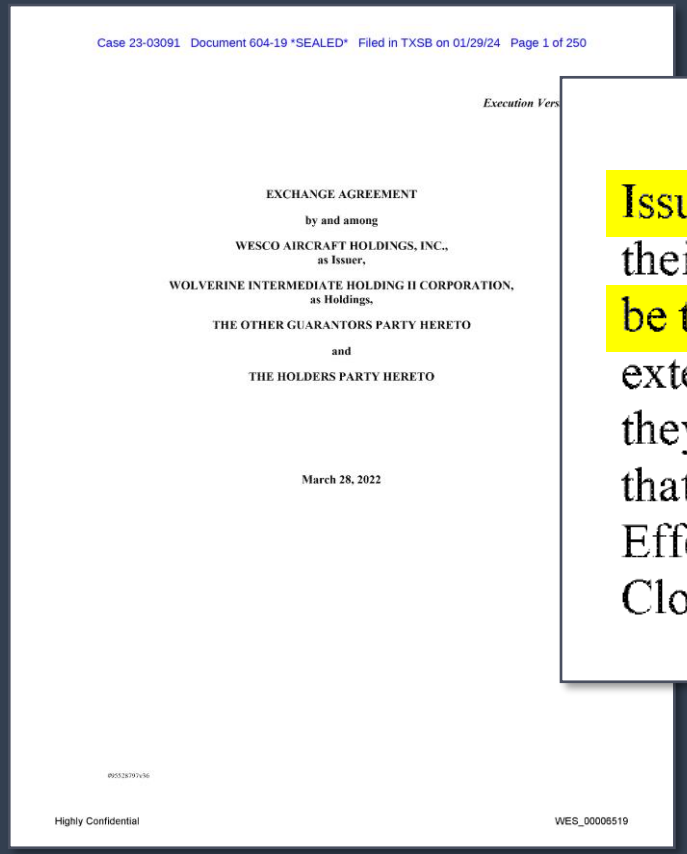
The Issuer and each Guarantor represents and warrants to, and agrees with each Holder that, as of the date hereof and as of the Exchange Closing:

5.06. Absence of Defaults and Conflicts Resulting from the Transactions. The execution, delivery and performance of the Transaction Documents by the Issuer and each of the Guarantors, as applicable, compliance by the Issuer and each of the Guarantors with all provisions hereof and thereof and the consummation of the Transactions will not, giving effect to the entry into and effectiveness of the Note Purchase Consent Documents and the Exchange Consent Documents, (a) conflict with or constitute a breach of any of the terms or provisions of, or a default under, the charter, by-laws or other organizational documents of the Issuer or any Guarantor or any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to Holdings and its Subsidiaries, taken as a whole, to which the Issuer or the Guarantors is a party or by which the Issuer or the Guarantors or their respective property is bound, (b) violate or conflict

