

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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Counsel to CSCEC Holding Company, Inc.

In re:

CCA Construction, Inc.,¹

Debtor.

Case No. 24-22548 (CMG)

Chapter 11

Judge: Christine M. Gravelle

**NOTICE OF CSCEC HOLDING COMPANY INC.'S MOTION TO QUASH SUBPOENA
ISSUED BY BML PROPERTIES, LTD.**

PLEASE TAKE NOTICE that on **February 25, 2025 at 10:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard, CSCEC Holding Company, Inc. ("CSCEC"), by and through its counsel, shall move (the "Motion") before the Honorable Christine M. Gravelle, United

¹ The last four digits of CCA's federal tax identification number are 4862. CCA's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.



States Bankruptcy Judge, United States Bankruptcy Court for the District of New Jersey, Courtroom 3, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, for entry of an order, substantially in the form submitted herewith, quashing the *Subpoena For Rule 2004 Examination* issued by BML Properties, Ltd. to CSCEC on January 13, 2025.

PLEASE TAKE FURTHER NOTICE that CSCEC shall rely upon the Motion filed herewith. No brief is necessary as no novel issues of fact or law are presented by the Motion. A proposed form of order was also submitted therewith. Oral argument is requested in the event an objection is timely filed.

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed with the Clerk of the Court, together with proof of service thereof, and served so as to be actually received by no later than **February 18, 2025 at 4:00 p.m. (Eastern Time)** by counsel CSCEC, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068, Attn: Jeffrey L. Cohen (jcohen@lowenstein.com) Andrew Behlmann (abehlmann@lowenstein.com), Nicole Fulfree (nfulfree@lowenstein.com), Michael A. Kaplan (mkaplan@lowenstein.com) and Rasmeet Chahil (rchahil@lowenstein.com).

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must: (a) be in writing; (b) comply with the Bankruptcy Rules, the Local Rules, and any other case management rules or orders of this Court; and (c) state with particularity the legal and factual basis for the objection.

PLEASE TAKE FURTHER NOTICE that unless an objection is timely filed and served in accordance with this notice, it may not be considered by the Bankruptcy Court. In the event no objections are filed, the relief requested in the Motion may be granted without a hearing.

Dated: January 29, 2025

Respectfully submitted,

/s/ Andrew Behlmann

Andrew Behlmann

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CCA Construction, Inc.,¹

Debtor.

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Chapter 11

Judge: Christine M. Gravelle

**CSCEC HOLDING COMPANY INC.'S MOTION TO QUASH SUBPOENA
ISSUED BY BML PROPERTIES, LTD.**

CSCEC Holding Company ("CSCEC Holding") hereby files this motion to quash (this "Motion to Quash") the *Subpoena For Rule 2004 Examination* issued by BML Properties, Ltd. ("BMLP") to CSCEC Holding (the "Rule 2004 Subpoena"). In support of this Motion to Quash,

¹ The last four digits of CCA Construction, Inc.'s ("CCA" or the "Debtor") federal tax identification number are 4862. CCA's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

CSCEC Holding submits the *Certification of Michael A. Kaplan in Support of Motion to Quash Subpoena Issued by BML Properties, Ltd.* (the “Kaplan Certification”), and respectfully states as follows:

PRELIMINARY STATEMENT²

1. Following seven years of litigation and the entry of the NY Judgment in the Baha Mar Litigation in October of 2024 (which is currently on appeal), BMLP has—unsurprisingly—been laser-focused on its enforcement and collection efforts against the Debtor and the two Non-Debtor Baha Mar Defendants. Following the commencement of this chapter 11 case, BMLP doubled down, requesting discovery from the Debtor and CSCEC Holding, purportedly in connection with the DIP financing provided by CSCEC Holding. Although the discovery BMLP initially served in connection with the DIP Motion was wildly overbroad and more akin to a Rule 2004 fishing expedition than the targeted discovery available in connection with a contested matter, the parties eventually narrowed BMLP’s requests in a manner more appropriate for contested matter discovery. BMLP has also filed Bahamian liquidation proceedings against the Non-Debtor Baha Mar Defendants. Unbeknownst to anyone but BMLP, however, was the fact that while the wrangling over BMLP’s contested matter was underway both in and outside of this Court, BMLP had *already served* the Rule 2004 Subpoena on CSCEC Holding through its Delaware registered agent without so much as mentioning it to CSCEC Holding or the Court. “Table setting” is not mandatory at every hearing; candor, however, is.

2. Although appropriately tailored contested matter discovery in connection with the DIP Motion is within BMLP’s rights as a creditor of the Debtor, it is ***not*** within BMLP’s rights to exploit the more flexible guideposts of the Rule 2004 discovery process to gain an unfair litigation

² Capitalized terms used in the preliminary statement but not yet defined have the meanings given below.

advantage by impermissibly end-running the discovery rules applicable to various pending proceedings. There are at least four pending proceedings that preclude BMLP from pursuing Rule 2004 discovery: (i) the DIP Motion, a contested matter pending before this Court; (ii) the Defendants' appeal of the NY Judgment in the New York State courts, which, if unsuccessful, would inevitably (and as previewed by BMLP's counsel) lead to enforcement or collection proceedings; (iii) liquidation petitions that BMLP filed against the Non-Debtor Baha Mar Defendants in the Bahamas; and (iv) BMLP's own motion to appoint an examiner in the Debtor's chapter 11 case, a second contested matter. Rather than pursuing discovery within the boundaries of the applicable state, federal, and foreign rules in these various fora (two of which were selected by BMLP itself), BMLP instead seeks to use Federal Rule of Bankruptcy Procedure 2004 to fish for information in furtherance of its purely parochial collection efforts. The pending proceeding rule indisputably prohibits them from doing so and mandates that the Rule 2004 Subpoena be quashed.

