

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

In re:

ASCEND PERFORMANCE MATERIALS
HOLDINGS INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 25-90127 (CML)
)
)
) (Jointly Administered)
)

**DEBTORS' OBJECTION TO THE EMERGENCY
MOTION OF MASTEC INDUSTRIAL CORPORATION
FOR RELIEF FROM THE AUTOMATIC STAY TO ENFORCE
CONTRACT RIGHTS REGARDING THE LETTER OF CREDIT PROCEEDS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² file this objection (this “Objection”) to the *Emergency Motion of MasTec Industrial Corporation for Relief from the Automatic Stay to Enforce Contract Rights Regarding the Letter of Credit Proceeds* [Docket No. 760] (the “Motion”) filed by MasTec Industrial Corporation (“MasTec”). In support of this Objection, the Debtors respectfully state as follows:

Preliminary Statement

1. The Motion requests a complex array of relief, all of which is legally impermissible and would only result in additional litigation. Specifically, MasTec requests (each, a “Request”) that the Court (a) lift the automatic stay, (b) compel the Debtors to accept a surety bond as a

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.’s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 24] (the “First Day Declaration”).

“reasonably satisfactory” substitute for the Letter of Credit,³ and (c) compel Ascend to release the Letter of Credit proceeds to MasTec. (Mot. ¶¶ 38, 78.) According to MasTec, such relief would (x) cease to deprive MasTec of access to the Letter of Credit proceeds and (y) stem the incurrence of excessive legal fees in connection with the Adversary Proceeding. (Mot. ¶ 67.) This argument makes no sense.

2. To state the obvious, such relief assumes that MasTec would prevail in the underlying and ongoing litigation as to which party is entitled to the Letter of Credit proceeds—a matter that is already the subject of an agreed-upon litigation schedule. *See* Scheduling Order. MasTec should not now be able to use the Motion to obtain a ruling on one of the main issues in the ongoing Adversary Proceeding.

3. In addition to that fundamental flaw, Requests (b) and (c) are clearly impermissible. It is black letter law that an executory contract is not enforceable against a chapter 11 debtor, and yet that is exactly what MasTec is attempting to do through its Motion. (Mot. ¶¶ 38, 78.) If MasTec cannot compel the Debtors to accept the surety bond and release the Letter of Credit proceeds—and it cannot—then MasTec’s entire justification for Request (a), lifting the automatic stay, falls away.

4. The remainder of the lift-stay analysis, which focuses on the balance of harms, clearly favors the Debtors. The primary hardships MasTec allegedly faces are also faced by the Debtors: The Debtors and their estates continue to be deprived of the Letter of Credit proceeds, and the Debtors continue to expend significant resources combatting MasTec’s maximum-pressure litigation strategy. But granting the relief requested in the Motion would prejudice the Debtors

³ Capitalized terms used but not defined in this Objection shall have the meanings ascribed to them in the First Day Declaration.

even more by, among other things, creating greater distraction from the Debtors' primary duty of prosecuting a value-maximizing reorganization, forcing the Debtors to litigate whether the bond is "reasonably satisfactory," and, if necessary, forcing the Debtors to file and litigate a motion to reject the EPC Contract. Trading one piece of litigation for another is highly inefficient and impractical when the parties have been engaged in extensive litigation pursuant to an agreed-upon schedule.

5. Finally, the Motion contravenes both prior orders of this Court and the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"). All of MasTec's requested relief violates the plain language of the Final DIP Order, which set forth procedures to determine the rightful status of the Letter of Credit proceeds and the corresponding litigation schedule in the Adversary Proceeding. *See* Final DIP Order ¶ 47(h)(i); Stipulation ¶¶ 1, 5; *see also* Scheduling Order. As such, the DIP Term Loan Lenders (as defined in the Final DIP Order) support the Debtors in this Objection and the denial of MasTec's requested relief. The Motion also ignores Rule 4001-1(a)(8) of the Bankruptcy Local Rules, which prohibits combining a request for relief from the automatic stay with other requests for relief.

6. The Court should deny all requests in the Motion, curb MasTec's attempt to starve the estate of resources and force a value-destructive settlement, and allow the Adversary Proceeding to run its course.

Background

7. On December 2, 2019, MasTec and Ascend Performance Materials Operations LLC ("Ascend") entered into the Lump Sum Turnkey Agreement for the Engineering, Procurement and Construction of the Ascend Cogeneration Facility by and between Ascend, as Owner, and MasTec, as Contractor (including all amendments or modifications thereto, the "EPC Contract"), dated as of December 2, 2019, for the engineering, procurement, construction,

pre-commissioning, commissioning, start-up, and testing of a turnkey cogeneration steam power plant to be located near the Debtors' Decatur, Alabama manufacturing operations.

