Docket #1511 Date Filed: 10/7/2024

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

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

23906112410070000000000009

LANGUR MAIZE, LLC,
Counterclaim Plaintiff,

v.

WESCO AIRCRAFT HOLDINGS, INC., *et al*.,
Counterclaim Defendants.

NOTICE OF FILING OF CARLYLE'S DEMONSTRATIVES

PLEASE TAKE NOTICE that Carlyle Global Credit Investment Management, L.L.C., CCOF Onshore Coborrower LLC, CSP IV Acquisitions, L.P., CCOF Master, L.P., Unnamed Carlyle Funds, and Spring Creek Capital, LLC hereby submit the demonstratives used during the October 2–3, 2024 hearing in the above-captioned adversary proceeding, attached hereto as Exhibit 1.

Respectfully submitted this 7th day of October 2024.

GRAY REED

By: */s/ Jason S. Brookner*
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Lydia R. Webb
Texas Bar No. 24083758
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-and-

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Paul M. Basta (*pro hac vice*)
Andrew J. Ehrlich (*pro hac vice*)
William A. Clareman (*pro hac vice*)
John T. Weber (*pro hac vice*)
Max H. Siegel (*pro hac vice*)
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Counsel for the Carlyle Noteholders (CCOF Onshore Co-Borrower L.L.C., CSP IV Acquisitions, L.P., and CCOF Master, L.P.), Unnamed Carlyle Funds c/o Carlyle Global Credit Investment Management, L.L.C., Carlyle Global Credit Investment Management, L.L.C., and Spring Creek Capital, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of October 2024, he caused a true and correct copy of the foregoing document to be served via the Court's CM/ECF system.

/s/ Jason S. Brookner
Jason S. Brookner

Paul | Weiss

October 2, 2024

Carlyle and Spring Creek's Closing Presentation: Langur Maize's Claims

Wesco Aircraft Holdings, Inc., et al. v. SSD Investments Ltd., et al., No. 23-03091

EXHIBIT 1

I. Carlyle's Role in Negotiating the Transaction

Ad Hoc Group's Negotiation for A "Comprehensive Transaction"

December 23, 2021
PIMCO and Silver Point's advisors send an unsolicited uptier transaction proposal to the Company.

February 3, 2022
The Company counters the Ad Hoc Group's proposal and begin negotiations.

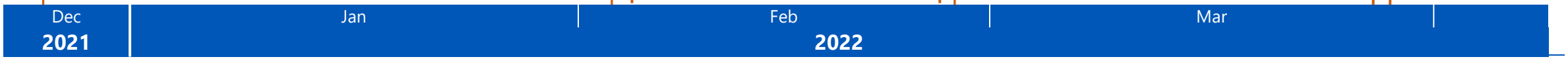
February 3 to February 26, 2022
The Ad Hoc Group exchanges term sheets with the Company for a Comprehensive Transaction.

February 26, 2022
The Ad Hoc Group reaches agreement on terms with the Company.

February 26, 2022
The Ad Hoc Group and the Company agree to send the proposal to Carlyle.

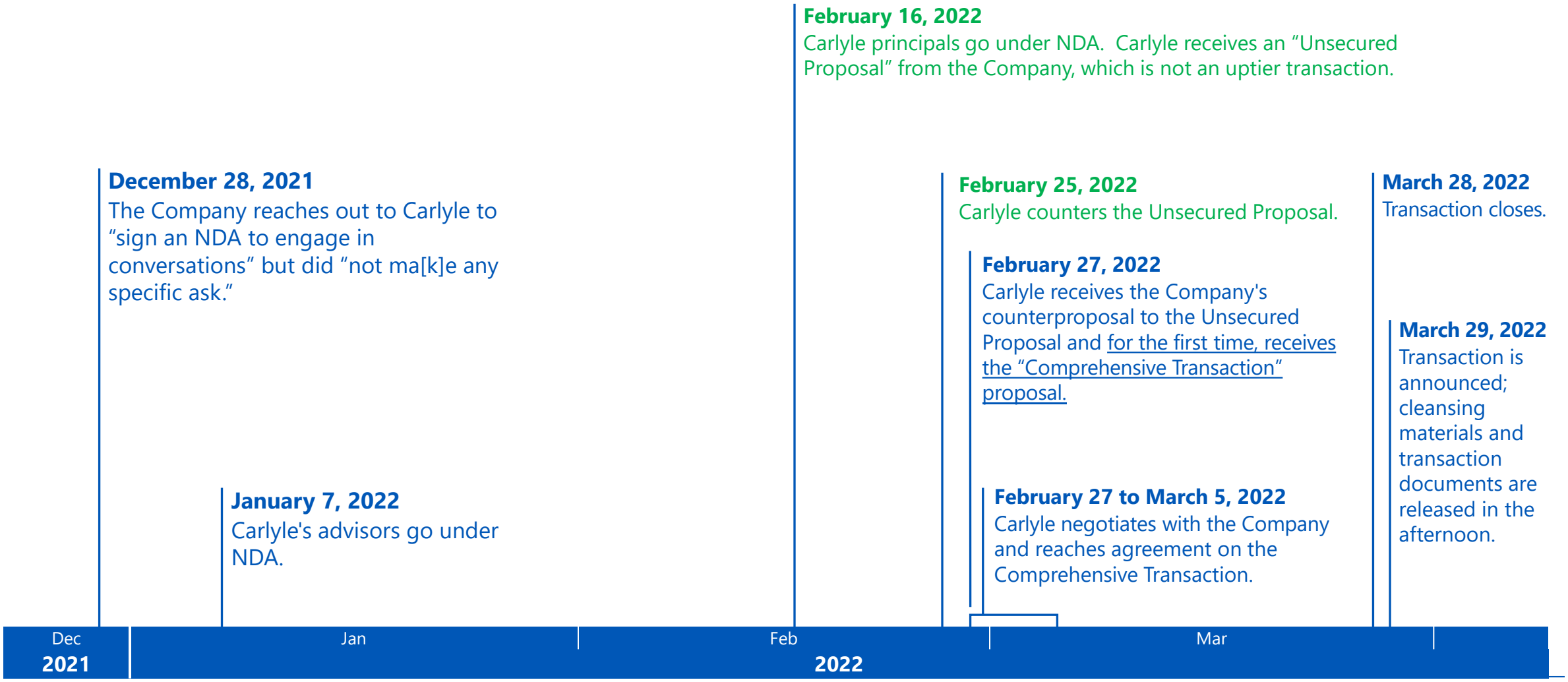
March 28, 2022
Transaction closes.

March 29, 2022
Transaction is announced; cleansing materials and transaction documents are released in the afternoon.



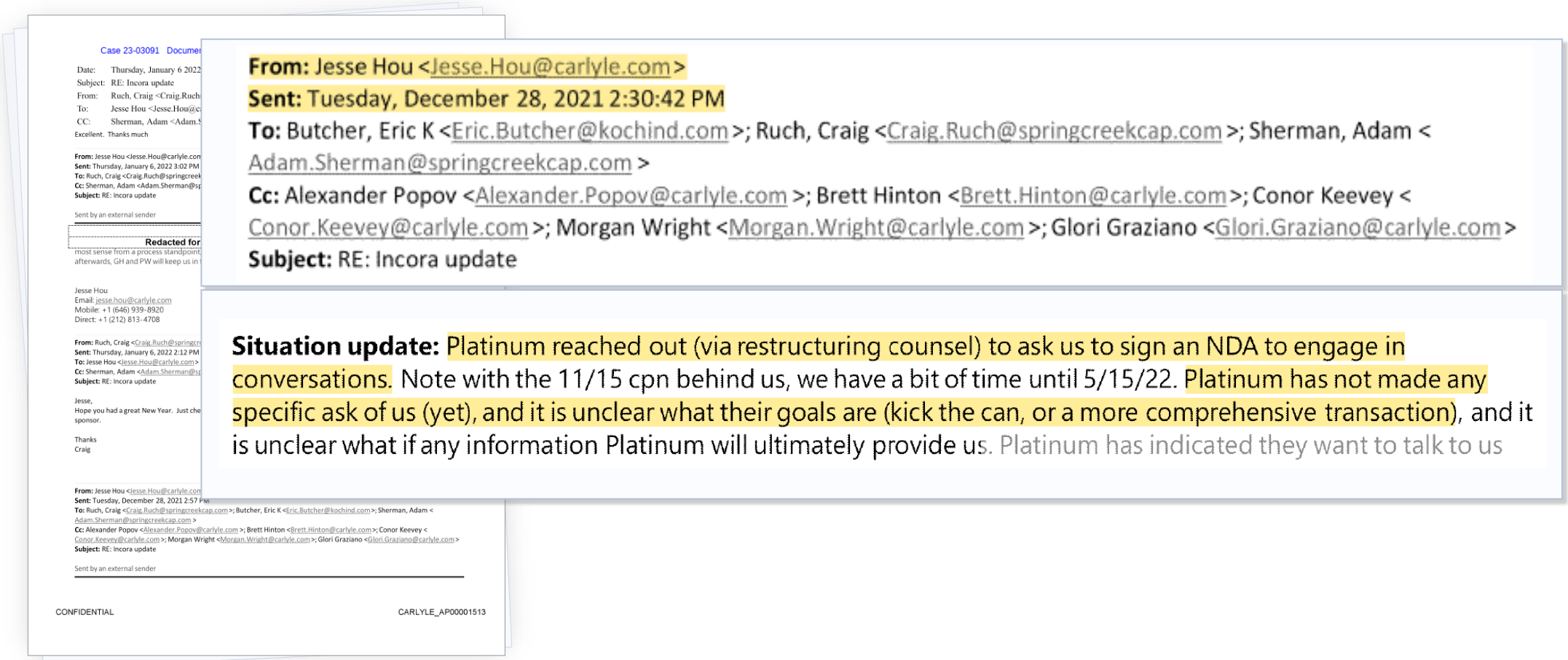
ECF 610-3 at 5-7 (first proposal); 610-5 (Company counter); 610-6, 610-30, 610-27, 610-31, 610-9, 610-32, 610-10, 610-12, 610-11 (various term sheets); 610-33 (agreement to send to Carlyle); 1016-7, -8, -9 (cleansing materials released).

Carlyle's Negotiation with the Company for an "Unsecured Exchange," and Later a "Comprehensive Transaction"



538-13 at 3 (outreach to Carlyle); ECF 832 (Hou) at 161:3-14 (discussing initial outreach); 704-79 (NDA); ECF (Hou) at 97:8-9; 610-7, 610-13, 610-14, 610-35 (various term sheets); 1016-7, -8, -9 (cleansing materials released).

In December 2021, the Company Reached Out to Carlyle Without Making A Specific Ask

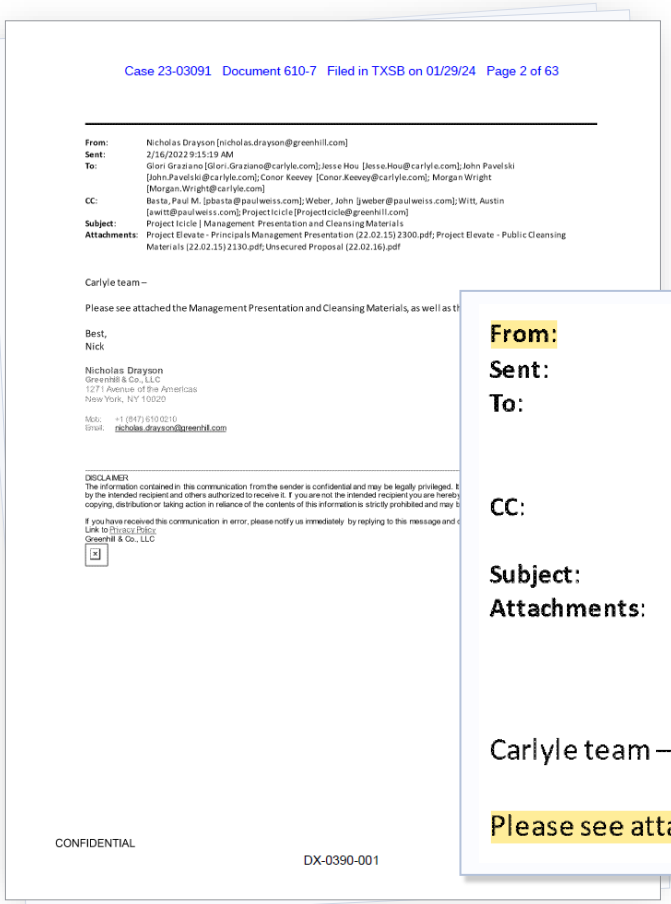


From: Jesse Hou <Jesse.Hou@carlyle.com>
Sent: Tuesday, December 28, 2021 2:30:42 PM
To: Butcher, Eric K <Eric.Butcher@kochind.com>; Ruch, Craig <Craig.Ruch@springcreekcap.com>; Sherman, Adam <Adam.Sherman@springcreekcap.com>
Cc: Alexander Popov <Alexander.Popov@carlyle.com>; Brett Hinton <Brett.Hinton@carlyle.com>; Conor Keevey <Conor.Keevey@carlyle.com>; Morgan Wright <Morgan.Wright@carlyle.com>; Glori Graziano <Glori.Graziano@carlyle.com>
Subject: RE: Incora update

Situation update: Platinum reached out (via restructuring counsel) to ask us to sign an NDA to engage in conversations. Note with the 11/15 cpn behind us, we have a bit of time until 5/15/22. Platinum has not made any specific ask of us (yet), and it is unclear what their goals are (kick the can, or a more comprehensive transaction), and it is unclear what if any information Platinum will ultimately provide us. Platinum has indicated they want to talk to us

ECF 538-13 at 4-5.

On February 16, 2022, Carlyle Received the Company's Unsecured Proposal



From: Nicholas Drayson [nicholas.drayson@greenhill.com]
Sent: 2/16/2022 9:15:19 AM
To: Glori Graziano [Glori.Graziano@carlyle.com]; Jesse Hou [Jesse.Hou@carlyle.com]; John Pavelski [John.Pavelski@carlyle.com]; Conor Keevey [Conor.Keevey@carlyle.com]; Morgan Wright [Morgan.Wright@carlyle.com]
CC: Basta, Paul M. [pbasta@paulweiss.com]; Weber, John [jweber@paulweiss.com]; Witt, Austin [awitt@paulweiss.com]; Project Icicle [ProjectIcicle@greenhill.com]
Subject: Project Icicle | Management Presentation and Cleansing Materials
Attachments: Project Elevate - Principals Management Presentation (22.02.15) 2300.pdf; Project Elevate - Public Cleansing Materials (22.02.15) 2130.pdf; Unsecured Proposal (22.02.16).pdf

Carlyle team –

Please see attached the Management Presentation and Cleansing Materials, as well as th

Best,
Nick

Nicholas Drayson
Greenhill & Co., LLC
1271 Avenue of the Americas
New York, NY 10020

Mob: +1 (847) 610 0210
Email: nicholas.drayson@greenhill.com

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Link to Privacy Policy
Greenhill & Co., LLC

CONFIDENTIAL

DX-0390-001

ECF 610-7.

- Carlyle principals went under NDA on February 16, 2022.
- They received an Unsecured Exchange proposal. This was an entirely different transaction from the one that ultimately occurred.

From: Nicholas Drayson [nicholas.drayson@greenhill.com]
Sent: 2/16/2022 9:15:19 AM
To: Glori Graziano [Glori.Graziano@carlyle.com]; Jesse Hou [Jesse.Hou@carlyle.com]; John Pavelski [John.Pavelski@carlyle.com]; Conor Keevey [Conor.Keevey@carlyle.com]; Morgan Wright [Morgan.Wright@carlyle.com]
CC: Basta, Paul M. [pbasta@paulweiss.com]; Weber, John [jweber@paulweiss.com]; Witt, Austin [awitt@paulweiss.com]; Project Icicle [ProjectIcicle@greenhill.com]
Subject: Project Icicle | Management Presentation and Cleansing Materials
Attachments: Project Elevate - Principals Management Presentation (22.02.15) 2300.pdf; Project Elevate - Public Cleansing Materials (22.02.15) 2130.pdf; Unsecured Proposal (22.02.16).pdf

Carlyle team –

Please see attached the Management Presentation and Cleansing Materials, as well as the Unsecured Proposal.

ECF 610-7 at 2.

The Company Asked Carlyle to PIK All Interest on its Unsecured Notes in 2022 for a 1% Fee; No Uptier Proposal

Illustrative Company Proposal Term Sheet

incora

		Illustrative Company Proposal
Carlyle / Platinum ("Anchor Unsecureds")	Amount	• $386mm of Unsecured Notes (74%) • $25mm of Unsecured Promissory Notes (100%)
	Rate	• 14.125% paid in kind for the May and November 2022 interest payments • Return to 13.125% cash interest payments in May 2023
	Anchor Consent Fees	• 1.00% consent fee paid in kind
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

ECF 610-7 at 63; *see also* 832 (Hou) at 105:21-25.

Carlyle Did Not Believe this Proposal Solved the Company's Liquidity Needs

JESSE HOU

Principal,
The Carlyle Group

Q. Was this an attractive proposal to you as an investor in Incora's unsecured notes?

A. Very much no.

Q. Okay. And why not?

A. Because it in no way solved the liquidity need that we perceived there to be. You know, the quantum of cash saved here was, you know, much, much lower than what they needed to make the coupon payment and -- and be healthy.

ECF 832 (Hou) at 106:2-9.

Carlyle's February 25 Counter to the Unsecured Exchange Proposed An Alternative Transaction Structure; Not An Uptier

Carlyle Counterproposal Term Sheet

	Company Proposal (Interim PIK) (January 21, 2022)	Carlyle Counterproposal (February 25, 2022)
Framework	▪ Unsecured PIK transaction	▪ Carlyle to fund its share of cash interest through 2026 SSN Purchases ▪ Platinum to PIK its unsecured debt and purchase 2026 SSNs in an amount which would fully utilize the remainder of the $75mm in secured debt capacity
Description	▪ Carlyle and Platinum PIK their 2027 UNS and WTHC holdings for the next two interest payments	▪ Incremental notes issued to Carlyle under existing baskets: – 2026 SSN note purchase put to Carlyle for $17.7mm funded just prior to May 15 (the "First Tranche") – 2026 SSN note purchase put to Carlyle for $17.7mm funded just prior to November 15 (the "Second Tranche", and together with the First Tranche, the "SSN Tranches") at the Company's option (a "Second Funding")
	▪ Consider broader solicitation	▪ Incremental 2026 SSNs open to other 2027 UNS, except Platinum, following entry of definitive docs between Carlyle, Platinum and the Company
	▪ Potentially negotiate with SSNs to uptier into 2L PIK debt	▪ TBD

ECF 610-13 at 4.

Carlyle's Counter Proposed To Exclude Platinum and Required Additional Concessions from Platinum

Carlyle Counterproposal
(February 25, 2022)

- Platinum PIKs its 2027 UNS and its WTHC Notes for the next three coupons ($27.9mm) at the existing rates
- Platinum to purchase at closing an incremental $38.2mm (subject to reduction for incremental participation of non-Platinum 2027 UNS holders in the transaction) of 2026 SSN
- Elimination of permitted Platinum management fees (~$7mm per annum) until after:
  - Two full years of UNS being paid cash interest (excluding funding from the First Tranche and Second Tranche) with no prior default; and
  - Refinancing and / or extending the 2024 Notes' maturity to at least 6 months prior to the 2026 Notes' maturity

ECF 610-13 at 4.