3. Even if BMLP's attempted use of Rule 2004 were not barred by the pending proceeding rule, the Rule 2004 Subpoena (which, unbeknownst to CSCEC Holding, was served on January 15, 2025 on its registered agent with no courtesy copy to counsel) requests information that is entirely untethered to estate assets or administration. The Rule 2004 Subpoena is instead focused on assets, transactions, and agreements between CSCEC Holding and over 100 Non-Debtor Entities and individuals. Simply put, the Rule 2004 Subpoena has no legitimate purpose whatsoever.

4. BMLP has repeatedly made its intentions clear: It will take every conceivable opportunity to use this chapter 11 case to end-run the existing proceedings pending not just in this Court, but also in other jurisdictions, to further its goals *outside the bankruptcy forum*, and

particularly, to enforce and collect on the NY Judgment against two non-debtors, neither of which is CSCEC Holding. BMLP's clear statements of intention render its failure to mention the Rule 2004 Subpoena to CSCEC Holding or the Court over the course of three meet and confer calls, two discovery conferences, and a multitude of emails, inexplicable.

5. BMLP has had nearly seven years to investigate, assert, and try to prove claims in state court against any putative defendants other than CCA and the two Non-Debtor Baha Mar Defendants. BMLP failed to do so. As evidenced by the Rule 2004 Subpoena itself and BMLP's own assertions, BMLP now seeks an impermissible second (and far larger) bite at the apple, including trying to pursue enforcement of the NY Judgment and *“any and all claims that may lie against nominally separate affiliates of CCA”* under the auspices of Rule 2004 discovery. (See BMLP Stay Relief ROR at 4 (emphasis added).) Using Rule 2004 in an effort to achieve what a litigant could not accomplish in a non-bankruptcy forum simply is not permitted under the Bankruptcy Rules.

6. Accordingly, for these reasons, and as set forth in more detail below, the Rule 2004 Subpoena is inappropriate, is barred by the pending proceeding rule, and must be quashed.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Motion to Quash under 28 U.S.C. § 1334, and venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The relief requested herein is authorized by Rule 45 of the Federal Rules of Civil Procedure (the “Federal Rules”), Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2004-1 and 9016-1 of the Local Rules of the United States Bankruptcy Court District of New Jersey (the “Local Rules”).

BACKGROUND

A. The New York Litigation.

9. This chapter 11 case is one of last resort and was ultimately necessitated by a crippling \$1.6 billion judgment (the “NY Judgment”) issued by the Supreme Court of New York in *BML Properties Ltd. v. China Construction America, Inc., et al.*, No. 657550/2017 (Sup. Ct., NY County 2024) (“Baha Mar Litigation”). (See *Decl. of Yan Wei*, Docket. No. 11 ¶ 3.) The NY Judgment was entered on October 31, 2024, in favor of BMLP and against CCA and two non-debtor affiliates, Bahamian entities CSCEC (Bahamas) Ltd. and CCA Bahamas, Ltd. (the “Non-Debtor Baha Mar Defendants”). (See Kaplan Cert. Ex. A.) CSCEC Holding was not a party to the Baha Mar Litigation and is not subject to the NY Judgment.

10. CCA and the Non-Debtor Baha Mar Defendants appealed from the NY Judgment to the New York Appellate Division, First Department, and that appeal remains pending. (*Decl. of Yan Wei*, Docket. No. 11 ¶ 4.) CCA’s final request for a stay pending appeal was denied on December 19, 2024, which led to the filing of this chapter 11 case. (*Id.*)

B. The Chapter 11 Case.

11. On December 22, 2024 (the “Petition Date”), CCA filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. CCA is operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

12. On the Petition Date, the Debtor filed the *Debtor’s Motion for Entry of Interim and Final Order (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief*[Docket No. 4] (the “DIP Motion”), seeking approval of, among other things, postpetition DIP financing in the amount of \$40 million from CSCEC Holding.

13. The Debtor also filed the *Debtor's Motion for Entry of an Order Granting Relief from the Automatic Stay to Prosecute an Appeal* [Docket No. 14] (the "Debtor's Stay Relief Motion") on the Petition Date, seeking an order modifying the automatic stay to allow it to prosecute the First Department appeal.

14. On December 23, 2024, the Court entered an order granting interim approval of the DIP Motion [Docket No. 27] (the "Interim DIP Order") and scheduling a final hearing on the DIP Motion (the "Final DIP Hearing") for January 30, 2025.

15. On December 27, 2024, BMLP filed the *Statement and Reservation of Rights of BML Properties, Ltd. to Debtor's Motion for Entry of an Order Granting Relief from the Automatic Stay to Prosecute an Appeal* [Docket No. 54] (the "BMLP Stay Relief ROR"). BMLP made its intentions clear from that filing early on in this case. The BMLP Stay Relief ROR explicitly states that "BMLP has no doubt that it will successfully defend the appeal in New York and fully intends to vindicate its rights in this Chapter 11 proceeding, ***including but not limited to pursuing any and all claims that may lie against nominally separate affiliates of CCA . . .***" (BMLP Stay Relief ROR at 4 (emphasis added).)