8. As required by the EPC Contract, MasTec executed an irrevocable standby letter of credit in Ascend's favor (the "Letter of Credit"). On April 15, 2025, Ascend drew on the Letter of Credit in compliance with the requirements thereunder. On April 16, 2025, the United States District Court for the Southern District of Texas (the "District Court") issued a temporary restraining order requiring Ascend to deposit the proceeds of the Letter of Credit into the District Court's registry. Ascend complied.

9. On April 21, 2025 (the "Petition Date"), the Debtors filed these chapter 11 cases, and the ongoing litigation between MasTec and Ascend pending in the District Court was stayed.

10. On April 25, 2025, the Court entered the *Stipulation and Agreed Order Regarding MasTec's Temporary Restraining Order* [Docket No. 151] (the "Stipulation"). The Stipulation provides that the Letter of Credit proceeds are to remain in the District Court registry until "determination of the MasTec LOC Proceeds Dispute . . . by Final Order of the Bankruptcy Court." Stipulation ¶ 1. The Stipulation defines the MasTec LOC Proceeds Dispute as, among other things, "whether the [Letter of Credit proceeds] are property of the Debtors' bankruptcy estate." Stipulation ¶ 5. The Stipulation makes clear that the Letter of Credit proceeds must remain in the District Court registry until the Court determines, in a Final Order (as defined in the Stipulation), whether the Letter of Credit proceeds are property of the Debtors' estates. The Stipulation was later incorporated into the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, and*

(V) *Granting Related Relief* [Docket No. 389] (the “Final DIP Order”). See Final DIP Order ¶ 47(h)(i).

11. On May 25, 2025, the Debtors initiated an adversary proceeding (the “Adversary Proceeding”) against MasTec to resolve two discrete issues, one of which being whether the proceeds of the Letter of Credit are property of Debtors’ estates. See *Ascend Performance Materials Operations LLC’s First Amended Complaint Against MasTec Industrial Corporation* [Adv. Proc. Docket No. 10]. In response, MasTec asserted five counterclaims alleging that Ascend breached various provisions of the EPC Contract and, thereby, statutory warranties, and that these breaches entitle MasTec to, among other relief, recover the Letter of Credit proceeds or the imposition of a constructive trust over the proceeds in MasTec’s favor. See *MasTec’s First Amended Answer Affirmative Defenses and Counterclaims* [Adv. Proc. Docket No. 25] ¶¶ 105–179.

12. On June 20, 2025, the Court entered an order [Adv. Proc. Docket No. 18] (the “Initial Scheduling Order”) approving a schedule for the Adversary Proceeding that was negotiated and agreed to by MasTec and the Debtors. The Initial Scheduling Order contemplated that dispositive motions would be heard on September 23, 2025. The Initial Scheduling Order was subsequently amended to extend certain fact discovery deadlines. See *Stipulation and Agreed Order Extending Certain Discovery Deadlines* [Adv. Proc. Docket No. 87] (together with the Initial Scheduling Order, the “Scheduling Order”). The parties have taken twenty-seven depositions and served ten expert reports as well as hundreds of written discovery requests. Despite this substantial ongoing discovery, since the commencement of the Adversary Proceeding MasTec has filed six “emergency” motions seeking to alter the Adversary Proceeding timeline

and/or compel additional discovery,⁴ one such motion on less than one business day's notice. *See* MasTec Extension Motion; *see also August 11, 2025 Order* [Adv. Proc. Docket No. 41] (declining to consider the MasTec Extension Motion in part because it “[sought] material changes . . . on less than one business days’ notice”).

13. On June 27, 2025, MasTec, by and through its counsel, sent a letter (the “June 27 Letter”) to the Debtors asserting that, among other things, pursuant to Section 7.7(iii) of the EPC Contract, Ascend must return the Letter of Credit proceeds to MasTec if MasTec provides a bond “reasonably satisfactory” to Ascend in the full amount of the Letter of Credit proceeds. MasTec reiterated these positions in another letter sent on August 8, 2025.⁵ Following the parties’ meet and confer, on July 25, 2025, the Debtors sent a letter in response to the June 27 Letter declining the proposed bond.

14. On August 21, 2025, MasTec filed the Motion, in which MasTec requests, in sum, that this Court lift the automatic stay and enforce MasTec’s interpretation of Section 7.7(iii) of the EPC Contract, *i.e.*, require Ascend to accept a proposed bond as reasonably satisfactory and release the Letter of Credit proceeds from the District Court registry to MasTec.

