TITLE: Feasibility in the 21st Century: LMEs, Chapter 22s and other Puzzles

DESCRIPTION:

What does "feasibility" mean in an era of liability management exercises and repeat chapter 11 filings? This panel will revisit the doctrinal roots of feasibility—including its relationship to absolute priority, the equity "option," and foundational Supreme Court precedent—and ask what work the requirement is meant to do today. Is feasibility still a meaningful safeguard for creditors, or has it become a flexible tool shaped by market realities?

The panel will explore whether rapid "chapter 22" cases reflect system failure or an efficient response to changing capital structures; how analysis should account for LMEs conducted prepetition; and how the presence of future claims intersects with the assumption of a solvent, reorganized debtor. The discussion will bring together judicial, legal, and financial perspectives to examine whether feasibility doctrine is keeping pace with modern restructuring practice—or quietly evolving to meet it

LEARNING OBJECTIVE:

A panel, comprised of leading restructuring practitioners representing debtor and creditor perspectives, a financial advisor, and a legal scholar, will address the current state of, and key issues and insights into, the feasibility requirement under section 1129(a)(11) of the Bankruptcy Code in an era of liability management exercises andrepeat chapter 11 filings. The panel will be moderated by Judge Kaplan, who will lead the discussion through the doctrinal foundations of feasibility and the practical challenges of applying that doctrine to modern restructurings. The panelists will examine whether feasibility remains a meaningful confirmation safeguard for creditors, or whether it has quietly evolved into a more flexible standard shaped by capital markets practice. The moderator will lead the discussion to address the following topics:

- **Doctrinal Roots of Feasibility**
    - What's the issue? Origins of the feasibility requirement under section 1129(a)(11) and its predecessors
    - Relationship between feasibility and the absolute priority rule

    - The equity "option" and the allocation of going-concern value
    - Precedent Cases
    - What work was the feasibility requirement originally meant to do, and what work does it do today?
- **Chapter 22 (and Chapter 33) Cases: System Failure or Efficient Response?**
    - What's the issue? Frequency and patterns of repeat filings
    - Does a near-term refiling prove that feasibility was never satisfied, or that markets simply moved?
    - Distinguishing exogenous shocks from structural defects in the original plan
    - Should feasibility analysis incorporate post-emergence default probability and refinancing risk?
    - Recent and historical examples and what they teach about the predictive value of confirmation-stage projections
- **Liability Management Exercises and Feasibility**
    - What's the issue? Prepetition LMEs and their effect on the reorganized capital structure
    - How should courts treat plans that assume continued access to LME-style flexibility post-emergence?
    - The "kicked can" problem — LMEs that delay rather than resolve distress, and what that means for the "not likely to be followed by liquidation or further reorganization" standard
    - Interaction with exit financing assumptions, covenant headroom, and projected liquidity
    - Burden of proof and the role of expert testimony in stress-testing management projections
- **Where Feasibility Doctrine Is Heading**
    - Is the prevailing "reasonable assurance" / "more probable than not" standard still meaningful in light of modern capital structures?
    - Should judges consider market evidence (debt above the fulcrum security at a discount after the plan is proposed)?

- Role of the financial advisor
- Practical considerations in contested confirmations: cross-examination of projections, treatment of management forecasts, and the evidentiary record
- Whether bankruptcy courts should adopt a more rigorous "stress test" approach, and what that would mean for plan negotiation, valuation, and creditor recoveries

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
SPIRIT AVIATION HOLDINGS, INC., *et al.*,	**Case No. 25-11897 (SHL)**
Debtors.[1]	**Jointly Administered**

REPORT OF EXAMINER MARC J. HEIMOWITZ

Marc J. Heimowitz, as Court-appointed Examiner (the "Examiner") in the above-captioned cases (the "Chapter 11 Cases") hereby submits this report of the Examiner (the "Report").

[1] The Debtors' names and last four digits of their respective employer identification numbers are as follows: Spirit Aviation Holdings, Inc. (1797); Spirit Airlines, LLC (7023); Spirit Finance Cayman 1 Ltd. (7020); Spirit Finance Cayman 2 Ltd. (7362); Spirit IP Cayman Ltd. (4732); and Spirit Loyalty Cayman Ltd. (4752). The Debtors' mailing address is 1731 Radiant Drive, Dania Beach, FL 33004.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Marc J. Heimowitz, Examiner appointed in the above-captioned cases, respectfully submits this report in accordance with the Examiner Order[1] entered by the Court on October 17, 2025, in these Chapter 11 Cases of Spirit Aviation Holdings, Inc., *et al.* ("Spirit" or the "Debtors" and, collectively with their non-Debtor affiliates, the "Company").

A. Examiner Appointment and Mandate

On October 28, 2025, Willim K. Harrington, the United States Trustee (the "U.S. Trustee"), in consultation with counsel to the Debtors and the Official Committee of Unsecured Creditors (the "Committee"), appointed Marc J. Heimowitz as Examiner in the Chapter 11 Cases.[2] The Examiner has been tasked with completing an independent, unfettered investigation (the "Investigation") relating to the circumstances surrounding the bankruptcy refiling of *In re Spirit Aviation Holdings, Inc., et al.*, Case No. 25-11897 ("Spirit 2") approximately five months after the effectiveness of the confirmed plan in *In re Spirit Airlines, LLC, et al.*, Case No. 24-11988 ("Spirit 1" and the "Spirit 1 Plan") and filing a report containing the Examiner's findings within 45 days.[3]

A second Chapter 11 filing following a plan confirmation, colloquially called a "Chapter 22," is an infrequent but recognized occurrence in corporate restructuring practice. Nevertheless, the interval between the effective date of the Spirit 1 Plan (March 12, 2025) and Spirit 2's petition date (August 29, 2025) is exceptionally short in the context of large Chapter 11

[1] *Stipulation and Order Appointing An Examiner* [Docket No. 286] (the "Examiner Order").

[2] *See Application for Order Approving Appointment of Examiner* [Docket No. 365] ¶¶ 2, 3. On October 29, 2025, the Court entered the *Order Approving the Appointment of Chapter 11 Examiner* [Docket No. 381].

[3] Examiner Order ¶¶ 1, 3. The two cases concern the same debtor businesses, corporate entities, other than slight name changes, and, for all current intents and purposes, constitute the same filing entities. The Spirit 1 Plan refers to the *First Amended Joint Chapter 11 Plan of Reorganization of Spirit Airlines, Inc. and its Debtor Affiliates* [Spirit 1, Docket No. 354].

cases and has attracted scrutiny regarding feasibility, good faith and adequate disclosure in Spirit 1, and prompted inquiry into whether circumstances precipitating Spirit 2 were reasonably foreseeable based on information available at the time of the Spirit 1 confirmation hearing. Furthermore, Spirit prosecuted a narrowly-tailored balance sheet restructuring in Spirit 1, deliberately declining to address operational restructuring initiatives,[4] yet Spirit 2 contemplates a robust operational restructuring. This shift in strategy warrants additional inquiry and assessment.

Timeline of Key Events	
Spirit 1 Petition Date	November 18, 2024
Spirit 1 Plan Solicitation	December 18, 2024
Spirit 1 Submission of Confirmation Brief and Declarations	January 16, 2025
Spirit 1 Plan Confirmation Hearing[5]	February 13, 2025
Spirit 1 Plan Confirmation	February 20, 2025
Spirit 1 Plan Effective Date[6]	March 12, 2025
Spirit 2 Petition Date	August 29, 2025

The Examiner notes that the instruction to examine the "circumstances surrounding the bankruptcy refiling" contains an inherent tension: it identifies a discrete subject but affords limited guidance as to the breadth and depth of the necessary investigation. The Examiner construes this mandate to encompass investigating:

- What occurred and what was known during relevant time periods, including Spirit 1's pre-filing and pendency periods, the interim period, and the month immediately preceding Spirit 2;

[4] "Spirit was acutely focused on liquidity needs and capital structure . . . and did not address any of its operational issues. The focus was on deleveraging, on liquidity, and emerging from Chapter 11 as quickly and as efficiently as possible." Spirit 2 First Day Hr'g Tr. (Sep. 2, 2025) [Docket No. 98] at 50: 14–18.

[5] At the Spirit 1 confirmation hearing, the Court orally noted approval of the Spirit 1 Plan but withheld ruling on the third-party release issue. The confirmation order on all issues was entered the following week. To evaluate good faith, the Examiner uses February 13, 2025, as the last date on which evidence was or should have been submitted to the Court in support of plan approval.

[6] The effective date of the Spirit 1 Plan is relevant for measuring the interval between bankruptcy filings, but as is apparent throughout this report the Examiner finds that Spirit's confirmation hearing date and the date on which the confirmation brief and declarations in support were submitted are the operative dates for analysis of issues presented (notwithstanding that the mandate uses the term "effectiveness"). The delay between the Spirit 1 confirmation hearing and the effective date was mechanical in nature and is not germane, except with respect to measuring the start date of the 180-day statute of repose embedded in 11 U.S.C. § 1144.

- Whether financial projections and testimony offered in support of Spirit 1's Plan, together with underlying assumptions, were reasonable and sufficient to support a finding of feasibility;

- Whether the Spirit 1 bankruptcy was undertaken in contemplation of a later robust operational restructuring or in anticipation of a necessary business combination; and

- Whether the events that precipitated Spirit 2 were foreseeable as of the Spirit 1 confirmation hearing date, and whether Spirit would have refiled so quickly in the absence of these events.

The scope of the investigation does not include opining on the merits of any exercise of business judgment, underlying operational decisions, legal strategy or possible alternative transactions. Throughout this Investigation, a persistent unstated and occasionally explicit question raised by market participants was: if an airline enters Chapter 11, is it obligated to pursue operational restructuring opportunities because that approach historically has been regarded as the dominant path to a successful reorganization? The answer is no. The Bankruptcy Code does not obligate a debtor to use Chapter 11 to extract every possible operational concession or to pursue the optimal solution,[7] and the stated rationales of simplicity, low cost and speed underpinning the Spirit 1 bankruptcy strategy are consistent with and permissible objectives under the Bankruptcy Code.[8] Retrospective views that a once-and-done restructuring "would have been better" do not transform a valid plan of reorganization into a deficient one.

[7] *See In re T-H New Orleans Ltd. P'ship*, 188 B.R. 799, 806 (E.D. La. 1995), *aff'd sub nom., Matter of T-H New Orleans Ltd. P'ship*, 116 F.3d 790 (5th Cir. 1997) ("The plan need not be the best alternative for the creditor, but only one that is fair, equitable and feasible under the Code."); *In re Celotex Corp.*, 204 B.R. 586, 611–12 (Bankr. M.D. Fla. 1996) ("The Court need not and ought not consider if a proposed plan is the 'best' plan of reorganization that could be promulgated, providing for the highest return to creditors of the Debtors' Estates."); *In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 683 (Bankr. S.D.N.Y. 2016) ("A chapter 11 debtor has an unfettered right to propose, in good faith, any plan of reorganization which the debtor believes will enable it to reorganize successfully.").

[8] *See Katchen v. Landy*, 382 U.S. 323, 328 (1966) ("[T]his Court has long recognized that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of estate of all bankrupts within a limited period."). Review of the documentary record in Spirit 1, confirmed by interviews, reveals that primary objectives were to reduce and reschedule indebtedness in a manner that could not be accomplished out-of-court, to provide a mechanism for injection of new equity capital, to avoid complexity, delay, and risk inherent in an operational restructuring, and to limit administrative costs of the bankruptcy. The duration of the Spirit 1 bankruptcy was only 114 days, and administrative costs hovered around $33 million; both measures are likely to be far exceeded in Spirit 2.

However, issues of feasibility, good faith, and adequate disclosure directly are implicated if Spirit could not have demonstrated at a hypothetically contested confirmation that its balance-sheet only Spirit 1 Plan was viable. Although the Examiner does not explore whether an operational restructuring would have been a better strategy in Spirit 1, it is well within the Examiner's mandate to explore whether Spirit knew or should have known at confirmation that the Spirit 1 Plan was unlikely to succeed without using bankruptcy to adjust operations. Similarly, when evaluating post-emergence transactions, the Examiner's focus is on whether those transactions were assumed in the financial projections or were foreseeable, not whether Spirit should have as a business matter engaged in those transactions. The Examiner evaluates facts as they arose and occurred, without substituting his business judgment for that of the debtors or creditors.

B. Methodology and Source of Information

The Examiner Order authorized the Examiner "to take informal, and thereafter if needed, formal discovery of the Debtors, their current and former officers and directors, and their professionals . . . to the extent reasonably necessary to perform the Investigation."[9] The Examiner and his professionals reviewed public information from Spirit's filings in bankruptcy, on EDGAR, and as published by the United States Department of Transportation, Bureau of Transportation Statistics, credit rating agencies, in airline industry periodicals, and in bankruptcy trade publications.

Examiner-reviewed Company materials (provided by the Debtors and the Committee) include Board of Directors ("Board") presentations, minutes and other Board materials; strategy and finance committee notes; internal Project Bravo (as described below) memoranda; internal

[9] Examiner Order ¶ 7.

financial and liquidity forecasts; operational data; booking-visibility materials; cleansing materials exchanged between Spirit, creditors and Frontier Airlines, Inc. ("Frontier"); 13-week cash flow reports; liquidity bridges; capacity and fleet presentations; and various geographical and analytic exhibits, including EBITDAR bridges, fleet-sale analyses and liquidity timelines. The Examiner also was provided with working Excel models and relevant backup materials. Among other items, these included Spirit's internal Company models for disclosure statement projections, cleansing materials actuals, 2025 projections, the 2025 EBITDAR bridge, DIP budget variance and reforecast materials, monthly trial balances, and fleet composition from the Spirit 1 Petition Date forward. Models relating to Spirit 2's bankruptcy also were provided and examined (*e.g.*, 13-week cash flows).

Legal documents reviewed included debt documents (relating to the Loyalty Notes, Convertible Notes, Revolving Credit Facility, EETC facilities, Exit Notes, and where relevant, aircraft bank debt),[10] agreements and amendments with Spirit's primary credit card processor (Elavon), agreements with IAE (Pratt & Whitney), various AerCap lease agreements and notices, other aircraft leasing terms and agreements, and documentation relating to post-emergence aircraft sales and sale-leaseback transactions. The Examiner also reviewed email communications with Frontier and with Elavon, as requested.

The Examiner and his professionals interviewed current and former Spirit officers, directors and professionals, including the current Chief Financial Officer, former Chair, and former Chief Executive Officer, and also interviewed professionals who advised the bondholder ad hoc groups. Where this Report references specific data (e.g., fleet counts, transaction dates, engine

[10] Capitalized terms used but not defined in this Section shall have the meanings ascribed to them *infra*.

credits, liquidity metrics, and post-emergence transactions), the facts are drawn from these materials and interviews.

The Debtors fully cooperated with the Investigation. The Examiner's legal analysis is based upon statutory text, legislative history and case law in this and other circuits interpreting relevant provisions of the Bankruptcy Code.

C. Summary of Findings and Conclusions[11]

1. The Examiner concludes that, based on information known at confirmation, the Spirit 1 Plan was not likely to be followed by the Debtors' liquidation, or need for further financial reorganization, in 2025.

2. The 2025 Projections, which formed the basis for the feasibility analysis, were reasonably supported by information available at the time of the confirmation hearing. Spirit's late-2024 performance and early-2025 trends were consistent with the assumptions embedded in the Projections for 2025, which were consistent with internal data and contemporaneous information available to Spirit. Spirit's expected case business plan for 2025 was reasonably supported by information then available, even though later events proved those expectations wrong.

3. The $350 million injection of new equity capital is compelling evidence that sophisticated and knowledgeable market participants did not expect Spirit to liquidate or reorganize in 2025. Affected creditors were well-informed and aided by counsel and financial advisors before and throughout Spirit 1. The Examiner found no indication that creditors believed they were deceived in any way in Spirit 1.

4. The operational and financial deterioration Spirit experienced in 2025 unfolded at a speed and scale that was not reasonably foreseeable at confirmation. The abrupt revenue contraction, yield compression, and erosion in forward bookings were far more severe than historic industry patterns or internal data suggested when the Spirit 1 Plan was confirmed.

5. Post-confirmation developments caused Spirit's rapid refiling in 2025, primarily due to Spirit's weak revenue performance and consequent insufficient liquidity, which in turn compelled a fleet restructuring. The primary proximate causes of refiling were Elavon's accelerated collateral requirements and AerCap's default and termination notices.

6. Spirit's liquidity projection for 2025 included receipt of approximately $150 million in net proceeds from the sale of certain aircraft that were not ultimately sold. Spirit had enough information by the confirmation hearing to know that the timing of aircraft sales would be materially delayed versus the Projections. Spirit should have updated its liquidity disclosures to reflect this risk and so informed the Court by the February confirmation

[11] Capitalized terms used but not defined in this Section shall have the meanings ascribed to them *infra*.

hearing. The Examiner finds that non-receipt of this $150 million, while a material amount, was not determinative of viability in 2025.

7. In no case does the Examiner substitute his business judgment for that of the Company or its advisors. Strictly with respect to the issue of foreseeability, the Examiner finds the March 2025 EETC transaction and the July 2025 sale-leaseback of spare engines to be unobjectionable.

8. Grounded aircraft because of a powdered-metal defect requiring accelerated inspections of Pratt & Whitney geared turbo fan engines was a significant cause of both Spirit 1 and Spirit 2. Spirit entered into several agreements with an affiliate of Pratt & Whitney that provided Spirit with monthly maintenance credits that roughly covered ownership or lease costs related to aircraft-on-ground but not lost revenue. Other than the delay in receipt, these monthly credits were incorporated in the Projections and able to be used as cash. Solely with respect to the issue of foreseeability, the June IAE Agreement is unobjectionable.

9. Based upon the confirmation record, the Spirit 1 Plan was feasible through at least 2025. The Examiner makes no finding about the feasibility of the Spirit 1 Plan in years beyond 2025 because out-year projections did not contribute to the circumstances surrounding the bankruptcy refiling.

10. The Examiner found no evidence that Spirit, its advisors, or its major creditors advanced the Spirit 1 Plan in bad faith or with undisclosed intentions. The Investigation revealed no internal two-stage restructuring plan, no reliance on an assumed Frontier transaction or other merger to make the Spirit 1 Plan work, and no internal information contradicting the feasibility presentation at confirmation.

11. Spirit did not undertake serial filings for the purpose of gaining leverage, modifying established payment obligations, or otherwise re-negotiating the economic commitments of its confirmed Spirit 1 Plan. The record does not support a statutory cause of dismissal of Spirit 2 as a bad faith filing under Section 1112(b).

II. HISTORICAL AND INDUSTRY CONTEXT

A. The ULCC Business Model and Structural Characteristics

Through its operating subsidiaries, Spirit functions as an ultra-low-cost carrier ("ULCC") providing passenger air transportation across the United States, the Caribbean, and Latin

America.[12] The ULCC segment is led by airlines such as Spirit, Frontier, and Allegiant[13] that operate a distinct unit-cost-driven model designed around high-density seating, single-fleet-type operations, rapid aircraft turns, and unbundled service offerings. This model's cornerstone is achieving the lowest possible cost structure to underprice mainline and low-cost competitors.[14] Airlines, as a class, operate with very high fixed costs and extremely low marginal savings when capacity is pulled. Aircraft ownership or lease costs, crew minimum-pay guarantees, maintenance programs, airport rents, ground-handling arrangements, and overhead all remain largely unchanged whether an aircraft flies five hours a day or thirteen. Reduced variable costs such as fuel or flight-hour or cycle-driven maintenance provide only modest relief when flying is reduced.

High operating leverage means profitability depends disproportionately on maximizing revenue per unit of fixed capacity, with the effect particularly acute for carriers competing principally on ticket price.[15] In airline terminology, an airline's earnings profile is dominated by how many available seat miles ("ASMs", also referred to as "capacity") it can produce and how efficiently it can convert those ASMs into revenue (total operating revenue per ASM, or "TRASM") while keeping cost per ASM ("CASM") as low as possible. Because fixed costs

[12] *Declaration of Fred Cromer in Support of the Chapter 11 Proceedings and First Day Pleadings* [Docket No. 19] (the "Spirit 2 First Day Declaration") ¶ 13; *Declaration of Fred Cromer in Support of the Chapter 11 Proceedings and First Day Pleadings* [Spirit 1, Docket No. 2] (the "Spirit 1 First Day Declaration") ¶ 3.

[13] Other ULCCs include Avelo Airlines ("Avelo") and Sun Country Airlines ("Sun Country"). In June 2025, Spirit, Frontier, Allegiant Air ("Allegiant"), Avelo, and Sun Country formed a lobbying organization called the Association of Value Airlines.

[14] The three legacy carriers are Delta Air Lines ("Delta"), United Airlines ("United"), and American Airlines ("American"). Southwest Airlines ("Southwest") began interstate operations after deregulation (hence, not a "legacy" carrier) and generally is regarded one of the "Big Four" or "mainline" carriers, despite its origins as a low-cost carrier ("LCC"). JetBlue Airways ("JetBlue") is considered an LCC.

[15] The principal competitive factors in the airline industry include fare pricing, total price, flight schedules, aircraft type, passenger amenities, number of routes served from a city, customer service, safety record and reputation, code-sharing relationships, loyalty programs, and redemption opportunities.

dominate, deficiencies caused by poor plane fleet utilization or low load factor reduce operating income almost dollar-for-dollar.[16]

Airlines reduce capacity by adjusting the total amount of ASMs (calculated as seats available for passengers × miles flown).[17] When an airline faces structural disadvantages in certain markets, the simplest way to reduce costs is to have fewer aircraft in operation, fewer hours flown per aircraft, or run shorter routes.[18] Mainline carriers can rationalize schedules without eviscerating their core economic model, but a ULCC that meaningfully cuts flying risks eroding the very low-CASM foundation that makes its low fares sustainable.

Simply, capacity discipline is much harder to enforce for a ULCC than a mainline carrier. Every hour an aircraft sits idle dilutes cost advantage, and critically, every basis point of load factor lost is disproportionately punitive for a ULCC because operating margin is driven by spreading fixed costs over seat miles and monetizing the customer relationship through ancillary fees (*e.g.*, bag charges or in-flight sales) that comprise a disproportionate share of ULCC revenue. The ULCC model requires high aircraft utilization, high load factor, disciplined cost control, and access

[16] "Load factor" refers to the percentage of aircraft seats occupied on a flight. Based on Examiner interviews, when discounting by mainline airlines intensified in early 2025, Spirit intentionally tried not to match discounting as aggressively as it would have in the past. Instead, Spirit accepted a lower load factor (less volume) as the consequence of adopting less aggressive ticket price reductions. Spirit's revenue miss in 2025 was more severe than that of its comparable competitors, and it is evident that one of the circumstances contributing to the Spirit 2 filing was Spirit's own business plan. The Examiner takes no position on the *ex ante* merits of that plan.

[17] ASMs help carriers evaluate capacity and efficiency. This metric can be used to optimize fleet utilization and make better decisions about capacity planning. For example, an airline might use ASM data to determine whether to add new routes, increase frequencies on existing routes, or adjust fleet composition to better match market demand. *Understanding RPKs and ASKs*, INT'L AIR TRANSP. ASSOC. (Aug. 19, 2024), https://www.iata.org/en/publications/newsletters/iata-knowledge-hub/demystifying-key-air-traffic-metrics-understanding-rpks-and-asks/.

[18] In practical terms, airlines almost never reduce capacity by simply "parking planes" in a desert storage facility. The primary mechanism is to change flight schedules. Cutting a route entirely, reducing frequencies, or eliminating the third or fourth daily flight on a city pair all represent capacity reduction, even if the aircraft remain fully functional and sit on the ground more hours per day. Airlines also change capacity by reducing aircraft utilization, the total number of block hours flown per airplane (measured from the time of gate departure before take-off until the gate arrival at the destination, divided by the number of days in the period, divided by average aircraft).

to a large pool of discretionary travelers who prioritize price above other considerations. When these conditions hold, ULCCs can fill planes at attractive margins.

However, the model leaves little room for error when consumer demand weakens or competitive fare pressures depress ticket prices. In addition, ULCCs are particularly vulnerable to operational irregularities, including air traffic control schedule disruptions, pilot shortage, and unanticipated grounding of aircraft, that diminish aircraft utilization and fleet efficiency. The ULCC cost advantage is the formulaic result of flying each aircraft more hours per day, with rapid turnaround times that keep the fleet in motion. The model works when few open seats are available and the planes are constantly flying, but it breaks quickly when they are not.

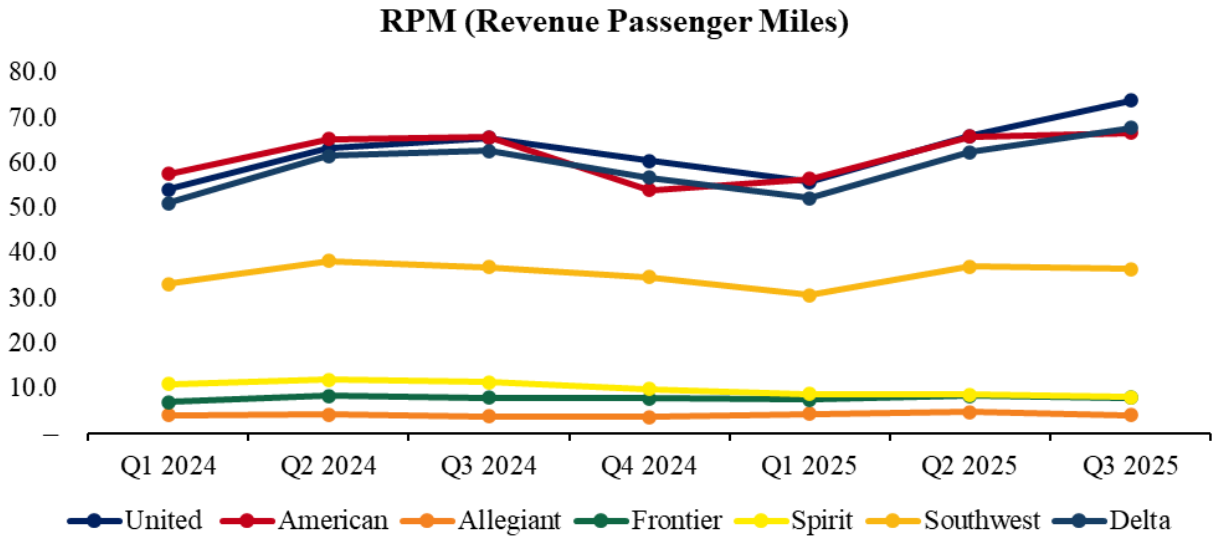
For Spirit specifically, these structural features constrain its strategic flexibility. Spirit's brand and network position force it to compete on cost and, because its customer base is highly price-sensitive, attempts to raise fares push customers to competitors. The airline cannot rely on pricing power, yield management or product differentiation[19] to offset reductions in load factor or utilization. When demand softens or operational disruptions reduce utilization, Spirit cannot readily adapt by raising prices or materially reducing ASMs without undermining its core cost position. Aggregate fleet size also is a material factor. As one financial advisor succinctly put it during an Examiner interview, "it's really difficult to shrink [a ULCC] to profitability."

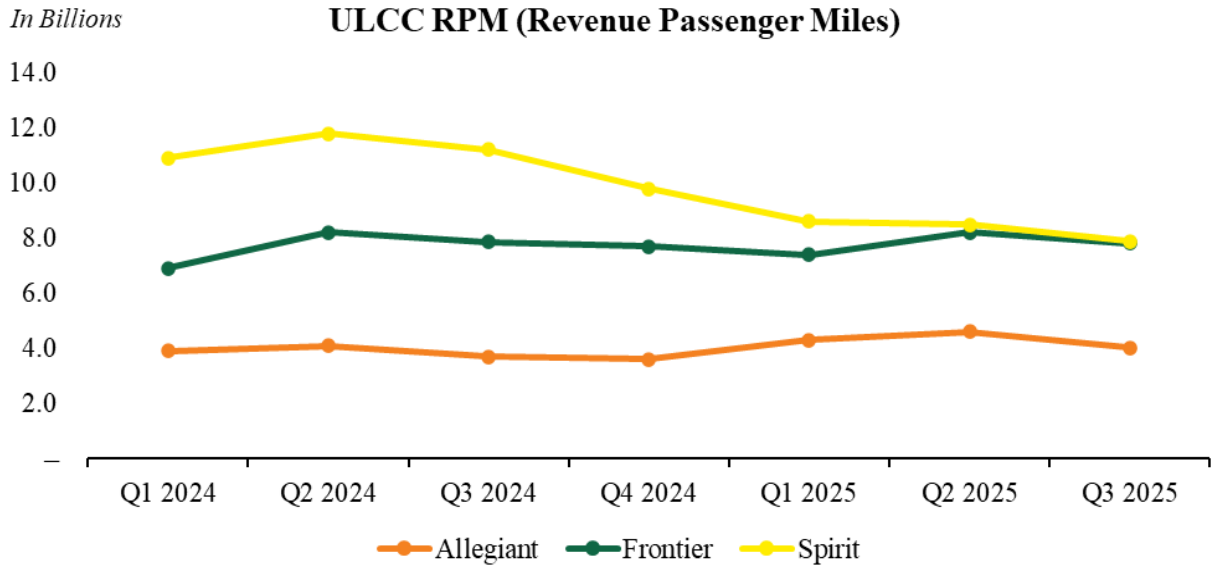
B. U.S. Airline Industry Environment from Q3'24 through Q2'25

Over the past year, the U.S. airline industry experienced a mix of strong demand recovery and intensifying competitive dynamics. Revenue passenger miles ("RPMs" or traffic) surpassed

[19] Trying to adjust this dynamic appears to have been central to Project Bravo. As mainline competitors moved down-market by unbundling their products to mimic LCCs through Basic Economy fares and ancillary charges for seats and baggage, Spirit's response included an effort to move up-market. Board materials and company interviews identified Spirit's "Go Comfy" offerings, such as blocked middle seats or extra-legroom seating, as a potential means to strengthen pricing power.

pre-pandemic levels, supported by resilient leisure travel and strength in premium segment demand.[20]





The second half of 2024 was the high point of the post-pandemic demand recovery. Legacy carriers returned to profitability, but shifts in consumer behavior due to competitive dynamics

[20] *Airline Quarterly Financial Review*, U.S. DEPT. OF TRANSP. (last visited Dec. 12, 2025), https://www.transportation.gov/policy/aviation-policy/airline-quarterly-financial-review.

created financial and operational challenges for Spirit and other ULCCs. According to McKinsey's 2025 aviation analysis,[21] the performance gap between legacy airlines and ULCCs widened as legacy carriers were able to extract more revenue per passenger through premium cabins and loyalty monetization, while also maintaining cost discipline. And, as legacy carriers adopted ULCC-style unbundling to compete for price-sensitive travelers, they were able to preserve yield through ancillary fees, priority services, and seat selection.

Conversely, legacy carriers' rapid expansion of "Basic Economy" fares and other unbundled fare products caused major disruption to Spirit and other ULCCs. The narrowing of the base-fare gap between legacy carriers and ULCCs led cost-driven leisure travelers to migrate toward legacy networks, where they could access broader schedules, larger networks, and loyalty benefits at only a marginally higher price. ULCCs also demonstrated limited ability to match the legacy carriers' revenue flexibility during periods of fare compression, particularly given their heavier reliance on ancillary fees and high-density seating configurations.[22]

As a result, competitive dynamics have shifted materially. While the ULCC model remains viable in targeted, underserved, or off-peak leisure markets, the economics that historically supported aggressive network expansion have weakened. Sustained pricing pressure from legacy carriers, coupled with slowing demand growth, suggests that ULCCs may need to reconsider their structural approach to restore competitiveness and financial resilience. Going forward, carriers in this segment may be compelled to consolidate, pursue network rationalization, or concentrate capacity in markets where they can consistently achieve positive unit economics.

[21] Andrew Curley *et al.*, *Are Low-Cost Airlines Losing Altitude?*, MCKINSEY (May 22, 2025), https://www.mckinsey.com/industries/travel/our-insights/are-low-cost-airlines-losing-altitude#/.

[22] Legacy airlines have better revenue stability, as loyalty programs and co-branded credit cards are a larger percentage of total revenue for legacy airlines than for ULCCs.

The U.S. airline industry began 2025 on a cautiously positive note. Despite seasonal weakness and even as inflation-adjusted airfares declined roughly 1%,[23] first-quarter revenue rose by about 2% year-over-year due to steady travel demand and carriers collectively generated an operating profit of around 1%,[24] marking an encouraging start to the year. A review of stock trading prices supports the view that market expectations at this time were (relatively) strong, as year-to-date 2025 peak share prices among publicly traded ULCCs other than Spirit all occurred in 1Q25.[25]

However, that optimism proved short-lived. Initial signs of industry fatigue emerged in February 2025 as year-over-year domestic airline demand, capacity, and load factors declined by 1.9%, 1.7%, and 0.2%, respectively.[26] By April, utilization began to decline as North American carriers expanded available seat capacity by more than 3% year-over-year while demand growth failed to keep pace.[27] Alaska Airlines, American, Delta, and Southwest all withdrew their full-year guidance, citing slowing leisure demand and ongoing uncertainty surrounding U.S. tariff policy.[28]

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[23] *First Quarter 2025 Average Air Fare Decreases 1.2% from Fourth Quarter 2024*, U.S. DEPT. OF TRANSP.: BUREAU OF TRANSP. STAT. (last visited Dec. 4, 2025), https://www.bts.gov/newsroom/first-quarter-2025-average-air-fare-decreases-12-fourth-quarter-2024.

[24] Data includes Delta, United, American, Southwest, Allegiant, Frontier and Spirit. This group of carriers represents a cross-section of the U.S. airline industry and allows for comparison across different business models, cost structures, and network strategies while capturing a meaningful portion of domestic capacity and market dynamics.

[25] YTD highs are as follows: Frontier (ticker: ULCC) at $10.06 on 2/10/25; Allegiant (ticker: ALGT) at $105.30 on 1/21/25; and Sun Country (ticker: SNCY) at $18.17 on 2/20/25. *See generally* BLOOMBERG (last visited Dec. 10, 2025), https://www.bloomberg.com.

[26] *Passenger Demand Growth Slows Slightly in February*, INT'L AIR TRANSP. ASSOC. (last visited Dec. 4, 2025), https://www.iata.org/en/pressroom/2025-releases/2025-03-31-02/?utm_source=chatgpt.com.

[27] *Aviation Wrap-up April 2025: Tracking Industry Performance*, ALL THINGS ON TIME PERFORMANCE (May 5, 2025), https://www.allthingsontimeperformance.com/aviation-wrap-up-april-2025-tracking-industry-performance/?utm_source=chatgpt.com.

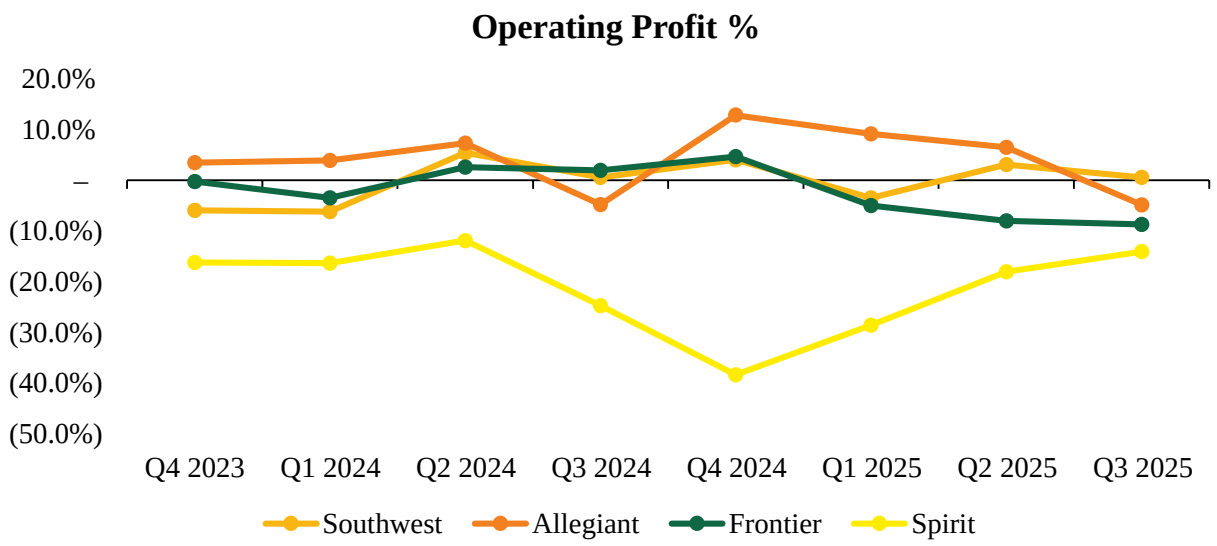
[28] Company representatives and advisors also noted in Examiner interviews that the April 2, 2025, announcement of import duties reduced visibility and affected Spirit's business plan.

