Docket #0645 Date Filed: 08/16/2026

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

THE GEORGIA DEPARTMENT OF NATURAL RESOURCES, ENVIRONMENTAL PROTECTION DIVISION'S OBJECTION TO CONFIRMATION OF CHAPTER 11 PLAN

The Georgia Department of Natural Resources, Environmental Protection Division (the "Department"), by and through counsel, Christopher M. Carr, Attorney General for the State of Georgia, files this Objection to Confirmation of the Debtor's Amended Plan (the "Objection") (Doc. 570). The Department shows the following in support of its Objection.

Preliminary Statement

The Department objects to the Plan and any other provisions made in the entire case to the extent that they may interfere with its regulatory responsibilities and enforcement of Georgia law in the transfer and maintenance of the Covington assets including, but not limited to, provisions for variances and/or permits between the debtors and the new holders of the debtors' leasehold interests in the Covington assets. The Department also objects to limiting provisions in the Plan meant to exculpate, enjoin, and/or release any persons or entities from their responsibilities under Georgia state law.

[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.

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Relevant Background

1. Professors Yan Wang and Eric Gratz, formerly of the Worcester Polytechnic Institute, formed Battery Resources, a lithium ion battery recycling and manufacturing company, ("Battery Resources") in 2015.[2]

2. Battery Resources, Inc. and Covington Industrial, LLC, executed a Lease Agreement for property located at 9176 Industrial Drive NE, Covington, Georgia 30014 (the "Covington Property") on December 31, 2021 (the "Lease").[3] Battery Resources, Inc. executed the Lease as Tenant, and Covington Industrial, LLC, executed the Lease as Landlord. As a result, Battery Resources, Inc. held a leasehold estate under the Lease.

3. Battery Resources, Inc. changed its name to Ascend Elements, Inc. in January, 2022.[4]

4. Ascend Elements, Inc. and Ascend Elements US, LLC (collectively, the "Debtors") filed petitions for relief under Chapter 11 of the United States Bankruptcy Code[5] on April 9, 2026 (the "Petition Date"). The Debtors have continued to operate their businesses as

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[2] *See* Declaration of Linh Austin in Support of Chapter 11 Petitions and Emergency First-Day Motions (Doc. 11) (the "Linh Declaration"), ¶ 16.

[3] *See Lease Agreement Between Covington Industrial, LLC as Landlord and Battery Resources, Inc. as Tenant Located at 9176 Industrial Drive Northeast, Covington, Georgia 30014* attached as Exhibit 4 to *Debtors' Motion for Summary Judgment Determining That Amcon Industrial's Asserted Mechanic's and Materialman's Lien Does Not Attach to (I) The Debtors' Leasehold Interest In the Covington Property or (II) The Personal Property Sold in the Covington Sale* (Doc. 593).

[4] Sloane M. Perron, *Battery Resources Rebranding to Ascend Elements, Worchester Business Journal*, January 20, 2022.

[5] 11 U.S.C. §§ 101-1532. (the "Bankruptcy Code"). References to sections, by word or by symbol, are to sections of the Bankruptcy Code unless stated otherwise herein.

debtors-in-possession[6] since the Petition Date pursuant to §§ 1107(a) and 1108.

5. The United States Trustee for the Southern District of Texas (the "UST") has appointed an Official Committee of Unsecured Creditors (the "Committee") pursuant to § 1102. No trustee or examiner has been appointed in these cases.

6. On June 20, 2026, the Debtors filed a notice of sale (the "Sale Notice") stating their intention to sell the Assets at the Georgia Facility to R3 Lithium, Inc. (the "Purchaser"). The term "Assets" as used in the Sale Notice is defined to include "all of [Debtor]'s right, title, and interest in and to the assets of the Business," and then goes on to expressly include "Leased Real Property", "all Contracts to which Seller is a party that support, facilitate, or relate to the Business and the other Acquired Assets or any Assumed Liabilities", "all Documents relating to any of the Acquired Assets", and "all tangible assets (including Equipment and IT Assets)" among other items. *See* Asset Purchase Agreement (the "APA"), § 1.1(a)—(e)[7] (Doc. 487).