ECF 604-19-22 § 5.06

# Signing the Exchange Agreement Did Not Induce a Breach of Section 3.02







*Execution Vers*

EXCHANGE AGREEMENT

by and among

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as Holdings,

THE OTHER GUARANTORS PARTY HERETO

and

THE HOLDERS PARTY HERETO

March 28, 2022

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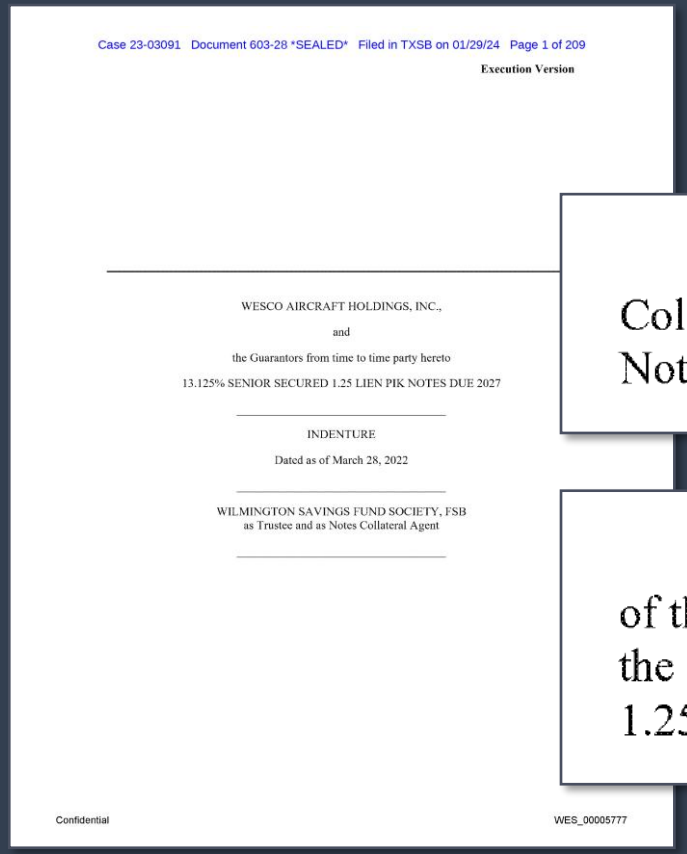
(c) Representations and Warranties. The representations and warranties of the Issuer and the Guarantors in Article V and the statements of the Issuer, the Guarantors and their respective officers made in any certificates delivered pursuant to this Agreement shall be true and correct in all material respects at and as of the Exchange Closing, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided* that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects at and as of the Exchange Closing or on and as of such earlier date, as the case may be.

# The Unsecured Exchange Did Not Foreclose Other Exchanges





Execution Version

WESCO AIRCRAFT HOLDINGS, INC.,

and

the Guarantors from time to time party hereto

13.125% SENIOR SECURED 1.25 LIEN PIK NOTES DUE 2027

INDENTURE

Dated as of March 28, 2022

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee and as Notes Collateral Agent

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"*Additional 1.25L Indebtedness*" means any notes that are secured by Liens on the Collateral that are *pari passu* with the Liens on the Collateral securing the 2027 1.25L Secured Notes and satisfying the following criteria:

"*Additional Secured Notes*" means the 2027 1.25L Secured Notes issued under the terms of this Indenture subsequent to the Issue Date in accordance with Section 4.09 hereof, as part of the same series of 2027 1.25L Secured Notes issued on the Issue Date or as a new series of 2027 1.25L Secured Notes, and satisfying the following criteria:

# The Unsecured Exchange Did Not Foreclose Other Exchanges



Execution Version

WESCO AIRCRAFT HOLDINGS, INC.,

and

the Guarantors from time to time party hereto

13.125% SENIOR SECURED 1.25 LIEN PIK NOTES DUE 2027

INDENTURE

Dated as of March 28, 2022

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee and as Notes Collateral Agent



Section 4.09 *Incurrence of Indebtedness and Issuance of Disqualified Stock or Preferred Stock.*

(a) The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Issuer will not issue any Disqualified Stock and will not permit (x) any of its Subsidiaries to issue any shares of Disqualified Stock or (y) any Non-Guarantor Subsidiaries to issue any shares of preferred stock.

(b) The provisions of Section 4.09(a) hereof will not prohibit the incurrence of any of the following (collectively, "*Permitted Debt*"):

* * *

(3) the incurrence by the Issuer and its Subsidiary Guarantors (including any future Guarantors) of Indebtedness represented by (a) the 2026 1L Secured Notes issued on the Issue Date or thereafter in accordance with Section 2.03(a), Section 2.03(b) and/or Section 2.04 of the Exchange Agreement and the 2026 1L Secured Note Guarantees; *provided* that the aggregate principal amount of 2026 1L Secured Notes issued after the Issue Date in accordance with Section 2.03(a), Section 2.03(b) and/or Section 2.04 of the Exchange Agreement shall not exceed $35.0 million in the aggregate, (b) the 2027 1.25L Secured Notes and the 2027 1.25L Secured Note Guarantees and any Additional 1.25L Indebtedness in an aggregate principal amount outstanding not to exceed an amount equal to (x) $1,050,000,000 *less* (y) the aggregate principal amount of 1.5L Secured Notes in excess of $200,000,000 issued prior to the date of issuance of any such 2027 1.25L Secured Notes or Additional 1.25L Indebtedness, *provided* that the aggregate principal amount of 2027 1.25L Secured Notes or Additional 1.25L Indebtedness issued for cash, the cash proceeds of which are used for working capital and other general corporate purposes (and expressly excluding any proceeds used to refinance, repurchase, redeem, retire, defease or otherwise prepay or repay any Indebtedness of the Issuer and its Subsidiaries) shall not exceed $250,000,000 and such 2027 1.25L Secured Notes or Additional 1.25L Indebtedness shall not require payments of interest in cash, (c) the 1.5L Secured Notes and

# Platinum Did Nothing to Induce WSFS

**Patrick HEALY**
Head of
Global Capital Markets
**WSFS**

**Q.** Are you aware of any instance in connection with the 2022 unsecured exchange where the participating noteholders gave any instruction of any kind to WSFS?