⁴ *See* Motion; *MasTec Industrial Corporation F/K/A MasTec Power Corporation’s Emergency Motion for an Extension of the Scheduling Order* [Adv. Proc. Docket No. 34] (“MasTec Extension Motion”); *MasTec’s Emergency Motion to Compel Production of Documents and Responses to its Interrogatories* [Adv. Proc. Docket No. 45]; *MasTec’s Emergency Motion to Compel 30(b)(6) Testimony* [Adv. Proc. Docket No. 61]; *MasTec Industrial Corporation’s Emergency Motion to Compel Production of Privileged Communications and Witness Testimony Regarding the Letter of Credit Draw* [Adv. Proc. Docket No. 88]; *MasTec’s Emergency Motion to Compel (1) Production of Documents, (2) Supplemental Interrogatory Responses, and (3) Privilege Log Amendment* [Adv. Proc. Docket No. 91].

⁵ Section 7.7(iii) of the EPC Contract states, “Owner shall pay Contractor the amount withheld or collected on the Letter of Credit if Contractor (i) pays, satisfies or discharges the applicable claim of Owner against Contractor under or by virtue of this Agreement and provides Owner with reasonable evidence of such payment, satisfaction or discharge, (ii) cures all such breaches and Defaults in the performance of this Agreement, or (iii) provides Owner with a bank guarantee or bond reasonably satisfactory to Owner in the amount of the withheld payment.”

Objection

15. The Motion requests relief from the automatic stay to compel the Debtors to comply with MasTec's interpretation of the EPC Contract. MasTec has failed to identify any theory under which the terms of the EPC Contract can be enforced against the Debtors and, by extension, failed to meet its burden to show cause exists to lift the automatic stay. In addition, MasTec has failed to explain how or why the Final DIP Order should be rewritten to accommodate the requested relief and does nothing to justify hearing the Motion on an emergency basis. The Motion also requests compound relief in violation of Bankruptcy Local Rule 4001-1(a)(8). As such, the relief requested in the Motion should be denied and, if the Motion is heard at all, should be heard on regular notice.

I. MasTec Has Not Established Cause for Relief from the Automatic Stay.

16. Section 362(d)(1) of the Bankruptcy Code provides that a court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not define "cause." *See, e.g., In re Reitnauer*, 152 F.3d 341, 343 n.4 (5th Cir. 1998) ("Because [section] 362 does not offer guidance as to what constitutes 'cause,' reviewing courts must determine whether cause exist[s] on a case-by-case basis."). Courts have generally examined the totality of circumstances in determining whether cause exists to lift the automatic stay. *See In re Trump Entm't Resorts, Inc.*, 526 B.R. 116, 120 (Bankr. D. Del. 2011) ("Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay."). The primary factor in determining whether to lift the automatic stay is whether allowing such action would impact a debtor's administration of its estate. *See In re W.R. Grace & Co.*, No. 01-01139, 2007 WL 1129170, at *2 n.7 (Bankr. D. Del. Apr. 13, 2007) ("The most important factor in determining whether to grant relief from the automatic stay . . . is the effect . . . on the administration of the

estate.”) (quoting *In re Curtis*, 40 B.R. 795, 806 (Bankr. D. Utah 1984)). Even a “slight interference” with the administration of the debtor’s estate “may be enough to preclude relief in the absence of a commensurate benefit [to the counterparty].” *See Curtis*, 40 B.R. at 806.

17. Contrary to MasTec’s assertion in the Motion,⁶ MasTec, as the movant, carries the burden to demonstrate cause. “If the movant fails to make an initial showing of cause . . . the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.” *In re Sonmax Indus., Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990); *see also In re Boodrow*, 126 F.3d 43, 48 (2d Cir. 1997) (“We have emphasized that a bankruptcy court should deny relief from the stay if the movant fails to make an initial showing of cause.”). MasTec cannot make an initial showing of cause, but even if it could, the Debtors are clearly entitled to the continued protection of the automatic stay.

A. Lifting the Stay Will Severely Prejudice the Debtors.

18. Lifting the automatic stay would be a value-destructive distraction from the Debtors’ reorganizational efforts and would only prompt more fee-intensive litigation. The Motion should be denied on this factor alone.

