

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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

SSD INVESTMENTS LTD., et al.,

Counterclaim Plaintiffs,

v.

WESCO AIRCRAFT HOLDINGS, INC., et al.,

Counterclaim Defendants.

**2024/2026 HOLDERS' RESPONSE TO NON-DEBTOR
COUNTERCLAIM DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

The 2024/2026 Holders hereby respond to the Non-Debtor Counterclaim Defendants' Notice of Supplemental Authority (ECF 1516, the "Notice") and, as a supplement to the filing by Langur Maize, L.L.C. ("Langur Maize") (ECF 1517), state as follows²:

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.

² This submission is not meant to be an exhaustive recitation of reasons why the Non-Debtor Counterclaim Defendants are liable for tortious interference or why the *Mitel* decision is inapposite.



1. Langur Maize correctly notes that the Appellate Division’s discussion of the economic interest defense was unnecessary to its ruling and is thus *dicta*. Likewise, Langur Maize correctly identifies the key difference between Platinum’s role in the 2022 Transaction, and that of the equity sponsor in the *Mitel* transaction. Here, Platinum acted in its direct interest as a *creditor*. Indeed, as proven at trial, Platinum sought to place unsecured bonds into the fulcrum position in the event of a bankruptcy, transforming those unsecured bonds into a secured position, and rolling up an illusory promissory note, without providing any new capital.³ The *Mitel* private equity sponsor, Searchlight, was not alleged to have been Mitel’s creditor.⁴

2. The Non-Debtor Counterclaim Defendants’ attempt to equate Platinum—which procured a breach to advance its direct interests as a bondholder—to the *Mitel* sponsor is thus misplaced.

3. So too is any comparison of PIMCO and Silver Point’s role in coercing the breach of the 2026 Indenture, with Credit Suisse, the sole lender accused of tortious interference in *Mitel*.

4. As an initial matter, Credit Suisse was not at all similarly situated to PIMCO and Silver Point. The *Mitel* transaction involved a credit agreement, not a bond indenture, and therefore the claims against participating lenders (the equivalent of PIMCO and Silver Point here) were predicated on breaches of contract, not tortious interference, since all such lenders were indisputably in contractual privity with each other. Credit Suisse was sued for tortious interference

³ See ECF 1394 at 34-35; *see, e.g.*, ECF 879 (O’Connell, Feb. 21 Tr.) at 187:5-188:11 (Debtors’ contemporaneous projections assumed that the \$25 million promissory note would not be paid at maturity); ECF 610-18, at 7 (March 2, 2022, PJT and Milbank reiterating Platinum’s inclusion in exchange of unsecured holdings for “Super Senior Second-Out Debt”).

⁴ See ECF 1516-1 (“*Mitel Appeal Decision*”) at 5 (“Plaintiffs’ own allegations make clear that Searchlight sought to enhance the borrower’s prospects by raising money to buy another company and pay down debt . . .”).

in its capacity as Administrative Agent and, as alleged, Credit Suisse’s objective was the early repayment of its separate, outstanding revolving loans.⁵

5. PIMCO and Silver Point, by contrast, engineered the Company’s breach using their “power position”⁶ as majority holders, in order to attain an outsized rate of return by creating new super-senior positions that were secured by liens unlawfully taken from their co-noteholders.⁷ PIMCO and Silver Point had no rights to those liens, let alone equal or superior rights, thus they are not entitled to an economic interest defense as secured creditors under New York law.⁸

6. Accordingly, the Appellate Division’s *Mitel* decision is inapposite. It does not alter the legal framework within which this Court should assess the unique facts of this case, as established at trial.

⁵ See, e.g., *Ocean Trails CLO VII v. MLN TopCo Ltd.*, Index No. 651327/2023 (N.Y. Sup. Ct. June 6, 2023), ECF 30 (Am. Compl.), ¶ 9 (“Credit Suisse . . . wanted its own piece of the Original Revolver to be paid down early as promised by Mitel”); *id.* ¶ 18 (“Credit Suisse’s participation was led by an ambitious banker who had promised his colleagues an early recovery on the bank’s participation in the Mitel revolver.”). See also *Mitel Appeal* Decision at 5.

⁶ ECF 1474 (July 10, 2024 Oral Ruling Tr.) at 11:13-18.

⁷ See, e.g., ECF 1485 at 5 & n.4; ECF 1394 at 34. ECF 700-58 at 3 (Sept. 28, 2021 PIMCO deck on Incora); see also ECF 955 (Dostart, Feb. 28 Tr.) at 198:14-25, 199:21-200:4, 226:14-227:5; ECF 710-54 at 2; ECF 1013 (Prager, Feb. 12 Tr.) at 81:1-83:6; ECF 700-58 at 3 (“attach remains at ~15% LTV”); see also *Hudson Bay Master Fund Ltd. v. Patriot Nat’l Inc.*, No. 16 Civ. 2767, 2019 WL 1649983, at *16 (S.D.N.Y. Mar. 28, 2019) (emphasis in original) (citation omitted) (“[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.”)

⁸ See *Ultramar Energy v. Chase Manhattan Bank*, 579 N.Y.S.2d 353 (N.Y. App. Div. 1st Dep’t 1992) (applying economic interest defense to secured creditor exercising equal or superior rights); *Abele Tractor & Equip. Co. v. Schaeffer*, 91 N.Y.S.3d 548, 552 (N.Y. App. Div. 3rd Dep’t 2018) (same).

Dated: January 7, 2025
New York, New York

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response was served on January 7, 2025, on all parties entitled to receive service through the Court's ECF system.

/s/ Zachary D. Rosenbaum
Zachary D. Rosenbaum