Docket #1510 Date Filed: 10/7/2024

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

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

[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.

23906112410070000000000008

NOTICE OF FILING OF LANGUR MAIZE'S DEMONSTRATIVES

PLEASE TAKE NOTICE that the demonstrative used by counsel for Langur Maize, L.L.C. during the October 2-3, 2024 hearing in the above-captioned adversary proceeding is attached hereto as Exhibit 1.

DATED: October 7, 2024

JONES DAY

/s/ Michael C. Schneidereit
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jmjones@jonesday.com

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Counsel for Langur Maize, L.L.C.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed on this October 7, 2024, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

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

EXHIBIT 1

LANGUR MAIZE V. PLATINUM, ET AL.

Closing Argument
October 2, 2024

Case No. 23-03091 (Bankr. S.D. Tex.)

Tortious Interference and the Economic Interest Defense

- In the United States of America, and in particular under New York law, one is liable if one interferes with another's contract.

- "One who intentionally and improperly interferes with the performance of a contract . . . between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract."*

- This is a duty imposed by law.

* Restatement (Second) of Torts ("Restatement") § 766; *see also White Plains Coat & Apron Co., Inc. v. Cintas Corp*, 867 N.E. 2d 381, 383 (N.Y. 2007) (quoting § 766 of the Restatement for the definition of tortious interference).

Tortious Interference and the Economic Interest Defense

- There is a narrow exception called the Economic Interest Defense.

- To establish the defense, the person who caused the breach (the "Inducer") must demonstrate

    1. that it has an economic interest in the breaching party and

    2. the breach protected the Inducer's economic interest in the breaching party rather than its own interests.

The economic interest defense does not apply where a party acts to profit itself to the detriment of the breaching party. *

* *See Wells Fargo Bank, N.A. v. ADF Op. Co.*, 855 N.Y.S.2d 68, 69 (App. Div. 2008).

Tortious Interference and the Economic Interest Defense

The Inducer must not have acted with malice towards the non-breaching party to the breached contract.*

*Dell's Maraschino Cherries Co., Inc. v. Shoreline Fruit Growers, Inc., 887 F. Supp. 2d 459, 482 (E.D.N.Y. 2012).

Tortious Interference and the Economic Interest Defense

- Platinum, Carlyle, and Senator (the "Selected Sellers") induced WSFS's breach of Section 3.02 by entering into a written agreement that called for WSFS to select only their 2027 Notes for exchange and then instructing WSFS to do just that.
  - Among many other things shown by the evidence we will discuss today, the Selected Sellers entered into the Exchange Agreement ***directing*** the Debtors and WSFS to breach the 2027 Indenture.

Tortious Interference and the Economic Interest Defense

- The economic interest defense does not apply because:
  - the Selected Sellers have no economic interest in WSFS;
  - the breach of Section 3.02 ***harmed Wesco***.
  - Nothing about the breach preserved or protected the Selected Sellers' existing position: holdings of 2027 Notes. The breach allowed the Selected Sellers to ***change*** their position by exchanging their 2027 Notes for 1.25 Lien Notes.

Tortious Interference and the Economic Interest Defense

- To answer the Court's question from last week's hearing: A party has a right to reject a proposal, but it *may not* affirmatively induce a breach of contract as a condition of accepting the proposal.

- Put another way, if Party A makes a proposal to Party B that Party B is legally entitled to reject, Party B may reject the proposal, but Party B may not respond by saying that it will accept Party A's proposal only if Party A breaches its contract with Party C.

  - Restatement: Party B may not use a "refusal to deal or the threat of it as a means of affirmative inducement, compulsion or pressure to make [Party A] break his contract with [Party C]."*

* Restatement § 766, cmt.l. *See also* § 766, cmt. p.

Tortious Interference and the Economic Interest Defense

- PJT presented Carlyle with a proposal to PIK its interest and exchange its 2027 Notes for 1.25 Lien Notes.
  - This proposal contemplated that ***all*** 2027 Notes would be eligible to participate in the exchange.
- Carlyle had the right to reject the proposal even though PJT correctly noted that Carlyle was "strongly incentivized" to take that deal.*
- Carlyle did ***not*** have the right, without creating liability for itself, to "affirmatively induce" Wesco and WSFS to breach the Indenture as a condition to accepting the proposal.**

* Feb. 21, 2024, Trial Tr. (O'Connell) 63:3-16; ECF No. 610-8.

** Restatement § 766, cmt. l.

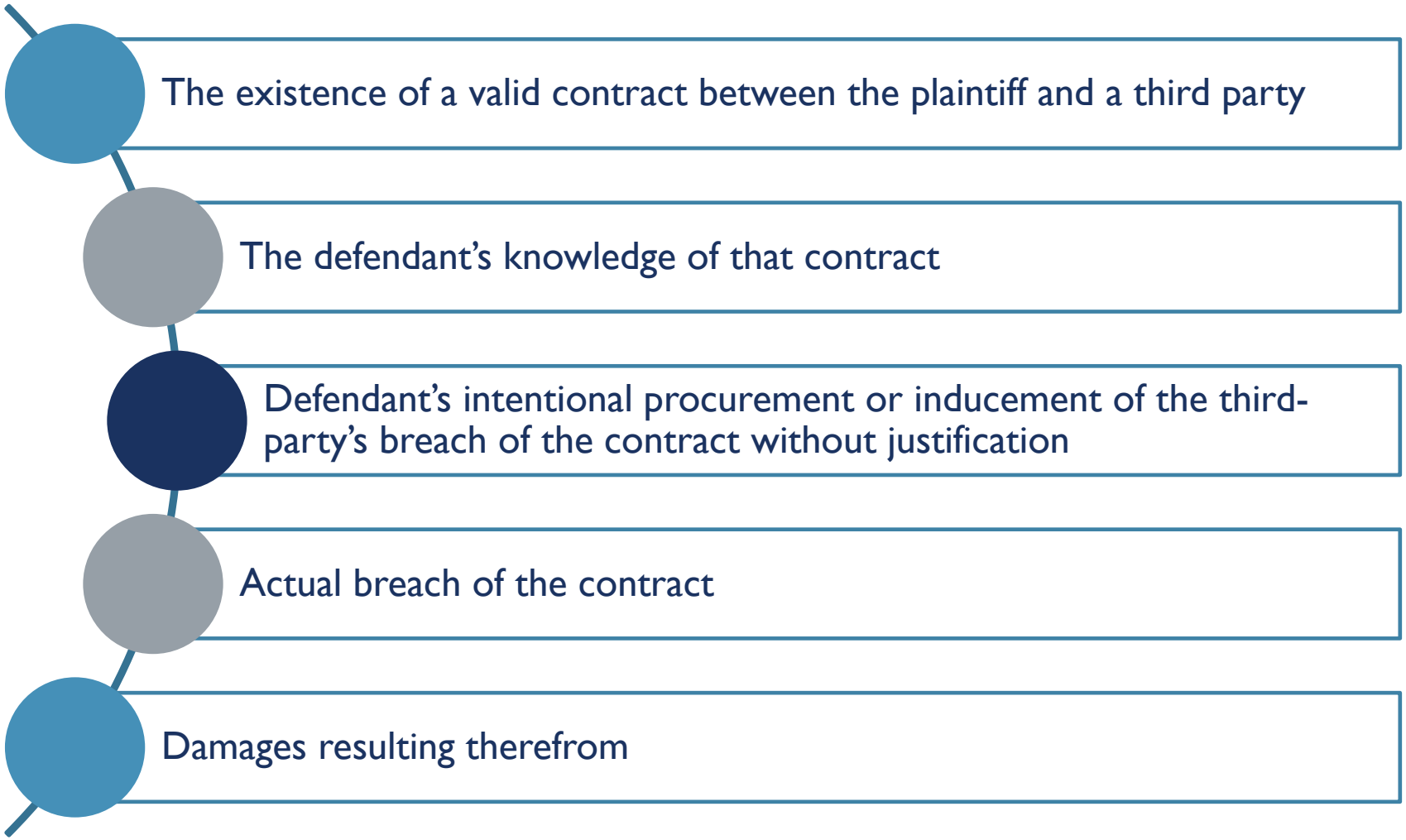
LANGUR MAIZE ESTABLISHED THE ELEMENTS OF ITS TORTIOUS INTERFERENCE CLAIM

Langur Maize Established Tortious Interference

- Platinum, Carlyle, and Senator tortiously interfered with the Indenture and Global Note by inducing, or intentionally procuring, WSFS's breach of Section 3.02.

Langur Maize Established Tortious Interference

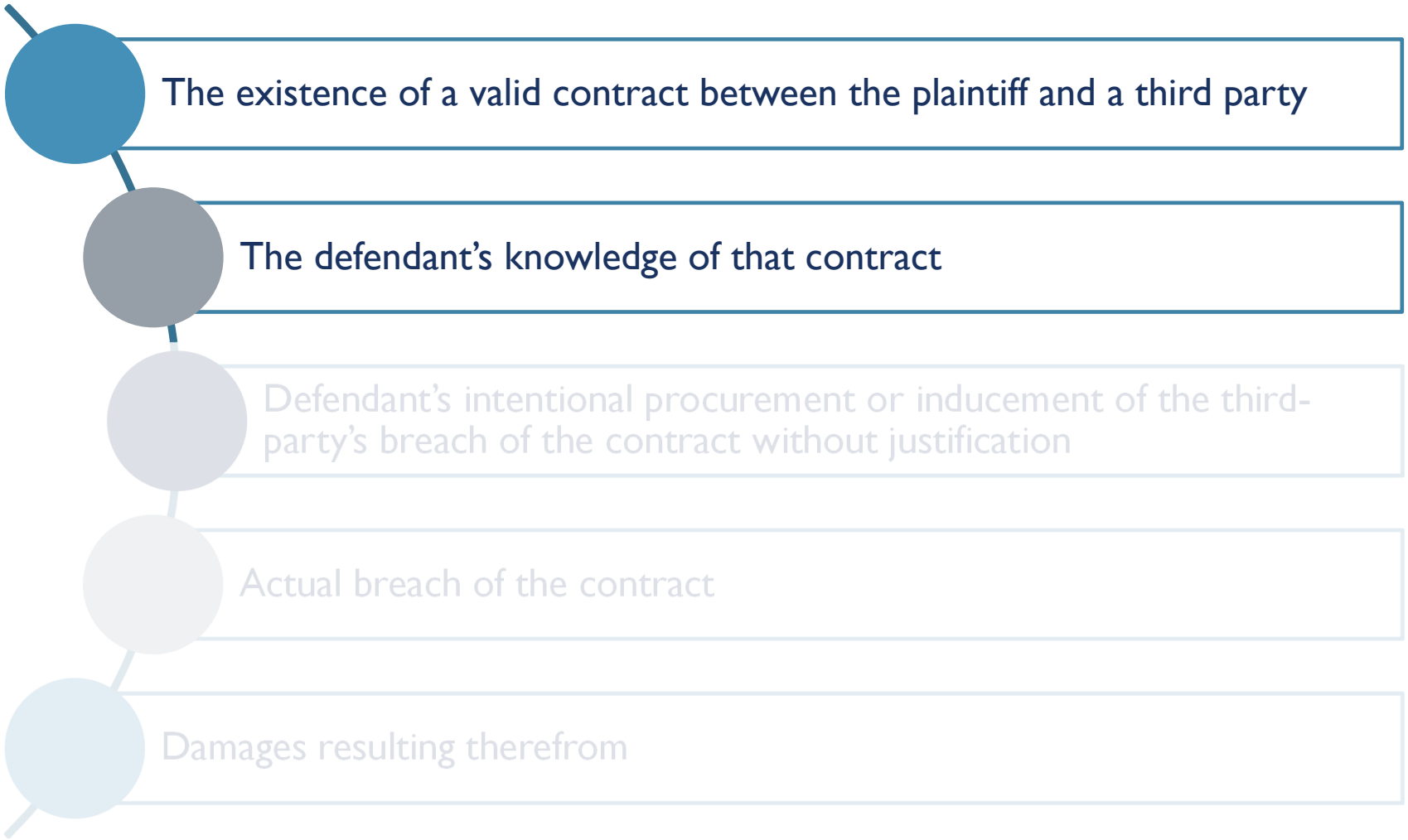
- The elements of tortious interference are:



* *Dell's Maraschino Cherries Co., Inc. v. Shoreline Fruit Growers, Inc.*, 887 F. Supp. 2d 459, 482 (E.D.N.Y. 2012).

Langur Maize Established Tortious Interference

- Satisfaction of the first two elements has not been controverted.*



* See ECF 601-7 (2027 Indenture); ECF 538-3 (Global Note).

WSFS Breached the 2027 Indenture

- The existence of a valid contract between the plaintiff and a third party
- The defendant's knowledge of that contract
- Defendant's intentional procurement or inducement of the third-party's breach of the contract without justification
- **Actual breach of the contract**
- Damages resulting therefrom

The Court's July 10 Ruling on Breach of Section 3.02

- The Court found that the actions of the parties to the March 2022 Transactions caused a breach of the 2027 Indenture.*

- Section 3.02 required the Trustee, *i.e.*, WSFS, to select the 2027 Notes "for redemption or purchase *pro rata*, by lot or by such method as it shall deem fair and appropriate . . . ."

- The Court recognized that, "Section 3.02 and 3.07 of the 2027 indentures required purchases of notes through privately negotiated transactions with third parties to be offered *pro rata* to other holders."*

* July 10, 2024, Tr. at 29:16-22.

The Court's July 10 Ruling on Breach of Section 3.02

- WSFS's Patrick Healy conceded that WSFS did not select 2027 Notes for redemption or purchase *pro rata*, by lot, or by some other fair and appropriate method.

- He disclaimed that WSFS had any role in selecting the notes to be purchased or redeemed.*

- WSFS failed to comply with Section 3.02 and breached the 2027 Indenture.

* June 3, 2024, Trial Tr. (Healy) 142:23-25; 262:22-263:6.