7. The Department filed an Objection to the Sale of Covington Assets on June 25, 2026 (the "Objection") (Doc. 513). The Department filed its Amended and Supplemented Objection to the Sale of the Debtors' Covington, Georgia Assets on June 28, 2026 (the "Amended Objection") (Doc. 526).

8. In its Amended Objection, the Department quoted language from the APA, Section 1.3 regarding Assumption of Certain Liabilities, and requested a determination of whether liabilities to the Department constitute Assumed Environmental Liabilities (Doc. 526,

[6] In Chapter 11 cases, with a few limited exceptions, a debtor in possession has all the rights, duties, and powers of a trustee pursuant to § 1107(a).

[7] *See* Asset Purchase Agreement attached as Exhibit A to *Notice of (I) Designation of R3 Lithium, Inc. as Successful Bidder for the Debtors' Covington, Georgia Assets and (II) Cancellation of Auction with Respect to Such Assets.* (Doc. 487).

¶ 26).

9. The Parties met before the June 29, 2026 sale hearing (the "Sale Hearing"), and were able to reach a resolution of some of the issues between them.

10. The Parties announced their settlement at the Sale Hearing. Toward the end of the announcement, counsel for the Department asked whether the Debtors' liabilities to the Department would be treated as Assumed Liabilities, and counsel for the Debtor agreed.

11. Counsel for the Debtor prepared an Order (the "Sale Order") and sent it to the Department and its counsel before submitting it to the Court. The Department and its counsel agreed for the Sale Order to be submitted; however, they have since identified inconsistencies within the Sale Order and conflicts between the Sale Order and Georgia law, which not discussed before the Debtors submitted the Sale Order to the Court.

12. The Debtors filed their *Combined Disclosure Statement and Joint Plan of Liquidation for Ascend Elements, Inc., et al.* (collectively, the "Plan") on July 14, 2026 (Doc. 570).

13. The Department objects to confirmation of the Plan in its present form.

The Department's Objections to Confirmation of the Plan

I. Provisions Related to the Sale of the Covington Assets

A. Environmental Responsibilities and Liabilities Related to the Covington Assets Must Be Consistent and Compliant with Georgia Law.

14. Property of the bankruptcy estate cannot be held, managed or disposed of in violation of laws designed to protect public health and safety. *See e.g.*, 28 U.S.C. § 959; *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) (holding that a trustee in bankruptcy may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from

identified hazards);*see also, In the Matter of Borne Chemical Company, Inc.*, 54 B.R. 126, 132 (Bankr. D.N.J. 1984) (holding that New Jersey's Environmental Cleanup Responsibility Act was not preempted by the Bankruptcy Code).

15. The Debtors improperly attempt to affect responsibilities involved in the transfer of Covington assets, the provision of financial assurance required for the transfer, and liabilities related thereto. The Debtors seek to prevent any assumption of liabilities related to Covington Assets "except as expressly provided in the Asset Purchase Agreement." (Doc. 534, ¶ N). The Asset Purchase Agreement, in turn, states that the Purchaser assumes "any Liabilities relating to any remediation at the Acquired Leased Real Property first occurring following the Closing and required under Environmental Laws because of any Release of Hazardous Materials first occurring after the Closing." (Doc. 487-1 at 8–9). It goes on to state, however, that "no Liability arising out of any Release of Hazardous Materials, condition or violation or Environmental Law in existence on or prior to the Closing Date…shall be an Assumed Environmental Liability." *Id.* at 9. This provision is contrary to Georgia law.

16. Georgia law holds owners and operators of facilities responsible for any release at that site. Georgia's Hazardous Site Response Act defines "Person who has contributed or who is contributing to a release" in part as "[t]he owner or operator of a facility." O.C.G.A. § 12-8-92(9). The Act goes on to explain that "[e]ach and every person who contributed to a release of a hazardous waste, a hazardous constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the State of Georgia for the reasonable costs of activities associated with the cleanup of environmental hazards." O.C.G.A. § 12-8-96.1. The Act also notes that, while bona fide purchasers of affected properties may avoid certain liability for releases, a person who contributed or who is contributing to a release cannot be a bona fide

purchaser for purposes of the Act. *See* O.C.G.A. § 12-8-96.3.

