Docket #0373 Date Filed: 05/21/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
ASCEND ELEMENTS, INC. *et al.*,[1]	)	Case No. 26-90440 (CML)
Debtors.	)	(Jointly Administered)

DECLARATION OF MICHAEL O'HARA IN SUPPORT OF ENTRY OF AN ORDER (I) APPROVING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS AND INTERESTS FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

I, Michael O'Hara, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Managing Director and Co-Head of US Debt Global Advisory & Restructuring Group at Jefferies LLC ("Jefferies"), an investment banking and financial advisory firm with principal offices located at 520 Madison Avenue, New York, New York 10022.

2. I am authorized to submit this declaration (the "Declaration") on behalf of the Debtors in the above-captioned cases and in support of entry of the order approving the sale of certain of the Debtors' assets and interests to Bluegrass Infrastructure Partners Holdings, LLC (the "Buyer" or "Newco"), free and clear of claims, liens, and encumbrances, and the assumption and assignment of designated executory contracts and unexpired leases.[2]

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Capitalized terms used but not defined in this Declaration shall have the meanings ascribed to them in the Sale Motion, the Bid Procedures Order, or the APA (as defined below), as applicable.

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3. The views and opinions expressed in this Declaration are based on my professional experience generally and my experience working with the Debtors specifically.

4. In reaching my conclusions, I have relied, in part, on (a) my personal knowledge; and (b) information provided by other members of the Jefferies team and the Debtors' management, employees, and other professional advisors. With respect to statements made based on documents or information prepared or supplied by the Debtors or their other advisors, I have relied upon the accuracy of such documents and information. I believe that the statements set forth herein are true and accurate to the best of my knowledge, information, and belief.

5. I am over the age of twenty-one (21) years, and if called upon to testify in this matter, my testimony would be consistent with this Declaration.

Qualifications and Professional Background

6. Jefferies is a registered broker-dealer with the United States Securities and Exchange Commission and a member of the Boston Stock Exchange, the International Stock Exchange, the Financial Industry Regulatory Authority, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the Securities Investor Protection Corporation. Jefferies was founded in 1962 and is a wholly-owned subsidiary of Jefferies Group LLC, which, together with its affiliates, has gross assets of approximately $51 billion and approximately 5,900 employees in more than 45 offices around the world.

7. Jefferies provides a broad range of corporate advisory services to its clients including, without limitation, services relating to the following: (a) general financial advice; (b) mergers, acquisitions, and divestitures; (c) special committee assignments; (d) capital raising; and (e) corporate restructurings. Jefferies and its senior professionals have extensive experience in the reorganization and restructuring of distressed companies, both out of court and in chapter 11 proceedings. Jefferies has advised debtors, creditor and equity constituencies,

and purchasers in numerous reorganizations in the United States and worldwide. Since 2007, Jefferies has been involved in over 250 restructurings representing over $550 billion in restructured liabilities.

8. I have advised companies in financial restructurings and distressed mergers and acquisitions, raised capital for troubled companies, and represented debtors and creditor constituencies in bankruptcy proceedings. Before joining Jefferies in 2020, I was a Partner in the restructuring & reorganization group of PJT Partners, and previously the Blackstone Group where I served as Managing Director. I have an MBA from the Columbia School of Business and a BA from Georgetown University.

Jefferies' Retention and the Debtors' Exploration of Strategic Alternatives

9. Since the fall of 2025, the Debtors and their advisors evaluated strategic alternatives to address the Debtors' liquidity constraints, operational challenges, and capital needs. The Debtors pursued financing and restructuring efforts while also exploring potential sale transactions. Ultimately, the Debtors determined that an out-of-court solution was not feasible and that chapter 11 provided the best available process to preserve value and conduct an orderly sale process. I understand that, as of the Petition Date, the Debtors' capital structure included approximately $20 million in Senior Notes secured by first-priority liens, approximately $83 million in Junior Notes secured by second-priority liens, substantial asserted mechanics' and related lien claims, and DOE-related interests associated with Apex 1.

The Marketing and Sale Process

10. In connection with the Debtors' exploration of strategic alternatives, Jefferies assisted the Debtors in evaluating restructuring paths, marketing their assets, and pursuing a

court-supervised sale transaction. Through that work, I'm familiar with the negotiations that led to the proposed sale to the Buyer and the terms of the transaction documents.

11. On April 17, 2026, the Court entered the Bid Procedures Order, approving procedures for a marketing and sale process for all or substantially all of the Debtors' assets. The Bid Procedures Order provided the following timeline: a May 1 indication of interest deadline, a May 6 stalking horse designation deadline, a May 9 bid deadline, an initial May 12 auction date, and a May 21 sale hearing. I understand that it also permitted bids for all or part of the Debtors' assets, allowed the Debtors to continue negotiating with prospective bidders to improve bids, and authorized the Debtors to modify the Bid Procedures or cancel an auction if insufficient qualified bids were received.

12. After entry of the Bid Procedures Order, Jefferies and the Debtors continued to actively market the business and assets. Interested parties were given access to diligence materials and other information, and Jefferies worked with bidders and stakeholders as they evaluated possible transaction structures and prepared bids. As that process unfolded, the Debtors received interest in a range of structures, including bids for discrete asset groups rather than a single whole-company transaction.

The Proposed DIP Facility and Stalking Horse Agreement

13. As the marketing and sale process continued, the Debtors also remained in discussions with Kinterra Capital Corp. ("Kinterra") and related parties regarding a potential debtor-in-possession financing and stalking horse agreement. On May 6, 2026, the Debtors filed the DIP Motion[3] seeking a $30 million postpetition financing facility tied to a stalking

[3] DIP Motion means the *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Dkt. No. 196].

horse bid through Newco for substantially all of the Debtors' assets, including funding for execution on a time-sensitive Polish land transaction.

