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# Not All Things Are Sacred: District Court Finds *Wesco Aircraft* Uptier Transaction Is Lawful

**January 7, 2026**

On December 8, 2025, Judge Randy Crane of the U.S. District Court for the Southern District of Texas reversed the bankruptcy court's decision in *Wesco Aircraft*, and held that a pre-bankruptcy uptier transaction did not violate an indenture's sacred rights provision. Consequently, the Court held that the transaction did not require supermajority consent for amendments that provided for the issuance of new notes as a means to dilute the voting power of a holdout group of noteholders. *Wesco Aircraft Holdings, Inc., v. SSD Investments Ltd.*, No. 4:25-CV-202, 2025 WL 3514358 (S.D. Tex. Dec. 8, 2025).

## Background

Wesco Aircraft Holdings, Inc., an aerospace service provider, issued three series of notes with an aggregate principal amount of over $2 billion in 2020, with each series issued pursuant to a separate indenture. These series of notes consisted of $650 million in senior secured notes due in 2024 (the "2024 Notes"), $900 million in senior secured notes maturing in 2026 (the "2026 Notes"), and $525 million in unsecured notes due in 2027.

Each of the indentures authorized Wesco to issue additional senior secured notes, subject to compliance with the indenture's debt and lien baskets. The indentures also provided that Wesco could amend the indentures with the consent of the holders of either a majority or supermajority of the outstanding principal amount of the applicable series of notes voting as a single class, depending on the nature of the amendment. Most amendments required only a simple majority of the applicable noteholders. However, some amendments required the consent of holders of two-thirds of the outstanding principal amount of the applicable series of notes, including any "amendment, supplement, or waiver" that had the "effect of releasing all or substantially all of the Collateral from the Liens created pursuant to the Security Documents" or that changed or altered "the priority of the security interests" of the noteholders in the collateral.

In 2021, Wesco encountered liquidity problems. To address these issues, Wesco engaged in a series of transactions in 2022 (with the support of a majority group of noteholders) that provided for

the issuance of new super senior secured notes, which primed the existing 2024 and 2026 Notes. First, Wesco entered into supplemental indentures that authorized it to issue $250 million of senior secured notes as rescue financing, and thereafter converted those notes into 2026 Notes. This transaction allowed the majority group to amass two-thirds of the 2026 Notes, thereby giving Wesco the leeway to amend the indentures even with respect to amendments requiring a two-thirds supermajority.

Thereafter, Wesco executed further supplemental indentures, which purported to release the liens securing the 2024 and 2026 Notes. These supplemental indentures also removed certain covenants that would have prevented the 2022 transactions. After the execution of these supplemental indentures, the majority group members exchanged their existing holdings for new super senior secured notes.

Litigation quickly followed these transactions. The excluded noteholders filed a complaint in New York state court alleging that the 2022 transactions breached the indentures and were seeking to unwind the uptier transactions. In 2023, Wesco filed for chapter 11 protection, thereby staying the state court action.

After filing for bankruptcy, Wesco filed an adversary complaint seeking a declaration that the debtors did not breach the indentures with the 2022 transaction. The excluded noteholders counterclaimed, seeking, *inter alia*, a declaratory judgment that the company had violated the indentures and that the majority group had tortiously interfered with the indentures governing the 2024 and 2026 Notes.

Following a trial, Judge Martin Isgur of the U.S. Bankruptcy Court for the Southern District of Texas issued a report and recommendation, which held that the uptier transactions breached the indenture governing the 2026 Notes (but not the indenture governing the 2024 Notes). In particular, the bankruptcy court held that the uptier transaction breached the 2026 Notes' indenture because Wesco did not receive the consent of holders of two-thirds of the original, pre-dilution principal amount of the 2026 Notes for the 2022 transactions.

The majority group of noteholders appealed this decision to the District Court.

## The District Court's Decision

District Court Judge Crane refused to adopt the bankruptcy court's report and recommendation, and instead held that the 2022 transactions did not breach Wesco's obligations under its indentures. The Court also dismissed the minority noteholders' tortious interference claims.

***Breach of Contract.*** Judge Crane held that the 2022 transactions did not breach the indentures, including the sacred rights provision. The sacred rights provision provided that absent the consent of holders of two-thirds of outstanding principal amount of the applicable series of notes, no amendments could have the "effect of releasing all or substantially all of the Collateral" from the noteholders' liens. Unlike the loan agreements addressed in the Fifth Circuit's *Serta* decision, which required unanimous consent for an uptier transaction, Judge Crane noted that the indentures merely required two-thirds consent for the release of liens on collateral and the alteration of priority of liens (including through the issuance of new notes). In this case, the Court found that Wesco obtained the proper consents for the 2022 transactions and therefore the uptier transactions did not breach the indentures.

