Docket #1209 Date Filed: 01/11/2024

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 (MI) Chapter 11 (Jointly Administered)

DEBTORS' OMNIBUS REPLY TO RESPONSES TO THEIR MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT, (II) APPROVING SOLICITATION AND VOTING PROCEDURES, (III) APPROVING FORMS OF BALLOTS, (IV) SCHEDULING A CONFIRMATION HEARING, AND (V) ESTABLISHING NOTICE AND OBJECTION PROCEDURES

(RELATED TO DOCKET NOS. 964, 1168, 1170 AND 1208)

[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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The above-captioned debtors and debtors in possession (the "***Debtors***"[2] and, together with their non-Debtor subsidiaries, "***Incora***") respectfully state as follows, in support of the *Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement, (II) Approving Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Scheduling a Confirmation Hearing, and (V) Establishing Notice and Objection Procedures* [Dkt. No. 964] (the "***Motion***"),[3] and responding to *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.* [Dkt. No. 1170] (the "***Formerly Secured Noteholder Objection***") and the *Reservation of Rights of UMB Bank., N.A., as Successor Indenture Trustee for the 8.5% Notes Due 2024 and the 9.0% Notes Due 2026, to the Debtors' Motion for Entry of an Order Approving Disclosure Statement, Approving Solicitation and Voting Procedures, Approving Forms of Ballots, Scheduling a Confirmation Hearing, and Establishing Notice and Objection Schedules* [Dkt. No. 1168] (the "***UMB Reservation of Rights***"). A chart summarizing the issues raised in those responses is attached as **Annex 1**.

PRELIMINARY STATEMENT

1. The only objection to the Motion was filed by the ad hoc group of formerly secured noteholders (the "***Formerly Secured Noteholder Group***"), who argue that the Plan should not be solicited until the 2022 Financing Adversary Proceeding has been resolved and that the Disclosure Statement contains insufficient information.

2. Contrary to the Formerly Secured Noteholder Group's argument, it is entirely appropriate for the Debtors to move forward with their proposed plan of reorganization. The Chapter 11 Cases have lasted over seven months at great cost to the estates, the Debtors have nearly completed their operational restructuring, and the Debtors have now obtained agreement from

[2] A detailed description of the Debtors and their businesses is set forth in the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* (the "***First Day Declaration***") [Dkt. No. 13], filed with the Debtors' voluntary petitions for relief filed under title 11 of the United States Code (the "***Bankruptcy Code***"), on June 1, 2023 (the "***Petition Date***"). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed on June 16, 2023; no trustee, examiner or other official committee has been appointed.

[3] Capitalized terms used but not defined in this Reply have the meanings ascribed to them in the Motion.

several key stakeholders on the material terms of the Plan. To be sure, not every creditor will vote to accept the Plan. But the Debtors have secured support for the Plan (or at least agreements not to object) from a broad coalition of stakeholders, including the Committee, the First Lien Noteholder Group, the leading holders of 1.25L Notes, and the leading holder of 2027 Unsecured Notes. Moreover, the filing and solicitation of the Plan does not prejudice the Formerly Secured Noteholder Group from pursuing claims and arguments in the upcoming trial in the 2022 Financing Adversary Proceeding. Nor does the Plan purport to release any "direct" claims that may be held by any party without its consent. In this context, the time is right to move toward confirmation and emergence.

3. The Formerly Secured Noteholder Group also objects to the Disclosure Statement's sufficiency in various respects. Although the creditors in that group appear to know already how they intend to vote on the Plan, they nevertheless assert that the Disclosure Statement contains insufficient information for creditors to cast an informed vote. As described below, the Debtors have proposed modifications to the Disclosure Statement and related materials to accommodate certain of the Formerly Secured Noteholder Group's suggestions. With those modifications, the Debtors believe that the Disclosure Statement provides more than adequate information to allow creditors to make informed decisions.

