

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Spirit Aviation Holdings, Inc., et al.,

Debtors.

Case No. 25-11897 (SHL)

Chapter 11

(Jointly Administered)

**OBJECTION OF THE ASSOCIATION OF FLIGHT ATTENDANTS–CWA
TO SUPPLEMENT TO THE WIND-DOWN MOTION
(ECF NO. 1115)**

The Association of Flight Attendants–CWA (“AFA” or the “Union”), as the certified collective bargaining representative of the flight attendants formerly employed by Spirit Airlines, LLC, by and through undersigned counsel, herby files this Objection to the Supplement to the Wind-Down Motion [ECF 1115] filed by the Debtors’ counsel on May 27, 2026 (the “Supplement”). In support of this Objection, the Union respectfully states as follows:

PRELIMINARY STATEMENT

1. The flight attendants on whose behalf the Union appears devoted years, in many cases decades, of their working lives to Spirit Airlines. They reported for work, including through the difficult final months of the airline’s operations, in reliance on a basic promise: that the vacation, sick pay, and other compensation they earned would be paid. Those obligations were recognized by the Debtors, and funds were specifically set aside to honor them. The employees now stand to receive nothing, while the very officers, directors, and lenders whose decisions left those earned wages unpaid ask this Court to immunize themselves, permanently and without the employees’ consent, from any claim arising out of that result. It is against that backdrop that the Union raises this objection.

2. This Objection focuses on one issue: the sweeping exculpation and injunction provisions proposed in the Proposed Order, and how those provisions, when considered alongside the Debtors' refusal to release reserves set aside under the DIP Credit Agreement for employment-related claims, including accrued vacation and sick pay, operate impermissibly to extinguish the claims of non-consenting third parties in violation of the Supreme Court's controlling decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024).

3. The DIP Credit Agreement and related orders established specific reserves for employee-related obligations, including accrued and unused vacation and sick leave owed to thousands of former Spirit employees and contractually-mandated pay in lieu of furlough notice. Those funds were set aside precisely because the obligations were recognized by the Debtor's management during the pendency of chapter 11 case. Yet the Debtors and their secured lenders now refuse to release those reserves to the affected employees, apparently because the lenders no longer view themselves as obligated to fund these amounts absent direct claims asserted against the officers and directors. The exculpation provisions now before the Court would, if approved permanently enjoin the claims that might trigger that funding obligation. That result, using a bankruptcy court order to extinguish third-party claims without consent is precisely what *Purdue Pharma* prohibits.

4. For these reasons, and as set forth more fully below, the Union respectfully requests that the Court deny the exculpation and injunction provisions as proposed, or in the alternative, require that they be materially narrowed, and do not allow the post-petition officers and directors to release the funds without further order of the Court.

BACKGROUND

A. The DIP Reserves for Employment-Related Claims

5. As part of the financing arrangements governing these Chapter 11 Cases, the DIP

Credit Agreement and the Final DIP Order (as amended) established carve-out accounts and reserves for certain categories of obligations, including employment-related claims such as accrued vacation pay, sick pay, contractually-mandated pay in lieu of furlough notice and other earned compensation obligations owed to employees at the time of the wind-down. Specifically, the DIP Order provides for the segregation of “amounts relating to liabilities with respect to payroll and related withholdings and any other amounts due to employees upon a separation that would give rise to personal liability for the Debtors’ directors, officers, executives, or other employees with managerial responsibility if they remain unpaid.” [ECF 643, p. 64 of 273].

6. During the course of the case, the Debtors made good faith estimates to deposit into these segregated accounts. The DIP Order provides for an \$80 million cap for this carveout, and the Debtors ultimately deposited approximately \$70 million into these segregated accounts. The establishment of such reserves was not gratuitous; it reflected the Debtor’s good faith recognition that these obligations existed.

7. Notwithstanding that recognition, the Debtors have declined to disburse those reserved funds to the former employees to whom they are owed. The Supplement itself acknowledges, matter-of-factly, that “no amounts will be paid on account of any values related to WARN, unused vacation or unused PTO.” Supplement ¶ 5. No explanation is offered for why funds specifically set aside for employment-related obligations will not be used to satisfy those obligations.

8. Based on information and belief, the secured lenders have taken the position that they bear no responsibility for releasing these funds unless and until direct claims are asserted against the Debtors’ officers and directors personally, including claims arising from decisions made in connection with the wind-down process, the termination of employee programs, or the

failure to honor earned compensation obligations. In other words, the lenders' willingness to fund employee obligations appears to be conditioned on the existence of personal liability claims against the very individuals who are now being proposed for sweeping exculpation.

9. The Union does not take lightly the significance of this connection. If accurate, it means as a practical matter that approving the exculpation provisions as written would through a court order, , permanently eliminate the trigger event for the release of funds that former Spirit employees are owed without the consent of the affected employees.

B. The Proposed Exculpation and Injunction

10. Paragraph 7 of the Proposed Order would exculpate the "Protected Persons," a category that includes the Debtors' officers, directors, and others involved in implementing the Wind-Down, from "any and all claims, causes of action or suits" based on actions taken or omitted in good faith in connection with the Wind-Down Plan. Paragraph 8 permanently enjoins the bringing of any such claims.