17. This broad-reaching liability is important for three main reasons. First, hazardous releases carry a high degree of risk that cannot be taken lightly. Second, hazardous releases can often be difficult to trace, and narrowly restricting liability increases the chances of protracted finger pointing and litigation, to the detriment of those at risk from the releases. Third, because these issues cannot be left unresolved, the costs of remediating situations without a viable responsible party can ultimately fall on limited public funds. *See generally* O.C.G.A. § 12-8-95 (establishing Georgia's Hazardous Waste Trust Fund).

18. The Asset Purchase Agreement's attempt to sever the Purchaser's liability for any release prior to the closing date directly conflicts with Georgia law. Once the Purchaser begins operating the facility, as it plans to do by taking over the Debtors' variance, it will be an operator and thus a "Person who has contributed or is contributing to a release" as that term is defined in the Hazardous Site Response Act. *See* O.C.G.A. § 12-8-92(9). Georgia law therefore requires that the Purchaser would be jointly and severally liable for the cost of any release at the facility. *See* O.C.G.A. § 12-8-96.1. While the Purchaser would have claims against the Debtors under Georgia law—subject to the releases made between the Purchaser and the Debtors—it cannot avoid its strict, joint, and several liability under Georgia law.

B. The Sale Order mandates a legal impossibility regarding the Purchaser's financial assurance for the property.

19. Under the Sale Order's existing terms, the Purchaser will be allowed to operate under the Debtors' variance on an interim basis so long as it adheres to that variance's requirements. The Sale Order specifically notes that, among those requirements is the "maintenance of current security in place." Sale Order at ¶ 43. While it is vital that the Purchaser maintain financial assurance, as Debtors have done under their variance, it is not

possible for the Purchaser to maintain the "current security in place." That is because the current security in place is a letter of credit issued to the Debtors for their operations at the property, which will become unusable once the Purchaser begins its operations at the property.

20. Hazardous waste sites must have financial assurance in place to ensure that, should there be a problem requiring environmental remediation, the responsible party will have sufficient funds to alleviate the threat to the environment. *See* Ga. Comp. R. Regs. 391-3-11-.05(3). Georgia law requires that this financial assurance be "adequate to insure any corrective action" based on specific facility. *See id.*

21. Requiring the Purchaser to maintain the "current security in place" poses two problems. First, if the Purchaser's operations are to differ in scale in any way from the Debtors', then the "current security in place," *see* Sale Order at ¶ 43, may not satisfy the law's requirement that the financial assurance be "adequate to insure any corrective action," *see* Ga. Comp. R. Regs. 391-3-11-.05(3); *see also* 40 C.F.R. § 264.142 (requiring a "detailed written estimate…of the cost of closing" a facility and requiring periodic updates of that estimate). While the Purchaser's operating under the Debtors' variance ensures that the *type* of activities the Purchaser will conduct during that interim period will be the same as those the Debtors conducted, it does not require that the *scale* of those activities stay the same. The Purchaser could, in theory, conduct those activities on a larger scale, creating greater risk and rendering the level of financial assurance the Debtors maintained inadequate. Or it could conduct those activities on a smaller scale, rendering the level of financial assurance that the Debtors maintained unnecessary. Regardless, because the law requires financial assurance to be "adequate" for the realities of the operation, the law requires that the Purchaser scale the financial assurance it will maintain to its own operations.

22. Second, because the existing financial assurance is a letter of credit issued to the Debtors, the Department would have no recourse to pull that letter of credit for any future noncompliance by the Purchaser, especially if the Debtors dissolve. These practical difficulties are why the law requires that "[a]n owner or operator of each facility must establish financial assurance for closure of the facility." *See* 40 C.F.R. § 264.143. Once the Purchaser takes over the Debtors' property interest and variance, the Purchaser will be "[a]n owner or operator," but the Debtors will not. Thus, the law requires that the Purchaser establish its own financial assurance, rather than maintaining the "current security in place." *See id.*; Sale Order at ¶ 43.