In May, Southwest announced that it would end its long-standing, open seating model and begin charging for checked bags. The announcement triggered significant customer backlash, prompting Southwest to cut fares, a shift that created additional downward pressure on pricing across the broader domestic market. Against this backdrop, CASM pressure was a central theme for major carriers. Even as fuel prices moderated, airlines faced rising labor, maintenance, and aircraft ownership costs, which eroded margins just as the revenue environment weakened. This combination of slowing demand, fare compression, and persistent non-fuel cost inflation marked a sharp reversal in industry momentum heading into mid-2025.

By midyear, the performance gap across the U.S. airline sector had widened meaningfully. Allegiant remained profitable,[29] though its operating margins were only a fraction of those achieved by Delta and United, underscoring the resilience of the premium-focused legacy carrier networks. In contrast, Frontier and Spirit reported negative operating margins in the second quarter,[30] a period that typically delivers some of the industry's strongest results, highlighting the growing vulnerability of the ULCC segment.

[29] *Airline Quarterly Financial Review*, U.S. DEPT. OF TRANSP. (last visited Dec. 12, 2025), https://www.transportation.gov/policy/aviation-policy/airline-quarterly-financial-review.

[30] Spirit and Frontier were among the most affected airlines, posting operating margins of approximately (18%) and (8%), respectively. *Id.*



These results reinforced a broader structural trend: ULCCs are increasingly struggling to maintain profitability in an environment where legacy carriers can leverage diversified revenue streams, premium cabins, loyalty programs, new reduced fare products, and great pricing flexibility, while the ULCC cost advantage has narrowed.

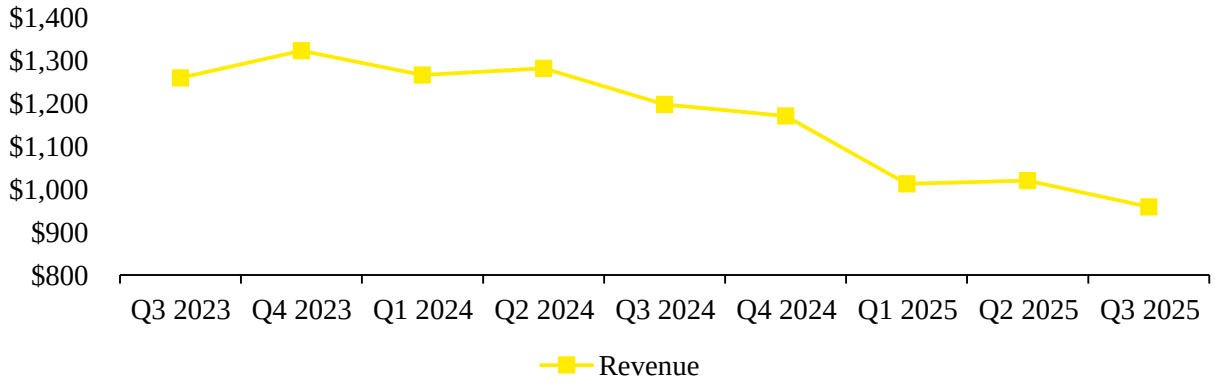
C. Spirit's Financial Performance Through Spirit 1 Exit[31]

Spirit's financial performance deteriorated meaningfully in 2023, driven by both industry-wide pressures and Spirit-specific challenges. Although total revenue increased modestly from $5.068 billion in 2022 to $5.362 billion in 2023, this growth was well below expectations given the industry's post-pandemic demand recovery. Competitive pricing pressure intensified throughout 2023 as U.S. carriers added significant capacity and discounted fares on domestic leisure routes. Low-cost alternatives suppressed passenger yields and limited Spirit's ability to translate higher ancillary attachment and modest ASM growth into stronger top-line results.

[31] The Examiner's findings regarding Spirit's actual performance reflect the benefit of hindsight and should not be read to imply that relevant facts were fully known or reasonably knowable to management at the time business judgments were made, except where stated otherwise.

The revenue environment weakened further in 2024. As reflected in the following chart,[32] total revenue declined 8.4% year-over-year to $4.913 billion, driven by (i) aggressive industrywide discounting, (ii) a reduction in ASMs due to Pratt & Whitney geared turbo fan ("GTF") engine groundings (as described below), and (iii) softer demand following Spirit's bankruptcy filing. Passenger yields declined 5.1% year-over-year in 2024, reflecting both weaker pricing and reduced revenue production per mile flown.[33]

Spirit: Historical Quarterly Revenue



Operationally, Spirit faced material capacity constraints in 2024. Following Pratt & Whitney's July 2023 disclosure of a powdered-metal defect affecting GTF engines, Spirit estimated an average of 25 aircraft grounded throughout 2024. This significantly reduced available capacity and fleet utilization, two fundamental drivers of the ULCC cost model. As a result, ASMs fell 4.8% to 53 billion in 2024, and traffic declined 3.5%, although load factors held steady, rising from 81.9% in 2022 to 82.4% in 2024, indicating disciplined capacity deployment that nevertheless could not offset weaker pricing.[34]

[32] 2025 Q3 10-Q at 1; 2025 Q2 10-Q at 1; 2025 Q1 10-Q at 1; 2024 Q4 10-Q at 1; 2024 Q3 10-Q at 1; 2024 Q2 10-Q at 1; 2024 Q1 10-Q at 1; 2023 Q4 10-Q at 1; 2023 Q3 10-Q at 1. All of these figures are in millions.

[33] Spirit Airlines, Inc., Annual Report (Form 10-K) at 60 (Feb. 9, 2024) [hereinafter, "2023 10-K"]; Spirit Airlines, Inc., Annual Report (Form 10-K) at 70 (Mar. 3, 2025) [hereinafter, "2024 10-K"].

[34] 2023 10-K at 59; 2024 10-K at 70.

Spirit's revenue mix also reflected these pressures. Fare revenue, which typically accounts for roughly 45% of total revenue, declined 4.7% year-over-year in 2023 as competitors discounted heavily into expanding domestic capacity. Non-fare revenue, which had increased from $2.533 billion in 2022 to $2.930 billion in 2023, weakened in 2024 as aircraft groundings and bankruptcy-related demand softness reduced passenger volumes. In the first half of 2024, fare revenue declined 16.3% year-over-year and non-fare revenue declined 2.7%, underscoring pressure across Spirit's revenue base.[35]

Total operating expenses increased from $5.858 billion in 2023 to $6.019 billion in 2024, despite fewer aircraft in service.[36] Increases among several key expense categories intensified, including: (i) aircraft rent, reflecting 23 new operating leases in addition to supplemental rent increases from two returned aircraft; (ii) salaries, wages and benefits, elevated due to inflation and sector-wide pilot wage resets; and (iii) landing fees and other rentals, driven by inflation and contractor escalators.[37]

The grounding of aircraft placed additional pressure on unit costs because fewer ASMs were available to absorb fixed and semi-fixed expenses. CASM decreased from 11.67¢ in 2022 to 10.52¢ in 2023 as operations normalized but rose sharply to 11.35¢ in 2024 as GTF groundings reduced utilization. Adjusted CASM (excluding fuel) rose from 7.06¢ in 2023 to 7.97¢ in 2024, highlighting underlying cost inflation.[38] On the revenue side, TRASM declined from 10.44¢ in 2022 to 9.63¢ in 2023 to 9.27¢ in 2024, due to sustained competitive discounting and weaker revenue production per seat. Total revenue per passenger flight segment fell 8.5%, from $121.58

[35] 2023 10-K at 60, 81; 2024 10-K at 71; Spirit Airlines, Inc., Quarterly Report (Form 10-Q) at 9 (Aug. 1, 2024) [hereinafter, "2024 Q2 10-Q"].

[36] 2024 10-K at 83.

[37] *Id.* at 72.

[38] 2023 10-K at 59; 2024 10-K at 70.

in 2023 to $111.21 in 2024, reflecting both lower fares and weaker ancillary revenue per passenger.[39]

Against this backdrop, following the March 2024 termination of the proposed merger with JetBlue,[40] Spirit pivoted to a stand-alone transformation plan known internally as "Project Bravo." Project Bravo aimed to push Spirit upmarket by introducing a premium product for less price-sensitive travelers, while maintaining ULCC-level cost discipline. Key initiatives included new boarding zones, free Wi-Fi, free flight changes, enhanced service elements, and a suite of premium-oriented offerings such as premium economy-style seating and upgraded "Big Front Seat" bundles. The plan also incorporated targeted network adjustments to improve operational reliability and align capacity with demand in focus markets.

While Project Bravo represented a strategic shift toward revenue diversification and product differentiation, its success remained constrained by Spirit's operational challenges, high unit costs, and the ongoing GTF engine grounding issues that limited capacity throughout 2024.

III. SPIRIT'S PROFILE AT EMERGENCE FROM BANKRUPTCY

A. Fleet Composition and Fleet Plan

In the longer term, an airline's cost structure is dominated by the composition of its fleet.[41] Spirit did not attempt a fleet restructuring in Spirit 1. As of the Spirit 1 Petition Date, Spirit operated a fleet of 213 aircraft, including 37 aircraft on ground ("AOG").[42] The AOG fleet

[39] 2023 10-K at 59; 2024 10-K at 70, 104.

[40] JetBlue submitted an unsolicited merger proposal that was executed on July 28, 2022. Following a challenge to the merger by the U.S. Department of Justice on antitrust grounds, a federal judge blocked the merger in January 2024, and the parties formally terminated the agreement in March 2024. Spirit 1 Disclosure Statement at 17.

[41] Spirit operates a single-type fleet composed exclusively of Airbus A320-family aircraft. Operating a single-type fleet provides significant operational and cost advantages relative to airlines that manage multiple aircraft types, but it also leaves Spirit more exposed to problems affecting a single platform.

[42] Company-provided fleet analysis. Spirit operated 217 aircraft at its most recent pre-petition peak in Q3 2024.

consisted of (i) 10 aircraft classified as held-for-sale in connection with a proposed transaction with GA Telesis, LLC ("GAT")[43] and (ii) 27 A320-family aircraft grounded due to the powdered-metal issues impacting GTF engines. After accounting for aircraft unavailable due to scheduled maintenance and spare-parts limitations, 164 aircraft remained available for revenue operations as of the Spirit 1 Petition Date.

The below chart bridges Spirit's fleet from the Spirit 1 Petition Date through emergence.[44]

	Spirit 1				Emergence
	As of 11/18/2024	As of 12/31/2024	As of 1/31/2025	As of 2/28/2025	As of 3/12/2025
Aircraft in Fleet	213	213	211	213	213
GAT Removed from Service	(10)	(16)	(18)	(20)	(20)
Other AOG AC	(27)	(28)	(29)	(30)	(30)
Spares	(6)	(6)	(5)	(6)	(5)
Mx/Eng Chg/Wifi	(6)	(8)	(6)	(6)	(7)
Aircraft Available	**164**	**155**	**153**	**151**	**151**

Chapter 11 Petition Date - 11/18/2024	A320neo	A320ceo	A321ceo	A321neo	A319	Total
Total	**91**	**64**	**30**	**26**	**2**	**213**

During the pendency period, an additional ten aircraft were taken out of service in anticipation of the proposed sales to GAT,[45] and three more aircraft were grounded due to Pratt & Whitney engine timeouts and required inspections, bringing the total AOG to 50 planes. As of emergence on March 12, 2025, Spirit continued to operate a 213-aircraft fleet, with 151 aircraft available for revenue service.[46]

[43] On October 29, 2024, Spirit entered into a sale and purchase agreement with GAT to divest 23 Airbus A320ceo/A321ceo aircraft for approximately $519 million. After repayment of debt related to these aircraft, net proceeds to Spirit were expected to be approximately $168 million. Ten of the aircraft had been taken out of service as of the petition date, 12 additional aircraft were taken out of service during pendency, and two were sold to GAT in December 2024. An additional plane was sold to GAT in July 2025; Spirit expected to receive "approximately $150 million" in remaining net proceeds in 2025 had the final 20 aircraft been sold.

[44] Spirit 1 First Day Declaration ¶ 19; Company-provided fleet analysis (Dec. 9, 2025).

[45] Grounding these planes was consistent with the Project Bravo fleet plan, which showed excess fleet capacity.

[46] Company-provided fleet analysis (Dec. 9, 2025).

In the months leading up to the Spirit 1 Petition Date, Spirit executed a few significant fleet-related transactions designed to improve liquidity and reduce near-term capital obligations under its aircraft purchase agreements. First, in April 2024, Spirit amended its original firm orderbook with Airbus SAS ("Airbus"), deferring all A320neo-family aircraft scheduled for delivery in Q2 2025 through 2026 to a delivery window spanning 2030 to 2031, and adjusted the schedule for optional aircraft accordingly.[47] This amendment rescheduled the timing of future pre-delivery deposit payments ("PDPs") into later periods, reducing Spirit's near-term capital commitments and shifting aircraft-related cash outflows beyond the projection horizon. Also, in July 2024, Spirit negotiated a direct lease transaction with AerCap Holdings N.V. ("AerCap") covering 36 aircraft that were originally part of Spirit's firm orderbook with Airbus. Under this arrangement, AerCap assumed the delivery positions and the associated PDP obligations for those 36 aircraft and agreed to lease the aircraft back to Spirit upon delivery. This transaction reduced Spirit's firm aircraft orders from Airbus and effectively eliminated a substantial block of near-term PDP requirements.[48] These steps collectively reflected a deliberate strategy to shrink and optimize the future fleet, reduce upfront capital expenditures, generate liquidity, defer or eliminate PDP obligations associated with future aircraft deliveries, and optimize the long-term fleet plan all ahead of the Spirit 1 Petition Date.

B. Capital Structure and RSA Framework

Prior to the Spirit 1 Petition Date, Spirit was obligated to repay (i) $1.11 billion of 8.00% first-lien Senior Secured Notes maturing in September 2025 (the "Loyalty Notes") and (ii) $525.1 million of unsecured Convertible Notes ($25.1 million of 4.75% notes due 2025 and $500 million

[47] 2024 10-K at 13, 53.

[48] Spirit 1 First Day Declaration ¶ 20.

of 1.00% notes due 2026), totaling $1.635 billion of funded debt. Spirit and its advisors engaged with an ad hoc group of senior secured noteholders, which represented 72.6% of the Loyalty Notes, and an ad hoc group of convertible noteholders, which represented 81.3% of the 2025 Convertible Notes and 84.3% of the 2026 Convertible Notes.

These negotiations resulted in the Restructuring Support Agreement, dated November 18, 2024 (the "Spirit 1 RSA"), which obligated participating parties to support the "Restructuring Transactions" through a prearranged plan.[49] In connection with these discussions, the ad hoc groups and their advisors had access to confidential information regarding Spirit's operations, financial projections, and potential liabilities.[50]

Members of the ad hoc groups representing approximately 80% of the debt to be restructured executed the Spirit 1 RSA.[51] They agreed to (i) accept an impaired recovery on their claims, (ii) permit the non-impairment of general unsecured creditors, (iii) take back new secured paper and new equity in satisfaction of their claims, and (iv) backstop a dilutive $350 million equity rights offering.[52] By the time the Spirit 1 Disclosure Statement was approved, support for the Spirit 1 RSA had increased to approximately 98.1% of impaired claims.[53]

More specifically, the Spirit 1 Plan implemented the following restructuring transactions: (i) the exchange of $840 million of existing secured debt ($700 million of Loyalty Notes and $140 million of Convertible Notes) for $840 million of take-back debt in the form of Exit Secured PIK Toggle Notes due 2030 (the "Exit Secured Notes"); (ii) the equitization of the remaining Loyalty

[49] *See Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Spirit Airlines, Inc. and its Debtor Affiliates* [Spirit 1, Docket No. 270] (the "Spirit 1 Disclosure Statement") at 19–20.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.* at 11.

Notes and Convertible Notes ($795 million in the aggregate, with the Loyalty Noteholders receiving, on a pro rata basis, 76% of the reorganized common equity and the Convertible Noteholders receiving, on a pro rata basis, the remaining 24% of the reorganized common equity, with all of the reorganized common equity subject to dilution by the equity rights offering, backstop premium and management incentive plan); and (iii) a fully backstopped equity rights offering (the "Equity Rights Offering") to raise $350 million in reorganized equity. The Spirit 1 Plan also provided for a $275 million exit revolving credit facility, and for existing common equity to be canceled with no recovery.[54] Following the equity rights offering, the backstop premium and the management incentive plan, the Loyalty Noteholders held approximately 70.1% of the fully diluted reorganized common equity and the Convertible Noteholders held approximately 20.0% of the fully diluted reorganized common equity.

The $350 million Equity Rights Offering was priced at a 30% discount to the Spirit 1 Plan's implied equity value of approximately $806 million. Subscription rights were allocated 78.75% to Loyalty Noteholders and 21.25% to Convertible Noteholders. Both ad hoc groups fully backstopped the Equity Rights Offering and received a 6.2% backstop fee payable in additional equity (4.9% allocated to Loyalty Noteholders and 1.3% to Convertible Noteholders). Proceeds from the Equity Rights Offering were used to repay the DIP facility and to augment post-emergence liquidity.[55]

[54] *See* Spirit 1 Disclosure Statement at 2, 3, 12. The Convertible Noteholders effectively elevated 26.7% of their principal amount from unsecured status to first-lien status, but of course also took a much larger haircut than the Loyalty Noteholders.

[55] The following table displays the investments and post-dilution reorganized equity. Spirit 1 Disclosure Statement at 31.

($ in millions)	Total Investment			Cash	Post-Reorg Equity (%)			
	Claim	New Money	Claim + New Money		New 1L Facility	Pre-Dilution	Post-Dilution From ERO	Post-Dilution From Equity MIP
8% Senior Secured Noteholders	1,110.0	–	1,110.0	–	700.0	76.0%	24.2%	21.8%
Rights Offering	–	275.6	275.6	–	–	–	48.8%	43.9%
Rights Offering Backstop Fee	–	–	–	–	–	–	4.9%	4.4%
Total 8% Senior Secured Noteholders	1,110.0	275.6	1,385.6	–	700.0	76.0%	77.9%	70.1%
Convertible Noteholders	525.1	–	525.1	–	140.0	24.0%	7.6%	6.9%
Rights Offering	–	74.4	74.4	–	–	–	13.2%	11.9%
Rights Offering Backstop Fee	–	–	–	–	–	–	1.3%	1.2%
Total Convertible Noteholders	525.1	74.4	599.5	–	140.0	24.0%	22.1%	20.0%
Management Incentive Plan								10.0%

The following table displays the prepetition capital structure and the post-emergence capital structure.[56]

($ in MMs)	Prepetition Capital Structure			Adjustments	Postpetition Capital Structure		
	Outstanding	Rate	Maturity		Outstanding	Rate	Maturity
Fixed-Rate Class B 2015-1 EETC due through 2024	–	4.450%	2024		–	4.450%	2024
Fixed-Rate Class B 2017-1 EETC due through 2026	46	3.800%	2026		46	3.800%	2026
Fixed-Rate Class A 2015-1 EETC due through 2028	246	4.100%	2028		246	4.100%	2028
Fixed-Rate Class A 2017-1 EETC due through 2030	55	3.650%	2030		55	3.650%	2030
Fixed-Rate Class AA 2017-1 EETC due through 2030	166	3.380%	2030		166	3.380%	2030
Total Securitization Debt	$514				$514		
Fixed-Rate Term Loans due through 2039	$1,034	3.500%	2039		$1,034	3.500%	2039
Finance Lease Obligations	1	7.300%			1	7.300%	
Total Aircraft Debt	$1,548				$1,548		
$300MM Secured Revolving Credit Facility	$300	SOFR + 2.00%	Sep-26	($300)	–	–	–
8.00% Senior Secured Notes due 2025	1,110	8.000%	Sep-25	(1,110)	–	–	–
New $275MM Secured Revolving Credit Facility	–	–	–		–	S + 3.250%	Mar-28
New Secured Exit Notes - Senior Note Holders[1]	–	–	–	700	700	12.000%	Mar-30
New Secured Exit Notes - Convertible Note Holders[1]	–	–	–	140	140	12.000%	Mar-30
Total Secured Debt	$2,958				$2,388		
4.75% Convertible Notes due 2025	$25	4.750%	May-25	($25)	–	–	–
1.00% Convertible Notes due 2026	500	1.000%	May-26	(500)	–	–	–
Unsecured Term Loans due through 2031	136				136		
Total Unsecured Debt	$661				$136		
Total Debt	$3,620				$2,524		

(1) Rate of 12.00% per annum (8.00% cash / 4.00% PIK) or (ii) at 11.00% per annum payable in cash

The Spirit 1 Plan impaired only the Loyalty Notes and the Convertible Notes (along with the cancellation of existing equity interests).[57] All other claims were unimpaired. The

[56] Spirit 1 RSA at 7; Spirit 1 Disclosure Statement at 11–14.

[57] Spirit 1 Disclosure Statement at 3.

Investigation confirmed that vendors were paid current during Spirit 1, with the notable exception of invoices related to inspection, maintenance and repair of GTF engines.

C. Liquidity Position and Critical Assumptions

Airlines are structurally exposed to liquidity risk in ways that are easy to underestimate unless one focuses directly on cash flow timing rather than accounting measures. Their operating model relies on a rigid fixed-cost base, substantial advance ticket sales, and counterparties (most notably credit-card processors) whose behavior can shift abruptly. These factors create a dynamic where liquidity can deteriorate rapidly even when net income, revenue trends, and net working capital appear stable or superficially healthy.

The fixed-cost structure is the foundation of the problem. Airlines cannot meaningfully scale down cash outflows in the short or medium term. Aircraft leases, debt service, maintenance programs, salaried labor, airport fees, and IT system costs all continue regardless of how many flights an airline operates. Even significant schedule reductions produce only limited variable-cost cash savings because only a small set of expenses (*e.g.*, fuel, landing fees, and minor deferred maintenance) adjust, while most other costs persist. Pricing changes, of course, drop straight to the bottom line, but reduction in seat miles (volume) has almost the same impact, and a half-full plane costs almost as much to operate as a full flight.

Working-capital dynamics amplify vulnerability. In most industries, payment occurs only after a product has been produced. Airlines invert this pattern. Advance ticket sales (together with credit card processor advances) allow airlines to collect funds weeks or months in advance of the obligation to honor tickets. In normal periods, an airline may carry structurally negative working capital as a result. But when bookings soften, this dynamic results in immediate cash drain and every dollar of deferred-revenue reduction consumes a dollar of liquidity.

Accounting optics move in the opposite direction. Because deferred revenue (here, Advance Ticket Liability or "ATL") is a current liability, a decline in prepaid bookings counterintuitively improves net working capital while at the same time draining liquidity. Those reviewing only the balance sheet perceive improvement, while the actual liquidity picture is deteriorating. This structural disconnect, where accounting signals imply stability at precisely the moment cash is being consumed, is a hallmark feature of airline liquidity in down markets.

Additional demands on cash also tend to emerge in weak demand environments. Refund liabilities accelerate when schedules change. At the same time, credit-card processors, who bear direct exposure to refund risk, may increase holdbacks or shift a portion of settlements into restricted accounts. This immediately reduces accessible liquidity, even though it barely affects net working capital and has no impact on earnings. Airlines also face sizeable prepaid obligations, such as maintenance deposits and long-lead vendor prepayments, that do not fall and can even rise during operational disruptions. These dynamics further drain cash while leaving Income Statement metrics largely unaffected.

The combination of operating leverage and timing mismatches produces recurring disconnects between reported financial indicators and actual liquidity. Movements in deferred revenue obscure cash consumption. Transfers between unrestricted and processor-restricted cash accounts alter liquidity without touching net working capital. It is entirely possible for an airline to show stable EBITDAR and improved working-capital ratios while burning hundreds of millions of dollars in cash over the same period.

Most material airline financing arrangements (whether secured term loans, revolvers, loyalty-program financings, bilateral facilities, or processor agreements) impose explicit

minimum-liquidity requirements.[58] These covenants focus on unrestricted cash and short-term investments rather than more traditional EBITDAR or leverage metrics. Their ubiquity reflects a longstanding industry view that earnings and balance-sheet indicators are poor early warnings of stress, and that real liquidity, not accounting performance, is the decisive constraint on continued operation.

i. Spirit's Operating and Net Working Capital Liquidity

Spirit's performance is a prime example of this dynamic. Over the first six months of 2025, Spirit's liquidity declined by approximately $350 million,[59] while net working capital moved only modestly. The liquidity deterioration significantly outpaced changes in net working capital because the primary drivers were deferred-revenue contraction and negative operating cash flow. From emergence through Q2 2025, the shrinkage in deferred revenue alone depleted approximately $111 million of liquidity, as revenue was recognized without generating sufficient new ticket sale liabilities and new cash inflows. Together, Spirit's high fixed-cost structure and declining forward bookings steadily and materially eroded liquidity.

ii. Spirit's Credit Card Processing Arrangement

Spirit has agreements with organizations that process credit card transactions arising from the purchase of air travel and other ancillary services by customers.[60] Credit card processing is

[58] For an enhanced equipment trust certificate ("EETC"), a traditional minimum-liquidity covenant is uncommon. Instead of requiring the airline to maintain a defined cash level, EETCs use structural protections such as liquidity facilities provided by third-party banks that can cover interest for a specified period during financial stress, cross-default thresholds tied to other debt instruments, and debt-service coverage tests applied within the trust rather than to the airline itself. These mechanisms protect investors without imposing balance sheet constraints on the carrier. EETCs are a widely used financing tool through which airlines raise secured debt backed by specific aircraft and related equipment, typically organized into multiple tranches with varying payment priorities. The refinancing of Spirit's EETC Tranche B and upsizing into a new Tranche B(R) was one of the transactions reviewed by the Examiner.

[59] Cleansing Materials Cash Forecast (Dec. 12, 2025) (includes $275 million of RCF availability).

[60] 2024 10-K at 104.

essential for airlines.[61] These agreements emphasize the importance of card processor support to airline liquidity and the relationship between processor collateral requirements, leverage and plan timing.[62] Using a credit card processor allows airlines to receive payment weeks or months before a flight takes place, giving them essential working capital for operations. However, not all this cash is freely available. Credit-card processors maintain reserves tied to forward bookings, refund risk, and overall liquidity conditions.[63] When bookings weaken or liquidity falls, processors can tighten terms or increase holdbacks, creating immediate cash pressure. But, without card processors, airlines could not efficiently collect, reconcile, or access this advance cash flow at the scale required by their business models.[64]

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[61] Airlines are heavily dependent on using credit card processors because the vast majority of ticket sales today occur online. Ricardo Boin *et al.*, *Airline Retailing: How Payment Innovation Can Improve the Bottom Line*, MCKINSEY (Sep. 9, 2022), https://www.mckinsey.com/industries/travel/our-insights/airline-retailing-how-payment-innovation-can-improve-the-bottom-line; *see also* Iñaki Aboitiz, *Reclaiming Value: How Airlines Can Boost Profits Through Optimizing Payments*, GLOBANT (May 20, 2025), https://stayrelevant.globant.com/en/technology/airlines/optimizing-payment-in-airline-industry/ (noting that the shift towards more direct business from with both passengers and travel agencies empowered airlines to have greater control over payment options and associated fees, but simultaneously exposed airlines to direct payment processing costs, which intermediaries such as travel agencies and global distribution systems previously absorbed via the previously more predominant indirect sale channels). Approximately 70% of retail airline transactions are done on credit cards which, while convenient for customers, are costly for airlines. *See* Boin, *supra* note 61.

[62] Additionally, a significant portion of airline revenue and liquidity comes from co-branded credit card partnerships, where banks purchase loyalty miles and points in advance from airlines, providing immediate cash and supporting profitability. Card processors facilitate these transactions, which underpin much of the modern airline loyalty business and connect carriers directly to this vital revenue source. Basudeb Chatterjee, *When Retail Becomes Finance: The Loyalty Disruption Airlines Didn't See Coming*, PARIVEDA (Nov. 3, 2025), https://parivedasolutions.com/perspectives/when-retail-becomes-finance-the-loyalty-disruption-airlines-didnt-see-coming/.

[63] Airlines are uniquely categorized as high-risk merchants because they sell tickets for future services and the delay between payment and delivery creates additional risks. *See* Thomas Helldorff, *Understanding Airline Payments Risk*, WORLDPAY (last visited Nov. 24, 2025), http://worldpay.com/en/insights/articles/understanding-airline-payments-risk. Card processors assume fraud and credit risk, comply with regulatory standards, handle authorization, settlement, fraud mitigation and risk management, and help manage chargebacks if a customer disputes a transaction. *Id.* Absorption of these risks translate to high costs associated with the use of a credit card processor and, because net margins in the airline industry are razor thin, it has been reported that card processing fees can consume over 50% of the net profits of an airline. *See The $20B Problem Airlines Can Solve Today: Payment Orchestration*, PAYBYRD (last visited Nov. 24, 2025), https://www.paybyrd.com/knowledge-hub/the-20b-problem-airlines-can-solve-today-payment-orchestration-vjxgp.

[64] Airlines have no immediate realistic alternative to credit card processors. Airlines can try partner with multiple processors and explore new methods (such as direct account-to-account payments) to try lower those costs. *See* Aboitiz, *supra* note 61. While credit cards remain the most-preferred payment method, use of digital wallets or bank transfers are increasing, and airlines might be able to explore new payment methods. *See* Boin, *supra* note 61.

Consistent with standard industry practice, Spirit's credit-card processing agreements allow processors to impose holdbacks or require collateral when customers purchase future travel or services using credit cards. Spirit's primary processor, Elavon, requires the Company to maintain minimum liquidity and cash collateral under its Credit Card Processing Agreement.[65] Spirit was in compliance with the financial covenants in this agreement as of December 31, 2024, and March 31, 2025.[66]

Spirit's liquidity dropped materially in Q2 2025 and then cratered in July (excluding the sale-leaseback) and in August. On August 15, 2025, Spirit agreed to transfer $50.0 million to a pledged account in favor of Elavon, to be held as restricted cash. Subsequently, on August 20, 2025, Spirit agreed to allow Elavon to (i) hold back up to $3.0 million per day until the processor's exposure is fully collateralized and (ii) remain fully collateralized as Elavon's exposure increases or decreases.[67]

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[65] *Id.* The "Credit Card Processing Agreement" refers to that certain signatory agreement entered into on May 21, 2009 (as amended from time to time in accordance with its terms) with an affiliate of U.S. Bank National Association ("U.S. Bank" or "Elavon"), pursuant to which Elavon processes credit card payments for the Debtors. Spirit 1 First Day Decl. ¶ 49.

On July 2, 2024, Spirit entered into a letter agreement (the "First Elavon Amendment") which modified the Credit Card Processing Agreement to, among other things, extend the term thereof until December 31, 2025, including automatic extensions for two successive one-year terms (subject to the right of either party to opt out of any extension term by written notice to the other within a specified period of time prior to the commencement of any extension term); however, under the First Elavon Amendment, if a specified amount of the Loyalty Notes was not extended or refinanced by September 20, 2024, then the expiration date under the Credit Card Processing Agreement was changed to December 31, 2024 (the "Early Maturity Date") (with no automatic extensions). Spirit 1 First Day Decl. ¶ 49. In accordance with the First Elavon Amendment, in July 2024, Spirit also deposited $200 million into a U.S. Bank deposit account and $50 million in pledged cash into a restricted U.S. Bank account. *Id.* The $200 million deposited into the deposit account was carefully structured to be considered a compensating balance arrangement that did not legally restrict Spirit's use of this cash, for purposes of meeting liquidity covenants in the Revolving Credit Agreement and Exit Notes. *Id.*

[66] 2024 10-K at 105; Spirit Aviation Holdings, Inc., Quarterly Report (Form 10-Q) at 28 (May 30, 2025) [hereinafter, "2025 Q1 10-Q"].

[67] Spirit's Form 10-Q for the period ended September 30, 2025, provides: "The second amendment authorized our primary credit card processor to hold back up to $3.0 million per day until its exposure is fully collateralized and to maintain full collateralization as such exposure fluctuates over time. As of October 6, 2025, we reached the gross exposure. Accordingly, increases in the collateralize holdback balance reduce the amount required in the deposit (cont'd)

iii. Cash Flow Bridge through August 2025

Spirit provided the Examiner with monthly cash actuals for the period from January 2025 through August 2025. The Company posted an operating cash burn for the first eight months of 2025 as expenses for fuel, salaries and wages, taxes, and rent exceeded cash inflows. Non-Operating Cash Flows include heavy maintenance costs, primarily due to the ongoing GTF engine powder metal defect, which required accelerated inspections and engine removals. Other significant cash outflow was related to debt service.

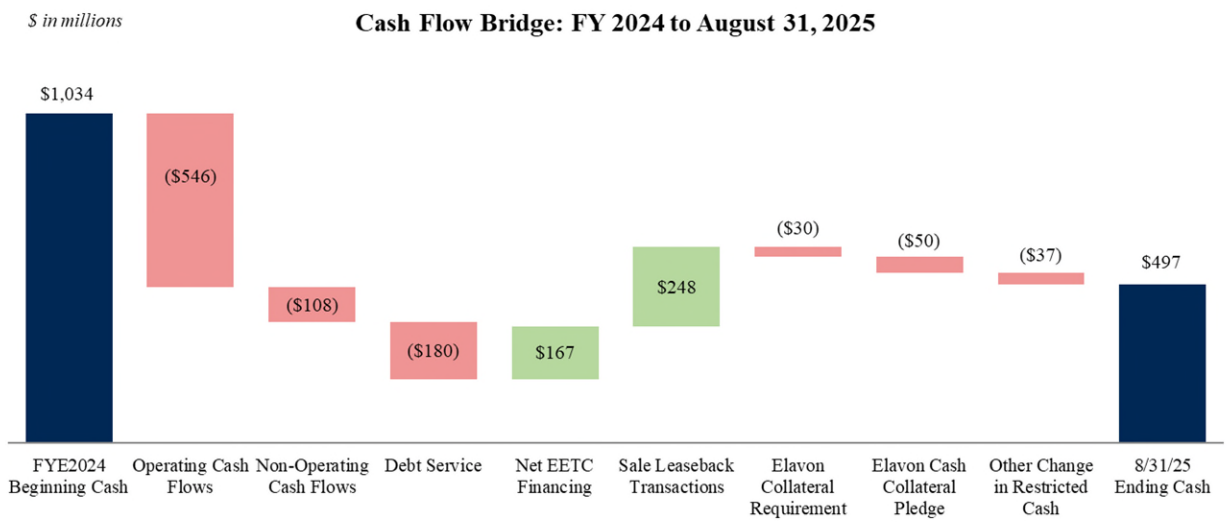
Ending cash in August 2025 was supported by $166.8 million in net proceeds from EETC financing, reflecting $210.2 million raised from the Series 2025-1B(R) certificates, offset by the $43.3 million extinguishment of outstanding equipment notes.[68] Additionally, Spirit recognized a cash inflow of $248 million during the first eight months of 2025 from 14 sale-leaseback transactions executed in the third quarter.[69] Lastly, the Elavon cash collateral requirements and pledged amounts resulted in a further $80.0 million reduction in cash by the end of August 2025.[70]

account on a dollar-for-dollar basis. As of September 30, 2025, the processor had a holdback $177.2 million, recorded in other long-term assets on our condensed consolidated balance sheets and the amount required in the deposit account was reduced to $24.0 million." Spirit Aviation Holdings, Inc., Quarterly Report (Form 10-Q) at 72 (Sep. 30, 2025) [hereinafter, "2025 Q3 10-Q"].

[68] 2025 3Q 10-Q at 41.

[69] *Id.*

[70] *Id.* The following chart displays the cash flow bridge from fiscal year 2024 to August 31, 2025. Cleansing Materials Cash Forecast (Dec. 12, 2025).



D. Projections for Fiscal Year 2025 and Key Assumptions

The Debtors presented a set of forward-looking financial projections contained in Exhibit B to the Spirit 1 Disclosure Statement (the "Projections"), which served as the primary basis for the Court to find that the Spirit 1 Plan was feasible. The Projections reflected management's view of Spirit's anticipated operating performance, cash flow, liquidity, and capital structure following emergence. They were supported by the Cromer Confirmation Declaration,[71] which described the underlying business assumptions and explained how the Debtors expected to stabilize operations and generate sufficient cash to meet their obligations under the Spirit 1 Plan. The Projections were admitted into evidence without objection or challenge. The key outputs of the Projections are summarized below.[72]

[71] The "Cromer Confirmation Declaration" refers to the *Declaration of Fred Cromer in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Reorganization of Spirit Airlines, Inc. and its Debtor Affiliates* [Spirit 1 Docket No. 391].

[72] Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 7–8.

