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Unsecured Creditors' Committee's Influence on Modern DIP Financing

How Committees Move Key Terms Between Interim and Final Approval



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Debtor-in-possession financing (DIP) is one of the most consequential early events in a chapter 11 case. The financing package approved at the outset often determines the range of restructuring options and the ultimate distribution of value.¹ At the same time, bankruptcy procedure requires that such financing be approved in stages. Under the Federal Rules of Bankruptcy Procedure, a court may authorize interim DIP financing only to the extent necessary to avoid immediate and irreparable harm to the estate. Final approval is granted later, after notice and an opportunity for parties in interest to be heard.²

Unsecured creditors' committees (UCCs) operate in the narrow — but important — space between these two stages. By the time a UCC has been appointed, the debtor and secured lenders have typically negotiated the DIP facility and the court may already have entered an interim order authorizing limited borrowing. Even so, UCCs frequently obtain modifications to roll-up mechanics, challenge periods, collateral scope, carve-outs, reporting rights, milestones and default provisions before a final order has been entered.³

The chapter 11 case of *Spirit Aviation Holdings Inc.* provides a recent illustration of how this process works in practice. In *Spirit*, the UCC initially identified concerns with the size and structure of the roll-up, the treatment of avoidance proceeds, the length of the challenge period, the breadth of releases and the

absence of reporting rights.⁴ Through negotiations conducted between the interim and final hearings, the UCC secured material changes in each of those areas and, after those changes had been incorporated, supported entry of the final DIP order.⁵ The case demonstrates how, even on compressed timelines, a focused UCC can meaningfully influence DIP terms without exercising anything resembling a formal veto.

This article uses *Spirit* as a case study to examine how UCCs move key DIP terms between interim and final approval, and contrasts that dynamic with its limits in more constrained cases, such as *Enviva Inc.* In doing so, the article highlights the practical role that UCCs play in shaping DIP outcomes within the statutory framework of § 364 of the Bankruptcy Code and the procedural structure imposed by Bankruptcy Rule 4001(c)(2).

The Interim and Final Approval Framework Under § 364 and Rule 4001(c)(2)

DIP financing is governed substantively by § 364, which authorizes a debtor to obtain post-petition credit across a spectrum of priorities, ranging from unsecured administrative-expense financing to superpriority claims, junior liens and priming liens.⁶ The availability of these enhanced protections depends on whether the debtor can obtain credit on less onerous terms and, when senior or equal liens

1 See, e.g., *In re Ames Dept. Stores Inc.*, 115 B.R. 34, 37-40 (Bankr. S.D.N.Y. 1990) (explaining that post-petition financing might be approved when supported by sound business justification and that such financing often shapes course of reorganization).

2 Fed. R. Bankr. P. 4001(c)(2).

3 See Final Report of the ABI Commission to Study the Reform of Chapter 11 (2014), commission.abi.org/full-report (discussing oversight of DIP financing terms, including roll-ups, releases, milestones and committee protections).

4 *In re Spirit Aviation Holdings Inc.*, No. 25-11897 (SHL) (Bankr. S.D.N.Y. Oct. 27, 2025) (hereinafter *In re Spirit Aviation*), Statement of the Official Committee of Unsecured Creditors in Support of the Debtors' Motion to Obtain Post-Petition Financing (Docket No. 343).

5 See *id.*

6 11 U.S.C. § 364(b)-(d).

are proposed, whether existing lienholders receive adequate protection.⁷ These provisions define the forms of credit that a debtor may obtain and the conditions under which heightened priority or lien rights might be granted, but they do not address the timing of court approval.

The timing framework instead arises from the Bankruptcy Rules. Rule 4001(c)(2) permits a court to authorize interim DIP financing before a final hearing, but only to the extent necessary to avoid immediate and irreparable harm to the estate.⁸ Final approval follows notice and an opportunity for parties-in-interest to be heard, at which point the court determines whether the proposed financing satisfies § 364 and should be approved on a final basis.⁹

This bifurcated approval structure has important practical consequences. Interim approval is intended to address short-term liquidity needs and stabilize operations, while reserving more consequential determinations for later review on a fuller record. The distinction between interim necessity and final approval provides the procedural space in which unsecured creditors' committees most often engage, evaluate and negotiate changes to proposed financing terms.