19. The Debtors have already been prejudiced by MasTec’s repeated attempts to disregard the agreed-upon schedule to adjudicate the Letter of Credit dispute. The framework for a consensual resolution was set forth first in the Stipulation and then later in the Final DIP Order, which incorporates the terms of the Stipulation and fully preserved “[t]he agreements, rights, defenses, and reservations contained” therein. Final DIP Order ¶ 47(h)(i). The Debtors then initiated the Adversary Proceeding to, among other things, have the Court adjudicate the Letter of

⁶ *See* (Mot. ¶ 43.) (“While the burden of establishing the debtor’s interest in the property protected by the stay is on the party seeking relief, 11 U.S.C. § 362(g) places on the party opposing relief the burden of demonstrating that cause for stay relief does not exist.”)

Credit proceeds dispute consistent with the Stipulation and the Final DIP Order. As discussed above, the Debtors then worked with MasTec and the Court to develop a consensual timeline for fact discovery and dispute resolution.

20. Notwithstanding the orderly process established to litigate the Letter of Credit dispute, MasTec has filed six emergency motions seeking to compel or expand the scope of discovery or alter the agreed-upon schedule.⁷ Responding to these motions, in addition to losing key members of their management team to needless, day-long depositions in connection with a dispute that is not fact-intensive, has destroyed considerable value and distracted from the Debtors' reorganization efforts. Having largely failed to alter the timeline of the Adversary Proceeding,⁸ MasTec now opens up a new front on the primary docket for the chapter 11 cases. The Motion, filed on shortened notice, is just the latest tactic in MasTec's strategy to harass and distract the Debtors and ignore the agreed-upon timeline in the Adversary Proceeding. The disruption MasTec has caused with its scorched-earth litigation strategy has already destroyed value to the detriment of all parties in interest, and granting the Motion would only exacerbate the problem.

21. Furthermore, if the Motion were granted, the Debtors would need to divert even more attention to (a) filing and litigating a motion to reject the EPC Contract so as to remove any doubt as to its enforceability against the Debtors, (b) challenging MasTec's assertion that the bond

⁷ *Supra* note 4.

⁸ *August 11, 2025 Order* [Adv. Proc. Docket No. 41] (declining to consider the MasTec Extension Motion in part because it "[sought] material changes . . . on less than one business days' notice").

they propose is “economically identical security,”⁹ *see* (Mot. ¶ 61.), and (c) litigating whether the requested relief violates the Final DIP Order.

22. The merits of Request (b) would need to be fully briefed if the stay were lifted, but, in any event, MasTec’s argument is clearly spurious. The Debtors properly drew down on the Letter of Credit by complying with the terms thereunder and, if successful on the merits in the Adversary Proceeding, will be immediately entitled to the Letter of Credit proceeds. In contrast, if the Letter of Credit is replaced with a bond, the Debtors would likely be forced to engage in costly and time-consuming negotiations with the bond company to collect the bond proceeds. Denying the Motion (a) ensures the Letter of Credit proceeds remain in the District Court registry pending determination of the Adversary Proceeding, preserving value that the Debtors contend is property of the Debtors’ estates, and (b) obviates the need for further litigation to reject the EPC Contract and/or determine whether the surety bond is “reasonably satisfactory.”

23. As for Request (c), granting the relief that MasTec requests would lead to even more litigation to determine whether it violates the plain language of the Final DIP Order. As detailed above, the DIP Term Loan Lenders support the Debtors’ interpretation that: (a) the Final DIP Order incorporates the Stipulation and (b) the Stipulation requires the Letter of Credit proceeds to remain in the District Court registry until the Court determines whether the proceeds are property of the Debtors’ estates. *See* Final DIP Order ¶ 47(h)(i); Stipulation ¶¶ 1, 5. The Motion, however, requests the release of the Letter of Credit proceeds from the registry to MasTec *without* this Court determining whether the Letter of Credit proceeds constitute property of the

⁹ MasTec’s assertion that its proposed bond constitutes “economically identical security” presupposes that MasTec’s theory of the case is correct and that the merits of the dispute as to whether Ascend complied with the EPC Contract need to be determined in order to assess the propriety of Ascend’s Letter of Credit draw. In fact, the relevant question in assessing the propriety of the Letter of Credit draw is whether Ascend complied with the terms of the Letter of Credit—if so, Ascend is entitled to possession of the Letter of Credit proceeds.

Debtors' estates. (Mot. ¶¶ 38, 78.) In other words, MasTec is seeking through the Motion a decision on one of the main issues disputed in the Adversary Proceeding. And, even if the Motion is granted, the Debtors would be forced to challenge the release of the Letter of Credit proceeds as a violation of the Final DIP Order.