16. On the same date, this Court granted the Debtor's Stay Relief Motion. (*See Order Granting Debtor Relief from the Automatic Stay to Prosecute an Appeal* [Docket No. 53] (the "Stay Relief Order").) The Stay Relief Order specifically provides that "no party shall be permitted to enforce any judgment or execute against CCA or any property of its estate absent further order of the Court." (*See Stay Relief Order* ¶ 3.) The automatic stay under 11 U.S.C. § 362 otherwise remains in place.

17. On January 10, 2025, CSCEC Holding received BMLP's First Requests for Production of Documents from CSCEC Holding Company, Inc. Pursuant to Federal Rules of Civil

Procedure 26 and 34 (the “Initial DIP Document Requests”). Although they were purportedly directed to CSCEC Holding, the Initial DIP Document Requests defined “You” as the Debtor and its affiliates and subsidiaries (among others)—likely a function of those requests being a near exact duplicate of discovery BMLP propounded on the Debtor.

18. On January 13, 2025, the Debtor, CSCEC Holding, and BMLP held a meet-and-confer call with respect to the Initial DIP Document Requests. (Kaplan Cert. ¶ 9.) BMLP’s counsel acknowledged that some of its document requests were not relevant to the DIP Motion and were more appropriate for Rule 2004 discovery, but declined to specify which requests they believed were relevant to the DIP Motion. (Kaplan Cert. ¶ 9.) It became clear in this initial meet-and-confer session and in a following email exchange that a key dispute among the parties would relate to BMLP’s desire to use any materials produced in chapter 11 discovery for unrelated purposes in connection with the Baha Mar Litigation and any related proceedings. (Kaplan Cert. ¶ 9.)

19. Later that day, BMLP served its *Amended First Requests for Production of Documents from CSCEC Holding Company, Inc.* in connection with the DIP Motion on January 13, 2025 (“DIP Document Requests”). (See Kaplan Cert. Ex. B.)

20. In connection with the ongoing discovery discussions between the Debtor, BMLP, and CSCEC Holding, the Debtor circulated a proposed protective order providing that discovery materials “shall be used solely in connection with these chapter 11 cases (including any adversary proceeding or contested matter in these chapter 11 cases) and not for any other legal, business, commercial, competitive, personal, or other purpose.” (Kaplan Cert. ¶ 11.) BMLP objected to the “use restriction” language, insisting instead on a much broader provision that would allow BMLP to use discovery in any other proceeding, including its enforcement efforts against the Non-Debtor Baha Mar Defendants. (Kaplan Cert. ¶ 11.)

21. Despite CSCEC Holding being represented by counsel in this case, BMLP served the Rule 2004 Subpoena on CSCEC Holding through its registered agent, Corporation Services Company, on January 15, 2025. (*See* Kaplan Cert. Ex. C.) The Rule 2004 Subpoena is dated January 13, 2025, but BMLP made no attempt to inform counsel to CSCEC Holding about the subpoena, or to ask counsel to accept service. (Kaplan Cert. ¶ 12.) Nor did BMLP provide notice of the Rule 2004 Subpoena to any parties in the case prior to or simultaneously with its service, or even mention it at all. CSCEC Holding’s counsel only became aware of the Rule 2004 Subpoena on January 22, 2025. (Kaplan Cert. ¶ 12.)

22. Following service of CSCEC Holding’s written responses and objections to the DIP Document Requests, CSCEC Holding and BMLP (along with the Debtor) attended a second meet-and-confer session on January 16, 2025 to discuss various outstanding discovery disputes. (Kaplan Cert. ¶ 13.) During that meeting, counsel for BMLP stated that it would hold off on certain requests for purposes of DIP Motion discovery, but represented BMLP would likely make those requests under Rule 2004. (*Id.*) Counsel neglected to mention that the Rule 2004 Subpoena *had already been served*. (*Id.*)

23. On January 17, 2025, the Court held a discovery conference to discuss, among other items, entry of the proposed protective order. As previewed at the initial meet-and-confer session, and despite similar limitations on use of materials produced under protective orders being customary in this District and others, BMLP objected to the “use restriction” limiting the use of the materials to the chapter 11 case. BMLP’s counter proposed language and its express statements on the record made clear that it sought to use documents produced in discovery in connection with its efforts to enforce the Baha Mar Litigation NY Judgment against parties other than the Debtor and outside of the chapter 11 case: “MR. THEISEN: We’re not saying there should be no

restrictions. We are agreeing to limit our use of any documents to *proceedings that are directly related to enforcing our rights arising out of that New York Judgment*.” (Kaplan Cert. Ex. D, at 19:1–7 (emphasis added).) The Court *rejected* this position and required that BMLP seek Court approval prior to using protective order materials in connection with any proceeding in furtherance of enforcing, executing, or otherwise satisfying the Baha Mar Judgment and/or BMLP’s creditor rights. (Kaplan Cert. ¶ 14.) BMLP made no mention of the Rule 2004 Subpoena during the January 17 chambers conference. (Kaplan Cert. ¶ 14.)