**A.** **No.**

**Q.** Are you aware of the participating noteholders in the 2022 unsecured exchange providing anything of value to WSFS to induce WSFS to sign the 3rd and 4th supplemental indentures?

**A.** **No.**

**Q.** Sitting here today can you recall any communications between Platinum on the one hand and WSFS on the other concerning the 2022 unsecured exchange?

**A.** **No.**

ECF 1350 (Healy) at 154:16-23, 155:8-11

# Transaction Depended On Debtor's Instruction

**Patrick HEALY**
Head of
Global Capital Markets
**WSFS**

**Q.** And would WSFS enter – execute the third supplemental indenture – sorry, the third supplemental indentures and the first supplemental indenture PIK notes if it didn't receive the officer certificate or the opinion of counsel?

**A.** No.

# No Evidence of an Intentional Inducement

***Roche Diagnostics GmbH v. Enzo Biochem, Inc.*,**
992 F. Supp. 2d 213, 221 (S.D.N.Y. 2013)

"[I]t is not enough that a defendant engaged in conduct with a third-party that happened to constitute a breach . . . Instead, the evidence must show **that the defendant's objective was to procure such a breach**."

# Closing Argument of Platinum Equity

1. Langur Maize Lacks Standing
2. Platinum Did Not Breach the Unsecured Indenture
3. Section 13.05 Protects Equity Owners
4. No Tortious Interference: Platinum Did Not Induce a Breach
5. **The Economic Interest Defense Bars Langur Maize's Tort Claim**

# Langur Maize Cannot Overcome the Economic Interest Defense

***White Plains Coat & Apron Co. v. Cintas Corp.,***
8 N.Y.3d 422, 426 (2007)

"In a contract interference case—as here—the plaintiff 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. **In response to such a claim, a defendant may raise the economic interest defense—that it acted to protect its own legal or financial stake in the breaching party's business.**"

# Under Any Theory of Breach, the Defense Applies

***White Plains Coat & Apron Co. v. Cintas Corp.*,**
8 N.Y.3d 422, 426 (2007)

"The defense has been applied, for example, where defendants were **significant stockholders in the breaching party's business**; where defendant and the breaching party had a **parent-subsidiary relationship**; where defendant was the **breaching party's creditor**; and where the defendant had a **managerial contract with the breaching party** at the time defendant induced the breach of contract with plaintiff."

***Audax Credit Opportunities Offshore Ltd. v. TMK Hawk Parent, Corp.*,**
150 N.Y.S.3d 894 (N.Y. Sup. Ct. 2021)

"In this case, the allegations in the Complaint show that the **Equity Sponsors' economic interests were closely aligned with TriMark's**. . . . The Liquidity Transaction then, by Plaintiffs' own reckoning, '**provide[d] new cash to the company at a precarious time' and 'also benefited its Equity Sponsors**.'"

# Artful Pleading Does Not Save Langur Maize's Claim

## Langur Maize's WSFS Theory Does Not Overcome Economic Interest Defense

***Bank of N.Y. Mellon v. Cart 1, Ltd.***,
2021 WL 2358695, at *4 (S.D.N.Y. June 9, 2021)

- The economic interest defense **applied to claim that defendant induced trustee's breach of contract**, because the bondholder **acted to protect its stake in an asset** held by the trustee.

# Langur Maize Cannot Evade the Economic Interest Defense and Also Prove Inducement


Langur Maize

# Closing Argument of Platinum Equity

| | |
|---|---|
| 1 | Langur Maize Lacks Standing |
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| 3 | Section 13.05 Protects Equity Owners |
| 4 | No Tortious Interference: Platinum Did Not Induce a Breach |
| 5 | The Economic Interest Defense Bars Langur Maize's Tort Claim |
| 6 | **No Causation: Langur Maize's Claims Are Inherently Speculative** |

# No Evidence that a Breach of Section 3.02 Caused Predecessors Any Harm

***Lama Holding Co. v. Smith Barney Inc.,***
88 N.Y.2d 413, 424 (1996)

Element of tortious interference is "damages resulting []from" breach of contract.