11. The Protected Persons also includes the DIP Lenders (solely in such capacity) and the DIP Facility Agent. The DIP Lenders and DIP Facility Agent are not estate fiduciaries and are not entitled to exculpation. Releasing claims against these parties without the consent of the releasing party is prohibited by the Supreme Court under *Purdue*.

12. The only carve-out from this sweeping grant of immunity is for acts or omissions "determined by a final non-appealable order to have constituted willful misconduct, actual fraud or gross negligence." Proposed Order ¶ 7. The standard of "willful misconduct" or "gross negligence" is a demanding one, and in the context of employment decisions made pursuant to court-approved procedures, it is likely to be virtually unreachable as a practical matter.

13. Critically, the proposed exculpation is not limited to claims arising from post-petition restructuring activities in the ordinary sense. The language of the Proposed Order,

covering “any and all actions” taken or omitted “to develop, approve, implement, fund and/or oversee the Wind-Down Plan,” would encompass decisions regarding the modification or termination of employee programs, the allocation of reserved funds, and the implementation of procedures that resulted in the nonpayment of accrued employee obligations. These are precisely the decisions that may give rise to the direct claims against officers and directors that the lenders assert would trigger their funding obligations under the DIP reserves.

LEGAL ARGUMENT

I. THE EXCULPATION PROVISIONS AS PROPOSED VIOLATE *HARRINGTON v. PURDUE PHARMA L.P.*

14. In *Harrington v. Purdue Pharma L.P.*, at 204 (2024), the Supreme Court held that the Bankruptcy Code does not permit a court to approve a reorganization plan that provides a nonconsensual release of claims held by third parties against nondebtor individuals. The Court’s rationale was grounded in the text of the Bankruptcy Code: the discharge provisions of § 1141(d) apply only to debtors, and no other provision of the Code authorizes a court to extinguish the claims of non-consenting creditors against nondebtors. *Id.* at 218–25.

15. While *Purdue Pharma* arose in the plan confirmation context, its logic extends with equal indeed, greater force to the circumstances presented here. The Debtors seek to obtain, through a standalone motion under § 105(a) and § 363, the very relief that *Purdue Pharma* held cannot be granted through a confirmed plan. The Supreme Court was explicit that § 105(a)’s general equitable powers cannot be used to override the specific limitations of the Bankruptcy Code’s discharge and release framework. *Id.* at 228.

A. The Exculpation Provisions Are Functionally Nonconsensual Third-Party Releases

16. The former flight attendants and other employees who are owed accrued vacation, sick pay, and other earned compensation have never consented to releasing their claims against the

Debtors' officers and directors. They are not parties to any agreement authorizing the exculpation. They have not voted to accept a plan containing such provisions. They are simply being told that they can never pursue personal liability claims against the individuals who made the decisions that resulted in the nonpayment of their earned wages.

17. The Debtors argue that exculpation under § 105(a) in the wind-down context is appropriate and well-established in this District. Supplement ¶¶ 21–24. But the cases cited by the Debtors largely predate *Purdue Pharma*, and none of them grapple with the Supreme Court's holding that § 105(a) cannot be used to circumvent the Code's limitations on discharge and release. Post-*Purdue Pharma*, courts must assess whether a proposed exculpation provision, however labeled, functions as a nonconsensual release of third-party claims. Where it does, it must satisfy the requirements the Supreme Court identified, or it cannot stand.

18. The exculpation provisions here satisfy the functional definition of a third-party release. The Protected Persons are not the Debtors. The claims being extinguished are not claims against the estate, they are potential personal liability claims held by individual employees against individual officers and directors. The injunction in Paragraph 8 of the Proposed Order would permanently bar those employees from bringing such claims in any forum. This is a nonconsensual third-party release by any measure.

B. The Connection to Withheld DIP Reserves Underscores the *Purdue Pharma* Problem

19. The exculpation issue here is not merely abstract. It has direct, immediate, and concrete consequences for former Spirit employees who are owed money that was supposed to have been set aside for them.

20. As noted above, the Debtors' secured lenders have apparently conditioned the release of DIP reserves for employee obligations on the existence of direct claims against the

Protected Persons. The mechanism works as follows: (1) the DIP Credit Agreement establishes reserves for employment-related claims; (2) the lenders take the position that those reserves need only be paid out in the event of direct claims against officers and directors; (3) the Debtors now seek a permanent injunction barring exactly those direct claims; and (4) the result is that the employees lose both their direct claims and the reserve funds that were earmarked for their benefit.

21. This is not a contingent or speculative harm. The Supplement itself confirms that “no amounts will be paid on account of any values related to WARN, unused vacation or unused PTO.” Supplement ¶ 5. The reserved funds exist. The obligations exist. The only explanation consistent with the record is that the lenders view their obligation to fund these reserves as contingent on claims that the proposed exculpation order would extinguish.