24. During the January 17th conference, the parties also discussed other contested discovery in connection with the DIP Motion, including BMLP’s request for board minutes. While discussing that request, counsel for BMLP stated, “I’m not saying that those things aren’t proper under Rule 2004. But with this, and you know, we would reserve rights there.” (Kaplan Cert. Ex. D, at 31:8–10.) Yet again, no mention of the fact that the Rule 2004 Subpoena had been served two days earlier. (Kaplan Cert. ¶ 15.) Despite having served the Rule 2004 Subpoena already on CSCEC Holding’s registered agent on January 15, 2025, BMLP’s counsel did not even mention the existence of the subpoena to the Court, instead stating BMLP would “reserve rights” regarding Rule 2004 discovery. (Kaplan Cert. ¶ 15.)

25. The parties once again met and conferred with respect to the DIP Document Requests on January 21, 2025. (Kaplan Cert. ¶ 16.) Although counsel for BMLP mentioned several times that rights would be reserved for Rule 2004 discovery, counsel once again failed to mention that Rule 2004 discovery had already been served on CSCEC Holding’s agent nearly a week prior. (Kaplan Cert. ¶ 16.)

26. Largely as a result of the ongoing discussions between the parties with respect to the DIP Document Requests, on January 21, 2025, the Debtor filed a notice of adjournment

indicating that the Final DIP Hearing and all other motions scheduled for hearing on January 30, 2025 would be adjourned by two weeks to February 13, 2025.

27. In preparation for a second discovery conference with the Court regarding the DIP Document Requests, counsel for BMLP sent a letter to the Court attaching email communications between CSCEC and BMLP (the “January 22 BMLP Letter”) that identified the remaining areas of dispute between the parties. (*See* Kaplan Cert. Ex. F.) The January 22 BMLP Letter represents that BMLP would “reserve its rights” on requests including those covering CSCEC’s organizational chart, shared services expenses, employee information (including census, activities disclosure, benefits, and reimbursements), information technology system information, and outstanding debts owed by the Debtor. (Kaplan Cert. ¶ 17.) No mention of the Rule 2004 Subpoena. (Kaplan Cert. ¶ 17.)

28. On January 22, 2025, the Court held a second discovery conference in order to address the outstanding disputes between BMLP and CSCEC Holding with respect to the DIP Document Requests. Counsel for BMLP once again, disingenuously reserved rights with respect to future discovery: “They’ve agreed, CSCEC has agreed to certain concessions and we’ve asked for, we’ve agreed to walk away from certain requests or rather, you know reserve rights for a later date and without prejudice even though it’s not a hundred percent of what we think might be appropriate at the moment.” (Kaplan Cert. Ex. E, at 5:19–24.) BMLP again made no mention of the Rule 2004 Subpoena served a week prior. (Kaplan Cert. ¶ 18.)

29. Later that day, counsel for CSCEC Holding first became aware of the Rule 2004 Subpoena. (Kaplan Cert. ¶ 19.)

30. The requests in the Rule 2004 Subpoena are duplicative of the information BMLP unsuccessfully requested in connection with the DIP Document Requests, entirely overbroad, and

a transparent attempt to engage in a fishing expedition intended to identify assets for purposes of enforcement of the NY Judgment and other related proceedings outside of this Court (including the Bahamian Liquidation Proceedings, defined below). Incredibly, many of the requests in the Rule 2004 Subpoena seek information completely unconnected to estate assets, instead concerning documents, transactions, and agreements between CSCEC Holding and 100 non-debtor entities (the “Non-Debtor Entities”) and 20 non-debtor related persons (the “Non-Debtor Individuals,” and together with the Non-Debtor Entities, the “Non-Debtor Affiliates”). Among other things, the Rule 2004 Subpoena seeks:

- all documents and communications concerning any lending agreements (and the use of proceeds thereunder) to which CSCEC Holding is a party (Request Nos. 21 and 24);
- all documents and communications concerning any proposal to extend financing (Request No. 28);
- CSCEC Holding’s audited and unaudited financial statements (Request Nos. 6 and 7);
- all board minutes and resolutions of CSCEC Holding and the Non-Debtor Entities (Request No. 9);
- information on any debts owed by the Debtor to CSCEC Holding (Request No. 20);
- all documents and communications regarding CSCEC’s ownership and management, and the ownership and management of any CSCEC affiliate (Request Nos. 14 and 15);
- all documents and communications concerning the valuation of all of CSCEC Holding’s assets (Request No. 26);
- all forecasts and projections relating to CSCEC Holding’s financial condition and future performance (Request No. 27);
- all documents and communications concerning all contracts and agreements between CSCEC Holding and Non-Debtor Affiliates (Request No. 25);
- all documents concerning CSCEC Holding’s tax filings and tax returns (Request No. 8); and
- all transfers made by CSCEC Holding to any Non-Debtor Entities or to any trusts (Request Nos. 12 and 13.)

31. On January 23, 2025, ten days after serving its Rule 2004 Subpoena, BMLP filed the *Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner* [Docket No. 88] (the “Examiner Motion”), adding a fourth pending proceeding to the roster. Rather than

identifying potential causes of action that the Debtor's estate may hold, the Examiner Motion focuses on the allegations in the Baha Mar Litigation and is aimed at assisting BMLP with collecting on the NY Judgment. Indeed, the first topic that BMLP requests an examiner "to investigate and report on" is "the historical and ongoing relationship, including any conflicts of interest, between CCA and its Non-Debtor Affiliates (including but not limited to CSCEC Holding and CSCEC)." (Examiner Motion ¶ 46.)