The Practical Limits of UCC Authority in DIP Financing

UCC influence in DIP financing is not absolute. Nothing in § 364 conditions approval of post-petition financing on UCC consent. The statute requires a showing that the debtor cannot obtain financing on better terms and, when superpriority or priming liens are sought, that existing lienholders are adequately protected. It does not require agreement by unsecured creditors or their UCC. As a result, a court may approve a DIP facility over UCC objection if the statutory requirements are satisfied.¹⁰

In practice, judges frequently view UCC support as a signal that meaningful negotiations have occurred, that investigative rights and process protections have been preserved, and that the risk of later litigation or appeal has been reduced. When a UCC supports a DIP on a final basis, courts often take comfort in the knowledge that the arrangement falls within acceptable market norms. By contrast, sustained UCC opposition tends to invite closer scrutiny and signals that further refinement may be necessary before a final order has been entered. Therefore, UCC influence operates less as a legal veto and more as a practical accelerant or brake on the path to final approval.¹¹

Recurring UCC Pressure Points Illustrated by *Spirit Aviation Holdings*

Although disputes over priming liens most often arise between DIP lenders and pre-petition secured creditors,

unsecured creditors' committees remain central participants in the negotiation of related protections, including challenge rights, investigation funding, reporting access, and the treatment of avoidance proceeds, because those terms directly affect potential recoveries for unsecured stakeholders.¹²

Spirit Aviation Holdings presented several of these issues in concentrated form. As reflected in the record, the official committee of unsecured creditors identified concerns in each of these areas and engaged with the debtors and DIP lenders during the period between interim and final approval to negotiate changes to the proposed financing terms. The *Spirit* case provides a useful illustration of how recurring UCC pressure points translate into concrete outcomes within the interim-final approval framework.¹³

Roll-Up Mechanics

Roll-ups, which convert pre-petition secured debt into post-petition DIP obligations, have become a common feature of modern DIP facilities. From a lender's perspective, roll-ups reward pre-petition exposure and simplify the post-petition capital structure. From a UCC's perspective, they elevate pre-petition lenders into superpriority status, reduce lien-challenge leverage and narrow the range of potential outcomes for unsecured creditors.

In *Spirit*, the UCC identified the size and structure of the proposed roll-up of the debtors' pre-petition secured notes as a core concern. The initial DIP proposal contemplated a final roll-up ratio of 2:1, meaning that for each dollar of new-money DIP funding, two dollars of pre-petition secured debt would be converted into DIP obligations. Prior to the interim hearing, negotiations reduced that ratio to 1.5:1.

Following entry of the interim order, continued negotiations produced further concessions. The final DIP credit agreement reduced the roll-up ratio to 1.25:1 and imposed a \$750 million cap on total roll-up loans. These changes did not eliminate the roll-up, but they materially constrained its scale and economic impact.¹⁴

Challenge Rights and Local Rule 4001-2(g)(5)

Challenge periods and investigation rights are another central focus of UCC engagement. Short challenge periods, particularly when coupled with limited investigation budgets or broad lien releases, can effectively insulate pre-petition liens from meaningful scrutiny and, in practice, diminish the committee's ability to carry out its investigatory and oversight functions.

In *Spirit*, the UCC objected to what it viewed as an unduly short challenge period and to releases that were not fully subject to that period.¹⁵ The UCC also raised concerns regarding the application of Local Rule 4001-2(g)(5) of the Southern District of New York to the proposed roll-up loans.¹⁶

7 11 U.S.C. § 364(d)(1).

8 Fed. R. Bankr. P. 4001(c)(2).

9 11 U.S.C. § 364; Fed. R. Bankr. P. 4001(c)(2).

10 See, e.g., *In re Lyondell Chem. Co.*, 402 B.R. 571, 588–89 (Bankr. S.D.N.Y. 2009) (approving post-petition financing where supported by sound business-judgment and statutory requirements of § 364).

11 See Richard J. Cooper, Kara A. Hailey, Richard C. Minott & Aracely Valencia, "The Complex World of DIP Financing: Trends and Strategies," *Global Restructuring Review* (Nov. 14, 2025) (explaining how creditors' committees influence DIP terms through negotiation leverage, investigative rights and litigation risk rather than formal statutory veto power), globalrestructuringreview.com/review/restructuring-review-of-the-americas/2026/article/the-complex-world-of-dip-financing-trends-and-strategies-international-and-domestic-debtors.

12 See 11 U.S.C. §§ 1102-1103 (discussing appointment of, powers and duties of committees; see also *Cooper, et al., supra* n.11).

13 See *In re Spirit Aviation Holdings Inc.*, *supra* at n.5.

14 See *In re Spirit Aviation Holdings Inc.*, Case No. 25-11897 (SHL) (Bankr. S.D.N.Y. Oct. 31, 2025), Final Order (I) Authorizing Debtors to Obtain Post-Petition Financing and (II) Granting Liens and Superpriority Claims, Docket No. 384.

15 *In re Spirit Aviation Holdings Inc.*, Case No. 25-11897 (SHL) (Bankr. S.D.N.Y. Oct. 27, 2025), Statement of the Official Committee of Unsecured Creditors in Support of the Debtors' Motion to Obtain Post-Petition Financing, Docket No. 343, at ¶¶ 2-3.

16 *Id.*

As part of the initial compromise that reduced the roll-up ratio to 1.5:1, the UCC agreed not to challenge the first \$400 million of roll-up loans under the local rule. At the final stage, the DIP lenders agreed to remove language that would have waived the UCC's challenge rights with respect to roll-up loans above \$550 million, preserving the UCC's ability to test incremental roll-up exposure beyond that threshold.¹⁷

Collateral Scope and Avoidance Proceeds

The scope of DIP liens and the treatment of avoidance-action proceeds are recurring points of contention in DIP negotiations. DIP lenders frequently seek liens on substantially all estate property, including avoidance proceeds, while UCCs seek to preserve litigation value as a potential source of recoveries for unsecured creditors.