***Carlyle, LLC v. Quik Park 1633 Garage LLC,***
160 A.D.3d 476, 477 (1st Dep't 2018)

Causal connection cannot be "**mere speculation**."

# Langur Maize's Two Theories of Harm

**Tortious interference caused . . .**

## Lost-Value Theory

**Unsecured Exchange caused price of 2027 Notes to decrease by creating new tranche of junior secured notes**

## 1.25L Theory

**Langur Maize's predecessors should have received 1.25L Notes**

**No evidence of causation for <u>either</u> theory**

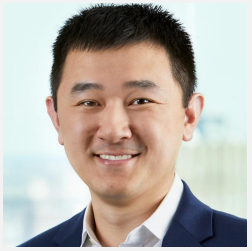
# Cannot Presume That an Unsecured Noteholder Would Have Participated

**Exchange for 1.25L Notes:**

- Junior lien
- Reduced cash interest

**Keep 2027 Notes:**

- Full cash coupon
- Increased runway from cash infusion

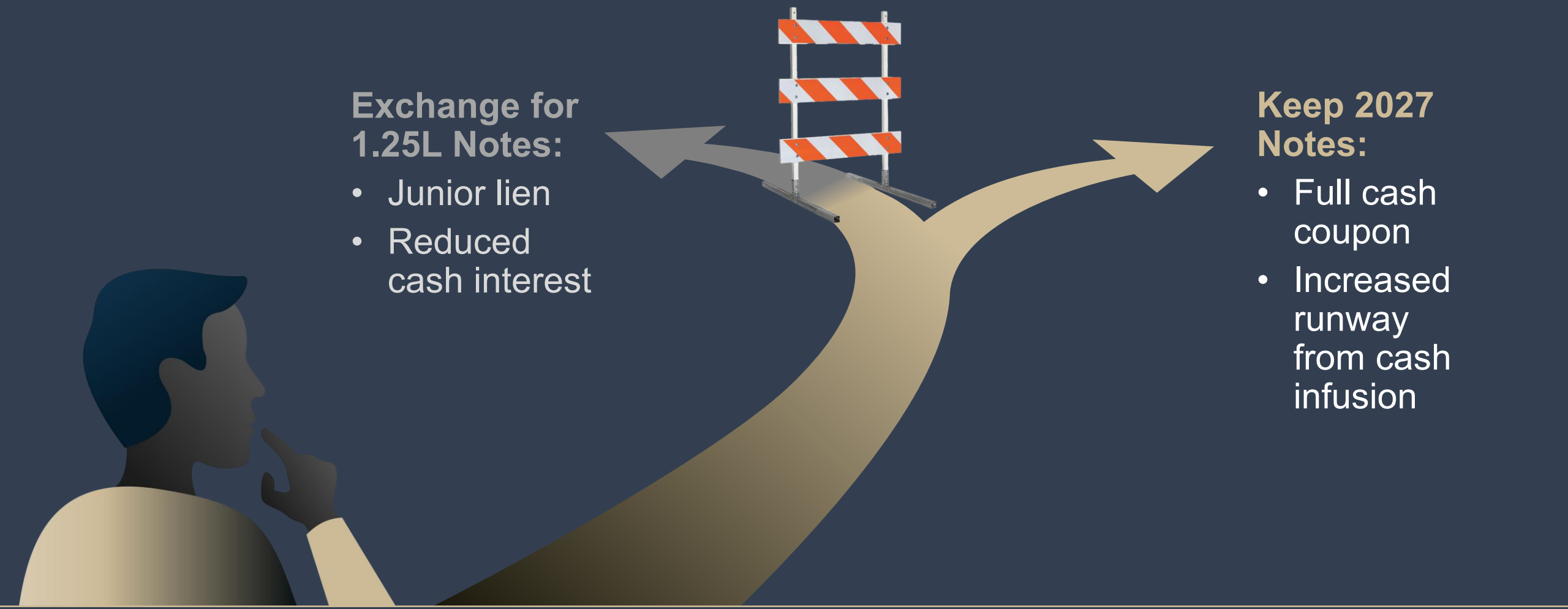


**Jesse HOU**
Principal, Credit Opportunities Fund

Participating noteholders "**took substantial risk** in this transaction."