	Fiscal Year Ending December 31				
Income Statement ($ in Millions)	**2024F**	**2025F**	**2026F**	**2027F**	**2028F**
Total Revenue	**$4,914**	**$4,891**	**$5,411**	**$6,090**	**$6,818**
Operating Expenses					
Aircraft Fuel	$1,486	$1,137	$1,169	$1,249	$1,343
Salaries, Wages & Benefits	1,686	1,502	1,519	1,641	1,800
Aircraft Rent	541	599	623	683	712
Landing Fees and Other Rents	457	420	435	471	511
Distribution	201	195	210	234	260
Maintenance, Materials & Repairs	221	192	201	223	246
Depreciation & Amortization	327	289	265	274	286
Other Operating Expenses	812	779	835	922	1,007
Total Operating Expenses	**$5,731**	**$5,113**	**$5,257**	**$5,697**	**$6,166**
Consolidated Operating Income / (Loss)	**($817)**	**($222)**	**$154**	**$393**	**$651**
Non-Operating (Income) / Expense					
Interest Income	($47)	($44)	($47)	($50)	($55)
Interest Expense [1]	214	245	212	215	213
Other [2]	347	(749)	1	1	2
Total Non-Operating (Income) / Expense	**$513**	**($548)**	**$166**	**$166**	**$160**
Consolidated Pre-Tax Income / (Loss)	**($1,330)**	**$326**	**($12)**	**$227**	**$491**
Consolidated Income Tax Expense / (Benefit)	(229)	74	(3)	51	111
Consolidated Net Income / (Loss)	**($1,101)**	**$252**	**($10)**	**$176**	**$380**
Memo					
EBITDAR [3]	*$51*	*$666*	*$1,041*	*$1,350*	*$1,650*

Footnotes:

[1] Interest expense, net of capitalized interest

[2] Includes (i) (gain) / loss from asset sales and cancellation of indebtedness; and (ii) special charges

[3] Operating Income / (Loss) plus aircraft rent and depreciation & amortization

	Fiscal Year Ending December 31				
Balance Sheet ($ in Millions)	**2024F**	**2025F**	**2026F**	**2027F**	**2028F**
Current Assets					
Cash & Short-Term Investments	$913	$600	$756	$1,018	$1,303
Restricted Cash	206	224	230	230	230
Accounts Receivable	211	216	224	237	243
Other Current Assets	813	331	335	356	364
Total Current Assets	$2,143	$1,371	$1,545	$1,841	$2,140
Non-Current Assets					
Property, Plant & Equipment, net	$2,521	$2,428	$2,338	$2,303	$2,274
Other Assets	5,016	4,899	4,655	5,444	5,510
Total Assets	$9,681	$8,698	$8,538	$9,588	$9,924
Current Liabilities					
Accounts Payable	$37	$36	$38	$48	$51
Air Traffic Liability	479	493	518	535	563
Other Current Liabilities	589	521	550	636	632
Total Current Liabilities	$1,104	$1,050	$1,105	$1,219	$1,247
Non-Current Liabilities					
Exit Financing	–	$868	$904	$941	$979
Funded Debt and Finance Leases	3,805	1,343	1,288	1,362	1,397
Other Liabilities	4,754	4,808	4,612	5,248	5,090
Total Liabilities	$9,664	$8,069	$7,909	$8,769	$8,714
Stockholders' Equity					
Accumulated Earnings / (Deficit)	($1,076)	($823)	($831)	($652)	($270)
APIC / New Equity	1,174	1,533	1,541	1,551	1,562
Other	($1)	($1)	($1)	($1)	($1)
Total Stockholders' Equity	$17	$629	$629	$818	$1,210
Total Liabilities & Stockholders' Equity	$9,681	$8,698	$8,538	$9,588	$9,924

The Court also received, as Exhibit C to the Spirit 1 Disclosure Statement, the "Valuation Analysis" prepared by the Spirit 1 Debtors' investment banker, Perella Weinberg Partners LP ("Perella"), that relied on the Projections to derive a range of enterprise values for the reorganized airline. This valuation range supported the Spirit 1 Plan's equitization framework and demonstrated that recoveries to the impaired creditor classes were consistent with the estimated value of the reorganized equity.

The Projections also supported the "Liquidation Analysis" (Exhibit D to the Spirit 1 Disclosure Statement), which compared creditor recoveries under a hypothetical Chapter 7 scenario to those available under the Spirit 1 Plan. Because the Projections supported a going-

concern value materially higher than liquidation value, the Debtors argued, and no party disputed, that the Spirit 1 Plan satisfied the "best interests" test.

Taken together, the Projections, supporting declarations, and valuation materials formed the uncontested evidentiary foundation for confirmation of the Spirit 1 Plan and its new capital structure. The Projections indicated that there would be sufficient cash flows to satisfy the Debtors' obligations during the period covered by the Projections.

i. Revenue

The Examiner is particularly concerned about the FY 2025 revenue projections because those projections proved critically inaccurate. Out-year projections were not tested by the Examiner because Spirit refiled in 2025, and nothing in the record or uncovered in the Investigation indicates that perceived inaccuracies in out-year projections contributed to Spirit's decision to refile.

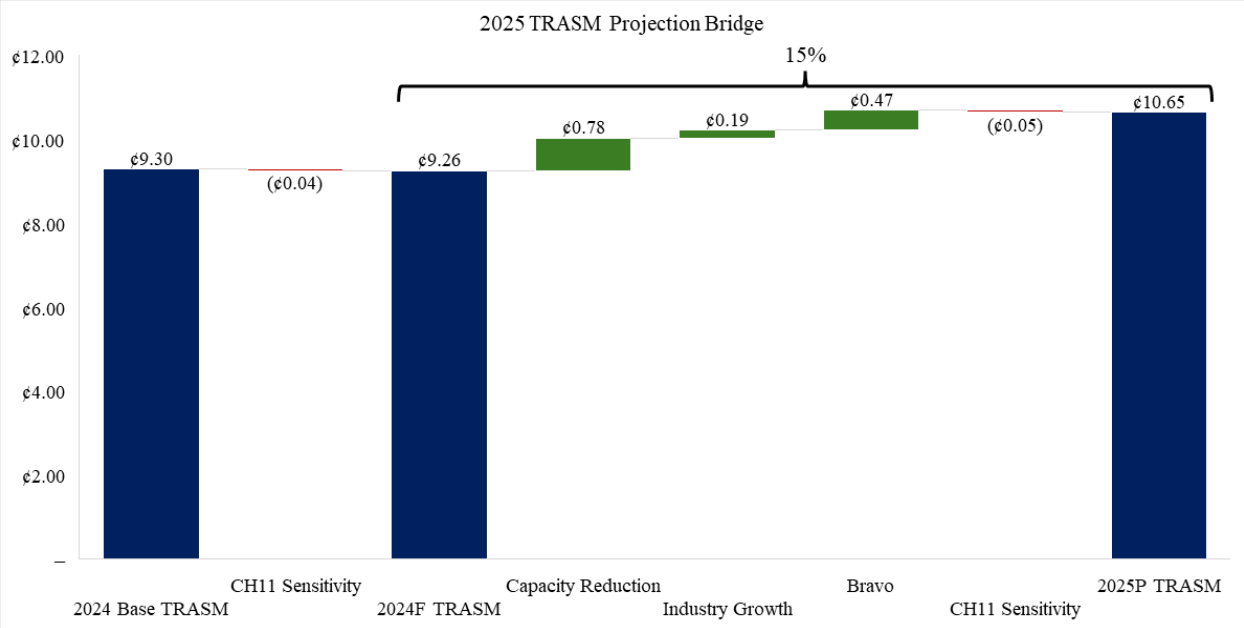
The Projections forecasted revenue using two primary categories: fare revenue and non-fare revenue. Fare revenue reflects passenger ticket sales, while non-fare revenue accounts for ancillary purchases such as checked luggage, seat assignments, and on-board catering.[73] Projected revenue was based on assumptions for ASM and TRASM. ASM serves as a proxy for system capacity and is driven by how many aircraft are expected to operate over the projection period. The Projections forecasted that Spirit's fleet would grow from 202 aircraft in 2024 to 208 aircraft by 2028, driving ASM growth from 50.0 billion to 58.3 billion.

TRASM was projected to increase from 9.26¢ in fiscal year 2024 to 11.69¢ in fiscal year 2028, including an approximately 15% increase between fiscal years 2024 and 2025.[74]

[73] Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 11.

[74] Preliminary Business Plan Model (Dec. 12, 2025); Board of Directors Presentation (Dec. 6, 2024) at 12, 23, 29, 57.

Management attributed these step-ups primarily to capacity reductions to fly more profitable routes and anticipated fare uplift from Project Bravo. Below is the TRASM bridge for 2025, which shows a 15% improvement in forecasted TRASM from 2024 to 2025.[75]



ASM projection for 2025 was 45.9 billion miles down from 53.0 million projected for full year 2024, meaning that in the aggregate Spirit expected a 0.5% decline in total revenue. After adjusting for fuel assumptions, Spirit expected a 6.6% improvement in total revenue.[76] Based on the ASM and TRASM assumptions outlined above, total revenue was projected to grow at an 8.5% CAGR, increasing from $4.9 billion in fiscal year 2024 to $6.8 billion in fiscal year 2028.[77]

For the eight months leading up to the Spirit 2 filing, ASM fell short of Projections by 8.1%, or 2.6 billion miles.[78] TRASM underperformed by 12%, with an actual TRASM of 9.39¢ as of August 31, 2025,[79] as compared to a TRASM of 10.70¢ from the Projections. Spirit projected

[75] Board of Directors Presentation (Dec. 6, 2024) at 9.

[76] Preliminary Business Plan Model (Dec. 12, 2025).

[77] Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 11.

[78] Cleansing Materials Cash Forecast (Dec. 12, 2025).

[79] Project Soar August 2025 Financial Summary.

a 3% year-over-year revenue decline in the YTD August 25 period, driven primarily by a 6.0 billion mile, or 16%, reduction to ASM.[80]

ii. Operating Expenses and Liquidity

Historically, Spirit's two largest operating expenses have been aircraft fuel and labor costs.[81] The Projections used forward pricing curves for US Gulf Coast Jet Fuel, NY Jet, and LA Jet as of November 1, 2024, to estimate fuel expenses, which were then weighted based on regional geographic flight proportions, and applied the weighted average price to monthly forecasted gallonage.[82] The Projections did not contemplate a fuel-hedging program.[83]

Labor costs were projected to increase modestly from $1.7 billion in fiscal year 2024 to $1.8 billion in fiscal year 2028.[84] This projection results in labor expense actually declining as a percentage of revenue from approximately 34% to 26% over the projection period.[85] In addition to fuel and labor, Spirit forecasted aircraft rent, landing fees, distribution expenses, and maintenance charges on a monthly basis throughout the Projections. Operating margin was projected to improve from (23%) in fiscal year 2024 to 9.6% in fiscal year 2028.[86]

The Debtors projected that they would have approximately $852 million of liquidity at the end of February 2025,[87] a level they expected to remain stable throughout the end of 2025. This was not much of a buffer to the Elavon minimum liquidity requirement of $850 million, but projected liquidity also did not include known potential sources of additional liquidity (*e.g.*, sale-

[80] Preliminary Business Plan Model (Dec. 12, 2025).

[81] *Id.*

[82] Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 11.

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] Preliminary Business Plan Model (Dec. 12, 2025).

[87] *Id.*

leaseback of spare engines or monetization of the Dania Beach, Florida, headquarters). The Projections reflected management's expectation that operating performance would be sufficient to support near-term operations, absorb seasonal working-capital requirements, and maintain a buffer against potential volatility in fuel costs, demand, and operating performance.[88]

iii. Transactions Contemplated in the Projections

The Investigation reveals that the following transactions (in addition to the restructuring transactions)[89] were assumed to occur in the Projections in support of the Spirit 1 Plan:

- The sale of 23 aircraft beginning in December 2024 and continuing through September 2025,[90] generating approximately $168 million in net total proceeds.
- Repayment of the EETC Tranche B, as well as a $200 million refinancing of the EETC notes in February 2025. Net cash contributions for the transaction were expected to be approximately $155 million (actual EETC net cash contributions were approximately $170 million, resulting in approximately $15 million of additional liquidity).[91]

IV. EVENTS LEADING TO THE SPIRIT 2 BANKRUPTCY

A. Post-Emergence Financial Deterioration

Spirit's financial and operating results disclosed during the first three quarters of 2025, prior to the Spirit 2 Petition Date, reflect material operating underperformance, accelerated cash burn, and a liquidity path that diverged sharply from the forward-looking expectations under the Projections. Unit revenue and capacity were significantly weaker than anticipated and management resorted to extraordinary cash-preservation initiatives to maintain liquidity.

[88] *Id.*

[89] The restructuring transactions are described in Section III.B. and include the $350 million rights offering, the exit facility reinstated at a reduced maximum commitment of $275 million, and $840 million of new Exit Secured Notes, among other transactions.

[90] Preliminary Business Plan Model (Dec. 12, 2025).

[91] *Id.*

i. Q1 2025 – Early Operational Strain and Heightened Liquidity Warnings

During Q1 2025, Spirit's reported results revealed early signs that its operating trajectory was weakening relative to the Projections. Both unit revenue (TRASM) and capacity (ASM) underperformed during the quarter, and total revenue fell short of plan by approximately $79 million, or 7% (and EBITDAR underperformed by roughly $87 million). Nonetheless, Spirit ended March with $900 million of liquidity.[92]

Although these results reflected emerging signs of deterioration, Spirit's Q1 2025 10-Q stated that Spirit expected to maintain sufficient liquidity to meet its future cash needs despite operating in a "challenging pricing environment."[93] It also noted that liquidity covenants could be met in Q2 2025 through "management initiatives."[94]

ii. Q2 2025 – "Adverse Market Conditions" and Escalating Liquidity Risk

Performance weakened further in Q2 2025, with revenue declining from the Projections by more than 20% (roughly $300 million).[95] This shortfall was driven by both materially lower capacity and weaker unit revenue: ASM registered an 11% negative variance to plan, while TRASM came in approximately 20% below expectations.[96] Together with the failure to realize $91 million in Q2 2025 projected aircraft-sale net proceeds from the GAT sale agreement, these factors produced a significant liquidity shortfall, including a negative variance to plan of $150 million, which reduced total liquidity to $680 million.[97]

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[92] *Id.*; Cleansing Materials Cash Forecast (Dec. 12, 2025).

[93] 2025 Q1 10-Q at 7, 48. This conclusion was based on existing cash balances, anticipated operating cash flows, and management's planned initiatives.

[94] Spirit Aviation Holdings, Inc., Quarterly Report (Form 10-Q) at 54 (June 30, 2025) [hereinafter, "2025 Q2 10-Q"].

[95] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

[96] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

[97] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025). (cont'd)

Management outlined several potential liquidity measures, including planned sale-leaseback transactions, network and product enhancements, and additional cost-reduction initiatives.[98] Spirit further noted that financial performance would need to improve more quickly than management anticipated to remain in compliance with minimum liquidity covenants under its debt and credit-card processing agreements.[99] As a result, Spirit announced that additional liquidity-enhancing actions, including potential aircraft and real-estate sales, the sale of excess gate capacity, and the elimination of certain fixed costs, would be required to remain in compliance.[100]

iii. Q3 2025 – Continued Liquidity Erosion and Filing of Spirit 2

Unfortunately, the Debtors' financial performance deteriorated sharply during the two months leading up to the Spirit 2 filing in August 2025. Revenue performance continued to weaken relative to the Projections, highlighted by an unfavorable variance of approximately 27%, or $132 million through the first month of the quarter.[101] In addition, Elavon required Spirit to post an additional $50 million into a restricted cash account.[102] In July, Spirit tried to increase liquidity through a $250 million sale-leaseback transaction as allowed under the Exit Note carve-out. However, Spirit's liquidity position declined by almost $300 million to roughly $500 million by the Spirit 2 Petition Date.[103] The chart below demonstrates this financial decline:[104]

Spirit's Q2 2025 going-concern discussion attributed the weak results to "adverse market conditions, including elevated domestic capacity and continued weak demand for domestic leisure travel . . . resulting in a challenging pricing environment." 2025 2Q 10-Q at 8, 54.

[98] 2025 2Q 10-Q at 8, 54–55.

[99] *Id.*

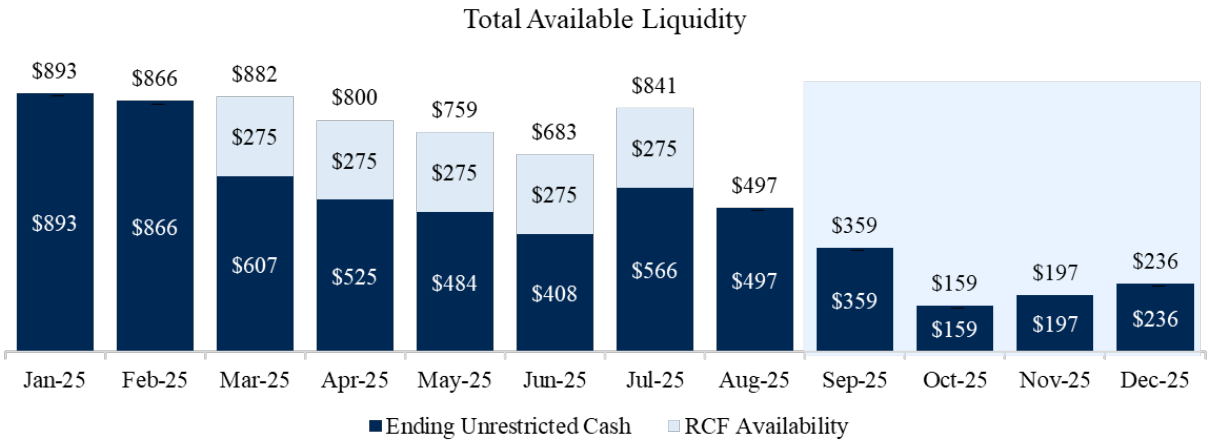
[100] *Id.*

[101] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

[102] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

[103] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

[104] Cleansing Materials Cash Forecast (Dec. 12, 2025).



B. Post-Emergence Transactions

Spirit engaged in several Interim Period transactions that, together with the timing of the two bankruptcy filings, warrant Examiner scrutiny.

i. GAT Sale Failure (Early 2025)

Spirit's agreement with GAT for the sale of 23 Airbus A320ceo/A321ceo aircraft expired on July 15, 2025, after delivery of only three aircraft, two in December 2024 and one in July 2025. The agreement was not performed as expected due to defects in internal engine components identified during inspection.[105] As a standard condition of sale, the aircraft engines were required to undergo borescope inspections, which can identify defects in internal components that are not otherwise observable. Numerous aircraft failed these inspections, and Spirit could not find sufficient repair slots, in part because of extended queues at Pratt & Whitney's engine maintenance affiliate, International Aero Engines, LLC ("IAE").[106]

[105] Spirit and GAT also had disputes over the application of contractual condition requirements (*e.g.*, configuration specification) for delivery of each aircraft. In one interview, a company representative described the process of delivering the first three aircraft as "more difficult than [previously] selling the entire A319 fleet."

[106] These held-for-sale planes largely used older engines, not the GTF engines that suffered from powdered-metal cracking. Even so, maintenance slots at IAE were in high demand, and Spirit had to triage which engines would receive slots.

Spirit suffered a loss of liquidity because unsold aircraft could not be monetized as anticipated. The impact on capacity was minimal because the affected planes had already been removed from active service and removal was consistent with Project Bravo capacity reductions. And, although backup buyers may have been available, many of the GAT-related engines still required repair in 2025 and available repair slots (whether at IAE or elsewhere) were scarce. By the confirmation hearing, the Debtors had sufficient information to determine that the Projections' assumption of 21 aircraft sold by Q3 2025 was unlikely to be met.

ii. EETC Transaction (March 2025)

Upon emergence from Spirit 1, Spirit's fleet included 27 aircraft financed through EETCs.[107] On March 31, 2025, Spirit refinanced the EETC structure via a private offering of Spirit Airlines Class B(R) Pass Through Certificates, Series 2025-1B(R) in the aggregate face amount of $215 million, the proceeds of which were used to acquire new equipment notes issued by Spirit Airlines, LLC and to repay $43 million of the existing "Series B" equipment notes issued under the Spirit Airlines 2017-1 pass through certificates, pay transaction fees, and for general corporate purposes.[108] Although it is not evident in the notes to the Projections, Spirit expected the EETC refinancing to raise $200 million in gross proceeds in February 2025, and that amount (less fees) was accounted for in the underlying model that supported the Projections.

iii. Management Changes (April 2025)

On April 7, 2025, Spirit announced that then-President and Chief Executive Officer ("CEO") Ted Christie was stepping down from Spirit and its board of directors, effective April 7,

[107] 2025 Q2 10-Q at 24.

[108] 2025 Q1 10-Q at 33, 49.

and that the board was in the process of appointing a permanent replacement.[109] On April 17, 2025, Spirit announced David Davis as its new President and CEO, effective April 21, 2025.[110] Immediately after joining Spirit, Mr. Davis "launched a complete review of the network optimization strategy" because he saw untapped value in network optimization that exceeded what the previous management team identified or was willing to pursue, including enhancing the benefits of Spirit's strongholds at LaGuardia Airport and Fort Lauderdale-Hollywood International Airport, moving toward more of a hub strategy.[111] Mr. Davis also advanced Project Bravo, implementing network and product offering proposals, while also focusing on costs, capacity, and the Pratt & Whitney engine issues.[112]

iv. Pratt & Whitney Deals (June 2025)

Beyond question, Spirit's fleet operations were significantly affected by widespread maintenance and engine issues stemming from defects in certain Pratt & Whitney GTF engines powering its A320neo-family aircraft. As a result, Spirit grounded approximately 25 aircraft on average during 2024 for operational service due to engine issues.[113] On March 26, 2024, Spirit entered into an agreement with IAE to compensate Spirit for its non-operational aircraft due to GTF engine issues. $30.6 million in credits were issued to Spirit in Q1 2024 based on AOG

[109] *Spirit Airlines Announces Senior Leadership Transition*, SPIRIT (Apr. 7, 2025), https://ir.spirit.com/news/news-details/2025/Spirit-Airlines-Announces-Senior-Leadership-Transition/default.aspx. In the same press release, Spirit also announced the resignation of then-Executive Vice President and Chief Commercial Officer Matt Klein, to be succeeded by Rana Ghosh. *Id.*

[110] *Spirit Airlines Appoints Airline Industry Leader Dave Davis as President and CEO*, SPIRIT (Apr. 17, 2025), https://ir.spirit.com/news/news-details/2025/Spirit-Airlines-Appoints-Airline-Industry-Leader-Dave-Davis-as-President-and-CEO/default.aspx. Spirit also announced the appointments of Duncan Dee as Senior Vice President, Commercial Communications and Trey Urbahn as Senior Commercial Advisor. *Id.*

[111] Interview by Marc Heimowitz with Fred Cromer in Dania Beach, Fla. (Nov. 6, 2025) [hereinafter, "Cromer Interview"].

[112] *Id.*

[113] 2024 10-K at 41–42, 74.

days.[114] The 2024 agreement had a mechanism for calculating compensation for AOG days through the end of the year; as of the Spirit 1 Petition Date, Spirit estimated that negotiated credits would range from $150–200 million through the end of 2024, which comports with the model underlying the Projections.[115] These engine-related groundings and the resulting credit relief from IAE materially affected Spirit's liquidity and balance sheet heading into the Spirit 1 bankruptcy. By recognizing the IAE credits as reductions to its purchase costs for flight equipment and deferred heavy maintenance, Spirit sought to partially offset the cost burden of AOG days and the associated maintenance liability.[116] However, Spirit also acknowledged that the credits did not fully offset its fixed obligations or the associated lost revenue.

Spirit and Pratt & Whitney ended 2024 without an agreement for compensation for AOG days in 2025. On June 4, 2025, Spirit and IAE entered into a new agreement (the "June IAE Agreement"), pursuant to which IAE provided the Company with a monthly credit, subject to certain conditions, as compensation for each of the Company's aircraft unavailable for operational service due to GTF engine issues from January 1, 2025, through December 31, 2025. The Examiner's professionals reviewed an unredacted copy of the June IAE Agreement.

In the Spirit 2 First Day Declaration, it was stated that the negotiated credits from IAE did not fully compensate Spirit for the costs of carrying the 38 aircraft then grounded due to the Pratt & Whitney powdered metal issue.[117] Between the June IAE Agreement and the Spirit 2 Petition Date, IAE and the Spirit remained engaged in further negotiations over the terms of a final

[114] Spirit Airlines, Inc., Quarterly Report (Form 10-Q) at 8 (May 3, 2024) [hereinafter, "2024 Q1 10-Q"].

[115] *Id.* at 25; Preliminary Business Plan Model (Dec. 12, 2025).

[116] Spirit Airlines, Inc., Form 8-K at 4 (Apr. 15, 2024).

[117] Spirit 2 First Day Declaration ¶ 21.

settlement of the dispute,[118] and ultimately filed the IAE Motion on December 3, 2025, seeking approval of a "restructuring term sheet" memorializing their agreed settlement providing for, among other things, $140 million in new service credits for Spirit.[119]

v. Sale Leaseback of Engines (July 2025)

To raise needed liquidity, Spirit completed a sale-leaseback transaction relating to 14 spare engines in July and August 2025, generating $250 million in proceeds.[120]

vi. Elavon Transaction (August 2025)

During the Interim Period, two additional amendments with Elavon were executed effective with Elavon as of August 15, 2025 and August 20, 2025.[121] Spirit agreed to make an additional transfer of $50 million in cash to a pledged account in favor of Elavon.[122] In addition, Spirit agreed to allow Elavon to hold back up to $3 million per day until Elavon's exposure is fully collateralized and to remain fully collateralized as Elavon's exposure increases or decreases.[123] In exchange, Elavon agreed to (i) extend the term of the Credit Card Processing Agreement from the current December 31, 2025, expiry date to December 31, 2027, followed by two automatic one-year extensions unless either party provides a notice of non-renewal not less than 90 days prior to the end of the then-effective term, and (ii) remove the existing minimum liquidity trigger for holdbacks under the Credit Card Processing Agreement.[124]

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[118] *See* Board of Directors Presentation (Nov. 14, 2025); *Motion of the Debtors for Entry of an Order (I) Approving the Restructuring Term Sheet with the IAE Parties, (II) Authorizing and Approving Entry into the Definitive Documents and GTE Agreements, and (III) Granting Related Relief* [Docket No. 540] (the "IAE Motion") at ¶ 7.

[119] *See generally* IAE Motion. The Examiner received and reviewed an unredacted version of the IAE Motion provided by the Debtors and discussed the same with relevant parties in interest. As discussed below, the Examiner determined that the IAE Motion is outside the scope of the Investigation.

[120] Spirit 2 First Day Declaration ¶ 47.

[121] *Id.* ¶ 49.

[122] *Id.*

[123] *Id.* ¶ 49.

[124] *Id.*

vii. AerCap Lease Terminations and Need for Immediate Protection (August 2025)

A key driver of the Spirit 2 filing was AerCap's August 25, 2025 assertion of defaults under (i) existing leases covering 37 aircraft in Spirit's fleet and (ii) leases entered into on July 30, 2025 for the delivery of 36 new Airbus A320neo family jets in 2027 and 2028, declaring termination of these new leases and AerCap's future delivery obligations thereunder.[125] Prior to this event, Spirit was pursuing a transformation plan that required cooperation from its major lessors.[126] The plan depended on shrinking the fleet, returning unneeded aircraft, and keeping a smaller core of operable planes. As a part of the plan, Spirit was negotiating with its major lessors, including a "PDP Financing Transaction" with AerCap, on a fleet restructuring that would shrink the airline.[127] The objective was to return excess aircraft while retaining those needed for a smaller network. However, negotiations stalled when AerCap insisted on taking back only "flying" aircraft with good engines and refused to take the powder-metal-affected aircraft.[128]

Spirit management indicated that AerCap issued a default notice on its existing leases and a termination notice of the lease agreements for 36 new aircraft scheduled for delivery between 2027 and 2028.[129] The unexpected notices were destabilizing and happened abruptly, providing little opportunity for Spirit to negotiate before having to issue an 8-K and informing the world it was locked in a catastrophic dispute with its largest lessor counterparty. Spirit believed other lessors might engage in similar conduct so as not to be last in line, potentially producing a cascade

[125] *Id.* ¶ 24.

[126] *See* Cromer Interview.

[127] Board Minutes (July 29, 2024).

[128] *See* Cromer Interview.

[129] *Id.*

of termination notices. Confronted with the possibility of losing essential aircraft, Spirit filed bankruptcy again to secure the protection of the automatic stay.

C. Spirit 2

Spirit's operational fleet position continued to weaken in the Interim Period. The total number of AOG increased from 30 to 41 aircraft as of the Spirit 2 Petition Date, which includes eight additional GTF-powered aircraft that were removed from service due to the accelerated inspection requirement, and three more aircraft that were grounded for unrelated maintenance issues.[130] This brought the total number of aircraft grounded for accelerated inspections to 38, with 41 in total awaiting engine maintenance. As a result, the number of available aircraft fell from 151 at emergence to 145 by the Spirit 2 Petition Date, a net decline driven entirely by powdered-metal engine issues, even though the overall fleet count remained relatively identical at approximately 214 aircraft.[131]

Chapter 22 Petition Date - 8/29/25	A320neo	A320ceo	A321neo	A321ceo	Total
Owned	–	24	–	24	48
Leased	91	38	32	5	75
Total	91	62	32	29	123

	Emergence						Spirit 2
	As of 3/12/2025	As of 3/31/2025	As of 4/30/2025	As of 5/31/2025	As of 6/30/2025	As of 7/31/2025	As of 8/29/2025
Aircraft in Fleet	213	213	214	215	215	214	214
GAT Removed from Service	(20)	(20)	(20)	(20)	(20)	(19)	(19)
Other AOG AC	(30)	(30)	(33)	(36)	(37)	(37)	(41)
Spares	(5)	(5)	(5)	(5)	(5)	(5)	(5)
Mx/Eng Chg/Wifi	(7)	(5)	(6)	(5)	(5)	(5)	(4)
Aircraft Available	**151**	**153**	**150**	**149**	**148**	**148**	**145**

With Court protection, Spirit rejected aircraft leases and secured more favorable terms for disposition of excess fleet capacity.[132] It divested most of the powder-metal-burdened aircraft,

[130] Company-provided fleet analysis.

[131] Spirit 2 First Day Decl. ¶ 19; Company-provided fleet analysis.

[132] *See Order Granting Debtors' First Omnibus Motion to Reject Certain Equipment Leases Pursuant to* (cont'd)

retained aircraft needed for operations, reset delivery obligations on better terms, and obtained a substantial cash payment of $150 million from AerCap.[133] The AerCap Settlement Order reduced Spirit's leased fleet from 166 units to 52 and positioned Spirit toward an operating fleet of approximately 100 aircraft by October 2025, with all 48 owned aircraft – including the 27 EETC-financed units – remaining intact.[134]

Date	Spirit 1 Petition Date 11/18/2024	Spirit 2 Petition Date 8/29/2025	AerCap Settlement Adj. (Dkt #247) 10/10/2025	Lease Rejection Adj. (Dkt #301) 10/21/2025	Pro Forma Current
Owned	51	48	–	–	48
Leased	162	166	(27)	(87)	52
Total	213	214	(27)	(87)	100

The resulting lessor breakdown is as follows:[135]

Lessor	Ch. 22 Petition Date Leases (August 2025)	Lease Rejection Adjustments (Sept - Oct 2025)	Pro Forma Leases (Nov 2025)
AerCap	37	(27)	10
SMBC	26	(25)	1
JSAI	23	(19)	4
Sky Leasing	10	–	10
ACG	9	(9)	–
ALC	8	(1)	7
ORIX	8	(3)	5
ICBC	6	(3)	3
All Others (12 Lessors in Total)	39	(27)	12
Total Leased Aircraft	166	(114)	52

Section 365 of the Bankruptcy Code [Docket No. 301] (the "Rejection Order"); *Order (I) Approving the Global Restructuring Term Sheet with AerCap Ireland Limited, (II) Authorizing and Approving Assumption and Rejection of Certain Aircraft Agreements, (III) Authorizing and Approving Entry Into the New Lease Agreements and Definitive Documents, and (IV) Granting Related Relief* [Docket No. 247] (the "AerCap Settlement Order"), providing for:

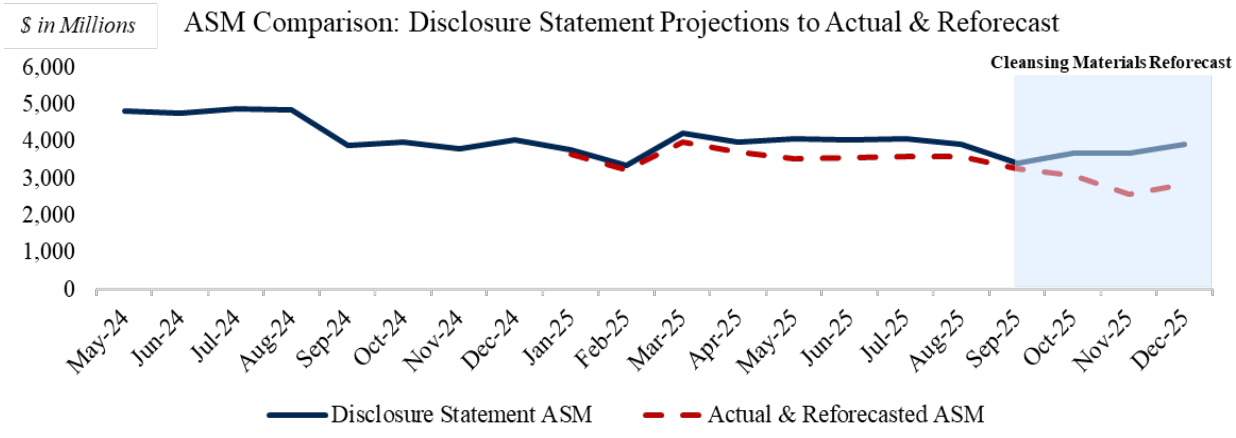
(a) rejection of 27 existing AerCap leases (19 A320neo, 8 A321neo),
(b) rejection of 87 additional aircraft leases across other lessors,
(c) cancellation of 36 undelivered AerCap aircraft and 52 firm orders and options,
(d) execution of 30 new AerCap operating leases (10 per year, 2027–2029), and
(e) receipt of a $150 million cash settlement from AerCap.

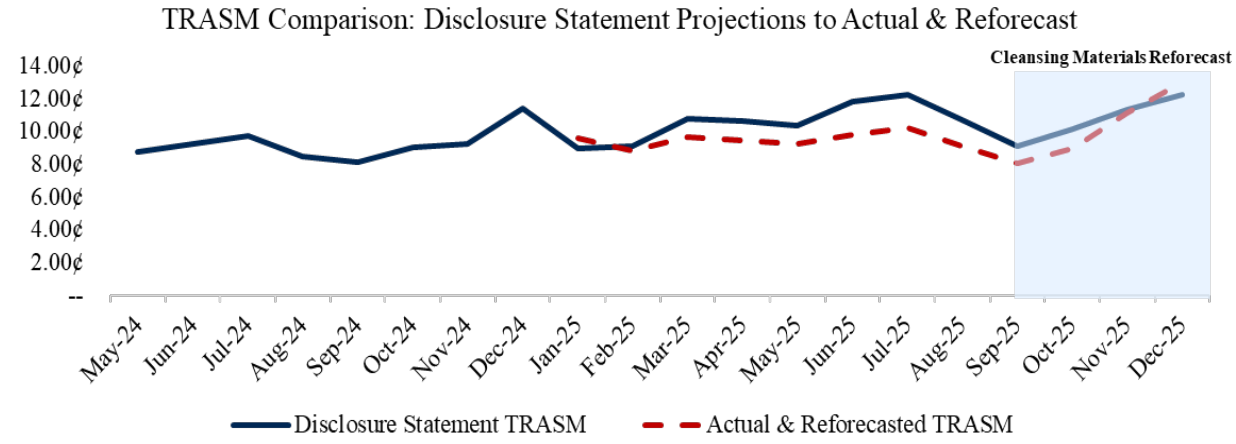
[133] *See* Cromer Interview; Spirit Aviation Holdings, Inc., Form 8-K at 2, 159 (Oct. 14, 2025).

[134] AerCap Settlement Order at 1–2, 12–13, 18–23; Rejection Order, Schedule 1 at 1–3.

[135] Rejection Order, Schedule 1 at 1–3.

In contrast to Spirit 1's narrowly focused restructuring, Spirit 2 involves a substantial operational restructuring. The following charts reflect the capacity reductions contemplated as compared to the original Projections (45.94 billion ASMs originally expected in 2025).[136]





The Debtors' description of the "headwinds" in the airline industry that necessitated the Spirit 2 filing identify many of the same issues that the Debtors noted in connection with the Spirit 1 filing. This time, however, the Debtors are using the broader tools available in bankruptcy to shed capacity and reduce fixed costs. The Spirit 1 reorganization was based upon the business judgment that a material debt deleveraging and infusion of $350 million of new equity,

[136] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

accomplished through a swift case with limited administrative costs, would position the Debtors to emerge with sufficient flexibility to address industry challenges.

That business judgment turned out to be wrong, and quickly. This Investigation focuses on whether Spirit's judgment was merely incorrect or whether more serious factors compromised the integrity of the Spirit 1 process.

