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

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| *In re*<br><br>**WESCO AIRCRAFT HOLDINGS, INC.**, *et al.*,<br><br>Debtors.[1] | Case No. 23-90611 (MI)<br><br>Chapter 11<br><br>(Jointly Administered) |

**THE 2024/2026 NOTEHOLDER GROUP'S OBJECTION TO FIRST AMENDED DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF WESCO AIRCRAFT HOLDINGS, INC., *ET AL.***
**Related to Docket Nos. 964, 1133 and 1134.**

The ad hoc group of holders (the "2024/2026 Noteholder Group") of the 8.50% notes due 2024 (the "2024 Notes") and the 9.00% notes due 2026 (the "2026 Notes") hereby files this objection (the "Objection") to the *First Amended Disclosure Statement for the Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [ECF No. 1134] (as amended, the "Disclosure Statement").[2] In support of this Objection, the 2024/2026 Noteholder Group respectfully represents as follows:

## I. PRELIMINARY STATEMENT

For the reasons set forth below, the 2024/2026 Noteholder Group submits that approval of the Disclosure Statement at this time is premature. The Court should not approve the Disclosure Statement until there is resolution of the claims asserted in the 2022 Financing Adversary Proceeding. Indeed, the Debtors' insistence on moving forward with approval of a disclosure

[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] Capitalized terms used but not defined in this Objection have the meanings ascribed to them in the Disclosure Statement or Plan (as defined below), as appropriate.



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statement and confirmation of a plan shortly thereafter appear to be just the next steps in the Debtors' and certain of its favored creditors' likely attempt to moot that litigation in hopes of cleansing the 2022 Financing Transaction - a controversial insider transaction - through these chapter 11 cases. The Debtors' proposed confirmation schedule could easily result in a hearing on confirmation of the Plan occurring before the 2022 Financing Adversary Proceeding is concluded. Further, approving a disclosure statement before resolution of that litigation runs the risk of creditors being solicited to vote on a plan that is accompanied by an out-of-date, at best, or completely misleading, at worst, disclosure statement.

Nevertheless, if the Court is inclined to approve the Disclosure Statement at this time, the 2024/2026 Noteholder Group requests that the Court set a hearing on confirmation of the Plan on a date that accommodates resolution of the 2022 Financing Adversary Proceeding prior to a confirmation hearing. Finally, certain additional information that would be needed for a creditor to cast an informed vote is missing from the Disclosure Statement, such that it should not be approved until that information is included.[3]

## II. SUMMARY OF OBJECTION

1. Members of the 2024/2026 Noteholder Group collectively own approximately $112,869,000 of the outstanding principal amount of the 2024 Notes and approximately $337,121,811 of the outstanding principal amount of the 2026 Notes, for a total of approximately $450,000,000. The Disclosure Statement assumes that the total amount of the General Unsecured Claims class under the Plan is approximately $650 million to $690 million. The 2024/2026

[3] The 2024/2026 Noteholder Group provided a list of additional requested disclosures to the Debtors prior to filing this Objection and will work with the Debtors to resolve as many of its objections as possible in advance of the hearing on the Disclosure Statement although, as noted below, certain of its objections are not resolvable at this time.

Noteholder Group thus constitutes approximately 65% to 69% of the assumed General Unsecured Claim class under the Plan.

2. In order for a court to approve the Disclosure Statement, it must find that it contains "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . ." Because this Disclosure Statement does not contain such information, approval should be denied at this time.

3. As the Debtors have previously recognized, no reorganization is possible or practical in this case without resolution of the litigation currently pending in this Court concerning the March 2022 transaction (the "2022 Financing Transaction"). Indeed, the issues being litigated in the 2022 Financing Adversary Proceeding strike at the very heart of the Debtors' capital structure – including which creditors are secured, unsecured, or subordinated. And while the parties have briefed dispositive motions in the 2022 Financing Adversary Proceeding and the Court held oral argument in October 2023, the Court has not yet ruled on those motions. Trial is not scheduled to begin until January 18, 2024, one week *after* the hearing on the Disclosure Statement.