22. Under *Purdue Pharma*, this bootstrapping cannot be permitted. A debtor cannot use § 105(a) to permanently enjoin creditor claims against nondebtors, and the fact that doing so would benefit the secured lenders by eliminating the trigger for a funding obligation makes the impropriety more pronounced, not less. The Court should not serve as the instrument by which lenders avoid obligations to employees by eliminating the very claims that would require those obligations to be honored.

C. Section 105(a) Cannot Provide the Authority the Debtors Seek

23. The Debtors invoke § 105(a) as the statutory basis for the exculpation and injunction provisions. Proposed Order, preamble and ¶ 8. But the Supreme Court in *Purdue Pharma* was unambiguous: “[W]hatever equitable powers § 105(a) may confer, it does not license courts to rewrite the Bankruptcy Code’s carefully calibrated limitations.” 603 U.S. at 228. *Purdue Pharma* specifically addressed the argument that § 105(a) authorizes courts to grant third-party releases when equity demands it, and it flatly rejected that argument. *Id.* at 225–28.

24. The Debtors also rely on the general principle that exculpation provisions are

appropriate where this Court has approved the underlying transactions. Supplement ¶ 21 (citing *In re Azul S.A.*, 676 B.R. 277, 287 (Bankr. S.D.N.Y. 2026)). But court approval of the underlying wind-down transactions does not consent to the release of every claim that any creditor might have against the individuals implementing those transactions. The former employees of Spirit Airlines did not consent to the Wind-Down Plan. They did not consent to the termination of their employment programs. They certainly did not consent to releasing personal claims against those responsible for decisions that deprived them, or may deprive them, of earned wages.

II. IN THE ALTERNATIVE, THE EXCULPATION PROVISIONS MUST BE SUBSTANTIALLY NARROWED

25. Even if the Court were to conclude that some exculpation is permissible in this context, the provisions as proposed are dramatically overbroad and must be narrowed in at least the following respects.

26. First, the exculpation must expressly carve out all employment-related claims, including claims arising from the nonpayment of accrued vacation, sick pay, PTO, and WARN Act obligations. These claims are substantively distinct from the restructuring activities that courts have historically found appropriate to exculpate; they concern the nonpayment of earned compensation, not business judgment decisions about capital structure or asset monetization.

27. Second, the scope of “Protected Persons” must be clearly and narrowly defined. While some fiduciaries related to the Debtor’s estate may be entitled to some form of exculpation in some circumstances, certainly the DIP Lenders and DIP Agent cannot be covered by an exculpation.

28. Third, and most critically in light of the analysis above, any exculpation order must expressly preserve all claims related to DIP reserve accounts, carve-out accounts, and other funds set aside for employee obligations, including claims that might, under the terms of the DIP Credit

Agreement or related orders, trigger the release of such funds, and such funds should only be released upon further order of this Court.

CONCLUSION

29. For the foregoing reasons, the Association of Flight Attendants–CWA respectfully requests that the Court:

- a. Deny the exculpation and injunction provisions in the Proposed Order as inconsistent with *Harrington v. Purdue Pharma L.P.*, at 204 (2024);
- b. In the alternative, require the Debtors to narrow the exculpation to exclude employment-related claims, WARN Act claims, claims arising from the nonpayment of reserved compensation obligations, and claims relating to DIP reserve and carve-out accounts;
- c. Removing the DIP Lenders and the DIP Agent from the list of proposed Protected Persons;
- d. Require full disclosure of the terms and conditions under which DIP reserves for employee obligations may be released, and subject any release to further order of this Court; and
- e. Grant such other and further relief as the Court deems just and proper.

Dated: June 5, 2026
New York, New York

PARKINS & RUBIO LLP

/s/ Charles M. Rubio
Charles M. Rubio
100 Park Avenue, Suite 1600
New York, NY 10017
Telephone: (713) 715-1660
Email: crubio@parkinsrubio.com

*Counsel to Association of
Flight Attendants-CWA, AFL-CIO.*

Certificate of Service

I certify that on June 5, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System and on the persons listed below.

/s/ Charles M. Rubio

Charles M. Rubio

The US Trustee, 1 Bowling Green, New York, NY 10004, Attn: Shara Cornell (shara.cornell@usdoj.gov) and Rachael E. Siegel (Rachael.E.Siegel@usdoj.gov);

Counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Christopher S. Robertson, and Joseph S. Brown (marshall.huebner@davispolk.com, darren.klein@dpw.com, christopher.robertson@davispolk.com, joseph.brown@davispolk.com);

Counsel to the Official Committee of Unsecured Creditors (the “Committee”), Willkie Farr & Gallagher LLP, 787 7th Avenue, New York, NY 10019, Attn: Brett H. Miller, Todd M. Goren, James H. Burbage, and Jessica D. Graber (bmiller@willkie.com, tgoren@willkie.com, jburbage@willkie.com, and jgraber@willkie.com);

Counsel to the Ad Hoc Group of Senior Secured Noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer and Jason Rubin (mstamer@akingump.com, jrubin@akingump.com); and (v) counsel to the RCF Agent, Milbank LLP, 55 Hudson Yards, New York, NY 10001-2163, Attn: Andrew Harmeyer and Jason Kestecher (aharmeyer@milbank.com, JKestecher@milbank.com) (collectively, the “Objection Service Parties”).