V. LEGAL STANDARDS

The Examiner's investigation relating to the circumstances surrounding the Debtors' rapid bankruptcy refiling raises five inter-related legal topics. The Spirit 1 issues include: (i) the standards for determining whether the Spirit 1 Plan was feasible under 11 U.S.C. § 1129(a)(11); (ii) the standards for determining whether the Spirit 1 Plan was proposed in good faith under 11 U.S.C. § 1129(a)(3); (iii) standards for determining whether there was adequate disclosure under 11 U.S.C. § 1126(b); and (iv) the standards for revocation of an order of confirmation under 11 U.S.C. § 1144. The Spirit 2 issue involves determining whether the initial bankruptcy filings are subject to dismissal for statutory cause under 11 U.S.C. § 1112(b).[137]

The feasibility determination is the focal point of the Examiner's review. If the Spirit 1 Plan was advanced despite contemporaneous information demonstrating a stand-alone restructuring was not viable, that conclusion necessarily raises broader concerns about Spirit's motivations and good faith, adequacy of disclosures, and accuracy and consistency of materials presented to the Court. Conversely, if financial projections underlying the Spirit 1 Plan were supported by verifiable and reliable data and reflected a realistic path to avoid insolvency, then

[137] This Investigation is for the benefit of the public and the Court, not the first step in an adversarial process. The scope of examination necessarily requires inquiry into support for and legal sufficiency of the February 20, 2025 Spirit 1 confirmation order, regardless of whether revocation of that order and its component releases is possible. Accordingly, the Investigation is not restricted to claims for which a remedy can be provided.

analysis of remaining issues narrows substantially. Feasibility, limited in this Investigation to the risk of refiling in 2025, is the threshold inquiry that drives most of the analysis.

A. The "Feasibility Test" Under 11 U.S.C. § 1129(a)(11)

The words "feasible" or "feasibility" do not appear anywhere in the Bankruptcy Code's text. Notwithstanding this, courts and practitioners commonly and consistently use these words as interpretive shorthand for the requirements of Section 1129(a)(11), and refer to it as the "Feasibility Test." That is because Section 1129(a)(11) plainly is derived from the feasibility tests in the 1934 Bankruptcy Act and in the 1938 Chandler Act amendments to the Bankruptcy Act.[138] In describing section 1129(a)(10) of H.R. 8200, which corresponds with Section 1129(a)(11) of the Bankruptcy Code, the House Report states:

> Paragraph (10) contains the feasibility standards. It requires that the court find that confirmation of the plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or any successor to the debtor, unless the plan so contemplates (such as under a liquidating plan).[139]

[138] Section 77B of the 1934 Bankruptcy Act provided that "after hearing such objections as may be made to the plan, the judge shall confirm the plan if satisfied that it is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders and is **feasible**." Bankruptcy Act of 1898 § 77B(f)(1) (repealed 1938), Act of June 7, 1934, ch. 424, Pub. L. 296, 48 Stat. 911, 919 (1934) (emphasis added); *see also* 7 COLLIER ON BANKRUPTCY ¶ 1129LH at 186 n.33 (15th ed. rev. 2002). In 1938, Chapters X and XI replaced Section 77B, and similarly required the court to determine that a plan was "fair and equitable, and **feasible**." Chandler Act, Pub. L. No. 75-696, 52 Stat. 840, 895–97 (1938) (emphasis added); *see also In re Great Northern Protective Servs., Inc.*, 19 B.R. 802, 803–04 (W.D. Wash. 1982); COLLIER ON BANKRUPTCY ¶ 1129.LH (16th ed. 2016) ("Section 1129(a)(11) is derived from feasibility tests contained in sections 221(2), 366(2) and 472(2) of the Bankruptcy Act."); S. 2266, S. REP. NO. 95-989, 95th Cong., 2d Sess. (1978), at 128, *as reprinted in* COLLIER ON BANKRUPTCY App. Pt. 4(e)(i) (16th ed. 2016). Notably, the term "feasible" was not defined in section 77B, chapter X, chapter XI, or elsewhere in statutes. Instead, the then-recently formed Securities and Exchange Commission offered interpretive guidance as to which factors should affect plan feasibility determinations, and courts developed the meaning of "feasible" through common law. For a history of the feasibility test, *see generally* Steven Fruchter, *Revisiting Chapter 11's Feasibility Requirement*, 30 Am. Bankr. Inst. L. Rev. 109 (2022).

[139] H.R. REP. NO. 595, 95th Cong., 1st Sess. 413 (1977). Similarly, in discussing the adoption of Section 1129(a)(11) of the modern Bankruptcy Code, the Senate Judiciary Committee linked this provision to the earlier feasibility tests, stating that a plan "is necessarily predicated on . . . factually supported expectations as to the future course of the business sufficient to meet the feasibility standard." S. REP. NO. 95-989, at 121 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (emphasis added).

The Supreme Court has held that cases interpreting the Bankruptcy Act continue to remain good precedent under the Bankruptcy Code.[140]

Section 1129(a)(11) requires the Court to determine that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor under the plan, unless such liquidation or reorganization is proposed in the plan."[141] This statutory language can be difficult to apply in practice and is highly fact-dependent.[142]

i. Court's Independent Determination

To confirm a Chapter 11 plan the Court must find that the debtor has satisfied all requirements of Section 1129 of the Bankruptcy Code.[143] The Court has an "affirmative obligation to scrutinize . . . [the plan] and determine whether it is feasible."[144] The bankruptcy judge is "not passive during confirmation."[145] In practice, such a finding often is based entirely from evidence presented by the debtor.[146] This is nearly always the case in speedy and consensual "prepackaged"

[140] *Dewsnup v. Timm*, 502 U.S. 410, 411, 419 (1992) (Congress "enacted the Code with a full understanding of" practice under the Bankruptcy Act and "[w]hen Congress amends the bankruptcy laws, it does not write 'on a clean slate'").

[141] 11 U.S.C. § 1129(a)(11).

[142] *In re Young Broad. Inc.*, 430 B.R. 99, 129 (Bankr. S.D.N.Y. 2010); *In re 20 Bayard Views, LLC*, 445 B.R. 83, 100 (Bankr. E.D.N.Y. 2011).

[143] 11 U.S.C. § 1129(a) ("The court shall confirm a plan only if all of the following requirements [listed in Section 1129] are met:"), which includes subsections (a)(11) feasibility and (a)(3) good faith requirements.

[144] 430 B.R. at 128 (citing cases); *see also In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001) (stressing the importance of this "independent duty"); *In re Vita Corp.*, 358 B.R. 749, 750 (Bankr. C.D. Ill. 2007) (noting that a court has "an independent duty . . . to determine whether a plan satisfies each element of Section 1129, even in the absence of valid objections to confirmation."); *In re Hockenberry*, 457 B.R. 646, 652 (Bankr. S.D. Ohio 2011) ("The Court has an independent duty to determine compliance with the Bankruptcy Code's confirmation requirements.").

[145] *In re Las Vegas Monorail Co.*, 462 B.R. 795, 798 (Bankr. D. Nev. 2011).

[146] *In re Red Mountain Mach. Co.*, 448 B.R. 1, 8–9 (Bankr. D. Ariz. 2011), *aff'd*, 471 B.R. 242 (D. Ariz. 2012) (projections prepared by Chapter 11 debtors' chief restructuring officer, the same individual whose projections debtors had consistently met and exceeded while operating as Chapter 11 debtors-in-possession, along with the unrebutted testimony of debtors' expert, were sufficient to show that debtors' proposed Chapter 11 plan was "feasible," as required for confirmation).

or "prearranged" Chapter 11 cases where the court relies heavily on the debtor's submission.[147] As a result, courts frequently make feasibility findings based on unchallenged projections and declarations, not on an independent economic assessment.[148] Feasibility determinations in a prepackaged or prearranged bankruptcy do not involve intensive inquiry into whether the reorganized business will need a future restructuring apt to occur.[149]

The judicial obligation to affirmatively find feasibility applies even if the plan enjoys overwhelming creditor support. The "[Bankruptcy] Code separates the feasibility requirement from any requirement related to creditor consent."[150] In every bankruptcy, the court must find in

[147] *See, e.g.*, *In re Dallas Stars, L.P.*, No. 11-12935 (PJW), 2011 WL 13500543, at *9 (Bankr. D. Del. Sep. 21, 2011); *In re Seadrill New Finance Ltd.*, No. 22-90001 (DRJ) (Bankr. S.D. Tex. Jan. 12, 2022), ECF No. 1374 (confirming prepackaged plan and approving disclosure statement approximately 24 hours after petition date); *In re Carlson Travel, Inc.*, No. 21-90017 (MI) (Bankr. S.D. Tex. Nov. 12, 2021), ECF No. 106 (same); *HighPoint Resources Corp*. No. 21-10565 (CSS) (Bankr. D. Del. Mar. 18, 2021), ECF No. 110 (confirming prepackaged plan and approving disclosure statement four days after petition date); *In re Belk, Inc.*, No. 21-30630 (MI) (Bankr. S.D. Tex. Feb. 24, 2021), ECF No. 76 (confirming prepackaged plan and approving disclosure statement approximately 24 hours after petition date); *In re Mood Media*, No. 20-33768 (MI) (Bankr. S.D. Tex. July. 31, 2020), ECF No. 72 (same); *In re Sheridan Holding Company I, LLC*, No. 20-31884 (DRJ) (Bankr. S.D. Tex. Mar. 23, 2020), ECF No. 76 (same); *In re Sungard Availability Servs. Cap.*, No. 19-22915 (RDD) (Bankr. S.D.N.Y. May. 23, 2019), ECF No. 46 (same); *In re FullBeauty Brands Corp.*, No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 4, 2019), ECF No. 39 (confirming prepackaged plan and approving disclosure statement approximately 24 hours after petition date); *In re Prudential Energy Co.*, 58 B.R. 857, 867 (Bankr. S.D.N.Y. 1986).

[148] In *In re Arsenal Holding*, the U.S. Trustee set forth a different basis for the objection, noting that the plan could not meet feasibility standards due to the speed in which it was proposed. *See* Hr'g Tr. at 44, *In re Arsenal Energy Holdings LLC*, No. 19-10226 (BLS) (Bankr. D. Del. Feb. 6, 2019), ECF No. 58 (The United States Trustee noted that "there is a risk that a plan will get rushed through that's not fully baked."). The judge, while concerned with the plan's speed, ultimately confirmed the plan over the objection, noting that the "parties have voted [for the plan]. How do I balance that principled concept of more time is better against people saying, it's my money and this is the result that I'm supportive of? How do I walk that?" *See id*. at 49:3–6. In *In re Sungard Availability Servs. Cap. Inc*, the judge confirmed a Chapter 11 plan in less than two days and, in response to the U.S. Trustee's objection for lack of proper notice, the judge found that a lack of creditor objection supports plan confirmation. *See* Hr'g Tr. at 21:14–17, 29:7–8, *In re Sungard Availability Servs. Cap. Inc*, No. 19-22915 (RDD) (Bankr. S.D.N.Y. May 2, 2019), ECF No. 117 ("[T]he people whose money is at stake certainly were smart enough to raise [objections] if they wanted to.").

[149] *See, e.g.*, *In re Southcross Holdings LP*, No. 16-20111-H1-11 (Bankr. S.D. Tex. Apr. 1, 2016); *In re Mood Media Corp.*, No. 20-33768 (MI) (Bankr. S.D. Tex. July 31, 2020).

[150] *In re Las Vegas Monorail Co.*, 462 B.R. at 798, 803 ("[S]atisfaction of the feasibility requirement resists negotiation and consent as a solution; the requirement does not dissolve upon proof that no party objected" and "[r]egardless of whether all creditors agree . . . the court must assess, [the debtor's] short, medium, and long-term prospects. Had Congress wished to prevent this court from making that inquiry when there was overwhelming creditor support, it would have written a very different Bankruptcy Code.").

support of confirmation that the plan is feasible, and courts have *sua sponte* intervened to review feasibility of highly consensual plans.[151]

The Examiner is aware of a strong body of thought among some practitioners that the primary purpose of the feasibility test is to protect affected claimants from unsupported projections showing repayment or falsely valued new consideration. However, feasibility cannot be collapsed into a version of the "Best Interests" test; it is not enough to find that affected creditors and interest holders agreed to a plan that delivers more than they would have received in a liquidation.[152]

Even when a Chapter 11 filing resembles a straightforward "out-of-court LME,"[153] the confirmation process should not be treated as a mere formality. An in-court restructuring carries legal and economic consequences that fundamentally differ from an out-of-court LME. A debtor in bankruptcy and emerging under a confirmed plan receives unique protections and advantages, including the automatic stay protection, access to priming DIP financing, the ability to impose a capital structure on dissenting creditors, the discharge of prepetition obligations, funding of administrative costs by the estate, the Section 1145 exemption from securities registration,

[151] *See, e.g.*, *Coones v. Mut. Life Ins. Co. of N.Y. (In re Coones)*, 168 B.R. 247, 251 (D. Wyo. 1994) (denying a creditor-debtor approved plan by the judge when "[there was no] way in God's green Earth the debtor can possibly pay [the proposed amount]"); *U.S. Aid Funds, Inc. v. Epinosa*, 559 U.S. 260, 277, n.14 (2010) (noting that the bankruptcy code, "requires bankruptcy courts to address and correct a defect in a debtor's proposed plan even if no creditor raises the issue[]"); *In re Las Vegas Monorail Co.*, No. BK-S-10-10464-BAM, slip op, at 1–2 (Bankr. D. Nev. May 9, 2012) (changing of the approved plan by the judge to lower nearly two-thirds the amount of debt and reducing the interest rates by half the interest rate on that debt).

[152] *In re Crestwood Hosp. LLC*, No. 4:21-BK-03091-BMW, 2025 WL 1183883, at *20–21, *29 (Bankr. D. Ariz. Apr. 23, 2025) (denying confirmation for lack of feasibility where the plan relied of speculative refinancing, and noting that a plan's promise of recoveries exceeding liquidation value does not satisfy feasibility absent concrete evidence of executability). The Examiner finds the Spirit 1 Liquidation Analysis persuasive, that affected creditors recovered more than what they would have received in a liquidation. *See generally* Spirit 1 Disclosure Statement, Ex. D (Liquidation Analysis). No relevant conclusions follow for purposes of the Investigation.

[153] "LME" refers to a "Liability Management Exercise," which is market shorthand for a coordinated set of transactions designed to reshape a company's capital structure by modifying the amount, priority, maturity, terms, or composition of its outstanding debt, often in anticipation of, or as an alternative to, a formal restructuring process.

favorable treatment of cancellation-of-debt income, and in appropriate cases, releases that protect the participants in the in-court LME.

To obtain the benefits of a Chapter 11 plan, debtors must satisfy the statutory confirmation requirements, including feasibility, even if the Chapter 11 is merely a liability management exercise in form and substance.[154] The presence of unanimous creditor support does not relieve the debtor of this burden.

ii. Evidentiary Standard of Proof

A plan proponent must provide credible and specific evidence to demonstrate feasibility by a preponderance of the evidence.[155] As such, "honesty[] and willingness are not sufficient to make [a] plan feasible[.]"[156] Financial projections must be prepared in good faith, using reasonable assumptions, and supported by independent expert analysis, historical operational data, and reliable industry forecasts. The Court determines a plan's feasibility as of the time of the confirmation hearing.[157]

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[154] *In re Pioneer Fin. Corp.*, 246 B.R. 626, 630 (Bankr. D. Nev. 2000) ("Regardless of whether a plan is prepackaged or 'prenegotiated,' it must comply with the provisions of the Bankruptcy Code). An in-court LME is no different than any other financial Chapter 11 restructuring at an operating company, or restructuring of a holding company with only financial debt. *See, e.g.*, *In re Pacific Drilling S.A.*, No. 17-13193 (MEW) (Bankr. S.D.N.Y. Sep. 27, 2018), ECF No. 721 (showing feasibility in a balance-sheet, non-operational chapter 11 through supported long-range projections, independent liquidity and capital-structure analysis, and evidence that post-emergence obligations could be met without risking liquidation or a subsequent restructuring); *In re Elec. Components Int'l, Inc.*, No. 10-11054 (KJC), 2010 WL 3350305, at *9 (Bankr. D. Del. May 11, 2010); *In re Eagle Bulk Shipping Inc.*, No. 14-12303 (SHL) (Bankr. S.D.N.Y. Sep. 22, 2014), ECF No. 112; *In re FullBeauty Brands Corp.*, No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 4, 2019); *In re McDermott International, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. March 12, 2020), ECF No. 660; *In re iHeartMedia, Inc.*, No. 18-31274 (MI) (Bankr. S.D. Tex. Jan 22, 2019), ECF No. 2525.

[155] *In re W.R. Grace & Co.*, 475 B.R. 34, 114 (D. Del. 2012), *aff'd sub nom.*, *In re WR Grace & Co.*, 729 F.3d 332 (3d Cir. 2013), and *aff'd*, 532 F. App'x 264 (3d Cir. 2013), and *aff'd*, 729 F.3d 311 (3d Cir. 2013); *In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *4 (Bankr. D. Del. Apr. 29, 2010) (holding that the plan proponent must prove each element of Section 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence).

[156] *Chase Manhattan Mortg. & Realty Trust v. Bergman (In re Bergman)*, 585 F.2d 1171, 1179 (2d Cir. 1978) (quoting 9 COLLIER ON BANKRUPTCY at 1139 (14th ed. 1978)); *accord In re W.R. Grace & Co.*, 475 B.R. at 115.

[157] *In re Sis Corp.*, 120 B.R. 93, 95 (Bankr. N.D. Ohio 1990) (feasibility is "determined at the confirmation hearing"); *In re Aztec Co.*, 99 B.R. 388, 392 (Bankr. M.D. Tenn. 1989) (calculating the rate of interest that will be (cont'd)

The Examiner acknowledges that practical considerations often predominate in Chapter 11. Real-world examination of feasibility by bankruptcy judges differs markedly depending on whether feasibility is contested, whether requisite majorities support the plan, and whether the debtor and creditors are represented by sophisticated counsel and financial advisors, among other factors. Judges are not industry experts. Realistically, no court can be expected to bring its own business judgment and scrutiny to every company and industry that comes before it. It is incumbent on the debtor as the proffering party to be truthful, complete, and to update information in response to material changes.

Financial projections must be prepared in good faith, using reasonable assumptions, and supported by independent expert analysis, monthly operating reports, historical operational data, and reliable industry forecasts.[158] Even in LMEs where operations remain unchanged, the debtor must show that it can meet its post-emergence obligations under reasonably anticipated market conditions.[159] Courts should reject plans where the debtor's ability to perform depends on contingencies that lack evidentiary support, including speculative revenue enhancements, uncommitted financing sources, or improbably favorable external conditions.[160]

applicable at the confirmation hearing for feasibility test); *In re Save Our Springs All., Inc.*, No. A-08-CA-727 LY, 2009 WL 8637183, at *3 (W.D. Tex. Sep. 29, 2009), *aff'd sub nom.*, *In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168 (5th Cir. 2011) (denying motion to present additional evidence after the confirmation hearing).

[158] *In re GAC Storage Lansing, LLC*, 485 B.R. 174, 188 (Bankr. N.D. Ill. 2013) (denying confirmation where expert projections failed to consider rent concessions, vacancy rate, and weak economic conditions); *In re Curiel*, 651 B.R. 548, 554–57 (B.A.P. 9th Cir. 2023), *appeal dismissed*, No. 23-60039, 2023 WL 11887031 (9th Cir. Aug. 17, 2023), and *appeal dismissed*, No. 23-60038, 2023 WL 11887032 (9th Cir. Aug. 18, 2023).

[159] *See supra* note 154.

[160] *In re A & B Assocs., L.P.*, No. 17-40185-EJC, 2019 WL 1470892, at *2 (Bankr. S.D. Ga. Mar. 29, 2019) (denying confirmation because the debtor failed to prove feasibility where the plan used an unrealistically low interest rate, management lacked necessary experiences, and Section 506(b) additions greatly increased the secured debt, the expert's projections were unreliable, and no credible evidence supported the required future financing).

(a) When is a plan "not likely to be followed" by liquidation or further financial reorganization?

The harder part of the feasibility analysis is what "not likely to be followed by the liquidation, or the need for further financial reorganization or liquidation" means.[161] A bankruptcy court need not require a guarantee of success to find a Chapter 11 plan feasible.[162] The court must simply find that the "plan offers a reasonable expectation of success.[163] Confirmation is granted only if the evidence reflects a reasonable expectation that the payments required to be made during the term of the plan will be made.[164] In estimating the reasonable probability of future performance, "mathematical certitude is neither expected nor required."[165]

Case law, however, provides little guidance on how probability of failure should be measured in practical terms, except to state that Chapter 11 issues are fact-intensive and that trial court decisions will be upheld unless "clearly erroneous."[166] Courts are left to determine feasibility

[161] *See* 11 U.S.C. § 1129(a)(11).

[162] *See, e.g.*, *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting approvingly that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility.").

[163] *See In re G–I Holdings Inc.*, 420 B.R. 216, 267 (D.N.J. 2009) ("[The] key element of feasibility is whether there is a reasonable probability the provisions of the Plan can be performed."); *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1364 (9th Cir. 1986); *In re Cherry*, 84 B.R. 134, 137 (Bankr. N.D. Ill. 1988) ("reasonable expectation of success"); *In re Johns-Manville Corp.*, 68 B.R. 618, 635 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom., Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648 (2d Cir. 1988) ("'reasonable assurance of success"'); *In re Prudential Energy Co.*, 58 B.R. at 862 ("reasonable assurance of commercial viability").

[164] *See In re Save Our Springs All., Inc.*, 2009 WL 8637183, at *3.

[165] *See In re Arts Dairy, LLC*, 432 B.R. 712, 719–720 (Bankr. N.D. Ohio 2010) (quoting *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 452 (1968)).

[166] *See, e.g.*, *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 801 (5th Cir. 1997) (quoting *In re Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1165–66 (5th Cir. 1993)) (explaining that "the [bankruptcy] court need not require a guarantee of success," and instead may require "[o]nly a reasonable assurance of commercial viability"); *see also In re Danny Thomas Props. II Ltd. P'ship*, 241 F.3d 959, 962–63 (8th Cir. 2001) (holding that a provision in the post-confirmation obligation documentation requiring automatic liquidation in the event of default does not render feasible an otherwise unfeasible plan); *In re 203 N. LaSalle St. P'ship*, 126 F.3d 955, 962 (7th Cir. 1997) (holding that the bankruptcy court's findings on close questions of fact as to feasibility were not clearly erroneous), *trit'd on other grounds sub nom., Bank of Am. Nat'l Trust & Say. Assoc. v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999); *Quality Inns Int'l, Inc. v. L.B.H. Assocs. Ltd. P'ship*, 911 F.2d 724 (4th Cir. 1990) (unpublished table decision) ("In light of

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in an up or down process with minimal direction and almost no analytic structure.

Courts do recognize that the Code does not impose a rigid temporal benchmark (*e.g.*, that a debtor must be able to survive for three years). Instead, feasibility must be assessed in light of the debtor's capital structure, liquidity profile, and operational demands. Some courts frame the inquiry by reference to the maturities of the reorganized debtor's obligations.[167] While there is no prohibition on long-term plan payments, the longer the term, the "more doubtful the projections and the more likely a court will be to deny confirmation."[168] This makes sense, in part, but it does not make sense if taken to its logical extreme: if the debtor has a 50-year exit bond, does the court have to see a 50-year business plan? In close cases, "the better approach is to give the debtor an opportunity to demonstrate feasibility by performance."[169]

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the extensive confirmation hearing and the bankruptcy court's opportunity to evaluate the demeanor and credibility of the witnesses, the court does not find its determination of feasibility to be clearly erroneous."), *available at* Nos. 89-2443 to 89-2445, 1990 WL 116761, at *4; *Berkeley Fed. Bank & Trust v. Sea Garden Motel & Apts. (In re Sea Garden Motel & Apts.)*, 195 B.R. 294, 305 (Bankr. D.N.J. 1996) (quoting *In re Eddington Thread Mfg. Co., Inc.*, 181 B.R. 826, 832–33 (Bankr. E.D. Pa. 1995)) ("[T]he feasibility inquiry is peculiarly fact intensive."); *S & P, Inc. v. Pfeifer*, 189 B.R. 173, 187 (Bankr. N.D. Ind. 1995) (holding that a debtor failed to prove a sufficient future cash flow and upholding the bankruptcy court's finding that reorganization was impossible), *affd*, 78 F.3d 587 (7th Cir. 1996) (unpublished).

[167] *See In re Sunnyslope Housing Ltd. P'ship*, 859 F.3d 637, 646–47 (9th Cir. 2017) (holding that bankruptcy court did not abuse its discretion in finding Chapter 11 debtor's 40-year, balloon-payment plan was feasible where debtor's projections showed that it could make plan payments, and expert testimony confirmed that real property which collateralized objecting creditor's secured claim would remain useful for full term of plan).

[168] *In re Mayslake Vill.-Plainfield Campus, Inc.*, 441 B.R. 309, 317 (Bankr. N.D. Ill. 2010); *In re Mallard Pond Ltd.*, 217 B.R. 782, 789–90 (Bankr. M.D. Tenn. 1997) (finding a fifty-nine year plan not feasible in a case involving a 360–unit apartment complex, where an under-secured creditor's claim was significant, the debtor failed to present evidence that it had ever generated sufficient sums from operations to service the claim, and the debtor relied on speculative earnings in the face of uncertain economic circumstances to make payments required under the plan); *In re Agawam Creative Mktg. Assocs. Inc.*, 63 B.R. 612, 620–22 (Bankr. D. Mass. 1986) (finding thirty-year plan not feasible, where the plan was to be funded out of operating revenues, the debtor did not have a proven track record demonstrating profitable operations over even a five-year period, and the debtor would have a cushion of only $672 during the first year of the plan, assuming its financial projections were accurate).

[169] *In re Monticello Realty Invs., LLC*, 526 B.R. 902, 915 (Bankr. M.D. Fla. 2015).

Other courts adopt a more immediate lens focused on whether the debtor can remain solvent for a reasonable forward period, but those periods are not well defined in the case law.[170] The 12-month accounting standard for going-concern assessments may be a touch point.[171] In most situations, establishing that a proposed Chapter 11 plan is feasible "in the time immediately following bankruptcy will call for fairly specific proof of the company's ability to meet its obligations" under the plan; however, "[a]s one moves further away from time of confirmation, the proof will necessarily become less and less specific."[172] Regardless of approach, courts uniformly hold that a plan fails Section 1129(a)(11) where the reorganized debtor faces a material risk of insolvency soon after emergence, even if the risk does not mature into an actual default until a later date.

In applying the feasibility test, the Court must determine whether the plan can be implemented and whether it has a reasonable likelihood of success.[173] The feasibility test is a fundamental procedural and substantive gatekeeper "to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a plan than the debtor can possibly

[170] *See, e.g.*, *In re Brice Road Devs., L.L.C.*, 392 B.R. 274, 282–84 (B.A.P. 6th Cir. 2008) (Chapter 11 plan was feasible, as required for confirmation, where (i) debtor's cash-flow shortfall during first three calendar quarters post-confirmation would be covered by interest reserve to be set aside from $2.5 million capital contribution, (ii) demands of plan would be met from this $2.5 million infusion, (iii) beginning in second full year post-confirmation, debtor was projected to realize a positive cash flow in excess of $300,000 per year, (iv) debtor had positive cash flow most months and for entire postpetition period when taken in aggregate, (v) capitalization was quite adequate, and (vi) management of debtor's property would be experienced and competent); *In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 725 (Bankr. S.D.N.Y. 2011).

[171] "Going concern" is an accounting concept that "relevant conditions and events, considered in the aggregate, indicate that it is probable that an entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued." FIN. ACCT. STANDARDS BD., *Accounting Standards Codification* ¶ 205-40-50-1 (Presentation of Financial Statements—Going Concern) (as amended through Dec. 2025).

[172] *Dish Network Corp. v. DBSD N. Am. Inc. (In re DBSD N. Am. Inc.)*, 634 F.3d 79, 107 (2d Cir. 2011).

[173] *See In re Johns-Manville Corp.*, 843 F.2d at 649–50 (citing *Prudential Ins. Co. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 1341 (8th Cir. 1985)); *In re Wolf*, 61 B.R. 1010, 1011–12 (Bankr. N.D. Iowa 1986).

attain after confirmation."[174] Courts have identified the following factors as probative of feasibility:

> a. the adequacy of the capital structure;
> b. the earning power of the business;
> c. the economic conditions;
> d. the ability of management;
> e. the probability of the continuation of the same management; and
> f. any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[175]

Under Chapter X of the Bankruptcy Act, for a plan to be feasible, the reorganized debtor had to emerge from bankruptcy "in a solvent condition with reasonable prospects of financial stability and success."[176] The Bankruptcy Code similarly both presumes and requires that the debtor emerge from bankruptcy in a solvent financial condition.[177]

Section 1129(a)(11) "requires the plan proponent to show concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under the plan."[178] However,

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[174] *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.02 (15th ed. 1984)).

[175] *See In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *28 (Bankr. D. Del. May 13, 2010).

[176] *In re King Res. Co.*, 651 F.2d 1326, 1340 (10th Cir. 1980) (citation omitted); *see also In re Spectrum Arena, Inc.*, 340 F. Supp. 767, 778–80 (E.D.Pa. 1971) (plan where debtor would remain insolvent after emergence not feasible); COLLIER ON BANKRUPTCY ¶ 1129.LH[3] (16th ed. 2016) (for a plan of reorganization to be feasible under Chapter X of the Bankruptcy Act, it had to provide for the reorganized debtor to emerge "in a solvent condition and with reasonable prospects of financial stability and success").

[177] *See In re Mirant Corp.*, No. 03-46590, 2005 WL 6440372, *7 (Bankr. N.D. Tex. May 24, 2005) ("If the transactions contemplated by the Plan would render [the debtor] insolvent or leave it with inadequate capital, the Plan will not be feasible and so may not be confirmed."); *In re W.R. Grace & Co.*, 475 B.R. at 163 n.137 (the "goal" of chapter 11 reorganization is for the debtor to "emerge from bankruptcy as a solvent entity after having undergone reorganization"); *In re Five Rivers Petroleum, LLC*, No. 11-25202 (JAD), 2013 WL 656026, *3 (Bankr. W.D. Pa. 2013) ("the Debtor's ongoing financial performance reflect[ed] continuous insolvency thereby undermining the feasibility of the Debtor's Plan").

[178] *S & P, Inc. v. Pfeifer*, 189 B.R. at 183 (quoting *In re SM 104 Ltd.*, 160 B.R. 202, 234 (Bankr. S.D. Fla. 1993)); *In re Woodmere Inv'rs Ltd. P'ship*, 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995) ("[I]n the absence of . . . funding for the Plan, feasibility is a hurdle the Debtors are unable to overcome."); *Pan Am. Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 508 (S.D.N.Y. 1994) ("To establish feasibility, [a] debtor must present 'proof through reasonable projections that there will be sufficient cash flow to fund the plan and maintain operations according to the plan. Such projections cannot be speculative, conjectural or unrealistic.'"); *In re Las Vegas Monorail Co.*, 462 B.R. at 800 (stating that "courts have refused to confirm plans whose feasibility turned on future sales of property, or future refinancings, absent an adequate showing that such sales or refinancings would be likely to occur").

courts reject visionary schemes or plans based on speculative or overly optimistic projections.[179] Financial projections put forth by a debtor should realistically project the anticipated results of future business operations.[180] The debtors must also present proof through reasonable projections that there will be sufficient cash flow to operate the business and fund the debt service payments required under the plan.[181] Although "[r]eorganization plans need not completely amortize reorganization debt to be confirmed . . . if refinancing is anticipated, the plan proponent has to produce some credible evidence about the likelihood of that refinancing."[182]

For this reason, "courts have refused to confirm plans whose feasibility turned on future sales of property, or future refinancings, absent an adequate showing that such sales or refinancings

[179] *See In re TCI 2 Holdings, LLC*, 428 B.R. 117, 148 (Bankr. D.N.J. 2010); *In re Pizza of Haw., Inc.*, 761 F.2d at 1382 ("The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.") (citations omitted).

[180] *See, e.g.*, *In re Paragon Offshore PLC*, No. 16-10386 (LSS), 2016 WL 6699318, *22–23, *28 (Bankr. D. Del. Nov. 15, 2016) (finding that plan was not feasible where projections assumed a win rate in excess of the debtor's prior performance and the market overall); *In re M & S Assocs., Ltd.*, 138 B.R. 845, 851–852 (Bankr. W.D. Tex. 1992) (denying confirmation based on debtor's lack of source of funds to repay debts upon maturity).

[181] *In re Maluhia Eight, LLC*, No. 10-30986, 2010 WL 4259832, at *1 (Bankr. N.D. Tex. Oct. 22, 2010) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic[.]"); *In re Investment Co. of the Southwest, Inc.*, 341 B.R. 298, 316–17 (B.A.P. 10th Cir. 2006) (plan proponent fails to explain how balloon payments are to be reasonably funded; explanation proffered is inconsistent with debtors' past performance); *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R. 202, 240 (Bankr. W.D. Tex. 2008), *aff'd*, No. A-08-CA-727 LY, 2009 WL 8637183 (W.D. Tex. Sep. 29, 2009) ("[W]ithout evidence of a firm commitment of financing, [a] Plan does not meet the feasibility requirement for confirmation.") (internal citations omitted); *In re Trail's End Lodge, Inc.*, 54 B.R. 898, 900, 904 (Bankr. D. Vt. 1985) (holding that plan that would be sufficient only if proposed asset sale occurred in near future and yielded "top dollar" would not be confirmed given debtor's demonstrated inability to sell the assets under market conditions); *In re Hoffman*, 52 B.R. 212, 214–15 (Bankr. D. N.D. 1985) (holding that plan was not feasible where it would be funded by sale of assets that was neither certain to occur in the two years forecast nor certain to generate sufficient proceeds); *In re Archdiocese of St. Paul and Minneapolis*, 579 B.R. 188, 203–04 (Bankr. D. Minn. 2017) (finding unsecured creditors committee's plan did not satisfy feasibility requirement for confirmation where plan conditioned debtor's successful reorganization on "speculative funding"); *In re Sunflower Racing, Inc.*, 219 B.R. 587, 604 (Bankr. D. Kan. 1998), *aff'd* 226 B.R. 673 (D. Kan. 1998) (holding that plan was not feasible where "too many uncertain events" had to occur before debtor's plan could succeed).

[182] *In re Las Vegas Monorail Co.*, 462 B.R. at 800.

would be likely to occur.[183] In the absence of a committed financing proposal, a speculation that there *may* be financing after six months is insufficient for the feasibility test.[184] Essentially, the Debtors must "show that [they] can accomplish what [they] propose[] to do, in the time period allowed, on the terms set forth in the plan."[185] In that regard, courts have rejected plans for lack of feasibility when there is not enough certainty of third-party sources to provide the debtor with financing.[186] Likewise, "[a] plan dependent on an uncertain litigation outcome cannot be confirmed because it simply is not feasible."[187]

"In most situations, the time immediately following bankruptcy will call for fairly specific proof of the company's ability to meet its obligations . . . ."[188] For example, weaknesses in a debtor's capital structure or its ability to perform under the plan pose additional feasibility

[183] *M & S Assocs., Ltd.*, 138 B.R. at 800–01 (denying confirmation because plan required debtor to make substantial balloon payment in seven years and would likely require refinancing); *In re Vanderveer Estates Holding, LLC*, 293 B.R. 560 (Bankr. E.D.N.Y. 2003) (upholding secured creditor's objection to confirmation where plan required debtor to refinance in ten years and projections showed that debtor would be able to secure refinancing based on valuation of secured asset); *In re Cottonwood Corners Phase V, LLC*, No. 11-11-12663, 2012 WL 566426, at *26–27 (Bankr. D.N.M. Feb. 17, 2012) (denying confirmation under Section 1129(a)(11) when the plan assumed a renewed commitment from a lending institution despite the debtor's past contract breaches); *In re Bashas' Inc.*, 437 B.R. 874, 916 (Bankr. D. Ariz. 2010) ("A court may not confirm a plan if its feasibility depends on future refinancing, unless there is an adequate evidentiary showing that such refinancing is likely to occur."); *In re Carolina Commons Dev., LP*, No. 09-011230-8, 2010 WL 1965895, at *2 (Bankr. E.D.N.C. May 17, 2010) (finding a debtor's plan to be unfeasible due to its reliance on commercially unreasonable assumption inconsistent with "current commercial market conditions").

[184] *See, e.g., Save Our Springs (S.O.S.) Alliance, Inc. v. WSI (II)-COS, LLC*, 632 F. 3d 168, 173 n.8 (5th Cir. 2011) (finding "debtors' statements that funding is forthcoming to be insufficient in the absence of concrete evidence that the contributors are willing to give and capable of giving").

[185] *In re 20 Bayard Views, LLC*, 445 B.R. 83, 101–02 (Bankr. E.D.N.Y. 2011).

