Docket #0565 Date Filed: 07/13/2026
United States Bankruptcy Court
Southern District of Texas
ENTERED
July 13, 2026
Nathan Ochsner, Clerk

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)

STIPULATION AND AGREED SCHEDULING ORDER
BY AND AMONG THE DEBTORS, AMCON INDUSTRIAL,
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

This Stipulation and Agreed Scheduling Order (this "Stipulation and Order") is entered into by and among: (i) the above-captioned debtors and debtors in possession (the "Debtors"); (ii) AM Construction Inc. d/b/a AMCON Industrial ("AMCON"); and (iii) the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the "Committee", and together with the Debtors and AMCON, the "Parties"). The Parties, by and through their respective undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on April 9, 2026 (the Petition Date), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the Bankruptcy Code) with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the Court);

WHEREAS, on June 30, 2026, the Court entered the *Order (I) Approving the Sale of Certain of the Debtors' Assets 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* [Docket No. 534] (the "Covington Sale Order"), by which the Court

[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.

2690440260713000000000009

approved the sale (the "Covington Sale") of the Acquired Assets (as defined in that certain Asset Purchase Agreement, dated as of June 19, 2026 (together with all other agreements and other instruments deliverable thereunder or attached thereto or referenced therein, and as may be amended, modified, or supplemented)), consisting of certain assets located or otherwise related to the Debtors' business operations in Covington, Georgia (collectively, the "Covington Assets");

WHEREAS, AMCON asserts a mechanics' and materialmen's lien against the Covington Assets, excluding any off-site feedstock or other off-site inventory, and the proceeds thereof from the Covington Sale (the "M&M Lien"); the Debtors and Committee dispute the validity, extent, priority, enforceability and amount of the M&M Lien;

WHEREAS, pursuant to paragraph 40 of the Covington Sale Order, the Debtors and AMCON agreed to expedited litigation of the validity, priority, extent, enforceability, and amount of AMCON's asserted M&M Lien, and the allocation of sale proceeds, if any, attributable to AMCON's asserted M&M Lien (the "AMCON Lien Dispute");

WHEREAS, the Parties have conferred and agreed that the Issues (as defined below) with respect to the AMCON Lien Dispute should be resolved by way of a contested matter under Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), on the schedule set forth herein, and that no adversary proceeding is required; and

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED THAT:

1. **Issues for Determination**. The following two issues (collectively, the "Issues") shall be submitted to and determined by the Court in accordance with the schedule set forth herein:

   i. Whether, under Georgia law, AMCON's asserted M&M Lien attaches to the Debtors' leasehold interest, if any, in the Covington property; and

ii. Whether, under Georgia law, AMCON's asserted M&M Lien attaches to equipment, machinery, fixtures, trade fixtures, tenant improvements, or other assets located at the Covington facility and sold in connection with the Covington Sale, excluding any off-site feedstock or other off-site inventory.

2. **Contested Matter; Consent; Limited Waiver of Adversary Proceeding with Respect to the Issues.** The Parties agree, solely for purposes of expedited resolution of the Issues identified in Paragraph 1, that the Issues shall be adjudicated and determined by the Court by way of a contested matter under Bankruptcy Rule 9014, and not by way of an adversary proceeding. The Parties hereby waive any right to have the Issues adjudicated through an adversary proceeding under Bankruptcy Rule 7001, and agree that they shall not at any time contend or argue that the contested-matter procedure set forth in this Stipulation and Order was procedurally improper, deprived any of the Parties of due process, or otherwise failed to afford any of the Parties adequate notice and an opportunity to be heard with respect to the Issues. The Parties further agree that the Court's determination of the Issues shall be final and binding to the same extent as if the Issues had been determined in an adversary proceeding. This agreement and any waiver associated with it are limited exclusively to the Issues identified in Paragraph 1. AMCON does not waive, and expressly reserves, any right to require that any other issue, dispute, claim, or request for relief concerning the validity, priority, extent, enforceability, or amount of its asserted M&M Lien, or any other matter otherwise governed by Bankruptcy Rule 7001, be brought and adjudicated by adversary proceeding. Nothing in this Stipulation and Order shall alter, shift, or waive any burden of proof, burden of production, or other substantive or procedural right that would otherwise apply under the Bankruptcy Code, the Bankruptcy Rules, the Federal Rules of Evidence, applicable Georgia law, or any prior order of the Court.