Carlyle Wanted Platinum As the Sponsor To Maximize the Company's Liquidity and Preserve Its Runway

JESSE HOU

Principal,
The Carlyle Group

Q. And can you describe what that proposal was meant to achieve?

A. Right. So, in concept, our counterproposal would allow for other unsecured holders to participate on, effectively, the same terms, except Platinum.

* * *

Q. Was the treatment of Platinum, in this proposal, in your understanding, better or worse than what you were receiving?

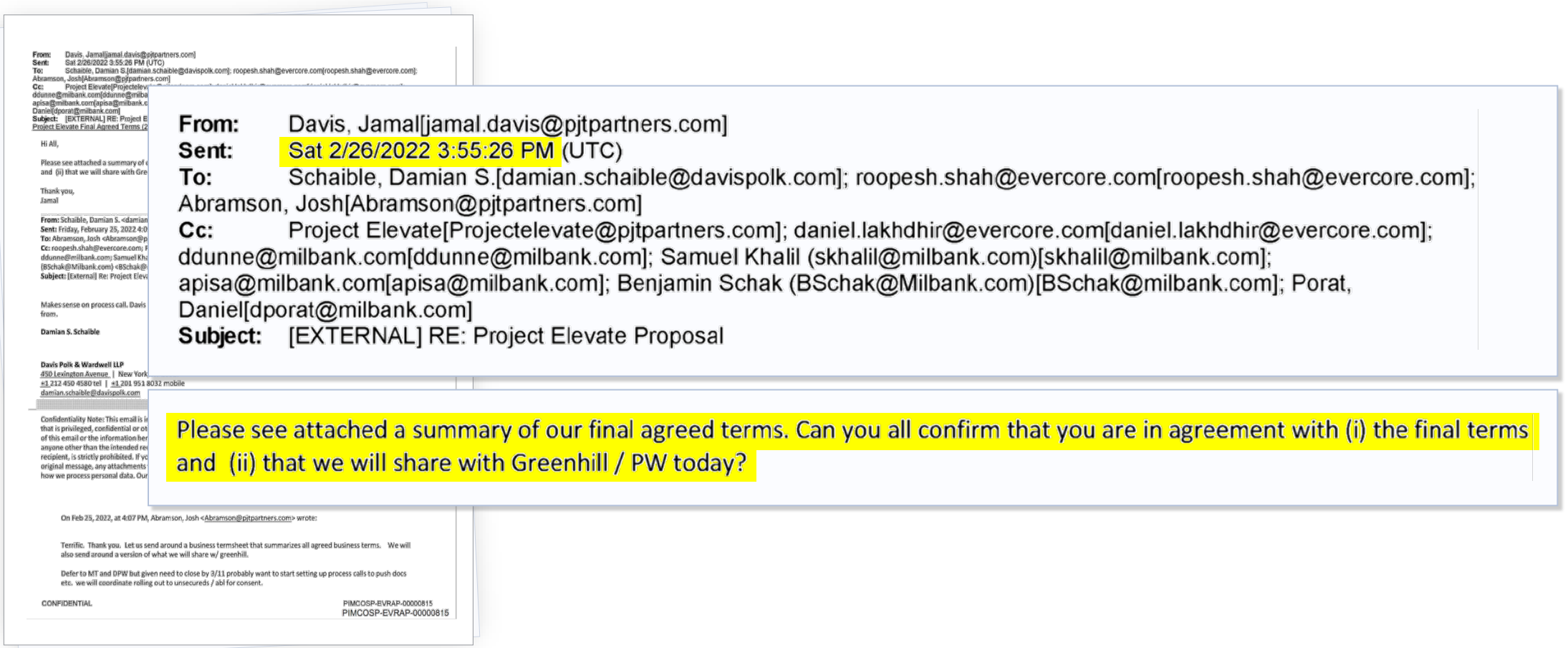
A. Worse.

Q. [] Why did you propose that treatment for Platinum?

A. [W]e wanted them to support the business by maximizing PIK and, you know, liquidity preservation. And we wanted them to, you know, put cash on the balance sheet [and] help turn off the management fee again, all in the interest of preserving that runway.

ECF 832 (Hou) 111:24-112:3; 112:19-113:4.

On February 26, 2022, the Company Agreed with the Ad Hoc Group to Send Carlyle's Advisors their "Final Agreed Terms"



From: Davis, Jamal[jamal.davis@pjtpartners.com]
Sent: Sat 2/26/2022 3:55:26 PM (UTC)
To: Schaible, Damian S.[damian.schaible@davispolk.com]; roopesh.shah@evercore.com[roopesh.shah@evercore.com]; Abramson, Josh[Abramson@pjtpartners.com]
Cc: Project Elevate[Projectelevate@pjtpartners.com]; daniel.lakhdhir@evercore.com[daniel.lakhdhir@evercore.com]; ddunne@milbank.com[ddunne@milbank.com]; Samuel Khalil (skhalil@milbank.com)[skhalil@milbank.com]; apisa@milbank.com[apisa@milbank.com]; Benjamin Schak (BSchak@Milbank.com)[BSchak@milbank.com]; Porat, Daniel[dporat@milbank.com]
Subject: [EXTERNAL] RE: Project Elevate Proposal

Please see attached a summary of our final agreed terms. Can you all confirm that you are in agreement with (i) the final terms and (ii) that we will share with Greenhill / PW today?

ECF 610-33 at 1, 6-9.

The Ad Hoc Group Had No Substantive Negotiations with Carlyle or Its Advisors on These Terms

ROOPESH SHAH

Senior Managing Director, Evercore (Advisor for PIMCO and Silver Point)

Q. Do you recall any of the conversations that you may have been involved in [with Carlyle]?

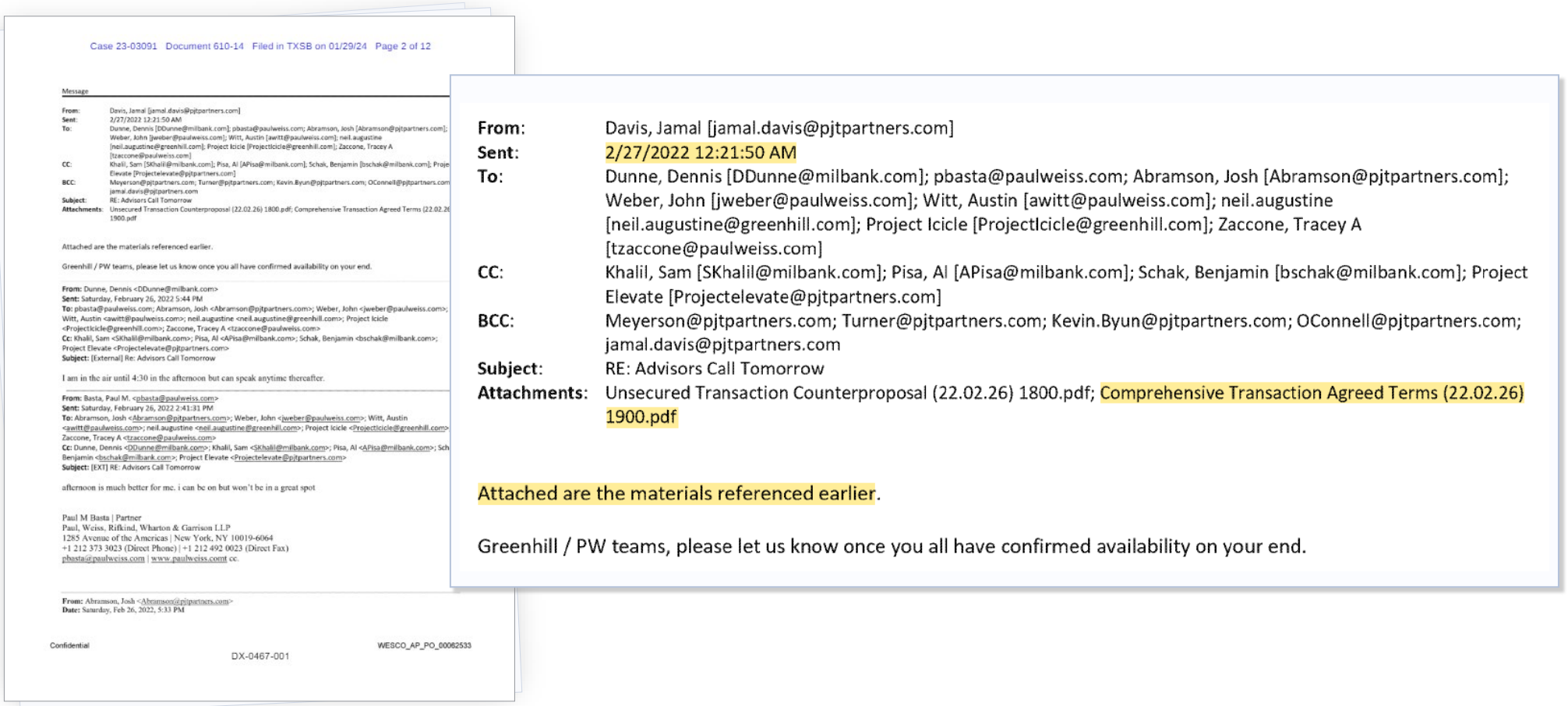
A. Not specifically. . . . I had a conversation with the principal [at] Carlyle really introducing myself. I don't recall that . . . we had subsequent deal negotiations at any point.

Q. Did you have conversations at all with Green Hill at any point?

A. The same answer. I can't say we didn't have a conversation. But I don't recall there being substantive negotiation.

ECF 939 (Shah) 92: 2-12.

On February 27, 2022, Carlyle Received the "Comprehensive Transaction Agreed Terms" for the First Time from the Company



Message

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.

From: Dunne, Dennis <DDunne@milbank.com>
Sent: Saturday, February 26, 2022 5:44 PM
To: 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>
Subject: [External] Re: Advisors Call Tomorrow

I am in the air until 4:30 in the afternoon but can speak anytime thereafter.

From: Basta, Paul M. <pbasta@paulweiss.com>
Sent: Saturday, February 26, 2022 2:41:31 PM
To: 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: Dunne, Dennis <DDunne@milbank.com>; Khalil, Sam <SKhalil@milbank.com>; Pisa, Al <APisa@milbank.com>; Schak, Benjamin <bschak@milbank.com>; Project Elevate <Projectelevate@pjtpartners.com>
Subject: [EXT] RE: Advisors Call Tomorrow

afternoon is much better for me. i can be on but won't be in a great spot

Paul M Basta | Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas | New York, NY 10019-6064
+1 212 373 3023 (Direct Phone) | +1 212 492 0023 (Direct Fax)
pbasta@paulweiss.com | www.paulweiss.com cc.

From: Abramson, Josh <Abramson@pjtpartners.com>
Date: Saturday, Feb 26, 2022, 5:33 PM

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WESCO_AP_PO_00082533

DX-0467-001

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.

ECF 610-14 at 2; *see also* ECF 832 (Hou) 114:16-18.

Key Terms of the Company's February 27, 2022 Proposal to Uptier Unsecured Notes

PJT Partners

Project

COMPREHENSI

February 2022

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Subject to FRE 408
Draft - Subject to Mat

Confidential

Super Senior First-Out Debt	Amount	> Principal amount of exchanging Secured Notes > $250mm of New Money

Super Senior Second-Out Debt	Amount	> $1,050mm which includes exchange debt and basket for future incurrence / exchange
	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
	Rate	> Unsecured Holders: 10% all-PIK
	Maturity	> Nov-27
	Covenants	> Financial Covenants: None > Negative Covenants: for the avoidance of doubt: > Baskets to be set wide of levels in Super Senior First-Out Debt > Incremental Second-Out basket equal to $1,050mm less initial exchange amount > TBD basket for Super Senior Secured Third-Out Debt > TBD RP limitations
	Other	> Elimination of all material negative covenants on Unsecured Notes

ECF 610-14 at 9.

ECF 610-14 at 10-11.

On March 1, 2022, Carlyle Countered the "Comprehensive Transaction" Proposal

		Company Proposal (February 26, 2022)	Carlyle Counterproposal (March 1, 2022)
Super Senior Second-Out Debt	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
	Rate	▪ Unsecured Holders: 10% all-PIK	▪ 2022: Toggle for 10% cash or 5% cash and 10.125% PIK ▪ 2023: Toggle for 10% cash or 7.5% cash and 7.625% PIK ▪ 2024 and thereafter: 13.125% cash

Greenhill

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Wesco_2004_0236062

DX-0488-003

ECF 610-15 at 4.

Carlyle Attempted to Exclude Platinum and to have Platinum PIK 100%

JESSE HOU

Principal,
The Carlyle Group

Q. Can you explain what Carlyle's counter was in terms of who could participate in the transaction?

A. Yes. We agreed for Carlyle and Senator, but we excluded Platinum.

* * *

Q. Can you explain what you meant by the proposal that "Platinum debt shall be PIK'ed for life"?

A. That their unsecured holdings would convert to a hundred percent PIK until maturity.

* * *

Q. How did you respond to the company's proposal for a 1.05 billion-dollar basket?

A. We pushed back on that quite robustly. We wanted the basket to be sized precisely to match Carlyle and Senator's holding and -- you know, and no more.

ECF 832 (Hou) 119:15-120:2; 120:12-16.

The Company's March 2, 2022 Counter Rejected Most of Carlyle's Proposed Changes

	Company Proposal (February 26, 2022)	Carlyle Counterproposal (March 1, 2022)	Company Counterproposal (March 2, 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	▪ Same as Company Proposal (2/26/2022)
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	▪ Same as Company Proposal (2/26/2022)
Rate	▪ Unsecured Holders: 10% all-PIK	▪ 2022: Toggle for 10% cash or 5% cash and 10.125% PIK ▪ 2023: Toggle for 10% cash or 7.5% cash and 7.625% PIK ▪ 2024 and thereafter: 13.125% cash	▪ 2022: 12.125% PIK ▪ 2023 and thereafter: 3% cash / 9.125% PIK ▪ Subject to secured consent

ECF 610-35 at 9, 10.

Carlyle Agreed to the Company's Proposal for Eligible Participants in its Next Counter But Continued to Negotiate Basket Size and Rate

		Company Proposal (February 26, 2022)	Carlyle Counterproposal (March 1, 2022)	Company Counterproposal (March 2, 2022)	Carlyle Counterproposal (March 2, 2022)	Company Counterproposal (March 3, 2022)	Carlyle Counterproposal (March 3, 2022)	Company Counterproposal #1 (March 4, 2022)	Carlyle Counterproposal (March 4, 2022)	Company Counterproposal #2 (March 4, 2022)	Carlyle Counterproposal (March 5, 2022)
Super Senior Second-Out Debt	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	▪ Same as Company Proposal (2/26/2022)	▪ Agree, subject to the following: – Carlyle and Senator to each have an MFN on any uptier or other exchanges – Platinum is prohibited from uptiering in the future without Carlyle and Senator receiving the same treatment – Platinum / Company must consult with Carlyle on any utilization of the basket for future uptiers – Carlyle and Senator to have a ROFR on New Money on a pro rata basis	▪ Agree, subject to the following: – Agree – Addressed via MFN – N/A – N/A	▪ Agree, subject to the following: – Agree – Agree – Platinum / Company must consult with Carlyle on uptier of 2026 SSNs – Carlyle and Senator to have the right to pro rata participation in New Money, as measured on a pre-transaction basis	▪ Same as Company Counterproposal (3/3/2022)	▪ Agree, subject to the following: – Agree – Agree – Same as Carlyle Counterproposal (3/3/2022) – Agree	▪ Agree, subject to the following: – Agree – Agree – N/A – Agree	▪ Agree, subject to the following: – Agree – Agree – To be discussed between Milbank and Paul Weiss – Agree

1. COMPANY PROPOSAL

$1,050mm which includes exchange debt and basket for future incurrence / exchange

2. CARLYLE COUNTER

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

3. COMPANY COUNTER

Same as Company Proposal (2/26/2022)

ECF 610-35 at 9.

Carlyle Did Not Succeed in Limiting the Basket or Obtaining Any Consultation Right

JESSE HOU

Principal,
The Carlyle Group

Q. Do you know how that discussion [regarding the consultation right] was resolved?

A. I do.

Q. And how was it resolved?

A. [W]e effectively lost this point, and . . . they simply told us that they would try and let us know if they were ever going to use the basket, and that's it.

* * *

A. [W]e had no ability to prevent the Company from using the basket.

ECF 832 (Hou) at 127:16-22; 130-17:18.

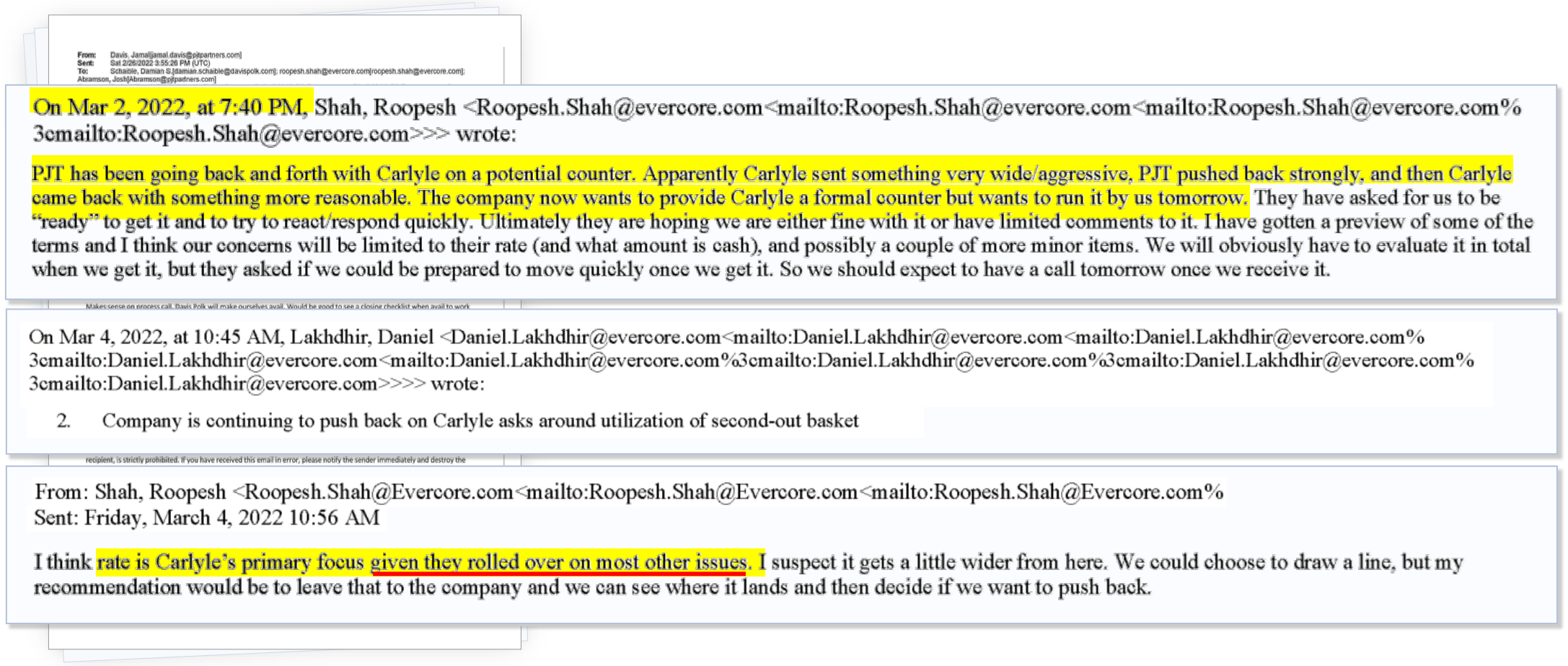
Carlyle Prevailed on Preserving Limited Cash Pay Interest But Agreed to PIK the Majority of Interest until Maturity

Comprehensive Transaction Proposal Term Sheets

	Company Proposal (February 26, 2022)	Carlyle Counterproposal (March 1, 2022)	Company Counterproposal (March 2, 2022)	Carlyle Counterproposal (March 2, 2022)	Company Counterproposal (March 3, 2022)	Carlyle Counterproposal (March 3, 2022)	Company Counterproposal #1 (March 4, 2022)	Carlyle Counterproposal (March 4, 2022)	Company Counterproposal #2 (March 4, 2022)	Carlyle Counterproposal (March 5, 2022)
Rate	▪ Unsecured Holders: 10% all-PIK	▪ 2022: Toggle for 10% cash or 5% cash and 10.125% PIK ▪ 2023: Toggle for 10% cash or 7.5% cash and 7.625% PIK ▪ 2024 and thereafter: 13.125% cash	▪ 2022: 12.125% PIK ▪ 2023 and thereafter: 3% cash / 9.125% PIK ▪ Subject to secured consent	▪ 2022: 5% cash pay and 8.125% PIK ▪ 2023: 7.5% cash pay and 5.625% PIK ▪ Thereafter: 10% cash pay and 3.125% PIK ▪ Platinum unsecured debt to be PIK for life at 13.125%	▪ 2022: 2% Cash / 10.125% PIK ▪ 2023 and thereafter: 4% cash / 8.125% PIK	▪ Same as Carlyle Counterproposal (3/2/2022) ▪ Same as Carlyle Counterproposal (3/2/2022) ▪ N/A	▪ 2022: 3.25% cash / 8.875% PIK ▪ 2023 and thereafter: 5.25% cash / 6.875% PIK	▪ 2022: 4% cash / 9.125% PIK ▪ 2023 and thereafter: 6% cash / 7.125% PIK	Agree Agree	▪ Agree ▪ Agree

ECF 610-35 at 10.