14. On May 7, 2026, the Debtors designated Newco as the proposed stalking horse bidder for substantially all of the Debtors' assets.[4] Newco's bid was the only Qualified Bid the Debtors received for substantially all the Debtors' assets. Subsequently, the Debtors rescheduled the Auction from May 12th to May 13th and then from May 13th to a later date while the Debtors and their advisors evaluated how to preserve the time-sensitive Polish land opportunity and the value associated with the Poland/IP Assets as the sale process continued.[5]

15. On May 14, 2026, the Court held the hearing on the DIP Motion. For the reasons stated on the record of the hearing, the Court declined to approve the DIP Motion. The Court then directed the parties to meet and consider the next steps in the sale process. In light of the Debtors' liquidity constraints and the time-sensitive nature of the Polish land opportunity, that process required the Debtors and stakeholders to determine promptly whether a narrower transaction could preserve the Polish land opportunity on an executable timeline while the marketing process for the remaining assets continued.

The Debtors Continue Exploring Alternative Transactions

16. After the Court's ruling, and consistent with the Bid Procedures, the Debtors reevaluated the sale path in light of the Qualified Bids then available, the Debtors' liquidity constraints, and the need to preserve the time-sensitive Polish land opportunity that management understood to be central to maintaining buyer engagement. I understand that, on March 24, 2026, the board appointed independent director Bill Transier as the sole member of a special committee to address potential conflicts of interest and coordinate among the board, management, and advisors in connection with potential restructuring transactions. In that

[4] *See* Dkt. No. 206.

[5] *See* Dkt. Nos. 207 & 262.

capacity, Bill Transier, acting as the special committee, approved pursuit of a joint bid by Kinterra and the holders of the CLN Obligations and put those parties in contact to negotiate the terms of such a transaction. The Special Committee and the Debtors believed that doing so would maximize value by enhancing the development of Qualified Bids that might not otherwise be available.

17. Over the course of the last week, negotiations with Kinterra and the relevant stakeholders continued and resulted in the current revised transaction for the Debtors' intellectual property, equity interests in certain non-Debtor subsidiaries, and related assets (the "Poland/IP Assets"). With respect to the Poland/IP Assets, the Debtors received no Qualified Bids other than Newco's revised bid. The Debtors therefore designated Newco as the successful bidder and cancelled the auction solely as to the Poland/IP Assets, preserving a transaction path that could capture the value of the Polish platform and related land opportunity while the process for selling the remaining assets continues.

18. The Debtors required a transaction path that could preserve value, protect the Polish platform and related intellectual property, maintain site integrity and compliance, and allow the Debtors to continue addressing the remaining assets through separate processes.

19. The Debtors, in consultation with Jefferies and their other advisors, decided to proceed with that revised transaction with the Buyer because it was the best and only executable remaining transaction for those assets, while preserving the ability to continue separate efforts for the Debtors' other assets.

20. In my judgment, the proposed sale benefits the estates by securing a committed purchaser for the Poland/IP Assets, monetizing assets for which no competing qualified bid was received, and allowing the Debtors to continue pursuing value-maximizing alternatives for the remaining assets of the estate.

The Terms of the Proposed Sale

21. On May 20, 2026, the Debtors and the Buyer entered into the Second Amended and the Second Amended and Restated Asset Purchase Agreement (the "APA"), pursuant to which the Buyer agreed to acquire certain assets and interests of the Debtors and assume specified liabilities, subject to entry of the Sale Order and satisfaction of the applicable closing conditions. The proposed consideration includes the assumption of certain liabilities, $3.0 million in cash, and a credit bid of the CLN Obligations in an amount of $98,120,777.96, comprised of (A) $20,000,000 of obligations owing under (A) the Senior Note Purchase Agreement (as defined in the APA) and (B) the $78,120,777.96 of obligations owing under the Junior Note Purchase Agreement (as defined in the APA) (together, such obligations, the "CLN Obligations," and such credit bid, the "Credit Bid").

22. As set forth in greater detail in the APA, the transaction includes, among other things, specified equity interests in foreign subsidiaries, intellectual property, assigned contracts, and the entity holding the Polish land opportunity. The sale would be approved free and clear of liens and other encumbrances, authorize the assumption and assignment of designated contracts, and find that the Buyer is a good-faith purchaser under section 363(m) of the Bankruptcy Code and not a successor to the Debtors, except as expressly provided in the APA.

The Proposed Sale is the Highest or Otherwise Best Transaction Available

23. Based on my involvement in the Debtors' restructuring and transaction process, I believe the APA represents the highest or otherwise best transaction reasonably available for the Poland/IP Assets. As mentioned, the Debtors received no Qualified Bids for the Poland/IP Assets other than Newco's revised bid.

24. The transaction is designed to preserve the value of the Poland/IP Assets and the business platform associated with them, including the Polish development opportunity,

rather than forcing an immediate liquidation of those assets. In my judgment, that outcome is in the best interests of the Debtors, their estates, and their stakeholders.

The Proposed Sale Was Negotiated at Arm's Length and in Good Faith

25. Negotiations over the revised APA and the related sale documents were extensive, conducted at arm's length, and involved substantial negotiation among the Debtors, Jefferies, Kinterra, the supporting noteholder constituencies, and their respective advisors. Based on the discussions I observed and in which I participated, I believe the Debtors and the Buyer acted in good faith and without collusion.

26. In sum, for the reasons stated above, I believe that the proposed sale of the Poland/IP Assets set forth in the APA is fair, reasonable, and in the best interests of the Debtors' estates.

[*Signature on following page*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 21, 2026

/s/ Michael O'Hara
Michael O'Hara
Jefferies LLC