[186]. *In re Archdiocese of Saint Paul & Minneapolis*, 579 B.R. at 203–04 (holding the plan did not provide adequate showing that a third-party financing would likely occur).

[187] *In re Yeager*, No. 02–35857 (DWS), 2004 WL 422049, at *3 (Bankr. E.D. Pa. Feb. 18, 2004).

[188] *In re DBSD N. Am., Inc.*, 634 F.3d at 107.

challenges.[189] There must be sufficient cash flow to operate the business and fund the plan.[190] The financial projections should be based on historical performance of the business and should realistically project the anticipated results of future business operations.[191] Where financial projections do not withstand scrutiny, the plan will be found not to be feasible. [192]

(b) Feasibility is not a probabilistic analysis.

In evaluating the feasibility of a Chapter 11 plan under Section 1129(a)(11), a bankruptcy court must make a fundamentally different inquiry than the one undertaken by financial analysts, lenders, rating agencies, and restructuring professionals when they assess solvency or default risk. Although both exercises look forward and both concern a debtor's ability to meet future obligations, the governing standards, assumptions, and methods diverge significantly. That divergence is central to understanding why a debtor may be viewed in the marketplace as presenting high default risk yet is able to offer a feasible business plan; and conversely, why a debtor that looks solvent in a probabilistic financial sense may fail the feasibility requirement because some element of the expected trajectory makes failure reasonably foreseeable.

As explained more fully below, Section 1129(a)(11) adopts a deterministic legal standard that focuses on the debtor's expected, ordinary-course operating path. In contrast, the financial markets, and virtually all modern corporate finance analytics, evaluate solvency as a probabilistic

[189] *See In re Five Rivers Petroleum, LLC*, 2013 WL 656026, at *3–4 (the debtor's habitually overdrawn bank accounts and lack of capital structure suggested that the debtor's plan was not feasible); *In re Glob. Ocean Carriers Ltd.*, 251 B.R. 31, 46–47 (Bankr. D. Del. 2000) (plan not feasible where debtors had a shortfall of the collateral necessary to obtain exit financing).

[190] *See Pan Am Corp.*, 175 B.R. at 508; *In re Two Streets, Inc.*, 597 B.R. 309, 317–19 (Bankr. S.D. Miss. 2019).

[191] *See, e.g.*, *In re Schriock Constr., Inc.*, 167 B.R. 569, 576–77 (Bankr. D.N.D. 1994); *In re M & S Assocs., Ltd.*, 138 B.R. at 851; *In re Sound Radio, Inc.*, 93 B.R. 849, 855 (Bankr. D.N.J. 1988) (subsequent history omitted); *In re Hobble-Diamond Cattle Co.*, 89 B.R. 856, 858 (Bankr. D. Mont. 1988) (speculative, conjectural or unrealistic predictions cannot be used in making determination as to feasibility of plan of reorganization; debtor must provide factual support for any income and expense projections).

[192] *See, e.g.*, *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 156 (3d Cir. 2012) (plan not feasible where funding source was based on "wholly speculative litigation proceeds").

question spanning a distribution of potential operating states: lenders and analysts build probability-weighted distributions of potential outcomes, recognizing that cash flows vary meaningfully across different scenarios. They incorporate volatility in revenue, margins, working capital, and capital-market access. They also study correlations among negative events, such as revenue downturns coinciding with borrowing-base shrinkage. Fixed income investors in particular pay attention to the left tail of the distribution, where liquidity is exhausted and covenants are breached. For fixed income investors, solvency means having sufficient liquidity and covenant headroom across nearly all plausible downside scenarios, not merely in the base or expected case. A company that survives in 80% of modeled scenarios but fails in 20% is a materially risky credit; the 20% failure rate would not be noise but a key driver of credit pricing.

Bankruptcy courts applying Section 1129(a)(11) are ill-equipped to engage in scenario analysis or probabilistic inquiry. Courts are not institutionally structured to evaluate probabilities in the way financial markets, rating agencies, or lenders do. A bankruptcy judge does not operate with access to the full modeling apparatus of a credit desk, nor with the mandate to assign formal likelihoods to future economic conditions. Probabilistic solvency analysis depends on statistical assumptions, distributional modeling, Monte Carlo simulations, covariance estimates, and volatility inputs that require specialized expertise and, more importantly, ongoing calibration to market data.

There is also an evidentiary problem. Court proceedings depend on admissible evidence, clear factual records, and testimony subject to cross-examination. Probability distributions, by contrast, are sensitive to modeling assumptions that may not be empirically verifiable in a courtroom. If the feasibility test required judges to weigh probabilistic forecasts, each confirmation hearing would devolve into a battle of experts debating discount rates, volatility

surfaces, operating-leverage coefficients, and tail-event calibration, all built on assumptions that have no fixed legal status. The fact that equally sophisticated analysts routinely reach different probabilistic conclusions reinforces why courts cannot reliably adjudicate which model reflects the "correct" likelihood of future conditions. A judicial process designed to resolve factual disputes could not efficiently manage the inherently speculative disputes over probability weighting, or choose among technical frameworks that are neither standardized nor universally agreed upon even among professionals.

Instead, the feasibility test adopts a deterministic lens aimed at evaluating the debtor's expected operating path, not the distribution of possible outcomes. Courts determine whether projections are grounded in credible evidence, whether contingencies are reasonable, and whether it is more likely than not that the debtor can meet its plan obligations in the ordinary course. The "possibility of failure" is not fatal to confirmation. The statute asks whether liquidation or further reorganization is likely, not whether it is possible under a downside scenario.

For these reasons, a deterministic standard is not only practical but also conceptually aligned with the judicial role. Courts evaluate whether the debtor's expected-case projections are credible, not whether some percentage of downside cases might occur. Expected-case trajectories can be assessed with evidence: recent financial performance, contractual commitments, current market conditions, management testimony, and historical comparables. These inputs can be tested, challenged, and documented. A deterministic standard therefore confines judicial evaluation to matters within the Court's competence: credibility, reasonableness, and foreseeability.

The bridge between these two approaches is the legal concept of foreseeability. Courts do not ask whether the debtor ***could*** fail; they ask whether failure is reasonably predictable based on the evidence presented. A plan is feasible if the debtor's ordinary-course path is sound, even if a

probabilistic analysis would reveal substantial left-tail risk. Also, unless a near-term market downturn is predictable, a feasibility analysis does not address the timing of potential downturns even if the cumulative risk of volatility over time is significant. Accordingly, an unforeseeable and catastrophic short-term downturn in the business should not retrospectively undermine a finding of feasibility.

The practical consequence is that the same business record can produce two very different conclusions that are internally consistent. Market participants may reasonably conclude that the debtor is highly exposed to volatility, has thin liquidity cushions, and is susceptible to distress. At the same time, a court may conclude that the debtor's expected operations are credible, its projections reasonable, and its plan feasible. The reverse is also true: a debtor that appears financially solvent in a probabilistic sense may nonetheless fail feasibility if the expected trajectory exposes foreseeable obstacles, such as unrealistic cost assumptions, deteriorating trends, or near-term refinancing challenges that the plan does not adequately address. Despite "likely" literally meaning greater than 50%, courts seem to evaluate the term "not likely" in Section 1129(a)(11) qualitatively, not statistically. If the expected case is strongly supported by evidence – stabilized operations, clear contractual revenue, credible cost assumptions, known liquidity – and if none of the downside drivers are manifesting in real time, then the plan is "likely" to succeed even if a quantitative model says it has a material chance of not surviving.

The *Young Broadcasting Inc*. decision,[193] in which the court rejected the unsecured creditors' committee's proposed plan based on lack of feasibility, is illustrative. The court's main issue with the proposed plan was that the underlying projections were overly aggressive in

[193] *In re Young Broad. Inc.*, 430 B.R. 99 (Bankr. S.D.N.Y. 2010).

comparison to the debtors' competitors.[194] "The key deficiency in the Debtors' business plan is that the projected rate of growth in revenue necessarily presumes either a substantial improvement in the industry, increased industry market share within 2.5 years of emerging from bankruptcy, or both."[195] The debtors' projections included a contracted operating budget, deferred capital expenditure spending and no capital expenditure budget for its biggest broadcasting station.[196] The projections also included a growth rate which the court found to be "aggressive and unrealistic."[197] The debtors' idealistic projections caused the court to question the "key issue in determining feasibility" of that plan, which was the debtors' ability to pay the debt when it matured either through a sale or refinancing.[198]

In *Las Vegas Monorail Company*, the plan was supported by the overwhelming majority of bondholders and the debtor was able to settle or resolve all plan objections.[199] But, the bankruptcy court still found that the debtor's "failure to adequately provide for significant capital expenditures and debt retirement" in its plan, "underscore[d] the inadequacy of [it]'s capital structure on a going forward basis."[200] The bankruptcy court found that the enterprise value of the reorganized debtor of "roughly $16 million to $20 million . . . [was] simply too small a base to sustain over $40 million of reorganization debt."[201] Therefore, the court denied plan confirmation.[202]

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[194] *Id*. at 132.

[195] *Id*. at 136.

[196] *Id*. at 135.

[197] *Id*. at 132.

[198] *Id*. at 129–30.

[199] *In re Las Vegas Monorail Co.*, 462 B.R. at 798.

[200] *Id*. at 802.

[201] *Id*.

[202] *Id*. at 804.

Applied to Spirit 1, the feasibility inquiry turns on: (1) whether the projections presented to the Court reflected information reasonably available at the time; (2) whether Spirit adjusted its assumptions to account for material operational or liquidity deterioration that arose prior to confirmation; (3) whether known risks (including aircraft availability, processor collateralization exposure, anticipated liquidity shortfalls, and expected post-emergence transactions) were incorporated into the feasibility analysis; (4) whether the plan was implicitly contingent on developments not disclosed to the Court, such as a prospective transaction with Frontier or credit support that had not been secured; and (5) whether the plan depended on unrealistic contingencies such as an uplift in the market or business mergers. These considerations frame the Examiner's analysis of whether the Spirit 1 plan satisfied the statutory feasibility test.

B. "Good Faith" Plan Proposal Under Section 1129(a)(3)

The Bankruptcy Code requires that a plan of reorganization has been "proposed in good faith and not by any means forbidden by law."[203] In evaluating whether a plan is proposed in "good faith" under Section 1129(a)(3), "the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code."[204]

[203] 11 U.S.C. § 1129(a)(3). This confirmation requirement is distinct from the requirement that a Chapter 11 petition be filed in good faith under 11 U.S.C. § 1112(b). Nothing in the record suggests—nor has any party argued—that the Spirit 1 petitions were filed in bad faith. The debtors in Spirit 1 faced financial distress, liquidity constraints and covenant noncompliance. As a result, they required a balance-sheet restructuring to stabilize operations. Conducting a liability-management transaction or pursuing a financial-only reorganization is a legitimate bankruptcy purpose when a debtor confronts capital-structure dysfunction.

[204] *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 247 (3d Cir. 2004), *as amended* (Feb. 23, 2005). Section 1129(a)(3) "speaks more to the process of plan development than to the content of the plan." *In re Bush Indus.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004); *see also, e.g.*, *In re W.R. Grace & Co.*, 475 B.R. at 88–89 (noting that the good faith inquiry includes a determination of whether the plan exhibits a fundamental fairness in dealing with creditors.); *Jorgenson v. Fed. Land Bank of Spokane (In re Jorgensen)*, 66 B.R. 104, 109 (B.A.P. 9th Cir. 1986) (a chapter 11 plan is proposed in good faith if the plan proponent has exhibited "a fundamental fairness in dealing with creditors" and if the plan "will achieve a result consistent with the objectives and purposes of the Code.").

The Second Circuit has construed this good faith standard as requiring a showing that "the plan was proposed with 'honesty and good intentions' and 'with a basis for expecting that a reorganization can be effected.'"[205] "Whether a [chapter 11] plan has been proposed in good faith must be viewed in the totality of the circumstances, and the requirement of Section 1129(a)(3) speaks more to the process of plan development than to the content of the plan."[206] As stated in *WorldCom*:

> The primary goal of chapter 11 is to promote the rehabilitation of the debtor. Congress has recognized that the continuation of the operation of a debtor's business as a viable entity benefits the national economy through the preservation of jobs and continued production of goods and services. The Supreme Court similarly has recognized that "[t]he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."[207]

Although good faith issues overlap with feasibility, two additional questions arise under Section 1129(a)(3):

1. Whether Spirit continued to rely on prepetition financial projections that had become outdated by the time of solicitation and confirmation; and

2. Whether the Spirit 1 plan was genuinely a stand-alone restructuring or instead the first stage of an intended two-step process (whether a follow-on operational restructuring or a post-emergence merger) not disclosed to creditors or the Court.

i. Financial Projections and Whether they Required Updating

Projections inform feasibility, and they also must be proposed in good faith. They reveal how the debtor constructed the plan, what assumptions it relied upon, and whether the process was

[205] *Johns-Manville*, 843 F.2d 636, 649 (citations omitted); *see also In re Texaco, Inc.*, 84 B.R. at 901–07 ("[I]n the context of a chapter 11 reorganization . . . a plan is considered proposed in good faith 'if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the Code.'") (citations omitted).

[206] *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (quoting *In re Bush Industries, Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004)) (internal citations omitted).

[207] *See, e.g.*, *WorldCom, Inc.*, No. 02–13533 (AJG), 2003 WL 23861928, at *51 (Bankr. S.D.N.Y. 2003) (quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)) (alteration in original); *In re Cellular Info. Sys., Inc.*, 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) (collecting cases).

driven by honest evaluation or by the desire to lock in a prearranged deal regardless of changed circumstances.[208] In a prearranged case, projections are almost always created before filing. That structure is not improper; prearranged cases (and more so prepackaged cases) are designed to be fast, with diligence and negotiation occurring out of court. But the speed of the process does not relieve the debtor of its obligation to make reasonable efforts to ensure that projections are reasonable and materially reliable at time of solicitation and confirmation.[209] A debtor cannot avoid updating projections because of inconvenience, disruption to negotiations, or undermining of prearranged support. If a debtor continues to present outdated information when internal data shows materially changed assumptions, the court may conclude that the plan was not proposed with candor required under Section 1129(a)(3).[210] That a plan "is already done" does not excuse a debtor from its obligations of candor and disclosure.

Absence of good faith is not determined merely because projections later prove to be incorrect.[211] The concern arises only when the debtor knew, or reasonably should have known, that its prepetition projections had become stale, unrealistic, or inconsistent with internal information available at the time the plan was confirmed.[212] Continued reliance on outdated numbers despite material changes in revenue trends, liquidity, operating costs, or market

[208] *See In re Edgewood Food Mart, Inc.*, 666 B.R. 418, 437 (Bankr. N.D. Ga. 2024) (a confirmable plan will have "thorough and accurate financial projections."); *In re Premier Glass Servs., LLC*, 664 B.R. 465, 474 (Bankr. N.D. Ill. 2024) ("Projections should show anticipated earnings and expenses, [and] calculate projected disposable income[.]").

[209] *In re Pioneer Fin. Corp.*, 246 B.R. 626, 630 (Bankr. D. Nev. 2000) ("Regardless of whether a plan is prepackaged or 'prenegotiated,' it must comply with the provisions of the Bankruptcy Code.").

[210] *In re Multiut Corp.*, 449 B.R. 323, 342–43 (Bankr. N.D. Ill. 2011) (finding lack of good faith where the plan materially misstated unsecured debt amount).

[211] *See In re Lupton Consulting LLC*, 633 B.R. 844, 871 (Bankr. E.D. Wis. 2021) ("Not all infeasible plans are proposed in bad faith" but financial disclosure must reflect honest, realistic assumptions rather than vague assertions); *In re Trinity Family Practice & Urgent Care PLLC*, 661 B.R. 793, 814 (Bankr. W.D. Tex. 2024).

[212] *See In re Alston*, No. 14-BK-03454 MDF, 2016 Bankr. LEXIS 4510, at *23 (Bankr. M.D. Pa. Dec. 27, 2016); *In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986); *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (holding that a proper disclosure statement must "clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting their [sic] distribution.").

conditions, may suggest not an error of judgment, but a deliberate choice to withhold information.[213]

ii. Whether the Spirit 1 Plan Was Part of an Intended Two-Part Restructuring Process

A debtor may permissibly seek Chapter 11 relief for financial reasons alone. It is common to do so, and nothing in the Code bars a filing with the objective solely to reshape the capital structure. What creates good-faith concerns here is not financial engineering, but whether Spirit (for its own purposes or as directed by its creditors) was using Chapter 11 as the first step in a prearranged, undisclosed two-stage process. It is not just feasibility that is implicated when a debtor knows that an operational restructuring or follow-on financial restructuring will be required after emergence but does not reveal that fact to a Court. When a filing is presented as a stand-alone solution while internally understood to be only the opening move in a sequential restructuring, the integrity of the confirmation process is undermined.

The same issue arises if the filing is primarily intended to clear the balance sheet to enable a contemplated merger or combination following emergence, and such intention is not disclosed. A Chapter 11 case may incidentally make a debtor more attractive as an acquisition target; that is a natural byproduct of deleveraging and claim resolution and is not improper. It becomes problematic when the merger objective is the driving motivation for the restructuring but is concealed, and the plan instead is marketed as independently viable.

Section 1129(a)(3) requires candor about the purpose of the filing, the objectives of the restructuring, and the role of any contemplated strategic transaction. A debtor cannot present a plan as a durable stand-alone solution while privately treating it as a step transaction designed to

[213] *See In re Hercules Offshore, Inc.*, 565 B.R. 732, 764 (Bankr. D. Del. 2016) (good-faith inquiry under Section 1129(a)(3) looks to totality and fundamental fairness and "[i]nformation affecting the good faith determination might be added to the record throughout the process leading up to confirmation.").

pave the way for a merger or a follow-on restructuring. Creditors and the court are entitled to understand whether the plan is intended to create a viable independent enterprise or to facilitate a subsequent transaction. Even if the plan satisfies feasibility, meeting feasibility does not cure undisclosed intent or a failure to present the restructuring's true objectives.

C. Adequate Disclosure Under Section 1126(b)

Under Section 1126(b) of the Bankruptcy Code, the disclosure statement and the debtors' solicitation of the plan must disclose "adequate information" prior to the solicitation of votes on a reorganization plan.[214] Thus, a disclosure statement must, as a whole, provide information that is reasonably practicable to permit an informed judgment by impaired creditors or equity interest holders entitled to vote on a plan of reorganization.[215] In examining the adequacy of the information contained in a disclosure statement, the Court has broad discretion.[216] This grant of discretion was intended to facilitate effective reorganization of a debtor in the broad range of

[214] 11 U.S.C. § 1125(a)(1). Section 1125(a)(1) of the Bankruptcy Code defines "adequate information as follows:

> "[A]dequate information" means 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 investor of the relevant class to make an informed judgment about the plan . . . .

[215] *See Cadle Co. II, Inc. v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 866 (E.D.N.Y. 2008) (holding that a disclosure statement was adequate where it "enable[d] a reasonable creditor to make an informed judgment about the [p]lan"); *see also In re Adelphia Commc'ns Corp.*, 352 B.R. 592, 600 (Bankr. S.D.N.Y. 2006) (explaining that "an adequate disclosure determination requires a bankruptcy court to find not just that there is enough information, but also that what is said is not misleading"); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement "is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties").

[216] *See Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157–60 (5th Cir. 1988); *see also In re Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress intentionally drew vague contours of what constitutes adequate information so that bankruptcy courts may exercise discretion to tailor them to each case's particular circumstances); *In re Dakota Rail Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (bankruptcy court has "wide discretion to determine . . . whether a disclosure statement contains adequate information, without burdensome, unnecessary, and cumbersome detail").

circumstances and businesses in which Chapter 11 debtors operate.[217] "In reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest."[218] Accordingly, the determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case.[219] In that regard, courts generally examine a number of factors to determine whether the disclosure statement contains adequate information, including, but not limited to, a discussion of certain risk factors to be considered in evaluating the plan.[220]

Here, the question of adequate disclosure is entirely subsumed within the analysis of feasibility and good faith. If the Spirit 1 Plan fails on feasibility or good faith, then it is likely that there should have been better disclosure. If feasibility and good faith are properly established, then it is likely that disclosure was adequate.[221]

In practice, adequacy of information rarely stands alone. Here, it is closely intertwined with the requirements of feasibility and good faith. The debtor's ability to present a viable business plan, supported by financial projections that withstand scrutiny, speaks directly to whether the disclosure statement gave creditors what they needed to evaluate the plan's prospects. The same is true of good faith: if the debtor acted honestly, updated its information responsibly, and disclosed

[217] *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408–09 (1977).

[218] *Id*. at 409.

[219] *See Cadle Co. II, Inc. v. PC Liquidation Corp. (In re PC Liquidation Corp.)*, 383 B.R. 856, 865–66 (E.D.N.Y. 2008); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

[220] *See, e.g.*, *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing factors); *see also In re Source Enters., Inc.*, No. 06-11707, 2007 WL 7144778, at *2 (Bankr. S.D.N.Y. July 31, 2007) (similar list). The factors are not meant to be comprehensive; nor must a debtor provide information on all factors. Rather, the bankruptcy court must decide what is appropriate in each case. *See In re Ferretti*, 128 B.R. 16, 18–19 (Bankr. D. N.H. 1991) (noting that not every debtor needs to provide information on each factor); *see also Phoenix Petroleum*, 278 B.R. at 393 (making use of a list of factors but cautioning that "no one list of categories will apply in every case").

[221] Feasibility ensures that creditors received enough information to assess the debtor's ability to perform under the plan. Good faith ensures that the debtor communicated the plan's purpose and structure honestly. If both standards are met, the statutory disclosure requirement is necessarily satisfied.

its true intentions, creditors generally receive adequate information as a natural consequence. A court may also consider that impaired creditors actively participated in a restructuring process, whether through an ad hoc group or on an individual basis, and that they received financial analyses and projections beyond those contained in the disclosure statements. Access to such information can support a finding that creditors were adequately informed for purposes of evaluating a proposed restructuring.[222]

D. Revocation of a Confirmation Order Under 11 U.S.C. § 1144

Finality is a central policy of the Bankruptcy Code, and Section 1144 creates a narrow exception to the finality of a confirmed Chapter 11 plan.[223] This statute "provides the only means by which a court can revoke an order confirming a Chapter 11 plan . . . if such order was procured by fraud."[224] If the court exercises it discretion to revoke a confirmation order under Section 1144, the revocation order must "(1) revoke the discharge, and (2) protect those who acquired rights in good faith reliance on the confirmation order."[225] A request for revocation of confirmation, if made at all, must be made by a party in interest within 180 days of confirmation. The court, after notice and hearing, may revoke a confirmation order "if and only if the [confirmation] order was

[222] *See In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979–80 (Bankr. N.D.N.Y. 1988); *First Am. Bank v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 ("[T]he information required will necessarily be governed by the circumstances of the case."); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 297 (Bankr. D. Del. 2013) (rejecting the argument that formal disclosure statement review is the only means through which sophisticated creditors could be adequately informed).

[223] *In re Mine Hill Anesthesia, LLC*, 658 B.R. 214, 217 (Bankr. S.D. Fla. 2024) ("Section 1144 is the sole basis to vacate or revoke an order confirming a chapter 11 plan."); *In re Logan Place Props., Ltd.*, 327 B.R. 811, 814–15 (Bankr. S.D. Tex. 2005) ("fraud under § 1144 [is] the exclusive means by which a plan can be revoked" and "[i]f the language 'if and only if' does not express fraud as the exclusive means of revocation, it is difficult to imagine what language Congress could find to make this point clear.") (citing cases); *see also In re Orange Tree Assocs., Ltd.*, 961 F.2d 1445, 1447 (9th Cir. 1992) ("In recognition of the strength of the interest in finality of reorganization plans, courts have held uniformly that strict compliance with section 1144 is a prerequisite to relief.").

[224] *In re Delta Air Lines, Inc.*, 386 B.R. 518, 531–32 (Bankr. S.D.N.Y. 2008).

[225] *In re Trico Marine Servs., Inc.*, 343 B.R. 68, 71 (Bankr. S.D.N.Y. 2006).

procured by fraud."[226] The strict construction of Section 1144 and its 180-day repose period reflect Congress's "measured choice . . . to allow confirmation order to be revoked only under the narrowest circumstances."[227]

To prove fraud, a plaintiff invoking Section 1144 must meet the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, made applicable by Rule 9 of the Federal Rules of Bankruptcy Procedure.[228] Section 1144 does not define "fraud," leaving courts to articulate the operative standard. The scope of fraud under Section 1144 is not limited by common law or other statutory reference.[229] Courts therefore look to traditional common-law principles, earlier interpretations of Section 1144, analogous revocation provision in other chapters of the Bankruptcy Code, and decisions under the former Bankruptcy Act.[230] "[F]raud on the court is "one species that unquestionably is a basis for revoking the order confirming a plan of reorganization."[231] In addition, most courts require a showing of actual fraudulent intent.[232] Constructive fraud, negligence, without more, do not satisfy Section 1144.[233]

[226] 11 U.S.C. § 1144.

[227] *In re Oakhurst Lodge, Inc.*, 582 B.R. 784, 794 (Bankr. E.D. Cal. 2018).

[228] *See In re Motors Liquidation Co.*, 462 B.R. 494, 505 (Bankr. S.D.N.Y. 2012).

[229] *See, e.g.*, *Tenn-Fla Partners*, 229 B.R. 720, 734–35 (W.D. Tenn. 1999) (revoking plan confirmation because the debtors concealed from the court that there were "several qualified purchasers who were actively interested in purchasing" the company for more than the plan's offer); *United States v. Kostoglou (In re Kostoglou)*, 73 B.R. 596, 598–99 (Bankr. N.D. Ohio 1987) (citations omitted); *see also Official Comm. of Unsecured Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 724–25 (Bankr. E.D. Cal. 1992) (tracing history of "procured by fraud" and stating that the language of Section 1144 suggests that "any fraud will suffice").

[230] *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal. 1992).

[231] *Id*.

[232] *In re Calpine Corp.*, 389 B.R. 323, 324 (S.D.N.Y. 2008) (citing *In re Hertz*, 38 B.R. 215, 220 (Bankr. S.D.N.Y. 1984).

[233] *In re Tenn-Fla Partners*, 226 F.3d 746, 750 (6th Cir. 2000).

"More egregious conduct" such as fabrication of evidence or bribery are certainly grounds for revocation of a confirmation order.[234] But courts have also done so where a debtor "(1) is obligated to disclose [material information], (2) knows of the existence of material information, and (3) does not disclose it."[235] Intentional omissions may constitute fraud where the information that would be material to finding that party complied with confirmation requirements, including creditor recoveries, or the debtor's ability to perform under the plan.[236]

The Spirit 2 Petition Date (August 29, 2025) was within the 180-day deadline. Section 1144 is the only procedural mechanism capable of undoing the finality of the Spirit 1 Plan.[237] It is an open question whether the filing of a Chapter 22 tolls the 180-day period in Section 1144. This is a statute of repose and has been strictly observed.[238] For example, in *Lothian*

[234] *Tenn-Fla Partners v. First Union Nat. Bank of Fla.*, 229 B.R. at 730, 734-35 (affirming bankruptcy court's plan revocation on the basis of fraudulent nondisclosure where debtor-in-possession breached its fiduciary duty to "disclose all known material information"); *Kelly v. Giguere (In re Giguere)*, 165 B.R. 531, 534 (Bankr. D.R.I. 1994) (finding fraud under Section 1144 where debtor failed to disclose assets in disclosure statement); *In re V & M Mgmt.*, 215 B.R. 895, 903 (Bankr. D. Mass. 1997).

[235] *In re Giguere*, 165 B.R. at 534 (finding fraud under Section 1144 where debtor failed to disclose assets in disclosure statement); *see also In re Oriental Cantones Inc.*, 2019 WL 5866149, at *3 (Bankr. D.P.R. Nov. 8, 2019) ("A debtor that omits material facts from his schedules, such as assets and creditors, violates his duty to disclose. If subsequently, that debtor obtains an order confirming a plan, this order is considered procured by fraud.").

[236] *Tenn-Fla Partners v. First Union Nat. Bank of Fla.*, 229 B.R.at 731 (W.D. Tenn. 1999).

[237] The Spirit 1 Plan contained third-party releases (the "Third-Party Releases") that bound all affected creditors unless they affirmatively "opted out" of them. Creditors could opt out of the Third-Party Releases by checking an opt-out box on a submitted ballot (that is, for those eligible to vote), by submitting a properly completed opt-out form provided to non-voting creditors deemed to accept the Debtors' plan, by electing to opt out through an online portal maintained by the Debtors' claims and noticing agent, or by filing a timely objection. Conversely, a creditor was deemed to have consented to the Third-Party Releases if it (i) voted to accept or reject the plan without checking the opt-out box, (ii) abstained from voting without otherwise opting out, (iii) failed to timely submit a properly completed opt-out form, or (iv) failed to file a timely objection. *See generally In re Spirit Airlines, Inc.*, 668 B.R. 689, 697–700 (Bankr. S.D.N.Y. 2025). The Court's ruling overruling objections to the Third-Party Releases suggests that releases such as the Third-Party Releases in the Spirit 1 Plan may only be revoked pursuant to Section 1144 of the Bankruptcy Code. *See id*. at 707–709; *In re Motors Liquidation Co.*, 462 B.R. 494, 500 (Bankr. S.D.N.Y. 2012) (holding "a bankruptcy court has the power only to fully—and not partially—revoke a confirmation order entered under section 1144").

[238] *See, e.g.*, *OneBeacon Ins. Co. v. Empress Ambulance Serv., Inc.*, 2003 WL 1857622, at *4 (S.D.N.Y. Mar. 28, 2003) ("The 180–day window is strictly construed, even where there is an allegation of fraud."); *In re 680 Fifth Ave. Assocs.*, 209 B.R. 314, 322 (Bankr. S.D.N.Y. 1997) ("Courts strictly construe this 180 day time limitation, applying it even if a fraud is discovered beyond that deadline.").

Oil,[239] a Fifth Circuit case, the court ruled that the 180-day limitation period encompassed in Section 1144 of the Bankruptcy Code for seeking revocation of a plan-confirmation order on the basis of fraud may not be tolled. This speaks to the importance of finality: as *Lothian Oil* held, "Once a bankruptcy plan is confirmed, Section 1144 sets the length of time available to challenge it—even when fraud is involved," and so it "would make little sense to toll the limitations period of rules designed to deal with fraud because fraud was present."[240]

The issue of revocation is linked to the issue of good faith. If the Examiner finds that the Spirit 1 Plan was proposed in good faith, then the Examiner cannot conclude that there was fraud justifying revocation of the confirmation order. Conversely, if the Spirit 1 Plan was not proposed in good faith, then the Examiner must consider whether conduct rose to the level of fraud.

E. Spirit 2: Dismissal for Statutory Cause Under Section 1112(b)

The Examiner's mandate arises in connection with the refiling in Spirit 2. Central questions relating to dismissal of Spirit 2 are why did Spirit refile and did it do so in good faith? There is no *per se* rule prohibiting serial filings of Chapter 11 cases.[241] A subsequent Chapter 11 filing is permissible when the debtor can show a "genuine need for a new Chapter 11 plan . . . established by an extraordinary change of circumstances . . . that were unanticipated and not reasonably foreseeable at the time of confirmation."[242] Further, the Bankruptcy Code does not prohibit or limit a company's commencement of a second Chapter 11 case, unless the case is

[239] *See Anti-Lothian Bankr. Fraud Comm. v. Lothian Oil, Inc. (In re Lothian Oil, Inc.)*, 2013 BL 17873 (5th Cir. Jan. 23, 2013).

[240] *See id*. at 357.

[241] *See In re Tillotson*, 266 B.R. 565, 569 (W.D.N.Y. 2001).

[242] *Id*.

intended to modify obligations created under a previously confirmed, substantially consummated plan under Section 1127(b).[243]

Courts have consistently held that a debtor may not use a second bankruptcy filing as a vehicle to revisit or unwind a substantially consummated plan. Once a plan is confirmed and materially implemented, its terms are binding on the debtor and creditors, and the integrity of the reorganization process requires that the obligations established under that plan remain enforceable. *In re Tillotson*[244] and similar authorities make clear that serial filings undertaken for the purpose of gaining leverage, modifying established payment obligations, or otherwise re-negotiating the economic commitments of a confirmed plan are not permitted. Allowing debtors to routinely seek a "do-over" through a successive filing would undermine finality and destabilize creditors' reliance on the confirmed plan.

A movant seeking dismissal must show more than the mere fact that the debtor filed a second case and bears the burden of proving by a preponderance of evidence that the successive filing is an abuse of the bankruptcy process. If that initial showing is made, the burden shifts to the debtor to demonstrate that extraordinary and unanticipated changes occurred after the confirmation of the prior plan, that those developments materially impaired performance under that plan and that the new filing is being pursued in good faith rather than to evade obligations under the prior plan.[245] In those cases, the second filing typically serves a distinct and legitimate

[243] *Elmwood Dev. Co. v. General Elec. Pension Trust (In re Elmwood Dev. Co.)*, 964 F.2d 508, 511 (5th Cir. 1992) (deciding that successive chapter 11 filings are not invalid because Congress did not prohibit or limit successive chapter 11 filings, as it did for successive chapter 7 and 13 filings (citing *Johnson v. Home State Bank*, 501 U.S. 78, 87 (1991))); *In re Woods*, 2011 Bankr. LEXIS 788, at *10 (Bankr. D. Kan. Mar. 7, 2011) ("[H]ad Congress intended to outlaw successive chapter 11 filings, it would have included that provision in § 109 where it explicitly conditioned or prohibited successive chapter 7 and 13 filings." (citing *Johnson*, 501 U.S. at 87)).

[244] *In re Tillotson*, 266 B.R. 565 (W.D.N.Y. 2001).

[245] *MacElvain v. I.R.S.*, 180 B.R. 670, 674–75 (M.D. Ala. 1995) (courts consider any factors which evidence (cont'd)

purpose – such as liquidating assets when reorganization has failed – rather than unwinding a substantially consummated plan.

The legitimacy of a second filing turns not on the adequacy of the original feasibility determination but on whether subsequent, unforeseen developments have fundamentally altered the debtor's ability to meet the obligations imposed by a substantially consummated plan. "Where, however, a debtor can anticipate the changed circumstances before confirmation of the first plan and later files a second petition to relieve itself of its obligations under the prior plan, bad faith may be inferred."[246] In order for a debtor to rely on "changed circumstances," such circumstances must have been unknown at the time of the substantial consummation of the prior plan, and must have substantially impaired the debtor's ability to perform that plan.[247]

Airlines, much like large retailers, frequently become repeat Chapter 11 filers. But no other major U.S. carrier has re-entered Chapter 11 so quickly. Spirit 2's filing came only about five months after Spirit 1's emergence. Spirit 1 filed in November 2024, emerged in March 2025, and returned to Chapter 11 (Spirit 2) on August 29, 2025.

As the following table illustrates, other serial airline bankruptcies have occurred over far longer intervals and typically involved comprehensive operational restructurings or major external shocks.

"intent to abuse the **j**udicial process and the purposes of the reorganization provisions"); *Matter of Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994); *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393 (11th Cir.1988) (quoting *In re Albany Partners*, 749 F.2d at 674); *In re Triumph Christian Ctr., Inc.*, 493 B.R. 479, 489 (Bankr. S.D. Tex. 2013).

[246] *Matter of Savannah, Ltd.*, 162 B.R. 912, 915–16 (Bankr. S.D. Ga. 1993); *In re Mableton–Booper Assocs.*, 127 B.R. 941, 944 (Bankr. N.D. Ga. 1991).

[247] *In re Casa Loma Associates*, 122 B.R. 814, 818–19 (Bankr. N.D. Ga. 1991) ("Finally, changed market conditions alone are not sufficiently changed circumstances to warrant a second filing."); *Mableton–Booper*, 127 B.R. at 944 (citing *Casa Loma*, 122 B.R. at 818.

Airline	Number of Filings	Filing Dates	Interval
Trans World Airlines	3	January 31, 1992 June 30, 1995 January 10, 2001	3 years; 5.5 years In March 2001 substantially all of the Debtors' assets were sold to American Airlines, Inc.[248]
Braniff, Inc.[249]	3	May 13, 1982 September 28,1989 August 7,1991 (liquidated)	7 years; 2 years
Continental Airlines[250]	2	September 24, 1983 December 3, 1990	7 years
Midway Airlines	2	March 25, 1991 August 13, 2001	Approximately 10 years
US Airways	2	August 11, 2002[251] September 12, 2004[252]	Approximately 2 years
Hawaiian Airlines	2	September 21, 1993 March 21, 2003	10 years
Aloha Airlines	2	December 30, 2004 March 20, 2008	3 years
ATA Airlines	2	October 26, 2004 April 2, 2008	4 years
Pan American World Airways, Inc.	2	January 8, 1991 February 26, 1998	7 years

All of the above bankruptcies involved some degree of operational restructuring. This is why the current "Chapter 22" has drawn skepticism: the speed of the refiling strongly suggests that the first proceeding failed to address the core operational and structural issues that plague airlines over time.