The Ad Hoc Group and the Company Were Not Receptive to Carlyle's Changes to the Comprehensive Transaction



On Mar 2, 2022, at 7:40 PM, Shah, Roopesh <Roopesh.Shah@evercore.com<mailto:Roopesh.Shah@evercore.com<mailto:Roopesh.Shah@evercore.com%3cmailto:Roopesh.Shah@evercore.com>>> wrote:

PJT has been going back and forth with Carlyle on a potential counter. Apparently Carlyle sent something very wide/aggressive, PJT pushed back strongly, and then Carlyle came back with something more reasonable. The company now wants to provide Carlyle a formal counter but wants to run it by us tomorrow. They have asked for us to be "ready" to get it and to try to react/respond quickly. Ultimately they are hoping we are either fine with it or have limited comments to it. I have gotten a preview of some of the terms and I think our concerns will be limited to their rate (and what amount is cash), and possibly a couple of more minor items. We will obviously have to evaluate it in total when we get it, but they asked if we could be prepared to move quickly once we get it. So we should expect to have a call tomorrow once we receive it.

On Mar 4, 2022, at 10:45 AM, Lakhdhir, Daniel <Daniel.Lakhdhir@evercore.com<mailto:Daniel.Lakhdhir@evercore.com<mailto:Daniel.Lakhdhir@evercore.com%3cmailto:Daniel.Lakhdhir@evercore.com<mailto:Daniel.Lakhdhir@evercore.com%3cmailto:Daniel.Lakhdhir@evercore.com%3cmailto:Daniel.Lakhdhir@evercore.com%3cmailto:Daniel.Lakhdhir@evercore.com>>>> wrote:

2. Company is continuing to push back on Carlyle asks around utilization of second-out basket

From: Shah, Roopesh <Roopesh.Shah@Evercore.com<mailto:Roopesh.Shah@Evercore.com<mailto:Roopesh.Shah@Evercore.com%3cmailto:Roopesh.Shah@Evercore.com>>>
Sent: Friday, March 4, 2022 10:56 AM

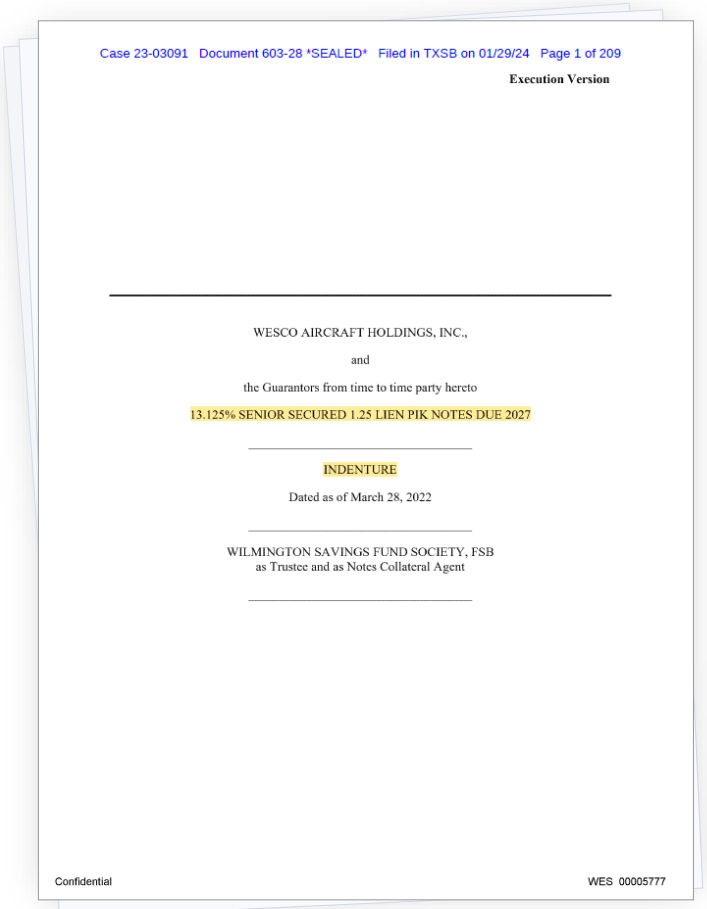
I think rate is Carlyle's primary focus given they rolled over on most other issues. I suspect it gets a little wider from here. We could choose to draw a line, but my recommendation would be to leave that to the company and we can see where it lands and then decide if we want to push back.

ECF 729-63 at 26-27, 30, 44-45.

Carlyle Did Not Dictate the Terms of the Unsecured Exchange

- Carlyle negotiated the Comprehensive Transaction proposal the Company presented to it.
- Carlyle had no success in negotiating any primary terms other than the cash interest rate.
  - Carlyle's proposal to exclude Platinum was rejected.
  - Carlyle's proposal to limit the basket for 1.25L notes was rejected.
- Carlyle was not the decisionmaker for participation in the Exchange. When Carlyle tried to change those terms, it was rebuffed.
  - None of the term sheets presented to Carlyle sought to include additional unsecured holders.

The Final 1.25L Note Indenture Allowed Up to $1.05 Billion of New 1.25L Notes to be Issued



Case 23-03091 Document 603-28 *SEALED* Filed in TXSB on 01/29/24 Page 1 of 209

Execution Version

WESCO AIRCRAFT HOLDINGS, INC.,

and

the Guarantors from time to time party hereto

13.125% SENIOR SECURED 1.25 LIEN PIK NOTES DUE 2027

INDENTURE

Dated as of March 28, 2022

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

Confidential WES 00005777

ECF 603-28 at 99-100 § 4.09(a)(3)

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

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

(3) the incurrence by the Issuer and its Subsidiary Guarantors (including any future Guarantors) of Indebtedness represented by (a) the 2026 1L Secured Notes issued on the Issue Date or thereafter in accordance with Section 2.03(a), Section 2.03(b) and/or Section 2.04 of the Exchange Agreement and the 2026 1L Secured Note Guarantees; *provided* that the aggregate principal amount of 2026 1L Secured Notes issued after the Issue Date in accordance with Section 2.03(a), Section 2.03(b) and/or Section 2.04 of the Exchange Agreement shall not exceed $35.0 million in the aggregate, (b) the 2027 1.25L Secured Notes and the 2027 1.25L Secured Note Guarantees and any Additional 1.25L Indebtedness in an aggregate principal amount outstanding not to exceed an amount equal to (x) $1,050,000,000 *less* (y) the aggregate principal amount of 1.5L Secured Notes in

- The Company had **$578 million of capacity** ($1.05 billion *minus* $472 million exchanged in the transaction) to exchange existing indebtedness into new 1.25L Notes.
- Company had the right to exchange additional Unsecured 2027 Notes after the March 2022 closing if it wanted.

Mr. O'Connell's Recollection of the Details of Carlyle's Negotiation With the Company Was Not Accurate

JAMIE O'CONNELL

Partner,
PJT Partners

Q. […] Was the company, sir, prevented from achieving these same benefits from any holder of 2027 notes that was willing to exchange the notes because Carlyle wouldn't let you do it?

A. In our discussion with Carlyle, my recollection was they were willing to allow Platinum and Senator in, but not others.

* * *

Q. Did Carlyle ever ask that Platinum's notes be excluded from the unsecured note exchange?

A. Not to my recollection.

ECF 879 (O'Connell Day 2) 120:22-121:1; 131:8-20 (admitting O'Connell Dep. Test. (Vol. 2) 300:22-25).

Mr. O'Connell Recognized on Re-Direct That Carlyle Attempted to Limit the Basket and Exclude Platinum But Did Not Prevail

JAMIE O'CONNELL

Partner,
PJT Partners

Q. Okay. With respect to the negotiation over the size of the basket for super senior second out debt, did Carlyle prevail or not prevail in its request of the company on that term?

A. It did not prevail.

Q. [I]f you go to the eligible participant's deal, Carlyle responded to the company's proposal and asked that Platinum not participate in the exchange. Do you see that?

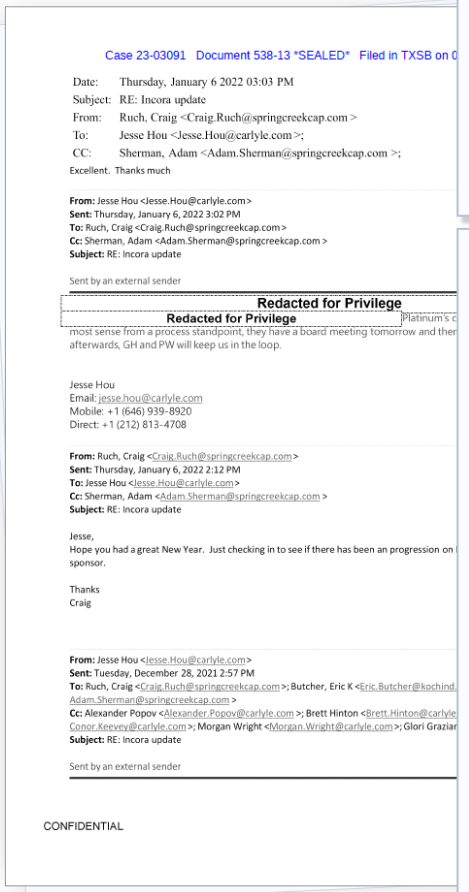
A. As of March 1st, yes.

Q. Did Carlyle prevail or not prevail in this negotiation over the eligible participants?

A. They did not prevail based on their March 1st stance.

ECF 879 (O'Connell) 345:18-1; 346:4-7.

Carlyle Agreed to Participate in This Transaction Believing that Incora Would Recover



Case 23-03091 Document 538-13 *SEALED* Filed in TXSB on 0

Date: Thursday, January 6 2022 03:03 PM
Subject: RE: Incora update
From: Ruch, Craig <Craig.Ruch@springcreekcap.com >
To: Jesse Hou <Jesse.Hou@carlyle.com >;
CC: Sherman, Adam <Adam.Sherman@springcreekcap.com >;
Excellent. Thanks much

From: Jesse Hou <Jesse.Hou@carlyle.com>
Sent: Thursday, January 6, 2022 3:02 PM
To: Ruch, Craig <Craig.Ruch@springcreekcap.com>
Cc: Sherman, Adam <Adam.Sherman@springcreekcap.com>
Subject: RE: Incora update

Sent by an external sender

Redacted for Privilege
Redacted for Privilege Platinum's c
most sense from a process standpoint, they have a board meeting tomorrow and ther
afterwards, GH and PW will keep us in the loop.

Jesse Hou
Email: jesse.hou@carlyle.com
Mobile: +1 (646) 939-8920
Direct: +1 (212) 813-4708

From: Ruch, Craig <Craig.Ruch@springcreekcap.com>
Sent: Thursday, January 6, 2022 2:12 PM
To: Jesse Hou <Jesse.Hou@carlyle.com>
Cc: Sherman, Adam <Adam.Sherman@springcreekcap.com>
Subject: RE: Incora update

Jesse,
Hope you had a great New Year. Just checking in to see if there has been an progression on
sponsor.

Thanks
Craig

From: Jesse Hou <Jesse.Hou@carlyle.com>
Sent: Tuesday, December 28, 2021 2:57 PM
To: Ruch, Craig <Craig.Ruch@springcreekcap.com>; Butcher, Eric K <Eric.Butcher@kochind.
Adam.Sherman@springcreekcap.com>
Cc: Alexander Popov <Alexander.Popov@carlyle.com>; Brett Hinton <Brett.Hinton@carlyle
Conor.Keevey@carlyle.com>; Morgan Wright <Morgan.Wright@carlyle.com>; Glori Graziar
Subject: RE: Incora update

Sent by an external sender

CONFIDENTIAL

From: Jesse Hou <Jesse.Hou@carlyle.com>
Sent: Friday, November 19, 2021 5:04 PM
To: Ruch, Craig <Craig.Ruch@springcreekcap.com>
Cc: Sherman, Adam <Adam.Sherman@springcreekcap.com>; Butcher, Eric K <Eric.Butcher@kochind.com>; Alexander Popov <Alexander.Popov@carlyle.com>; Brett Hinton <Brett.Hinton@carlyle.com>; Conor Keevey <Conor.Keevey@carlyle.com>; Morgan Wright <Morgan.Wright@carlyle.com>
Subject: RE: Incora update

Carlyle view

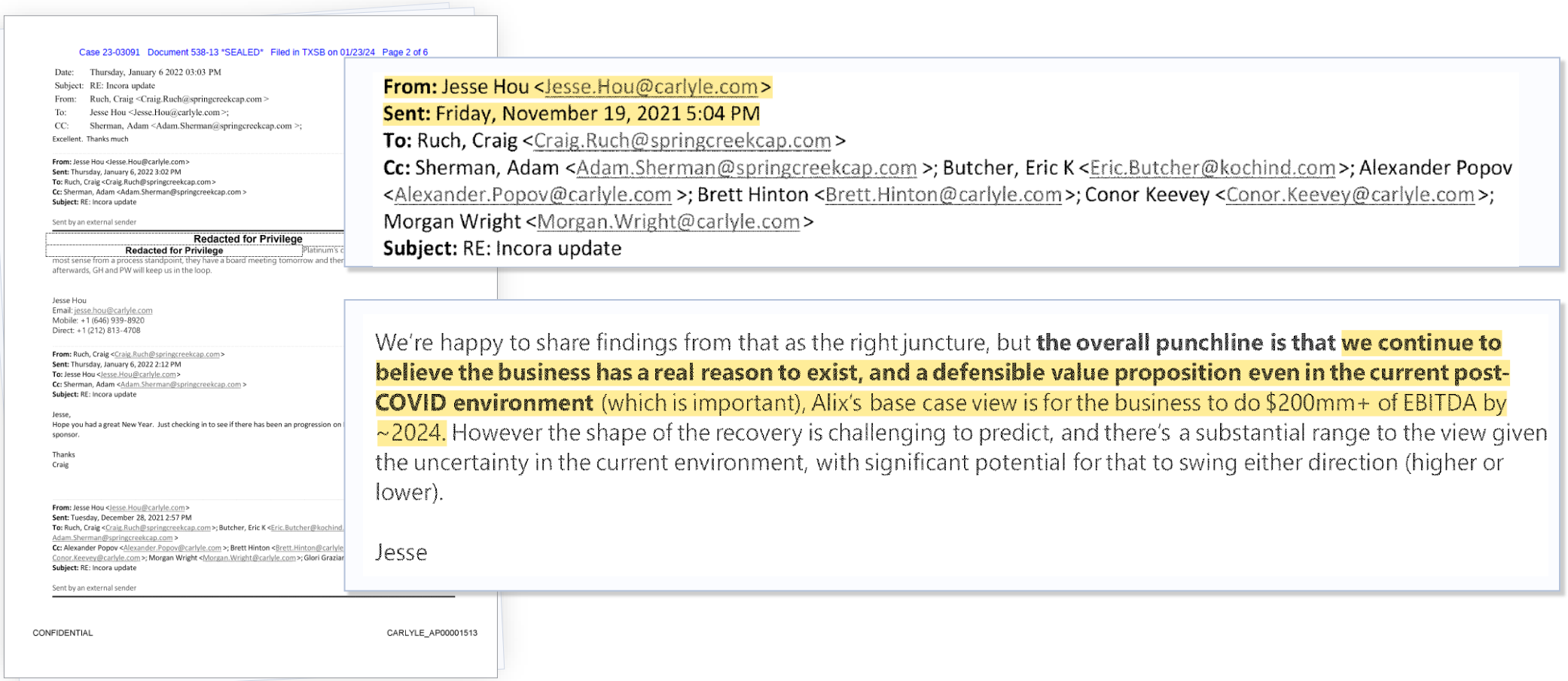
As a heads up, while we did expect the Company to make the 11/15/21 cpn payment, we have been investing substantial time in reunderwriting the position to prepare / lay groundwork in the eventuality that either we were wrong on 11/15, or the Company sought to raise capital ahead of 5/15/22. In any event, we wanted to be ready to potentially have to "defend" our position thoughtfully. With the above developments that timing may have gotten pushed out to this time next year.

We have engaged:

1) **Consulting firms:** Alix Partners (business / operational focus) and Astralum (macro focus) to help us with our commercial DD
    a. For now because the bonds remain current and there is no ask (Platinum has not asked us to go private), we've continued to stay public on the name, so all our work has been outside in for now
2) **Former executives:** In addition, we've engaged the former CEO Todd Renehan (under NDA) and the former COO Alex Murray (under an exclusive consulting agreement), to help with the overall reunderwriting effort. We connected with Kerry Shiba the former CFO, and he is contemplating a role as well
3) **Carlyle US Buyout:** Our PE team is fully in the loop as well, Dayne Baird (worked on the original buyout, previously on the board), Doug Brandley (A&D focused) and Michael Echemendia (A&D focused).

ECF 538-13 at 4-5; *see also*
ECF 832 (Hou) 85:9-19, 89:13-21.