24. In any event, granting the Motion would only compound the legal issues in dispute, continue to destroy value, and exacerbate the harms the Debtors already face. This factor weighs against lifting the automatic stay.

B. MasTec Does Not Stand to Benefit From Lifting the Stay.

25. MasTec cannot establish that it will stand to benefit if this Court lifts the automatic stay. MasTec's entire justification for lifting the stay rests on its ability to then compel the Debtors to (a) accept a bond from MasTec and (b) release of the Letter of Credit proceeds from the District Court registry to MasTec.¹⁰ *Id.* In addition to violating Bankruptcy Local Rule 4001-1(a)(8), which prohibits combining request for relief from the automatic stay with other requests for relief, MasTec offers no legal theory as to why the EPC Contract can be enforced against Ascend. Accordingly, even if this Court lifts the automatic stay, MasTec will receive no discernable benefit from relief that, as discussed above, severely prejudices the Debtors. *See Curtis*, 40 B.R. at 806 (holding that even a "slight interference" with the administration of the debtor's estate "may be enough to preclude relief in the absence of a commensurate benefit [to the counterparty]"). As such, the relief requested in the Motion should be denied.

¹⁰ MasTec's interpretation of the EPC Contract is irrelevant because the EPC Contract is not enforceable against the Debtors. But in any event, MasTec's reliance on Section 7.7(iii) of the EPC Contract is misplaced. Ascend drew on the Letter of Credit for amounts it was entitled to collect under the EPC Contract and did not "withhold payment" as contemplated by Section 7.7(iii). Thus, even if the stay were lifted and the EPC Contract were enforceable against Ascend, MasTec would have no basis to compel Ascend to accept its proposed bond.

26. To the extent the EPC Contract has performance obligations remaining, it would be an executory contract that the Debtors have not assumed, and it is well settled that a non-debtor counterparty cannot enforce an executory contract against a debtor unless and until the debtor elects to assume the contract. *See, e.g., Bildisco & Bildisco*, 465 U.S. 513, 532 (1984) (holding that a creditor is “precluded from . . . enforcing the contract terms” of an executory contract prior to the assumption by the debtor); *Lauter v. Citgo Petroleum Corp.*, No. CV H-17-2028, 2018 WL 801601, at *14 (S.D. Tex. Feb. 8, 2018) (“Between the date a bankruptcy petition is filed and an executory contract is assumed or rejected under § 365(a), the contract continues to exist, enforceable by the debtor, but not against the debtor.”); *In re FBI Distribution Corp.*, 330 F.3d 36, 43 (1st Cir. 2003) (“Although during the Chapter 11 proceeding a prepetition executory contract remains in effect and enforceable against the non-debtor party to the contract, the contract is unenforceable against the debtor in possession unless and until the contract is assumed.”); *In re Univ. Med. Ctr.*, 973 F.2d 1065, 1075 (3d Cir. 1992) (holding that prior to assumption, “the terms of an executory contract are temporarily unenforceable against the debtor”); *In re El Paso Refinery, L.P.*, 220 B.R. 37, 43 (Bankr. W.D. Tex. 1998) (“From the moment of filing to the moment of assumption or rejection, the non-debtor party is held to be barred from enforcing the contract and its terms.”); *In re Broadstripe, LLC*, 402 B.R. 646, 656 (Bankr. D. Del. 2009) (explaining that “[p]ending a debtor’s decision to assume or reject an executory contract, courts have generally concluded that the contract is ‘enforceable by the debtor but not against the debtor’” (quoting *U.S. v. Dewey Freight System, Inc.*, 31 F.3d 620, 624 (8th Cir. 1994))).¹¹

¹¹ For the avoidance of doubt, the Debtors reserve all rights with respect to the executory or non-executory status of the EPC Contract.

27. The Debtors have neither assumed, nor made any indication of an intent to assume, the EPC Contract, and neither the Debtors nor MasTec have performed under the EPC Contract since 2023, let alone during the pendency of the Debtors' chapter 11 cases. Even if obligations remain due by the Debtors, the EPC Contract is simply an unassumed executory contract that remains subject to rejection. Either way MasTec has no legitimate basis to enforce the terms of the EPC Contract against the Debtors and, in fact, is prohibited from doing so. *Id.* At most, MasTec may “[have] a claim against [Ascend] for breach of contract¹² . . . but [could not] deprive the estate of the performance that the estate has already received.” 3 Collier on Bankruptcy P 365.02 (16th 2025).