32. Yesterday, January 28, 2025, nearly two weeks after serving the Rule 2004 Subpoena, BMLP filed a belated *Notice of Subpoenas for Rule 2004 Examinations* [Docket No. 100] regarding the Rule 2004 Subpoena served on CSCEC Holding and 71 other Rule 2004 subpoenas that BMLP issued.

C. The Bahamian Liquidation Proceedings.

33. On January 15, 2025, BMLP also filed winding-up petitions in the Supreme Court of the Bahamas, seeking the orderly liquidation of the Non-Debtor Baha Mar Defendants (the "Bahamian Liquidation Proceedings"). BMLP has requested the appointment of liquidators to oversee the winding-up process. It intends to ask the Bahamian courts to take custody of the companies' assets, and investigate any potential financial misconduct or other wrongdoing by the Non-Debtor Baha Mar Defendants.³ CSCEC Holding is not a party to the Bahamian Liquidation Proceedings.

³ Natario McKenzie, *Izmirlian files winding up petitions for the liquidation of CCA Bahamas and CSCEC over \$1.6B judgement [sic]*, EYEWITNESS NEWS (January 14, 2025, 12:55 PM), <https://ewnews.com/izmirlian-files-winding-up-petitions-for-the-liquidation-of-cca-bahamas-and-cscec-over-1-6b-judgement/>. The docket of the Bahamian Liquidation Proceedings is not publicly accessible.

LEGAL ARGUMENT

A. BMLP Cannot Meet its Burden of Demonstrating Good Cause for the Rule 2004 Subpoena.

34. BMLP cannot use Rule 2004 to engage in a fishing expedition in an effort to support its position in pending proceedings both in this Court and in courts in New York and the Bahamas. Local Bankruptcy Rule 2004-1 allows a party in interest to serve a Rule 2004 subpoena without first filing a motion. D.N.J. LBR 2004-1(b). However, “[o]nce a motion to quash a subpoena is filed, the subpoena’s issuer must show good cause for the Rule 2004 examination.” *In re Lev*, No. 05-35847, 2008 WL 207523, at *4 (Bankr. D.N.J. Jan. 23, 2008) (citing *In re Eagle–Picher Indus., Inc.*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994)). Once good cause is established, the burden shifts back to the objecting party to demonstrate the impropriety of the Rule 2004 examination. *Id.* (citing *In re Buick*, 174 B.R. 299, 304 (Bankr. D. Colo. 1994)). As described below, BMLP cannot show good cause for its Rule 2004 Subpoena to CSCEC Holdings. Even if BMLP were able to show good cause, there are numerous reasons why the Rule 2004 Subpoena is improper.

B. The Pending Proceeding Rule Bars BMLP from Using Rule 2004 Discovery.

35. Under appropriate circumstances, Rule 2004 permits broad examinations. However, Rule 2004 discovery is not limitless. In the first instance, a party’s ability to use the broad investigative tools of Rule 2004 at all is limited by the pending proceeding rule. *See In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 455–56 (Bankr. D.N.J. 1998). Where there is a contested matter in the chapter 11 case or a pending litigation in another forum, the parties to that proceeding cannot take advantage of the liberal provisions of Rule 2004 to sidestep the rules of discovery that otherwise apply in the pending proceeding. *See id.*; *In re Washington Mut., Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (quoting *In re Enron Corp.*, 281 B.R. 836, 842 (Bankr. S.D.N.Y. 2002)) (“[C]ourts have also recognized that Rule 2004 examinations may be inappropriate ‘where the

party requesting the Rule 2004 examination could benefit their pending litigation outside of the bankruptcy court against the proposed Rule 2004 examinee.”). The pending proceeding rule exists because a Rule 2004 examination is akin to a “fishing expedition” that lacks the procedural safeguards of the rules of civil procedure, which “the party requesting the exam is likely seeking to avoid.” *2435 Plainfield Ave*, 223 B.R. at 456 (quoting William L. Norton, Jr., *6 Norton Bankruptcy Law & Practice* § 141:35 (2d ed. 1998)).

36. BMLP seeks the documents sought in the Rule 2004 Subpoena not because it is investigating the Debtor’s acts, conduct, property, liabilities, or financial condition strictly in connection with the chapter 11 case, but because it wants to use those documents to enforce and collect on the NY Judgment. As discussed above, BMLP has repeatedly referenced the NY Judgment in connection with the discovery it has sought in this case, forcing the parties to seek Court intervention regarding the protective order because BMLP demanded the unfettered ability to use documents produced in this case in connection with the NY Judgment and related proceedings. (*See Kaplan Cert.* ¶ 20; *Ex. D*, at 19:1–7.) This is not a proper purpose for Rule 2004 discovery. *See, e.g., Enron*, 281 B.R. at 842 (denying Rule 2004 discovery that a party sought for use in a pending securities class action); *cf. Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405, 410 (N.D.N.Y. 1973) (provisions restricting the use of discovery to instant proceedings are appropriate where “the discovering party is exploiting the instant litigation solely to assist in other litigation before a foreign forum.”); *see also In re Barnes*, 365 B.R. 1, 6 (Bankr. D.D.C. 2007) (finding that discovery to enforce a judgment should be conducted under Federal Rule of Civil Procedure 69, not Bankruptcy Rule 2004).