In *Spirit*, the UCC focused on the proposed lien on avoidance proceeds and on how those proceeds could be applied to satisfy DIP obligations. The final DIP order reflected a negotiated compromise. The DIP lenders agreed to look last to avoidance proceeds, other than proceeds arising from challenges to the secured notes and their liens, and further agreed not to apply retained avoidance proceeds to satisfy roll-up DIP obligations. Although avoidance proceeds were not entirely excluded from the collateral package, the final structure meaningfully preserved the value of successful lien challenges and limited the extent to which roll-up obligations could be insulated from scrutiny.

Reporting and Oversight Rights

Effective UCC participation depends on access to information. Without reporting rights comparable to those granted to secured lenders, UCCs might be unable to monitor compliance with budgets, covenants and milestones, or to assess whether DIP protections remain justified as the case progresses.

In *Spirit*, the UCC identified the absence of reporting rights as an initial concern. Before the interim hearing, the UCC obtained parity with the reporting rights granted to the revolving credit facility secured parties. The final documentation also preserved the ability of parties to seek recharacterization of certain adequate protection payments, ensuring that information obtained through reporting could support later disputes if necessary.

Taken together, these negotiated outcomes show how recurring UCC pressure points operate in practice. *Spirit* demonstrates that even when a DIP facility is largely negotiated pre-petition and partially implemented through an interim order, a focused UCC can still produce meaningful adjustments to roll-up economics, challenge rights, collateral treatment and oversight mechanisms before final approval is entered.

Enviva and the Limits of UCC Leverage

Enviva Inc. provides a useful contrast.¹⁸ When financing options are scarce and the DIP is tightly integrated into a

negotiated restructuring framework, courts are more likely to approve contested DIP terms notwithstanding UCC opposition. In such cases, UCC influence might preserve rights and shape negotiations, but it is unlikely to produce the kind of substantive restructuring of DIP economics seen in *Spirit*.

Enviva Inc. and its affiliates filed for chapter 11 in the U.S. Bankruptcy Court for the Eastern District of Virginia in 2024 with a restructuring-support agreement and a \$500 million superpriority DIP facility provided by an *ad hoc* creditor group. A contested feature of the DIP was a \$100 million tranche funded by existing shareholders, which granted those shareholders the right to convert their tranche A DIP claims into reorganized equity under a future plan.¹⁹ The UCC objected, arguing that the equity-conversion right violated the absolute-priority rule by guaranteeing value to equity-holders ahead of unsecured creditors.²⁰

The bankruptcy court overruled the objection, emphasizing the absence of alternative financing and finding that any equity received by shareholders would be on account of their DIP loans rather than their pre-petition equity interests.²¹ The UCC appealed, contending that the DIP structure locked in plan economics and impaired unsecured creditors' bargaining leverage. However, the appeal addressed only a discrete feature of the facility and did not threaten the debtors' continued access to liquidity under the DIP.

While the appeal was pending, the parties reached a global settlement resolving major disputes in the case. As part of that settlement, the UCC supported the chapter 11 plan, even while maintaining its earlier objections to the equity-conversion feature of the DIP. The core structure of the DIP facility itself remained unchanged.

Conclusion

The interim and final approval framework for DIP financing gives UCCs a narrow, but meaningful, opportunity to influence outcomes. *Spirit Aviation Holdings* demonstrates how that opportunity can be used to moderate roll-ups, preserve challenge rights, protect avoidance proceeds and secure meaningful oversight. By contrast, *Enviva* shows that when liquidity is constrained, and financing is embedded in a negotiated restructuring framework, UCC leverage may be inherently limited.

Taken together, these cases illustrate that UCC influence in modern DIP financing is real, but contingent. It operates through timing, credibility and negotiation rather than formal consent, and understanding those dynamics remains critical at the earliest and most consequential stages of chapter 11. **abi**

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¹⁷ See Final Order (I) Authorizing the Debtors to Obtain Post-Petition Financing; (II) Granting Senior Secured Liens and Superpriority Administrative-Expense Claims; (III) Authorizing the Debtors to Utilize Cash in Encumbered Accounts; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Granting Related Relief, Docket No. 384, *In re Spirit Aviation Holdings Inc.*, Case No. 25-11897 (SHL) (Bankr. S.D.N.Y. Oct. 31, 2025).

¹⁸ *In re Enviva Inc.*, Case No. 24-cv-00814 (Bankr. E.D. Va. 2024).

¹⁹ See *id.* at Docket No. 24 (Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtor-in-Possession Financing).

²⁰ *Id.* at Docket No. 1151 (Reply Brief of Appellant Official Committee of Unsecured Creditors of *Enviva Inc., et al.*).

²¹ *Id.* at Docket No. 1 (Voluntary Petition).