3. **Discovery.** All written discovery requests with respect to the Issues shall be served on or before **July 14, 2026**. All responses and objections to such discovery requests, and all

responsive document production, shall be served and produced on or before **July 21, 2026**. Discovery with respect to the Issues shall be governed by Bankruptcy Rules 7026 through 7037, as made applicable to this contested matter by Bankruptcy Rule 9014. The Parties agree that service by e-mail of all discovery requests and written responses is sufficient. Any privilege log shall be produced contemporaneously with written responses, categorical privilege logs being sufficient. Any third-party subpoenas relating to the Issues shall be served on or before July 14, 2026, unless otherwise agreed. Any discovery dispute shall be raised promptly after a good faith meet and confer.

4. **Briefs.** The Parties may file briefs in support of their respective positions on the Issues on or before **July 24, 2026**. Such briefs shall be treated as cross-motions for summary judgment governed by Federal Rule of Civil Procedure 56, made applicable by Bankruptcy Rule 7056 and Bankruptcy Rule 9014(c). Nothing in this Stipulation and Order is seeking the Court to resolve disputed issues of material fact on the papers.

5. **Responses.** Any responsive briefs shall be filed on or before **August 5, 2026**. No Party, including the Committee, may raise new arguments or rely on new evidence in a response without affording the opposing Party a reasonable opportunity to reply.

6. **Hearing.** The Court shall conduct hearing on this matter on **August 10, 2026 at 10:00 a.m. (prevailing Central Time)**.

7. **Reservation of Rights.** Except as expressly set forth herein, nothing in this Stipulation and Order shall constitute or be deemed a waiver of any claim, right, defense, or remedy of any Party with respect to the AMCON Lien Dispute, all of which are expressly reserved. For the avoidance of doubt, the Parties reserve all rights with respect to issues not expressly included in Paragraph 1 of this Stipulation and Order.

8. **Modification of Deadlines**. The Parties may modify the deadlines set forth herein by (a) mutual written agreement (e-mail being sufficient) or (b) upon request and further order of the Court for good cause shown.

9. **Binding Effect**. This Stipulation and Order shall have no force or effect unless and until approved by the Court.

10. **Effectiveness**. This Stipulation and Order shall be effective and enforceable immediately upon entry, in accordance with its terms.

11. **Execution**. This Stipulation and Order may be executed in separate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. This Stipulation and Order may be executed by exchange of facsimile or electronic signatures (in PDF or comparable format), which shall be deemed original signatures.

12. **Authorization**. Each person who executes this Stipulation and Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation and Order and agrees to the terms set forth herein.

13. **Retention of Jurisdiction**. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Order.

Signed: July 13, 2026

Christopher Lopez
United States Bankruptcy Judge

STIPULATED AND AGREED TO BY:

Dated: July 10, 2026

NORTON ROSE FULBRIGHT US LLP

By: */s/ Ryan Manns*
Ryan Manns (SBT 24041391)
Maria Mokrzycka (SBT 24119994)
1550 Lamar, Suite 2000
Houston, TX 77010
Tel: (713) 651-5151
Email: ryan.manns@nortonrosefulbright.com
Email:
maria.mokrzycka@nortonrosefulbright.com

-and-

Jason I. Blanchard (SBT 24130197)
Michael Berthiaume (SBT 24066039)
2200 Ross Avenue, Suite 3600
Dallas, TX 75201
Tel: (214) 855-8210
Email:
jason.blanchard@nortonrosefulbright.com
Email:
michael.berthiaume@nortonrosefulbright.com

Counsel to the Debtors and Debtors in Possession

JACKSON WALKER L.L.P.

By: */s/ Zachary McKay*
Zachary McKay (TX Bar No. 24073600)
1401 McKinney St. #1900
Houston, TX 77010
Telephone: (713) 752-4261
Email: zmckay@jw.com

Counsel for AM Construction Inc. d/b/a AMCON Industrial

MCDERMOTT WILL & SCHULTE LLP

By: */s/ Nathaniel Allard*
Charles R. Gibbs (TX Bar No. 7846300)
2801 North Harwood Street, Suite 2600
Dallas, Texas 75201
Telephone: (214) 295-8000
Facsimile: (972) 232-3098
Email: crgibbs@mcdermottlaw.com

-and-

Kristin K. Going (SDTX Fed. No. 438525)
Darren Azman (admitted *pro hac vice*)
Nathaniel Allard (admitted *pro hac vice*)
Joshua C. Lee (admitted *pro hac vice*)
One Vanderbilt Avenue
New York, New York 10017-3852
Telephone: (212) 547-5400
Facsimile: (212) 547-5444
Email: kgoing@mcdermottlaw.com
dazman@mcdermottlaw.com
nallard@mcdermottlaw.com
jclee@mcdermottlaw.com

-and-

Carole Wurzelbacher (admitted *pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, Illinois 60606-0029
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: cwurzelbacher@mcdermottlaw.com

Counsel to the Official Committee of Unsecured Creditors