REPLY: THE DISCLOSURE STATEMENT PROVIDES ADEQUATE INFORMATION.

I. THE DISCLOSURE STATEMENT ADEQUATELY EXPLAINS THE RISK OF AN ADVERSE RESULT IN THE 2022 FINANCING ADVERSARY PROCEEDING.

4. The Formerly Secured Noteholder Group's principal argument is that the Disclosure Statement does not adequately disclose "the effect" that the "resolution of the claims in the 2022 Financing Adversary Proceeding . . . has on the Debtors' capital structure and distributions to creditors." Formerly Secured Noteholder Obj. ¶ 25. Along the same lines, the UMB Reservation of Rights suggests that the Debtors are "put[ting] the cart before the horse" by filing the Plan before the 2022 Financing Adversary Proceeding has been resolved. UMB Res. of Rights at 3. Though asserted under the guise of a disclosure objection, the Formerly Secured Noteholder Group argues

that no amount of information could possibly remedy this alleged infirmity—only a final outcome in the pending litigation will do. Nothing in section 1125 of the Bankruptcy Code requires that result. In reality, what the Formerly Secured Noteholder Objection demands is not disclosure, but delay.

5. The time to propose and solicit a plan of reorganization is now. Since the outset of these cases, the Debtors have taken a consistent position that the 2022 financing transactions were valid and that the resulting capital structure—in which the Formerly Secured Noteholders are unsecured—should be the basis for their restructuring. The Debtors have gained remarkable support for the Plan premised on that approach: the Committee has agreed to abate its standing motion and support the Plan (including the settlements and releases contained therein) in exchange for unsecured creditors receiving cash and equity; the First Lien Noteholder Group and the leading holders of 1.25L Notes have likewise agreed to support the Plan and give up some or all of their recoveries in favor of unsecured creditors; and the leading holder of 2027 Unsecured Notes has agreed to withdraw its own standing motion and preserve only its "direct" causes of action against the defendants in its portion of the Financing Litigation. Thus, the Debtors have obtained broad support for the Plan from creditors throughout their capital structure.

6. It is true that some parties (most notably, the Formerly Secured Noteholder Group) may oppose the Plan. But that is hardly a reason to defer solicitation. As the Court recently noted:

> I know that the modern trend is don't file a disclosure statement hearing until you're ready for your confirmation hearing, and I'm inclined to get disclosure statement hearings, get the disclosure out, and let people negotiate . . . on changes to it later . . . . There's no real prejudice—there is prejudice because there's the gun of a confirmation hearing coming up, but there's no prejudice in terms of any legal findings of trying to get that done.

Audio Recording of Dec. 18, 2023 Status Conf. at 17:01, Dkt. No. 1098. The burdensome costs of these Chapter 11 Cases, the approaching post-petition financing maturity, and the broad consensus the Debtors have already built, all drive home the necessity and reasonableness of soliciting votes on the Plan now.

7. What other option is there? The Debtors have nearly completed their contract re-negotiation process—the backbone of their operational restructuring. It is hardly reasonable to now expect the Debtors to wait until ***all*** issues in the 2022 Financing Adversary Proceeding have been litigated to conclusion before filing a chapter 11 plan. To be clear, the Debtors fully intend for the nature of their capital structure to be determined at or before confirmation of the Plan, and nothing about the solicitation of the Plan precludes the Formerly Secured Noteholder Group from pursuing its side of the 2022 Financing Adversary Proceeding, either in the upcoming trial or through an objection to confirmation of the Plan. If the Debtors' capital structure changes as a result of the Formerly Secured Noteholder Group's arguments, then the Plan may need to be amended or the Court may deny confirmation. But there is no credible possibility that the Plan will leave the Reorganized Debtors "mired in litigation that stretches into the future," as the Formerly Secured Noteholder Group suggests. Obj. ¶ 26.[4]