The Court's July 10 Ruling on Breach of Section 3.02

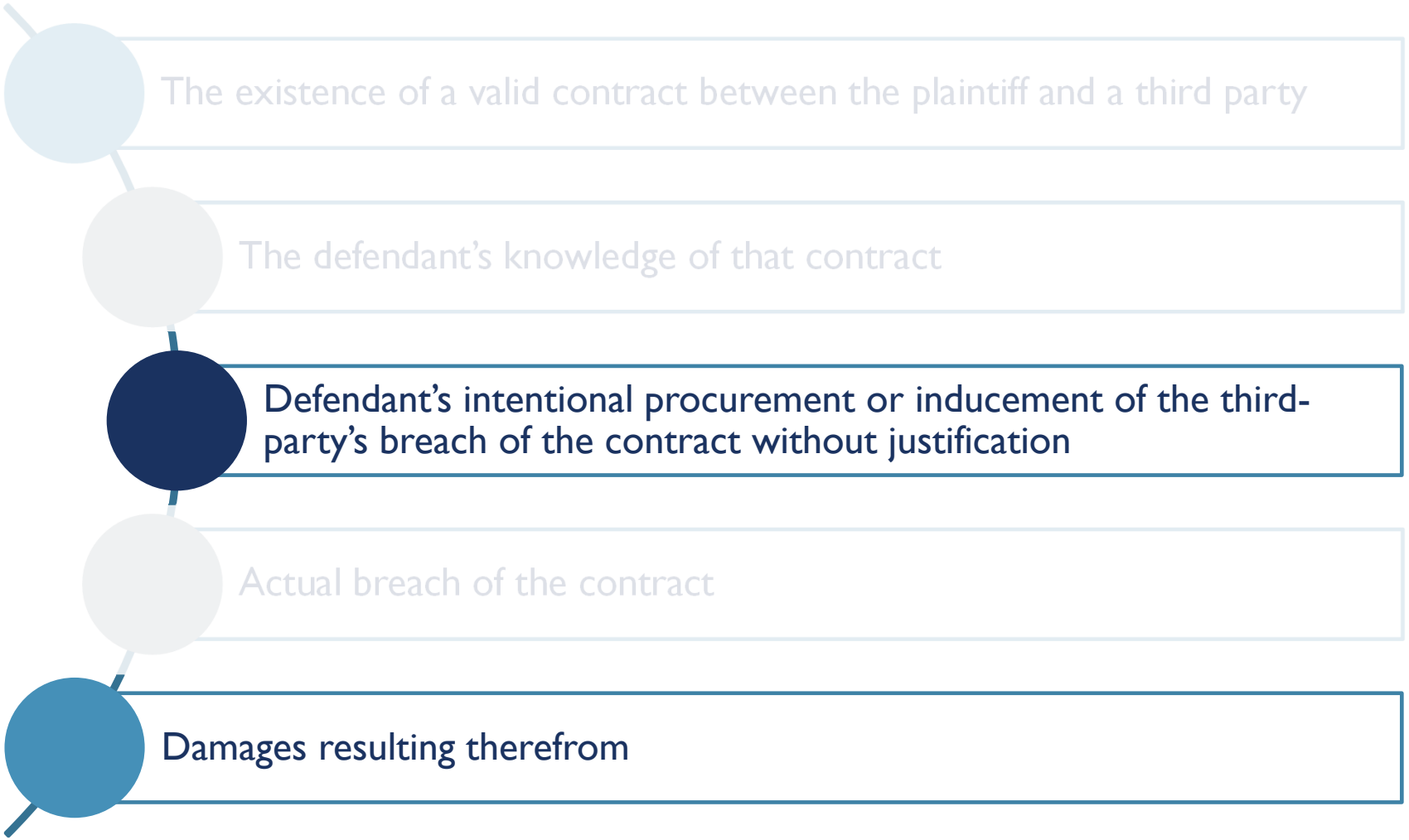
- This was also a breach of the Global Note because the Global Note includes all terms in the Indenture:

(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.

* Global Note §4

Langur Maize Established Tortious Interference

- The Selected Sellers intentionally procured these breaches, resulting in damage to Langur Maize.



THE SELECTED SELLERS INTENTIONALLY PROCURED THE BREACH OF SECTION 3.02

The Selected Sellers Intentionally Procured the Breach of Section 3.02

- The signing of the Exchange Agreement intentionally procured the breach of Section 3.02.

THE HOLDERS:

CCOF Onshore Co-Borrower LLC

By: Kristen Newville
Name: Kristen Newville
Title: Vice President

Address: One Vanderbilt Avenue, Suite 3400, New York, NY 10017
Facsimile:
Attention:
Email: kristen.newville@carlyle.com

CSP IV ACQUISITIONS, L.P.
By: CSP IV (Cayman 1) General Partner, L.P., its general partner
By: TC Group CSP IV, L.L.C., its general partner

By: Kristen Newville
Name: Kristen Newville
Title: Authorized Person

Address: One Vanderbilt Avenue, Suite 3400, New York, NY 10017
Facsimile:
Attention:
Email: kristen.newville@carlyle.com

CCOF Master, L.P.
By: CCOF General Partner, L.P., its general partner
By: CCOF L.L.C., its general partner

By: Kristen Newville
Name: Kristen Newville
Title: Authorized Person

Address: One Vanderbilt Avenue, Suite 3400, New York, NY 1001
Facsimile:
Attention:
Email: kristen.newville@carlyle.com

Wolverine Top Holding Corporation

By:
Name: Mary Ann Sigler
Title: President and Treasurer

Address: 360 N. Crescent Drive South Building,
Beverly Hills, CA 90210
Facsimile: (310) 712-1848
Attention: John Holland
Email: jholland@platinumequity.com

SENATOR GLOBAL OPPORTUNITY MASTER FUND L.P.

By: Senator GP LLC, its General Partner

By:
Name: Evan Gartenlaub
Title: Authorized Person

* ECF No. 604-19.

The Selected Sellers Intentionally Procured the Breach of Section 3.02

- A condition to the Selected Sellers' obligation to close the Selective Exchange was Wesco's delivery to WSFS of an Irrevocable Instruction:

> 4.02. Holder Exchange Closing Conditions. The obligation of each Holder to exchange the Exchanged Notes for the New Notes on the Closing Date is subject solely to the satisfaction or waiver (in accordance with Section 9.01) of the following conditions prior to or substantially contemporaneously with the Exchange Closing:
>
> (m) Irrevocable Cancellation Order. The Issuer shall have delivered an irrevocable instruction to (i) the Custodian, instructing the release of the Exchanged Notes from the Clearing Account and delivery via Deposit/Withdrawal by Custodian (DWAC) to the Existing Notes Trustees, and (ii) the Existing Notes Trustees, upon receipt of the Exchanged Notes, to cancel all such Exchanged Notes, and, if applicable, retire and record a corresponding reduction on the Global Notes principal balance.

* ECF No. 604-19.

The Selected Sellers Intentionally Procured the Breach of Section 3.02

- The Irrevocable Instruction directed WSFS to execute the Selective Exchange.

WESCO AIRCRAFT HOLDINGS, INC.

IRREVOCABLE INSTRUCTION

March 28, 2022

The Issuer further irrevocably authorizes and instructs the Trustee in accordance with Section 2.11 of each Indenture, to, immediately upon receipt of all Exchanged Notes, cancel and retire (in the manner provided in the corresponding Indenture) and record a corresponding reduction on the Global Notes principal balance, on the date all Exchanged Notes are received by the Trustee, as set forth in Schedule A hereto.

Schedule A

Beneficial Holder	Custodian Name	DTC Participant Number	CUSIP No.	Principal Amount of the DWAC Withdrawal
Wolverine Top Holding Corporation	Platinum Equity	604013	97789L AA4	$116,875,000
Senator Global Opportunity Master Fund L.P.	Goldman	5	97789L AA4	$35,000,000
CCOF Onshore Co-Borrower LLC	U.S. Bank National Association	DTC 2803	97789L AA4	$127,014,000
Spring Creek Capital, LLC	The Bank of New York Mellon	901	97789L AA4	$66,287,000
CSP IV ACQUISITIONS, L.P.	State Street Bank and Trust Company	DTC 997	U9716L AA4	$53,018,000
CCOF Master, L.P.	State Street Bank and Trust Company	DTC 997	97789L AD8	$22,681,000

* ECF No. 538-78

The Selected Sellers Intentionally Procured the Breach of Section 3.02

- The intentional signing of the Exchange Agreement satisfies the element of intentional procurement for each Selected Seller.

- The Exchange Agreement is a contract, and each Selected Seller voluntarily and intentionally entered into it after receiving extensive financial and legal advice.

  - Jesse Hou, Carlyle's witness, testified: "We negotiated the exchange agreement."*

  - Kevin Smith, Platinum's witness, testified that he reviewed, negotiated, and provided input on documents including the exchange agreement.**

- The execution of the Exchange Agreement was not the only method used to procure the breach.

* Feb. 8, 2024, Trial Tr. (Hou) 129:19.
** Feb. 9, 2024, Trial Tr. (Smith) 213:20-214:3.

The Selected Sellers Intentionally Procured the Breach of Section 3.02

The Evidence of the Selected Sellers' Intentional Procurement is Overwhelming

Carlyle Interferes

- Jamie O'Connell of PJT testified that Carlyle insisted on limiting participation in the Selective Exchange to only Platinum, Carlyle, and Senator:

> Q. Okay. And so Carlyle pushed back on the quantum of notes that could be included in the unsecured note exchange, correct?
>
> A. Platinum -- no. The way it -- my recollection is Carlyle said we are willing to accommodate Platinum and Senator but not others.
>
> It wasn't about an aggregate level of holdings.

* Oct. 25, 2023, Dep. Tr. (O'Connell) 300:6-13 (admitted Feb. 21, 2024, Trial Tr. (O'Connell) 131:20).

The Deal with PIMCO and Silver Point

- PIMCO/Silver Point and the Company had, at all times since December of 2021, agreed that *all* 2027 Notes would be eligible to participate in the Selective Exchange.

- This is reflected in the February 20, 2022, minutes of the board of Wolverine Intermediate:

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF WOLVERINE INTERMEDIATE HOLDING CORPORATION

February 20, 2022

		Ad Hoc Secured Noteholder Group Proposal (12/23/21)	Company Counterproposal (2/12/22)	Ad Hoc Secured Noteholder Group Counterproposal (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	> N/A	> Discuss rate and 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	> TBD exit covenant amendments on Secured and Unsecured Notes	> Financial Covenants: None > Negative Covenants: - Incremental Second-Out basket equal to $1,250mm less initial exchange amount - TBD basket for Super Senior Secured Third-Out Debt - TBD RP limitations
	Other	> N/A	> TBD exit covenant amendments on Secured and Unsecured Notes	> Elimination of all material negative covenants on Unsecured Notes

* ECF No. 610-8.

The Deal with PIMCO and Silver Point

- Even as of March 10, 2022, PIMCO understood that all 2027 Noteholders would be eligible to participate in the Selective Exchange:

From: "Dostart, Samuel" <Samuel.Dostart@pimco.com>
Sent: Thu, 10 Mar 2022 11:45:17 -0500 (EST)
To: "Pollakowski, John" <John.Pollakowski@pimco.com>
Subject: WAIR
Attachments: Incora - Deal PnL (3.4.2022).pdf;2022.03.01 Ad Hoc Group Agreed Terms.pdf

incora™

Ad Hoc Group Agreed Terms

March 2022

Super Senior Second-Out Debt	**Eligible Participants**	▪ Unsecured Noteholders (incl. Platinum-held amounts) may exchange into Super Senior Second-Out Debt ➢ For the avoidance of doubt, HoldCo PIK notes will not uptier

* ECF No. 705-69.

Initial Proposal Carlyle

- On January 21, 2022, PJT and Milbank sent Carlyle an "Unsecured Holder Proposal" that contemplated exchanging *all* the 2027 Notes.*

As such, the Company would like to negotiate a PIK transaction amongst the two largest Unsecured Creditors, Carlyle and Platinum

- Assuming an agreement can be reached, the Company would look to speak to the Secured Creditors to create 2L capacity so that participating Unsecured Holders can "uptier" into PIK second lien
- The Company would then launch an exchange to all Unsecureds

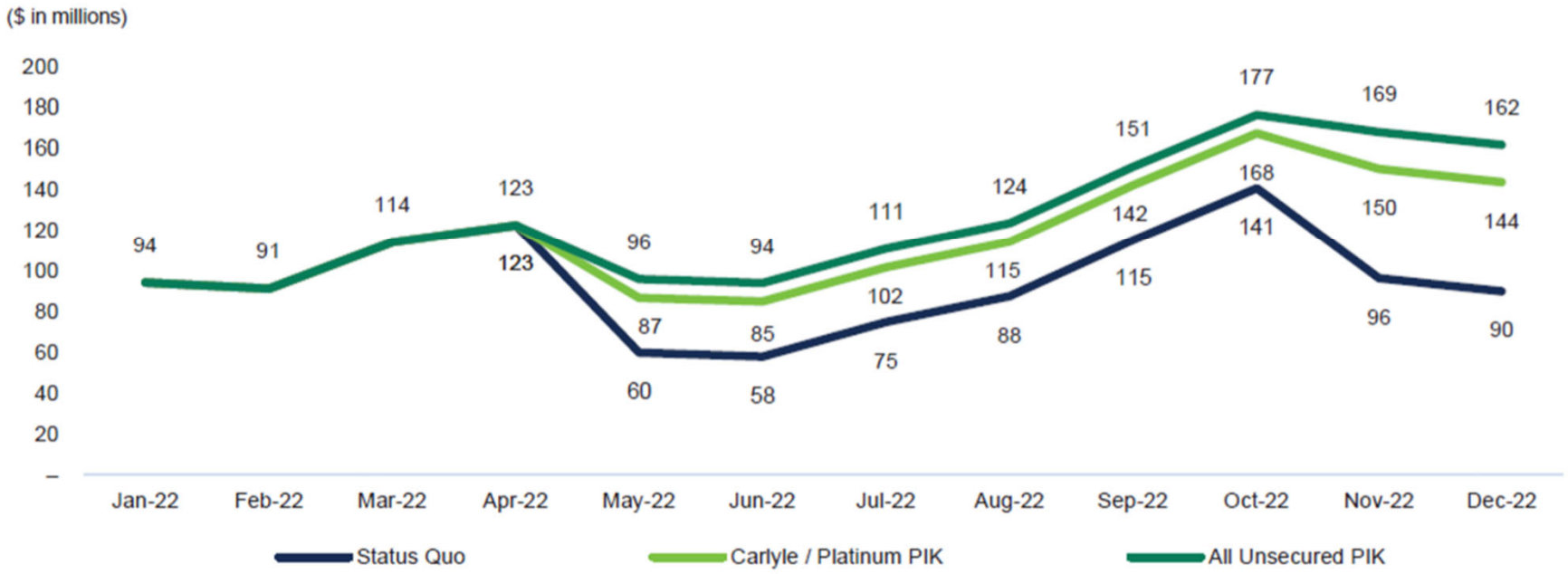
Unsecured Exchange	**Structure**	• Once a deal is achieved between the Company, Platinum and Carlyle, launch unsecured exchange whereby participating Unsecured Noteholders exchange into PIK paper • Potentially negotiate with Secured Noteholders to create 2L debt capacity in order to facilitate "uptier" into 2L PIK debt

* Jan. 31, 2024, Trial Tr. (Carney) 121:22-122:3; ECF Nos. 538-12; 713-4.

Initial Proposal to Carlyle

- PJT even included a graph to show Carlyle that an "All Unsecured PIK" was the most beneficial path for the Company and anything less was a worse result for the Company:

A PIK transaction with the Unsecured Noteholders would extend the Company's runway and provide liquidity through the end of 2022.



* ECF No. 713-4.

Platinum Prepares to Negotiate with Carlyle

- On February 26, PJT and Milbank met with three Platinum employees:

From: Davis, Jamal[jamal.davis@pjtpartners.com]
Organizer: Davis, Jamal[jamal.davis@pjtpartners.com]
Attendees: Samson, Louis; Fabiano, Michael; Vorderwuelbecke, Malik; O'Connell, Jamie; Abramson, Josh; Dunne, Dennis; Khalil, Sam; Pisa, Al; Schak, Benjamin; Project Elevate
Location: https://pjtpartners.zoom.us/j/84712718190?pwd=d25HQnFWcGxXSENPUWZPdXJKUnMyUT09
Subject: Company | Milbank | PJT
Importance: Normal
Start Time: Sat 2/26/2022 10:00:00 PM Coordinated Universal Time
End Time: Sat 2/26/2022 10:30:00 PM Coordinated Universal Time
Required Attendees: Samson, Louis; Fabiano, Michael; Vorderwuelbecke, Malik; O'Connell, Jamie; Abramson, Josh; Dunne, Dennis; Khalil, Sam; Pisa, Al; Schak, Benjamin; Project Elevate

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Required Attendees: **Samson, Louis; Fabiano, Michael; Vorderwuelbecke, Malik; O'Connell, Jamie; Abramson, Josh; Dunne, Dennis; Khalil, Sam; Pisa, Al; Schak, Benjamin; Project Elevate**

* ECF No. 1071-19.

Platinum Prepares to Negotiate With Carlyle

- The following people were (1) not given notice of this February 26 meeting, and (2) not invited to participate in this meeting:
  - Mr. Bartels ("independent" director of Wolverine Intermediate);
  - Ms. Sigler (director of Wesco);
  - Other persons who were directors of Wolverine Intermediate; and
  - Any officer of Wesco.
- This was **not** a meeting of a board of Wesco or any obligor on the 2027 Notes.
- Indeed, it was not a meeting of any board of directors.