Carlyle Agreed to Participate in This Transaction Believing that Incora Would Recover



Case 23-03091 Document 538-13 *SEALED* Filed in TXSB on 01/23/24 Page 2 of 6

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Jesse Hou
Email: jesse.hou@carlyle.com
Mobile: +1 (646) 939-8920
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Conor.Keevey@carlyle.com >; Morgan Wright <Morgan.Wright@carlyle.com >; Glori Grazia
Subject: RE: Incora update

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CONFIDENTIAL CARLYLE_AP00001513

From: Jesse Hou <Jesse.Hou@carlyle.com>
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To: Ruch, Craig <Craig.Ruch@springcreekcap.com >
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Subject: RE: Incora update

We're happy to share findings from that as the right juncture, but **the overall punchline is that we continue to believe the business has a real reason to exist, and a defensible value proposition even in the current post-COVID environment** (which is important), Alix's base case view is for the business to do $200mm+ of EBITDA by ~2024. However the shape of the recovery is challenging to predict, and there's a substantial range to the view given the uncertainty in the current environment, with significant potential for that to swing either direction (higher or lower).

Jesse

ECF 538-13 at 4-5.

Carlyle Agreed to Participate in This Transaction Because It Believed that Incora Would Recover

JESSE HOU

Principal,
The Carlyle Group

Q. Can you explain -- you referred to a number, 200 million of EBITDA by 2024. In the context of Incora's business, what does that mean to you?

A. [$200 million] was a very important threshold for us because it represented what the company had earned in EBITDA prior to COVID. . .

So the core question we always had was like will this business recover back to what it was doing before this dislocation. . . . All the consultants we hired, you know, consistently implied to us that we should be positive on the outlook.

ECF 832 (Hou) 91:4-6; 92:14-21.

Carlyle Agreed to Participate in This Transaction Because It Believed that Incora Would Recover

JESSE HOU

Principal,
The Carlyle Group

Q. You testified earlier that you believed the Company had the ability to achieve 200-plus million dollars in EBITDA by 2024. . . . Did you believe that the transaction that was being negotiated and is reflected in these term sheets was sufficient to solve the Company's liquidity needs?

A. I did. Obviously, as part of this negotiation, we needed to form a view internally on how much runway would get the Company and present that internally.

We did a lot of work around that, and our conclusion at the time, we believed that this transaction would very easily get the Company through 2024. And we actually felt reasonably confident that they would be able to address that maturity, and therefore, we'd get to 2026, which was the real maturity wall at the time.

ECF 832 (Hou) at 134:8-22.

Carlyle Agreed to Participate in This Transaction Because It Believed that Incora Would Recover

JESSE HOU

Principal,
The Carlyle Group

Q. [W]hat was the significance of 2024 and 2026 in particular?

A. [W]e felt at the time that it was extraordinarily valuable for this company and for all the investors involved for it to get runway, right. The more time [Incora] had, the more chances they had to realize the recovery prospects that we earnestly believed in at the time.

And so, 2024 was the initial maturity, right, the remaining '24 secured notes would mature that year, but it would be small.

So if you could get through that, almost the rest -- all the rest of the debt would mature around 2026, '27, and you would have a clean runway to be able to let the business recover, right.

ECF 832 (Hou) at 134:23-135:10.

Carlyle Took on Risk in the Transaction, While Nonparticipating Holders Benefitted From It

JESSE HOU

Principal,
The Carlyle Group

Q. Was there any benefit to your understanding to the non-participating unsecured holders that resulted from this transaction?

A. We took substantial risk in this transaction . . . We PIK'd our coupon. [Non-participating unsecured] investors did not . . . They were paid cash current 13.125 while we PIK'd 9.125 percent

[B]y getting runway and preserving their cash coupon, I think [non-participating unsecured holders] benefitted in those two ways very materially.

ECF 832 (Hou) at 141:24-142:15.

Carlyle Took on Risk in the Transaction, While Nonparticipating Holders Benefitted From It

JESSE HOU

Principal,
The Carlyle Group

Q. Well, what actually happened subsequent to the consummation of this transaction?

A. So that is the scenario that played out, right. The Company materially underperformed our expectations, and the Company today is well below 100 million EBITDA. And so, you know, we ultimately as part of this case, we are recovering zero, right. And so, we did not ever get that coupon, whereas the folks that did not participate benefitted from the full cash pay.

ECF 832 (Hou) at 143:6-15.

Carlyle and Spring Creek Gave Up Significant Cash Interest from PIK'ing

	Carlyle and Spring Creek	Unsecured 2027 Noteholders
Principal Amount	$285M	$104M
Accrued Interest PIK'd	**$(13)M**	$0
Interest Rate in 2022	4% cash / 9.125% PIK prorated	13.125% cash
Interest Payment Date(s)	November 15, 2022	May 15, 2022 and November 15, 2022
Cash Interest Paid in 2022	$7.2M	$14M
Cash Interest Forgone Following the Transaction	**$(28)M**	$0

ECF 832 (HOU) 158:10-14; 158:19-23.

The Transaction Was Fair to the Company, the Non-Participating Holders, and the Participating Holders

Incora

- Received $250 million in new money
- Saved substantial cash interest
- Received a $1.05 billion basket for 1.25L notes

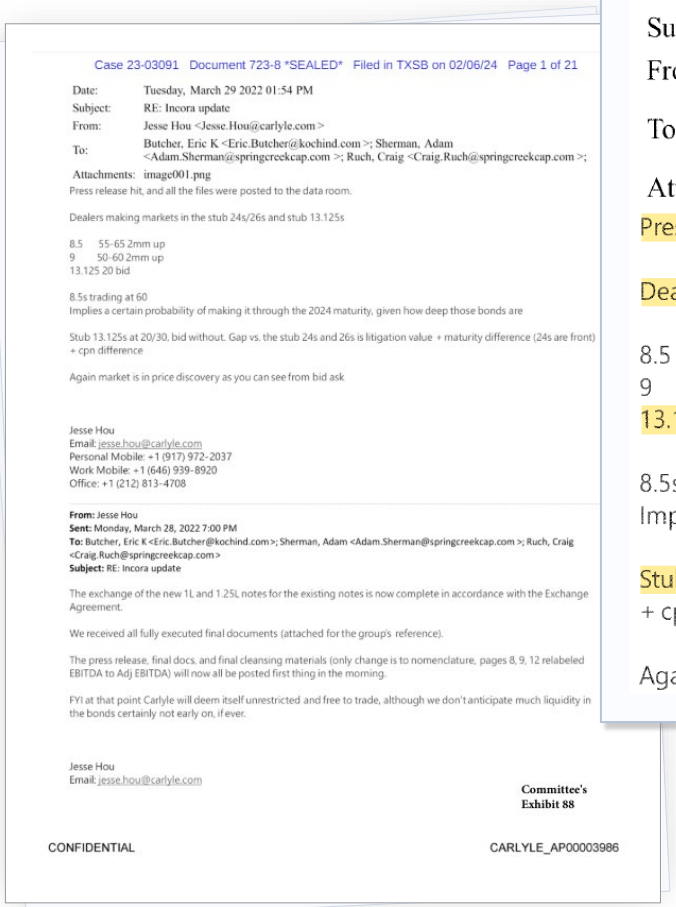
Non-Participating Holders

- Continued to receive 13.125% cash pay, including coupon payment that otherwise would have been missed
- Interest payment dates unaffected

Participating Holders

- Consented to the transaction
- Gave up substantial cash through PIK'ing accrued interest and PIK'ing interest under 1.25L Notes
- Hoped to benefit from extended runway and downside protection from second lien

Post-Transaction, the Market Price of the Unsecured Notes Increased Materially



Date: Tuesday, March 29 2022 01:54 PM
Subject: RE: Incora update
From: Jesse Hou <Jesse.Hou@carlyle.com>
To: Butcher, Eric K <Eric.Butcher@kochind.com>; Sherman, Adam <Adam.Sherman@springcreekcap.com>; Ruch, Craig <Craig.Ruch@springcreekcap.com>;
Attachments: image001.png

Press release hit, and all the files were posted to the data room.

Dealers making markets in the stub 24s/26s and stub 13.125s

8.5 55-65 2mm up
9 50-60 2mm up
13.125 20 bid

8.5s trading at 60
Implies a certain probability of making it through the 2024 maturity, given how deep those bonds are

Stub 13.125s at 20/30, bid without. Gap vs. the stub 24s and 26s is litigation value + maturity difference (24s are front) + cpn difference

Again market is in price discovery as you can see from bid ask

Jesse Hou
Email: jesse.hou@carlyle.com
Personal Mobile: +1 (917) 972-2037
Work Mobile: +1 (646) 939-8920
Office: +1 (212) 813-4708

From: Jesse Hou
Sent: Monday, March 28, 2022 7:00 PM
To: Butcher, Eric K <Eric.Butcher@kochind.com>; Sherman, Adam <Adam.Sherman@springcreekcap.com>; Ruch, Craig <Craig.Ruch@springcreekcap.com>
Subject: RE: Incora update

The exchange of the new 1L and 1.25L notes for the existing notes is now complete in accordance with the Exchange Agreement.

We received all fully executed final documents (attached for the group's reference).

The press release, final docs, and final cleansing materials (only change is to nomenclature, pages 8, 9, 12 relabeled EBITDA to Adj EBITDA) will now all be posted first thing in the morning.

FYI at that point Carlyle will deem itself unrestricted and free to trade, although we don't anticipate much liquidity in the bonds certainly not early on, if ever.

Jesse Hou
Email: jesse.hou@carlyle.com

Committee's Exhibit 88

CONFIDENTIAL

CARLYLE_AP00003986

ECF 723-8 at 1.

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Stub 13.125s at 20/30, bid without. Gap vs. the stub 24s and 26s is litigation value + maturity difference (24s are front) + cpn difference

Again market is in price discovery as you can see from bid ask

- On March 29, 2022, the cleansing materials were released shortly after 1:00 PM EDT. ECF 1016-7, -8, -9.

One Day after the Transaction was Announced, the Unsecured Notes Traded Up to Over 40 Cents

Transaction Type	Symbol	Full Fund Name	Trade Date	Settlement Date	Quantity	Price
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Fund, L.P.	3/30/2022	4/1/2022	612,000.00	41.25
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Offshore Master Fund, L.P.	3/30/2022	4/1/2022	1,613,000.00	41.25
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.	3/30/2022	4/1/2022	133,000.00	41.25
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunity Institutional Partners, L.P.	3/30/2022	4/1/2022	352,000.00	41.25
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunities Offshore Master Fund, L.P.	3/30/2022	4/1/2022	85,000.00	41.25
Buy	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunities Fund, L.P.	3/30/2022	4/1/2022	205,000.00	41.25

- Silver Point bought unsecured notes in a series of transactions for 41.25 cents on March 30, 2022.
- Prager testified that Silver Point made the purchases because it believed "all of the company's debts would likely to be paid in full. . . . [a]nd that the company had liquidity to last for years." ECF 1013 (Prager) 145:12-21.
- In aggregate, Silver Point bought ~$39 million of the remaining $104 million unsecured notes between March 30, 2022 and June 7, 2022.
  - On March 30, they paid 41.25 cents. On May 12, they paid 38.75 cents. On May 25, they paid 36.75 cents. On June 7, they paid 31 cents.

ECF 729-53 at 62.

Silver Point Sold All of Its Unsecured Notes at a Substantial Loss

Transaction Type	Symbol	Full Fund Name	Trade Date	Settlement Date	Quantity	Price
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunities Fund, L.P.	2/3/2023	2/7/2023	(3,947,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Offshore Master Fund, L.P.	2/3/2023	2/7/2023	(16,680,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunity Institutional Partners, L.P.	2/3/2023	2/7/2023	(5,586,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunity Institutional Partners Master Fund (Offshore), L.P.	2/3/2023	2/7/2023	(2,105,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Distressed Opportunities Offshore Master Fund, L.P.	2/3/2023	2/7/2023	(1,623,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Fund, L.P.	2/3/2023	2/7/2023	(6,648,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Offshore Master Fund, L.P.	2/3/2023	2/7/2023	(1,613,000.00)	6
Sell	WAIR 13.125% 11/15/27 AA4	Silver Point Capital Fund, L.P.	2/3/2023	2/7/2023	(612,000.00)	6

- Silver Point sold all of its ~$39 million in unsecured notes on February 3, 2023.
- All of the notes were sold for 6 cents.

ECF 729-55 at 12.

The 1.25L Notes Never Traded

JESSE HOU

Principal,
The Carlyle Group

Q. [A]ny indication of what the ones that you held were trading at?

A. No. I am very confident in this because I remember distinctly calling a bunch of traders trying to figure that out. No one would quote it.

Q. So none of the numbers in the email are the ones that --

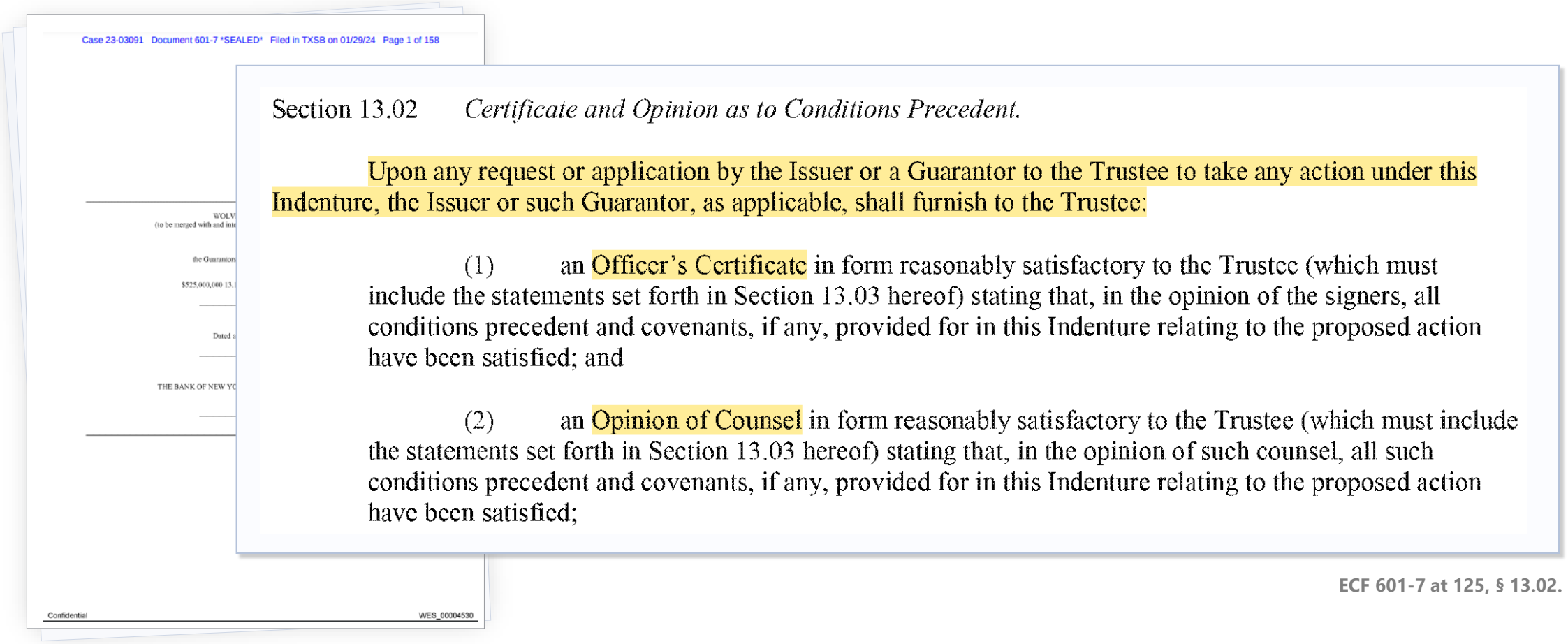
A. Relate to our instrument, no. . . . [I]t's all the, you know, remaining instruments that did not exchange.

* * *

A. We tried to make a market in them. We called all the banks, and we left an offer out . . . We never once got even interest or a bid of any sort.

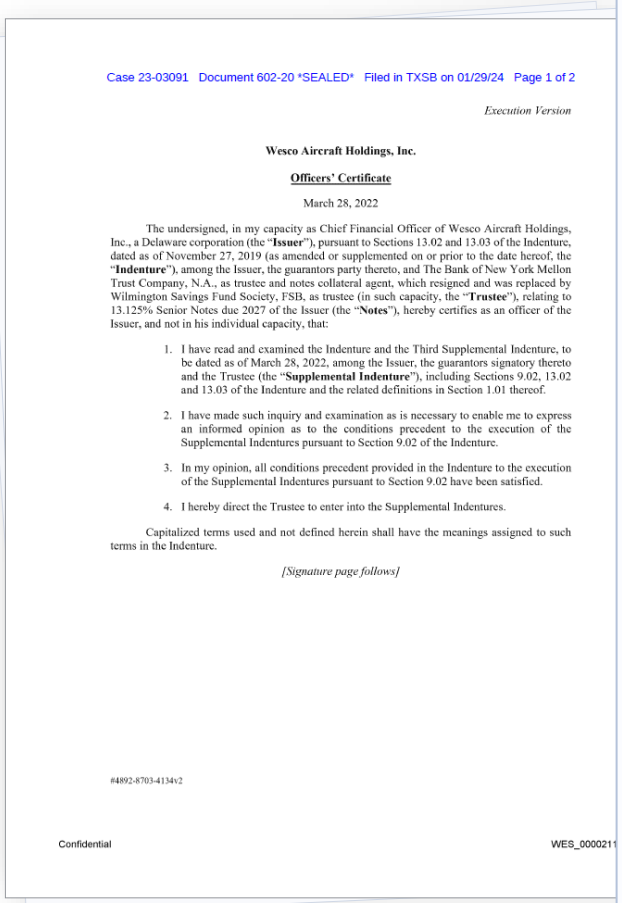
ECF 832 (Hou) 147:2-14; 237:21-238:4.

The Trustee Acted at the Direction of the Issuer, Not Noteholders, and Relied on Incora's Officer's Certificates and Opinions of Counsel



ECF 601-7 at 125, § 13.02.

The Officer's Certificate for the Third Supplemental Indenture Certified the Satisfaction of the Conditions Precedent



Execution Version

Wesco Aircraft Holdings, Inc.

Officers' Certificate

March 28, 2022

The undersigned, in my capacity as Chief Financial Officer of Wesco Aircraft Holdings, Inc., a Delaware corporation (the "**Issuer**"), pursuant to Sections 13.02 and 13.03 of the Indenture, dated as of November 27, 2019 (as amended or supplemented on or prior to the date hereof, the "**Indenture**"), among the Issuer, the guarantors party thereto, and The Bank of New York Mellon Trust Company, N.A., as trustee and notes collateral agent, which resigned and was replaced by Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "**Trustee**"), relating to 13.125% Senior Notes due 2027 of the Issuer (the "**Notes**"), hereby certifies as an officer of the Issuer, and not in his individual capacity, that:

1. I have read and examined the Indenture and the Third Supplemental Indenture, to be dated as of March 28, 2022, among the Issuer, the guarantors signatory thereto and the Trustee (the "**Supplemental Indenture**"), including Sections 9.02, 13.02 and 13.03 of the Indenture and the related definitions in Section 1.01 thereof.

2. I have made such inquiry and examination as is necessary to enable me to express an informed opinion as to the conditions precedent to the execution of the Supplemental Indentures pursuant to Section 9.02 of the Indenture.

3. In my opinion, all conditions precedent provided in the Indenture to the execution of the Supplemental Indentures pursuant to Section 9.02 have been satisfied.

4. I hereby direct the Trustee to enter into the Supplemental Indentures.

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Indenture.

[Signature page follows]

#4892-8703-4134v2

Confidential WES_0000211

ECF 602-20.