4. In the face of all this uncertainty, on December 27, 2023, the Debtors filed their *First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [ECF No. 1133] (as amended, the "Plan") and the Disclosure Statement which, for the first time, disclosed the economics of the Debtors' (and Committee's) proposed restructuring.

5. The Plan and Disclosure Statement assume that the 2024/2026 Noteholder Group – who were secured creditors of the Debtors prior to the 2022 Financing Transaction – are wholly unsecured, and treat them just like any other unsecured creditor of the Debtors, notwithstanding

the substantial claims the 2024/2026 Noteholder Group has raised with respect to the propriety of the 2022 Financing Transaction. In other words, the Plan assumes that this Court will deliver the Debtors and other counterclaim defendants a complete victory in the 2022 Financing Adversary Proceeding.

6. The Debtors nominally recognize the impossibility of their Plan without a favorable resolution of the litigation in their favor. One of the conditions to effectiveness of the Plan is a ruling on the 2022 Financing Litigation satisfactory to the Debtors. See Plan, Art. IX.A.12. Yet the Plan provides the Debtors with a backdoor to attempt to frustrate or pretermit any unfavorable outcome to the litigation by making that condition waivable, followed by Plan "finality," vesting of assets in the Reorganized Debtor, release of claims, and distributions under the Plan. In other words, the Debtors' fallback position, if they or the other counterclaim defendants face one or more adverse rulings in the litigation, is to seek to equitably moot such rulings.

7. Approving the Disclosure Statement at this time is premature. Without the benefit of the Court's ruling on the dispositive motions and the trial in the 2022 Financing Adversary Proceeding, the contours of the Debtors' capital structure is a massive question mark hanging over these cases. And, thus, any chapter 11 plan's proposed allocation of value to creditors is, at best, a shot in the dark, making solicitation of the Plan a potentially useless exercise. That fact distinguishes this case from most others, where there is not such uncertainty concerning such basic issues at the time a disclosure statement is approved.

8. At a minimum, if the Court is inclined to approve the Disclosure Statement now and authorize the Debtors to commence voting on the Plan, the hearing on confirmation of the Plan should be scheduled at a time that accommodates resolution of the 2022 Financing Adversary Proceeding prior to confirmation.

9. Further, the 2024/2026 Noteholder Group reserves all rights to object to confirmation of the Plan on any grounds. The Plan as currently written is non-confirmable and should be summarily denied. In particular, notwithstanding the optimistic legal assumptions that the Disclosure Statement makes, it also shows a company that will likely not generate sufficient cash flow to service post-emergence debt on a current basis, absent the use of payment in kind debt for an undisclosed period of time. As a result, the Plan that the Disclosure Statement describes is not feasible.

## III. JURISDICTION AND VENUE

10. The court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## IV. BACKGROUND

12. ***The Chapter 11 Cases***. On June 1, 2023 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Texas.

13. ***The 2022 Financing Adversary Proceeding.*** The Debtors commenced the 2022 Financing Adversary Proceeding on the Petition Date. In the 2022 Financing Adversary Proceeding the Debtors sought to stay the State Court Actions, which included an action – the 2026/2024 Noteholders Action - commenced by certain members of the 2024/2026 Noteholder Group in the New York Supreme Court in October 2022. As recited in the Disclosure Statement, the complaint in that action alleges "that the 2022 Financing Transactions violated Incora's original indentures and constituted an insider transaction that transferred value away from non-participating noteholders. The complaint seeks declarations that the 2022 Financing Transactions were not permitted under the original indentures, and asserts claims for breach of contract, breach

of the implied covenant of good faith and fair dealing, tortious interference with contract, fraudulent transfer, preferential transfer, and conversion . . ." See Disclosure Statement, at p. 27.