8. To address any concern regarding adequate disclosure, the Debtors have added the following risk factor to the Disclosure Statement, derived from the disclosure statement that was approved in *Serta Simmons*:[5]

> *Ongoing Litigation and Other Contingencies Could Affect the Outcome of the Chapter 11 Cases:* The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies. For example, the Debtors cannot predict with

[4] The Debtors' approach is consistent with *In re Serta Simmons Bedding, LLC*, a recent case in this District. Despite pending litigation over Serta's capital structure, Serta filed a chapter 11 plan on terms consistent with its litigation position, which ultimately prevailed at the confirmation hearing. *See In re Serta Simmons Bedding, LLC*, Case No. 23-90020 [Dkt. No. 545 at 10-13] (disclosure statement discussing treatment of claims under plan); [Dkt. No. 1045 at 7–9] (memorandum opinion discussing procedural history of debtors' bankruptcy cases).

[5] *Cf.* Disc. Stmt., *In re Serta Simmons*, Dkt. No. 545, at VIII.A.4 ("The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. For example, the Debtors cannot predict with certainty the outcome or effect of the resolution of claims arising from pending litigation, including with respect to the 2021 LCM Litigation, the 2022 Non-PTL Term Loan Lenders Litigation and the 2020 Transaction Adversary Proceeding, and an adverse outcome against the Debtors with respect to such litigation (including the invalidation of the 2020 Transaction) could materially affect the ability for the Debtors to consummate the Plan and would result in protracted Chapter 11 Cases. Further, in such an event, the Consenting Parties may terminate the Restructuring Support Agreement. The occurrence of such contingencies could affect distributions to holders of Claims and Interests under the Plan, resulting in protracted Chapter 11 Cases, and could significantly and detrimentally impact the Debtors' relationships with, among others, vendors, suppliers, employees, and major customers.").

> certainty the outcome or effect of the resolution of claims arising from the Financing Litigation, including the 2022 Financing Adversary Proceeding, and an adverse outcome with respect to such litigation (including the invalidation of the 2022 Financing Transactions) could materially affect the Debtors' ability to consummate the Plan, resulting in protracted Chapter 11 Cases, and could significantly and detrimentally impact the Debtors' relationships with, among others, vendors, suppliers, employees, and major customers. Further, in such an event, the Restructuring Support Agreement may be terminated.

Disc. Stmt., § IX.A.10.

II. THE DISCLOSURE STATEMENT ADEQUATELY DISCLOSES OTHER INFORMATION.

9. The Formerly Secured Noteholder Group also criticizes the Disclosure Statement for allegedly not disclosing (a) "the terms of the Management Incentive Plan and its effect on creditor recoveries," (b) "the terms of the Exit Facilities and their effect on creditor recoveries," (c) "the potential effect of the indemnification of the 1L Indenture Trustee and Holders of 1L Notes Claims . . . on creditor recoveries," (d) "analysis of the estate causes of action to be released under the Plan," and (e) an "expla[nation] that many other bases upon which the Plan rests are prohibited by relevant case law." Obj. ¶¶ 27–29. The Debtors believe that they have offered sufficient disclosures on these points (and disagree with the last one) and respond briefly to each in turn.

10. *First*, the Disclosure Statement clearly explains that "[t]he Reorganized Debtors will reserve a pool of the New Common Equity to be agreed by the Debtors and the Required Consenting 1L Noteholders for a post-emergency Management Incentive Plan" and that the terms and conditions of the Management Incentive Plan will be determined by the Reorganized Incora Board after the Effective Date. Disc. Stmt., § IV.D.8. The Reorganized Incora Board will be appointed by the Required Consenting 1L Noteholders (who will also own the vast majority of the New Common Equity). *See* Disc. Stmt., § IV.D.5.b. These disclosures allow voting creditors to conclude that the Reorganized Incora Board will be incentivized to develop a Management Incentive Plan on terms that will enhance the value of the business as a whole and the New Common Equity in particular. If a creditor does not trust the Reorganized Incora Board to develop