C. The Sale Order Contains Timelines that are Conflicting and Structured Such That They May Frustrate Compliance.

23. The final paragraph of this Court's Sale Order sets forth requirements for the Purchaser and the Department related to a variance that the Department granted to the Debtors in 2022. *See* Sale Order at ¶ 43. Among those requirements are the mandate for the Purchaser and the Department to work together to determine if the Purchaser's operations will be permissible under the existing variance, whether a RCRA Part B permit will be necessary, or whether neither will be necessary. However, the Sale Order has two different timelines for this review, leaving the Department uncertain as to what it must do to comply with this Court's Sale Order.

24. The first timeline requires a determination as to whether the Purchaser will need a variance, a permit, or neither "[w]ithin ninety (90) days of the date of entry of this Order." *Id.* The second timeline requires the same determination—at least as to the necessity of a permit—to "be made no later than 120 days of this Order." This ambiguity as to the amount of time the Department has to make the determination as to whether a permit is necessary leaves the Department with uncertainty as to how to comply with this Court's Sale Order.

25. Beyond the conflict between the 90- and 120-day timelines for the Department to decide how the Purchaser will be allowed to operate its facility, the structure of the timelines creates a risk that the Department will be prevented from compliance through no fault of its own. The Sale Order provides that "the Purchaser and GA the Department agree to conduct a review of the Purchaser's operations and determine whether" a variance, a permit, or neither is necessary. *Id.* at ¶ 43. While the Sale Order puts some level of obligation on both the Purchaser and the Department to participate in this review, Georgia law rests the ultimate decision-making authority as to variances and permits solely with the Department. *See* O.C.G.A. § 12-8-65(a)(3), (14). To make those decisions, however, the Department must have sufficient information about the Purchaser's operations to determine whether a variance, a permit, or neither will comply with state and federal law. By placing a deadline on the Department to decide without providing a deadline for the Purchaser to timely provide information, the Order creates the risk that the Department will be unable to make an accurate and legal determination within the time required if the Purchaser does not timely provide complete information.

II. The Department objects to the inclusion of any Exculpatory, Injunctive, Waiver, Limitations of Liability, and Third Party Releases that would contravene its rights and the Debtors' obligations under Georgia Law

26. The Department objects to any language in the Plan that could possibly be interpreted to exculpate, enjoin, waive, or release the Debtors and/or third parties from any responsibility Georgia law imposes upon them.

A. The Exculpation and Limitation of Liability Provision is too Broad

27. Exculpation is limited to estate fiduciaries, like trustees, the debtors officers and directors, official committees and their members, and counsel to estate fiduciaries. *See,*

e.g., Matter of Highland Cap. Mgmt., L.P., 48 F.4th 419, 437 (5th Cir. 2022) ("any exculpation in a 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 Pac. Lumber Co*., 584 F.3d 229, 252 (5th Cir. 2009) (same); *In re PWS Holding Corp.*, 228 F.3d 224 (3rd Cir. 2000) (court considered whether an official committee of unsecured creditors could be exculpated and held that 11 U.S.C. § 1103(c) implies both a fiduciary duty and a limited grant of immunity to members of the unsecured creditors' committee).

B. There Must Be a Governmental Carve-Out From the Releases

28. The Department's "police and regulatory power" excepts it from limitations under the Bankruptcy Code, such as the automatic stay to make sure the stay "does not impede government's ability to protect public health and safety." I*n re Wyly*, 526 B.R. 194, 198 (Bankr. N.D. Tex, 2015).

29. The Department joins on the UST request for a governmental carve-out from the releases.

DATED: August 15, 2026

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CERTIFICATE OF SERVICE

This is to certify that I have electronically filed the foregoing *Objection to Confirmation of Chapter 11 Plan* in the Bankruptcy Court's Electronic Case filing program, which sends a notice of this document and an accompanying link to this document to parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

This is to further certify that on this day I caused a copy of this document to be served via U.S. First Class Mail, with adequate postage prepaid on the Debtor at the following address:

Ascend Elements, Inc.
133 Flanders Rd.
Westborough, MA 01581

DATED: August 15, 2026

/s/ *Shawna Y. Staton*
Shawna Y. Staton