The first, and easier examination is identifying what triggered Spirit 2 and whether, if there had not been a prior Chapter 11 case, the Spirit 2 petitions would nonetheless have been filed in

[248] *In re TWA Inc. Post Confirmation Est.*, 305 B.R. 228, 231 (Bankr. D. Del. 2004).

[249] *In re Braniff Airways, Inc.*, 50 B.R. 393, 395 (Bankr. N.D. Tex. 1984); *In re Braniff, Inc.*, 118 B.R. 819, 829 (Bankr. M.D. Fla. 1989); *In re Braniff Int'l Airlines, Inc.*, 164 B.R. 820, 822 (Bankr. E.D.N.Y. 1994), *subsequently aff'd*, 101 F.3d 686 (2d Cir. 1996).

[250] *In re Continental Airlines, Inc.*, 145 B.R. 404, 406 (Bankr. D. Del 1992).

[251] *In re U.S. Airways Grp., Inc.*, 369 F.3d 806, 807 (4th Cir. 2004).

[252] *In re U.S. Airways, Inc.*, 329 B.R. 793, 795 (Bankr. E.D. Va. 2005).

good faith. As determined in Section VI.F. of this Report, it was clear by the Spirit 2 Petition Date that the debtors were at imminent risk of a cascading business implosion. Standing alone, if there had never been a Spirit 1, demands by AerCap and difficulties meeting liquidity covenants constituted valid precipitating causes for filing and would not support dismissal under Section 1112(b) for lack of good faith.

The complexity here arises because this is not a first-time reorganization but a successive Chapter 11 petition. Some courts evaluating a "Chapter 22" approach such filings with skepticism, given the risk that a debtor may attempt to unwind compromises previously reached with creditors.[253] Courts apply the *Bouy* factors in evaluating a "Chapter 22" to determine whether it was filed in good faith or should be dismissed:

> (1) the length of time between the two cases;
> (2) the foreseeability and substantiality of events which ultimately caused the subsequent filing;
> (3) whether the new plan contemplates liquidation or reorganization;[254]
> (4) the degree to which creditors consent to the filing of the subsequent reorganization; [and]
> (5) the extent to which an objecting creditor's rights were modified in the initial reorganization and its treatment in the subsequent case."[255]

In *Layman*, the court applied the five *Bouy* factors and concluded each one pointed toward bad faith.[256] First, although, the three-year gap was not "necessarily indicative of a lack of good faith," the gap between filings did not help the debtors because they had defaulted almost

[253] *In re Northtown Realty Co., L.P.*, 215 B.R. 906, 914 (Bankr. E.D.N.Y. 1998).

[254] A subsequent filing aimed at liquidation may reflect a good-faith admission that the debtor cannot continue operating, while a second filing aimed at reorganizing the same debts typically signals an attempt to rework or evade the confirmed plan rather than respond to a genuine, extraordinary change in circumstances. *In re Layman*, 611 B.R. 596, 616 (Bankr. E.D. Tenn. 2019), *aff'd sub nom.*, *Layman v. Tennessee State Bank*, No. 2:19-CV-233, 2021 WL 6425951 (E.D. Tenn. Feb. 2, 2021).

[255] *See* 7 COLLIER ON BANKRUPTCY ¶ 1127.05 (16th ed. 2025); *Lincoln Nat'l Life Ins. Co. v. Bouy, Hall & Howard & Assocs. (In re Bouy, Hall & Howard & Assocs.)*, 208 B.R. 737, 744 (Bankr. S.D. Ga. 1995) [hereinafter "*Bouy*" and, the factors, the "*Bouy* factors"].

[256] *In re Layman*, 611 B.R. at 618.

continuously and had performed only a fraction of the plan.[257] Second, the barn fire that was the purported cause of the second filing, was neither unforeseeable nor substantial, given the debtors' history of fires, their failure to maintain mandatory insurance, and income deficiencies that predated the loss.[258] The debtors' new plan sought another reorganization rather than liquidation, and in doing so attempted to recast the original bargain by surrendering property and altering the largest secured creditor's rights in ways the Bankruptcy Code would never allow through plan modification.[259] Major secured creditors opposed the second filing, and the proposed treatment materially diluted the rights the creditors had negotiated in the first case.[260] Taken together, the court dismissed the second filing.

Although no single factor is dispositive, inquiry also includes consideration of the debtors' good faith because good faith is also a requirement under Bankruptcy Code Section 1129(a)(3).[261] The debtor bears the burden of demonstrating that a genuine, unanticipated change in circumstances justifies departing from the finality ordinarily accorded to confirmed plans. The debtors bear the burden of proof of demonstrating an unanticipated change in circumstances that would justify a serial Chapter 11 filing.[262]

A serial Chapter 11 filing "may also be a hallmark of bad faith which combined with other factors will justify dismissal."[263] Such a second Chapter 11 filing that will alter or modify obligations that were created or assumed under an earlier substantially consummated plan of

[257] *Id*. at 616.

[258] *Id*. at 616-17.

[259] *Id*. at 617.

[260] *Id*. at 618.

[261] *Bouy*, 208 B.R. at 743.

[262] *In re Triumph Christian Ctr., Inc.*, 493 B.R. 479, 487 (Bankr. S.D. Tex. 2013) (citing *In re Casa Loma Assocs.*, 122 B.R. 814, 818–19 (Bankr. N.D. Ga. 1991)).

[263] *In re Northtown Realty Co., L.P.*, 215 B.R. at 914.

reorganization is impermissible, except in the "most extraordinary of circumstances."[264] "[I]t is necessary for the debtor to demonstrate, after consideration of the first filing and the circumstances surrounding default, that the second petition is not an attempt to thwart the initial bankruptcy proceedings."[265] The prevailing framework for assessing the propriety of a Chapter 22 filing requires courts to apply established standards and determine whether an unforeseeable change in circumstances justifies a second petition or whether the case should be dismissed for bad faith.[266] An unforeseeable change sufficient to justify a Chapter 22 petition has been defined as "a legitimately varied and previously unknown factual scenario" that necessitates "a different plan to accomplish the goals of bankruptcy relief."[267] In practice, any complex business will inevitably carry some degree of contractual exposure, including counterparties such as Elavon and AerCap.

Some courts have found that the asserted change was clearly unforeseeable. For example, in 1991, the Bankruptcy Court for the Northern District of Georgia considered whether an unexpected change in federal law[268] and the discovery of fire damage and structural defects materially affecting a single-asset real estate project were unforeseeable.[269] The court concluded

[264] *See id.* at 911; *see also Bouy*, 208 B.R. at 743 ("A debtor should not be permitted to routinely file a successive Chapter 11 reorganization where it has defaulted on a confirmed, substantially consummated plan of reorganization, because such an effort would, in effect, constitute an impermissible attempt to modify a substantially consummated plan.").

[265] *Bouy*, 208 B.R. at 743.

[266] *Matter of Elmwood Development Co.*, 964 F.2d 508, (5th Cir. 1992); *In re Caviata Attached Homes, LLC*, 481 B.R. 34, 56 (B.A.P. 9th Cir. 2012); *In re Triumph Christian Center, Inc.*, 493 B.R. 479, 487 (Bankr. S.D. Tex. 2013); *Matter of Mableton-Booper Assocs.*, 127 B.R. 941, 943 (Bankr. N.D. Ga. 1991). Courts that permit a successive Chapter 11 filing reason that the "unforeseeable changed circumstances" exception supports the Bankruptcy Code's central objective of promoting successful reorganization. *See Mableton-Booper*, 127 B.R. at 943. That goal would be undermined if parties were permanently bound by a confirmation order in the face of genuinely unforeseen developments. *See Elmwood Dev. Co.*, 964 F.2d at 511; *Casa Loma.*, 122 B.R. at 818 (where the court allowed a debtor to file a Chapter 22 case where the first plan's failure was caused by factors that were unanticipated at the time of confirmation of the debtor's first Chapter 11 plan).

[267] *In re Roxy Real Est. Co., Inc.*, 170 B.R. 571, 576 (Bankr. E.D. Pa. 1993). Such a change must both explain the debtor's default under the initial plan and make a second reorganization likely to succeed. *Id.*

[268] The debtor operated an "adults-only" apartment complex and the new federal law prohibited discrimination against children as tenants. *Casa Loma*, 122 B.R. at 818.

[269] *Id*.

that the debtor could not have been anticipated that federal law would change to prohibit it from operating an "adults-only" apartment complex as contemplated in the plan, nor that substantial damage and defects would be discovered after consummation.[270] The court therefore allowed the debtor to proceed under Chapter 22, but emphasized that reliance solely on altered market conditions would not constitute a sufficient change in circumstances.[271]

Although that court did not define the "market conditions" that might justify a second filing, subsequent decisions clarify the contours of that concept. In *Bouy*,[272] the court found that the debtor had demonstrated a sufficient change, while the courts in *In re Caviata Attached Homes, LLC*[273] and *In re Triumph Christian Center, Inc.*[274] concluded that the alleged changes were foreseeable or self-inflicted and therefore inadequate to support a Chapter 22 filing.

(a) In re Bouy, Hall & Howard and Associates

The Bankruptcy Court for the Southern District of Georgia undertook a comprehensive analysis of Chapter 22 precedent and the Bankruptcy Code in *Bouy*.[275] The debtor, a partnership that owned and operated the Quality Inn Hotel near the former Savannah International Airport terminal, had filed its first Chapter 11 petition to restructure secured debts and assume a franchise agreement.[276] The plan was confirmed on June 10, 1992. After confirmation, the debtor faced a series of unexpected setbacks: the airport relocated its terminal several miles away, one major

[270] *Id*.

[271] *Id*.

[272] *Bouy*, 208 B.R. 737.

[273] *In re Caviata Attached Homes, LLC*, 481 B.R. 34 (B.A.P. 9th Cir. 2012).

[274] *In re Triumph Christian Center, Inc.*, 493 B.R. 479 (Bankr. S.D. Tex. 2013).

[275] *Bouy*, 208 B.R. 737.

[276] *Id.* at 739–40.

airline declared bankruptcy, and two other carriers discontinued service to Savannah.[277] These developments severely reduced the debtor's revenue and prompted a second filing in 1995.

The court recognized that the Bankruptcy Code does not categorically prohibit successive Chapter 11 filings, but the debtor must establish that the second petition was filed in good faith.[278] The court rejected the view that good faith alone was sufficient, explaining that such an approach would disregard the finality principles embodied in sections 1127 and 1141 of the Bankruptcy Code.[279] A second filing is permissible only when the facts are "significantly distinguishable" from those in the first case so that the doctrine of res judicata is not offended.[280] The debtor must demonstrate, based on the circumstances surrounding its default, that the second petition was not intended to evade the obligations imposed by the original plan.[281]

The *Bouy* court further explained that ordinary market fluctuations are insufficient to justify refiling.[282] The debtor must instead show that its market underwent a fundamental and unforeseeable transformation.[283] In *Bouy*, the relocation of the airport terminal and the loss of major airline traffic constituted such a transformation. The court determined that these events could not reasonably have been anticipated and that they rendered compliance with the original plan impossible.[284]

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[277] *Id*. at 743.

[278] *Id*.

[279] *Id*.

[280] *Id*.

[281] *Id*.

[282] *Id*. at 745.

[283] *Id*.

[284] *Id*.

(b) In re Triumph Christian Center, Inc.

In *Triumph Christian Center, Inc.*, the debtor was a nonprofit ministry whose consensual plan of reorganization was confirmed on August 23, 2011.[285] After substantial consummation of the plan, the debtor faced financial difficulties, and its secured creditor sought to foreclose on its collateral.[286] On the eve of foreclosure, the debtor filed a second Chapter 11 petition.[287]

The debtor asserted that three developments constituted unforeseeable changed circumstances: (i) a decline in congregational tithing, (ii) an increase in rent for two leased modular buildings, and (iii) unanticipated repair costs.[288] The bankruptcy court found that none of these events were unforeseeable or extraordinary.[289]

The court explained that the reduction in tithes resulted from the debtor's own decision to initiate a building campaign, which reasonably diverted contributions away from general operations.[290] The rent increase was foreseeable because the debtor was bound by leases that provided for rate adjustments at renewal.[291] Similarly, the repair costs were ordinary and predictable, given that all equipment and fixtures have a finite lifespan.[292]

The court concluded that each of the alleged changes was caused by the debtor, known at the time of plan confirmation, or otherwise foreseeable and therefore the Chapter 22 petition was filed in bad faith.[293]

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[285] *In re Triumph Christian Center, Inc.*, 493 B.R. 479, 482 (Bankr. S.D. Tex. 2013).

[286] *Id*. at 484.

[287] *Id*. at 485.

[288] *Id*. at 484.

[289] *Id*. at 492.

[290] *Id*.

[291] *Id*.

[292] *Id*. at 493.

[293] *Id*. at 493, 495, 497.

(c) Hercules Offshore Inc.'s Chapter 22 Proceedings (2015-2016)

On August 13, 2015, Hercules Offshore, Inc., an offshore oil and gas drilling contractor, filed a pre-packaged chapter 11 petition and plan of reorganization in the Bankruptcy Court for the District of Delaware.[294] Under its plan, Hercules and its subsidiaries would convert approximately $1.2 billion of debt into equity and raise $450 million of new capital in the form of a term loan exit facility which would be used by Spirit for liquidity purposes upon exiting from bankruptcy.[295] The plan had strong support from Hercules' creditors.[296] The only evidence of plan feasibility was the financial projections contained in Hercules' disclosure statement.[297] The disclosure statement explained that the debtors developed financial projections by "review[ing] the current contracted status of their offshore jackup rigs and liftboats and ma[king] an assessment of whether or not these contracts were likely to continue or additional contracts were likely to be signed."[298] The projections were done "on a rig by rig basis" and were based on the debtors' evaluation of "the likelihood of each of their rigs and liftboats being utilized over the forecast period."[299] Based on the strong creditor support for the plan, and notwithstanding the fact that the debtors had already failed to meet some of the disclosure statement's financial projections during the pendency of the expedited chapter 11 proceedings, the plan was confirmed by the bankruptcy court on September

[294] *See* Voluntary Petition at 1–3, *In re Hercules Offshore, Inc.*, No. 15-11685 (Bankr. D. Del. Aug. 13, 2015), ECF No. 1.

[295] *See* Declaration of Troy L. Carson in Support of First Day Motions at 2–4, *In re Hercules Offshore, Inc.*, No. 15-11685 (Bankr. D. Del. 2016), ECF No. 2.

[296] *See id.* at 5 ("[O]ver 99% of holders of Class 3 Senior Notes Claims--the only class entitled to vote on the Plan--voted to accept the Plan.").

[297] Spirit 1 Disclosure Statement, Ex. D (Liquidation Analysis) at 1–4, *In re Hercules Offshore, Inc.*, No. 15-11685 (Bankr. D. Del. 2016), ECF No. 16-4.

[298] *Id.* at 7.

[299] *Id*.

24, 2015.[300] The confirmation order expressly held that the plan met the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

Less than eight months later, Hercules and its subsidiaries again filed for Chapter 11 protection on June 5, 2016.[301] This time, the purpose of the 0Chapter 11 filing was to facilitate Hercules' liquidation.[302] At the time of confirmation of the first plan, it was reasonably clear that, unless the depressed oil rig industry substantially recovered in the near term, Hercules was likely to, once again, be in financial distress shortly after emerging from bankruptcy.[303] The committee of equity security holders objected to the plan, asserting, among other things, that it was not proposed in good faith and that the accompanying disclosure statement failed to provide adequate and accurate information.[304] Nevertheless, the court confirmed Hercules' modified joint prepackaged Chapter 11 plan of liquidation over the objection of the committee of equity security holders.[305]

VI. EXAMINER'S FINDINGS AND ANALYSIS

In carrying out the mandate, the Examiner focused on five overarching and interrelated inquiries:

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[300] *See* Order Approving the Debtors' Solicitation and Disclosure Statement for, and Confirming, the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code at 23, *In re Hercules Offshore, Inc.*, No. 15-11685 (Bankr. D. Del. 2016), ECF No. 2.

[301] *See In re Hercules Offshore, Inc.*, 565 B.R. 732, 736 (Bankr. D. Del. 2016). An initial event of default that occurred with respect to the exit loan financing from Hercules' 2015 bankruptcy filing occurred on April 18, 2016. *Id.* at 748–49.

[302] *See id.* at 752 ("[U]pon Consummation, all of the Debtors' assets (including their equity interests in the Non-Debtor Subsidiaries) will be transferred to the Wind Down Entity, which would be responsible for, among other things, the monetization of the Debtors' assets and winding down the Debtors' and the Non-Debtor Subsidiaries' businesses and operations.").

[303] *See id.* at 741–42.

[304] Objection of Official Committee of Equity Security Holders to (I) Approval of Disclosure Statement for Debtors' Joint Prepackaged Chapter 11 Plan and (II) Confirmation of Debtors' Joint Prepackaged Chapter 11 Plan, *In re Hercules Offshore, Inc.*, No. 15-11685 (Bankr. D. Del. 2016), ECF No. 251.

[305] *In re Hercules Offshore, Inc.*, 565 B.R. at 765.

1. **Reliability**: Whether the Projections submitted in support of the Spirit 1 Plan were grounded in operational, financial, and commercial information available to Spirit and its advisors at the time of confirmation, and if the Projections were aligned with Spirit's business model, known performance trends, and plan assumptions;

2. **Operating Divergence**: Whether Spirit's actual operating results in 2025 materially diverged from the assumptions underlying the confirmed plan, and whether such variance was the result of unforeseeable shocks or predictable weaknesses;

3. **Liquidity**: Whether Spirit's liquidity at emergence, including access to committed facilities, expected monetization, unencumbered assets and covenant compliance, provided an adequate margin of safety, and whether liquidity-raising transactions during 2025 were reasonably anticipated or should have been anticipated at confirmation;

4. **Good Faith and Adequate Disclosure**: Whether Spirit possessed information that contradicted the feasibility case presented at confirmation, intended that Spirit 1 would be the first part of a two-stage restructuring process and not a stand-alone restructuring, or relied on a subsequent business transaction (*e.g.*, a combination with Frontier) to avoid refiling; and

5. **Proximate Cause**: Whether Spirit 2 was proximately caused by events that should have been anticipated in Spirit 1.

The Examiner did not evaluate the merits of Spirit's exercise of business judgment or its strategic decisions or tactical actions, and did not explore counterfactual scenarios in which Spirit attempted an operational restructuring in Spirit 1 or cut different deals in the Interim Period. Essentially, whether Spirit and/or its stakeholders could have made better choices is an area of inquiry deemed outside the Examiner's scope.[306] Rather, the Examiner accepted choices as made and then evaluated how and to what extent those decisions and consequent facts contributed to the circumstances surrounding the bankruptcy refiling.

[306] The Examiner will not, and should not, substitute his judgment for that of a company and bondholders who were well advised by counsel and financial advisors, and who were familiar with Spirit's operational risks and financing needs in November 2024. Among other reasons, there can be no assurance that an Examiner-generated, hypothetical restructuring in Spirit 1 would have been successful.

Of course, the Examiner is fully aware that the Spirit 1 restructuring, in actuality, did not leave Spirit in a position to avoid another restructuring. The Examiner's view is that inquiry should focus on why Spirit and its financial creditors pursued a balance-sheet only restructuring in Spirit 1, the extent to which operational restructuring was considered, and whether the decision not to address operations materially contributed to rapidity of refiling. Relatedly, it also is clear that Spirit's FY2025 estimates of revenue, EBITDAR, and liquidity proved inaccurate and insufficient. The real question is whether the conditions and decisions that led to Spirit's refiling were part of a foreseeable downside case for which preparations should have been made, or if the miss was part of a left-tail risk that was not estimable or highly unlikely.

Further, the Examiner believes that identification or evaluation of potential causes of action based on pre-petition activity is not within the appointment mandate.[307] Notwithstanding, in the course of this Investigation, it naturally arose in interviews whether affected creditors believed they suffered actionable harm as a consequence of Spirit 1, or felt deceived by Spirit's conduct during Spirit 1. That information is deemed probative of not just adequate disclosure but also feasibility. Ad hoc groups were provided with comprehensive operational and financial projections (beyond what was published) and then chose to commit $350 million in new equity capital based on this information. Significantly, none of the creditors or their representatives interviewed indicated that they felt they were deceived. No one articulated a theoretically viable cause of action, even if prompted to assume the Spirit 1 confirmation order were revoked.

[307] The Examiner was approached during this appointment with requests to evaluate the business merits of transactions carried out in the interim period between bankruptcies, and implicitly to determine whether those transactions could be challenged. In the Examiner's view, those requests do not fall within the scope of the mandate. The Examiner did assess whether those transactions were foreseeable as of Spirit 1 or contributed to the expedited filing of Spirit 2.

A. Reliability of the Projections

The Projections supporting confirmation in the Spirit 1 Plan were central to the feasibility case presented to the Court and creditors. The Examiner therefore undertook a detailed review of (i) when the Projections were created, (ii) why they were created, (iii) whether Spirit disclosed when they were prepared, (iv) whether Spirit possessed information that contradicted them, and (v) whether the Projections reasonably supported the requirements for confirmation of the Spirit 1 Plan as of February 13, 2025. The facts concerning their development, use, and actual contemporaneous performance are essential to understanding whether the Spirit 1 Plan met the statutory requirements of feasibility, good faith, and adequate disclosure.

i. Origin, Timing, and Purpose of the Financial Projections

The Examiner finds that the business plan underlying the Projections was not developed for the bankruptcy process but instead originated months earlier in support of a failed LME. The primary purposes of the LME were to preserve the Elavon credit card processing agreement, reduce financial leverage, and extend debt maturities.

Perella,[308] working with Spirit, prepared a comprehensive stand-alone operational plan as well as financial projections in the Spring of 2024. ("Backup plans" started developing in late 2023, after court commentary increased the likelihood the JetBlue merger would not be consummated.) The projections were refined in May 2024 and again in July 2024. It is not clear exactly when Spirit and its larger creditors began serious discussions for a balance sheet restructuring. Although there had been earlier conversations, substantive discussions, including

[308] Perella handled the fleet projections and operational planning in Spirit 1, while Alvarez & Marsal ("A&M") prepared the 13-week cash flows.

the exchange of prior stand-alone business plans, likely started in May or June of 2024.[309] Pressure to act quickly was applied by the First Elavon Amendment, dated July 2, 2024, which mandated that a portion of the Loyalty Notes had to be extended or refinanced by September 20, 2024.[310]

Spirit internally rolled out Project Bravo in August 2024. The rollout was well-received. Because Project Bravo substantially changed operations, there was a "comprehensive modification" of the operations plan and financial projections during September into early October 2024 (the "October Model"). Business plan assumptions embedded in the October Model were not materially changed after this date, other than routine updating of predictable model inputs (such as expected AOG or fuel cost curves). Specifically, it is not clear to the Examiner whether and to what extent ASM and TRASM assumptions, deemed "hard to predict" by Spirit's internal network and revenue team, were adjusted over time. The better weight of the evidence is that inputs relating to revenue in 2025 did not materially change after October, a conclusion also supported by the pre-petition circulation of the October Model to the ad hoc groups in support of a prearranged bankruptcy.

Spirit's attempted LME failed because out-of-court tools could not effectively compel holdouts to participate, and because there was need for a structure that incentivized contribution of new equity capital. Spirit and its creditors then pivoted to a bankruptcy strategy to accomplish these goals. The Debtors and their advisors have expressed consistent views that there would not

[309] The Examiner requested access to data rooms associated with the LME and Frontier negotiations. These data rooms have been eliminated and were not available to the Examiner (and were represented as no longer available to the debtors). Although reconstruction of the data rooms would have reduced investigatory effort and improved precision, the Examiner finds that interview testimony and available documents were consistent, that all necessary materials could be obtained from the debtors or from Spirit 1 creditors, or the UCC, and that attempting to reconstruct the data rooms would have imposed unnecessary cost on the debtor. Imposing such costs on creditors might have required subpoenas and likely reduced candor. The Examiner finds that the debtors' data rooms were eliminated sometime before the Spirit 2 filing and accepts debtors' representation that elimination occurred in the ordinary course and in-line with industry practice.

[310] The Loyalty Notes were set to mature on September 20, 2025, and would have been classified as a current liability if not adjusted by the deadline in the First Elavon Amendment.

have been a bankruptcy filing in 2024 if the extension of maturity LME had been successful.[311] The Examiner finds this credible, consistent with market practice (where the threat of bankruptcy encourages holdouts to participate) and probative of good faith. Setting aside that an LME likely would have been followed by a bankruptcy, the origins of Spirit 1 do not support the idea that filing was intended as the opening move in a planned two-step bankruptcy strategy.

As would be expected, however, once bankruptcy was on the table there were discussions at Spirit, and between Spirit and bondholders, about whether and to what extent an operational restructuring should be pursued in Spirit 1. Viewed through the lens of Spirit 2, there is a natural tendency to frame discussions in 2024 as a binary choice between the no-touch Spirit 1 and a comprehensively restructured "Spirit 1 Alt." However, after extensive interviews and assessment of contemporaneous documentation, the Examiner finds that no party-in-interest – not the Debtors, creditors, or Committee – ever expressed a view that a fleet reduction and fleet plan similar in scope to Spirit 2 was warranted in Spirit 1.[312]

There is strong evidence that Spirit believed it could reduce excess capacity without using bankruptcy tools, and that its fleet plan was appropriate for implementation of Project Bravo. Spirit engaged Campbell-Hill Aviation Group, a consultancy specializing in airline network and fleet strategy, to assist its internal fleet analysis teams. Campbell-Hill's mandate focused on delivering independent assessments of aircraft requirements, utilization and productivity

[311] One advisor's comment was that there was "no thought of bankruptcy at all" when negotiations were limited to the LME. Spirit was "feeling pretty good" and it was a "good time to engage with stakeholders."

[312] At least one bondholder advisor recommended conditioning the $350 million liquidity injection on achieving reductions in rent and labor costs, but without tying that strategy to a massive fleet reduction. Perella analyzed the fleet with respect to potential lease rejections and concluded that there was not much "juice" to be had by rejecting leases because many leases were below market or not enough above market to make rejection "worth the cost." Creditor constituencies ultimately reached the same conclusion. The Debtors and creditors also reached a similar conclusion with respect to savings from labor renegotiation. The Examiner did not review specific leases or labor contracts but all interviews were consistent and indicated broad agreement that rent or labor concessions without a step change to the fleet size would have delivered marginal and not transformative savings.

assumptions, long-term capacity planning, and the implications of alternative fleet scenarios on Spirit's operating and financial profile. Based on interview discussion, it appears that Campbell-Hill's contemporaneous analysis of market conditions and Project Bravo supported the fleet plan embedded in the Projections, and were not far off from Spirit's own internal analysis of the same. Moreover, merger discussions with Frontier in the fall of 2024 revealed that Frontier expected market conditions to improve in a manner directionally similar to Spirit's expectations.

The Examiner notes that fleet size inevitably played a role in the circumstances leading to Spirit 2 since revenues must cover fixed obligations, including those associated with aircraft. Even so, the Examiner concludes that the Debtors' decision to pursue Project Bravo and keep a fleet commensurate with its revenue projections was not the proximate cause of the rapid refiling. It was operating losses and working capital demands, much more than rent, that exhausted Spirit's liquidity.

The October Model, containing financial projections substantially similar to the Projections, was shared with Evercore and Ducera, the financial advisors for the ad hoc groups owning Loyalty Notes and Convertible Notes, respectively, in or around October 2024. The October Model was also made available to Frontier in furtherance of merger discussions. This origin matters because the business plan reflected an economic environment and business assessment rooted in data available in mid-2024, and there was not a full re-assessment of Spirit's business model during the pendency of Spirit 1.

As would be expected, there was no update to the Projections between their filing in December 2024 and the confirmation hearing in February 2025. The Projections were, in effect, "frozen" for purposes of solicitation. The absence of any update is not uncommon in a prearranged

case, where plan negotiations typically begin before filing, and projections are often "locked" to maintain deal stability.

That said, there was a prolonged period of time between the Projections created pre-petition and the confirmation hearing in February 2025, and there is no strong evidence that there were substantial bring-down adjustments to the Projections during that period. Accordingly, the Examiner must consider whether Spirit's performance from October through confirmation in February offered information that rendered the Projections unreliable. For the reasons below, the Examiner finds that Spirit's performance and outlook generally were trending positively from October until mid-to-late January 2025, and that there actually is a stronger case for Spirit's viability in January 2025 than in October 2024.

ii. Performance from October 2024 to the Confirmation Declaration

The Examiner reviewed 13-week cash flows, internal budget-to-actual analyses, board-level materials, and internal communications among management and advisors. These materials reflect that Spirit's operational performance from immediately prior to the Spirit 1 Petition Date through the filing of the Cromer Confirmation Declaration on January 16, 2025, met expectations in the Projections. The Examiner finds that during this period: (i) weekly revenue performance typically exceeded or met baseline; (ii) operating variances skewed positive rather than negative; and (iii) liquidity was adequate and met budget.

Internal communications from management and advisors confirm that performance was improving from the summer lows in 2024. There is no evidence of internal dissent, suppressed analysis, or contradictory forecasting in the materials reviewed, or indication that Spirit believed the Projections were undermined by emerging trends. To the contrary, interviews with management revealed that, however "aggressive" the Projections might be, management was "more comfortable" with those projections in mid-January than pre-petition. The Examiner

concludes that the absence of updated projections does not plausibly indicate that revised figures would have revealed a deteriorating financial outlook or otherwise undermine the Cromer Confirmation Declaration.

iii. Performance from the Confirmation Declaration to Confirmation

The majority of Spirit's bookings are made within one month of travel, and Spirit had at most six to eight weeks of booking visibility in January 2025. This low "visibility window" is typical for ULCCs because their customers tend to book closer to departure date than legacy carriers' customers. Also, in January 2025, Spirit had slightly worse booking visibility than normal because of its ongoing bankruptcy and quickly changing market dynamics. Although Spirit observed "softening" in future bookings beginning sometime in mid-January, "around [MLK] weekend," the pace and scale of slowing sales was not deemed to be indicative of a trend, particularly as January traffic and performance was healthy and slightly above expectations. Also, February is a low volume month for leisure travel and advance bookings were not deemed particularly valuable for predicting future traffic.

When the ULCC market and Spirit's fortunes turned it was a matter of weeks, not months. In hindsight, at the confirmation hearing on February 13, 2025, it could have been said that the market had started its descent. However, concerns then-identified by the Company were mild in nature, and no contemporaneous documentation indicated the emergence of defined trend rather than a condition warranting observation. All interviewed financial advisors, whether engaged by the Debtors or the ad hoc groups, indicated that revenue weakness in February was not viewed as requiring a change to the business plan. Given ULCC booking patterns and the inherently noisy nature of short-term demand signals, the Examiner concludes that Spirit had no reasonable basis to interpret the mid-January to mid-February softness as a structural decline or as something that required revising the Projections.

That is not to say that Spirit's stand-alone plan was feasible, *see* discussion *supra* Section VI.C.iii., but rather that if the Projections supported feasibility pre-petition they also supported feasibility as of confirmation. The Examiner further finds that the failure to disclose the pre-petition preparation date of Projections did not materially disadvantage affected creditors, who were overwhelmingly sophisticated, well-advised, and directly or indirectly received regular business updates. Although relying on unrefreshed projections in support of confirmation could be characterized as a process deficiency (albeit typical for a prearranged plan), it did not, in the Examiner's judgment, amount to a defect affecting feasibility or good faith.

iv. Actual 2024 Results as the Foundation for 2025 Projections

This Investigation principally is concerned with Spirit's 2025 performance and variance of that year's performance against the Projections. Although out-year projections were provided in support of confirmation, the Examiner determined that out-year projections were not related to or the cause of the Spirit 2 bankruptcy, because no one relied on those projections, other than perfunctorily as included in the Projections in support of feasibility at confirmation. Even if out-year projections were wildly aggressive, the Examiner need not test these out-year projections to determine whether the balance-sheet-only Spirit 1 Plan was feasible through 2025.[313]

Spirit's financial performance in 2024 was not strong, but after the lows in August 2024 gross revenue did not materially deviate relative to expectations and budgets, assuaging some management concerns, and costs were largely in line with budget. As discussed below, the Examiner finds that it was reasonable for Spirit to use 2024 operations and results as the foundation for forecasting 2025 operations and results.

[313] Although the Examiner views feasibility as a critical issue, it is not essential to determine whether Spirit likely would have filed for bankruptcy in 2026 or 2027 had it not filed in 2025. The Examiner also takes the view that assessing feasibility through 2025 roughly comports with the 12-month forward looking view that governs a going-concern qualification.

2024 Revenues: Actual full-year operating revenue totaled approximately $4.913 billion, materially identical to the $4.914 billion in the Projections. This alignment does not reflect success, but it does reflect stability at the diminished revenue base already evident by mid-2024. There was no late-year deterioration signaling a collapse in Spirit's ability to generate passenger or ancillary income heading into 2025. Spirit's revenue trajectory for 2025 was broadly consistent with both internal expectations and standard ULCC seasonal patterns.

2024 Costs: Total expenses closely tracked the assumptions underlying the Projections, with several categories, including fuel, landing fees, and maintenance, coming in slightly below projected levels. Spirit's 2025 cost trajectory reflected an assumption that it would operate essentially the same 2024 fleet upon emergence. That assumption may have been strategically unsound, but the cost projections themselves were reasonably grounded.

2024 Cash Flow and Liquidity: Spirit's operating cash burn in 2024 totaled approximately $758 million,[314] compared with a projected burn of $791 million,[315] representing a favorable variance of roughly $33 million. This variance, while positive, nonetheless tightened the Company's liquidity cushion and reduced its financial flexibility heading into 2025. The 2024 cash burn reflects a combination of net losses, increases in deferred heavy maintenance obligations, and use of working capital, among other factors. Spirit's operating cash burn was also affected by working capital usage. In particular, changes in accounts receivable, deferred revenue, and prepaid expenses caused cash outflows that were not offset by collections, contributing to the overall cash burn alongside lower operating margins and fixed-cost obligations.

[314] 2024 10-K at 76.

[315] Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 10.

The Examiner concludes that Spirit's 2024 cash flow results materially narrowed the margin of safety embedded in the Projections, driven by a combination of lower operating margins, working capital outflows, and ongoing fixed-cost obligations. Nonetheless, at year-end 2024, Spirit's liquidity and operating performance remained within the ranges contemplated in the Projections, and the variance was not of a magnitude that would undermine the overall reliability of the Projections for purposes of confirmation.

B. Operating Divergence in 2025

i. Variance Between Projected and Actual 2025 Results

The Examiner evaluated Spirit's actual financial and operational results from January 2025 through the end of August 2025 against the Projections (as described in Section III.D.). The Examiner had access to weekly, monthly, and quarterly actual results and financial models. January performance was consistent with the Projections, underscoring the severity and rapidity of the subsequent revenue deterioration in February and especially in March.

The Spirit 2 First Day Declaration identifies a series of adverse operating conditions that "intensified immediately"[316] after the Spirit 1 confirmation hearing. Industry-wide revenue headwinds intensified materially in 2025, particularly within the ULCC sector. The Examiner's findings broadly concur with the Spirit 2 First Day Declaration, and the Examiner finds that these industry dynamics (including intensified fare competition and promotional discounting) directly contributed to sharp yield degradation across Spirit's core demographics and geographies.

Several forces converged at once:

[316] There is no practical difference between stating that the deterioration started immediately after the confirmation hearing and stating that future bookings deterioration that started in late January was recognized as a meaningful market trend only immediately after the confirmation hearing. The Examiner believes that the latter characterization is more accurate. In the Examiner's view, Spirit's management did not have sufficient information in January to predict that softness in bookings presaged a dramatic market downturn by March.

- Southwest initiated aggressive fare discounting following negative customer reaction to strategic changes, exerting downward pressure on ULCC and low-cost carrier pricing across domestic markets.

- American, Delta, and United expanded their "Basic Economy" offerings, directly targeting Spirit's consumer base and compressing ULCC pricing power by offering seats at a reduced ticket price.

- Legacy carriers also increased their presence in ULCC-heavy leisure markets, adding capacity and matching discounted fares, which further constrained Spirit's pricing and load performance on overlapping routes.

- Domestic flight capacity did not match the pace of demand recovery, especially for leisure-focused airlines like Spirit.

Spirit's internal financial performance metrics, including revenues, yields, and booked load factors, fell materially below projected assumptions beginning in February 2025 and deteriorated sharply thereafter.

It was not unexpected costs that brought down Spirit: it was a revenue shortfall, and nothing else. In this case, a constant-margin decomposition[317] helps illustrate the reason why Spirit missed so badly on its 2025 projected revenue. Below is a variance bridge derived from the October 2025 Cleansing Materials,[318] which reconciles the Spirit 1 Disclosure Statement's 2025 Adjusted EBITDAR & EBITDA Projections to Spirit's revised 2025 projections.[319]

[317] Sometimes it is clearer and more effective to demonstrate with approximation rather than precision. The constant-margin decomposition method is a mechanically simplistic and a knowingly incorrect tool because it posits that historical margins remain stable even as revenue changes. Still, the method provides clear and intuitive margin attribution. Here, the Examiner made a further simplifying assumption to reverse 2025 fuel cost savings, treating them as uncontrollable, and to add a corresponding amount back to revenue as if Spirit passed higher fuel prices through to customers.