a value-maximizing Management Incentive Plan, the creditor may vote to reject the Plan. Similar disclosures have been approved in several other cases. *E.g.*, *In re Cineworld Grp. plc*, Case No. 22-90168 (MI) (Bankr. S.D. Tex. Apr. 26, 2023) [Dkt. No. 1604] (disclosing that terms and cost of management incentive plan would be determined by reorganized board); *In re Tailored Brands, Inc.*, Case No. 20-33900 (MI) (Bankr. S.D. Tex. Oct. 8, 2021) [Dkt. No. 817] (disclosing that terms of management incentive plan would be determined by reorganized board).

11. *Second*, the Disclosure Statement describes the three Exit Facilities in the section entitled "New Debt Instruments and Securities." *See* Disc. Stmt., § IV.A. That section discloses that the New Revolver Facility will offer aggregate commitments of up to $600 million, that the New Exit Notes will have a principal amount of approximately $324 million, and that the New Takeback Notes will have a principal amount of $420 million. Furthermore, the financial projections in Exhibit B to the Disclosure Statement state detailed assumptions with respect to each of the Exit Facilities. *See* Disc. Stmt., Ex. B, Note G. Critically, in response to informal comments from the Committee, the Debtors have agreed to file the material terms of the New Exit Notes and the New Takeback Notes in a Plan Supplement at least seven days before the Voting Deadline.[6] The Debtors believe that this provides ample time for voting creditors to review the terms of these notes and determine whether to accept the Plan. Similar review periods have been approved in other cases in this District. *E.g.*, *In re Tailored Brands, Inc.*, Case No. 20-33900 (MI) (Bankr. S.D. Tex. Nov. 3, 2021) [Dkt. No. 1000] (plan supplement including exit financing term sheets filed six days prior to voting deadline); *In re Fieldwood Energy LLC*, Case No. 20-33948 (MI) (Bankr. S.D. Tex. May 26, 2021) [Dkt. No. 1394] (same); *In re Valaris plc*, Case No. 20-34114 (MI) (Bankr. S.D. Tex. Jan. 27, 2021) [Dkt. No. 896] (plan supplement including exit financing indentures filed seven days prior to voting deadline).

[6] The New Revolver Facility is presently subject to a marketing process, and its market-based terms may not be known before the Voting Deadline. The Debtors have appropriately disclosed that the New Revolver Facility may not become available, and that the assumptions set forth in the financial projections are illustrative. *See* Disc. Stmt., §§ IX.D.1, .3; Ex. B, Note G.

12. *Third*, the Disclosure Statement clearly explains that holders of 1L Notes Claims and the 1L Indenture Trustee will be entitled to indemnification in certain circumstances. *See* Disc. Stmt. § IV.E.4.b.ii. The Debtors believe that the Disclosure Statement adequately puts creditors on notice that the Reorganized Debtors may become liable for material contingent obligations. In fact, the provided disclosure is even more clear than that provided in *Serta Simmons*, where the relevant plan provision was not separately described in the disclosure statement. *Cf.* Disc. Stmt., *In re Serta Simmons*, Dkt. No. 545, at Ex. A. (Plan), § 8.5(b). Nevertheless, to address any concern regarding adequate disclosure, the Debtors have added the following risk factor to the Disclosure Statement:

> *The Debtors' Indemnification Obligations Could Affect the Value of New Common Equity*. Certain holders of Allowed Claims are expected to receive the New Common Equity under the Plan, the value of which may be affected by the indemnification obligations owed to the 1L Indenture Trustee and Holders of 1L Notes Claims. The Debtors cannot predict with certainty the potential value, if any, of such indemnification obligations, but payments on account of such indemnification obligations could adversely impact the value of the New Common Equity.

Disc. Stmt., § IX.C.10.