28. The EPC Contract is simply not enforceable against the Debtors and MasTec offers no legal theory to the contrary. As such, there is no basis to compel Ascend's performance with the terms of the EPC Contract, MasTec will derive no benefit for the Court lifting the automatic stay, and the relief requested in the Motion should be denied.

C. MasTec Cannot Carry Its Burden to Show that the Balance of the Harms Tips In Its Favor.

29. MasTec has failed to articulate any cognizable harms to MasTec that would tip the balance of harms in its favor. Absent such a showing, MasTec cannot carry its “heavy and possibly insurmountable burden of proving that the balance of hardships tips significantly in favor of granting relief.” *In re W.R. Grace & Co.*, No. 01-01139, 2007 WL 1129170, at *3 (Bankr. D. Del. Apr. 13, 2007) (internal quotation omitted); *see also In re Am. Classic Voyages, Co.*, 298 B.R. 222, 225 (D. Del. 2003) (holding that the movant must show that “the balance of hardships from not obtaining relief tips significantly in [its] favor”) (citation omitted).

¹² For the avoidance of doubt, despite MasTec's assertions to the contrary, the Debtors have not “admitted” to any breach of the EPC Contract.

30. The only harms to MasTec alleged in the Motion are MasTec’s ongoing deprivation of capital and “significant resourc[e]” expenditure litigating the Letter of Credit proceeds dispute. These harms are illusory. First, MasTec’s has not been “deprived” of anything. The Letter of Credit proceeds are currently in the District Court registry pending this Court’s determination of their rightful owner. If MasTec can claim prejudice for not being declared the winner before the litigation has concluded, then the Debtors can make precisely the same argument. In addition, MasTec agreed to the Scheduling Order and is bound to litigate the Adversary Proceeding accordingly. MasTec being stayed from side-stepping the agreed schedule and litigating certain claims at their discretion and convenience is not hardship—it is the result of the schedule they agreed to.

31. On the other hand, the Debtors have spent and will continue to spend significant resources fighting MasTec’s disruptive tactics in addition to litigating the Letter of Credit proceeds dispute. As stated above, MasTec has sought to impede the Adversary Proceeding schedule and broader case timeline at every opportunity. Because of the Motion, the Debtors are now forced to address duplicative, redundant claims already set for determination in the Adversary Proceeding. Curbing MasTec’s ability to drain the Debtors’ resources, alone, tips the balance of harms in the Debtors’ favor.

D. MasTec’s Legal Argument is Insufficient to Warrant Granting the Relief Requested.

32. MasTec’s legal argument is insufficient and does not support granting its requested relief because (a) MasTec’s argument relies on its conclusory assertion that Ascend improperly drew on the Letter of Credit—an issue to be determined in the Adversary Proceeding; (b) MasTec’s cherry-picked case citations cannot withstand scrutiny; and (c) the Motion violates Bankruptcy Local Rule 4001-1(a)(8).

33. MasTec’s argument relies on various allegations of Ascend’s “wrongful” conduct, including its assertion that Ascend drew on the Letter of Credit improperly and in bad faith. (Mot. ¶¶ 45–60.) These allegations sit at the core of the Adversary Proceeding. MasTec states as fact legal conclusions that the Court has not yet decided. MasTec’s conclusory statements as to the propriety of Ascend’s conduct cannot possibly serve as the basis to lift the automatic stay or compel Ascend’s performance under the EPC Contract. The Court should deny the relief requested in the Motion and determine relevant issues raised therein in the Adversary Proceeding consistent with the Scheduling Order.

34. Furthermore, MasTec’s argument relies on cases that offer limited support to its position and, in any event, are factually distinguishable. MasTec does not cite a single case that supports its assertion that “Ascend’s breaches of the EPC Contract and the Letter of Credit provide a strong foundation for relief.” (Mot. ¶ 18.) MasTec states that “[the] ‘cause’ analysis ... begins with Ascend’s admitted¹³ breaches of the EPC Contract,” then cites *In re Northbelt, LLC* for the proposition that “cause [can be] any reason cognizable to the equity power and conscience of the court as constituting an abuse of the bankruptcy process.” (Mot. ¶ 45.) *Northbelt* discusses cause to lift the automatic stay where a debtor, who owned a single real estate asset, had ***filed for bankruptcy in bad faith***. 630 B.R. 228, 284 (Bankr. S.D. Tex. 2020) (emphasis added). *Northbelt* does not stand for the proposition that a breach of contract, even if in bad faith, constitutes sufficient cause to lift the automatic stay. *Id.* Furthermore, the *Northbelt* court goes on to find that cause does ***not*** exist to lift the automatic stay where, among other factors, “there is no evidence demonstrating that [the debtor] has used the bankruptcy process merely as a means to stall a two-party dispute” and the “[d]ebtor has been actively engaged in the bankruptcy process.” *Id.*