37. The pending proceeding rule has even more significant force where the discovery is sought for use against non-debtors or parties who otherwise have no input on a producing party’s

productions. The NY Judgment is not even against CSCEC Holding; only the Debtor and two non-debtor entities organized in the Bahamas are subject to the NY Judgment. If BMLP wanted to seek to pursue claims against CSCEC Holding, the place to do so was in the Baha Mar Litigation—the proper forum, where BMLP could have sought discovery on that issue. Instead, BMLP (apparently frustrated by the filing of the chapter 11 case and the automatic stay) now seeks broad-ranging discovery under the auspices of a defective Rule 2004 Subpoena in order to try to expand the reach of the NY Judgment to other parties. For example, among other requests, the Rule 2004 Subpoena seeks CSCEC Holding’s audited and unaudited financial statements (Request Nos. 6 and 7), all board minutes and resolutions of CSCEC Holding and the Non-Debtor Entities (Request No. 9), all documents and communications regarding CSCEC’s ownership and management, and the ownership and management of any CSCEC Affiliate (as defined therein) (Request Nos. 14 and 15), all documents and communications concerning the valuation of all of CSCEC Holding’s assets (Request No. 26), all forecasts and projections relating to CSCEC Holding’s financial condition and future performance (Request No. 27), and all documents concerning CSCEC Holding’s tax filings and tax returns (Request No. 8). None of these requests bear any connection to the chapter 11 case or the proper purposes of Rule 2004 discovery. Instead, all of these requests are an inappropriate fishing expedition aimed at obtaining all information on the assets and financials of CSCEC Holding and over 100 other affiliates including the Non-Debtor Baha Mar Defendants, in a transparent attempt to collect on the NY Judgment from parties other than the Debtor, outside of the chapter 11 case, even though the NY Judgment is not final and is currently on appeal.

38. BMLP also previously sought some of the information in the Rule 2004 Subpoena in connection with the DIP Motion, a contested matter in which the Federal Rules of Civil

Procedure govern discovery. For example, both the DIP Document Requests and the Rule 2004 Subpoena seek CSCEC Holding's audited and unaudited financial statements, all board minutes, board consents/resolutions, shareholder resolutions, documents sufficient to show all related party transactions with the Debtor, and information on any debts owed by the Debtor to CSCEC Holding. (*Compare* Ex. C, Subpoena Request Nos. 6 & 7, *with* Ex. B, Doc. Request Nos. 3 & 4; *compare* Ex. C, Subpoena Request No. 9, *with* Ex. B, Doc. Request No. 6; *compare* Ex. C, Subpoena Request No. 10, *with* Ex. B, Doc. Request No. 7; *compare* Ex. C Subpoena Request No. 20, *with* Ex. B, Doc. Request No. 30.)

39. Certain requests in the 2004 Subpoena also appear to be a thinly veiled backdoor attempt to get additional DIP-related discovery.⁴ (*See* Ex C, Subpoena Request Nos. 21, 24, 28) (requesting documents and communications concerning any lending agreements (and the use of proceeds thereunder) to which CSCEC Holding is a party, and documents and communications concerning any proposal to extend financing). Discovery on the DIP Motion, a pending proceeding, was significantly contested and required court intervention. BMLP is not entitled to a second chance to seek the same (or additional) discovery for purposes of the DIP Motion or any other pending proceeding through the Rule 2004 Subpoena.

40. The two non-debtor entities subject to the NY Judgment are Bahamian companies and BMLP has already filed a petition in the Bahamas to liquidate them. BMLP thus has another forum (of its own choosing) in which it could seek discovery regarding those entities, which—unlike CSCEC Holding—are actually parties to the NY Judgment.

41. Finally, the Examiner Motion created yet another pending proceeding in this Court. Through the Examiner Motion, BMLP seeks appointment of an examiner to investigate a number

⁴ The Rule 2004 Subpoena was returnable on the original date of the hearing on the DIP Motion.

of supposed issues, most of which overlap with the blunderbuss scope of the Rule 2004 Subpoena.⁵ The Rule 2004 Subpoena, at a minimum, is premature while the Examiner Motion is pending, and may become entirely moot if the Court grants any relief on the Examiner Motion. In any event, the contested matter created by the Examiner Motion invokes the pending proceeding rule yet again and precludes BMLP from pursuing Rule 2004 discovery.

42. In total, there are at least *four* pending proceedings in which BMLP could have sought or can seek appropriate discovery. The pending proceeding rule requires BMLP to follow the discovery rules of the for a in which these proceedings are pending, rather than seeking to exploit CSCEC Holding and this Court under the pretext of the defective Rule 2004 Subpoena.

C. There is No Proper Purpose for the Rule 2004 Subpoena.

43. The Rule 2004 Subpoena seeks documents well outside the scope of an examination permitted by Rule 2004, which, in pertinent part, “may relate *only* to: *the debtor’s* acts, conduct, or property; (B) *the debtor’s* liabilities and financial condition; and (C) any matter that may affect the administration of the *debtor’s* estate.” Fed. R. Bankr. P. 2004(b)(1) (emphasis added). The Rule 2004 Subpoena does not seek information about the Debtor. Rather, it seeks (i) information that BMLP did not or could not appropriately seek or obtain in its DIP Discovery Requests, and (ii) as BMLP has openly acknowledged, information about CSCEC Holding, the Non-Debtor Baha Mar Defendants, and other non-debtor affiliates to help BMLP execute on and try to expand the scope of the NY Judgment in the Baha Mar Litigation.