Officers' Certificate

March 28, 2022

The undersigned, in my capacity as Chief Financial Officer of Wesco Aircraft Holdings, Inc., a Delaware corporation (the "**Issuer**"), pursuant to Sections 13.02 and 13.03 of the Indenture, dated as of November 27, 2019 (as amended or supplemented on or prior to the date hereof, the "**Indenture**"), among the Issuer, the guarantors party thereto, and The Bank of New York Mellon Trust Company, N.A., as trustee and notes collateral agent, which resigned and was replaced by Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "**Trustee**"), relating to 13.125% Senior Notes due 2027 of the Issuer (the "**Notes**"), hereby certifies as an officer of the Issuer, and not in his individual capacity, that:

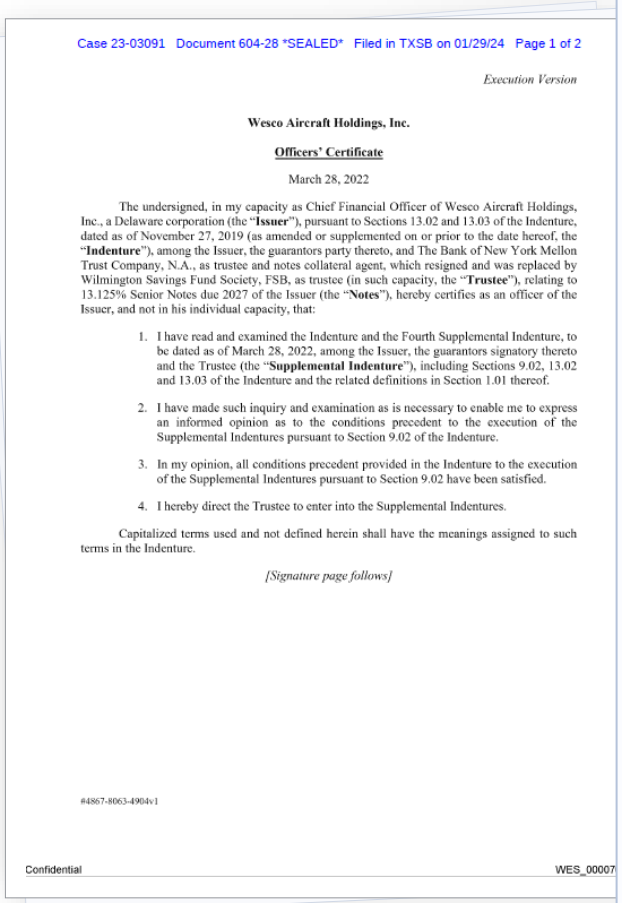
1. I have read and examined the Indenture and the Third Supplemental Indenture, to be dated as of March 28, 2022, among the Issuer, the guarantors signatory thereto and the Trustee (the "**Supplemental Indenture**"), including Sections 9.02, 13.02 and 13.03 of the Indenture and the related definitions in Section 1.01 thereof.

2. I have made such inquiry and examination as is necessary to enable me to express an informed opinion as to the conditions precedent to the execution of the Supplemental Indentures pursuant to Section 9.02 of the Indenture.

3. In my opinion, all conditions precedent provided in the Indenture to the execution of the Supplemental Indentures pursuant to Section 9.02 have been satisfied.

4. I hereby direct the Trustee to enter into the Supplemental Indentures.

The Officer's Certificate for the Fourth Supplemental Indenture Certified the Satisfaction of the Conditions Precedent



Execution Version

Wesco Aircraft Holdings, Inc.

Officers' Certificate

March 28, 2022

The undersigned, in my capacity as Chief Financial Officer of Wesco Aircraft Holdings, Inc., a Delaware corporation (the "**Issuer**"), pursuant to Sections 13.02 and 13.03 of the Indenture, dated as of November 27, 2019 (as amended or supplemented on or prior to the date hereof, the "**Indenture**"), among the Issuer, the guarantors party thereto, and The Bank of New York Mellon Trust Company, N.A., as trustee and notes collateral agent, which resigned and was replaced by Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "**Trustee**"), relating to 13.125% Senior Notes due 2027 of the Issuer (the "**Notes**"), hereby certifies as an officer of the Issuer, and not in his individual capacity, that:

1. I have read and examined the Indenture and the Fourth Supplemental Indenture, to be dated as of March 28, 2022, among the Issuer, the guarantors signatory thereto and the Trustee (the "**Supplemental Indenture**"), including Sections 9.02, 13.02 and 13.03 of the Indenture and the related definitions in Section 1.01 thereof.

2. I have made such inquiry and examination as is necessary to enable me to express an informed opinion as to the conditions precedent to the execution of the Supplemental Indentures pursuant to Section 9.02 of the Indenture.

3. In my opinion, all conditions precedent provided in the Indenture to the execution of the Supplemental Indentures pursuant to Section 9.02 have been satisfied.

4. I hereby direct the Trustee to enter into the Supplemental Indentures.

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Indenture.

[Signature page follows]

#4867-8063-4904v1

ECF 604-28.

Officers' Certificate

March 28, 2022

The undersigned, in my capacity as Chief Financial Officer of Wesco Aircraft Holdings, Inc., a Delaware corporation (the "**Issuer**"), pursuant to Sections 13.02 and 13.03 of the Indenture, dated as of November 27, 2019 (as amended or supplemented on or prior to the date hereof, the "**Indenture**"), among the Issuer, the guarantors party thereto, and The Bank of New York Mellon Trust Company, N.A., as trustee and notes collateral agent, which resigned and was replaced by Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "**Trustee**"), relating to 13.125% Senior Notes due 2027 of the Issuer (the "**Notes**"), hereby certifies as an officer of the Issuer, and not in his individual capacity, that:

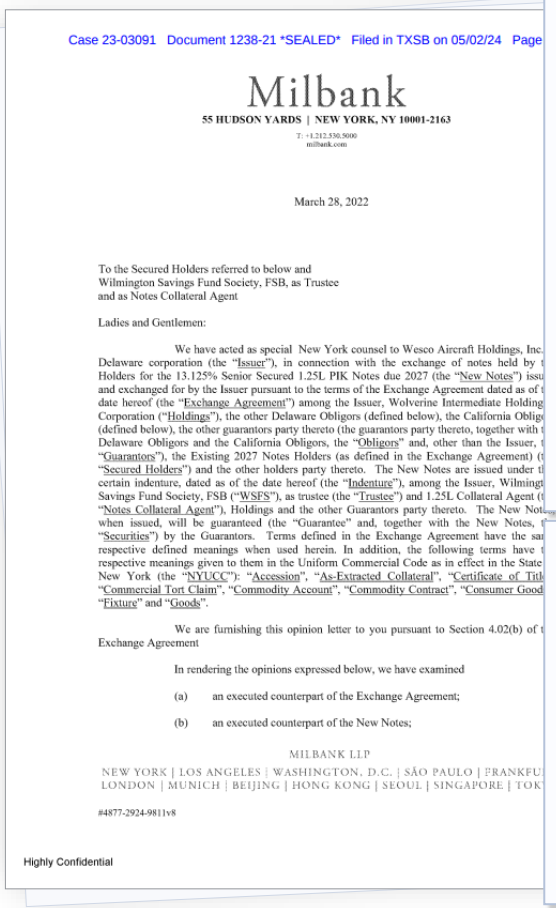
1. I have read and examined the Indenture and the Fourth Supplemental Indenture, to be dated as of March 28, 2022, among the Issuer, the guarantors signatory thereto and the Trustee (the "**Supplemental Indenture**"), including Sections 9.02, 13.02 and 13.03 of the Indenture and the related definitions in Section 1.01 thereof.

2. I have made such inquiry and examination as is necessary to enable me to express an informed opinion as to the conditions precedent to the execution of the Supplemental Indentures pursuant to Section 9.02 of the Indenture.

3. In my opinion, all conditions precedent provided in the Indenture to the execution of the Supplemental Indentures pursuant to Section 9.02 have been satisfied.

4. I hereby direct the Trustee to enter into the Supplemental Indentures.

The Company Provided the Trustee with an Opinion of Counsel that the Transactions Complied with the Unsecured Indenture



Milbank

55 HUDSON YARDS | NEW YORK, NY 10001-2163

March 28, 2022

To the Secured Holders referred to below and
Wilmington Savings Fund Society, FSB, as Trustee
and as Notes Collateral Agent

Ladies and Gentlemen:

We have acted as special New York counsel to Wesco Aircraft Holdings, Inc. Delaware corporation (the "Issuer"), in connection with the exchange of notes held by t Holders for the 13.125% Senior Secured 1.25L PIK Notes due 2027 (the "New Notes") issu and exchanged for by the Issuer pursuant to the terms of the Exchange Agreement dated as of t date hereof (the "Exchange Agreement") among the Issuer, Wolverine Intermediate Holding Corporation ("Holdings"), the other Delaware Obligors (defined below), the California Obligo (defined below), the other guarantors party thereto (the guarantors party thereto, together with t Delaware Obligors and the California Obligors, the "Obligors" and, other than the Issuer, t "Guarantors"), the Existing 2027 Notes Holders (as defined in the Exchange Agreement) ("Secured Holders") and the other holders party thereto. The New Notes are issued under t certain indenture, dated as of the date hereof (the "Indenture"), among the Issuer, Wilmingt Savings Fund Society, FSB ("WSFS"), as trustee (the "Trustee") and 1.25L Collateral Agent ("Notes Collateral Agent"), Holdings and the other Guarantors party thereto. The New Not when issued, will be guaranteed (the "Guarantee" and, together with the New Notes, t "Securities") by the Guarantors. Terms defined in the Exchange Agreement have the sa respective defined meanings when used herein. In addition, the following terms have t respective meanings given to them in the Uniform Commercial Code as in effect in the State New York (the "NYUCC"): "Accession", "As-Extracted Collateral", "Certificate of Titl "Commercial Tort Claim", "Commodity Account", "Commodity Contract", "Consumer Good "Fixture" and "Goods".

We are furnishing this opinion letter to you pursuant to Section 4.02(b) of t Exchange Agreement

In rendering the opinions expressed below, we have examined

(a) an executed counterpart of the Exchange Agreement;

(b) an executed counterpart of the New Notes;

MILBANK LLP

NEW YORK | LOS ANGELES | WASHINGTON, D.C. | SÃO PAULO | FRANKFU LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | SINGAPORE | TOK

#4877-2924-9811v8

Highly Confidential

ECF 1238-21.

(5) The issuance of the New Notes in accordance with the Indenture, the sale of the Securities to you and execution and delivery by each Obligor of the Opinion Documents to which it is a party and the performance of its obligations thereunder do not,

(a) violate any Applicable Law,

(b) other than as described in opinion paragraph (12) below, require approval from or any filings with any governmental authority under any Applicable Law except (A) such as have been duly obtained or made and are in full force and effect and (B) the filing of financing statements in respect of the Liens created pursuant to the Security Agreement, or

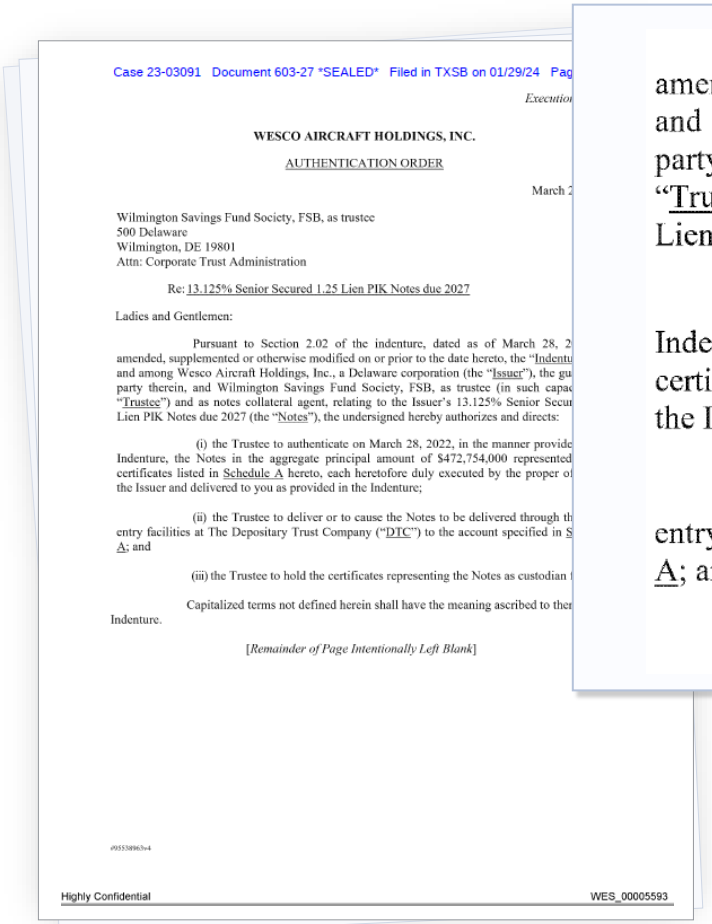
(c) breach or violate, or constitute a default under any Specified Agreement.

Specified Agreements

3. The Indenture, dated as of November 27, 2019 (as amended by that certain First Supplemental Indenture dated as of January 9th, 2020, that certain Second Supplemental Indenture dated as of January 28, 2020, that certain Third Supplemental Indenture dated as of March 28, 2022 and that certain Fourth Supplemental Indenture dated as of March 28, 2022, among the Issuer as the issuer of the 13.125% Senior Notes Due 2027, Wilmington Savings Fund Society, FSB, as Trustee, (as successor in interest to The Bank of New York Mellon Trust Company, N.A.) and the other parties party thereto.

ECF 1238-21 at 5-6, 11.

The Authentication Order by the Company Directed the Trustee to Authenticate and Deliver the 1.25L Notes



ECF 603-27.

Pursuant to Section 2.02 of the indenture, dated as of March 28, 2022 (as amended, supplemented or otherwise modified on or prior to the date hereto, the "Indenture"), by and among Wesco Aircraft Holdings, Inc., a Delaware corporation (the "Issuer"), the guarantors party therein, and Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "Trustee") and as notes collateral agent, relating to the Issuer's 13.125% Senior Secured 1.25 Lien PIK Notes due 2027 (the "Notes"), the undersigned hereby authorizes and directs:

(i) the Trustee to authenticate on March 28, 2022, in the manner provided in the Indenture, the Notes in the aggregate principal amount of $472,754,000 represented by the certificates listed in Schedule A hereto, each heretofore duly executed by the proper officer of the Issuer and delivered to you as provided in the Indenture;

(ii) the Trustee to deliver or to cause the Notes to be delivered through the book-entry facilities at The Depositary Trust Company ("DTC") to the account specified in Schedule A; and

(iii) the Trustee to hold the certificates representing the Notes as custodian for DTC.

WESCO AIRCRAFT HOLDINGS, INC.,
as Issuer

By: _____
Name: Ray Carney
Title: Chief Financial Officer

The Opinion of Counsel Certified that All Conditions Were Met

PATRICK HEALY

Senior Vice President, WSFS

Q. [W]hat was the significance of the opinion letter from counsel in WSFS's determination to sign the 3rd and 4th supplemental indentures?

A. The significance is that Milbank in their opinion stated that they had to review the relevant sections appropriate for the transaction, or for the supplement indentures, and it certified that all conditions were met and we were set. It's typical to receive that, so we were satisfied upon receiving that.

ECF 1350 (Healy) at 152:9-17.

The Trustee Received the Required Officer's Certificates and Opinions of Counsel *from the Company and Company's counsel*

PATRICK HEALY

Senior Vice President, WSFS

A. The officer certificate came from Wesco.

* * *

Q. From whose counsel did you receive that opinion letter?

A. Wesco's counsel. . . . Milbank.

* * *

Q. And would WSFS enter the third supplemental indentures . . . if it didn't receive the officer certificate or the opinion of counsel?

A. No.

ECF 1350 (Healy) at 107:22-108:1; 151:25; 152:4-8.

The Trustee Did Not Receive Direction from or Communicate with the Unsecured Noteholders

PATRICK HEALY

Senior Vice President, WSFS

Q. Did WSFS receive any direction to your knowledge from the beneficial holders of the original 2027 unsecured notes as to who should participate in the exchange?

A. No.

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

A. No.

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

A. No.

ECF 1350 (Healy) at 150:20-22; 154:16-23.

The Trustee Did Not Communicate with Carlyle or Spring Creek

PATRICK HEALY

Senior Vice President, WSFS

Q. [A]re you aware of any communications between WSFS on one hand and Carlyle on the other concerning the 2022 unsecured exchange?

A. Not that I recall, no.

Q. Are you aware of any -- and sitting here today can you recall any communication with Spring Creek on the one hand and WSFS on the other as it relates to the 2022 unsecured exchange?

A. No.

ECF 1350 (Healy) at 154:24-155:2; 155:3-7.

II. Langur Maize's Claims Against Carlyle

Langur Maize's Remaining Claims Against Carlyle and the Carlyle Funds

1. **Breach of Section 3.02 of the Original Unsecured Indenture**
2. **Tortious Interference Arising from Breach of Section 3.02**
3. **Civil Conspiracy**

- Langur Maize asserts no claims against Spring Creek Capital, which was a co-investor with Carlyle in the Unsecured Notes.

All of Langur Maize's Claims Fail for Lack of Contractual Privity and Lack of Injury-in-Fact

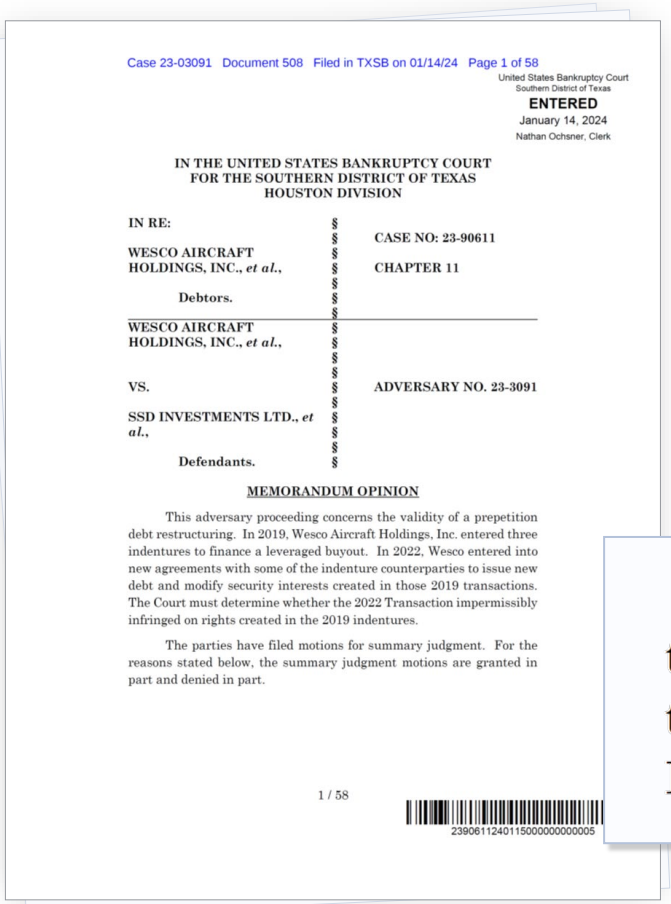
- Carlyle was a beneficial holder of Unsecured Notes **with no contractual obligations or contractual privity** with other unsecured holders. This disposes of the breach of contract claim.
- Langur Maize acquired Unsecured Notes after the Unsecured Exchange and **lacks standing to assert any claims against third parties** such as Carlyle on behalf of prior unknown holders.
  - Langur Maize suffered no direct injury.
  - Langur Maize received no assignments of any claims.
- A ruling against Langur Maize on these two issues disposes of its claims without a need to address any other issues the parties have raised.

Langur Maize's Claims Fail on the Merits on Numerous Independent Grounds

- **Langur Maize's tortious interference claim fails on the merits**:
  - Carlyle did not induce a breach.
  - The economic interest defense bars any claim.
  - The non-participating unsecured holders were not harmed.
- Langur Maize's civil conspiracy claim fails on the merits:
  - No independent tort as would be necessary to establish the conspiracy.
  - Carlyle acted independently without any common purpose or plan with other unsecured holders.
- Langur Maize's claims all fail for the additional reason that there is no underlying breach of the Unsecured Indenture:
  - The Court's interlocutory ruling that Section 3.02 was breached should be reconsidered.
  - There is no claim against Carlyle relating to Section 3.07(h).

A. Langur Maize's Breach of Contract Claims Fail for Lack of Privity

Beneficial Holders Are Not Parties to the Unsecured Indenture



Case 23-03091 Document 508 Filed in TXSB on 01/14/24 Page 1 of 58

United States Bankruptcy Court
Southern District of Texas
ENTERED
January 14, 2024
Nathan Ochsner, Clerk

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

IN RE:	§	
	§	CASE NO: 23-90611
WESCO AIRCRAFT HOLDINGS, INC., *et al.*,	§	CHAPTER 11
	§	
Debtors.	§	
	§	
WESCO AIRCRAFT HOLDINGS, INC., *et al.*,	§	
	§	
VS.	§	ADVERSARY NO. 23-3091
SSD INVESTMENTS LTD., *et al.*,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION

This adversary proceeding concerns the validity of a prepetition debt restructuring. In 2019, Wesco Aircraft Holdings, Inc. entered three indentures to finance a leveraged buyout. In 2022, Wesco entered into new agreements with some of the indenture counterparties to issue new debt and modify security interests created in those 2019 transactions. The Court must determine whether the 2022 Transaction impermissibly infringed on rights created in the 2019 indentures.

The parties have filed motions for summary judgment. For the reasons stated below, the summary judgment motions are granted in part and denied in part.

1 / 58

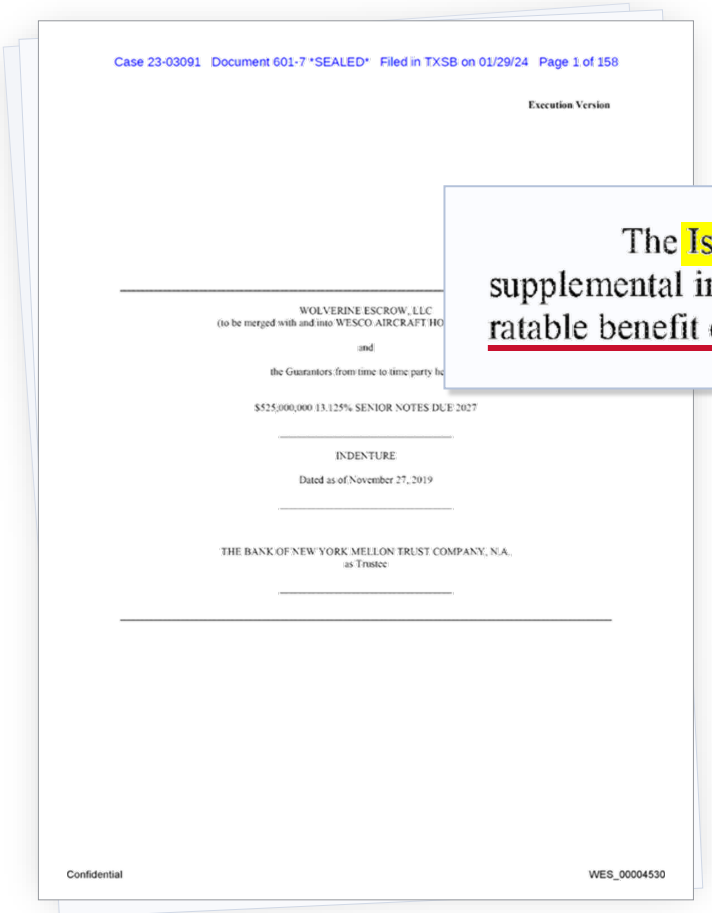
239061124011500000000005

ECF 508 - Memorandum Opinion (Jan 14, 2024), p. 53

- The Court recognized in its summary judgment opinion that beneficial holders are not "parties" with "obligat[ions]" under the Secured Indentures.
- The Unsecured Indenture is identical in this regard, and therefore there are no viable contract claims against anyone but the Debtors and WSFS.

> Because the Silver Point Noteholders, the PIMCO Noteholders, the Senator Noteholder, and the Citadel Noteholder are not parties to the Secured Indentures, they cannot be obligated under the Secured Indentures. And there is no evidence the third-party beneficiaries

Noteholders Are Not Parties to the Unsecured Indenture



Execution Version

WOLVERINE ESCROW, LLC
(to be merged with and into WESCO AIRCRAFT HO

and

the Guarantors from time to time party he

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

INDENTURE

Dated as of November 27, 2019

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Trustee

Confidential WES_00004530

ECF 601-7 - 2027 Unsecured Note Original Indenture

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

- The preamble to the Unsecured Indenture makes this clear:
- Only Incora and WSFS have contractual obligations under the Unsecured Indenture.
- Beneficial holders such as Carlyle are not parties and have no contractual obligations.

B. Langur Maize Has No Article III Standing to Bring Tort Claims Against the Participating Unsecured Noteholders

Langur Maize Suffered No Direct Injury

- At summary judgment, this Court held there was an issue of triable fact only as to whether Langur Maize suffered a direct injury by buying notes without knowledge of the 2022 Transaction. *See* Summ. J. Op. at 24.
- Langur Maize has conceded that it acquired unsecured notes with knowledge of the 2022 Transaction and has suffered no direct injury.
- Its claims now are predicated entirely on a theory that Langur Maize has been assigned claims either by prior beneficial holders, or DTC.
  - Langur Maize cannot carry its burden with respect to either theory.

Langur Maize Failed to Prove an Assignment under New York Law

- New York law requires an express recitation of intent to transfer tort claims to obtain a valid assignment: "**[T]he law in New York . . . requires either some expressed intent or reference to tort causes of action, or some explicit language evidencing the parties' intent to transfer broad and unlimited rights and claims**." *Commonwealth of Pennsylvania Pub. Sch. Employees' Ret. Sys.* v. *Morgan Stanley & Co. ("PSERS II")*, 25 N.Y.3d 543, 551 (2015).

- This is an extremely high standard of proof.
  - In *Fox* v. *Hirschfeld*, 157 A.D. 364, 366, 368 (1st Dep't 1913), an assignment of "**all my right, title and interest in and to the within contract**" was **insufficient** to transfer any rights other than breach of contract claims.
  - In *Banque Arabe et Internationale D'Investissement* v. *Maryland Nat. Bank*, 57 F.3d 146, 152 (2d Cir. 1995), the assignment of **"rights, title, and interest" in (a) the "Participation Agreement," (b) "participation in [the] loan," and (c) the "transaction"** was deemed sufficient to transfer tort claims, but the court noted that assigning only rights in the "Participation Agreement" was not sufficient under *Fox*.

N.Y. Gen. Oblig. Law § 13-107 Provides a Statutory Exception that Transfers Claims against the Obligor, Guarantors, Trustee or Depositary

- Against the background of this New York common law rule, New York's legislature enacted a very specific provision of the General Obligations Law that broadly transfers all rights as against certain parties upon the transfer of debt securities.
  - **N.Y. Gen. Oblig. Law § 13-107(1)**: "Unless expressly reserved in writing, a transfer of any bond shall vest in the transferee all claims or demands of the transferrer, whether or not such claims or demands are known to exist, (a) for damages or rescission against the obligor on such bond, (b) for damages against the trustee or depositary under any indenture under which such bond was issued or outstanding, and (c) for damages against any guarantor of the obligation of such obligor, trustee or depositary."
- New York courts and the New York legislature have been very clear about what is necessary to find a transfer tort claims. That law is incorporated into New York law governed indentures.

The New York Court of Appeals' Decision in *PSERS II* Is Dispositive and Forecloses Langur Maize's Assignment Theories

- In *PSERS II*, the New York Court of Appeals held that, in the absence of a specific statement of intent to transfer tort claims, the transfer of an interest in a note did not effect an assignment of tort claims.
- The assignor and assignee of the notes—who were related parties—both "believed that any causes of action related to the notes would automatically transfer . . . with the notes themselves." 25 N.Y.3d at 548. Therefore, the assignor did not document its intent to assign causes of action.
- The assignee sued third parties—the notes' investment manager and the ratings agencies—for fraudulent misrepresentation.
- The Second Circuit certified the following question to the New York Court of Appeals: "whether the intent of parties to transfer a whole interest, combined with the absence of limiting language, suffices to transfer an assignor's tort claims, ***or whether an additional, more specific statement of an intent to transfer tort claims is required***." *Pennsylvania Pub. Sch. Employees' Ret. Sys.* v. *Morgan Stanley & Co. ("PSERS I")*, 772 F.3d 111, 123 (2d Cir. 2014).

PSERS II Forecloses Langur Maize's Assignment Theories

- The Court of Appeals held that there had been no assignment of "fraud or other tort claims":
  - "[W]here an assignment of fraud or other tort claims is intended in conjunction with the conveyance of a contract or note, ***there must be some language—although no specific words are required—that evinces that intent and effectuates the transfer of such rights.***" 25 N.Y.3d at 543.
  - ***"[T]he law in New York . . . requires either some expressed intent or reference to tort causes of action, or some explicit language evidencing the parties' intent to transfer broad and unlimited rights and claims***, in order to effectuate such an assignment." *Id.* at 551.
  - ***"Because DAF's sale of the notes, in the conceded absence of any expression of a contemporaneous intent to transfer related tort claims to Dresdner, did not, under New York law, effectuate an assignment of the fraud claim Commerzbank now seeks to pursue, Commerzbank has failed to raise a question of fact concerning standing***." *Id.* at 553.

PSERS II Forecloses Langur Maize's Assignment Theories

- Here, as in *PSERS II*, there is no evidence of an express manifestation of intent by any person or entity to assign causes of action to Langur Maize.
- *PSERS II* is on point and controls. Langur Maize has no standing to bring tort claims.

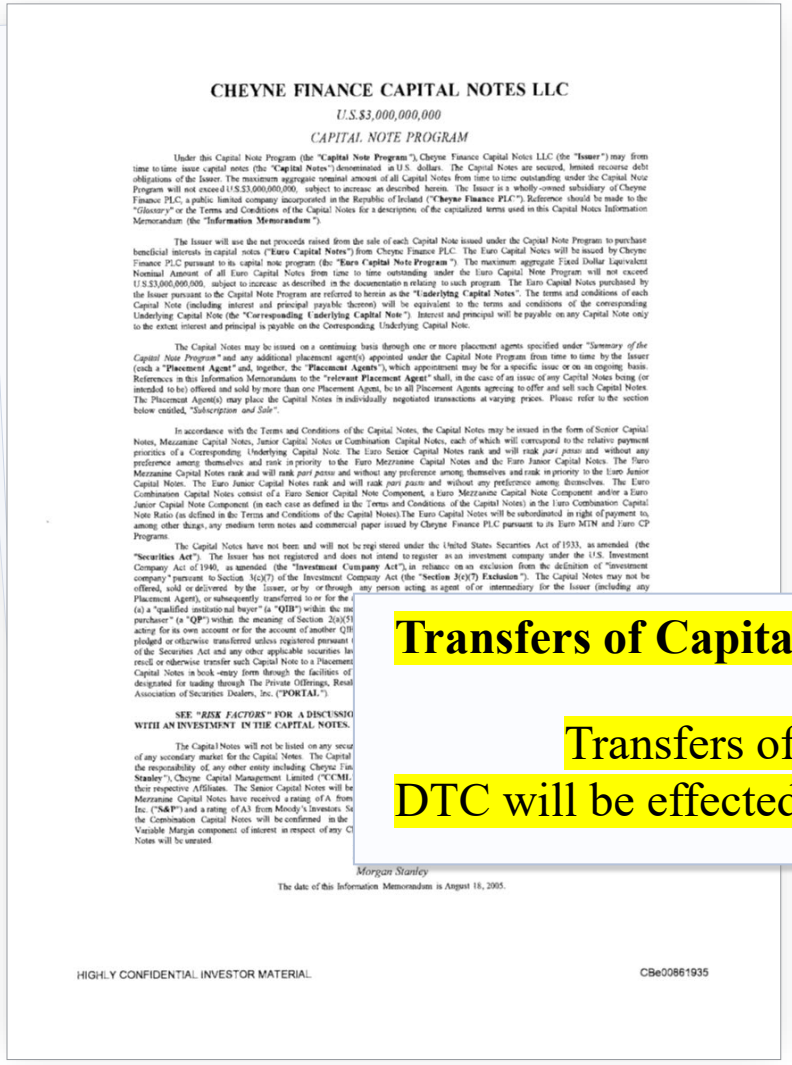
Langur Maize's Attempt to Distinguish *PSERS II* Fails

- Langur Maize attempts to distinguish *PSERS II* by arguing that in *PSERS II*, "there was no expressed intent or language in any document evidencing any intent to transfer such claims. That is not the case here, where **the DTC Rules and the Indenture demonstrate a clear intent to assign and transfer the 'entire interest' in the 2027 Notes**." ECF 1395 at 37 n.130.

- Langur Maize is referring to:

  1. Section 2.06(b) of the Unsecured Indenture, which provides: "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."
  2. DTC Rule 9(B)(2), which, Langur Maize contends, pertains to transfers of "the entire interest in . . . Securities."

Langur Maize's Attempt to Distinguish *PSERS II* Fails



CHEYNE FINANCE CAPITAL NOTES LLC

U.S.$3,000,000,000

CAPITAL NOTE PROGRAM

Under this Capital Note Program (the "**Capital Note Program**"), Cheyne Finance Capital Notes LLC (the "**Issuer**") may from time to time issue capital notes (the "**Capital Notes**") denominated in U.S. dollars. The Capital Notes are secured, limited recourse debt obligations of the Issuer. The maximum aggregate nominal amount of all Capital Notes from time to time outstanding under the Capital Note Program will not exceed U.S.$3,000,000,000, subject to increase as described herein. The Issuer is a wholly-owned subsidiary of Cheyne Finance PLC, a public limited company incorporated in the Republic of Ireland ("**Cheyne Finance PLC**"). Reference should be made to the "*Glossary*" or the Terms and Conditions of the Capital Notes for a description of the capitalized terms used in this Capital Notes Information Memorandum (the "**Information Memorandum**").

The Issuer will use the net proceeds raised from the sale of each Capital Note issued under the Capital Note Program to purchase beneficial interests in capital notes ("**Euro Capital Notes**") from Cheyne Finance PLC. The Euro Capital Notes will be issued by Cheyne Finance PLC pursuant to its capital note program (the "**Euro Capital Note Program**"). The maximum aggregate Fixed Dollar Equivalent Nominal Amount of all Euro Capital Notes from time to time outstanding under the Euro Capital Note Program will not exceed U.S.$3,000,000,000, subject to increase as described in the documentation relating to such program. The Euro Capital Notes purchased by the Issuer pursuant to the Capital Note Program are referred to herein as the "**Underlying Capital Notes**". The terms and conditions of each Capital Note (including interest and principal payable thereon) will be equivalent to the terms and conditions of the corresponding Underlying Capital Note (the "**Corresponding Underlying Capital Note**"). Interest and principal will be payable on any Capital Note only to the extent interest and principal is payable on the Corresponding Underlying Capital Note.

The Capital Notes may be issued on a continuing basis through one or more placement agents specified under "*Summary of the Capital Note Program*" and any additional placement agent(s) appointed under the Capital Note Program from time to time by the Issuer (each a "**Placement Agent**" and, together, the "**Placement Agents**"), which appointment may be for a specific issue or on an ongoing basis. References in this Information Memorandum to the "**relevant Placement Agent**" shall, in the case of an issue of any Capital Notes being (or intended to be) offered and sold by more than one Placement Agent, be to all Placement Agents agreeing to offer and sell such Capital Notes. The Placement Agent(s) may place the Capital Notes in individually negotiated transactions at varying prices. Please refer to the section below entitled, "*Subscription and Sale*".

In accordance with the Terms and Conditions of the Capital Notes, the Capital Notes may be issued in the form of Senior Capital Notes, Mezzanine Capital Notes, Junior Capital Notes or Combination Capital Notes, each of which will correspond to the relative payment priorities of a Corresponding Underlying Capital Note. The Euro Senior Capital Notes rank and will rank *pari passu* and without any preference among themselves and rank in priority to the Euro Mezzanine Capital Notes and the Euro Junior Capital Notes. The Euro Mezzanine Capital Notes rank and will rank *pari passu* and without any preference among themselves and rank in priority to the Euro Junior Capital Notes. The Euro Junior Capital Notes rank and will rank *pari passu* and without any preference among themselves. The Euro Combination Capital Notes consist of a Euro Senior Capital Note Component, a Euro Mezzanine Capital Note Component and/or a Euro Junior Capital Note Component (in each case as defined in the Terms and Conditions of the Capital Notes) in the Euro Combination Capital Note Ratio (as defined in the Terms and Conditions of the Capital Notes).The Euro Capital Notes will be subordinated in right of payment to, among other things, any medium term notes and commercial paper issued by Cheyne Finance PLC pursuant to its Euro MTN and Euro CP Programs.

The Capital Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**"). The Issuer has not registered and does not intend to register as an investment company under the U.S. Investment Company Act of 1940, as amended (the "**Investment Company Act**"), in reliance on an exclusion from the definition of "investment company" pursuant to Section 3(c)(7) of the Investment Company Act (the "**Section 3(c)(7) Exclusion**"). The Capital Notes may not be offered, sold or delivered by the Issuer, or by or through any person acting as agent of or intermediary for the Issuer (including any Placement Agent), or subsequently transferred to or for the

(a) a "qualified institutional buyer" (a "**QIB**") within the

purchaser" (a "**QP**") within the meaning of Section 2(a)(51

acting for its own account or for the account of another QIB

pledged or otherwise transferred unless registered pursuant

of the Securities Act and any other applicable securities la

resell or otherwise transfer such Capital Note to a Placement

Capital Notes in book-entry form through the facilities of

designated for trading through The Private Offerings, Resal

Association of Securities Dealers, Inc. ("**PORTAL**").

SEE "*RISK FACTORS*" FOR A DISCUSSIO

WITH AN INVESTMENT IN THE CAPITAL NOTES.

The Capital Notes will not be listed on any secur

of any secondary market for the Capital Notes. The Capital

the responsibility of, any other entity including Cheyne Fin

Stanley"), Cheyne Capital Management Limited ("CCML

their respective Affiliates. The Senior Capital Notes will be

Mezzanine Capital Notes have received a rating of A from

Inc. ("S&P") and a rating of A3 from Moody's Investors S

the Combination Capital Notes will be confirmed in the

Variable Margin component of interest in respect of any C

Notes will be unrated.

Morgan Stanley

The date of this Information Memorandum is August 18, 2005.