14. Throughout these cases, the Debtors have repeatedly acknowledged that resolution of the 2022 Financing Adversary Proceeding is central to determining the claim priorities and other treatment to be set forth in any plan:

- "The treatment of the 2022 Transaction ***is of critical importance in these Chapter 11 Cases—the Debtors' capital structure is, after all, the backbone of any potential plan of reorganization*** . . ." See *Emergency Motion for an Order (I) Declaring that the Automatic Stay Applies to the Non-Debtor Parties in the New York State Actions or Extending the Automatic Stay to the Non-Debtor Parties and (II) Preliminarily Enjoining the New York State Actions* [Adv. Pro. ECF No. 2] (the "Stay Motion"), at p. 31 (emphasis added).

- "But it's important to remember that there are two lawsuits and there are two lawsuits about the exact same transaction. And ***that transaction is key to figuring out the priorities in this case, to figuring out the plan, figuring out our path forward.***" See June 6, Hearing Tr. at 24:24-25:3 (emphasis added).

- "However, it does have some bearing on the debtors' case because ***the debtors are looking to move forward with a plan process. The debtors can't do that without an order being entered on what their capital structure looks like***." See October 11, 2023 Hearing Tr. at 12:4-13 (emphasis added).

15. On July 9, 2023, the Debtors filed their First Amended Complaint in the 2022 Financing Adversary Proceeding. See Adv. Pro. ECF No. 63. On July 31, 2023, certain members of the 2024/2026 Noteholder Group filed their First Amended Counterclaims. See Adv. Pro. ECF No. 144. On August 8, 2023, the parties filed their Answers. On August 23, 2023, the parties filed their dispositive motions (the "Dispositive Motions").

16. On or about August 22, 2023, the Debtors and certain members of the 2024/2026 Noteholder Group stipulated to a stay of the First New York State Court Action "until the earlier of (i) the resolution of the Amended Counterclaims and the Effective Date of a plan of reorganization, or (ii) a further order of this Court terminating the stay of the First New York State

Action." See *Joint Stipulation and Agreed Order Staying the First New York State Court Action* [Adv. Pro. ECF No. 194], at pp. 4-5.

17. The Court held a hearing on the Dispositive Motions on October 11, 2023, but has not yet ruled on the Dispositive Motions. Further, trial is scheduled to begin on January 18, 2024, which is one week *after* the currently scheduled January 11, 2024 hearing on the Disclosure Statement. Thus, if the current schedule holds, creditors may be voting on the Plan before knowing the Court's ruling on the Dispositive Motions and the result of the trial.

18. ***The Plan and Disclosure Statement***. On November 17, 2023, the Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [ECF No. 963] and their *Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.* [ECF No. 962]. These filings contained few details of the Debtors' proposed treatment of creditors and were fairly characterized as "placeholders", although those filings did, in the Debtors' view at least, start the clock ticking on a disclosure statement objection deadline and hearing. It was not until almost six weeks later, on December 27, 2023, just in advance of a holiday weekend, only 15 days before the scheduled hearing on the adequacy of the Disclosure Statement, and only eight days before the deadline to object, the Debtors filed the Plan and the Disclosure Statement. The December 27, 2023 versions of the Plan and Disclosure Statement disclosed, for the first time, the proposed treatment of creditors and estimated recoveries, among other things.

19. The Debtors assert that the Plan constitutes "an arms' length and good faith compromise and settlement of", among other things, "all Claims and Interests and controversies resolved pursuant to the Plan, including (a) all Claims and controversies related to the 2022 Financing Transactions and the Financing Litigation . . ." See Disclosure Statement, at p. 50.

However, prior to filing the Plan, the Debtors did not engage in any settlement discussions with the 2024/2026 Noteholder Group regarding this proposed settlement.