[318] Spirit Aviation Holdings, Inc., Form 8-K (Oct. 14, 2025), Ex. 99.1 at 5–6, 15–18.

[319] Adj. EBITDAR Waterfall Support (Nov. 26, 2025).

EBITDAR Bridge from Disclosure Statement to October Cleansing Materials

($ in millions)	2025 DS	As %	2025 Revised	As %	Pro Forma	As %
Total Revenue	**$4,891**	**100.0%**	**$3,907**	**100.0%**	**$4,025**	**100.0%**
(-) Aircraft Fuel	(1,137)	(23.3%)	(1,019)	(26.1%)	(1,137)	nm
(-) Salaries, Wages & Benefits	(1,502)	(30.7%)	(1,490)	(38.1%)	(1,490)	(37.0%)
(-) Landing Fees & Other Rents	(420)	(8.6%)	(396)	(10.1%)	(396)	(9.8%)
(-) Distribution	(195)	(4.0%)	(186)	(4.8%)	(186)	(4.6%)
(-) M&R	(192)	(3.9%)	(197)	(5.1%)	(197)	(4.9%)
(-) Other Operating Expenses	(779)	(15.9%)	(681)	(17.4%)	(681)	(16.9%)
Adjusted EBITDAR	**$666**	**13.6%**	**($62)**	**(1.6%)**	**($62)**	**(1.5%)**
(-) Rent	(599)	(12.2%)	(506)	(13.0%)	(506)	(12.6%)
Adjusted EBITDA	**$67**	**1.4%**	**($568)**	**(14.5%)**	**($568)**	**(14.1%)**

Applying the original EBITDAR margin of 13.6% to the *pro forma* revised revenue implies *pro forma* EBITDAR of $547.4 million, which is what Spirit would have generated if margins had remained constant while revenue declined. The $118.1 million difference between this implied figure and the Spirit 1 Disclosure Statement EBITDAR of $665.5 million reflects the portion of deterioration not explained by revenue loss. Since the total EBITDAR decline is $727.6 million, the remaining $609.5 million (roughly 84% of the miss) is attributable to the revenue contraction. Doing the same exercise with respect to EBITDA implies 98% of the miss is attributable to revenue contraction.

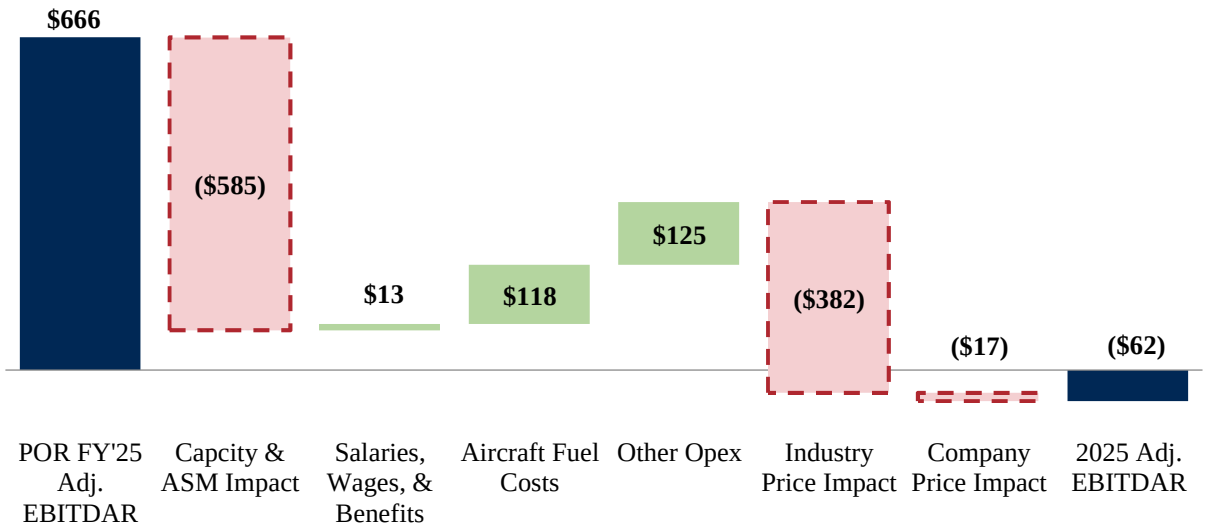
The Examiner employed a more accurate, complex model that adjusted for variable cost segmentation (distinguishing variable, semi-fixed, and fixed costs), and which delineated costs more specifically than as publicly disclosed. The Examiner concludes that more than 100% of the EBITDAR decline is attributable to the revenue shortfall, and that management in fact achieved (or is likely to achieve) marginal but positive reductions in non-rent cost categories that would ordinarily be regarded as fixed.

The Examiner had access to Spirit's underlying models and internal financial reports. Using these materials, along with information from industry sources, the Examiner evaluated Spirit's published assertion that the projected FY 2025 revenue effect would total $967 million

($585 million from ASMs and $399 million from industry & company price impacts).[320] The Examiner does not endorse that specific $967 million figure, but neither is it disputed. It was not cost effective to reassess Spirit's assumptions once it became clear that the revenue shortfall materially exceeds 100% of the change in EBITDAR, and that Spirit marginally outperformed (or likely will outperform) predicted cost savings.

FY 2025 EBITDAR Bridge: POR Projections to October 2025 Cleansing Materials

($ in millions)



The combined effect of the Capacity & ASM Impact, Industry Price Impact, and Company Price Impact reconciles to the total FY 2025 revenue reduction

With respect to the revenue miss itself, the largest drivers of the variances stem from (i) Spirit-specific capacity reductions and (ii) broader industry and company-specific pricing pressures, both of which directly impact revenue and overall profitability. The revenue impact from capacity reductions reflects a projected 5.5 billion decline in ASMs. Applying Spirit's bridging methodology which calculates capacity and ASM impact, the TRASM assumption of

[320] The following table reflects these projections. Adj. EBITDAR Waterfall Support (Nov. 26, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

10.65¢ from the Projections yields a $585 million reduction in 2025 revenue between the October Cleansing Materials and the projections. Spirit's Industry Price Impact calculation, calculated by applying the change in analyst consensus estimates for Frontier between February 2025 through October 2025,[321] multiplied by Spirit's relevant KPIs, the price impact results in an additional $382 million reduction to FY 2025 Adjusted EBITDAR after applying the updated ASMs included in the October Cleansing Materials. Finally, the $17 million Company Price Impact is calculated by measuring the difference between the forecast TRASM growth and the actual industry TRASM growth and applying that variance to the ASMs shown in the October Cleansing Materials.[322]

Capacity & ASM Impact	
	POR vs 2025
Cleansing Report ASMs	40,438,477
(-) POR ASMs	45,937,018
ASM Delta	**(5,498,541)**
(x) POR TRASM	10.65
Capacity and ASM Impact ($ in MM's)	**($585)**

Industry Price Impact	
	POR vs 2025
Frontier Revised TRASM	9.37
(-) Frontier Expected TRASM Growth	10.28
Industry TRASM Change	**(8.9%)**
(x) POR Spirit TRASM	10.65
Implied Spirit TRASM post Ind. Decline	**9.70**
(-) Old POR TRASM	(10.65)
Industry TRASM Revenue Impact	**(0.94)**
(x) Cleansing Report ASMs	40,438,477
Industry Price Impact ($ in MM's)	**($382)**

Company Price Impact	
	POR vs 2025
Total TRASM Change	(9.3%)
(-) Industry TRASM Change	(8.9%)
Company TRASM Change	**(0.4%)**
(x) POR Spirit TRASM	10.65
Company TRASM Impact	**10.61**
(-) Old POR TRASM	(10.65)
Industry TRASM Revenue Impact	**(0.04)**
(x) Cleansing Report ASMs	40,438,477
Company Price Impact (MM's)	**($17)**

The Examiner also examined the fleet plan to isolate revenue changes on account of retained versus released aircraft. Much of the drop in projected 2025 revenue is, of course, due to lease rejections and elimination of aircraft, some of which contributed to EBITDAR. The obvious questions are why would Spirit reject a "profitable" plane, and if it does reject a plane with a

[321] Frontier Historical 2025 TRASM Analyst Consensus.

[322] Adj. EBITDAR Waterfall Support (Nov. 26, 2025).

negative contribution margin wouldn't that improve EBITDA? The answers are complicated, but essentially it appears that adjusting the fleet and fleet plan is a step function, and rejected planes in the aggregate are expected to have negative contribution margin and/or provide a reduction in rent that is greater than positive contribution margin. That is, EBITDAR would have been even worse had the planes not been rejected.

Revenue through July 2025 missed the forecast by approximately 17.4% on a gross basis, driven largely by an 8.1% ASM shortfall and a 10.1% TRASM miss. After applying fuel-cost adjustments consistent with the bridge methodology, the revenue variance narrows slightly, with revenue approximately 16.0% below forecast. A summary of these variances is presented in the chart below.[323]

YTD July'25

$ in MM	Revenue	Fuel Costs	PF Revenue	ASM (MMs)	TRASM
Actual	$2,397	$634	$2,436	25,173	¢9.52
Disclosure Statement Projections	2,901	673	2,901	27,393	10.59
Variance $	**($504)**	**($39)**	**($465)**	**($2,219)**	**(¢1.07)**
Memo: Variance %	(17.4%)	(5.8%)	(16.0%)	(8.1%)	(10.1%)

The full-year revenue miss shown in the preceding calculations reflects substantial underperformance during the January through July 2025 period. On its existing fleet, Spirit fell short of its ASM projection by 8.1%. Spirit also missed its TRASM projection, generating 9.52¢ compared with the 10.59¢ originally forecast. After adjusting for variances in actual fuel costs, the Examiner estimates that total revenue for this seven-month period was approximately 16% below expectations.

The Examiner finds no evidence that Spirit reasonably could have anticipated the magnitude and speed of this rapid decline at confirmation. Once revenue declined at scale, the Projections ceased to be realizable.

[323] Preliminary Business Plan Model (Dec. 12, 2025); Cleansing Materials Cash Forecast (Dec. 12, 2025).

ii. Capacity Reductions, Aircraft Utilization and Network Retrenchment

(a) Difficulty Adjusting Cost Structure to Match Revenue Compression

For Spirit, the 2025 capacity reductions were the result of a broad network retrenchment rather than a singular action. The Projections assumed a year-over-year ASM reduction of approximately 16 percent, or roughly six billion ASMs, for the year-to-date period through August 2025. In reality, ASMs declined by more than 22 percent, which represents an approximate seven billion ASM reduction, for the year-to-date period ending July 2025. Ultimately, Spirit cut frequencies across its highest-exposed leisure routes, pulled out of weaker, spoke cities, and shortened its aircraft duty days, leaving jets idle for longer periods. Spirit eliminated or downsized service on routes in Florida, Las Vegas, and several Northeast cities where competitive pressure and fare erosion made the ULCC economics untenable.[324] These scheduling cuts are why Spirit's ASMs fell sharply, even though its fleet did not shrink commensurately.

Spirit also faced aircraft-specific constraints that amplified the impact of its broader operational retrenchment. The ongoing Pratt & Whitney GTF inspection cycle continued to sideline aircraft, removing them from full-day rotations and materially reducing available flying hours. During the Interim Period, eight additional GTF engines were removed from service for repair. These incremental AOG events compounded Spirit's fleet imbalance and required even deeper utilization cuts than market conditions alone would have dictated. As a result, lower utilization, reduced frequencies, route exits, and engine-related downtime resulted in a deep decline in ASMs. For Spirit's ULCC model depending on high aircraft productivity, these capacity

[324] If an airline shifts flying from long-haul or mid-continental routes to shorter-haul intraregional segments, total ASMs fall even if the number of daily flights stays constant. Route exits disproportionately hit ASMs when the cancelled routes are long distance, as here.

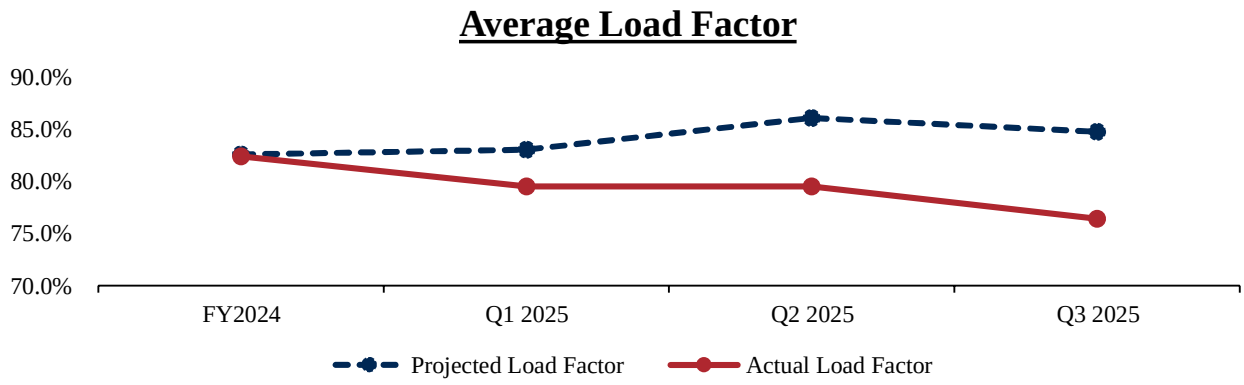
reductions, in hindsight, signaled that the revenue environment had deteriorated so significantly that the airline could no longer profitably deploy its assets at scale.

The cost effects further intensified the operational pressures. Reduced flying elevated CASM, which in turn required higher fares to achieve break-even performance, which in turn suppressed demand in Spirit's leisure-oriented markets. As a result, the 2025 capacity reductions, initially intended as a targeted efficiency measure, ultimately reinforced the negative trajectory: demand weakness necessitated a smaller schedule, but the reduced schedule increased unit costs and further weakened demand. Sustained reductions in ASMs alongside elevated CASM are not compatible with the ULCC model, which relies on high aircraft utilization.[325]

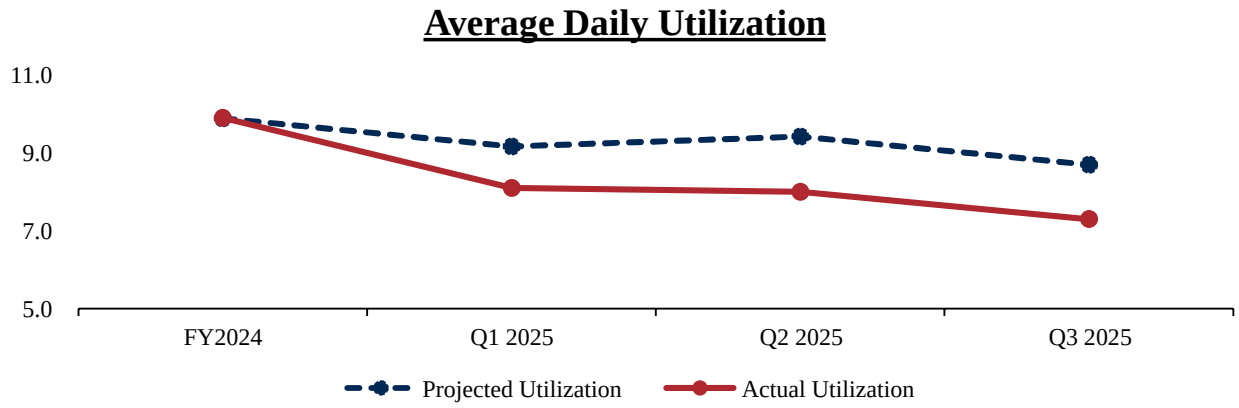
With this backdrop, a core question for the Examiner is whether Spirit emerged from bankruptcy with the operational capacity necessary to achieve the revenue and performance assumptions embedded in the Spirit 1 Plan. Viewed retrospectively, Spirit lacked sufficient network efficiency and aircraft productivity. Although Spirit operated a nominal fleet consistent with plan expectations, its ability to translate that fleet into revenue-generating activity proved weaker than projected. Two core metrics, load factor and aircraft utilization, fell meaningfully short of plan.[326]

[325] The Examiner recognizes that costs did not go up so much as they were spread over lower passenger volume and revenue. Some airlines might have the capacity to price below CASM breakeven for a short while; Spirit does not.

[326] Preliminary Business Plan Model (Dec. 12, 2025); 2025 Q1 10-Q at 43; 2025 Q3 10-Q at 58–59, 64.



Spirit's load factor performance weakened versus projections across the first three quarters of 2025, reflecting soft demand and excess industry capacity. At Spirit 1's emergence (Q1 2025), the actual load factor of 79.5% trailed the projected 83.0% by 4%.[327] By Q3 2025, the variance had expanded to 10%, with actual load factor declining to 76.4% versus an 84.8% projection.[328]



Actual utilization also underperformed projections throughout 2025, and the gap widened as the year progressed. In Q1 2025, utilization was 8.1 hours versus a projected 9.2, a 12% shortfall.[329] By Q3 2025, the variance had grown to 16%, falling to 7.3 hours in Q3 2025, versus

[327] 2025 Q1 10-Q at 43; Preliminary Business Plan Model (Dec. 12, 2025).

[328] 2025 Q3 10-Q at 58; Preliminary Business Plan Model (Dec. 12, 2025).

[329] 2025 Q1 10-Q at 43; Preliminary Business Plan Model (Dec. 12, 2025).

projected utilization of 8.7 hours, driven by elevated AOG levels, grounded GTF aircraft, and reduced block-hour efficiency.[330]

This deterioration in passenger throughput and aircraft productivity materially suppressed revenue generation relative to the Spirit 1 Plan assumptions. As a result, Spirit entered the post-emergence period with weaker operating leverage and reduced capacity to meet the revenue targets underpinning the Spirit 1 Plan's feasibility.

(b) Speed and Magnitude of Decline

The Examiner concludes that the pace of Spirit's deterioration was as significant as its magnitude. The speed of revenue contraction left management with insufficient time to adjust operations, and the Company was compelled to raise liquidity far earlier than contemplated in the Projections. Lessors, lenders, vendors, and other counterparties became more cautious as liquidity tightened, further narrowing Spirit's options.

A multi-month decline in both ASMs and load factors can overwhelm even a well-structured liquidity plan. Spirit's decline occurred in weeks. Even when management recognized the need for structural fleet resizing, the Examiner finds that Spirit lacked the operational runway to implement those actions before liquidity deteriorated. By the time Spirit and AerCap were engaged in meaningful discussions about consensual fleet reductions, around June 2025, it was probably too late. By that time, revenue performance had already diverged from the Projections by multiple quarters of anticipated recovery, and liquidity had reached or was about to reach critically low levels.

When an airline reaches this stage, repeated schedule cuts cease to be a tool and instead become a symptom of overcapacity relative to underlying demand. Structural fleet changes

[330] 2025 Q3 10-Q at 58; Preliminary Business Plan Model (Dec. 12, 2025).

become unavoidable. This is why Spirit 2's long-term exit path involves rejecting leases, renegotiating ownership costs, or selling aircraft outright. A ULCC cannot shrink its way to profitability while holding the same fleet obligations; the math simply will not work. Rejecting leases under the Bankruptcy Code is the most direct mechanism for eliminating excess aircraft because it immediately removes the fixed lease burden and allows the network to be resized to the revenue reality. Aircraft sales are more complex, but also achieve the same result of reducing obligations tied to planes that Spirit cannot economically fly.

The speed of Spirit's deterioration also is material because airlines require time to recalibrate networks, renegotiate aircraft obligations, and activate liquidity levers. Spirit did not have that time. Demand fell, yields softened, and competitive pressure intensified at a pace that outstripped Spirit's ability to adjust. In a ULCC model, where margins are already thin and liquidity buffers are smaller than those of network carriers, a rapid drop in ASMs and load factors immediately stresses cash flows. A slow decline can be managed by pacing aircraft returns, sequencing route cuts, and gradually resizing the workforce. A fast decline leaves Spirit reacting, not planning, and compresses what should have been a multi-quarter stabilization process into a matter of weeks. The faster the cycle moved, the less optionality Spirit retained.

Rapid deterioration closes doors that would be open in a slower decline. Lessors become less cooperative once they sense distress; lenders tighten terms as liquidity falls; manufacturers resist deferrals when an airline appears reactive rather than orderly. Spirit entered 2025 under the assumption of stabilization and found itself within months in a position where counterparties were pricing in heightened risk. Had Spirit's decline unfolded over a year, the airline might have negotiated aircraft returns, reshaped the network, and activated liquidity sources in sequence. Instead, the rapid contraction created a financial and operational choke point: costs could not be

removed fast enough, liquidity ran ahead of planning, and every short-term fix made the medium-term outlook worse. The Examiner finds that Spirit's early 2025 performance deviated from the Projections far more quickly than could reasonably have been foreseen at confirmation.

iii. Conclusions Regarding Fleet Reductions

The scale of the post-petition fleet reduction is striking and naturally creates the impression that Spirit's model was so fundamentally flawed it was unreasonable not to downsize the fleet in Spirit 1. Also, many of the aircraft rejected in Spirit 2 were already AOG during Spirit 1 or were expected soon to be AOG. However, the fleet plan reflected in the Projections was not devoid of business justification, nor were its assumed capacity reductions unattainable at the time they were formulated. The Examiner concludes that, although the need for fleet rationalization now appears obvious, that conclusion was not obvious based on the information available during Spirit 1.

Documents and interviews demonstrate that Spirit intended to retain essentially the same fleet upon emergence that it operated in 2024. Management anticipated continued ASM reductions but no meaningful reduction in fleet size at exit. No party interviewed indicated a belief that a massive fleet contraction was required for Spirit to survive through 2025. Some interviewees did express views that a Chapter 22 after 2025 was likely. There also were views expressed that shrinking the fleet would have reduced, not enhanced, Spirit's viability as a going-concern.

Management's determination that it was necessary to shrink the fleet available for revenue developed only after conditions worsened in 2025. The new Chief Executive Officer, who assumed leadership in April 2025, began reassessing the fleet plan shortly thereafter. By June 2025, Spirit initiated discussions with AerCap regarding a substantial reduction in aircraft count. The Examiner finds that the scale of ASM contraction and resulting CASM inflation placed Spirit in an untenable and unrecoverable fleet position by mid-2025. To the extent it may be argued that an earlier in-court fleet reduction should have been pursued, the Examiner views Spirit's strategy

in Spirit 1 to be a matter of business judgment not patently unreasonable as of the Spirit 1 confirmation hearing.

C. Liquidity and Appropriate Margin of Safety

The Examiner finds that the most important determinant of Spirit's near-term viability was not its leverage profile, its maturity schedule, or even its absolute earnings trajectory, but its liquidity margin of safety. In an enterprise with volatile revenue cycles, limited ability to reduce costs quickly, and heavy operational commitments, liquidity must serve as the buffer between performance variability and operational continuity. The record demonstrates that Spirit in fact operated with too narrow a liquidity margin relative to the volatility of its cash flows and the rigidity of its cost structure.

The question is whether this was a deterministic feasibility issue that should have been anticipated, or was it a tail risk that materialized?

i. Liquidity to Cover Operating Losses

Liquidity is not simply a pool of cash or a borrowing facility. It represents the time the company can survive under adverse or unexpected conditions. When a business has volatile cash flows, liquidity performs the function of absorbing interim losses and preserving operational optionality long enough for structural adjustments to take effect. Spirit's business model, fleet commitments, and cost base made it highly dependent on maintaining a liquidity buffer commensurate with that volatility. When this buffer narrowed, Spirit lost the ability to manage even modest variances without compromising its operational and financial stability.

Spirit's liquidity needs were amplified by three defining characteristics of its business: (i) high operating leverage, meaning fixed or semi-fixed costs that do not decline quickly when revenues fall; (ii) timing mismatches, meaning revenues can deteriorate far faster than expenses can be reduced; and (iii) contractual inflexibility, meaning material categories of cost cannot be

adjusted immediately. When these forces combine, a company requires a larger liquidity buffer because the initial phase of a downturn is absorbed entirely through liquidity loss rather than immediate cost reductions.

Operating leverage was central to Spirit's liquidity risk. Spirit's cost base, comprised of fleet ownership and lease costs, engine maintenance programs, airport fees, labor contracts, overhead, and technology system, did not vary in the short term with changes in passenger revenue.[331] Liquidity must carry the enterprise through that adjustment period. For a company with substantial fixed costs and thin per-unit margins, the margin of liquidity safety needed to be significantly larger than Spirit maintained.

The Examiner finds that Spirit's second structural constraint was the speed of revenue deterioration relative to the speed of cost reduction. Airlines generally experience sudden changes in unit revenue, particularly when competitive pressure intensifies, capacity increases, or promotional pricing enters the market. Spirit's ULCC model further compresses reaction time because its yields are already low and its margins narrow. As pricing pressures intensified in early 2025, Spirit could not reduce costs quickly enough to match falling revenue. The business therefore required a liquidity position robust enough to withstand revenue volatility long enough for necessary structural adjustments to materialize.[332]

[331] Operational disruptions related to Pratt & Whitney GTF engine issues were expected by Spirit to strain liquidity during early 2025. Actual AOG exceeded expected AOG, but the Examiner finds that GTF fleet issues were modeled reasonably in the Projections based on information known at the time (in contrast to the borescope problems found when examining aircraft held-for-sale to GAT).

[332] A third constraint, shared by all airlines, is contractual rigidity. Aircraft leases cannot be terminated immediately, maintenance obligations cannot be halted without severe operational consequences, and labor agreements restrict rapid adjustments in staffing or compensation. These obligations prevent airlines from reducing costs at the same pace as declines in revenue (and increases profit in good times). As a result, even when a company identifies a necessary cost reduction, liquidity must sustain operations through the lead time required to execute these changes. A primary benefit of bankruptcy is the potential to reject or renegotiate contracts.

ii. Working Capital Liquidity

The Examiner also finds that Spirit's liquidity profile was unusually sensitive to working-capital swings, particularly deferred revenue. Advance ticket sales function as a form of rolling financing: when forward bookings weaken or shift in timing, cash inflow drops immediately while expenses remain constant. This dynamic is unique to airlines and can create sudden liquidity deterioration unrelated to income-statement performance. For Spirit, working-capital volatility created an additional channel through which liquidity could decline rapidly. A company exposed to this kind of booking shift requires a liquidity buffer sufficient to withstand such swings.

Counterparty behavior also affects working capital and liquidity. Here, Spirit's liquidity needs were heightened by credit-card processor behavior. Elavon observed liquidity deterioration plus going concern language in Spirit's filings and responded to it by increasing reserves, tightening terms for advances, demanding collateral, and limiting exposure. Spirit was required to post an additional $50 million into a pledged cash account and to cash-collateralize a portion of future credit-card exposure, which was projected to require approximately $200 million of cash collateral through November 2025.[333]

iii. Adequacy of Liquidity at Confirmation

Spirit entered 2025 with a liquidity position that matched plan expectations but did not exceed them by a margin appropriate to its actual volatility exposure. When performance variances emerged the liquidity buffer narrowed. As the buffer narrowed, Elavon and other counterparties tightened credit terms and exercised remedies. While it is not clear that revenue deterioration in 2025 was, in fact, survivable, it was the loss of liquidity and the run on available funds that had Spirit engaged in "prudent" contingent bankruptcy planning in the summer of 2025.

[333] Cleansing Materials Cash Forecast (Dec. 12, 2025).

That Spirit's liquidity margin could no longer absorb operational losses does not, on its own, establish that the Spirit 1 Plan was not feasible. As outlined in the legal discussion, the feasibility standard is a deterministic one and is not calibrated to capture inestimable risks or low probability scenarios. Instead, the question is whether Spirit had adequate liquidity to manage the expected case risks, including those inherent in a rigid cost structure and negative working capital. Liquidity needed to be sufficient to bridge the interval between the onset of a reasonable downturn from the expected case and the implementation of cost reductions or strategic adjustments. In the airline industry, that interval can be significant. A narrow liquidity buffer leaves the enterprise dependent on favorable conditions and limits its ability to withstand foreseeable volatility.

The Examiner finds that the deterioration that occurred here was beyond what the feasibility test is designed to detect. Although there is some support for the generic approach that an airline, or any high–fixed cost, high–operational leverage business, should pursue an operational restructuring as a matter of course, that is not a prerequisite for seeking bankruptcy protection. In this case, the deterioration in Spirit's financial position was unusually rapid and severe. Spirit's challenges were compounded by concurrent operational disruptions, such as grounded aircraft and irregular operations costs, which reduced revenue and increased expenses simultaneously. These stresses consumed liquidity faster than Spirit could have reasonably anticipated.

Enterprises operating in more stable industries can maintain comparatively modest liquidity buffers. Their revenue bases erode gradually, and cost structures may be adjusted gradually. Spirit, operating in a sector marked by pronounced cyclicality and high fixed costs, required materially greater liquidity relative to absorb sudden revenue shock. In retrospect, Spirit's liquidity reserves should have been calibrated to that heightened exposure, and if such reserves

could not be achieved, a comprehensive operational restructuring would have been the more appropriate course.[334]

iv. The Examiner's Conclusions with Respect to the Projections

The Examiner finds it unlikely that reasonable additional contingency planning in Spirit 1 would have prevented collapse in 2025, as the revenue deterioration was simply too severe. Spirit's liquidity planning included a volatility-adjusted margin of safety that was appropriate for the Spirit 1 Plan under a deterministic, rather than probabilistic, framework. The Projections were internally coherent and Spirit's liquidity runway was adequate under the expected-case scenario presented at confirmation. Simply, the Projections did not contemplate a left-tail scenario involving consecutive quarters of double-digit revenue deterioration, heightened competitive pricing across core markets, and a sharp decline in ATL. These circumstances constituted a "legitimately varied and previously unknown factual scenario" justifying a Chapter 22.[335]

The Examiner concludes:

1. In hindsight, Spirit's liquidity margin was too narrow relative to the volatility and operational rigidity inherent in its business model.

2. The rapid decline in revenue, yields, and ATL exhausted Spirit's liquidity faster than contemplated in the Projections.

3. Counterparty reactions accelerated the liquidity deterioration.

4. Deterioration occurred too quickly for Spirit to execute structural adjustments, including fleet rationalization.

5. While the liquidity buffer was insufficient in hindsight, the magnitude and speed of the revenue decline place this scenario at the left tail of outcomes and therefore outside what Section 1129(a)(11) reasonably requires a debtor to predict.

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[334] Every financial advisor interviewed took the position that liquidity at exit was sufficient to support the expected case presented in the Projections.

[335] *In re Roxy Real Est. Co., Inc.*, 170 B.R. 571, 576 (Bankr. E.D. Pa. 1993); *see also In re Northtown Realty Co., L.P.*, 215 B.R. at 914 (describing the "most extraordinary of circumstances" consideration as part of the *Bouy* analysis for evaluating whether a Chapter 22 was filed in good faith or should be dismissed); *see generally supra* Section V.E.

D. Financing Transactions

This section addresses the financing transactions contemplated in the Projections and those undertaken during the pendency period between Spirit 1 and Spirit 2. The Examiner evaluates whether these transactions were disclosed at confirmation and/or whether they should have been reasonably anticipated at confirmation.

i. Transactions Modeled in the Projections

(a) The GAT Aircraft Monetization

The Projections supporting the Spirit 1 Plan assumed that Spirit would generate approximately $150 million of liquidity in 2025 from the sale of grounded aircraft to GAT. This assumed monetization was built into the plan as a defined and discrete source of incremental liquidity, intended to supplement operating cash and other asset-sale initiatives during the post-emergence period. The contemplated aircraft pool consisted of grounded or otherwise non-operational units that Spirit believed could be transferred to GAT for resale without significant additional investment.

Spirit's internal presentation of this $150 million line item, as reflected in the materials reviewed, did not identify it as a high-risk or speculative source of funds. Instead, Spirit treated the GAT program as an ordinary-course asset sale, supported by market demand for used aircraft components and the historical reliability of GAT as a counterparty in such transactions. Indeed, Spirit had chosen GAT, from among a number of interested parties, as the counterparty for this transaction because of the perceived low execution risk and expectation that GAT would be interested in taking all the aircraft that Spirit was looking to sell.

During the Pendency Period, Spirit received new information indicating that many of the aircraft would take longer to sell than originally anticipated. As technical teams and maintenance personnel evaluated the specific airframes, they determined that most units required substantial

inspection work or remedial maintenance before they could be marketed. These inspections were not superficial, and involved high-cost, time-consuming work that materially changed the economics and timing of disposal. Out of the original pool, 21 of 23 aircraft were determined to require such work, leaving only two aircraft sale-ready.

Further internal communications reflected that these inspection requirements were much more extensive than initially understood. The Examiner's review shows that Spirit had not anticipated the scope of technical issues associated with this group of assets.[336] The assumptions underlying the Projections presumed a readily marketable inventory – aircraft suitable for part-out or resale with only routine pre-sale steps. Instead, the technical findings converted what had been modeled as a straightforward asset sale into a significantly more complex and delayed process, with diminished near-term liquidity value. The deterioration in saleable inventory did not arise from unexpected market conditions. Ultimately, the liquidity available through the GAT pathway contracted sharply relative to the Projections, by approximately $150 million.

The weight of the evidence is that Spirit likely was aware of substantial delay by no later than the Spirit 1 confirmation hearing date and knew that GAT proceeds would not be received as assumed in the Projections. It is not clear whether Spirit believed at that time that the aircraft were totally unsalable to GAT in 2025, or if some portion of the $150 million in incremental liquidity could be realized by August 2025. The Examiner finds that Spirit had sufficiently concrete information that best practice would have been to update its disclosures to reflect potential delays and made additional disclosures to the Court at the February confirmation hearing. In the

[336] According to management, Spirit's auditor was comfortable with Spirit's liquidity projections because of the generally high market interest in the airplanes for sale, and Spirit's previously demonstrated ability to sell large portions of its prior fleet of a different type of aircraft. Spirit also shared information regarding the anticipated delay with Elavon.

Examiner's judgment, the loss of $150 million in liquidity contributed to Spirit's difficulties in 2025 but was not dispositive.

(b) The EETC Refinancing of Tranche B and Upsizing

An EETC provides creditors with unusually strong protection by isolating aircraft collateral inside a bankruptcy-remote trust, enforcing a strict priority waterfall, and giving senior tranches accelerated repossession rights under 11 U.S.C. § 1110. The EETC structure ensures that investors have direct, enforceable access to valuable aircraft assets, predictable recovery outcomes, and insulation from the broader corporate capital structure. It also benefits from cross-collateralization, which prevents selective default and spreads risk across an entire aircraft pool. Together, these features make EETCs one of the most secure and reliable forms of aviation financing for creditors.

Some EETCs are drafted with inherent flexibility to accommodate refinancing of existing tranches or the addition of new subordinate tranches when collateral value and indenture capacity permit. Because the trust contains a pool of aircraft rather than a single plane, and because the underlying indentures often include collateral-coverage tests and room for additional issuance, airlines can restructure or expand their secured financing without renegotiating senior debt or pledging new assets. This flexibility is particularly valuable for airlines facing liquidity constraints. Airlines can retire maturing or inefficient tranches, replace them with new issuances, and if the collateral headroom exists borrow incremental amounts beneath existing layers. The EETC structure can offer a path to raise capital quickly without destabilizing senior creditors or altering the waterfall.

Against this backdrop, the Projections assumed a refinancing of the existing B-Tranche notes. A small portion of the new issuance was applied to retire the old 2017-1 B tranche.

Approximately $43 million of the proceeds went to pay off these remaining B notes and the Spirit 1 Disclosure Statement was explicit that this refinancing was expected.[337]

However, Spirit chose to conduct the retirement of the old B tranche as part of a much larger issuance than what was described in the Spirit 1 Disclosure Statement. Through a new trust structure, Spirit issued $215 million of new B(R) equipment notes secured by the same pool of approximately two dozen A320-family aircraft that supported its 2015-1 and 2017-1 EETCs. Because only $43 million was needed to retire the legacy B notes, the remaining amount, approximately $172 million, represented incremental borrowing, enabled entirely by the existence of collateral headroom beneath the senior tranches. Spirit used this room to raise substantial liquidity at a moment of growing operational and financial pressure.[338]

After reviewing board-level documents and interviewing Company officials and Spirit's advisors, the Examiner finds that Spirit was aware that there was upsizing headroom in the EETC structure in 2024 but had not tested the market. Although it is not apparent in the disclosure notes in the Projections, the underlying model shows that Spirit assumed it would receive $200 million on account of refinancing of the EETC notes in February 2025, before repayment of the legacy Tranche B Notes and costs, leaving cash contributions for the transaction expected around $155 million. Because of the slight upsizing, actual net cash contributions were approximately $170 million, resulting in approximately $15 million of additional liquidity. The EETC upsizing cannot be said to be a surprise, except that the Disclosure Statement did not provide enough detail that a reader could determine that an upsizing was anticipated. Given that the ad hoc groups had access

[337] *See* Spirit 1 Disclosure Statement, Ex. B (Financial Projections) at 12.