¹³ Despite MasTec’s assertions to the contrary, the Debtors have not “admitted” to any breach of the EPC Contract.

at 285. The Debtors did not file their cases in bad faith merely to stall the parties' dispute, and MasTec makes no showing to this effect. That the Debtors have been actively engaged in the bankruptcy process from the outset is beyond question. As such, even if *Northbelt* were applicable to the matter at hand, *Northbelt* supports **denying** the relief requested in the Motion.

35. MasTec further asserts, (Mot. ¶ 49.), that “[c]ourts . . . uniformly reject attempts to use the automatic stay as an offensive weapon” and cites *Am. Builders & Contractors Supply Co., Inc. v. Precision Roofing & Consulting* for the proposition that “that the automatic stay in 362(a)(1) is not designed to be an offensive weapon to allow a debtor to breach a post-bankruptcy petition contract.” 2017 WL 2240366, at *2 (M.D. Ala. May 22, 2017) (quoting *Turner Broad. Sys., Inc. v. Sanyo Elec., Inc.*, 33 B.R. 996, 1000 (N.D. Ga. 1983)). The “post-bankruptcy petition contract” discussed in *Turner* was “voluntarily entered into . . . five months **after** [an] involuntary petition was filed against [the debtor].” See *Turner Broad. Sys., Inc.*, 33 B.R. at 1000. The EPC Contract, in contrast, long pre-dates the Petition Date, and neither party has performed thereunder since 2023. As such, *Turner* is clearly distinguishable from the present case. Additionally, as the *Am. Builders* court makes clear, even if section 362(a)(1) of the Bankruptcy Code does not stay litigation arising from a postpetition claim, section 362(a)(3) prohibits the enforcement of any judgement against a debtor’s bankruptcy estate, thereby upholding the use of the automatic stay to prevent interference with estate property. See *Am. Builders & Contractors Supply Co.*, 2017 WL 2240366, at *2. As such, neither *Am. Builders* nor *Turner* support granting the relief requested in the Motion.

36. This trend continues throughout MasTec’s argument—MasTec cherry-picks citations that appear relevant while failing to discuss the underlying facts and circumstances that distinguish each case. See (Mot. ¶¶ 49, 62.); *Contra In re LaFemina*, 2017 WL 4404254, at *7

(Bankr. E.D.N.Y. Sept. 30, 2017) (lifting the automatic stay to authorize pursuit of equitable relief to enforce a non-compete provision after determining that the claimant's right to injunctive relief was not a "dischargeable claim within the meaning of § 101(5)(B) of the Bankruptcy Code."); *In re Matus*, 303 B.R. 660, 683 (Bankr. N.D. Ga. 2004) (denying discharge to a chapter 7 debtor, and discussing sanctions for counsel, where counsel facilitated fraudulent transfers and filed a notice of suggestion of bankruptcy in a separate civil litigation two months prior to filing a petition); *In re Gaslight Vill. Inc.*, 8 B.R. 866, 870 (Bankr. D. Conn. 1981) (discussing lifting the automatic stay where "[the] debtor . . . shielded its apartment house complex under the automatic stay umbrella for more than fourteen months without ever [filing] a realistic plan of reorganization."); *In re 360 Networks (USA) Inc.*, 282 B.R. 756, 764–65 (Bankr. S.D.N.Y. 2001) (lifting the stay solely to permit counterparty to file a cause of action and then immediately staying such cause of action); *In re Aleris Int'l, Inc.*, 456 B.R. 35, 48 (Bankr. D. Del. 2011) (determining a seller's right to relief from the automatic stay to obtain possession of goods for which the Debtor had not paid and upholding the stay because the movant failed to show that the movant's hardship "considerably outweigh[ed] the hardship likely to be suffered by the [d]ebtor if the stay [were] lifted or modified").

37. Furthermore, MasTec's request that the Court compel Ascend's performance under the EPC Contract violates Rule 4001-1(a)(8) of the Bankruptcy Local Rules. Rule 4001-1(a)(8) states that "[m]otions for relief from stay may never be combined with a request for other relief." Not only does the Motion combine MasTec's Request (a) for relief from the automatic stay with Requests (b) and (c) for the Court to compel Ascend's performance under a prepetition agreement, but Requests (b) and (c) form the very basis of MasTec's argument as to why the stay should be lifted.