ECF 832 (Hou) at 142:2-15, 145:1-146:23, 139:4-17

# Cannot Presume That an Unsecured Noteholder Could Have Participated



**Exchange for 1.25L Notes:**

- Junior lien
- Reduced cash interest

**Keep 2027 Notes:**

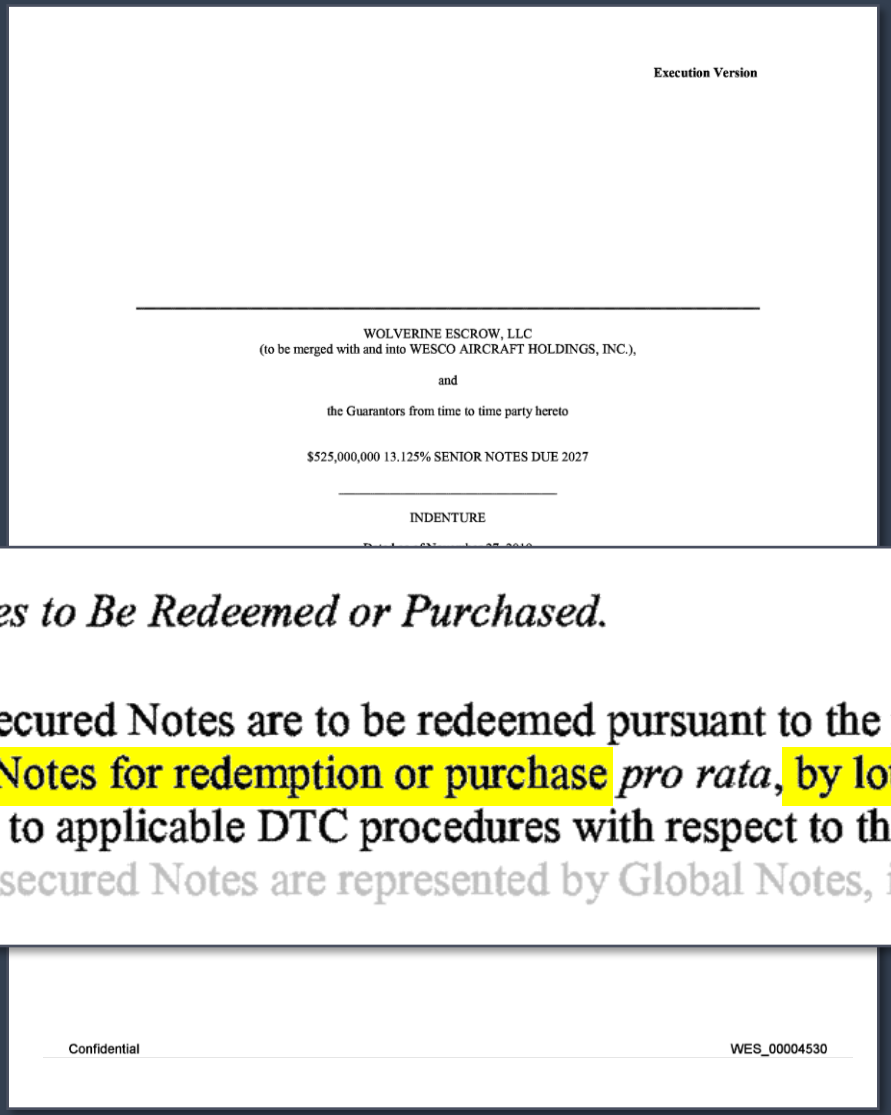
- Full cash coupon
- Increased runway from cash infusion

# No Evidence of Causation for Lost-Value Theory

**Even a compliant transaction** would have resulted in new secured debt and affected the price of the 2027 Notes

1. No evidence that unsecured noteholders would have participated
2. No evidence of what selection mechanism the Trustee would have used (e.g., by lot)