[338] This upsizing was economically significant. The new B(R) notes carried an 11% coupon and a final maturity several years into the future, with amortization scheduled to begin later in 2025. The upsizing provided Spirit with immediate liquidity without the need to pledge additional assets, renegotiate senior-secured debt, or create new collateral structures.

to the model showing an upsizing of similar magnitude, and that Spirit would have been wary of disclosing an untested, future market transaction with specificity, the Examiner finds the EETC transaction unobjectionable for purposes of the Investigation. The Examiner makes no finding as to the business merits of the upsizing.

(c) The Exit Revolving Credit Facility ("RCF")

Spirit replaced its prepetition $300 million revolver with a $275 million exit revolver (with a $25 million accordion feature). This reduced total committed liquidity by $25 million. The Examiner finds that no borrowing base reductions, covenant compressions, or lender revaluations occurred during 2025. The RCF's contractual reduction in availability was not expected until 2026 and therefore did not affect 2025 feasibility.

When Spirit fully drew the revolver on August 21, 2025, liquidity converted from "availability" to "cash," but total liquidity did not meaningfully change. The Projections' treatment of the facility was directionally and structurally accurate.

(d) Pratt & Whitney Monthly Credit Agreement

Core questions for the Examiner are (i) whether Spirit emerged from bankruptcy with a fleet of sufficient size, reliability, and operational readiness to support implementation of the Spirit 1 Plan, and (ii) whether unforeseen GTF engine issues in the interim period between confirmation and the Spirit 2 Petition Date contributed to the rapid refiling. In hindsight, of course, it may have been the better option to reject AOG leases in Spirit 1, but the Examiner does not substitute his business judgment for that of the Company and its advisors.[339]

[339] Plainly, a major contributing cause of the Spirit 1 bankruptcy was AOG because of accelerated inspection requirements for the PW1100G-JM geared turbo fan fleet was. The uniformity of the fleet's composition, expected to be an advantage, magnified the impact of inspections because such a large portion of the fleet was affected. The Examiner does not revisit the causes of Spirit 1 beyond this observation, and did not review the March 26, 2024, monthly maintenance credit compensation agreement with IAE.

As detailed above in Section IV.B.iv., during the Interim Period, AOG on account of the GTF issue increased by three aircraft. Ten held-for-sale planes were removed from service pending inspections, and those planes were placed in the long maintenance and repair queue with IAE.[340] Total aircraft available for revenue service dropped from 164 to 151. Spirit furloughed 240 pilots on September 1, 2024, due to Pratt & Whitney GTF issues, and on January 31, 2025, furloughed an additional 330 pilots ostensibly for the same reason.[341]

After extensive and specific inquiry, the Examiner could not determine exactly how many of these additional GTF grounded aircraft were accounted for *ex ante* in the Projections. Based on the available data, Spirit did not emerge from bankruptcy with a fleet fully aligned to the operational assumptions underpinning the Spirit 1 Plan. However, the Examiner concludes that Spirit did internally model incremental AOG, and that at the time of the confirmation hearing, Spirit had not reached a conclusion that 2025 projections were unachievable. Spirit entered the post-emergence period with a constrained and less reliable operating fleet than assumed in the Spirit 1 Plan, increasing execution risk and limiting Spirit's ability to achieve the performance targets, but the Examiner does not conclude that the Spirit 1 Plan was rendered infeasible.

Similarly, after extensive and specific inquiry, the Examiner could not determine why eight net[342] additional AOG related to the GTF inspections occurred between emergence and the Spirit 2

[340] The shared queue at IAE, and general shortage of alternative maintenance providers or slots, likely was a material contributing factor to the delay in delivering planes to GAT.

[341] Rajesh Kumar Singh, *Spirit Airlines to Furlough Hundreds of Pilots to Cut Costs*, REUTERS (Oct. 30, 2024), https://www.reuters.com/business/aerospace-defense/spirit-airlines-furlough-hundreds-pilots-2024-10-30/; 2024 2Q 10-Q at 17.

[342] The Examiner did not fully explore the pace of inspections and repair, or why so many more planes were being taken out of service than returned. Spirit's former CEO did suggest, however, that the turnaround time at IAE for repair of damaged powdered metal parts was over 400 days, compared with a normal engine repair turnaround time of 90 days. The implication is that engines were (and are) timing-out according to schedule but repair slots were being made available at a glacial pace. Spirit's AOG forecast was based on inputs received from IAE and was largely dependent on IAE's ability to move engines through its repair facilities; these inputs proved to be inaccurate and were (cont'd)

filing. To estimate the financial impact of these incremental AOG, the Examiner calculated average revenue per operating aircraft (194 to 196 aircraft) in each month including April through July 2025 and multiplied that figure by the incremental GTF AOG to derive an implied monthly revenue impact per plane. Comparing this monthly revenue impact per plane with the total revenue variance from the Projections indicated that each additional AOG accounted for approximately 0.9% to 1.9% of the revenue variance to the Spirit 1 Plan. Because the number of AOG rose during this period, the effect cannot be captured by a simple planes-times-contribution calculation. The Examiner estimates, in rough terms, that 8% of the January through July 2025 revenue variance is attributable to incremental AOG.[343]

On the cost side, Spirit's March 2024 agreement with IAE expired at the end of that year. For most of the first half of 2025 there was a stand-off. IAE was inspecting, maintaining and repairing planes (at a pace undetermined by the Examiner), and sending invoices. Based on the expectation that a 2025 agreement would eventually be signed, and in anticipation of monthly maintenance credits, Spirit was not paying those invoices. On June 4, 2025, Spirit entered into the June IAE Agreement which provided it with monthly credits retrospectively and through December 31, 2025.

The Examiner was approached with a concern that Spirit released claims against Pratt & Whitney in the June IAE Agreement in exchange for incremental liquidity. This impression may have may have arisen because the June IAE Agreement included $72.4 million in credits related to AOG days through June 30, 2025. However, this was not incremental liquidity, and Spirit

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often adjusted by Spirit's technical team. Heading into 2025, Spirit received inputs that indicated a stable and improving AOG situation for Spirit, but IAE did not meet its own expectations, which ultimately led to the increasing number of AOGs.

[343] Revenue per available aircraft is based on pre-emergence projections and may understate revenue per available for revenue aircraft. Each incremental AOG is assumed to be grounded for the entire month in which it appears in monthly models.

expected that a 2025 agreement would provide cumulative credits calculated from the beginning of the year. Because Spirit had deferred payment on invoices the credits applied to satisfy prior claims, and to the extent there was excess, were used to satisfy Spirit's other obligations to IAE. The Examiner finds that the apparent enhancement in liquidity reflected the release of accumulated credits, and the monthly credits paid were materially consistent with the Projections. The Examiner also finds that monthly credits offset unavoidable maintenance expenses that Spirit otherwise would have to pay in cash. The Examiner lastly finds that monthly credits appear to be calibrated to compensate Spirit for lease and financing "parking" costs, but not lost business opportunities or CASM effects.[344]

The Examiner also was approached with concerns that the redacted IAE Restructuring Term Sheet, filed on December 3, 2025,[345] concealed facts related to the circumstances surrounding the refiling of Spirit 2. The Examiner was provided with an unredacted copy of the IAE Restructuring Term Sheet and is satisfied that the new proposed agreement does not have any relation to the June IAE Agreement. Specifically, all credits contemplated to be paid pursuant to the June IAE Agreement are expected to be received by Spirit, unless Spirit no longer operates that AOG.

The Examiner finds that:

1. Incremental and unexpected AOG from January 2025 to the Spirit 2 Petition Date were a significant factor behind the Spirit 2 filing.

2. The June IAE Agreement constituted the formalization of a preexisting reimbursement practice, not a monetization of future maintenance credits.

[344] The June IAE Agreement was reviewed on a professional-eyes only basis and not by the Examiner. On the same PEO basis, the Examiner finds that the June IAE Agreement is not related to lease rejections in Spirit 2 because credits are only paid if aircraft is operated by Spirit. Company officials explained in interviews in qualitative terms that monthly credits were based on Spirit's hard costs.

[345] *See generally* IAE Motion [Docket No. 540].

3. The liquidity effects reflected the release of accumulated credits during a period of deferred invoicing, not the creation of new economic value.

4. The structure and economics of the monthly credit mechanism were consistent with long-standing practice and were not materially different from the assumptions incorporated into the Projections.

ii. Transactions Not Modeled in the Projections

(a) Sale-Leaseback of Spare Engines

The Examiner reviewed Spirit's sale-leaseback transaction of spare engines executed in 2025, which was not modeled in the Projections. The Exit Secured Notes permitted Spirit to raise up to $250 million in additional liquidity using their collateral. Spirit elected to pursue a sale-leaseback of spare engines rather than encumbering other corporate assets such as Spirit's headquarters (the Examiner reviewed internal analyses of alternative collateral-based financing transactions but makes no findings about the merits of the sale-leaseback transaction). None of these unexecuted pathways were sufficiently advanced during Spirit 1 to suggest they should have been disclosed as probable or committed financing sources. Spirit eventually approached bondholders for relief from the $250 million covenant and additional liquidity, but the request was made too late to have a practical impact. The Examiner finds the sale-leaseback to be an ordinary-course monetization strategy responsive to liquidity pressure, not indicative of information concealed from the parties who relied on the Projections.

(b) Collateralization for Elavon and Amendment of the Credit Card Processing Agreement

Given that posting of collateral to support the Elevon credit card agreement was material to the decision to file Spirit 2, whether Spirit anticipated a deterioration in its relationship with Elavon during Spirit 1 is a core inquiry. The Examiner requested and received all communications between Spirit and Elavon during the Spirit 1 pendency period, reviewed board-level documents, and interviewed advisors. At all times, Spirit appears highly attuned to and concerned with

satisfying Elavon's minimum liquidity covenant, which was the most restrictive among Spirit's contractual obligations. However, there is no evidence that Spirit expected Elavon to alter the credit-card arrangement or tighten requirements on exit. Contemporaneous documents do not contain warnings, alerts, or forward-looking concerns. In fact, there is an absence of high-level written communication between Spirit and Elavon during Spirit 1. Given the central role the processor plays in Spirit's liquidity cycle, this silence is significant and suggests that Spirit believed the covenant was manageable.

The first substantive post-emergence communications begin in March 2025, when Elavon asserted that Spirit breached the credit-card processing agreement because the debt restructuring had not been completed by December 31, 2024, the Early Maturity Date specified in the First Elavon Amendment. Spirit effectively rebutted that assertion by explaining that the restructuring clause operated as a financial covenant rather than an affirmative performance requirement, and because it was not a curable obligation, its non-occurrence did not constitute a condition Spirit was required to satisfy. These communications marked the beginning of renewed tension between Spirit and Elavon over advances and holdbacks, however, which tensions accelerated through Q2 2025. After publication of the 10-Q for Q2 2025, which essentially contained a going concern qualification, Elavon conditioned a two-year extension of its credit-card processing agreement on significant and immediate collateralization. Spirit executed amendments on August 15 and August 20, 2025, under which it: (i) permitted Elavon to hold back up to $3 million per day until Elavon deemed its exposure fully collateralized; (ii) agreed to maintain full collateralization on a continuous basis as Elavon's exposure fluctuated; and (iii) transferred $50 million into a pledged account for Elavon's benefit.

The written record, particularly Board presentations, show that Spirit knew it had to manage its liquidity to maintain compliance with the Elavon covenant, and that Spirit could not effectively operate without the Elavon credit card processing agreement remaining in place.[346] The Examiner finds that Spirit reasonably believed that its liquidity at emergence would be sufficient to maintain compliance with Elavon's minimum liquidity covenant, albeit barely. It was only in March 2025 that the Board was shown projections that liquidity in Q2 2025 would drop below threshold and presented with management initiatives to provide necessary additional liquidity. Given Spirit's poor business performance, and Elavon's strong negotiating leverage due to Spirit's existential reliance on the credit card processing agreement, the Examiner is unsurprised by the August collateralization of contract liabilities.

iii. The Rights Offering in Support of Liquidity and Feasibility

The Spirit 1 equity rights offering was a central economic feature necessary to support Spirit's liquidity and its viability as a going-concern. Sophisticated financial institutions[347] with full access to Spirit's projections, liquidity profile, and operational risks chose to invest $350 million in new equity capital in support of a balance-sheet only restructuring. The decision to invest $350 million as equity flatly is inconsistent with the view that Spirit was likely to fail in 2025. The Examiner finds that the injection of equity capital is compelling evidence that sophisticated and knowledgeable market participants did not expect Spirit to liquidate or reorganize in 2025.

[346] The potential loss of the credit card processing agreement was summarily declared by one interviewee as "fatal."

[347] Funding constituencies consisted of institutions with deep restructuring experience, specialized aviation knowledge, and intensive credit-analysis capabilities. Moreover, each of the ad hoc groups was represented by sophisticated counsel and financial advisors. As the only affected claimants, and as a practical matter forced to put in new money, bondholders had enormous incentive to scrutinize Spirit's operations and evaluate the Projections. The Examiner's investigation revealed that bondholders' advisors (and some funds) were given access to detailed information regarding fleet plans, labor costs, maintenance requirements, network strategy, advance-ticket liability trends, liquidity sensitivities, and macroeconomic assumptions embedded in the Spirit 1 Plan.

The Examiner finds that the scale of the equity raise is itself probative. A $350 million equity injection, at real cash cost, is not a token gesture. It represents an extraordinary commitment of subordinated capital that would be the first to be wiped out if the Spirit 1 Plan faltered. Sophisticated investors would not have deployed this level of equity capital unless they believed Spirit had a credible runway to execute its business plan, at least through 2025. All interviewees with knowledge offered opinions strongly consistent with the Examiner's view, and all expressed incredulity that bondholders would have invested $350 million dollars of new equity had they anticipated failure in 2025.[348] Interviewees also confirmed that bondholders did not communicate material concerns about Spirit's viability in 2025, if any, to the Company.

The Examiner evaluated two alternative theories that might have supported an investment decision based on truncated viability. First, it could be argued that participation in the equity raise can be explained by option theory. Bondholders could have been buying time to allow for a near-term merger in 2025 with Frontier, or some other potential partner or suitor.[349] $350 million could be an appropriate option premium. The Examiner finds, however, that merger discussions with Frontier (last held in February 2025) would not, and based on interviews did not, leave either bondholders or Spirit with expectation of a near-term business combination. Instead, the dominant view expressed by financial advisors and Spirit was that Spirit was expected to perform over some period in 2025, and how it performed would govern the likelihood and terms of any future business combination. An option only has value if Spirit were expected to survive long enough for the optionality to matter. If the bondholders truly believed Spirit would suffer a liquidity crisis in

[348] Comments included there was "no way" investors would have made the equity contribution and "that would be a good way to get fired."

[349] It is an interesting legal question whether feasibility can be shown if a contingency such as merger is 50+% likely, but liquidation or reorganization otherwise occurs. The Examiner does not reach this question because a business combination was not part of the proffered expected case, and was hoped for but not expected in 2025 (noting, in addition, that extended time would be required to complete any such transaction).

2025, the option value would be zero or close to it. No sophisticated investor purchases time on an underlying asset expecting it to fail before the window of opportunity opens.

Second, it could also be argued that the equity raise simply was the price of avoiding the cost and risk of an operational restructuring, and that not injecting $350 million would have resulted in liquidation. To maintain its credit-card processing agreement with Elavon, Spirit was required to extend or refinance the $1.1 billion of secured notes due in 2025, with no room to extend maturity past the $500 million of unsecured notes due in 2026. By deleveraging (more convertible debt was equitized than secured debt) and then requiring ratable participation in the equity offering, bondholders collectively could defer without addressing underlying problems.

While this kick-the-can logic may have motivated some bondholders, the Examiner finds it highly improbable that bondholders would have contributed additional funds as equity if a 2025 default were viewed as likely. It also is doubtful that secured bondholders other than cross-holders[350] would have allowed the unsecured bondholders to gain any priority of payment if a 2025 default were viewed as likely. In that case, providing greater DIP financing in Spirit 1, and later converting prepetition debt to equity, would have been a cheaper, more predictable strategy.

Based on the record, the Examiner finds:

1. The rights offering was central to the Spirit 1 Plan's feasibility and provided liquidity necessary for ongoing operations.

2. Sophisticated bondholders voluntarily committed substantial new money based on their evaluation of the Projections now scrutinized.

3. These investors believed the stand-alone plan offered higher expected value than available alternatives, including the Frontier transaction.

4. Their willingness to provide junior capital is incompatible with a belief that Spirit was likely to fail early in 2025.

[350] Some investors held positions in both secured Loyalty Notes and unsecured Convertible Notes.

5. Alternative explanations, such as optionality or a kick-the-can strategy, do not justify a $350 million equity investment if near-term collapse were expected.

The substantial equity commitments made through the rights offering are compelling indicators of feasibility through 2025. Although a later strategic combination (with Frontier or another airline) likely was part of bondholder calculations, and undoubtedly bondholders understood there was some probability that that Spirit could fail in 2025, the rights offering reflects a reasoned, data-driven belief that the airline could survive, stabilize, and potentially improve its position in 2025.[351]

iv. The Valuation Report in Support of Liquidity and Feasibility

Financial projections and enterprise valuation fill distinct and carefully delineated roles in a Chapter 11 confirmation analysis. Projections provide the operational foundation for feasibility; valuation, when offered, presents a market-oriented assessment of what the reorganized business is worth under continued operation. The Court relies on the former to determine whether the debtor can reasonably execute its post-emergence plan, and may consider the latter to understand how the reorganized enterprise is perceived economically. They are best understood not as overlapping exercises but as complementary forms of evidence that serve different legal functions.

Projections are the core evidentiary mechanism through which a debtor demonstrates feasibility. Courts expect debtors to present a clear and credible statement of what is anticipated under ordinary business conditions, not a probabilistic model, not a range of scenarios, and not a Monte Carlo distribution of possible outcomes. The legal standard at confirmation requires an expected case that is coherent, internally supported, and grounded in observable facts. This narrow requirement exists for a reason: the Court evaluates whether the plan, as proposed, has a reasonable

[351] Again, the Examiner makes no such finding with respect to out-year projections (when Spirit starts to show operating profits) and offers no opinion about Spirit's hypothetical chance of default in 2026 or later.

prospect of success, not whether every adverse contingency has been mitigated. Long-standing practice dictates that debtors present a single expected-case scenario, occasionally supplemented by limited sensitivity analysis. Feasibility is an inquiry into whether the debtor's stated path forward is achievable, not an exercise in scenario-weighting.

Valuation, by contrast, plays no mandatory role in plan confirmation. Many plans are confirmed without a valuation analysis when capital structure dynamics make the fulcrum security clear and distributions can be allocated by percentage rather than dollar value. In such circumstances, crystalizing valuation may add little beyond unnecessary precision or counterproductively invite litigation over discount rates, multiples, and methodological choices. Parties often avoid valuation when it does not bear on the economic mechanics of the plan.

When valuation is included, however, it is almost always presented as a range, not a point estimate, because enterprise value is inherently probabilistic. A valuation exercise translates expected performance, and the range of plausible variations, into a present-value assessment using market benchmarks and discounting conventions. It incorporates risk, rather than eliminating it. In this way, valuation captures forward uncertainty that feasibility projections intentionally ignore.

In Spirit's case, an enterprise and equity valuation range was calculated because the plan contained a rights offering. Perella's Valuation Analysis[352] unequivocally was a going-concern analysis that assumed Spirit's continued operation, and the Examiner confirmed that it was prepared using the same underlying model as was used to prepare the Projections. The valuation required assumptions about future operating performance, capital needs, cost structure, and macroeconomic conditions. As is typical, Perella used a discounted cashflow analysis, a public comparables analysis, and a precedent transactions analysis to estimate Spirit's enterprise value

[352] *See generally* Spirit 1 Disclosure Statement, Ex. C (Valuation Analysis).

and consequent new equity value. Calculated equity value ranged from $163 million to $863 million.

The Examiner finds that the Valuation Analysis offers some support for Spirit's viability, though it merits only modest evidentiary weight. The low end of the equity valuation range remains positive and reflects the conclusion of a respected financial advisory firm that Spirit's going-concern value exceeded its liabilities. However, the range was driven primarily by adjustments to multiples and discount rates rather than by stressing Spirit's operations or running what-if scenarios. As is typical, the analysis also did not test whether Spirit could withstand early-period volatility, near-term cash burn, or covenant pressure immediately after emergence. Accordingly, while the Valuation Analysis implicitly supports the conclusion that Spirit would survive into the medium-term, it yields limited insight into Spirit's potential vulnerability to acute timing risks in the early phase of execution.[353]

E. Good Faith

i. Internal Consistency of Information at Confirmation

The Examiner first addresses whether Spirit possessed information contradicting the feasibility case presented at confirmation. After reviewing board presentations, internal strategy materials, Company analyses, and senior-level communications, and conducting interviews with Company representatives and bondholder representatives, the Examiner finds no evidence that Spirit intentionally held or concealed information that materially conflicted with the feasibility showing to the Court. The Examiner finds no indication that Spirit concealed the failure of the

[353] The Examiner also reviewed post-emergence rating agency reports related to Spirit's EETC issuances. Although EETCs are designed to isolate investors from company repayment risk, each of the rating agencies did at least consider Spirit's underlying risk of distress and the possibility that Spirit would not operate aircraft. The Examiner gives little weight to these agency reports, but notes that none of the reports presaged such an immediate deterioration of Spirit's business model.

GAT aircraft sale, but Spirit did not update the Projections (or otherwise to make appropriate disclosure to the Court and parties in interest) to reflect the development of new circumstances (which, as best practice, it should have done). The documents reviewed reflect that management, advisors, and creditors all assessed Spirit's prospects based on the same information. No memorandum, presentation, or internal communication suggests that Spirit believed the stand-alone plan was unworkable at the time of confirmation or that it expected an imminent failure – meaning in 2025 – inconsistent with the Projections.[354] The Examiner therefore finds that Spirit did not withhold contradictory feasibility information and that confirmation was pursued on the basis of contemporaneous and genuinely held assumptions.

ii. No Evidence of Intentional Two-Stage Bankruptcy Planning

The Examiner finds no evidence that Spirit intended Spirit 1 to be the first step in a deliberate two-stage bankruptcy strategy. The documentary record reviewed contains:

- no internal reference to a pre-planned second filing;
- no memos or advisor presentations discussing a staged approach;
- no communications suggesting Spirit intended to return to Chapter 11 absent successful negotiations with lessors or lenders; and
- no concealment of known structural deficiencies requiring a second case.

Instead, Spirit planned for and attempted to execute a genuine stand-alone restructuring. Spirit's actions, including retaining a full fleet, preparing operational plans for 2025, raising equity through the rights offering, and pursuing liquidity transactions consistent with long-term operations, were inconsistent with a strategy premised on an anticipated refiling. The Examiner found no evidence of a concealed two-step bankruptcy strategy.

[354] That does not mean that everyone had confidence in out-year projections. When asked about the reasonableness of out-year projections, the debtor admitted to "aggressive," and non-debtor responses ranged from "at least not a hockey stick" to characterization of those projections as a "Hail Mary."

iii. No Reliance on Assumed or Expected Post-Confirmation Merger

The Examiner finally evaluates whether Spirit relied on the expectation of a future business combination with Frontier, or another counterparty, to avoid a second bankruptcy filing. The record reflects that Spirit engaged in merger discussions with Frontier prior to confirmation but those discussions did not produce an agreement. The Examiner reviewed confidential materials related to discussions between Spirit and Frontier in January and February 2025. These materials included business term exchanges, internal analyses, and communications between advisors. Because the underlying documents contain sensitive commercial information, only high-level findings are provided in this section.

Merger negotiations with Frontier were active immediately before the February 2025 confirmation hearing.[355] These negotiations were sufficiently developed that the parties asked the Court to postpone the confirmation hearing to allow discussions to progress. All parties participating in the restructuring, including Spirit, the Committee, and the ad hoc groups, recognized that a potential transaction warranted continued dialogue before the Court considered confirmation of the stand-alone plan.

The Examiner finds that Spirit's bondholders and Frontier disagreed materially on valuation and transaction structure, and that these disagreements appear to have prevented a final agreement. The divergence concerned the overall enterprise value to be attributed to Spirit, the allocation of consideration across creditor constituencies, the treatment of existing liabilities, and the appropriate capital structure of the combined entity. Essentially, and as described at the confirmation hearing, parties acknowledged that a combination of Spirit and Frontier could

[355] Merger discussions in January 2025 discussions were cleansed by publication, (*see* Spirit Airlines, Inc., Form 8-K at 19, 22, 31 (Jan. 29, 2025), but there was not a comparable cleansing of the discussions in February. At the Spirit 1 confirmation hearing, counsel alluded to these discussions and some, but not all, proposals were disclosed.

generate synergies, including cost efficiencies, network optimization, and revenue opportunities that might be realized in a combined platform. The central question was not whether value could be created, but how that value should be allocated between Spirit stakeholders and Frontier stakeholders, and on what terms and conditions.

Bondholders ultimately preferred the stand-alone Spirit 1 Plan over Frontier's best offer. The Examiner finds that this preference was the result of deliberate evaluation by sophisticated financial institutions and advisors, not a casual or uninformed decision. Bondholders appear to have compared the recovery profile, governance rights, and risk-sharing under a Frontier transaction to the outcomes under the stand-alone plan and concluded that the stand-alone plan was superior.

The Examiner cannot exclude the possibility that bondholders also valued the optionality inherent in remaining in the stand-alone structure. Under the stand-alone plan, if Spirit's post-emergence performance met or exceeded projections, bondholders could demand more favorable terms in any future merger or sale process. If performance weakened, they would still control the Company and could still negotiate with Frontier or another strategic buyer, albeit with less negotiating leverage. This option was likely an economically rational factor in their decision-making.

However, as discussed above with respect to the $350 million equity injection, the presence of meaningful option value is itself inconsistent with any belief that Spirit was likely to collapse within a few months of confirmation. Optionality has value only if the future is not already determined. If bondholders had believed that Spirit was almost certain to fail quickly, the rational course would have been to secure value through an immediate transaction rather than preserve a stand-alone path. Their choice to reject Frontier's available terms therefore implies that they

viewed the stand-alone plan as having a real, not merely theoretical, chance of success. Similarly, Frontier's decision to negotiate a strategic transaction with Spirit as late as February 2025 indicates that it did not believe that Spirit's revenue deterioration was inevitable based on market factors or Spirit's market position.

Nothing in the Examiner's review indicates that Spirit treated a Frontier deal as a presumed or necessary component of the Spirit 1 Plan's viability. Though supportive of a merger, there is no evidence that Spirit's Board or management believed a transaction was inevitable or that it counted on such a transaction to compensate for deficiencies in the stand-alone restructuring. To the contrary, negotiators on all sides treated a Frontier deal as one possible strategic outcome, contingent on value allocation and commercial terms that were never resolved.

The Examiner finds no evidence in the Frontier negotiations that contradicted Spirit's feasibility case as presented at confirmation. Further, the Examiner finds that Frontier was given the same basic models and projections that were shared with the ad hoc groups and that formed the basis of the Projections. During merger discussions, at least in written documentation, Frontier appeared to accept Spirit's EBITDAR projections as the basis for negotiation and as an input in evaluating the economics of a potential transaction. While Frontier's reliance does not validate the Projections or prove that they were correct, it is significant that a knowledgeable counterparty with its own balance sheet at risk did not reject Spirit's projected EBITDAR as facially implausible.

iv. Conclusion

Based on the full record, the Examiner concludes:

1. Spirit did not conceal information contradicting the feasibility case presented at confirmation.

2. Spirit did not intend or plan a two-stage restructuring culminating in a second filing.

3. Spirit did not rely on an assumed Frontier combination to avoid failure in 2025.

4. No evidence indicates concealment, misrepresentation, or bad-faith conduct in obtaining confirmation of Spirit 1.

The Examiner also finds Perella's analysis of Spirit's fleet, along with Campbell-Hill's evaluation of Project Bravo, to be probative on the issue of good faith; specifically, that at the time of filing Spirit 1, the airline believed that capacity and fleet size could be adjusted outside of bankruptcy. Taken together, these findings also support the conclusion that confirmation disclosures were adequate under Section 1125.

With respect to revocation of the Spirit 1 confirmation order under 11 U.S.C. § 1144, the record contains no sign of fraud, manipulation, or intentional concealment. While the Examiner believes that best practice would have been to update the Projections to reflect lower liquidity due to delay in disposing of planes held-for-sale, the Examiner found nothing that suggests that any creditor group was materially misled in their evaluation of the plan. In the words of one debtor advisor, there was "no pushback on 2025 projections" from creditors. The evidence instead shows that all material participants – management, advisors, creditors, and potential strategic partners – worked from the same informational base and evaluated risks on a common foundation. Moreover, in their interviews, advisors to the ad hoc groups did not complain of any harm or claim arising from the Spirit 1 Plan.[356] The Examiner finds no grounds for revocation of the Spirit 1 confirmation order.

F. Proximate Causes of the Spirit 2 Filing

The Examiner finds that Spirit's second bankruptcy filing was precipitated by two proximate and mutually reinforcing developments in August 2025: (i) the liquidity compression

[356] The Examiner notes that vendors were kept current during Spirit 1, and that according to management all or substantially all of Spirit's accounts payable (other than relating to IAE) turned over in the 170 days between emergence and refiling.

resulting from Elavon's accelerated collateralization demands; and (ii) AerCap's unexpected issuance of sweeping default and termination notices affecting both Spirit's in-service aircraft and its forward Airbus orderbook. These events emerged in rapid succession when liquidity was already thin, interacting in a way that eliminated already-minimal residual flexibility to avoid filing.

i. Liquidity Compression Resulting from the Elavon Dispute

The Examiner finds that the Elavon dispute significantly depleted Spirit's liquidity at a time when the airline was already stressed and had little flexibility. Spirit entered Q3 2025 with substantially less available cushion than contemplated at confirmation ($882 million as of March 31 declining to $497 million as of August 31), and the dispute not only restricted available cash but also imposed additional friction on ordinary-course cash management. The August agreements with Elavon materially weakened Spirit's capacity to absorb operational shocks. Given the going-concern qualification in the 10-Q, and nascent discussions with creditors that might be best described as "prudent" bankruptcy planning, it is not at all clear that Spirit could have operated the airline for much longer without a capital infusion.

ii. AerCap's Termination Notices and Fleet Disruption

The Examiner finds that AerCap's actions in August 2025 constituted the second and more immediate trigger of the Spirit 2 filing. AerCap issued default and termination notices covering 37 in-service aircraft and 36 future A320neo deliveries. These notices placed a substantial portion of Spirit's active fleet and forward orderbook at risk and forced Spirit to confront the possibility of losing essential aircraft capacity in the near term. Spirit disputed AerCap's interpretation of the underlying agreements, but the scale and timing of the asserted defaults created an operational crisis.

The Examiner finds that this escalation was not foreseeable based on the confirmation record. The stand-alone plan assumed continuity of existing leases and access to future Airbus deliveries. Nothing in the Projections contemplated a scenario in which Spirit's largest lessor would move to terminate dozens of active leases and withdraw a major block of future aircraft. When AerCap issued its notices, Spirit lacked the liquidity, negotiating leverage, and fleet redundancy needed to fight back. Spirit also feared other lessors would be prompted quickly to issue their own default notices. The Examiner finds Spirit's claim that refiling and invocation of the automatic stay was necessary to avoid piecemeal dismemberment of Spirit's fleet to be credible.

Although each development was significant on its own, the Examiner concludes that their combined impact was decisive. The Elavon dispute compressed liquidity, leaving Spirit with limited capacity to respond to an unexpected external shock. AerCap then delivered a shock of unusual magnitude, striking at the center of Spirit's operational viability. The combination of constrained liquidity and immediate fleet jeopardy eliminated any residual ability to avoid bankruptcy.

iii. Could Spirit Have Survived Otherwise?

By mid-2025, Spirit was engaged in preliminary DIP discussions and had begun internal contingency planning for the possibility of a chapter 11 filing. These steps appear to reflect prudent management behavior. The Examiner does not interpret these activities as contradicting Spirit's earlier belief in the viability of the stand-alone plan, but rather as evidence that Spirit recognized the severity of the post-emergence environment as it unfolded.

However, the existence of DIP discussions and contingency planning also demonstrates that the Elavon and AerCap events, while proximate triggers, were layered on top of an already weakening liquidity and performance profile. The Examiner cannot conclude that, absent those

two events, Spirit would have survived. Instead, the record indicates that Spirit's liquidity was insufficient to absorb revenue decline that materialized in the months following emergence. By mid-2025, Spirit's operating and financial pressures were already on an unsustainable trajectory. Elavon and AerCap accelerated that trajectory and made a second filing unavoidable, but cannot be said to be the sole causes of Spirit 2.

The Examiner concludes that:

1. Elavon's accelerated collateral demands materially compressed liquidity at a critical juncture.

2. AerCap's sweeping default and termination notices created an immediate fleet crisis outside the assumptions of the confirmed Spirit 1 Plan.

3. Spirit's second bankruptcy filing was driven by post-confirmation counterparty actions, not by concealed pre-confirmation information or pre-planned strategy.

4. During the Interim Period, Spirit suffered an extraordinary change of circumstances that was unanticipated and not reasonably foreseeable at the time of confirmation.

5. Spirit did not undertake serial filings for the purpose of gaining leverage, modifying established payment obligations, or otherwise re-negotiating the economic commitments of its confirmed Spirit 1 Plan.

6. The record does not support a statutory cause of dismissal for a bad faith filing under Section 1112(b).

VII. EXAMINER'S CONCLUSIONS

Under Section 1129(a)(11), the feasibility test is a deterministic inquiry. The Court does not model a distribution of outcomes, assign probabilities to downside scenarios, or recoil at the possibility of a tail-case failure. The Bankruptcy Code does not require stress-testing the expected case against all plausible adverse scenarios, ensuring solvency across probabilistic distributions of outcomes, insulating the debtor from low-probability but severe downside events.

Projection Reliability: The Examiner finds that while the Projections used in Spirit 1 were aged and prepared originally for an out-of-court liability-management exercise, nothing in the

record indicates that they were materially contradicted by information known at confirmation. Spirit's performance through the petition-to-confirmation period aligned sufficiently with those Projections to render them reliable under the feasibility standard.

Operating Divergence in 2025: The Examiner finds that Spirit's early-2025 deterioration was driven by rapid revenue compression, competitive discounting, reduced ASMs, and elevated unit cost, that occurred at a speed and scale that was not reasonably foreseeable at the time of confirmation of the Spirit 1 Plan.

Liquidity Adequacy: The Examiner finds that Spirit's liquidity margin was much thinner than optimal for a high-volatility, high-fixed-cost business, but the record at the time of confirmation established liquidity that was sufficient under the expected-case standard required for plan confirmation.

Financing Transactions and Counterparty Behavior: The Examiner finds that the financing transactions assumed in the Projections were reasonable, and that other than the GAT aircraft sale, they were implemented substantially as contemplated.

Good Faith and Intent: The Examiner finds no evidence of concealed information, staged restructuring intent, or reliance on undisclosed contingencies. The Spirit 1 Plan was proposed and confirmed based on information that management, advisors, and the bondholder funding sources all believed to be accurate. No affected creditor expressed any complaint to the Examiner regarding any damage due to Spirit 1.

The Examiner concludes that, while the record reflects some procedural and analytical deficiencies in Spirit 1, none rise to a level that would have undermined the good-faith basis for confirmation or negated feasibility under the statutory standard.[357] Still, the Examiner finds:

[357] This conclusion is consistent with the *Bouy* analysis, as described *supra* in Section V.E.

1. Spirit should have considered, as a matter of best practice, updating the Projections to reflect the lag between their initial creation and the confirmation hearing.

2. Spirit should have refreshed its liquidity disclosures to incorporate the risk of impairment related to the GAT monetization.

3. However, even had GAT liquidity been available, that incremental liquidity likely would not have averted refiling, as the subsequent revenue collapse was too severe.

In sum, although the events precipitating Spirit 2 were, in some sense, plausible – airlines historically are prone to sudden revenue shocks, operational disruptions, and repeated restructurings – the speed and magnitude of the revenue decline in 2025 were not reasonably foreseeable at the time of the Spirit 1 Plan's confirmation. The stand-alone plan ultimately collapsed due to a convergence of tail-event dynamics. These included accelerated competitive pressure, rapid yield deterioration, shrinking ATL, and poor execution. Nearly simultaneous liquidity compression triggered by Elavon and fleet-level disruption triggered by AerCap were not survivable outside of bankruptcy. The circumstances surrounding the bankruptcy refiling approximately five months after the effectiveness of the Spirit 1 Plan are best described as relating to unforeseeable post-confirmation developments and miscalculated business judgments, not plan design.

Dated: December 15, 2025
New York, New York

Respectfully submitted,

/s/ Marc J. Heimowitz
Marc J. Heimowitz, as Examiner