20. The Plan contemplates that (i) holders of the 1L Notes will receive the "New Takeback Notes" and 96.5% of the New Common Equity, subject to dilution by a Management Incentive Plan; (ii) holders of the 1.25L Notes will receive no distribution; (iii) the holders of the 2024 Notes and the 2026 Notes will be classified with holders of General Unsecured Claims, who will collectively receive 3.5% of the New Common Equity, subject to dilution by a Management Incentive Plan.

21. While the Debtors have attempted to paint the 2024/2026 Noteholder Group as holdouts unwilling to engage with them, the current Plan demonstrates refusal by the Debtors and their sponsor to propose a plan that reflects anything other than complete validation of their 2022 scheme to divest the 2024/2026 Noteholder Group of their bargained-for liens. The 2024/2026 Noteholder Group has engaged with the Debtors on potential resolution of its claims and requested and received in late December information to diligence potential plan constructs. The members of the 2024/2026 Noteholder Group have been working hard to diligence that information, including over the recent holidays.

## V. OBJECTION

### A. A Disclosure Statement Must Contain "Adequate Information".

22. Under section 1125(b) of the Bankruptcy Code, a disclosure statement must contain "adequate information" before the debtor may solicit acceptance of a plan of reorganization or liquidation. 11 U.S.C. §1125(b). The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any

successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan . . .” 11 U.S.C. § 1125(a)(1).

**B. The Disclosure Statement Should Not Be Approved at This Time Because It Does Not Sufficiently Disclose the Impact of and Risks Related to the Outcome the 2022 Financing Adversary Proceeding.**

23. The Debtors state that the Plan is predicated on the assumption that the claims asserted by certain members of the 2024/2026 Noteholder Group in the 2022 Financing Adversary Proceeding are without merit. See *Debtors’ Memorandum of Law in Opposition to the 2024/2026 Holders’ Amended and Supplemental Standing Motion* [ECF No. 1136], at p. 88 (“the plan the Debtors have proposed assumes the validity of the 2022 Transaction and the capital structure it created . . .”).

24. While the 2024/2026 Noteholder Group acknowledges that these chapter 11 cases involve more than the claims asserted by the various parties in the 2022 Financing Adversary Proceeding, it is beyond doubt that resolution of those claims is a major component of these cases and, further, that resolution of some or all of those claims in favor of the holders of the 2024 Notes and the 2026 Notes could have major implications on the appropriate treatment of creditors in any chapter 11 plan in these cases. Indeed, the Debtors have recognized the importance of determining their capital structure in previous filings made in this Court, noting that “[t]he treatment of the 2022 Transaction is of ***critical importance*** in these Chapter 11 Cases”, see Stay Motion, at p. 31 (emphasis added). Debtors’ counsel has made similar statements in open court throughout these cases. See June 6, 2023 Hearing Tr. At 24:24-25:3 (the 2022 Financing Transaction “***is key to figuring out the priorities in this case, to figuring out the plan, figuring out our path forward.***”) (emphasis added); October 11, 2023 Hearing Tr. At 12:4-13 (“***the debtors are looking to move***

***forward with a plan process. The debtors can't do that without an order being entered on what their capital structure looks like***.") (emphasis added).

25. Thus, the resolution of the claims in the 2022 Financing Adversary Proceeding, and the effect that resolution has on the Debtors' capital structure and distributions to creditors, should be a part of any disclosure statement approved by this Court. Because that cannot be disclosed at this time, the 2024/2026 Noteholder Group submits that it is premature to approve the Disclosure Statement. If the Court were to approve the Disclosure Statement and the Debtors were to commence solicitation of the Plan after such approval, but before resolution of the 2022 Financing Adversary Proceeding, there is a risk that solicitation of the Plan could be in vain, resulting in significant and unnecessary expenditures of time and money by the Debtors' estates to the detriment of all of its creditor constituencies.

26. Further, if, as the Debtors seem to contemplate, a confirmation hearing is scheduled in mid-to-late February, and before resolution of the 2022 Financing Adversary Proceeding, the Debtors could emerge from bankruptcy with great uncertainty as to their capital structure. The Debtors' constituents – employees, customers, vendors – may not know who in fact rightfully owns the Debtors after emergence, which could result in a disruption in the Debtors' operations, with the reorganized Debtors mired in litigation that stretches into the future. This risk to the Debtors' business is not disclosed in the Disclosure Statement.

### C. The Disclosure Statement Should Not Be Approved at This Time Because It Does Not Sufficiently Disclose Certain Other Information Necessary to Cast an Informed Vote on the Plan.

27. The Disclosure Statement fails to disclose other information that would be required for a creditor to cast an informed vote on the Plan. That information includes: (i) the terms of the Management Incentive Plan and its effect on creditor recoveries; (ii) the terms of the Exit Facilities and their effect on creditor recoveries; (iii) the consequences to creditors if the Debtors do not

prevail in the 2022 Financing Adversary Proceeding; and (iv) the potential effect of the indemnification of the 1L Indenture Trustee and Holders of the 1L Notes Claims, which are improper as proscribed indemnification of pre-petition claims, which are also largely contingent, on creditor recoveries. To be clear, remedying these deficiencies in disclosure would not make the otherwise unconfirmable Plan or Committee Acceptable Plan confirmable.

28. The Disclosure Statement also does not contain any analysis of the estate causes of action to be released under the Plan or why they should be released. Further, to the extent the Committee's settlement with the Debtors is deferred to confirmation, the Disclosure Statement should not only disclose, but also contain an analysis of, the basis for the Committee's settlement, including the Committee withdrawing its motion seeking standing to pursue certain causes of action.

29. Moreover, the Disclosure Statement fails to explain that many other bases upon which the Plan rests are prohibited by relevant case law, at least absent consent and acceptance by the creditors. A non-exhaustive list of deficiencies of disclosure includes: (i) current and former officers and directors of the Debtors receive exculpations for pre-petition conduct, including conduct related to the pre-petition 2022 Financing Transaction; and (ii) certain parties receive pre- and post-petition releases and indemnification without contributing value.

## VI. RESERVATION OF RIGHTS

30. Given that it was only recently filed, the 2024/2026 Noteholder Group is still in the process of reviewing the Plan. The 2024/2026 Noteholder Group reserves its right to object to confirmation of the Plan on any basis, including but not limited to that (a) the feasibility of the Plan, as the Debtors will not generate sufficient cash flow to service post-emergence debt on a current basis, (b) the proposed exculpation and release provisions of the Plan, which appear to be intended to shield certain non-Debtors from liability with respect to the 2022 Financing

Transaction, (c) the retention of jurisdiction contained in the Plan is overbroad and inappropriate as the many of specific examples of retained jurisdiction could have no conceivable effect on distributions under the Plan, (d) the Plan has not been proposed in good faith, (e) the Plan discriminates unfairly against and is not fair and equitable with respect to the holders of the 2024 Noteholders and the 2026 Noteholders, and (f) the Plan's proposed indemnification of certain parties, which are improper as proscribed indemnification of pre-petition claims, which are also largely contingent.

31. The 2024/2026 Noteholder Group reserves the right to raise additional grounds for relief requested in this Objection and to supplement and/or amend this Objection, including in response to amendments to the Plan and Disclosure Statement that the Debtors may file on or after the date hereof.

**WHEREFORE**, the 2024/2026 Noteholder Group respectfully requests this Court: (a) not approve the Disclosure Statement at this time, or, in the alternative, if the Court is inclined to approve the Disclosure Statement at this time, set a hearing on confirmation of the Plan on a date that accommodates resolution of the 2022 Financing Adversary Proceeding prior to a confirmation hearing; and (b) award the 2024/2026 Noteholder Group any and all relief to which it may be entitled, at law or in equity.

Dated: January 4, 2024

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**Certificate of Service**

I certify that on January 4, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to the notice parties on the attached service list via e-mail.

*/s/ John P. Melko*

*John P. Melko*

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