HIGHLY CONFIDENTIAL INVESTOR MATERIAL CBe00861935

Transfers of Capital Notes Represented by Global Capital Notes

Transfers of any interests in Capital Notes represented by a Global Capital Note within DTC will be effected in accordance with the customary rules and operating procedures of DTC.

- The loan documents in *PSERS II* contained a transfer provision that is functionally identical to Section 2.06(b) of the Unsecured Indenture, and likewise incorporates DTC's rules on transfers of interests in global notes.
- *See* Cheyne Finance Capital Notes LLC, U.S. $3,000,000,000 Capital Note Program at 138, *Abu Dhabi Commercial Bank et al.* v. *Morgan Stanley & Co.*, No. 8 Civ. 7508 (SAS), ECF 464-5 and -6 (S.D.N.Y. July 2, 2012).
- The purported difference on which Langur Maize relies does not exist.

Langur Maize Failed to Prove an Assignment under New York Law

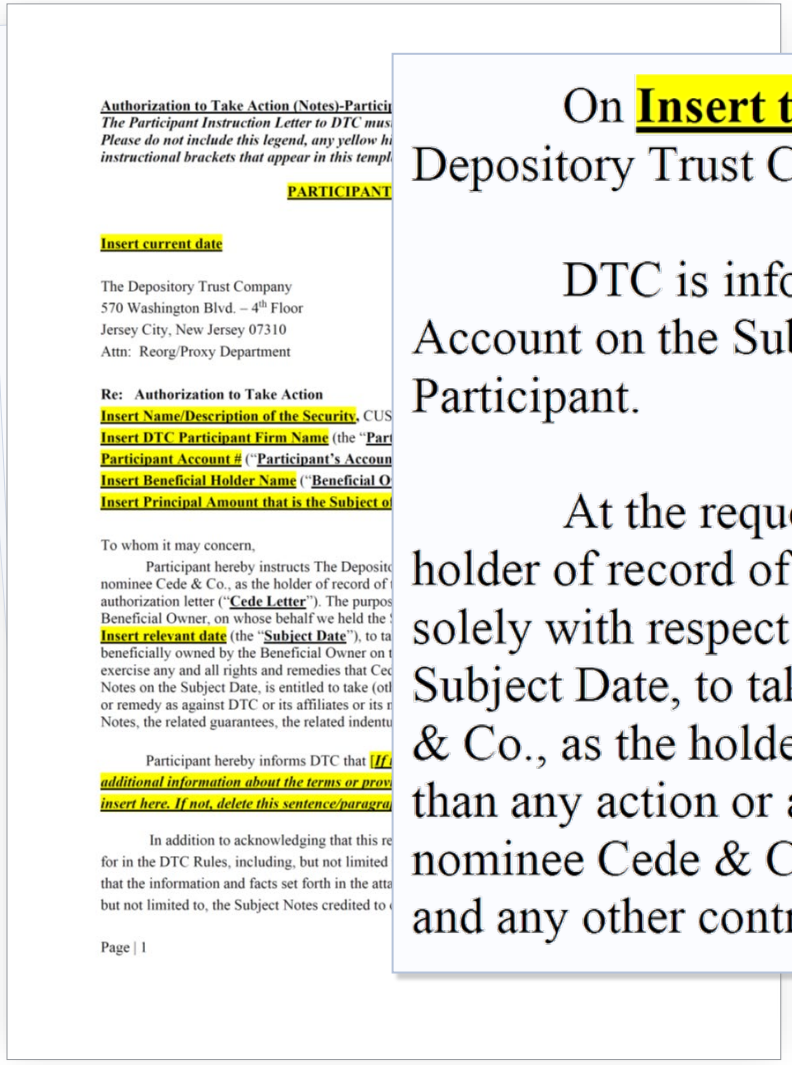
- The language in DTC Rule 9(B)(2) on which Langur Maize relies is precisely the kind of language that New York courts have held to be insufficient to transfer tort claims.
- Under *Fox*, assigning the "entire interest" in a security does not transfer tort claims. It transfers only contract claims.
  - *See Dexia SA/NV, Dexia Holdings, Inc.* v. *Morgan Stanley*, 41 Misc. 3d 1214(A), 980 N.Y.S.2d 275 (Sup. Ct., N.Y. Cnty. 2013) (holding that under *Fox*, an assignment of "all right, title, and interest" in a security did not transfer related tort claims), *aff'd*, 135 A.D.3d 497 (1st Dep't 2016).
- Langur Maize has proffered no assignment language specifically referring to tort claims or any assignment language broad enough to encompass tort claims, as in *Banque Arabe*.

The Unassigned Tort Claims Remain with the Prior Beneficial Owners

- Under New York law, when only breach of contract claims are assigned, "the right to bring" unassigned tort claims "remain[s] in [the assignor]." *Fox*, 157 A.D. at 366.

- The Indenture and DTC's rules do not prevent prior holders from bringing the tort claims that remain with them:
  - The Indenture is silent on prior holders. It does not require them to obtain DTC's authorization before bringing suit.
  - Even if a prior holder sought to obtain an authorization letter from DTC, there is no evidence in the record of a DTC policy against issuing one.

DTC's Authorization Letter Template Is in the Past Tense—Consistent with Prior Holders Being Able to Sue (Pink Highlighting Added)



Authorization to Take Action (Notes)-Partici
The Participant Instruction Letter to DTC mus
Please do not include this legend, any yellow hi
instructional brackets that appear in this templ

PARTICIPANT

Insert current date

The Depository Trust Company
570 Washington Blvd. – 4th Floor
Jersey City, New Jersey 07310
Attn: Reorg/Proxy Department

Re: Authorization to Take Action
Insert Name/Description of the Security, CUS
Insert DTC Participant Firm Name (the "Part
Participant Account # ("Participant's Accoun
Insert Beneficial Holder Name ("Beneficial O
Insert Principal Amount that is the Subject of

To whom it may concern,

Participant hereby instructs The Deposit
nominee Cede & Co., as the holder of record of
authorization letter ("Cede Letter"). The purpos
Beneficial Owner, on whose behalf we held the
Insert relevant date (the "Subject Date"), to ta
beneficially owned by the Beneficial Owner on t
exercise any and all rights and remedies that Ced
Notes on the Subject Date, is entitled to take (oth
or remedy as against DTC or its affiliates or its
Notes, the related guarantees, the related indentu

Participant hereby informs DTC that *If*
additional information about the terms or prov
insert here. If not, delete this sentence/paragra

In addition to acknowledging that this re
for in the DTC Rules, including, but not limited
that the information and facts set forth in the atta
but not limited to, the Subject Notes credited to

Page | 1

On **Insert the relevant date** ("**Subject Date**"), Cede & Co., as nominee of The Depository Trust Company ("DTC"), was a holder of record of the Notes.

DTC is informed by the Participant that the Subject Notes credited to the Participant's Account on the Subject Date were beneficially owned by Beneficial Owner, a customer of the Participant.

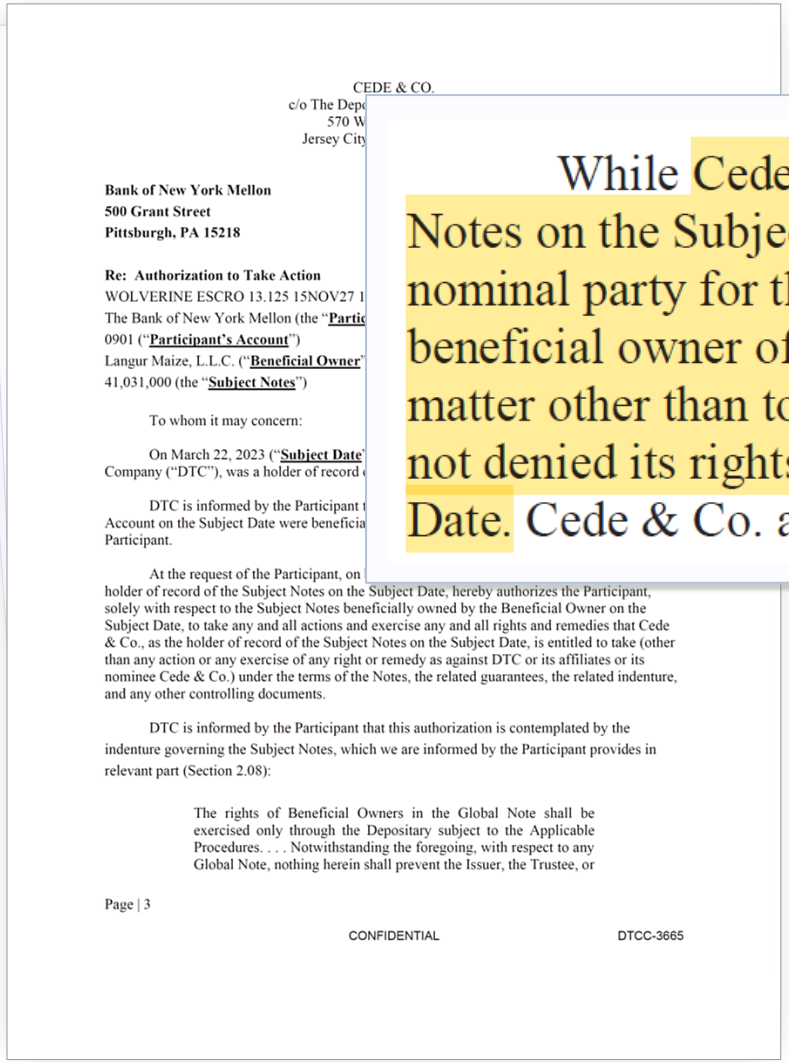
At the request of the Participant, on behalf of the Beneficial Owner, Cede & Co., as the holder of record of the Subject Notes on the Subject Date, hereby authorizes the Participant, solely with respect to the Subject Notes beneficially owned by the Beneficial Owner on the Subject Date, to take any and all actions and exercise any and all rights and remedies that Cede & Co., as the holder of record of the Subject Notes on the Subject Date, is entitled to take (other than any action or any exercise of any right or remedy as against DTC or its affiliates or its nominee Cede & Co.) under the terms of the Notes, the related guarantees, the related indenture, and any other controlling documents.

ECF 1364-29 at 3.

Langur Maize Failed to Prove an Assignment from DTC

- At trial, this Court correctly concluded that "since DTC did not experience these harms itself, it cannot assign these claims to an entity that did not suffer an injury." Summ. J. Op. at 21-22 (further citations omitted).
- At trial, Langur Maize offered no evidence of harm to DTC from the 2022 Transaction.
- We are aware of no case:
  1. holding that DTC has standing to bring tort claims under Article III; or
  2. in which DTC brought ***any claim*** (contract or tort) in connection with a security.
- The evidence at trial is that DTC has no claims to assign.

Langur Maize Failed to Prove an Assignment from DTC



CEDE & CO.
c/o The Depo
570 W
Jersey City

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

Re: Authorization to Take Action
WOLVERINE ESCRO 13.125 15NOV27 1
The Bank of New York Mellon (the "Partic
0901 ("**Participant's Account**")
Langur Maize, L.L.C. ("**Beneficial Owner**"
41,031,000 (the "**Subject Notes**")

To whom it may concern:

On March 22, 2023 ("**Subject Date**"
Company ("DTC"), was a holder of record

DTC is informed by the Participant t
Account on the Subject Date were beneficia
Participant.

At the request of the Participant, on
holder of record of the Subject Notes on the Subject Date, hereby authorizes the Participant, solely with respect to the Subject Notes beneficially owned by the Beneficial Owner on the Subject Date, to take any and all actions and exercise any and all rights and remedies that Cede & Co., as the holder of record of the Subject Notes on the Subject Date, is entitled to take (other than any action or any exercise of any right or remedy as against DTC or its affiliates or its nominee Cede & Co.) under the terms of the Notes, the related guarantees, the related indenture, and any other controlling documents.

DTC is informed by the Participant that this authorization is contemplated by the indenture governing the Subject Notes, which we are informed by the Participant provides in relevant part (Section 2.08):

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

Page | 3

CONFIDENTIAL DTCC-3665

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

- Cede's disclaimer of interest is the ***opposite*** of "manifest[ing] [the] intention to transfer . . . title or ownership" of a claim. *Cortlandt St. Recovery Corp.* v. *Hellas Telecommunications, S.a.r.l*, 790 F.3d 411, 418 (2d Cir. 2015).

ECF 1075-1 at 6.

C. Langur Maize's Tortious Interference Claim Fails

Langur's Maize Tortious Interference Claim Against Carlyle Fails

- **Carlyle did not induce any breach.**
  - Carlyle exercised consent rights it had under the terms of the Unsecured Indenture.
  - Carlyle entered into an exchange agreement pursuant to Section 3.07(h), which it was permitted to do.
  - Carlyle had no authority or ability to exclude anyone from the transaction, and Incora negotiated for basket capacity that could be used to exchange all remaining unsecured notes.
  - WSFS relied entirely on the Debtors in this transaction, not beneficial holders.
- **The economic interest defense defeats Langur Maize's claims.**
  - Carlyle acted to protect its economic interest in Incora's notes, for which WSFS served as trustee.
  - There is no evidence whatsoever that any actions by Carlyle were motivated by malice, as opposed to legitimate commercial interests.
- **Langur Maize has also failed to prove harm to any unsecured holders.**

Carlyle's Conduct Did Not Intentionally Induce Any Breach

- Carlyle did not propose the transaction. ECF 610-14.
- Carlyle was approached with a pre-negotiated proposal and was unsuccessful in its own negotiation, other than securing a small cash interest concession. ECF 610-14, 610-35.
- Carlyle provided its consent to amend the Unsecured Indenture, which it was entitled to do, and executed the Exchange Agreement.
- Incora's board approved the transaction. ECF 630 (Vorderwuelbecke) at 140:15-17.
- The Company instructed WSFS to execute the supplemental indentures and issue the new 1.25L notes. ECF 1150-5, 1150-18, ECF 1350 (Healy) at 152:4-8.
  - The Company provided an opinion of counsel and officer's certificate certifying that the transaction was compliant with the Unsecured Indenture. ECF 1238-21.
  - WSFS did not communicate with, or rely on any actions by, Carlyle or Spring Creek, or any other unsecured holder. ECF 1350 (Healy) at 150:20-22; 154:16-155:2; 155:3-7.

The Economic Interest Defense Defeats Langur Maize's Claims Against Carlyle

- "Procuring the breach of a contract in the exercise of an equal or superior right is acting with just cause or excuse, and is justification for what would otherwise be an actionable wrong."
  Felsen v. *Sol Cafe Mfg. Corp.*, 24 N.Y.2d 682, 687 (1969).

- The defense has been applied broadly, including when a defendant "acted to protect its own legal or financial stake in the breaching party's business. . . . for example, where defendants were significant stockholders in the breaching party's business; where defendant and the breaching party had a parent-subsidiary relationship; where defendant was the breaching party's creditor; and where the defendant had a managerial contract with the breaching party at the time defendant induced the breach of contract with plaintiff."
  White Plains Coat & Apron Co. v. *Cintas Corp.*, 8 N.Y.3d 422, 426 (2007).

The Economic Interest Defense Applies to Creditors

- The economic interest defense is routinely applied to tortious interference claims against creditors. *See, e.g. U.S. Bank Nat'l Ass'n* v. *Triaxx Asset Mgmt. LLC*, No. 18 CIV. 4044 (VM), 2019 WL 4744220, at *9 (S.D.N.Y. Aug. 26, 2019); *Ultramar Energy Ltd. v. Chase Manhattan Bank, N.A., 579 N.Y.S.2d 353, 354 (1992)*; *Ocean Trails CLO VII* v. *MLN TopCo Ltd. ("Mitel")*, Index No. 651327/2023 (N.Y. Sup. Ct. 2023), ECF 701-2 at 56:7-57:10.

- Every case involving an uptier transaction has recognized the defense and dismissed tortious interference claims.
  - *Mitel*, Index No. 651327/2023 (N.Y. Sup. Ct. 2023), ECF 701-2 at 56:7-57:10;
  - *Audax Cred. Opportunities Offshore Ltd. v. TMK Hawk Parent, Corp.* ("*TriMark*"), 72 Misc. 3d 1218(A), at *14–15 (N.Y. Sup. Ct. 2021);
  - *ICG Glob. Loan Fund 1 DAC v. Boardriders, Inc.*, 2022 WL 10085886, at *9–10 (N.Y. Sup. Ct. Oct. 17, 2022);
  - *Robertshaw US Holding Corp. v. Invesco Senior Secured Mgmt. Inc.*, 2024 WL 3200467, at *14 (Bankr. S.D. Tex. June 20, 2024) (Lopez, J.).

Carlyle Acted to Protected Its Economic Interests in Incora

- Carlyle and Spring Creek owned a majority of the unsecured notes at the time of the transaction, and that investment would have been harmed by a Incora bankruptcy in 2022. ECF 832 (Hou) at 77:14-77:18; 78:7-9.
- Carlyle and Spring Creek consented to a transaction, which was inarguably within their rights to do.
- Carlyle and Spring Creek agreed to exchange their unsecured notes for 1.25L notes in the exchange agreement, which they were permitted to do.
- The transaction benefitted Incora by allowing it to raise $250 million of new money, conserve liquidity through PIK'ing interest, and provided flexibility to the Company for further refinancings in the future.
- The transaction benefitted Carlyle and Spring Creek by providing the issuer of their notes, for which WSFS served as trustee, with significant liquidity and runway to support the issuer's payment obligations and provided them with a second lien security interest as consideration for their consent and financial contributions.
- Langur Maize's claim that this transaction did not benefit Incora because an exchange involving all unsecured holders would have PIK'ed more interest has been squarely rejected by New York courts. *TriMark*, 2021 WL 3671541, at *15.

A Showing of Malice is Required to Overcome the Defense

- Langur Maize must show that Carlyle acted with ***malice***, that it "engaged in conduct for the ***sole purpose*** of inflicting ***intentional harm on . . . the particular plaintiff***," *U.S. Bank Nat'l Ass'n* v. *Triaxx Asset Mgmt. LLC*, 2019 WL 4744220, at *10 (S.D.N.Y. Aug. 26, 2019), or used fraudulent or illegal means. *Foster* v. *Churchill*, 87 N.Y.2d 744, 750 (1996).
- Even bad faith is insufficient to establish malice that can overcome the economic interest defense.
  - In *Boardriders,* the court applied the economic interest defense even where the court stated that the defendant "may not have acted in good faith." 2022 WL 10085886, at *25.
- There is no evidence whatsoever that could support a finding of malice by Carlyle.

Langur Maize Has Failed to Prove Harm

- The evidence at trial is that the value of the Unsecured Notes traded up after the exchange.
- By contrast, the 1.25L Notes never traded, and were illiquid. The cash coupon the 1.25L holders received was vastly smaller than the coupon the non-participating holders received.
- It is remarkable that after 30 days of trial, there is not one shred of any evidence that any purported holders of unsecured notes ***who held at that time*** wanted to participate in the exchange, but were prevented from doing so.
  - None objected.
  - None sued.
  - None has ever claimed any harm.