38. Accordingly, MasTec’s allegations rely on contested, conclusory assertions, the citations underpinning MasTec’s legal argument are inapposite, and the Motion clearly violates the Bankruptcy Local Rules. As such, MasTec has expressed no valid legal basis for the relief it requests.

II. Hearing the Motion on an Emergency Basis is Unwarranted; the Motion Should be Heard on Regular Notice, if at All.

39. The merits of the Motion aside, MasTec has failed to establish sufficient cause for emergency consideration. Pursuant to Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure, courts may shorten notice requirements “for cause.” Requests to shorten notice must be “justified by the circumstances” and are viewed with increased scrutiny where business debtors and creditors are involved. *In re A.H. Coombs, LLC*, No. BR 16-25559, 2016 WL 7985367, at *4 (Bankr. D. Utah Dec. 22, 2016); *see also In re Fort Wayne Assocs., L.P.*, No. 97-10378, 1998 WL 928419, at *1 (Bankr. N.D. Ind. Dec. 16, 1998) (holding that requests for expedited relief are “extraordinary requests” that require showing of a “real emergency”). Moreover, a movant cannot satisfy cause with a self-created emergency. *In re Villareal*, 160 B.R. 786, 787 (Bankr. W.D. Tex. 1993) (“[c]ause is not shown when the cause for expedited hearing is one of the movant’s own making.”).

40. As its basis for “emergency” relief, MasTec cites continued “deprivation of . . . capital” and “continued incurrence of legal fees.” (Mot. ¶ 76.) As an initial matter, MasTec—a company with approximately \$9 billion in total assets according to its latest SEC filings,¹⁴—has been able to fund its operating and litigation costs since the Letter of Credit proceeds were paid into the District Court registry in April (at MasTec’s request). (MasTec Indus.

¹⁴ MasTec, Inc., Form10-K, at 58 (filed February 28, 2025), available at <https://investors.mastec.com/static-files/125231e7-5c35-48ac-a060-7747a64662fc>.

Corp.’s Emergency Mot. & Memorandum in Support of Emergency Mot. for Temp. Restraining Ord. at 1, *MasTec Indus. Corp f/k/a MasTec Power Corp. v. Ascend Performance Materials Operations LLC*, No. 4-2-CV-3932 (S.D. Tex. Apr. 16, 2025), ECF No. 102.) MasTec could have filed a motion to lift the automatic stay at any time over the four months preceding the Motion, but it failed to do so until its other diversionary tactics in the Adversary Proceeding failed to bear fruit. Additionally, in June, MasTec agreed to the Initial Scheduling Order, which set a schedule to resolve disputes surrounding the Letter of Credit in late September at the earliest. *See Agreed Scheduling Order* [Adv. Proc. Docket No. 18]. Furthermore, as detailed above, MasTec’s scorched-earth litigation campaign is the primary source of the parties’ continued legal fees.¹⁵ Hearing the Motion on shortened notice would only reward MasTec for creating and perpetuating its own “emergency.” As such, MasTec has failed to establish the existence of any emergency that is not of its own making. The Court should deny MasTec’s request for emergency consideration and hear the Motion on regular notice, if at all.

Conclusion

41. In sum, MasTec (a) fails to advance any theory by which the EPC Contract is enforceable against the Debtors; (b) does not establish sufficient cause exists to lift the automatic stay; and (c) has created the emergency it cites as the justification for expedited relief. Granting the relief requested in the Motion is not only improper on its face but contravenes the express agreements of the parties and orders of this Court as to the manner and method of resolving the Letter of Credit proceeds dispute. The Court should deny the Motion on the papers or, if this matter is to be heard, at a hearing on regular notice.

¹⁵ *Supra* note 4.

WHEREFORE, the Debtors request that the Court deny the Motion.

Houston, Texas

Dated: September 4, 2025

/s/ Jason G. Cohen

BRACEWELL LLP

Jason G. Cohen (TX Bar No. 24050435)

Jonathan L. Lozano (TX Bar No. 24121570)

711 Louisiana Street, Suite 2300

Houston, Texas 77002

Telephone: (713) 223-2300

Facsimile: (800) 404-3970

Email: jason.cohen@bracewell.com
jonathan.lozano@bracewell.com

*Co-Counsel for the Debtors
and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Christopher Marcus, P.C. (admitted *pro hac vice*)

Derek I. Hunter (admitted *pro hac vice*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: cmarcus@kirkland.com
derek.hunter@kirkland.com

*Co-Counsel for the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on September 4, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen