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)

2024/2026 NOTEHOLDER APPELLANTS' STATEMENT AND COUNTERSTATEMENT OF THE ISSUES, COUNTERDESIGNATION OF THE RECORD ON APPEAL, AND BANKRUPTCY RULE 8009(B) CERTIFICATION

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the 2024/2026 Noteholder Appellants,[2] by and through their undersigned counsel, respectfully submit the following: (i) counterstatement of issues to be presented in response to the Participating Holders'[3] statement of issues in connection with their appeal from the Amended Confirmation Order,[4] *see* Dkt. No. 2599; (ii) statement of issues to be presented on appeal of the

[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] The appellants (collectively, the "2024/2026 Noteholder Appellants") are certain members of an ad hoc group of holders of the 8.50% Senior Notes due November 15, 2024 (the "2024 Notes") under the 2024 Unsecured Indenture (as such term is defined in the *Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.*, Dkt. No. 2517, the "Plan") and the 9.00% Senior Notes due November 15, 2026 (the "2026 Notes") under the 2026 Indenture (as such term is defined in the Plan), and their respective transferees, successors and assigns, which for the avoidance of doubt are named in the *Joint Notice of Appeal*, Dkt. No. 2600. The 2024/2026 Noteholder Appellants are referred to herein as the "2024 Noteholder Appellants" to the extent appealing in their capacity as holders of the 2024 Notes, and as the "2026 Noteholder Appellants" to the extent appealing in their capacity as holders of the 2026 Notes.

[3] The Participating Holders are listed individually in the *Joint Notice of Appeal* (Dkt. No. 2564).

[4] The Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order (I) Confirming Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al. and (II) Granting Related Relief*, Dkt. No. 2528 (the "Confirmation Order") on December 27, 2024, and then issued its *Corrected Findings of Fact,*

Amended Confirmation Order; (iii) counterdesignation of additional items for inclusion in the designated record in connection with the 2024/2026 Noteholder Appellants' and Participating Holders' appeals from the Amended Confirmation Order; and (iv) Bankruptcy Rule 8009(b) certification.[5]

I. COUNTERSTATEMENT OF ISSUES ON APPEAL

The 2024/2026 Noteholder Appellants submit the following counterstatement of issues in response to the Participating Holders' statement of issues in connection with their appeal from the Amended Confirmation Order. *See* Dkt. No. 2599.

1. Did the 2022 Transaction[6] breach the 2026 Indenture either on the grounds found by the Bankruptcy Court under subpart (1) of Section 9.02's supermajority requirements in the 2026 Indenture and/or on additional or alternative grounds for affirmance including, but not limited to: violation of subpart (3) of Section 9.02's supermajority requirements in the 2026 Indenture; violation of Sections 2.01(e), 4.12(a), 4.09 and 4.26 of the 2026 Indenture; violation of subpart (10) of Section 9.02's sacred rights provision in the 2026 Indenture; violation of Sections

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Conclusions of Law, and Order (I) Confirming Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al. and (II) Granting Related Relief, Dkt. No. 2550 (the "Amended Confirmation Order") on January 6, 2025. In an abundance of caution, the 2024/2026 Noteholder Appellants have noticed an appeal of both orders. Unless otherwise defined herein, all capitalized terms contained herein shall have the meaning set forth in the Confirmation Order or the Plan.

[5] The 2024/2026 Noteholder Appellants' Counterstatement of Issues on Appeal and Statement of the Issues on Appeal, below, are not meant to limit or waive in any respect additional grounds for affirmance that the 2024/2026 Noteholder Appellants may argue in opposition to the Participating Holders' or Debtors' appellate submissions and/or their objections to the Bankruptcy Court's Report and Recommendation dated January 17, 2025 (Dkt. No. 1520) or its forthcoming but not yet issued Report and Recommendation concerning their claims for tortious interference. *See, e.g.*, *Cantu v. Romero Gonzalez & Benavides L.L.P.* (*In re Cantu*), 398 F. App'x 76, 78 (5th Cir. 2010) ("We may affirm the bankruptcy court on any grounds supported by the record."); *Plunk v. Yaquinto* (*In re Plunk*), 481 F.3d 302, 305 (5th Cir. 2007) ("We may affirm on any grounds supported by the record, even if those grounds were not relied upon by the lower courts."). Rather, the issues are identified in an abundance of caution, even where overlapping with additional grounds for affirmance, to ensure consistency with Bankruptcy Rule 8009, given the procedural posture of this matter. *See, e.g.*, *In re Highland Cap. Mgmt., L.P.*, 57 F.4th 494, 499 (5th Cir. 2023) ("Bankruptcy Rule 8009—previously Rule 8006—requires that, in an appeal to a district court or bankruptcy appellate panel, '[t]he appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.'") (quoting Fed. R. Bankr. P. 8009(a)(1)(A)).

[6] As used herein, the term "2022 Transaction" is coterminous with the term "2022 Financing Transactions," as defined in the Plan.

3.02 and 3.07(h) of the 2026 Indenture; failures to comply with the 2026 Indenture's authenticity and authentication requirements for supposed additional notes, under Sections 2.02, 2.08 and 9.02 of the 2026 Indenture; or the 2022 Transaction was a singular, collapsed event under the Indenture's Rules of Construction in Section 1.03(5) and (7), longstanding principles governing the interpretation of bond indentures (*see, e.g.*, *Sharon Steel Corp. v. Chase Manhattan Bank, N.A.*, 691 F.2d 1039 (2d Cir. 1982)), and New York's single integrated transaction doctrine?

2. Are the 2026 Noteholders entitled to the remedy in the form of declaratory relief for the breach of the 2026 Indenture as found by the Bankruptcy Court, such that their "rights, liens and interests" as confirmed in the Debtors' Plan remained as they were immediately prior to the 2022 Transaction, and/or on additional or alternative grounds for affirmance including, but not limited to: pursuant to Sections 6.03 and/or 6.09 of the Indenture; state law remedies (including but not limited to specific performance, equitable lien, or money damages against Debtors or non-Debtors); or equitable subordination?

II. STATEMENT OF THE ISSUES ON APPEAL

A. Appeal of Amended Confirmation Order

The 2024/2026 Noteholder Appellants further intend to raise the following issues on appeal:

1. Did the Bankruptcy Court err by not finding that the 2022 Transaction breached one of the "sacred rights" (*i.e.*, unanimous consent provisions) of the indenture governing the 2024 Notes—specifically, section 9.02(10)—because, without the consent of the 2024 Noteholder Appellants, the 2022 Transaction modified the ranking of the 2024 Notes in respect of right of payment through the incurrence of approximately $1.27 billion of senior secured debt that had a springing maturity that would rank such new debt ahead of the 2024 Notes?

2. Did the Bankruptcy Court err by not finding that the 2022 Transaction breached sections 3.02 and 3.07(h) of the indenture governing the 2024 Notes, when, despite a redemption of less than all of the 2024 Notes, the indenture trustee failed to select the 2024 Notes for purchase or redemption *pro rata*, by lot, or by other "fair and appropriate" method?

3. Did the Bankruptcy Court err by not finding that the documents comprising the 2022 Transaction prevented the 2024 Notes from becoming unsecured if the liens securing the 2026 Notes were not released and if the 2022 Transaction was otherwise ineffective as to the 2026 Notes?

4. Did the Bankruptcy Court err by not finding that, because the 2022 Transaction breached the 2026 Indenture such that "the rights, liens, and interests that were for the benefit of all of the holders of 2026 Notes as they existed on March 27, 2022, remained in full force and effect on March 29, 2022",[7] certain or all 1L Notes were unsecured as of the commencement of the Chapter 11 Cases (the "Petition Date") given that, among other things: (i) the Notes Security Agreement, dated January 9, 2020 (the "Original Security Agreement"), was not properly amended and thus the Amended and Restated Notes Security Agreement, dated as of March 28, 2022, entered into as part of the 2022 Transaction is unenforceable, (ii) the 1L Notes did not constitute "Additional First Lien Obligations" under the Original Security Agreement, and (iii) only the holders of 2024 Notes and 2026 Notes as of the Petition Date were entitled to the benefit of the perfected security interests created by the Original Security Agreement?

B. Appeal of Interlocutory Orders

The issues on appeal arising from interlocutory orders include, but are not limited to:

[7] *Report and Recommendation*, Adv. Pro., Dkt. No. 1520 at 36.

5. Did the Bankruptcy Court err in finding on summary judgment that the 2024/2026 Noteholder Appellants' claim for equitable lien was property of the Debtors' Estates and thus derivative, not direct, such that the 2024/2026 Noteholder Appellants lacked direct standing to bring that claim?[8]

6. Did the Bankruptcy Court err in finding on summary judgment that the 2024/2026 Noteholder Appellants' claim for equitable subordination was property of the Debtors' Estates and thus derivative, not direct, such that the 2024/2026 Noteholder Appellants lacked direct standing to bring that claim?[9]

7. Did the Bankruptcy Court err by dismissing on summary judgment the 2024/2026 Noteholder Appellants' claim for breach of contract against WSFS?[10]

8. Did the Bankruptcy Court err on summary judgment in dismissing the 2024/2026 Noteholder Appellants' claim against the Debtors for breach of the implied covenant of good faith and fair dealing?[11]

9. Did the Bankruptcy Court err on summary judgment in dismissing the 2024/2026 Noteholder Appellants' claim against the PIMCO Noteholders, the Silver Point Noteholders, the Senator Noteholder, the Citadel Noteholder, and WSFS (as such terms are used in the MSJ Opinion) for breach of the implied covenant of good faith and fair dealing?[12]

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[8] *See Memorandum Opinion on Motions for Summary Judgment* ("MSJ Opinion"), Adv. Pro., Dkt. No. 508 at 14–16; *Order on Motions for Summary Judgment* ("MSJ Order"), Adv. Pro., Dkt. No. 509 at 2; *Amended Order on Motions for Summary Judgment* ("Amended MSJ Order"), Adv. Pro., Dkt. No. 554 at 2; *see generally Supplement to Memorandum Opinion* ("MSJ Supplementary Opinion"), Adv. Pro., Dkt. No. 553; *Order Clarifying Orders on Summary Judgment*, Adv. Pro., Dkt. No. 998 ("MSJ Clarification Order," and together with the MSJ Opinion, MSJ Order, MSJ Supplementary Opinion, and Amended MSJ Order, the "Summary Judgment Decisions").

[9] *See* MSJ Opinion at 14–16; MSJ Order at 2; Amended MSJ Order at 2; *see generally* Summary Judgment Decisions.

[10] *See* MSJ Opinion at 43–46; MSJ Order at 2; MSJ Supplementary Opinion at 3–5; Amended MSJ Order at 2*; see generally* Summary Judgment Decisions.

[11] *See* MSJ Opinion at 50–52; MSJ Order at 2; Amended MSJ Order at 2*; see generally* Summary Judgment Decisions.

[12] *See* MSJ Opinion at 49–50, 52–54; MSJ Order at 2; Amended MSJ Order at 2*; see generally* Summary Judgment Decisions.

10. Did the Bankruptcy Court err in ruling that Platinum did not waive privilege as a consequence of putting its state of mind and alleged good faith at issue because its witness did not testify that his belief about the 2022 Transaction's compliance with the indenture was based on advice of counsel,[13] even though that witness also testified that his understanding of relevant indenture provisions was confirmed by counsel's legal advice, as the Bankruptcy Court found?[14]

11. Did the Bankruptcy Court err by allowing a transactional attorney for the Debtors to testify about the 2022 Transaction's closing at trial, when (i) that witness was first identified only after trial started, (ii) the Debtors asserted privilege over many of his firm's communications, and (iii) the Debtors, the PIMCO Noteholders, and the Silver Point Noteholders withheld documents from discovery relating to the subject of the witness' testimony?[15]

12. Did the Bankruptcy Court err in permitting the PIMCO Noteholders and Silver Point Noteholders to put on evidence in support of an economic interest defense to tortious interference while also permitting them to shield from discovery financial forecasts and methods of financial analysis within non-privileged internal documents concerning the 2022 Transaction?[16]

III. DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

The 2024/2026 Noteholder Appellants designate the following additional items to be included in the record of the 2024/2026 Noteholder Appellants' and Participating Holders' appeals from the Amended Confirmation Order. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items. By submitting this

[13] *See generally Memorandum Opinion and Order*, Adv. Pro., Dkt. No. 1269.
[14] *See generally Memorandum Opinion and Order*, Adv. Pro., Dkt. No. 1187.
[15] *See* April 17, 2024 Tr., Adv. Pro., Dkt. No. 1182, at 4:7–8; *see also* February 9, 2024 Tr., Adv. Pro., Dkt. No. 827, at 238:22–247:6.
[16] *See* November 3, 2023 Tr., Adv. Pro., Dkt. No. 417, at 6:17–7:3.

counterdesignation, the 2024/2026 Noteholder Appellants do not waive, and expressly reserve, their rights to seek to dismiss and otherwise challenge the Participating Holders' appeal.

Further, by submitting this counterdesignation, the 2024/2026 Noteholder Appellants do not waive, and expressly reserve, their rights to rely on any of the documents designated in the Participating Holders' designations, *see* Dkt. No. 2599, including any and all exhibits and documents annexed to and/or referenced within such items. For the avoidance of doubt, the 2024/2026 Noteholder Appellants incorporate each item designated in the record on appeal by the Participating Holders, and affirmatively designate each such item as the 2024/2026 Noteholder Appellants' designations of record on appeal of the Amended Confirmation Order, together with the counterdesignations below.

In re Wesco Aircraft Holdings, Inc., et al., Case No. 23-90611		
Docket Date	**Docket No.**	**Description**
10/20/2023	0857	Response and Reservation of Rights
10/20/2023	0858	Sealed Document Statement and Reservation of Rights with respect to the Debtors Motion to Extend the Debtors Exclusive Periods to File a Chapter 11 Plan and Solicit Votes
10/20/2023	0859	Motion to Seal Statement and Reservation of Rights with respect to the Debtors Motion to Extend the Debtors Exclusive Periods to File a Chapter 11 Plan and Solicit Votes Filed by Creditor Langur Maize, L.L.C.
11/1/2023	0896	Response to Certificate of No Objection and Statement Regarding the Debtors' Motion to Extend the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Votes
1/11/2024	1210	Notice of Filing Revised Solicitation Order and Exhibits to First Amended Disclosure Statement
1/12/2024	1237	Motion to Seal 2024/2026 Holders' Reply in Support of Amended and Supplemental Standing Motion [Related to Docket No. 1235]
1/16/2024	1257	Motion to Seal (I) Authorizing the 2024/2026 Holders to File Certain Confidential Information Under Seal and (II) Limiting Notice Thereof [Related to Docket No. 1255]
3/20/2024	1564	Notice of Filing of Amended Plan Supplement

3/27/2024	1606	Objection of Laird R and F Products, Inc. to the Debtors Proposed Cure Amounts Under the Modified First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.
7/31/2024	1957	Motion for Adequate Protection
7/31/2024	1958	Sealed Document Motion for Adequate Protection
7/31/2024	1959	Motion to Seal 2024/2026 Noteholder Group's Motion for Adequate Protection [Related to Docket No. 1958]
8/23/2024	2029	Disclosure Statement
12/15/2024	2472	Declaration of Kevin Martin with Respect to the Tabulation of Votes on the Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al
12/16/2024	2486	Notice of Filing of Third Amended Plan Supplement
12/18/2024	2505	Notice of Continued Confirmation Hearing on December 27, 2024 at 9:00 a.m. (CST)
12/18/2024	2506	Notice of Status Conference on January 14, 2025 at 10:00 a.m. (CST)
12/27/2024	2520	Supplemental Declaration of Kevin Martin with Respect to the Tabulation of Votes on the Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.
1/3/2024	2549	Second Supplemental Declaration of Kevin Martin with Respect to the Tabulation of Votes on the Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al
1/24/2025	2599	Statement of Issues on Appeal
1/24/2025	2600	Cross Appeal
1/28/2025	2605	Transcript RE: Status Conference (Via Zoom) held on January 14, 2025 before Judge Marvin Isgur
1/28/2025	2606	Declaration re: Third Supplemental Declaration of Kevin Martin with Respect to the Tabulation of Votes on the Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc., et al.
1/31/2025	2612	Notice of Filing of Sixth Amended Plan Supplement
1/31/2025	2613	Stipulation By Wesco Aircraft Holdings, Inc. and the First Lien Noteholder Group and the 2024/2026 Noteholder Group. Does this document include an agreed order or otherwise request that the judge sign a document? No.
1/31/2025	2615	Notice of (I) Effective Date and (II) Entry of Order Confirming Further Modified Second Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.
2/3/2025	2618	Clerk's Notice of Filing of an Appeal
2/3/2025	2620	Clerk's Notice of Filing of an Cross Appeal

WESCO AIRCRAFT HOLDINGS, INC., et al. v. SSD INVESTMENTS LTD., et al. Adversary Case No. 23-03091		
Docket Date	**Docket No.**	**Description**
7/28/2023	0133	Stipulation By Langur Maize L.L.C. and Wesco Aircraft Holdings, Inc..
9/7/2023	0241	Notice of Hearing
9/27/2023	0294	Notice of Hearing
10/6/2023	0332	Motion to Seal Motion for Entry of an Order Authorizing Langur Maize to File Under Seal Portions of Its (I) Reply; (II) Declaration in Support of the Reply; and (III) Exhibits Attached to the Declaration
1/8/2024	0489	Motion to Seal Motion for Entry of an Order Authorizing Langur Maize to File Under Seal Portions of (I) Its Opposition and (II) Exhibits Attached to the Opposition
1/17/2024	0513	Notice Langur Maize's Notice of Unavailability of Witness and Potential of Trial-Related Scheduling Dispute
2/20/2024	0851	Notice of Hearing on Emergency Motion of the 2024/2026 Holders for an Order Granting an Extension of Time to Respond to the Platinum Defendants' Renewed Motion for Summary Judgment
3/19/2024	1013	Transcript RE: Trial Day Seven (AMENDED TRANSCRIPT) held on February 12, 2024 before Judge Marvin Isgur
4/10/2024	1119	Transcript RE: Trial Day Nineteen held on April 5, 2024 before Judge Marvin Isgur
5/4/2024	1247	Transcript RE: Trial Day 24 held on May 1, 2024 before Judge Marvin Isgur
10/11/2024	1512	Transcript RE: held on 10/03/2024 before Judge Marvin Isgur

IV. RESERVATION OF RIGHTS

The 2024/2026 Noteholder Appellants expressly reserve, and do not waive, the right to amend, supplement, or otherwise modify the foregoing statements of issues and designations, and/or to object to or move to strike the items designated or counterdesignated for inclusion in the record on appeal by the Participating Holders and any other parties. This filing is made expressly subject to, and without waiver of, any and all rights, remedies, challenges, and objections.

V. CERTIFICATION PURSUANT TO BANKRUPTCY RULE 8009(b)

In an appeal from a bankruptcy court ruling, Bankruptcy Rule 8009(b) requires an appellant to either: (i) order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal and file a copy of the order with the bankruptcy clerk; or (ii) file a certificate with the bankruptcy clerk stating that the appellant is not ordering a transcript. Pursuant to Bankruptcy Rule 8009(b), the 2024/2026 Noteholder Appellants respectfully certify to the Clerk of Court that they are not ordering a transcript not already on file.

Dated: February 7, 2025
New York, New York

Respectfully submitted,

KOBRE & KIM LLP

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CERTIFICATE OF SERVICE

I certify that on February 7, 2025, 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.

/s/ Zachary D. Rosenbaum
Zachary D. Rosenbaum