D. Langur Maize's Civil Conspiracy Claim Fails

Langur Maize Failed to Prove Civil Conspiracy

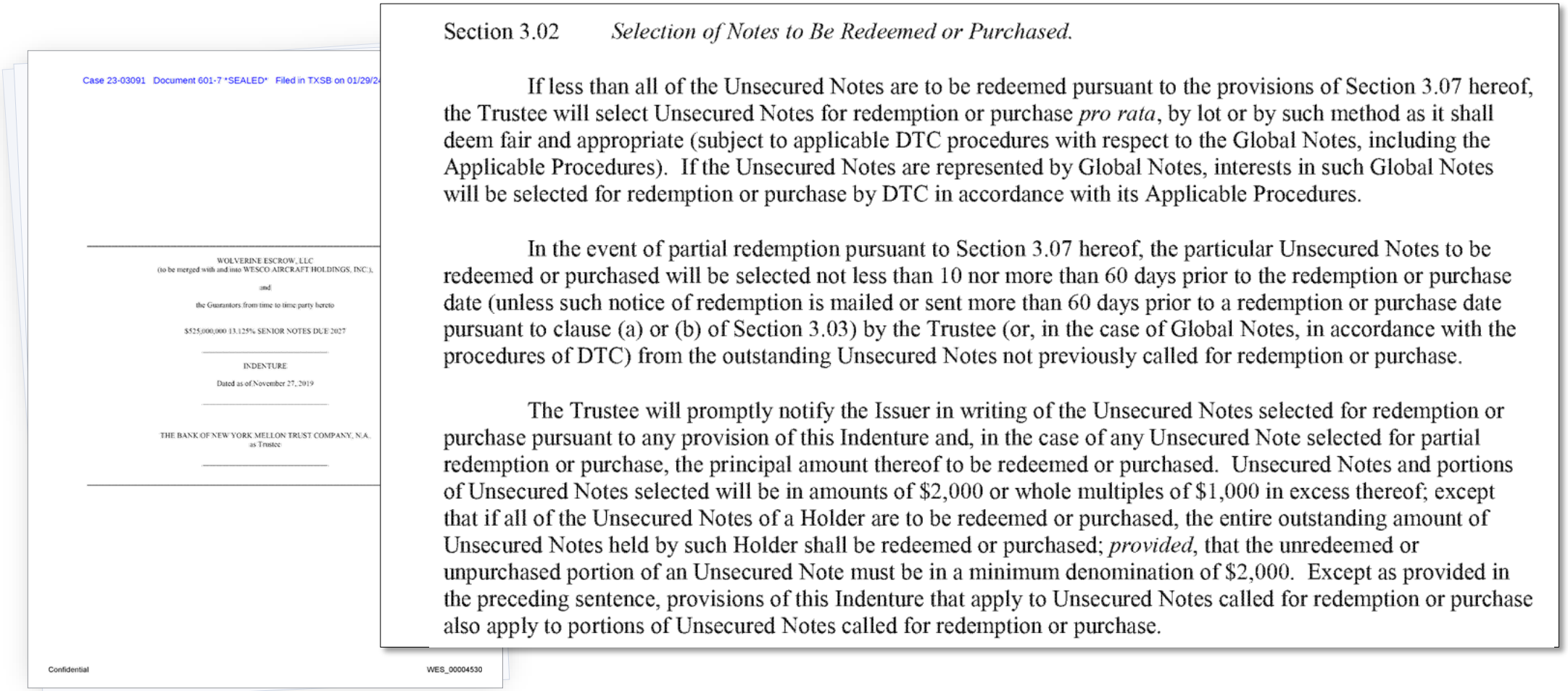
- There is no evidence of any common scheme or plan between Carlyle and Spring Creek and other participating holders. Carlyle acted ***independently*** to advance its interests.
- Carlyle negotiated with ***the Company***. It was not part of an ad hoc group.
- Carlyle repeatedly ***sought to exclude Platinum*** from participating and sought to negotiate for worse treatment for Platinum.
- Where a defendant is "initially cool to . . . [alleged co-conspirators'] participation" but eventually "acquiesces" to an agreement with the alleged co-conspirators, that conduct "hardly establishes a conspiracy." *Arlinghaus* v. *Ritenour*, 622 F.2d 629, 639-40 (2d Cir. 1980) (Friendly, J.).
- Langur Maize cites no cases to the contrary.

The Civil Conspiracy Claim is Duplicative of Tortious Interference

- Langur Maize claimed that much of the "evidence supporting [the tortious interference] claim establishes a conspiracy to tortiously interfere with the Indenture." LM PTB at 35.
- A claim that "add[s] no new allegations" to a substantive tort claim, other than stating defendants "conspired to commit the acts [elsewhere] described," must be rejected as duplicative. *Durante Bros. & Sons* v. *Flushing Nat'l Bank*, 755 F.2d 239, 251 (2d Cir. 1985).

E. Section 3.02 of the Unsecured Indenture Was Not Breached

Section 3.02 of the Unsecured Indenture Was Not Breached



Case 23-03091 Document 601-7 *SEALED* Filed in TXSB on 01/29/24

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

and

the Guarantors from time to time party hereto

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

INDENTURE

Dated as of November 27, 2019

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Trustee

Confidential WES_00004530

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.

In the event of partial redemption pursuant to Section 3.07 hereof, the particular Unsecured Notes to be redeemed or purchased will be selected not less than 10 nor more than 60 days prior to the redemption or purchase date (unless such notice of redemption is mailed or sent more than 60 days prior to a redemption or purchase date pursuant to clause (a) or (b) of Section 3.03) by the Trustee (or, in the case of Global Notes, in accordance with the procedures of DTC) from the outstanding Unsecured Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Issuer in writing of the Unsecured Notes selected for redemption or purchase pursuant to any provision of this Indenture and, in the case of any Unsecured Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Unsecured Notes and portions of Unsecured Notes selected will be in amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Unsecured Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Unsecured Notes held by such Holder shall be redeemed or purchased; *provided*, that the unredeemed or unpurchased portion of an Unsecured Note must be in a minimum denomination of $2,000. Except as provided in the preceding sentence, provisions of this Indenture that apply to Unsecured Notes called for redemption or purchase also apply to portions of Unsecured Notes called for redemption or purchase.

ECF 601-7 - 2027 Unsecured Note Original Indenture, § 3.02

This Court's Summary Judgment Ruling and Phase One Ruling Adopt Two Different Interpretations of Section 3.02

- The summary judgment ruling held:

  Langur Maize asserts even if the 2022 Transaction was not a redemption, § 3.02 still applies because "none" of the notes were redeemed. This logic would strain the language of the Indentures. Section 3.02 is not ambiguous. The quoted portion of § 3.02 does not apply to exchanges that involved no redemptions. It applies only when a redemption occurs involving less than all of the notes under the Indentures. In this context, "less than all" does not include "none." If the 2022 Transaction was not a redemption, § 3.02 does not apply to the 2022 Transaction. Summ. J. Op. at 42-43 (citations and quotations omitted).

- The Post-Trial Phase One Ruling held:

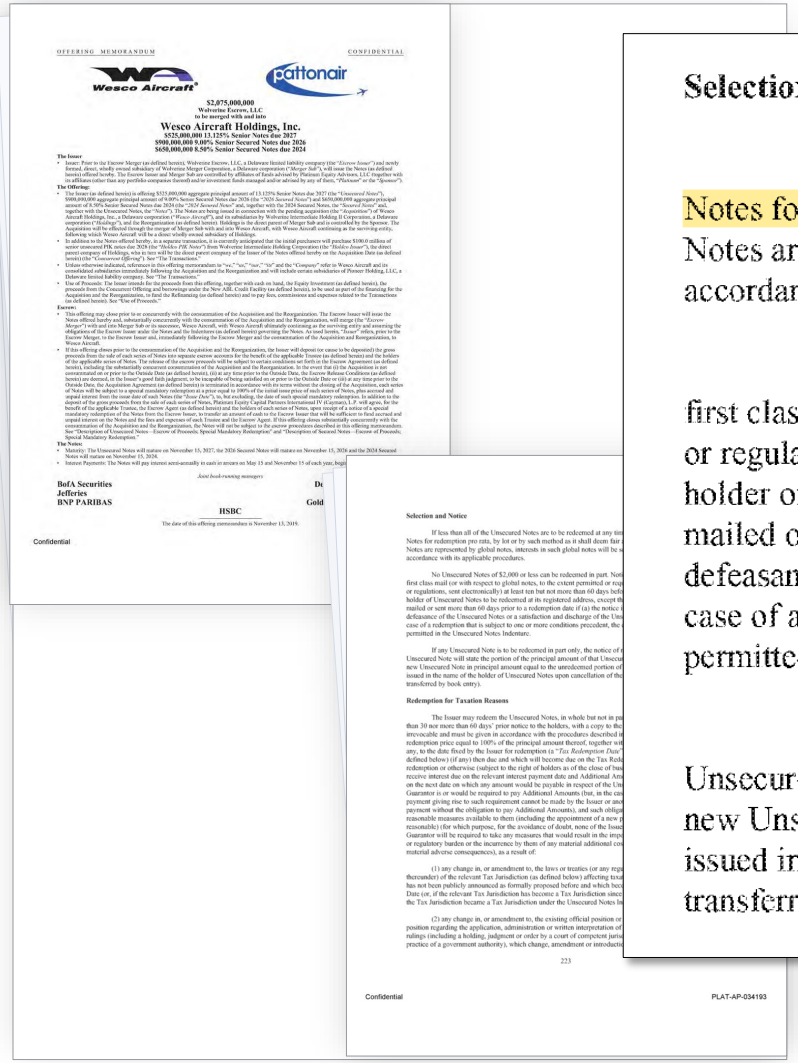
  There must be some reading of 3.02 that would trigger the "or purchase" language, and that reading occurs only if none of the notes are redeemed; that is, if there is a purchase of any of the notes, it must be done by fair method. The Court should not read the unsecured indenture so as to render a phrase meaningless, especially a phrase that has been deliberately repeated many times within a single section.

  Reading "less than all" to include none is awkward, but it's an awkward reading that fits within the only rational interpretation of the original intent of the drafters. July 10, 2024 Tr. at 36:15-25.

The Court's Divergent Rulings Imply that Section 3.02 Is Ambiguous

- A contract is ambiguous when "specific language is susceptible of two reasonable interpretations." *Ellington* v. *EMI Music, Inc.*, 24 N.Y.3d 239, 244 (2014).
  - Divergent court rulings on the same contractual language indicate ambiguity. *Hoover* v. *HSBC Mortg. Corp. (USA)*, 9 F. Supp. 3d 223, 243 (N.D.N.Y. 2014).
- At trial, the Defendants relied on the summary judgment ruling.
  - The Defendants therefore did not previously identify for the Court evidence in the record in the form of the Offering Memorandum that could resolve any ambiguity in Section 3.02.
  - Had the Defendants been aware that the summary judgment ruling was open to revisitation, additional evidence not in the record would have been proffered in further support of the Court's summary judgment interpretation.

The Preliminary Offering Memorandum's Description of Section 3.02 Does Not Refer to "Purchases"



OFFERING MEMORANDUM CONFIDENTIAL

Wesco Aircraft pattonair

$2,075,000,000
Wolverine Escrow, LLC
to be merged with and into
Wesco Aircraft Holdings, Inc.
$525,000,000 13.125% Senior Notes due 2027
$900,000,000 9.00% Senior Secured Notes due 2026
$650,000,000 8.50% Senior Secured Notes due 2024

BofA Securities
Jefferies
BNP PARIBAS
HSBC

Confidential

Selection and Notice

Redemption for Taxation Reasons

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Selection and Notice

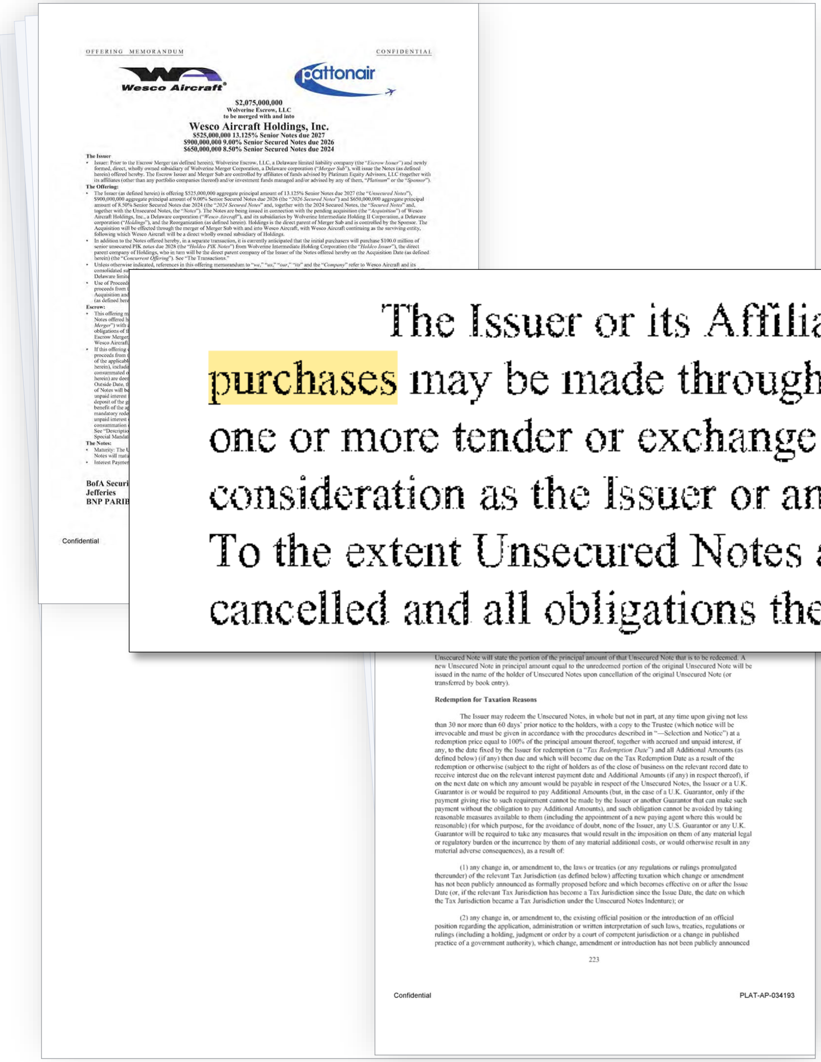
If less than all of the Unsecured Notes are to be redeemed at any time, the Trustee will select Unsecured Notes for redemption pro rata, by lot or by such method as it shall deem fair and appropriate. If the Unsecured Notes are represented by global notes, interests in such global notes will be selected for redemption by DTC in accordance with its applicable procedures.

No Unsecured Notes of $2,000 or less can be redeemed in part. Notices of redemption will be mailed by first class mail (or with respect to global notes, to the extent permitted or required by applicable DTC procedures or regulations, sent electronically) at least ten but not more than 60 days before the redemption date to each holder of Unsecured Notes to be redeemed at its registered address, except that redemption notices may be mailed or sent more than 60 days prior to a redemption date if (a) the notice is issued in connection with a defeasance of the Unsecured Notes or a satisfaction and discharge of the Unsecured Notes Indenture or (b) in the case of a redemption that is subject to one or more conditions precedent, the date of redemption is extended as permitted in the Unsecured Notes Indenture.

If any Unsecured Note is to be redeemed in part only, the notice of redemption that relates to that Unsecured Note will state the portion of the principal amount of that Unsecured Note that is to be redeemed. A new Unsecured Note in principal amount equal to the unredeemed portion of the original Unsecured Note will be issued in the name of the holder of Unsecured Notes upon cancellation of the original Unsecured Note (or transferred by book entry).

ECF 560-01 at PDF p.245.

The Preliminary Offering Memorandum Describes "Purchases" Under Section 3.07(h) as Distinct from Redemptions


OFFERING MEMORANDUM
CONFIDENTIAL
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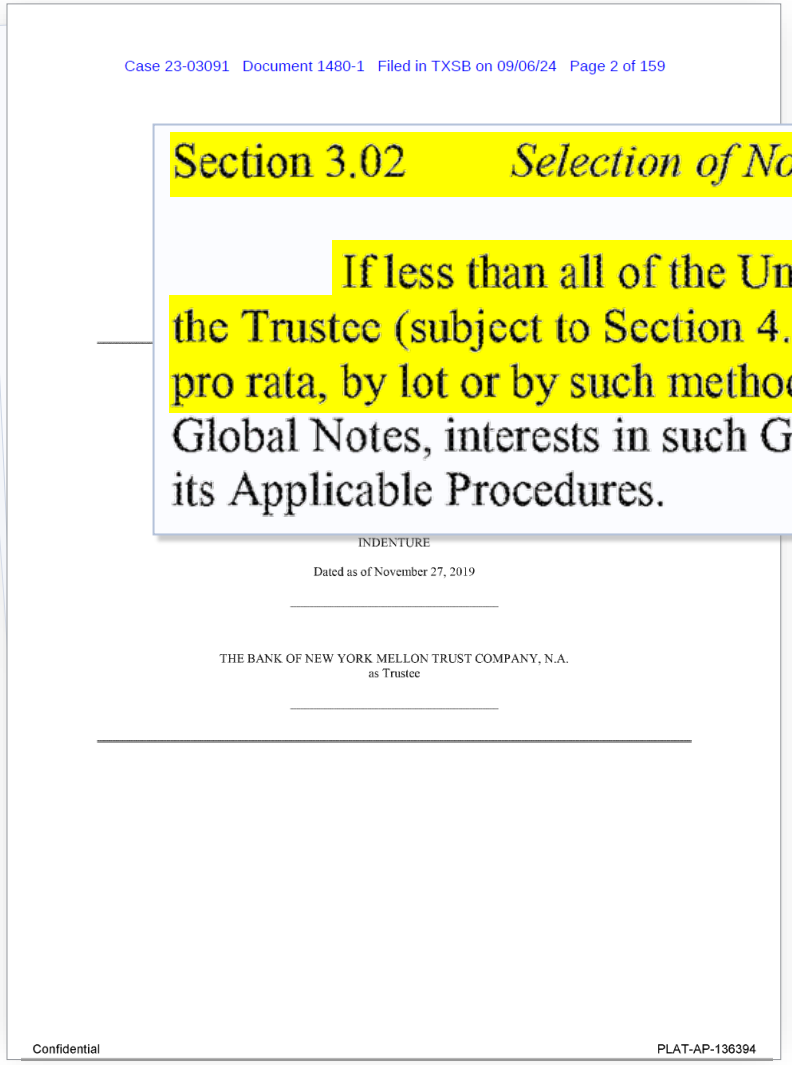
PLAT-AP-034193

The Issuer or its Affiliates may at any time and from time to time purchase Unsecured Notes. Any such purchases may be made through open market or privately negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise, upon such terms and at such prices as well as with such consideration as the Issuer or any such Affiliates may determine. The amount of such purchases may be material. To the extent Unsecured Notes are purchased or otherwise acquired by the Issuer, such Unsecured Notes may be cancelled and all obligations thereunder terminated.

ECF 560-01 at PDF p.244.

Prior Draft of Indenture: Section 3.02 Applied to Purchases as Well as Redemptions; Language Deleted from Final



INDENTURE

Dated as of November 27, 2019

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Trustee

Confidential PLAT-AP-136394

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

If less than all of the Unsecured Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee (subject to Section 4.10 or 4.14, as applicable) will select Unsecured Notes for redemption or purchase pro rata, by lot or by such method as it shall deem fair and appropriate. 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.

- An earlier draft of the Unsecured Indenture that was produced in discovery but not entered into evidence expressly included the words "or purchased" in the triggering language in Section 3.02.
- The words "or purchased" were deleted in the final Unsecured Indenture, which is consistent with an intent that Section 3.02 apply to partial redemptions only, not to purchases of notes.

ECF 1480-1 § 3.02.