44. In this District, parties may serve Rule 2004 subpoenas without first filing a motion. D.N.J. LBR 2004-1(b). Thus, BMLP has not yet directly stated its motives for seeking a Rule

⁵ On brand with every other action BMLP has taken in this chapter 11 case, the Examiner Motion seeks appointment of an examiner with a scope far in excess of anything reasonably tailored to the circumstances of the case. CSCEC Holding reserves all rights in connection with the Examiner Motion.

2004 examination. However, BMLP's conduct in the chapter 11 case has clearly demonstrated its intentions to end-run contested matter discovery in connection with the DIP Motion and seek information to enforce the NY Judgment outside of the chapter 11 case. The Examiner Motion makes clear that the discovery sought relates not to anything BMLP wishes to investigate with regard to the acts, liabilities, conduct, property, or financial condition of the Debtor, but instead to the Baha Mar Litigation and to collection of the NY Judgment in venues other than this Court against parties other than the Debtor. The Examiner Motion identifies no transactions or acts of the Debtor that BMLP seeks to have investigated for purposes of determining, for example, whether causes of action exist for fraudulent transfer or breach of fiduciary duty. Instead, BMLP focuses solely on its own allegations and the state court's findings in the Baha Mar Litigation (none of which involved CSCEC Holding). The focal point of the Examiner Motion is the relationship between CCA and the non-debtor entities. The first subject on which BMLP seeks investigation is "the historical and ongoing relationship, including any conflicts of interest, between CCA and its Non-Debtor Affiliates (including but not limited to CSCEC Holding and CSCEC)." (Examiner Motion ¶ 46.) Even if the Rule 2004 Subpoena were appropriate in light of the pendency of the Examiner Motion, that motion further demonstrates that BMLP simply hopes to uncover information that it can use to collect on the NY Judgment against other, non-debtor entities.

45. The Rule 2004 Subpoena here is akin to the document requests at issue in *In re Mathews*, which were directed at non-debtor trusts and sought information relating to the assets and administration of the trusts, not any permissible purpose under Rule 2004. *In re Mathews*, No. 18-mc-153-LPS, 2018 WL 5024167, at *3 (D. Del. Oct. 17, 2018). The *Mathews* court quashed the Rule 2004 subpoenas at issue in that case after finding no nexus to the debtor or her

estate, because the subpoenas sought “disclosure of private third-party personal and financial information not related to the bankruptcy case. *Id.* (citing *In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985)) (“It is clear that Rule 2004 may not be used as a device to launch into a wholesale investigation of a non-debtor’s private business affairs.”). If Rule 2004 discovery was permitted in a situation like this, it would transform Rule 2004 into a “proceeding supplemental, which creditors could use in an effort to collect the amounts due [to] them outside the bankruptcy proceeding,” an expansion that courts have routinely rejected. *In re J & R Trucking, Inc.*, 431 B.R. 818, 821 (Bankr. N.D. Ind. 2010).

46. Additionally, any Rule 2004 examination is premature while the Examiner Motion is pending. Through the Examiner Motion, BMLP seeks appointment of an outside party to evaluate the exact same information it seeks through the Rule 2004 Subpoena. If the Examiner Motion is granted to the extent BMLP requests, a simultaneous Rule 2004 examination conducted by BMLP would result in duplicative discovery and waste the parties’ time and resources. While an investigation by an examiner would not itself preclude the use of Rule 2004 by other parties, “an ongoing investigation is a factor to be considered when there are other clear indications that the motivation for the request is not for the purpose of investigating matters which may affect the administration of the bankruptcy estate, but to advance the non-bankruptcy agenda of the applicant.” *Enron*, 281 B.R. at 843 n.7. CSCEC Holding should not have to respond to the improper Rule 2004 Subpoena while the Examiner Motion is pending. If an examiner is appointed, the examiner will conduct an investigation to maximize the value of the Debtor’s estate, rather than the self-serving investigation BMLP wishes to conduct to further its purely parochial interests against various non-debtors in the Baha Mar Litigation.

D. BMLP's Failure to Provide Prior or Simultaneous Notice of the Rule 2004 Subpoena and Lack of Candor are a Further Basis to Quash the Subpoena.

47. BMLP's true intent is demonstrated by its lack of candor and the timing of its Rule 2004 Subpoena. As noted above, BMLP served the Rule 2004 Subpoena solely through CSCEC Holding's registered agent, neglecting to advise counsel or the Court of the subpoena simultaneously.

48. BMLP also failed to provide the required notice of the Rule 2004 Subpoena to the parties. Subpoenas served under Rule 2004 must comply with the requirements of Bankruptcy Rule 9016 and Federal Rule 45. *See* Fed. R. Bankr. P. 2004(c) (“[A]n entity may be compelled under Rule 9016 to attend and produce documents or electronically stored information.”); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 279 (3d Cir. 2013) (citations omitted) (“[A] party that serves a subpoena for a Rule 2004 examination and document production may compel performance under Bankruptcy Rule 9016 and Civil Rule 45. . . . To be valid, a subpoena must comply with Civil Rule 45's requirements.”).