Moreover, the Court found that the issuance of new notes—such as the 2026 Notes that were issued to the majority group—merely required the consent of holders of a majority of principal amount of the 2026 Notes. According to the Court, the indenture permitted Wesco to "dilute a minority group's voting power by issuing new bonds with majority consent and to then rely on consent from those additional bonds to issue senior debt over the minority noteholders' objection."

The minority holders argued that the 2022 transactions—when taken together as a whole—had "the effect of releasing all or substantially all" of the collateral because the transactions allowed Wesco to issue additional 2026 Notes solely for the purpose of obtaining the required two-thirds supermajority consent to the release of liens on the collateral. Judge Crane rejected this argument, holding that "under the plain language of the 2026 Indenture, Wesco needed to obtain supermajority consent for" the supplemental indenture authorizing the issuance of additional 2026 Notes only if the supplemental indenture itself "had the effect of releasing all or substantially all of the liens." In other words, the focus of the sacred rights provision is on the amendment itself—not the chain of events that occur after the execution of the amendment. The Court found that nothing in the sacred rights provision "prevents majority holders from investing additional funds in Wesco" in exchange for the issuance of additional notes sufficient to give them a supermajority. On the contrary, the indentures merely required majority consent for amendments permitting the issuance of additional 2026 Notes.

The minority noteholders argued that New York law required collapsing the series of transactions into a single transaction. The Court rejected this argument, holding that such an argument is an "interpretive canon" under New York law, "not a *substantive* doctrine that would collapse multiple separate agreements into a single instrument" when the parties did not intend that result. In the instant case, the Court found that the parties "clearly intended the separate steps to be treated as distinct transactions, and New York law gives effect to that intent."

The minority noteholders also contended that the 2022 transactions breached the indenture because the indenture requires consent from each affected holder for changes to the ranking of the

2026 Notes "in respect of right of payment." The Court found that this sacred rights provision was not applicable to the 2022 transactions because the provision applied solely to *payment* priority. The Court held that it did not apply to modifications to lien priority or changes to maturity dates. According to the Court, any contrary interpretation would render other sections of the indenture superfluous, particularly those provisions that required only a supermajority consent to the release of liens on collateral.

***Tortious Interference.*** In a separate opinion, the Court also dismissed the minority group's tortious interference claim. The Court found that under New York law "[d]efendants cannot be held liable for tortious interference where they acted to protect their own legal or financial stake in the breaching party's business," unless they acted with malice, defined as acting "only with an intent to cause harm to the particular plaintiff." Both the bankruptcy court and the District Court found that there was "no evidence in the record that Defendants acted for anything other than economic gain" and "no evidence in the record that they engaged in illegal or fraudulent conduct." The Court found that "[t]he fact that [the restructuring] efforts were unsuccessful, and the breaching party 'ended up filing bankruptcy' anyway, 'does not change the answer.'" Consequently, the Court held that the minority group failed to state a plausible tortious interference claim.

**Takeaways**

- Sacred rights provisions in credit agreements and indentures protect the fundamental economic rights of creditors by requiring unanimous or supermajority consent to amendments that affect those rights.
- Bond indentures and loans typically vary in their "sacred rights" requirements. Sacred rights provisions in loan documents often require all "affected lenders" consent to make certain modifications, including lien releases. But the *Wesco* note indentures required the consent of only two-thirds of noteholders to release liens. If the indentures had required consent of all affected noteholders, hold-out creditors still may have been able to block the release of their collateral even following the dilution of their voting power through the issuance of additional notes.
- Even though the *Wesco* indenture included relatively broad language prohibiting amendments having the "effect of" releasing liens, the Court held that supplemental indentures that did not themselves directly release liens, and that instead merely required the issuance of additional notes as a means of enabling a *subsequent* indenture to release the liens, did not run afoul of this prohibition. Put another way, the Court examined each step of the transaction in isolation by cabining its analysis to each separate agreement, rather than viewing all of the steps of the transaction holistically. This is atypical historically in the analysis of multi-stage transactions in a bankruptcy case. By contrast, other courts (such as *Trimark*) have treated a series of related transactions "executed at the same time, by the same parties, and for the same purpose . . . in

the eye of the law, [as] one instrument." *Audax Credit Opp. Offshore Ltd. v. TMK Hawk Parent, Corp.*, 72 Misc.3d 1218(A) at *8 (Sup. Ct., N.Y. Cnty. 2021).

- The minority noteholders filed a notice of appeal regarding Judge Crane's opinion. The Fifth Circuit may get the last word on whether the Wesco uptier transactions violated the sacred rights provisions.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.


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