UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	**CASE NO. 26-90440 (CML)**
ASCEND ELEMENTS, INC., *et al.*	§	
	§	
	§	**CHAPTER 11**
DEBTORS.[1]	§	

UNITED STATES TRUSTEE'S OBJECTION TO COMBINED DISCLOSURE STATEMENT AND JOINT PLAN OF LIQUIDATION FOR ASCEND ELEMENTS, INC.

This objection is in reference to the Plan filed at ECF 570

Kevin M. Epstein, the United States Trustee for Region 7, which includes the Southern and Western District of Texas (the "U.S. Trustee"), hereby files his objection to the *Combined Disclosure Statement and Joint Plan of Liquidation for Ascend elements, Inc. et al.* (the "Liquidating Plan") [ECF no. 570]. In further support of his objection to the Liquidating Plan, the U.S. Trustee states the following:

OBJECTION

1. The U.S. Trustee objects to the Liquidating Plan on three grounds: (1) the exculpation provisions exceed the scope permitted under Fifth Circuit law; (2) the Liquidating Plan contains discharge provisions that are inconsistent with 11 U.S.C. § 1141; and (3) the Liquidating Plan should include a governmental carve-out from the releases.

2. **First**, consistent with its prior decision in *Bank of New York Trust Company, N.A. v. Official Unsecured Creditors' Committee (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009), and Section 524 of the Bankruptcy Code, the Fifth Circuit reaffirmed that "any exculpation in a

[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.

Chapter 11 reorganization plan [must] be limited to the debtor, the creditors' committee and its members for conduct within the scope of their duties, 11 U.S.C. § 1103(c), and the trustees within the scope of their duties . . . ." *In re Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 437 (5th Cir. 2022).

3. The Fifth Circuit in *Highland Capital* narrowly held that independent directors appointed by the bankruptcy court, under the "unique governance structure" present in that case, to collectively perform functions similar to those of a bankruptcy trustee were entitled to exculpation. *Id.* at 437. Here, by contrast, the Debtors seek to extend exculpation to the Chief Restructuring Officer ("CRO") and members of the Special Committee. The Debtors have no comparable "unique governance structure" requiring those parties to perform the functions of a bankruptcy trustee. Indeed, the appointment of a CRO and a special committee in chapter 11 cases is commonplace and, standing alone, does not provide a basis for expanding exculpation beyond the narrow categories recognized by the Fifth Circuit.

4. Moreover, the Fifth Circuit specifically considered whether officers and employees of the debtor were entitled to exculpation and held that they were not. *Highland Capital*. The Fifth Circuit thus excluded from the permissible scope of exculpation the debtor's chief executive officer and other employees. To wit:

> As it stands, the Plan's exculpation provision extends to Highland Capital and **its employees and CEO**; Strand; the Reorganized Debtor and HCMLP GP LLC; the Independent Directors; the Committee and its members; the Claimant Trust, its trustee, and the members of its Oversight Board; the Litigation Sub-Trust and its trustee; professionals retained by the Highland Capital and the Committee in this case; and all "Related Persons." Consistent with § 524(e), **we strike all exculpated parties from the Plan except Highland Capital, the Committee and its members, and the Independent Directors.**

In re Highland Cap. Mgmt., L.P., 48 F.4th at 438 (emphasis added).

5. The Liquidating Plan provides broad protection to the CRO and members of the Special Committee. Fifth Circuit precedent, however, provides no statutory basis for extending exculpation to these non-debtor parties. Accordingly, to comply with the Fifth Circuit's holdings in *Pacific Lumber* and *Highland Capital*, the CRO and members of the Special Committee must be removed from the Liquidating Plan's definition of "Exculpated Parties."

6. **Second**, the Liquidating Plan contains a provision that contravenes section 1141(d)(3) of the Bankruptcy Code. Specifically, Article XIII(B), styled as a "Limited Discharge," purports to effectuate a "general resolution with prejudice" of all pending legal proceedings, as well as any proceedings not yet commenced, against the Debtors or their assets. Notwithstanding its characterization as a "limited discharge," the provision operates as a discharge in substance and effect.

70. The Bankruptcy Code provides that "[t]he confirmation of a plan does not discharge a debtor if: (A) the plan provides for the liquidation of all or substantially all of the property of the estate; (B) the debtor does not engage in business after consummation of the plan; *and* (C) the debtor would be denied a discharge under § 727(a) of this title if the case were a case under chapter 7 of this title. 11 U.S.C. § 1141(d)(3). Even though the Liquidating Plan triggers all the requirements of 11 U.S.C. § 1141(d)(3), thereby limiting Debtors from receiving a discharge, certain provisions of the Plan impermissibly seek to discharge and permanently enjoin the Holders of claims against the Debtors in violation of 11 U.S.C. § 1141(d)(3).

7. The Debtors should revise the Liquidating Plan to comply with the Bankruptcy Code. First, the Debtors should remove the "Limited Discharge" provision in Article XIII. Second, the Debtors should remove from the treatment of each class any language purporting to characterize distributions under the Liquidating Plan as constituting full and final satisfaction of the applicable

Claims. Third, any injunction imposed under the Liquidating Plan should terminate upon completion of the liquidation activities contemplated by the Liquidating Plan and should not operate as a *de facto* discharge to which the Debtors are not entitled under section 1141(d)(3).

8. **Lastly**, the Liquidating Plan should clarify that claims of government entites are not released under the third-party releases and exculpation provisions. The "police and regulatory power" exception to the automatic stay found at 11 U.S.C. § 362(b)(4) is designed to ensure that the stay "does not impede government's ability to protect public health and safety." *In re Wyly*, 526 B.R. 194, 198 (Bankr. N.D. Tex. 2015).

9. The Debtors should modify the Liquidating Plan to clarify that no party shall be released from any causes of action or proceedings brought by any governmental entity in accordance with its regulatory functions, including but not limited to criminal and environmental matters. The United States Trustee requests that the Debtors include the following language in the Liquidating Plan:

> Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

10. For the reasons set forth above, the Court should not confirm the Liquidating Plan unless and until the requested revisions are made. As currently drafted, the Liquidating Plan

contravenes applicable provisions of the Bankruptcy Code and binding Fifth Circuit precedent and, therefore, cannot be confirmed in its present form.

Dated: August 13, 2026,

Respectfully submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means on all PACER participants on this August 13, 2026.

/s/ Ha M. Nguyen
Ha M. Nguyen