13. *Third*, the Disclosure Statement already sets forth a summary of the estate causes of action that are subject to the Committee's motion for standing, each of which is to be resolved pursuant to the Plan's Debtor Releases. *See* Disc. Stmt., § III.I. The revised Disclosure Statement also includes a comprehensive description of the terms of the Debtors' and the Committee's settlement of those Causes of Action and the reasons for the Debtors' and the Committee's entry into that settlement. *See* Disc. Stmt., § III.J.

14. *Fourth*, the Debtors respectfully decline the Formerly Secured Noteholder Group's invitation to "explain that many other bases upon which the Plan rests are prohibited by relevant case law." If the Formerly Secured Noteholder Group believes that the Plan contains unlawful

terms, it may object to its confirmation.[7] For now, the Debtors consider it sufficient that the Disclosure Statement accurately describe the terms of the Plan.

III. The Debtors Have Consensually Resolved Comments Received from the Committee.

15. The Debtors have consensually resolved certain suggestions made informally by the Committee, such as: (a) to clarify which ballots will be counted if a creditor returns multiple ballots, (b) to clarify procedures to extend the Voting Deadline, and (c) to limit the Reorganized Debtors' ability to reject contracts after the Effective Date.

Conclusion

16. For these reasons and those set forth in the Motion, the Court should overrule the Formerly Secured Noteholder Objection, grant the relief requested in the Motion, and grant such other relief as is just and proper.

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[7] One specific point raised by the Formerly Secured Noteholder Group is that the Plan's exculpation provision improperly applies to pre-petition conduct. As revised, the exculpation is limited to claims that arise "on or after the Petition Date." Plan, art. VIII.F.

Dated: January 11, 2024

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

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CERTIFICATE OF SERVICE

I certify that, on January 11, 2024, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed noticing agent.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

ANNEX 1 TO OMNIBUS REPLY

SUMMARY OF OBJECTIONS AND RESPONSES

Docket No.	Party	Summary of Response to Motion	Summary of Debtors' Reply and Modifications to Disclosure Statement
1168	UMB Bank, N.A.	**Reservation of Rights**: UMB reserves its rights, objections, arguments, claims, and defenses with respect to the Disclosure Statement and Plan.	No response is required to a reservation of confirmation arguments.
1170	Formerly Secured Noteholder Group	**Objection**: Inadequate disclosure regarding each of the following.	
		The effect that resolution of the Financing Litigation may have on the Debtors' capital structure and distributions to creditors. (¶ 25)	Disclosure Statement adequately discloses that Plan is predicated on Debtors' view of pre-petition capital structure. Debtors have added a risk factor to the effect that the outcome of the 2022 Financing Adversary Proceeding may adversary affect the Debtors' ability to implement the Plan.
		The terms of the Exit Facilities. (¶ 27)	Plan Supplement will disclose material terms of New Exit Notes and New Takeback Notes at least 7 days prior to Voting Deadline. Further disclosure is not warranted as to New Revolver Facility, which is subject to ongoing marketing.

Docket No.	Party	Summary of Response to Motion	Summary of Debtors' Reply and Modifications to Disclosure Statement
		The terms of the Management Incentive Plan. (¶ 27)	Disclosure Statement adequately discloses that Management Incentive Plan will be determined by Reorganized Incora Board.
		Effect of indemnification of 1L Indenture Trustee and holders of 1L Notes Claims. (¶ 27)	Disclosure Statement adequately discloses existence and nature of indemnification obligations. Debtors have added a risk factor addressing potential effects of indemnification on value of New Common Equity.
		Estate causes of action to be released under the Plan. (¶ 28)	Disclosure Statement includes substantial explanation of settlement of estate causes of action.
		Case law that allegedly prohibits certain aspects of exculpation and indemnification provisions. (¶ 29)	Exculpation is for postpetition conduct only. Further objections are properly considered as objections to confirmation.