* ECF No. 1071-19.

In the Negotiation of the Selective Exchange, Platinum Employees Acted for Platinum and *not* for Wesco or any Guarantor of the 2027 Notes

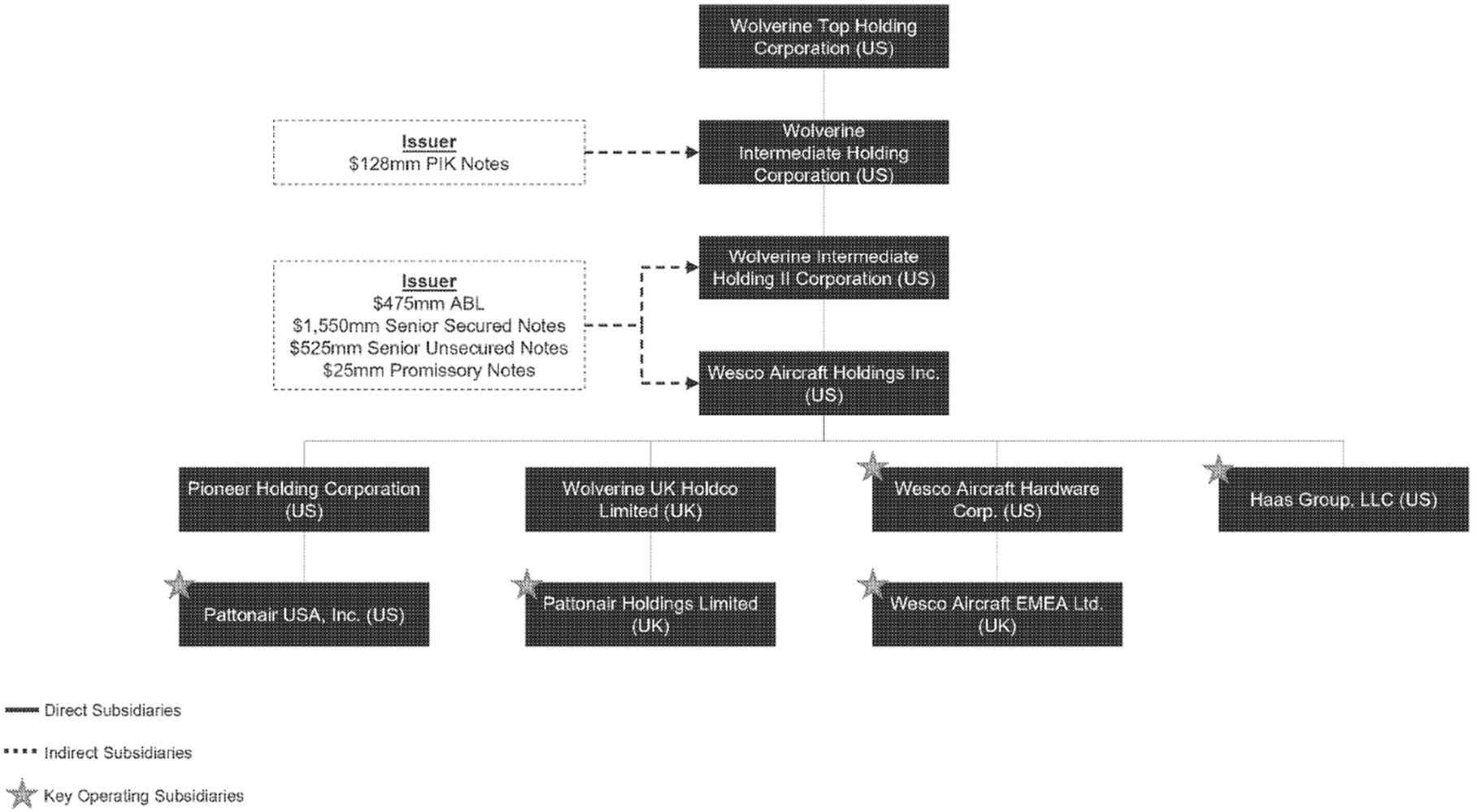
- "A board of directors can take action in two ways. One way is through a resolution adopted at a meeting. [8 Del. Ch.] § 141(b). Another is through unanimous action by written consent without a meeting. *See id.* § 141(f)."*

- "[An individual director] has no power of his own to act on the corporation's behalf, but only as one of the body of directors acting as a board."**

- When individual Platinum employees—even though some were members of the board of Wolverine Intermediate—but not all of the members of the board of Wolverine Intermediate, acted outside of a duly noticed board meeting, they acted only in their capacity as ***Platinum employees***.

* *Applied Energetics, Inc. v. Farley*, 239 A.3d 409, 425 (Del. Ch. Ct. 2020).
** Restatement (Second) of Agency § 14(C).

Platinum Employees Acted Only on behalf of Platinum



* See ECF 538-16.

Directors of Wesco Entities

Wolverine TopCo (Holder of Platinum Notes)	Mary Ann Sigler (Sole Director / Platinum CFO)	
Wolverine Intermediate	Malik Vorderwuelbecke (Platinum Managing Director)	Mary Ann Sigler (Platinum CFO)
	Louis Samson (Platinum Co-President)	John Holland (Platinum General Counsel)
	Michael Fabiano (Platinum Managing Director)	Patrick Bartels ("Independent" Director)
Wolverine Intermediate II	Mary Ann Sigler (Sole Director / Platinum CFO)	
Wesco Aircraft Holdings (Issuer of 2027 Notes)	Mary Ann Sigler (Sole Director / Platinum CFO)	

* See ECF 610-8; Apr. 4, 2024, Trial Tr. (Bartels) 102:18-107:5.

Platinum Interferes

- PJT and Milbank represented Wolverine Top Holding Corporation (the entity that held Platinum's 2027 Notes), Wolverine Intermediate Holding Corporate, Wolverine Intermediate II Corporation, and Wesco Aircraft Holdings, Inc. (collectively, the "TopCo Group").

PJT's Engagement Letter

This letter confirms the understanding and agreement (the "**Agreement**") between PJT Partners LP ("**PJT Partners**") and Wolverine Top Holding Corporation, Wolverine Intermediate Holding Corporation, Wolverine Intermediate Holding II Corporation and Wesco Aircraft Holdings, Inc. (collectively and together with their subsidiaries, the "**Company**") regarding the retention of PJT Partners on an exclusive basis by the Company effective as of October 8, 2021 (the "**Effective Date**") as its investment banker for the purposes set forth herein.

Milbank's Engagement Letter

I am delighted to confirm the engagement (the "Engagement") of Milbank LLP to represent Wolverine Top Holding Corporation, Wolverine Intermediate Holding Corporation, Wolverine Intermediate Holding II Corporation, Wesco Aircraft Holdings, Inc., and the subsidiaries listed on Annex A hereto ("you" or the "Client"). This letter, including the standard Terms of Engagement set forth in the Attachment hereto (which is an integral part of this letter), sets forth our mutual agreement with respect to the Engagement and any and all matters we may undertake on your behalf subsequent hereto.

* ECF No. 637-2; 1071-37.

Platinum Interferes

- Regardless of whether PJT and Milbank knew that they were representing a holder of 2027 Notes, Platinum certainly knew that PJT and Milbank were hired to advise the entity that held Platinum's 2027 Notes. Platinum's general counsel signed the engagement letters.

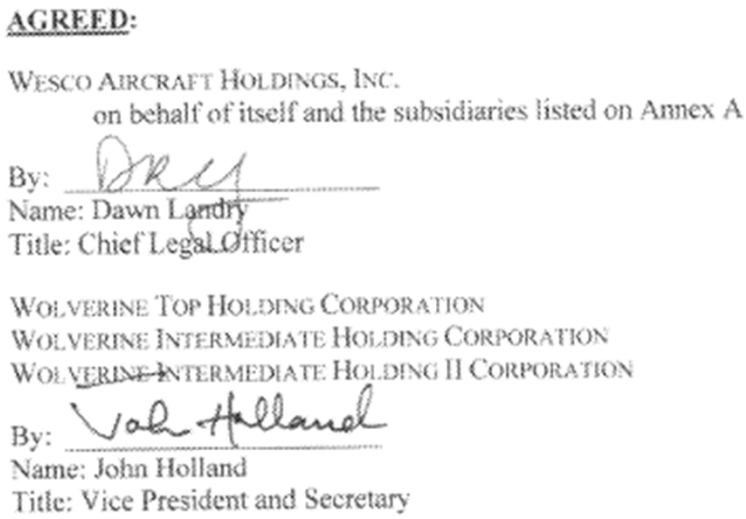
PJT's Engagement Letter

WOLVERINE TOP HOLDING CORPORATION
WOLVERINE INTERMEDIATE HOLDING CORPORATION
WOLVERINE INTERMEDIATE HOLDING II CORPORATION

By: John Holland

Name: John Holland
Title: Vice President and Secretary

Milbank's Engagement Letter



AGREED:

WESCO AIRCRAFT HOLDINGS, INC.
on behalf of itself and the subsidiaries listed on Annex A

By:
Name: Dawn Landry
Title: Chief Legal Officer

WOLVERINE TOP HOLDING CORPORATION
WOLVERINE INTERMEDIATE HOLDING CORPORATION
WOLVERINE INTERMEDIATE HOLDING II CORPORATION

By: John Holland
Name: John Holland
Title: Vice President and Secretary

* ECF No. 637-2; 1071-37.

Platinum Interferes

- Platinum's trial counsel acknowledged just last week that corporate governance and process are important.

> This is a slide that is the same or similar to one that we used in openings. The Platinum defendants are shown at the top of the page. They are distinct corporate entities from the entity where the Wolverine Intermediate Holdings Corporation Board sat, which all of the evidence showed is the location where the actual decision-making happened. That's where the board meeting minutes happened, that's where a vote took place, so that is where the action occurred.
>
> In Delaware, like almost everywhere else in America, corporate formalities are supposed to be taken seriously because, otherwise, the expectations of the parties can be upset with respect to what various entities have taken on what risks and rewards, and so those formalities are supposed to be respected, unless there's a very clear and defined reason to set them aside.

- Taking corporate formalities seriously reveals exactly which persons and entities were acting in what capacity at every relevant time.

* Sept. 23, 2024, Tr. 74:23-75:12.

Platinum Negotiates with Carlyle

- The following day, PJT sent Carlyle a proposal that mentioned only Carlyle, Senator and Platinum and was silent as to all other holders of 2027 Notes.

From: Davis, Jamal [jamal.davis@pjtpartners.com]
Sent: 2/27/2022 12:21:50 AM
To: Dunne, Dennis [DDunne@milbank.com]; pbasta@paulweiss.com; Abramson, Josh [Abramson@pjtpartners.com]; Weber, John [jweber@paulweiss.com]; Witt, Austin [awitt@paulweiss.com]; neil.augustine [neil.augustine@greenhill.com]; Project Icicle [ProjectIcicle@greenhill.com]; Zaccone, Tracey A [tzaccone@paulweiss.com]
CC: Khalil, Sam [SKhalil@milbank.com]; Pisa, Al [APisa@milbank.com]; Schak, Benjamin [bschak@milbank.com]; Project Elevate [Projectelevate@pjtpartners.com]
BCC: Meyerson@pjtpartners.com; Turner@pjtpartners.com; Kevin.Byun@pjtpartners.com; OConnell@pjtpartners.com; jamal.davis@pjtpartners.com
Subject: RE: Advisors Call Tomorrow
Attachments: Unsecured Transaction Counterproposal (22.02.26) 1800.pdf; Comprehensive Transaction Agreed Terms (22.02.26) 1900.pdf

Attached are the materials referenced earlier.

Greenhill / PW teams, please let us know once you all have confirmed availability on your end.

Eligible Participants	> Carlyle, Senator and Platinum may exchange unsecured holdings into Super Senior Second-Out Debt at par; but for the avoidance of doubt, HoldCo PIK notes will not be eligible to participate

* ECF No. 610-14.

Platinum Negotiates with Carlyle

- No additional board meeting had occurred since the February 20 meeting the minutes of which reflect the Company's agreement that all 2027 notes would be eligible to participate in an unsecured exchange.

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
WOLVERINE INTERMEDIATE HOLDING CORPORATION

February 20, 2022

		Ad Hoc Secured Noteholder Group Proposal (12/23/21)	Company Counterproposal (2/12/22)	Ad Hoc Secured Noteholder Group Counterproposal (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	> N/A	> Discuss rate and 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	> TBD exit covenant amendments on Secured and Unsecured Notes	> Financial Covenants: None > Negative Covenants: - Incremental Second-Out basket equal to $1,250mm less initial exchange amount - TBD basket for Super Senior Secured Third-Out Debt - TBD RP limitations
	Other	> N/A	> TBD exit covenant amendments on Secured and Unsecured Notes	> Elimination of all material negative covenants on Unsecured Notes

* ECF No. 610-8.

Platinum Negotiates with Carlyle

The February 27 proposal was thus *not* made on behalf of the Company.

Carlyle Interferes

- In response to the February 27 proposal, Carlyle demanded that only Carlyle and Senator would become holders of secured bonds.

1	Q Okay. Does this refresh your recollection that at some
2	point in the dialogue over those several days, Carlyle said
3	only Carlyle and Senator, not Platinum, not anybody else?
4	A Yes.

* Feb. 21, 2024, Trial Tr. (O'Connell) 125:1-4; ECF No. 610-18.

Carlyle Interferes

- On March 1, 2022, Carlyle made a proposal that specifically excluded all holders other than Carlyle and Senator from the Selective Exchange

		Company Proposal (February 26, 2022)	Carlyle Counterproposal (March 1, 2022)
	Amount	▪ $1,050mm which includes exchange debt and basket for future incurrence / exchange	▪ To be sized for exchange of Carlyle and Senator unsecured debt (but not Holdco debt). Carlyle to have consent rights to all further uptiers and New Money – and a ROFR on New Money
	Eligible Participants	▪ Carlyle, Senator and Platinum may exchange unsecured holdings into Super Senior Second-Out Debt at par; but for the avoidance of doubt, HoldCo PIK notes will not be eligible to participate	▪ Agree except Platinum shall not participate in exchange and all Platinum debt shall be PIK'd for life

* ECF No. 610-18.

Carlyle Interferes

- The only party that could have refuted this testimony, Carlyle's financial advisor Greenhill, did not testify at a deposition or trial.

Greenhill

Carlyle Interferes

- At last week's hearing, Platinum's counsel characterized the evidence as follows:

THE COURT: Who is it that -- and again, I'm going to have to go back and look at the record because I'm obviously remembering it wrong. Who is it that limited the unsecured debt that's exchanged with the second out debt only to Platinum? Because I thought that was Platinum, and you're telling me I'm wrong, so who did that?

MS. OBERWETTER: I believe that that is -- that's right, Your Honor. So there are different parties that were involved in negotiating different components of the transactions, in terms of the overall inclusion. I think the record evidence was Silver Point and PIMCO, in terms of the second out debt and who would receive that and who would not. I believe that was more in the nature of a Carlyle determination. But I would want to recheck the record on that.

* Sept. 23, 2024, Tr. 73:1-15.

Platinum Employees Acted Only on behalf of Platinum

- After receiving Carlyle's proposal, PJT and Milbank consulted with four Platinum employees to prepare a response. Only three of these Platinum Employees were also directors of Wolverine Intermediate. They were just three members of a six-member board.

From: Davis, Jamal [jamal.davis@pjtpartners.com]
Sent: 3/2/2022 12:17:10 PM
To: Dunne, Dennis [DDunne@milbank.com]; Malik Vorderwuelbecke (MVorderwuelbecke@platinumequity.com) [MVorderwuelbecke@platinumequity.com]; Project Elevate [Projectelevate@pjtpartners.com]; O'Connell, Jamie [OConnell@pjtpartners.com]; Samson, Louis [Lsamson@platinumequity.com]; Abramson, Josh [Abramson@pjtpartners.com]; Khalil, Sam [SKhalil@milbank.com]; Schak, Benjamin [bschak@milbank.com]; Smith, Kevin [ksmith@platinumequity.com]; Pisa, Al [APisa@milbank.com]; Fabiano, Michael [Mfabiano@platinumequity.com]
CC: Meyerson, Scott [Meyerson@pjtpartners.com]
BCC: Turner@pjtpartners.com; Kevin.Byun@pjtpartners.com; jamal.davis@pjtpartners.com
Subject: RE: Company | Milbank | PJT
Attachments: Unsecured Counterproposal (22.03.02) 0700.pdf

Hi All,

Please see attached the Company Counterproposal.

-----Original Appointment-----
From: Davis, Jamal
Sent: Tuesday, March 1, 2022 9:12 PM
To: Davis, Jamal; Dunne, Dennis; Malik Vorderwuelbecke (MVorderwuelbecke@platinumequity.com); Project Elevate; O'Connell, Jamie; Samson, Louis; Abramson, Josh; Khalil, Sam; Schak, Benjamin; Smith, Kevin; Pisa, Al; Fabiano, Michael
Cc: Meyerson, Scott
Subject: Company | Milbank | PJT
When: Wednesday, March 2, 2022 7:30 AM-8:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: https://pjtpartners.zoom.us/j/88976600789?pwd=ZzViT1dGMmpNSGZSclllSGJDM2ZGUT09

* ECF No. 1071-23.

Platinum Employees Acted Only on behalf of Platinum

- These following people were (1) not given copies of the proposal, (2) not given notice of the meeting, and (3) not invited to participate in this meeting:
  - Mr. Bartels ("independent" director of Wolverine Intermediate);
  - Ms. Sigler (director of Wesco);
  - Other persons who were directors of Wolverine Intermediate; and
  - Any officer of Wesco

From: Davis, Jamal [jamal.davis@pjtpartners.com]
Sent: 3/2/2022 12:17:10 PM
To: Dunne, Dennis [DDunne@milbank.com]; Malik Vorderwuelbecke (MVorderwuelbecke@platinumequity.com) [MVorderwuelbecke@platinumequity.com]; Project Elevate [Projectelevate@pjtpartners.com]; O'Connell, Jamie [OConnell@pjtpartners.com]; Samson, Louis [Lsamson@platinumequity.com]; Abramson, Josh [Abramson@pjtpartners.com]; Khalil, Sam [SKhalil@milbank.com]; Schak, Benjamin [bschak@milbank.com]; Smith, Kevin [ksmith@platinumequity.com]; Pisa, Al [APisa@milbank.com]; Fabiano, Michael [Mfabiano@platinumequity.com]
CC: Meyerson, Scott [Meyerson@pjtpartners.com]
BCC: Turner@pjtpartners.com; Kevin.Byun@pjtpartners.com; jamal.davis@pjtpartners.com
Subject: RE: Company | Milbank | PJT
Attachments: Unsecured Counterproposal (22.03.02) 0700.pdf

- Just like the February 26 meeting, this was **not** a meeting of a board of Wesco or any obligor on the 2027 Notes.

* ECF No. 1071-23.

Platinum Employees Acted Only on behalf of Platinum

- Mr. O'Connell testified that he did not recall Mr. Bartels "ever participating in any negotiations."*

- Mr. Carney, Wesco's CFO, testified that neither he nor anyone else from Wesco's management participated in the negotiations: **

Q And you've mentioned a few times that you had no involvement in the negotiation of the March, 2022 up tier transactions, correct?
A That's correct, yes.
Q And as far as you're aware, no one from debtors management was involved in those negotiations, correct?
A That is correct.

* Feb. 21, 2024, (O'Connell) Trial Tr. 351:15-18.
** Jan. 31, 2024, (Carney) Trial Tr. 137:11-25.

Platinum Employees Acted Only on Behalf of Platinum

- Patrick Bartels, the "independent" director, was only informed about the decision to include Platinum in the Selective Exchange after it was made.

- He did not know who made the decision.

Q You don't have an answer to that. Okay. So just going back and summarize, you actually don't remember being part of the -- of any discussion concerning how to respond to Carlyle's position that the exchange should only apply to Carlyle, Spring Creek and Senator. Correct?
A That's correct.
Q Okay. Someone else did that.
A The advisors is my understanding.
Q Well, do you know that or is it -- or you just don't know who did it?
A I making the assumption that the advisors did it.
Q Okay. So you don't know whether it was the advisors or Platinum, you just don't know.
A I'll concede that's a fair statement.

* Apr. 4, 2024, Trial Tr. (Bartels) 189:12-25.

Platinum Interferes

- Following the meeting with Platinum employees and before any corporate action was taken by Wesco or any obligor on the 2027 Notes, PJT and Milbank responded by proposing to Carlyle that *Platinum's* 2027 Notes (but no others) should be included.

- This is shown in a contemporaneous term sheet:

	Company Proposal (2/26/2022)	Carlyle Counterproposal (3/1/2022)	Company Counterproposal (3/2/2022)
Eligible Participants	> Carlyle, Senator and Platinum may exchange unsecured holdings into Super Senior Second-Out Debt at par; but for the avoidance of doubt, HoldCo PIK notes will not be eligible to participate	> Agree except Platinum shall not participate in exchange and all Platinum debt shall be PIK'd for life	> Carlyle, Senator and Platinum may exchange unsecured holdings into Super Senior Second-Out Debt at par; but for the avoidance of doubt, HoldCo PIK notes will not be eligible to participate

* Feb. 21, 2024, Trial Tr. (O'Connell) 126:1-4; ECF 1071-23.

Platinum Interferes

- Mr. O'Connell of PJT confirmed this in trial testimony:

Jamie O'Connell
Partner, PJT Partners

24 Q -- just to make sure we've got it exactly right. We'll
25 look at it from both sides. But to just finish with this one,
1 first of all, does it therefore accurately say that PJT's only
2 response to Carlyle's rejection of other participants
3 exchanging 2027 notes was a proposal to let Platinum back in?
4 A Yes, based on this side-by-side, that seems to be the
5 company's position.

* Feb. 21, 2024, Trial Tr. (O'Connell) 125:24-126:4; ECF 1071-23.

Platinum Interferes

- The board of directors did not hold a single meeting during the entire period where Platinum and Carlyle agreed that the Selective Exchange would be limited to only 2027 Notes held by Platinum, Carlyle, and Senator.

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
WOLVERINE INTERMEDIATE HOLDING CORPORATION

February 20, 2022

Eligible Participants	> Unsecured / HoldCo Noteholders (incl. Platinum-held amounts) may exchange into Super Senior Second-Out Debt	> Agree	> Agree

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
WOLVERINE INTERMEDIATE HOLDING CORPORATION

March 3, 2022

Eligible Participants	> Carlyle, Senator and Platinum may exchange unsecured holdings into Super Senior Second-Out Debt; but for the avoidance of doubt, HoldCo PIK notes will not be eligible to participate

* ECF Nos. 610-8; 538-53.

Platinum Employees Acted Only on behalf of Platinum

- The February 26 and March 2 meetings were not isolated incidents.
- The dates shaded blue below are those on which Platinum communicated with PJT and/or Milbank about the negotiations for the 2022 Transactions *without* Mr. Bartels or any Wesco officer or director.

February-March 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	1	2	3	4	5
6	7	8	9	10	11	12

* ECF Nos. 1071-12; 1071-17; 1071-19; 1071-23; 1071-27; 1071-28; 1071-24; 1071-10; 1071-34; 1071-18; 1071-7; 1071-2; 1071-4; 1071-14; 1071-11; 1071-15; 1071-8; 1071-22; 1071-30; 1071-31; 1071-32; 1071-16; 1071-33; 1071-21; 1071-26.

Platinum Employees Acted Only on behalf of Platinum

- Milbank proposed that Mr. Fabiano, a Platinum employee, be included in all calls between Mr. Bartels, the designated "independent" director, and the Company's advisors.

- Mr. Fabiano, Mr. Bartels' appointed minder, was invited to participate in all calls or meetings that Mr. Bartels had with the TopCo Group's advisors between February 8, 2022, and March 8, 2022.

- Mr. Bartels could not remember ever asking for Mr. Fabiano to be excluded from these meetings with advisors.

- Mr. Bartels could not identify the Wesco entities to which he owed fiduciary duties; he did not evaluate how individual Wesco entities would be impacted by the 2022 Transactions.

* Apr. 4, 2024, Trial Tr. (Bartels) 22:13-19; 27:10-16; 28:4-10; 138:15-21; 139:4-6.

Platinum Interferes

- Considering other responses the Company could have made to Carlyle's proposal underscores that Platinum's interests drove PJT's and Milbank's response:

Potential Response	Impact
All Notes should be included in the Selective Exchange	• Avoids breaching any provision in the 2027 Indenture • Results in greater interest savings for the company by "PIK'ing" interest on all the exchanged notes
All 2027 Notes that were not held by Platinum should be included in the Selective Exchange	• Unless Platinum consents, breaches Section 3.02 of the 2027 Indenture, ***but*** • Avoids breaching Section 3.07(h) of the 2027 Indenture • Satisfies Carlyle's desire to limit participation in the Selective Exchange because fewer 2027 Notes were held by non-Platinum investors than by Platinum.

Platinum Interferes

- PJT's and Milbank's response, after consulting with Platinum employees, cannot be attributed to Wesco—the issuer of the 2027 Notes—or any guarantor.

- The decision of how to respond to Carlyle's demand was not made at a duly noticed board meeting or by unanimous written consent.

- The response came after a meeting with four Platinum employees ***without*** the independent director of Wolverine Intermediate (which was and is not an obligor on the 2027 Notes), the director of Wesco—the issuer of the 2027 Notes (Mary Ann Sigler), or any member of Wesco's management.

- The decision to include Platinum's 2027 Notes in the Selective Exchange was made by Platinum employees to benefit Platinum in its capacity as a creditor.

- Platinum acted to benefit Platinum, not Wesco or anybody else.

Platinum Employees Acted Only on behalf of Platinum

- Platinum's response to PJT and Milbank was that *Platinum* wanted to participate in the Selective Exchange:

Q Did any representative of Platinum, including representatives of Platinum who also are on the board of directors, ever express a view concerning the desirability or undesirability of the unsecured exchange as far as Platinum's ownership of 2027 notes was concerned?

A I recall there being a discussion that Platinum would want to be included in the terms that Greenhill was being negotiated -- that Greenhill was negotiating, yes.

Q. So let's use the term you just used, which is a discussion as opposed to a negotiation.

Those discussions were with the deal team, is that correct?

A. Yes.

Q. And Malik was the head of the deal team, correct?

A. Malik was the point-to-point person on the deal team, yes.

* Feb. 21, 2024, Trial Tr. (O'Connell) 98:11-18; Oct. 23, 2023, Dep. Tr. (O'Connell) 146:22-147:9.

Senator Interferes

- The inclusion of Senator in the Selective Exchange was solely for Senator's and Platinum's benefit.

- Senator held 13.750% Senior PIK Notes due 2028 ("HoldCo PIK Notes") issued by Wolverine Intermediate.

- Wesco was neither an obligor nor guarantor of the HoldCo PIK Notes.

- A default under the HoldCo PIK Notes would not have triggered a cross-default on any of Wesco's debt obligations.

22 Q So the potential default in the Intermediate PIK notes
23 was a problem for Wolverine Intermediate Holding; wasn't it?
24 A Yes. It was -- it's the issuer of the debt. So yes. It
25 was a problem for --

* ECF 601-3 (HoldCo PIK Notes Indenture); Apr. 4, 2024, Trial Tr. (Bartels) 136:22-25.

Individual Persons' "Commercial Understandings" are Irrelevant

- Individual persons' subjective "commercial understanding" of the provisions of the Indenture is irrelevant to tortious interference.

- "A defendant intentionally procures a breach when he knows of a valid . . . contract and commits an intentional act whose probably and foreseeable outcome is that one party will breach the contract, causing the other party damage." *@Wireless Enters., Inc. v. AI Consulting, LLC*, 2011 WL 1871214, at *11 (W.D.N.Y. May 16, 2011) (quotation omitted).

- "[I]t is not necessary that the [interferor] appreciate the legal significance of the facts giving rise to the contractual duty, at least in the case of an express contract. If he knows these facts, he is subject to liability even though he is mistaken as to their legal significance and believes that the agreement is not legally binding or has a different legal effect from what it is judicially held to have." Restatement (Second) of Torts § 766, cmt. i.

Privilege Assertions Require that "Commercial Understandings" be Rejected

- Even if any party's subjective commercial understanding were relevant (it is not), the Court has found that the Defendants' privilege assertions make it impossible to determine what the Defendants actually believed or understood about the indenture.

> However, there is an absence of evidence in the record that the board accounted for the risk that the 2022 transaction was illegal under the documents. Because attorney/client privilege applied to many documents, and they related to this issue, the Court does not know what advice the board members or other parties received from their attorneys, and the Court makes no finding on whether the board believed that the 2022 transaction was legal or illegal.

* July 10, 2024, Trial Tr. 12:23-13:5.

Privilege Assertions Require that "Commercial Understandings" be Rejected

- In *MBIA*, the Court found a privilege waiver when a party withheld documents concerning contract interpretation as privileged and said that its witnesses would testify concerning the party's "intent and interpretation of the contracts." *MBIA Ins. Corp. v. Patriarch Partners VIII, LLC*, 2012 WL 2568972, at *8 (S.D.N.Y. July 3, 2012).

- The Court said, "**a veritable Niagara of opinions have concluded that where a party affirmatively reserves the right to use parol evidence to bolster its interpretation of a contract, it may not, via the attorney-client privilege, withhold from discovery attorney-client communications that also form the extrinsic context for the agreement**, particularly those that occurred in negotiating or interpreting the agreement." *Id.* (quoting *Stovall v. United States*, 85 Fed. Cl. 801, 816 & n.7 (2009)) (emphasis added).

No One Relied on "Commercial Understandings"

- It cannot be disputed that Defendants obtained extensive legal advice about the indentures from law firms that claim expertise in the field.

- Defendants cannot argue that they believed their actions were "permitted" under Section 3.02 having withheld the privileged communications that informed the asserted belief. Kevin Smith, Platinum's witness, testified that he had discussed Section 3.02 with "lots of lawyers":

Kevin Smith
Managing Director, Platinum

20	Q Let me stop you there. So now you remember discussing
21	section 3.02 with your counsel?
22	A Now that you've found me the section. Yes.
23	Q Yes.
24	A Thank you.
25	Q All right. Thank you. That's my question.
1	A Okay.
2	Q And you recall discussing that with Latham & Watkins,
3	yes?
4	A There were a lot of lawyers that we were discussing this
5	with, so it's likely that I discussed with Latham.
6	Q All right.
7	A Also that I probably likely discussed with Milbank.

* Feb. 9, 2024, Trial Tr. (Smith) 225:20-226:9.

No One Relied on "Commercial Understandings"

- In any event, the Defendants clearly did not rely on their "commercial understanding." They asked for and received an enormous amount of ***legal*** advice, which they refused to disclose in discovery.

- The Defendants and the Debtors withheld or redacted as privileged ***thousands*** of documents from 2021 and 2022.

- Advisor Fees related to the 2022 Transactions amounted to at least $25 million.*

* ECF No. 536-24.

The Selected Sellers Intentionally Procured the Breach of Section 3.02

- In summary:
  - Each of the Selected Sellers signed the Exchange Agreement, which directly and foreseeably breached Section 3.02 of the 2027 Indenture.
  - Carlyle insisted that the Exchange be limited to Carlyle and Senator thereby requiring a breach of Section 3.02.
  - Platinum directed the Company to respond to Carlyle's breaching proposal,
    - not by proposing a transaction that would comply with the 2027 Indenture, but
    - by proposing another breaching transaction that would include Platinum's 2027 Notes but no others.
  - Senator managed to convince both Carlyle and Platinum that it should participate knowing full well that others would be left out.

EXCLUDED 2027 NOTEHOLDERS WERE HARMED BY SELECTED SELLERS' INTERFERENCE

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- The parties agreed to bifurcate the liability and remedies phase of the trial.*

- The admitted evidence more than satisfies any requirement that Langur Maize show that the Selected Sellers' tortious interference harmed excluded 2027 Noteholders.

- Only the Selected Sellers received New 1.25L Notes and the lien that accompanied them, which lien is a prior claim on the assets of the Company; the excluded 2027 Noteholders received nothing.

- The Selected Sellers undeniably obtained a secured instrument that was more valuable than the 2027 Notes that they held before the transaction; the other excluded 2027 Noteholders had no opportunity obtain that instrument.

* *Stipulated Comprehensive Scheduling Order*, ECF No. 193 (Aug. 23, 2023).

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Harm is measured at the time of the breach, not afterwards using hindsight.
- "**The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach.**"*
- "New York courts have rejected awards based on what the actual economic conditions and performance were in light of hindsight."**
- The Court must look at how the Selective Exchange impacted excluded 2027 Noteholders ***in and around March 2022***, not at any subsequent time.

* *Simon v. Electrospace Corp.*, 269 N.E.2d 21, 26 (N.Y. 1971) (emphasis added).
** *Lucente v. IBM*, 310 F.3d 243, 262 (2d Cir. 2004).

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Testimony from the participants in the transaction confirmed what everyone knew, *i.e.*, that the Selective Exchange would and did harm the 2027 Noteholders:
  - Mr. O'Connell testified that PJT believed Carlyle and Senator would be "strongly incentivized to support and participate in the [Selective Exchange] as their position in the capital structure [would change] from unsecured to super senior second out . . . ."
  - Mr. Vorderwuelbecke of Platinum testified that "the reality was that net, net, accepting the limitations of this deal, which obviously, meant that some people were unfairly treated . . . ."
  - Mr. Prager of Silver Point testified that excluded holders "would be relatively worse off the day after than the day before" and that the Selected Sellers would experience a "windfall" by their participation.

* Feb. 21, 2024, Trial Tr. (O'Connell) 63:3-16; Feb. 1, 2024, Trial Tr. (Vorderwuelbecke) 57:23-58:1; Feb. 13, 2024, Trial Tr. (Prager) 187:1-5; ECF No. 782-10.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- In a colloquy with Mr. O'Connell, the Court aptly noted that the uptiering mechanism in the 2022 Transactions was designed to advantage some entities over others in a bankruptcy scenario:

Jamie O'Connell
Partner, PJT Partners

THE COURT: No. I'm just -- I have a question for you, though, --

MR. KIRPALANI: Please.

THE COURT: -- which is if you all weren't worried about bankruptcy, why did anybody need a lien on anything? Because everybody gets paid.

THE WITNESS: I'm sorry, Your Honor. Can you repeat --

THE COURT: If no one was worried about bankruptcy, why was anybody worried about taking liens? Everybody gets paid if there's never a bankruptcy, right?

THE WITNESS: Yes, but I think here, it was very clear to us based on the back and forth during this time period that the Evercore Group was requiring those liens.

THE COURT: I understand they're requiring it. But in terms of whether there was an injury to the people whose lien got taken away, I mean, the whole purpose of liens is only to deal with a bankruptcy, right, if you -- otherwise, everybody always gets paid. So if you really weren't worried about it, why were others worried about it?

* Feb. 2, 2024, Trial Tr. (O'Connell) 39:9-40:3.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Additionally, Mr. Vorderwuelbecke testified that the nonparticipating 2027 Noteholders were "unfairly treated."

Malik Vorderwuelbecke
Managing Director, Platinum

THE COURT: So did you even think about the fairness or unfairness of this?

THE WITNESS: Yes. I'm --

THE COURT: Then how was it fair to the people that got left out in the cold?

(Pause in the proceeding.)

THE WITNESS: I -- I think you can -- you can say it -- it doesn't feel like it's fair. But at the --

THE COURT: It doesn't. I'll say that.

THE WITNESS: No. No.

THE COURT: That's why I'm trying --

THE WITNESS: No. It -- it --

THE COURT: -- to figure out why it was fair.

THE WITNESS: It doesn't. But the -- the reality was that net, net, accepting the limitations of this deal, which obviously, meant that some people were unfairly treated, it gave the company --

* Feb. 1, 2024, Trial Tr. (Vorderwuelbecke) 57:2-14.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Silver Point had a more quantitative view on the impact the Selective Exchange would have on the 2027 Notes.

From: Jon Zinman <jzinman@silverpointcapital.com<mailto:jzinman@silverpointcapital.com>>
Date: Monday, Mar 14, 2022, 8:51 PM
To: Taylor Montague <tmontague@silverpointcapital.com<mailto: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<mailto:tmontague@silverpointcapital.com>>
Date: Monday, Mar 14, 2022, 8:07 PM
To: Jon Zinman <jzinman@silverpointcapital.com<mailto:jzinman@silverpointcapital.com>>
Subject: RE: Incora

I assume if this transaction does close, this will be a very good outcome for Carlyle?

- This is the only evidence admitted at trial regarding the difference between the value of the stub 2027 Notes and the New 1.25L Notes at the same point in time.

* ECF No. 563-1.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- The Selected Sellers raise several counterfactual arguments for why their interference did not harm excluded 2027 Noteholders.

1. Langur Maize's 2027 Notes may not have been selected if WSFS used a lottery to select 2027 Notes for purchase under Section 3.02.

2. It is speculative that the Selective Exchange would have occurred if the Secured Exchange had not occurred.

3. It is speculative whether Langur Maize's predecessors would have participated in the Selective Exchange if it had been offered to them.

4. Langur Maize's predecessors might not have attempted to sell 1.25L Notes even if they had received them.

- These arguments ignore both the evidence and the law and should be rejected.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Langur Maize's 2027 Notes may not have been selected if WSFS used a lottery to select 2027 Notes for purchase under Section 3.02.

- The probability that only the Selected Sellers' 2027 Notes and none of Langur Maize's predecessor's 2027 Notes would have been selected had WSFS run a lottery is infinitesimal.

- Regardless, the Selected Sellers prevented WSFS from selecting 2027 Notes in compliance with Section 3.02 ***at all***.

- The evidence of intentional interference that we just reviewed ***guaranteed*** that the excluded 2027 Noteholders would suffer injury.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- It is speculative that the Selective Exchange would have occurred if the Secured Exchange had not occurred.

- The Selective Exchange ***did occur***, and the Court's July 10 ruling did not unwind the entire Secured Exchange (the 2024 Notes uptier was not unwound).

- The Selected Sellers – not Langur Maize – must answer for any uncertainty that their conduct may have caused in ascertaining Langur Maize's damages.

- New York law is clear that a defendant "cannot complain" about a plaintiff's damages being uncertain when its "own wrong . . . Rendered it impossible for [the] plaintiff to prove [its] damages with more certainty" because "[a]ny other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim."*

* *See Sptiz v. Lesser*, 302 N.Y. 490, 494 (1951) (quoting *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 265-66 (1946)).

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- It is speculative whether Langur Maize's predecessors would have participated in the Selective Exchange if it had been offered to them.

- The excluded 2027 Noteholders would have been just as "strongly incentivized" as the Defendants to obtain a secured claim that PJT believed was "in-the-money."

> THE COURT: And what I'm missing in that is, if you move somebody higher in the capital structure and you say, You're still junior and you're out of the money, that seems like a weak incentive.
>
> THE WITNESS: Right.
>
> THE COURT: It would be an incentive but not a strong incentive. So what led you to believe it would be a strong incentive? Was it that you thought that it would be an in-the-money lien?
>
> THE WITNESS: Yes. Yes, Your Honor.

- The Selected Sellers deprived the excluded holders from ever receiving this valuable option.

* Feb. 21, 2024, Trial Tr. (O'Connell) 63:3-16; 69:14-70:1.

Excluded 2027 Noteholders were Harmed by the Selected Sellers' Interference

- Langur Maize's predecessors might not have attempted to sell 1.25L Notes even if they had received them.

- Damages are ascertained at the time of breach. *See LG Cap. Funding, LLC v. CardioGenics Holdings, Inc.*, 787 Fed. 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.").

- Whether 1.25L Notes could, in hindsight, have been sold at some later time does not change the fact of damages at the time of breach.

THE ECONOMIC INTEREST DEFENSE IN UNAVAILABLE TO THE SELECTED SELLERS

The Economic Interest Defense is Unavailable to the Selected Sellers

- **The Selected Sellers bear the burden** to prove any defense to their intentional interference, including the "economic interest" defense. *Momentive Performance Materials USA, Inc. v. AstroCosmos Metallurgical, Inc.*, 2009 WL 1514912, at *8 (N.D.N.Y. June 1, 2009).

- **The "economic interest defense" cannot apply to Langur Maize's tortious interference claims based on WSFS's breaches of the 2027 Indenture.**

- "[T]he purpose of the economic interest defense is to enable a defendant to claim that it 'acted to protect its own legal or financial stake in the ***breaching party's*** business.'" *Jordan's Ladder Legal Placements, LLC v. Major, Lindsey & Afr., LLC*, 2022 WL 1500772, at *8 (S.D.N.Y. May 12, 2022) (citation omitted) (emphasis in original).

- The breaching party for purposes of analyzing the economic interest defense is ***WSFS, not Wesco***.

The Economic Interest Defense is Unavailable to the Selected Sellers

- WSFS had and breached the contractual duty to select the 2027 Notes under Section 3.02.

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 will be selected for redemption or purchase by DTC in accordance with its Applicable Procedures.

- The Selected Sellers could not and did not adduce any evidence that they held any economic interest in WSFS.

- Platinum and Senator expressly disclaimed any economic interest in WSFS in their responses to a Request for Admission, and Carlyle improperly refused to answer.*

* ECF No. 538-97 (Platinum) RFA 21; 538-98 (Carlyle) RFA 10; 534-136 (Senator) RFA 10.

The Economic Interest Defense is Unavailable to the Selected Sellers

- The Defendants cite *Bank of N.Y. Mellon v. Cart 1, Ltd.*, 2021 WL 2358695, at *4 (S.D.N.Y. June 9, 2021) ("*Cart 1*") for the proposition that they have an economic interest in WSFS by virtue of its role as the former trustee under the Indenture.

- This is wrong. In *Cart 1*, a noteholder requested that a trustee withhold a payment of funds to a swap counterparty because the counterparty allegedly had breached certain swap agreement.

- In doing so, the noteholder acted to protect an extant economic interest in the corpus of funds withheld by the trustee (which funds would have been residually due to the noteholder).

- ***Here***, the Defendants were not acting to "protect" any corpus of funds to which they had an asserted right. Instead, they were acting to obtain ***new benefits*** for themselves by inducing WSFS to issue them new senior secured notes in violation of the Indenture.

The Economic Interest Defense is Unavailable to the Selected Sellers

No further analysis is required. The Selected Sellers do not have an economic interest in WSFS, and thus, they are unable to claim the protection of the Economic Interest Defense.

The Economic Interest Defense is Unavailable to the Selected Sellers

- Even if the breach was also a breach by Wesco, the economic interest defense does not apply to the breach procured by the Selected Sellers.

- **The economic interest defense does not apply where a party acts to profit itself to the detriment of the breaching party.**

The Economic Interest Defense is Unavailable to the Selected Sellers

- "[A]n interferer acting to protect its own direct interests, rather than its interests in the breaching party, may not raise the economic interest defense."*
- The economic interest defense "only applies when the alleged interfering parties have acted to protect their interest in the breaching party's business . . . not their own."**
- The economic interest defense is not applicable where defendant acted "to profit themselves to the detriment" of breaching party.***

* *Bausch & Lomb Inc. v. Mimetogen Pharms., Inc.*, 2016 WL 2622013, at *11 (W.D.N.Y. May 5, 2016).
** *Dell's Maraschino Cherries Co.*, 887 F. Supp. 2d at 484.
*** *Wells Fargo Bank, N.A. v. ADF Op. Co.*, 855 N.Y.S.2d 68, 69 (App. Div. 2008).

The Economic Interest Defense is Unavailable to the Selected Sellers

- Here:
  - The breach — *i.e.*, the exclusion of other 2027 Notes — did not benefit Wesco or any guarantor.
  - Instead, the breach ***harmed*** Wesco and the guarantors of the 2027 Notes.
  - Nothing about the breach preserved or protected the Selected Sellers' existing position: holdings of 2027 Notes. The breach allowed the Selected Sellers to change their position.

The Economic Interest Defense is Unavailable to the Selected Sellers

- The Selected Sellers argue that the ***Selective Exchange*** benefitted Wesco in four ways:

1. Wesco received an infusion of $250 million in cash;

2. Wesco deferred cash interest expense due to the PIK component of the New 1.25L Notes;

3. Platinum deferred its management fee under the Corporate Advisory Services Agreement (the "CASA") between Platinum and Wolverine TopCo; and

4. Platinum extended the maturity on a $25 million promissory note given by Wesco to TopCo (the "TopCo Note").

- These "benefits" either were not conferred by the Selective Sellers, did not benefit Wesco, or actually ***harmed*** Wesco.

The Economic Interest Defense is Unavailable to the Selected Sellers

None of the purported benefits support an economic interest defense because they did not flow from the ***breach*** – the limitation of participation in the Selective Exchange

The $250 Million in New Money was Unrelated to the Selective Exchange

- None of the Selected Sellers contributed any of the new money that Wesco received in connection with the Secured Exchange.

- PIMCO and Silver Point did not condition the $250 million in new money on any restriction on participation of 2027 Notes in the Selective Exchange.

* Apr. 4, 2024, Trial Tr. at 172:17-173:25; ECF No. 610-10.

The $250 Million in New Money was Unrelated to the Selective Exchange

- The February 20 board presentation and PIMCO's notes show that at all times before and after the interference, PIMCO/Silver Point and the Company had agreed to the inclusion of *all* 2027 Notes in the Selective Exchange:

		Ad Hoc Secured Noteholder Group Proposal (12/23/21)	Company Counterproposal (2/12/22)	Ad Hoc Secured Noteholder Group Counterproposal (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	> N/A	> Discuss rate and 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	> TBD exit covenant amendments on Secured and Unsecured Notes	> Financial Covenants: None > Negative Covenants: - Incremental Second-Out basket equal to $1,250mm less initial exchange amount - TBD basket for Super Senior Secured Third-Out Debt - TBD RP limitations
	Other	> N/A	> TBD exit covenant amendments on Secured and Unsecured Notes	> Elimination of all material negative covenants on Unsecured Notes

* ECF No. 610-8.

The $250 Million in New Money was Unrelated to the Selective Exchange

- Principals from both Silver Point and PIMCO testified at trial that they supported participation by ***all 2027 Notes*** in the Selective Exchange:

Jason Prager
Principal, Silver Point

A. Yes. As a general matter the more unsecured debt that convert that exchange in to the new second debt the better because that had a lower cash coupon than the right of the in secured debt. So it was better for the -- the more unsecured the exchange, the better respect to the company for the clarity profile.

Samuel Dostart
Principal, PIMCO

Q Okay. And you -- did you identify which unsecured holders you would be willing to allow to participate in the treatment of the unsecured notes as listed here?

A No, I recall wanting all of them to participate.

Q Why did you want all of them to participate?

A Because then they would be providing more cash interest relief to the company, which I viewed as advantageous.

* Feb. 13, 2024, (Prager) Trial Tr. 124:14-20; Feb. 28, 2024, (Dostart) Trial Tr. 90:13-19.

The $250 Million in New Money was Unrelated to the Selective Exchange

- Mr. Bartels confirmed this:

Patrick Bartels
"Independent Director"

Q Okay. So this reflects that the ad hoc secured group and the company agreed that eligible participants for the super senior second out debt would not be limited to any particular holders and did not exclude any holders. Correct?
A That's correct.
Q So the company, at least as of February 17, 2020 was allowing all 2027 noteholders to participate in the selective exchange. Correct?
A Yes.

* Apr. 4, 2024, Trial Tr. 172:17-25.

The $250 Million in New Money was Unrelated to the Selective Exchange

- Mr. Bartels also testified that there was no need to limit the unsecured exchange to achieve the secured exchange.

Patrick Bartels
"Independent Director"

Q Okay. And to achieve the secured exchange which was -- which was the other one that we haven't looked at, I don't think we need to but if you want to, you can, there was no need to limit the unsecured exchange at all, was there?

A No, I don't believe so.

* Apr. 4, 2024, Trial Tr. 173:9-25.

The $250 Million in New Money was Unrelated to the Selective Exchange

- And Mr. Bartels confirmed that Wesco's proposed basket for additional New 1.25L Notes was "more than enough for all 2027 noteholders."

Patrick Bartels
"Independent Director"

Q Okay. And do you see that on February 17 the company proposed a $750 million, I think the right word to use is basket for additional issuances of 1.2 -- for issuances I should say of 1.25 lien notes. Correct?
A That's correct.
Q And the ad hoc group responded with an increase to $1.25 billion in its February 17 proposal. Correct?
A Yes, that's my understanding.
Q Okay. And do you remember that there were only 525 million of 2027 notes outstanding in March of 2022?
A Yes.
Q And 525 is below 750 million?
A Yes.
Q And it's even further below 1.25 billion.
A Correct.
Q So it's more than enough for all 2027 noteholders.
A Yes.

* Apr. 4, 2024, Trial Tr. 173:9-25.

The Interference Reduced Wesco's Potential Cash Interest Savings

- The Selected Sellers argue that the Selective Exchange benefitted Wesco because Wesco deferred cash interest expense due to the PIK component of the New 1.25L Notes, but as we will see in a moment, the Selected Sellers' interference actually reduced Wesco's potential cash interest savings.

Deferral of the CASA Fee Only Benefitted TopCo

- Only Wolverine TopCo and Platinum were parties to the CASA:

CORPORATE ADVISORY SERVICES AGREEMENT

This Corporate Advisory Services Agreement (this "Agreement") is entered into as of January 9, 2020 (the "Effective Date") by and between Wolverine Top Holding Corporation, a Delaware corporation (the "Company") and Platinum Equity Advisors, LLC, a Delaware limited liability company ("Advisors").

PLATINUM EQUITY ADVISORS, LLC

By: _____
Name: Justin Maroldi
Title: Assistant Secretary

WOLVERINE TOP HOLDING CORPORATION

By: _____
Name: Justin Maroldi
Title: Assistant Secretary

* ECF No. 536-8.

Deferral of the CASA Fee Only Benefitted TopCo

- Mr. Bartels provided clear testimony regarding the CASA fee deferral:

Patrick Bartels
"Independent Director"

10	Q Okay. That deferral was a benefit to Wolverine TopCo
11	because it's a party to the CASA. Correct?
12	A Correct.

6	Q Did Wolverine TopCo give Wesco Aircraft anything to
7	compensate Wesco Aircraft for facilitating the deferral of
8	CASA fees?
9	A No.

8	Q Since Wolverine TopCo was the holder of the 2027 --
9	A Yeah.
10	Q -- notes in March of 2022 and Wolverine TopCo is the
11	obligor under the Corporate Advisory Services Agreement, is it
12	fair to say that Wolverine TopCo got the benefit of the
13	unsecured exchange and got the benefit of deferral of its
14	obligation to pay management fees under the 2022 transactions?
15	MR. NOSKOV: Again, just for the Record, as a
16	business matter.
17	THE COURT: Yes, as a business matter.
18	THE WITNESS: Yeah, it's fair to say that.

* Apr. 4, 2024, Trial Tr. (Bartels) 152:10-12; 155:6-9; 157:8-18.

Deferral of the CASA Fee Only Benefitted TopCo

- The CASA is also another example of Platinum's unchecked control over Wesco.
- It was never negotiated, and neither Mr. O'Connell nor Mr. Bartels ever reviewed the CASA before the 2022 Transactions.
- Both Mr. O'Connell and Mr. Bartels were unaware that only TopCo and Platinum were parties to the CASA.
- The CASA was a standard form used by Platinum – five of the six directors knew which entities were party to the CASA, but they allowed Mr. Bartels to remain ignorant of the true facts.
- Privilege assertions prevent us from learning what Milbank, which represented both parties to the CASA, knew about this.

* Feb. 1, 2024, Trial Tr. (Vorderwuelbecke) 202:21-203:1; Feb. 21, 2024, Trial Tr. (O'Connell) 47:4-9; 50:12-16; Apr. 4, 2024, Trial Tr. (Bartels) 147:18-149:21; 152:4-9.

Deferral of the CASA Fee Only Benefitted TopCo

- In any event, Platinum stopped charging CASA fees after year-end 2020, instructed Wesco to accrue the fees, and ultimately told Wesco to reverse the accrual journal entries, effectively writing off the fees.

- Platinum's agreement to "defer" these fees that it was not actually charging at the time of the 2022 Transactions and that Wesco did not contractually owe was completely illusory and no benefit to Wesco at all.

* Jan. 31, 2024, Trial Tr. (Carney) 24:18-25:11; Nov. 17, 2023, Dep. Tr. (Sigler) 88:13-22; 129:24-130:14.

Exchange of the TopCo Note Did Not Benefit Wesco

- Mary Ann Sigler, Platinum partner and CFO, signed the TopCo Note on behalf of both Wesco and Wolverine TopCo:

UNSECURED PROMISSORY NOTE

Original Principal Amount:
$25,000,000.00

November 10, 2020
("Closing Date")

For value received, the undersigned, WESCO AIRCRAFT HOLDINGS, INC., a Delaware corporation ("Maker"), promises to pay WOLVERINE TOP HOLDING CORPORATION, a Delaware corporation, or its permitted successors and assigns ("Holder"), the principal amount of TWENTY-FIVE MILLION AND 00/100 DOLLARS ($25,000,000.00) (the "Loan") with interest on the unpaid principal amount at an interest rate equal to the Interest Rate (as defined below) from the date of this Unsecured Promissory Note (this "Note") until paid in full or until the occurrence of an Event of Default (as defined below). Following the occurrence and during the continuance of an Event of Default, interest shall accrue on the outstanding balance under this Note at a rate of interest (the "Default Rate") equal to the Interest Rate plus two percent (2%) per annum.

MAKER:

Executed by **WESCO AIRCRAFT HOLDINGS, INC.:**

By: _____
Name: Mary Ann Sigler
Title: Vice President and Treasurer

HOLDER:

Executed by **WOLVERINE TOP HOLDING CORPORATION:**

By: _____
Name: Mary Ann Sigler
Title: President and Treasurer

* ECF No. 536-29.

Exchange of the TopCo Note Did Not Benefit Wesco

- Wesco's "Related Party Policy" required that the Audit Committee approve any transactions with related parties, including any transaction with Platinum.
  - Wesco's Audit Committee consists of solely Mary Ann Sigler, Platinum's CFO, which single-person membership calls into question the ability of this committee to adequately address conflicts of interest between Wesco and Platinum.
- Wesco's CFO testified that he never saw an approval of the TopCo Note from the Audit Committee.

* Jan. 31, 2024, Trial Tr. (Carney) 132:8-133:23.

Exchange of the TopCo Note Did Not Benefit Wesco

- A default on the TopCo Note would not have resulted in any cross-default on any of Wesco's indebtedness.

Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*":

(4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for borrowed money (other than Indebtedness owed to the Issuer or any of its Restricted Subsidiaries or any Affiliate) of the Issuer or any of the Issuer's Restricted Subsidiaries that is a Significant Subsidiary (or the payment of which is guaranteed by the Issuer or any of the Issuer's Restricted Subsidiaries that is a Significant Subsidiary), whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, if that default:

* ECF No. 601-7.

Exchange of the TopCo Note Did Not Benefit Wesco

- Exchanging the TopCo Note for New 1.25L Notes did not benefit Wesco:

  1. The exchange elevated the unsecured promissory note to a secured claim;

  2. The maturity extension led to additional cash and total interest expense due on the TopCo Note over the course of its life;

  3. The exchange was unnecessary for Wesco to obtain new money or execute the Secured Exchange; and

  4. Platinum was not going to sue Wesco to enforce an unsecured note, which Wesco (if independently represented) would assert was in fact a capital contribution.

* ECF No. 538-29.

Exchange of the TopCo Note Did Not Benefit Wesco

- In any event, Wesco never intended to pay the TopCo Note at maturity according to the business plan prepared by Wesco's advisors and presented to the Wolverine Intermediate board, which plan showed that Wesco's unsecured debt would remain constant from 2022 through 2026 under the status quo.*

- None of the five Platinum executives who sat on Wesco's board criticized the status quo description as erroneous or questioned it at all.

- Including the $104 million of 2027 Notes that were left out of the Selective Exchange would have resulted in a cash interest savings of over $30 million – more than the principal amount of the Wolverine TopCo Note.*

* ECF No. 538-53; Feb. 21, 2024, Trial Tr. (O'Connell) 189:6-22; 208:15-209:3.

The Interference Reduced Wesco's Potential Cash Interest Savings

- The breach that was procured by the Selected Sellers was the ***exclusion of other 2027 Noteholders*** from participating in the Selective Exchange.

- That did not result in more cash interest savings – it resulted in less.

- Nearly every party in this case agrees that including all, instead of merely some, of the 2027 Notes in the Selective Exchange would have benefitted Wesco.

- Thus, including only Platinum's, Carlyle's, and Senator's 2027 Notes in the Selective Exchange benefitted ***their own*** economic interests, **not their economic interest in Wesco or the Guarantors**.

The Interference Reduced Wesco's Potential Cash Interest Savings

Raymond Carney
CFO, Wesco

Q And the chart shows that liquidity is consistently higher through the period reflected in the chart if all unsecured notes are exchanged for new PIK notes, is that right?

A Yes.

Q And it also shows that if all holders of unsecured notes had exchanged their notes for PIK notes, it would have increased the company's liquidity more than if only Carlyle and Platinum exchanged, correct?

A Yes.

* Jan. 31, 2024, Trial Tr. at 123:20-124:3.

The Interference Reduced Wesco's Potential Cash Interest Savings

Malik Vorderwuelbecke
Managing Director, Platinum

Q Okay. And therefore the more 2027 holders that agree to PIK interest on their notes, the greater the economic benefit to Wesco Aircraft. True or false?
A That is true.
Q And if for any reason less than all of the 2027 noteholders have the opportunity to PIK interest, there is less economic benefit to Wesco. Correct?
A That's correct.

* Feb. 1, 2024, Trial Tr. 32:13-20.

The Interference Reduced Wesco's Potential Cash Interest Savings

Jesse Hou
Principal, Carlyle

Q All right. And sir, then if that were your concern, if providing -- let's assume we could have gotten over what you're suggesting are some logistical issues, they couldn't inviting all unsecured 2027 noteholders to participate.

If we could have gotten over those, you would agree with me that PIK-ing the interest on all of those notes would have provided more liquidity for the company, correct?

A Yes.

* Feb. 8, 2024, Trial Tr. 181:17-20.

The Interference Reduced Wesco's Potential Cash Interest Savings

Patrick Bartels
"Independent Director"

Q And in terms of other unsecured noteholders, not all unsecured noteholders participated in this transaction, correct?

A That's correct.
Q Why not?
A There wasn't part of how the overall deal was laid out.
Q And was that an option for you at this board meeting to decide to include them in the transaction?
A It was not an option.
Q If it were an option, would you approve that?
A That would have been better for the company.
Q So would you have approved it?
A I would have.

* Feb. 13, 2024, Trial Tr. 234:23-235:10.

The Interference Reduced Wesco's Potential Cash Interest Savings

Jamie O'Connell
Partner, PJT Partners

Q As a matter of arithmetic, Wesco Aircraft could have received additional cash flow relief if it were able to extend the same offer to all holders of 2027 notes, true?
A If I understand the question, I'm sorry. I'm going to paraphrase, if I can, just to make sure we're saying the same thing. You're saying if all unsecured holders were offered the same lower cash interest rate with the PIK, that would benefit the company more?
Q Yes.
A Yes.

* Feb. 21, 2024, Trial Tr. 118:7-16.

The Interference Reduced Wesco's Potential Cash Interest Savings

Jason Prager
Principal, Silver Point

A. Yes. As a general matter the more unsecured debt that convert that exchange in to the new second debt the better because that had a lower cash coupon than the right of the in secured debt. So it was better for the -- the more unsecured the exchange, the better respect to the company for the clarity profile.

* Feb. 13, 2024, (Prager) Trial Tr. 124:14-20.

The Interference Reduced Wesco's Potential Cash Interest Savings

Samuel Dostart
Principal, PIMCO

Q Okay. And you -- did you identify which unsecured holders you would be willing to allow to participate in the treatment of the unsecured notes as listed here?
A No, I recall wanting all of them to participate.
Q Why did you want all of them to participate?
A Because then they would be providing more cash interest relief to the company, which I viewed as advantageous.

* Feb. 28, 2024, (Dostart) Trial Tr. 90:13-19.

The Interference Reduced Wesco's Potential Cash Interest Savings

- Thus, including only Platinum's, Carlyle's, and Senator's 2027 Notes in the Selective Exchange benefitted ***their own*** economic interests, **not their economic interest in Wesco or the Guarantors**.

There Were No "Logistical Issues" Preventing Contact With Other Holders of 2027 Notes

- PJT discovered the identities of several 2027 Noteholders other than Platinum, Carlyle, and Senator and shared this information Mr. Bartels.

Unsecured Noteholders

Select Holders

- > Waddell & Reed / Ivy*
- > BlackRock*
- > JP Morgan*
- > Carlyle
- > Platinum Equity

Bloomberg Holdings

$525mm Unsecured Notes	
Waddell & Reed / Ivy	3.1%
BlackRock	2.3%
JPMorgan Chase	2.2%
Victory Capital Management	1.4%
Resource America	1.0%
State Street	0.7%
Schroders	0.7%
Deutsche Bank	0.6%
Guardian Life	0.4%
Flexshares Trust	0.1%
Other	*87.6%*

* ECF 659-2; Feb. 21, 2024, Trial Tr. (O'Connell) 15:16-24; 18:14-19:2; Apr. 4, 2024, Trial Tr. (Bartels) 191:1-22.

There Were No "Logistical Issues" Preventing Contact With Other Holders of 2027 Notes

- ***Platinum*** also forwarded a list of 2027 Noteholders to PIT in November 2021.

From: Fabiano, Michael [Mfabiano@platinumequity.com]
Sent: 11/16/2021 2:42:33 PM
To: Josh Abramson (abramson@pjtpartners.com) [abramson@pjtpartners.com]; Jamie O'Connell [oconnell@pjtpartners.com]; Dennis Dunne (ddunne@milbank.com) [ddunne@milbank.com]; Khalil, Sam [SKhalil@milbank.com]

BD Institution Name	Count Of Bonds (Selected Bonds)	Aggregate Par Held (Selected Bonds)	Par Held (WOLVERINE ESCROW, LLC 13.125% 11/2027 US97789LAA44) $m
Macquarie Investment Management	3	268,512,000	31,139,000
Carlyle Investment Management, LLC	1	127,014,000	127,014,000
J.P. Morgan Investment Management, Inc. (Columbus)	3	73,899,000	9,435,000
J.P. Morgan Investment Management, Inc.	3	61,691,000	3,635,000
Fidelity Management & Research Company, LLC	2	59,637,696	
BlackRock Fund Advisors	3	52,857,757	12,189,289
Allianz Global Investors U.S., LLC	2	34,698,000	
State Street Global Advisors (SSgA)	3	33,097,000	5,643,000
PIMCO - Pacific Investment Management Company	2	31,175,000	
J.P. Morgan Investment Management, Inc.| J.P. Morgan Investment Management, Inc. (Columbus)	2	18,087,000	
Guardian Investor Services, LLC| Victory Capital Management, Inc.	2	17,539,000	2,200,000
Lord, Abbett & Co., LLC (Asset Management)	1	16,567,000	
BlackRock Advisors, LLC	3	14,502,230	21,062
Goldman Sachs Asset Management, L.P. (U.S.)	2	14,097,731	
DoubleLine Capital, L.P.	1	12,503,000	
NN Investment Partners (Singapore), LTD| NN Investment Partners B.V.	3	12,303,036	3,800,011
Loews Corp. (Asset Management)	2	12,066,000	
DBX Advisors, LLC	3	12,036,000	2,943,000
Schroder Investment Management North America, Inc.	2	10,820,000	2,620,000
Guardian Investor Services, LLC	2	9,603,000	6,950,000

* ECF 843-1; Feb. 21, 2024, Trial Tr. (O'Connell) 21:4-15.

There Were No "Logistical Issues" Preventing Contact With Other Holders of 2027 Notes

- Mr. O'Connell did not recall ever contacting anyone on these lists and Mr. Bartels never asked PJT to update the lists.

Jamie O'Connell
Partner, PJT Partners

Q Okay. Did Mr. Bartels ever ask you to update the pages we just looked at?
A Not to my knowledge on the pitch deck, no. The pitch deck would have been -- at that point it was older information.
Q Okay. Did Mr. Bartels ever ask you to find additional holders of 2027 notes?
A Not to my recollection.

Q Okay. Did you ever try to contact any of the holders of the 2027 notes that are listed on this spreadsheet, other than Carlyle, Senator and Platinum?

THE WITNESS: We may have, I don't specifically recall.

* Feb. 21, 2024, Trial Tr. (O'Connell) 19:3-10; 21:4-6, 14-15.

Patrick Bartels
"Independent Director"

Q Did you know which holders were being excluded?
A I'd seen holders lists early but I didn't know specifically which holders were being excluded.
Q Then you made no effort to find out who the excluded holders were.
A It wasn't all -- it wasn't -- no.
Q And you personally made no effort to talk to any of them.
A No, I didn't speak to any of the holders.
Q And did you ask PJT to talk to any of them?
A I don't recall asking PJT to talk to them.
Q Did you ask Milbank to talk to any of them?
A I don't recall asking.
Q Do you recall asking anyone else to talk to any of the excluded holders?
A No, I don't.
Q Okay. And you testified that you had been given lists of holders of the 2027 notes, didn't you?
A In the beginning presentations I saw, they were older though, they were like pitch presentations if I remember correctly.
Q Did you ask anyone to update those presentations?
A I did not.

The Economic Interest Defense is Unavailable to the Selected Sellers

- The Selected Sellers failed to satisfy their burden to show that the economic interest defense is available to them in this case.

- The evidence leaves no doubt that the Selective Exchange, which violated Section 3.02, was designed and implemented by the Selected Sellers for their own economic advantage.

- The breach of Section 3.02 was induced not to protect the Selected Sellers' existing economic position in Wesco, but to change and improve their own individual claims against Wesco in a way that ***harmed*** Wesco.

    - Transforming their debt claims against Wesco into entirely different and senior claims against Wesco's assets is not protecting an existing claim or interest.

The Selected Sellers Acted Maliciously

- Malice is only relevant if the Selected Sellers can show that they are entitled to the economic interest defense (which they cannot). *See In re Refco Inc. Secs. Litig.*, 826 F. Supp. 2d 478, 520 (S.D.N.Y. 2011) ("New York only requires proof of malice if the economic interest defense has been triggered.").

- The Selected Sellers committed several malicious acts:

  1. The only reason the Selected Sellers excluded certain 2027 Notes from the Selective Exchange was to pilfer value from those excluded 2027 Notes—the Selected Sellers could have obtained the New 1.25 Lien Notes even if they had been offered to all holders.

  2. The Selective Sellers stripped covenants from the 2027 Notes just before exchanging into New 1.25 Lien Notes having essentially the same covenants.*

- None of these actions benefitted the Selected Sellers; they only harmed the 2027 Noteholders.

* ECF No. 601-33 (Fourth Supplemental 2027 Indenture).

The Selected Sellers Acted Maliciously

- Below is a list of the covenants the Selected Sellers stripped from the Indenture:

- Section 3.10 *(Offer to Purchase by Application of Excess Proceeds)*
- Section 4.04 *(Compliance Certificate)*
- Section 4.07 *(Restricted Payments)*
- Section 4.08 *(Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries)*
- Section 4.09 *(Incurrence of Indebtedness and Issuance of Disqualified Stock or Preferred Stock)*
- Section 4.10 (*Asset Sales*)
- Section 4.11 *(Transactions with Affiliates)*
- Section 4.12 (*Liens*)
- Section 4.13 *(Corporate Existence)*
- Section 4.14 *(Offer to Repurchase Upon Change of Control)*
- Section 4.14 *(Offer to Repurchase Upon Change of Control)*
- Section 4.15 *(Permitted Activities of Holdings)*
- Section 4.16 *(Future Guarantees)*
- Section 4.17 *(Designation of Restricted Subsidiaries and Unrestricted Subsidiaries)*
- Section 4.19 *(Changes in Covenants When Unsecured Notes Rated Investment Grade)*
- Section 4.20 (*Post-Closing Covenant)*
- Section 4.21 *(Maintenance of Listing)*
- Section 4.26 (*Negative Pledge*)
- Clauses (3) and (4) of Section 5.01(a) (*Merger Consolidation or Sale of Assets*)
- Section 10.06 *(Guarantors May Consolidate, etc., on Certain Terms)*

* ECF No. 601-33 (Fourth Supplemental 2027 Indenture).

The Selected Sellers Conspired to Tortiously Interfere with the 2027 Indenture

- Civil conspiracy is a separate claim because it is an independent wrong for several parties to conspire together to harm another party than it is for a single party to independently perform the harmful conduct.

- "[T]o establish a civil conspiracy claim, a plaintiff must demonstrate [an] underlying tort plus three elements: (1) a corrupt agreement; (2) an overt act in furtherance of that agreement; and (3) membership in the conspiracy by each defendant." *Dell's Maraschino Cherries Co., Inc. v. Shoreline Fruit Growers, Inc.*, 887 F. Supp. 2d 459, 482 (E.D.N.Y. 2012).

- This may be the clearest conspiracy case ever to reach a bankruptcy court.

- The Exchange Agreement alone satisfies every element of the claim.

Section 13.05 Does Not Allow Platinum to Escape Liability

- Section 13.05 states, "No . . . Equity holder, including . . . any direct or indirect parent of the Issuer, ***as such***, will have any liability for any obligation of the Issuer or the Guarantors under the Unsecured Notes, this Indenture . . . or for any claim based on, in respect of, or by reason of, such obligations or their creation." (emphasis added).

- Section 13.05 applies only if Platinum is sued "***as such***" – *i.e.*, in its capacity as an ***equity holder or parent of Wesco***.

- Langur Maize is suing Platinum in its capacity as a ***noteholder, party to the Exchange Agreement, and for the actions of its employees*** and not in its capacity as an equity holder or parent of Wesco.

- Section 13.05 does excuse Platinum from liability.

LANGUR MAIZE HAS STANDING TO PURSUE CLAIMS AGAINST THE SELECTED SELLERS

The DTC Conferred Standing Upon Langur Maize

Securities Entitlements in the Global Note

- It may be convenient to say, in short form, that Langur Maize or any other beneficial holder "owns" or "holds" "2027 Notes."
- But it is neither precise nor accurate.
- What Langur Maize holds is a beneficial ownership interest in a Global Note.
- Holders of beneficial ownership interests in a Global Note are "entitlement holders" who hold "security entitlements" against "securities intermediaries (i.e., brokers or banks).*
- Entitlement holders "do not hold direct registered (legal) title to securities in which they have acquired interests"; they have a specific property interest in a Global Note. **

* N.Y. U.C.C. Law § 8-506; ECF 525-1 at 13-14.
** ECF 525-1 at 13-14; UCC § 8-102(17), off. cmt. 17.

Securities Entitlements in the Global Note

- Section 1.01 of the Indenture defines "Holder" as "a Person in whose name an Unsecured Note is registered," and Section 2.08 provides that the registered holder "shall be the [DTC] in the case of a Global Note."

- The Global Note is registered as held by Cede & Co., the DTC's nominee.

The DTC Conferred Standing Upon Langur Maize

Beneficial Owners "are not registered holders" and "are without standing to sue" absent authorization from the registered holder

* *MacKay Shields LLC v. Sea Containers, Ltd.*, 751 N.Y.S.2d 485, 486 (App. Div. 2022).

Authorization is Sufficient to Grant Standing

- Under controlling New York law, a beneficial owner acquires standing when a registered holder authorizes the beneficial owner to exercise the registered holders' rights.*

* *E.g., Springwell Nav. Corp. v. Sanluis Corporación, S.A.*, 917 N.Y.S.2d , 561 (App. Div. 2011) (authorization from registered holder cured beneficial owners' lack of standing); *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.à.r.l*, 996 N.Y.S.2d 476, 489 (Sup. Ct. 2014) ("If a party that lacked standing under such an indenture subsequently obtains authorization to sue from a registered holder, its lack of standing is cured.").

Authorization is Sufficient to Grant Standing

- The Global Note directs that only the DTC, through its nominee Cede & Co., has rights under the Indenture.

(11) *PERSONS DEEMED OWNERS.* 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.

- This Court already has held that Cede properly authorized Langur Maize to exercise those rights.

MEMORANDUM OPINION

Langur Maize received authorization to bring its suit in New York state court (and this Court) through a two-step authorization process.

* ECF 538-3; MSJ Op. 27.; ECF Nos. 1075-1 (DTC Authorization Letters), 1075-2 (BNY Custody Holding Statement), 1075-3 (BNY Authorization Letters and Trade Recaps), 1209-1, 1209-2, 1209-3, 1209-4 (Trade Recaps).

Numerous Cases Support Langur Maize's Standing

- "Cede's [*i.e.*, the depositary's] authorization ***is sufficient*** to provide standing to a beneficial owner." *Diverse Partners, LP v. AgriBank, FCB*, 2017 WL 4119649, at *5 (S.D.N.Y. Sept. 14, 2017) (emphasis added).
- Other courts have found authorizations substantially similar to the one that Langur Maize obtained sufficient to confer standing. *

* *E.g., Allan Applestein TTEE FBO D.C.A. Grantor Tr. v. Province of Buenos Aires*, 415 F.3d 242, 244-46 (2d Cir. 2005) (Cede authorized Participant, which authorized beneficial owner, "to pursue any and all of the rights that DTC has under Section 508 of the Indenture."); *Hamilton Rsrv. Bank Ltd. v. Democratic Socialist Republic of Sri Lanka*, 2023 WL 2632199, at *1 (S.D.N.Y. Mar. 24, 2023) (same); *Royal Park Invs. SA/NV v. Deutsche Bank Nat'l Tr. Co.*, 2016 WL 439020, at *2 (S.D.N.Y. Feb. 3, 2016) (same).

The DTC Gave Langur Maize Standing to Exercise its Rights

- Section 6.06 allows* the Holder (Cede & Co.) to "pursue ***any remedy with respect to*** this Indenture or ***the Unsecured Notes,***" including pursuing tort actions.

The DTC's Rights	
Cortlandt	***Quadrant***
▪ The nearly identical term "***any available remedy***" includes "all remedies available at law and in equity" and permits "any lawful means of enforcing the noteholders' rights, against any individual or entity, based on ***any viable theory of recovery*** in order to secure repayment upon the event of default on the debt of to noteholders."	▪ Where a "clause refers to both the indenture ***and the securities***[,] the securityholder's claims are subject to the terms of the clause, whether those claims be contractual in nature and based on the indenture agreement, ***or arise from common law and statute***."
Cortlandt St. Recovery Corp. v. Bonderman ("Cortlandt"), 96 N.E.3d 191, 198 (N.Y. 2018).	*Quadrant Structured Prod. Co. v. Vertin*, 16 N.E.3d 1165, 1173 (N.Y. 2014).

* Subject to the satisfaction of certain conditions, which have been waived in this case.

The DTC Gave Langur Maize Standing to Exercise its Rights

- The DTC gave Langur Maize standing to exercise its rights and remedies with respect to the Indenture or the 2027 Notes, including breach of contract and tortious interference.*

* ECF Nos. 1075-1 (DTC Authorization Letters), 1075-3 (BNY Authorization Letters).

The DTC Gave Langur Maize Standing to Exercise its Rights

- Now that Langur Maize has received standing and authorization, permitting a prior entitlement holder to also receive authorization and standing from the DTC would allow for double recoveries.

- Section 6.03 permits the Trustee to pursue remedies and enforce performance under the Indenture, and Section 6.11 provides that any recovery by the Trustee must be distributed "ratably, without preference or priority of any kind" to current entitlement holders.

- If a prior entitlement holder could recover on claims under the Indenture, it would put the Trustee in an impossible position when making distributions.

- The Trustee also would have no practical way of identifying prior entitlement holders.

The DTC Gave Langur Maize Standing to Exercise its Rights

- The Defendants argue that prior beneficial owners would not need DTC authorization to pursue tort claims against third parties because "[t]he DTC authorization requirement applies only to suits to vindicate '***rights under the Indenture***,'" as expressed in Section 6.03. ECF 1398 at 84 (emphasis in original).

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.

- Without citation to any authority, the Defendants conclude that this "language does not encompass tort claims against third parties."

- But New York law confirms this exact language ***does*** include tort claims: **"The text of the indenture authorizes the trustee to pursue 'any available remedy.' This, by its terms, includes all remedies available at law and in equity."** *Cortlandt*, 96 N.E. at 198.

- A prior beneficial owner would need to receive DTC authorization to have standing to bring tort claims against third parties.

The SEC Approved DTC Rules Confirm Langur Maize's Standing

- Rule 9(B) § 1 of the DTC Rules provides:

> *Section 1.* The Corporation shall not act on an instruction received by the Corporation from an Instructor to effect a Delivery, Pledge, Release or Withdrawal, or any other transaction affecting the Account of the Instructor or another Participant or Pledgee (other than a transaction classified in the Procedures as exempt from this Section), unless the Securities (if the transaction involves Securities) are, prior to the transaction, Deposited Securities or Pledged Securities reflected in the Account of the Instructor, as specified in the Procedures, and:

- "Instructor" means a Participant who "gives the [DTC] an instruction with respect to (i) a Delivery, Pledge, Release or Withdrawal of Securities, (ii) a payment in connection with a transaction in Securities or (iii) ***any other instruction pursuant to these Rules and the Procedures***."

- "Procedures" includes the process for obtaining authorization to sue as laid out in the DTC Reorganizations Service Guide.

- A "Deposited Security" is a security that is "credited to the Account of a Participant by Deposit or Delivery."

* ECF 1361-1 (the "DTC Rules"); ECF 1361-2

The DTC Rules Confirm Langur Maize's Standing

- The DTC Reorganizations Service Guide states:

> In order to exercise such rights through DTC, a Participant must complete and submit to DTC via the MyDTCC portal an instruction letter on the Participant's letterhead ***identifying the subject securities, the quantity of securities involved, the beneficial owner***, and the nature of the request, along with the exact form of securityholder letter that the Participant is instructing Cede & Co. to sign in order to exercise the relevant rights for the beneficial owner.

- Rule 9(B) and the DTC Reorganizations Service Guide direct that a Participant may give an instruction to the DTC ***only if*** they hold Securities in their account and identify the securities and the beneficial owner. *See* DTC Rule 9(B) (The DTC "shall not act on an instruction . . . Unless the Securities . . . are, prior to the transaction, . . . Reflected in the Account of the Instructor . . . .").

* ECF 1361-2, p. 25.

The DTC Rules Confirm Langur Maize's Standing

- Carlyle argues that Rule 9(B)(I) is limited to a "securities transaction" (although Carlyle does not explain what that means) and asserts that there is no support for the notion that the rule applies to authorization letters. ECF 1409 at 3 (June 21, 2024 letter).

- But the rule contains no such limitation. By its terms, it applies to any "Delivery, Pledge, Release or Withdrawal, ***or any other transaction affecting the Account of the Instructor***."

The DTC Rules Confirm Langur Maize's Standing

- Black's Law Dictionary defines a "transaction" as:

  transaction n. (17c)
  1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract.
  2. Something performed or carried out; a business agreement or exchange.
  3. Any activity involving two or more persons.

- The issuance of an authorization letter fits this definition — it is an "act or an instance of conducting business," "a business arrangement or exchange," ***and*** an "activity involving two or more persons."

* TRANSACTION, Black's Law Dictionary (11th ed. 2019).

The DTC Rules Confirm Langur Maize's Standing

- The defined terms "Delivery, Pledge, Release or Withdrawal" used in Rule 9(B) already capture regular-way purchase and sale transactions — and more.

- The inclusion of the language "any other transaction affecting the Account of the Instructor" demonstrates that Rule 9(B)(I) is intended to capture a much broader set of transactions.

- Authorization to Take Action Letters "affect[]* the Account of the Instructor" – they allow the Instructor to exercise the DTC's rights with respect to the securities entitlements in the Instructor's Account.

* See AFFECT (15c), Black's Law Dictionary (11th ed. 2019) ("1. Most generally, to produce an effect on; to influence in some way.").

Any Claim Held by a Prior Owner was Transferred to Langur Maize by Operation of the DTC Rules, the Indenture, and the Global Notes

Claims Under the Indenture have been Assigned to Langur Maize

- No party disputes that the tortious interference claims alleged by Langur Maize against the Selected Sellers under the Indenture can be assigned.

- "Courts may permit a party with standing to assign its claims to a third party, who will stand in the place of the injured party and satisfy the constitutional requirement of an injury-in-fact." *W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP*, 549 F.3d 100, 107 (2d Cir. 2008).*

- Such an assignment happened here.

* Cited by Platinum in *The Platinum Defendants' Memorandum of Law in Opposition to Langur Maize's Motion for Summary Judgment* [ECF No. 280] pg. 7.

Separate Documents Can Be Part of a Contract—the DTC Rules are part of the Indenture

- "Under . . . general contract principles . . ., a separate document will become part of the contract where the contract makes clear reference to the document and describes it in such terms that its identity may be ascertained beyond doubt." *One Beacon Ins. Co. v. Crowley Marine Services, Inc.*, 648 F.3d 258, 267-68 (5th Cir. 2011) (citation omitted).

- "Generally, all writings which are part of the same transaction are interpreted together." 11 Richard A. Lord, Williston on Contracts § 30:25 [4th ed 2020]. "One application of this principle is the situation in which the parties have expressed their intention to have one document's provision read into a separate document." *Revis v Schwartz*, 192 A.D.3d 127, 138 (N.Y. App. Div. 2020).

- The DTC Rules are part of the Indenture.

The Applicable Procedures are Incorporated into the Indenture (and the Global Note)

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange.

"*Depositary*" means, with respect to the Unsecured Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Unsecured Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

Section 2.03 *Registrar and Paying Agent.*

The Issuer will maintain an office or agency where Unsecured Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Unsecured Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of the Unsecured Notes and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Issuer initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Issuer initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

The Applicable Procedures are Incorporated into the Indenture (and the Global Note)

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. None of the Issuer, Trustee, Paying Agent, nor any Agent of the Issuer shall have any responsibility or liability for any aspect of the records relating to or payment made on account of beneficial ownership interests in a Global Note, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

None of the Issuer, the Trustee, or any Agent shall have any responsibility or obligation to any Beneficial Owner in a Global Note, a Participant, an Indirect Participant or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Participant or Indirect Participant, with respect to any ownership interest in the Unsecured Notes or with respect to the delivery to any a Participant, Indirect Participant, Beneficial Owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Unsecured Note. All notices and communications to be given to the Holders and all payments 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. The Issuer, the Trustee, and each Agent shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants, Indirect Participants and any Beneficial Owners. The Issuer, the Trustee, and each Agent shall be entitled to deal with the Depositary, and any nominee thereof, that is the registered holder of any Global Note for all purposes of this Indenture relating to such Global Note (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or Holder of a beneficial ownership interest in such Global Note) as the sole holder of such Global Note and shall have no obligations to the Beneficial Owners thereof. None of the Issuer, the Trustee, or any Agent have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Note, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such Global Note, for any transactions between the Depositary and any Participant, Indirect Participant or between or among the Depositary, any such Participant and Indirect Participant and/or any holder or owner of a beneficial interest in such Global Note, or for any transfers of beneficial interests in any such Global Note.

* Indenture 2.06(b); 2.08.

Supplement to Memorandum Opinion

Platinum's and Carlyle's argument would produce an absurd result. Put simply, the sellers to Langur Maize would "own" claims, but could never prosecute them. It makes no sense. Conversely, Langur Maize's argument would produce a workable system, but the Indenture has no clear statement that supports the position. Inasmuch as the result would be inconsistent with the New York statute, the Court is reluctant to find an elephant in the Indenture's mouseholes.

At this stage, no party has provided a persuasive interpretation of the Indenture as to whether the claims were transferred. Until a party demonstrates clarity in the Indenture, the Court will treat the Indenture as ambiguous on this issue. This issue is reserved for trial. A genuine issue of material fact remains as to whether Langur Maize has Article III standing to assert its claims against entities not covered by N.Y. Gen. Oblig. L. § 13-107.

* ECF 553 at 2-3.

There is Clarity in the Indenture

- Section 2.06(b) of the Indenture states:

> The transfer and exchange of beneficial interests in the Global Notes will be effected through [DTC], ***in accordance with*** the provisions of this Indenture and ***the Applicable Procedures***.

See also Global Note ¶¶ 4.

- "Applicable Procedures" are defined in the Indenture as: "with respect to any transfer or exchange of or for beneficial interests in any Global Note, ***the rules and procedures of the [DTC]*** that apply to such transfer or exchange."

- The DTC is mentioned 83 times in the Indenture — that many mentions would not fit in a mousehole!

Transfers at DTC are of the "Entire Interest"

- DTC's Applicable Procedures provide that "the entire interest" accompanies a security transferred through DTC.

- Rule 9(B), Section 2 of the DTC Rules provides:

> [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 . . .***

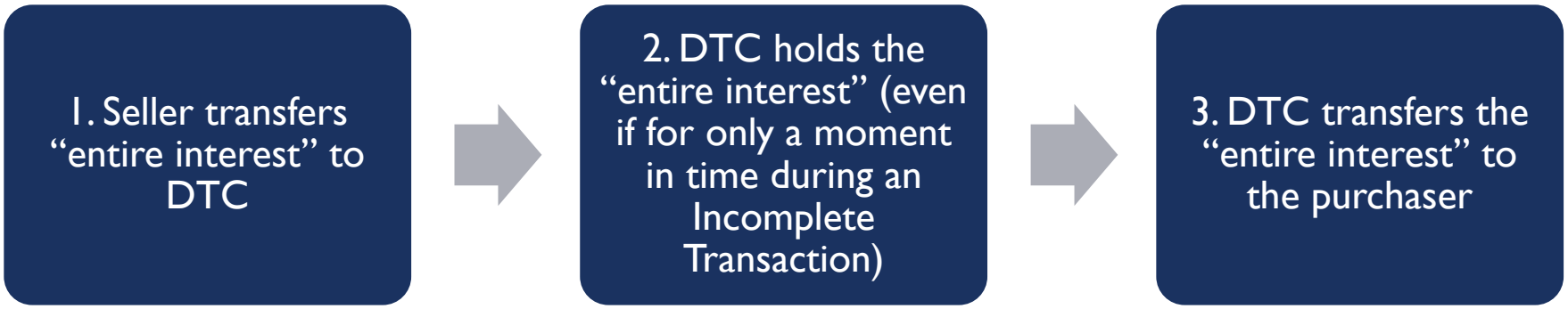
- There is, therefore, a point in any Delivery Versus Payment transaction where the transaction is an "Incomplete Transaction." At that point, the DTC holds the "entire interest" in the securities being transferred.

* "Delivery Versus Payment" is defined in the DTC Rules as a transaction where a security is debited from the person delivering the security against a settlement debit to the account of the person receiving the security. In other words, a purchase transaction. DTC Rules, pg. 4.

** An "Incomplete Transaction" is any Delivery Versus Payment transaction at the point where securities have been credited to the account of the DTC but have not yet been credited or delivered to the account of the receiving person. DTC Rules, pg. 8.

Summary of the DTC Sale Process

- DTC Sale Process ("Delivery versus Payment"):



- The DTC ensured that if the transaction broke at Step 2 – and it was "holding the bag" – it was holding absolutely everything.

- After the sale, the seller no longer holds ***any interest*** – the "***entire interest***" has been transferred to the purchaser.

"Entire Interest" Includes Tort Claims

- In *Pa. Public School Employees' Retirement Sys. v. Morgan Stanley & Co., Inc. ("PSERS")*, 772 F.3d 111, 122-23 (2d Cir. 2014), the Second Circuit held that whether a purchaser of notes has the right to bring tort claims with respect to those notes hinges on whether the purchaser received an assignment of the seller's "***entire interest***" in the notes.

- "A would-be assignor need not use any particular language to validly assign its claim so long as the language manifests [the assignor's] intention to transfer at least title or ownership, *i.e.*, to accomplish a completed transfer of ***the entire interest*** of the assignor in the particular subject of assignment." *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.a.r.l,* 790 F.3d 411, 418 (2d Cir. 2015).

- The DTC Rules, which govern Langur Maize's purchase of 2027 Notes, clearly provide that the "***entire interest***" in security entitlements are transferred from the seller to the DTC and then subsequently, from the DTC to the purchaser.

"Entire Interest" Includes Tort Claims

PSERS

236 (S.D.N.Y.2007) (internal quotation marks omitted). The question in this case is whether Commerzbank has offered sufficient evidence to allow a trier of fact to find that DAF assigned its entire interest in the notes to Dresdner, including, therefore, its right to sue for fraud.

DTC Rule 9(B)

Section 2. In the manner and for the purposes set forth in these Rules and the Procedures, and subject to applicable law, (i) the Corporation 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, including the authority to sell, Pledge or otherwise dispose of such Securities, (ii) the Corporation shall hold a security interest in any Securities Pledged or Released Versus Payment, which are the subject of an Incomplete Transaction, to Pledge for value or Release for value a security interest in such Securities, and shall have the authority of a secured party to sell, Pledge or otherwise dispose of such Securities, and (iii) the Corporation, acting as agent and attorney-in-fact for its Participants, shall have the authority to Pledge or sell on their behalf any of their shares of Preferred Stock.

"Entire Interest" Includes Tort Claims

- The DTC Rules contain an express assignment of the "entire interest" in securities entitlements, like Langur Maize's beneficial interests in the Global Note.

- None of the parties disputes that a party may assign claims by way of express assignment.

  - "[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor."*

- New York General Obligations Law Section 13-107 provides only that certain claims are automatically assigned, and has no application to Langur Maize's claims, which were expressly assigned.

* *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773, 120 S. Ct. 1858, 1863, 146 L. Ed. 2d 836 (2000).

The DTC Rules Govern

- Carlyle argues the Court should look to four documents found on the DTC's website to determine whether Langur Maize has standing.

- None of the four contradict Langur Maize's standing arguments, and if they did, the Court should disregard them because none are incorporated into the DTC Rules or the Indenture.

- The SEC approved the DTC Rules when it granted the DTC full registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934.*

- The SEC-approved DTC Rules govern the issue of Langur Maize's standing.

* *See Order Granting DTC Full Registration* Release No. 34-20221, available at https://www.sec.gov/tm/clearing-agencies.

This is the Only Practical System

- The rule expressed in Section 13-107 of New York's General Obligations Law was enacted in 1950, when notes were traded between a buyer and seller in definitive (physical, or paper) form and well before the DTC or global notes existed.

- Definitive notes are the exception in today's world, not the rule.

This is the Only Practical System

- A beneficial owner typically does not know the identity of the seller of a security entitlement it purchases through the DTC book-entry system.

- It would be impracticable for Langur Maize to identify the entity from which it purchased its beneficial interests in the 2027 Notes.

- It would be functionally impossible for Langur Maize to identify which entity held its beneficial interests in the 2027 Notes on March 28, 2022, particularly if the interests have changed hands several times in the intervening months and years.

- Requiring an express assignment agreement for every security entitlement transfer would result in the "outright bar" of actions against tortfeasors—an absurd result that the Court rightly feared. Jan. 25, 2024, Trial Tr. 92:21-93:12.

- The DTC and the parties drafting bond indentures governing global notes incorporated express assignment of tort claims into the rules and indentures. The absurd result should not obtain.

CONCLUSION

Conclusion

- Carlyle was presented with a proposal to PIK its interest and exchange its 2027 Notes for 1.25 Lien Notes.
  - This proposal contemplated that *all* 2027 would be eligible to participate in the exchange.
- Carlyle had the right to reject the proposal, even though PJT correctly noted that Carlyle was "strongly incentivized" to take that deal.*

* Feb. 21, 2024, Trial Tr. (O'Connell) 63:3-16

Conclusion

- Carlyle did ***not*** have the right, without creating liability for itself, to use its right to reject the proposal to "affirmatively induce" Wesco and WSFS to breach the Indenture.*

- That conduct is only excused if the breach it insisted on benefitted WSFS in a way that protected Carlyle's existing economic interest in WSFS.** But there is no evidence that Carlyle had any economic interest in WSFS.

- Even if Carlyle's economic interest in Wesco is relevant, as we saw, every witness asked about the issue swore under oath that the breach—limiting the participation of 2027 Notes in a way prohibited by the Indenture—harmed Wesco and therefore harmed the economic interest Carlyle had in Wesco.

* Restatement § 766, cmt. l.

** *Dell's Maraschino Cherries Co., Inc. v. Shoreline Fruit Growers, Inc.*, 887 F. Supp. 2d 459, 482 (E.D.N.Y. 2012).

Conclusion

- Platinum was also "strongly incentivized" to obtain 1.25 Liens and wanted to participate in the Selective Exchange.

- In response to Carlyle's limiting proposal, Platinum did not ensure compliance with the Indenture, but instead only made sure that it was not cut out of the deal.

- Platinum's participation not only breached Section 3.02, but also breached Section 3.07(h), which prohibited purchases of 2027 Notes held by non-third parties.

- In other words, Platinum agreed that WSFS and Wesco should breach the Indenture, so long as the breach did not negatively affect Platinum.

Conclusion

- Langur Maize respectfully requests that the Court find that all the Defendants tortiously interfered and conspired to cause WSFS to breach the Indenture and Global Note.

- Langur Maize requests that the Court set a date or dates for trial to determine the amount of damages to which Langur Maize is entitled as a result of the established tortious conduct.