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

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

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

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LANGUR MAIZE'S RESPONSE TO NON-DEBTOR COUNTERCLAIM DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Langur Maize, L.L.C. ("Langur Maize") responds here to the *Notice of Supplemental Authority* [ECF 1516] (the "Notice")[2] filed by the Non-Debtor Counterclaim Defendants (the "Defendants") to explain pivotal distinctions between the *Mitel Appeal* decision and this case. Those distinctions show that the *Mitel Appeal* decision only supports a finding of liability for the Defendants on Langur Maize's tortious interference claim.

The *Mitel Appeal* decision first finds that the tortious interference claim in that case was properly dismissed by the trial court because there was no underlying breach. The court's subsequent analysis of the economic interest defense is thus unnecessary to the holding. And in Langur Maize's case, of course, this Court already has held that the proofs at trial established an underlying breach of Section 3.02 of the Unsecured Indenture.[3]

Even if not necessary to its holding, the court's discussion of the economic interest defense in the *Mitel Appeal* decision only reinforces the unavailability of that defense to the Defendants here. As quoted in the Notice, the *Mitel Appeal* decision concludes that "***Plaintiffs' conclusory allegations that the subject transaction was 'contrary to [the borrower's] interests' are not supported by its factual allegations***." *Ocean Trails Co. v. MLN Topco Ltd.*, No. 2024-00169, slip op. at 5 (N.Y. App. Div. Dec. 31, 2024) (emphasis added). This conclusion is necessary and determinative to the *Mitel Appeal* decision because the economic interest defense is not available where the subject breach is contrary to the interests of (or works to the detriment

[2] Capitalized terms not defined herein have the meaning ascribed to those terms in the Notice or *Langur Maize's Post-Trial Brief* [ECF 1395] ("LM Closing Brief"), as applicable.

[3] July 10, 2024, Hr'g Tr. at 3:17-19 ("the selection of the 2027 notes for exchange was not done in a manner permitted under the 2027 notes indenture.").

of) the breaching party.[4] In Langur Maize's case, unlike in *Mitel*, the trial evidence established that the subject breach ***was*** contrary to Wesco's interests.[5]

The Court must look to the specific breach procured to determine whether the economic interest defense applies.[6] In *Mitel*, the breach was the "subject transaction" itself, *i.e.*, the uptier transactions through which Mitel was able to raise over $150 million in additional cash.[7] The breaches alleged in *Mitel* were committed in furtherance of Mitel's interest in the cash raise, and the Appellate Division found no support for the *Mitel* plaintiffs' allegations that they were contrary to Mitel's interests. In Langur Maize's case, the breach is not the March 2022 uptier transactions themselves, but rather the exclusion of certain holders of 2027 Notes from the Selective Exchange in violation of Section 3.02 of the Unsecured Indenture.[8] Documentary and testimonial evidence adduced by Langur Maize at trial proved that this breach of Section 3.02 — the exclusion—***was contrary to Wesco's economic interests***. The exclusion actually reduced cash interest relief that inclusion of all 2027 Noteholders would have provided.[9] And ***unlike in***

[4] *See, e.g.* LM Closing Brief at 19-20 and cases cited therein, including *Bausch & Lomb Inc. v. Mimetogen Pharms., Inc*., 2016 WL 2622013, at *11 (W.D.N.Y. May 5, 2016) ("[A]n interferer acting to protect ***its own*** direct interests, rather than its interests in the breaching party, may not raise the economic interest defense.") (emphasis in original); *Wells Fargo Bank, N.A. v. ADF Op. Co*., 855 N.Y.S.2d 68, 69 (App. Div. 2008) (economic interest defense is not applicable where defendant acted "to profit themselves to the detriment" of breaching party).

[5] *See* LM Closing Brief at 21-30 (explaining, among other things, that the inclusion of other 2027 Noteholders in the Selective Exchange would have benefitted Wesco, that the exclusion of other 2027 Noteholders harmed Wesco, and that the purported benefits received by Wesco in the Selective Exchange were illusory).

[6] *See Langur Maize's Motion to Strike and Response to Defendants' Supplemental Post-Trial Brief* [ECF No. 1484] at 8-9; LM Closing Brief at 19-21.

[7] *See*, *e.g.*, *Amended Complaint* filed in *Mitel* state court action, *Ocean Trails CLO VII v. MLN TopCo Ltd.*, Index No. 651327/2023 (N.Y. Sup. Ct. June 6, 2023), NYSCEF Doc. No. 30, ¶¶ 201-04 (alleging in the tortious interference cause of action that the defendants induced and concocted a "Scheme"); ¶¶ 11-26 (defining the "Scheme" generally as the totality of the uptier transaction); ¶ 93 (stating that, as a result of the uptier transactions, Mitel issued $156 million in new money debt).

[8] *See, e.g.* Langur Maize's *Crossclaims, Third-Party Claims and Counterclaim* [ECF 142] at ¶¶ 109-115 (alleging tortious interference for inducing the breach of Section 3.02). In its July 10, 2024 oral ruling, the Court held that the Selective Exchange breached Section 3.02 of the Unsecured Indenture. *See supra* n.3.

[9] *See supra* n.6.

Mitel, the breach of Section 3.02 had nothing at all to do with any new money that was provided in the Secured Exchange.[10]

The portion of the *Mitel Appeal* decision quoted by the Defendants also states, "It does not matter whether the borrower could have secured an even more favorable deal had it sought financing from all lenders (*see Trimark*, 2021 NY Slip Op 50794[U], *11-12)." This quote too is irrelevant to Langur Maize's tortious interference claim. In both *Mitel* and *Trimark*, the courts found that the alleged breaches benefitted the respective companies, and rejected the plaintiffs' argument that the economic interest defense did not apply because defendants might have been able to obtain an ***even more favorable*** deal had they sought financing from all lenders. [11]

Langur Maize does not argue that Wesco could have obtained an ***even more favorable*** deal if Section 3.02 had not been breached, but rather that the tortious exclusion of holders of 2027 Notes from the Selective Exchange in breach of Section 3.02 provided ***no benefit at all*** to Wesco—and was, instead, detrimental to Wesco. Because Wesco received no benefit from the breach, the economic interest defense cannot apply.

Moreover, unlike the sponsors in *Mitel* and *Trimark*, Platinum was not acting as a sponsor seeking to obtain a derivative benefit through its ownership of equity of its portfolio company; it was acting to benefit itself as a noteholder, and in doing so, demonstrably harmed Wesco by causing Wesco to exclude certain other 2027 Notes from the Selective Exchange. [12] Similarly, the Defendants cannot claim the protection of the economic interest defense simply because they

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[10] As Langur Maize has explained in prior briefing, any new money that was provided in the Secured Exchange was not conditioned upon the exclusion of 2027 Noteholders from the Selective Exchange. *See* LM Closing Brief at 21-22.

[11] *See Langur Maize's Response To The Platinum Defendants' Renewed Motion For Summary Judgment* [ECF 898] at 8, n.18.

[12] *See id.* at 8-9; LM Closing Brief at 21-30.

were acting to protect their interests as creditors. Again, the defense applies only when those interests ***align*** with the interests of the breaching party.[13] Here, the Defendants' interests in excluding holders of 2027 Notes from the Selective Exchange did not align with, and were contrary to, Wesco's interests. The economic interest defense is unavailable to the Defendants, and the *Mitel Appeal* decision only reinforces that conclusion.

Respectfully submitted,

DATED: January 6, 2025

JONES DAY

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[13] *See* LM Closing Brief at 21 and cases cited therein, including *Hudson Bay Master Fund Ltd. V. Patriot Nat'l, Inc.*, 2019 WL 1649983, at *16 (S.D.N.Y. Mar. 28, 2019) ("New York courts have clearly established that interference is justified only where a shareholder acts based on ***interests that are aligned with those of the breaching party*** — that is, where the shareholder acts to protect the breaching party's business and thereby preserve the value of her interests therein.") (emphasis added).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed on this January 6, 2025, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ Michael C. Schneidereit
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