# Compliant Selection Mechanism Was Available



Execution Version

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and

the Guarantors from time to time party hereto

$525,000,000 13.125% SENIOR NOTES DUE 2027

INDENTURE

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Unsecured Notes are to be redeemed pursuant to the provisions of Section 3.07 hereof, the Trustee will select Unsecured Notes for redemption or purchase *pro rata*, by lot or by such method as it shall deem fair and appropriate (subject to applicable DTC procedures with respect to the Global Notes, including the Applicable Procedures). If the Unsecured Notes are represented by Global Notes, interests in such Global Notes

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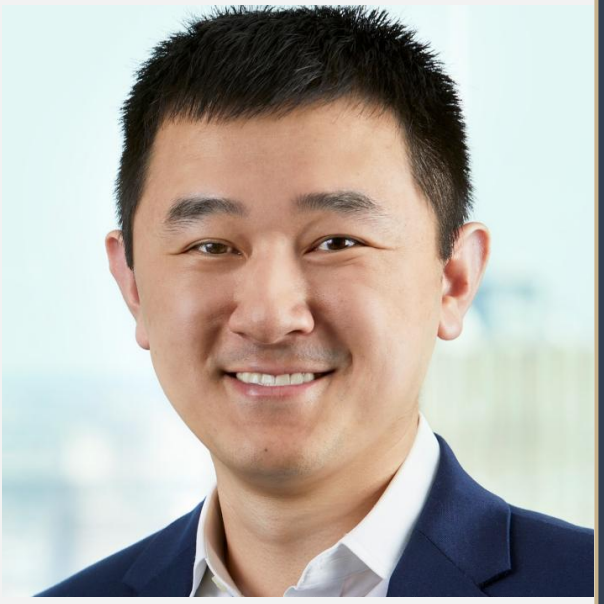
# No Evidence of Causation for 1.25L Theory

| | | |
|---|---|---|
| 1 | **Assumes** that predecessors noteholders would have opted to participate in the Unsecured Exchange if offered the opportunity | ***NO EVIDENCE*** |
| 2 | **Assumes** that the architects of the 2022 Transaction would have offered an Unsecured Exchange on the same terms absent the rest of the 2022 Transaction | ***NO EVIDENCE*** |
| 3 | **Assumes** that predecessors' notes would have actually been selected for exchange by the Trustee | ***NO EVIDENCE*** |
| 4 | **Assumes** that predecessors would have been able to sell their 1.25L Notes | ***NO EVIDENCE*** |

# No Evidence Langur Maize's Predecessors Could Have Sold 1.25L Notes



**Jesse**
**HOU**
Principal, Credit Opportunities Fund

**The Carlyle Group**

**THE COURT.** The comparison of what – the day after the transaction, what your bonds were worth on the market versus what their bonds were worth on the market.?

**A.** So we – the one-and-a-quarter lien bonds – and we were very focused on this because we were – it never traded to our knowledge. We tried to make a market in them. **We called all the banks, and we left an offer out, and we made clear there was room, right, and they should market them aggressively**, and if we could get any bids on them, we should try.

**THE COURT.** What offer did you make to sell?

**A.** There was a, you know, relatively low price. From memory, I think we – I don't remember the exact number, but from memory, it was **something like 50, but with the message that we would go a lot lower if we could get a bid. We never once got even interest or a bid of any sort**.

# No Evidence the Unsecured Exchange Would Have Occurred

## The Court's Oral Ruling,

July 10, 2024

- The 2022 transaction was "**a singular transaction**" "**negotiated in its totality**"
- PIMCO and Silver Point "only offered the new $250 million **on the contingency that the entire transaction would take place**"
- "**[N]o new 2026 notes issued**"

**No evidence of how the Unsecured Exchange would have occurred without the issuance of the additional 2026 Notes**

ECF 1474 (Oral Ruling) at 13:8-9, 12:4-12, 14:10-18, 19:24-20:1; ECF 2002 (Main Case) (Status Conference) at 74:18-20

# Langur Maize's Theory of Injury Violates New York Public Policy

## The Court's Oral Ruling,

July 10, 2024

"Wesco's entry into the third supplemental indenture to the 2026 indenture was **not permitted**" and the 2022 Transaction was "**illegal under the documents**."

## *Benjamin v. Koeppel*,

85 N.Y.2d 549, 553 (1995)

New York courts routinely hold that **"illegal" agreements are unenforceable**.