49. Federal Rule 45(a)(4) requires: “[i]f the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then *before* it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.” Fed. R. Civ. P. 45(a)(4) (emphasis added). The Advisory Committee Notes state that “[t]he purpose of such notice is to afford other parties an opportunity to object to the production or inspection.” Fed. R. Civ. P. 45(b)(1) advisory committee's note to 1991 amendment. As a district court in this Circuit has noted, “[w]ith this key protection, opposing parties can timely seek judicial relief before a third party quickly responds. Litigation by ambush, while easier in the short term, only multiplies proceedings.” *Kremsky v. Kremsky*, No. CV 16-4474, 2017 WL 30003, at *1 (E.D. Pa. Jan. 3, 2017). This concern is magnified where, as here,

the applicable local rules permit service of a Rule 2004 subpoena without the gating requirement of a motion to authorize issuance of a subpoena under Rule 2004. BMLP's failure to provide the required prior (or even simultaneous) notice to other parties is a further basis upon which to quash the Rule 2004 Subpoena. *See id.* at 3–4 (quashing subpoena due to the failure to provide notice to opposing parties before serving the subpoena).

50. Courts find the notice requirement so important that they will sanction parties that fail to follow it. *See In re Asbestos Prods. Liab. Litig. (No. VI)*, 256 F.R.D. 151, 158 (E.D. Pa. 2009) (“Parties should note, however, the standing order of the court that a party issuing a subpoena to a third party must send notice to all parties before, or at least contemporaneously with, the issuance of the subpoena or sanctions will be levied against the violating party, including the possible exclusion of evidence collected as a result of a breach of the notice provision of Rule 45.”).⁶

51. Despite participating in at least three meet-and-confer calls and two discovery conferences on the record before the Court with respect to the DIP Document Requests, counsel for BMLP never mentioned that the Rule 2004 Subpoena had already been served on CSCEC Holding. Instead, counsel for BMLP repeatedly hid the ball. For instance, during the January 17, 2025 chambers conference, BMLP's counsel stated that BMLP was “reserving rights” under Rule 2004, while simultaneously failing to disclose that the Rule 2004 Subpoena *had already been served*, unbeknownst to any of the other parties. (Kaplan Cert. Ex. D, at 31:8–10.) Against the backdrop of the numerous other issues discussed above, the Court should not countenance BMLP's lack of candor regarding the Rule 2004 Subpoena or its efforts at litigation by ambush.⁷

⁶ CSCEC Holding reserves the right to seek such relief if the Court does not fully quash the Rule 2004 Subpoena.

⁷ “A lawyer shall not knowingly . . . fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal.” N.J. RPC 3.3(a)(5).

NOTICE

52. Notice of the Motion to Quash has been provided to: (a) counsel for the Debtor (Debevoise & Plimpton LLP, Attn: M. Natasha Labovitz, Esq., Sidney P. Levinson, Esq., Elie J. Worenklein, Esq., and Rory B. Heller, Esq., and Cole Schotz P.C., Attn: Michael D. Sirota, Esq., Warren A. Usatine, Esq., Felice R. Yudkin, Esq., and Ryan T. Jereck, Esq.); (b) the Office of the U.S. Trustee for the District of New Jersey (Attn: Fran B. Steele, Esq. and Peter J. D'Auria, Esq.); (c) counsel for BMLP (Gibbons P.C., Attn: Robert K. Malone, Esq. and Brett S. Theisen, Esq.); via first class mail, postage pre-paid and electronic mail and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002 electronically via the Court's CM/ECF system. Accordingly, no further notice of the Motion to Quash is necessary.

NO PRIOR REQUEST

53. No prior request for the relief sought herein has been made to this Court or any other court.

RESERVATION OF RIGHTS

54. In the event the Motion to Quash is not granted in full or in part, CSCEC Holding reserves all rights to respond and/or object to the Rule 2004 Subpoena, and to seek a protective order.

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CONCLUSION

WHEREFORE, CSCEC Holding respectfully requests that the Court grant this Motion to Quash, quash the Rule 2004 Subpoena in its entirety, enter CSCEC Holding's proposed form of order, and grant such other and further relief against BMLP as is appropriate under the circumstances.

Respectfully submitted,

Dated: January 29, 2025

/s/ Andrew Behlmann

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Counsel to CSCEC Holding Company, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1

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Counsel to CSCEC Holding Company, Inc.

In re:

CCA Construction, Inc.,¹

Debtor.

Case No. 24-22548 (CMG)

Chapter 11

Judge: Christine M. Gravelle

**CERTIFICATION OF MICHAEL A. KAPLAN IN SUPPORT OF MOTION TO QUASH
SUBPOENA ISSUED BY BML PROPERTIES, LTD.**

Pursuant to 28 U.S.C. § 1746, I, Michael A. Kaplan, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a partner at the law firm of Lowenstein Sandler LLP, counsel in the above-captioned chapter 11 case to CSCEC Holding Company, Inc. ("CSCEC Holding").

¹ The last four digits of CCA Construction, Inc.'s ("CCA" or the "Debtor") federal tax identification number are 4862. CCA's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

2. I submit this certification in support of *CSCEC Holding Company Inc. 's Motion to Quash Subpoena issued by BML Properties, Ltd.* (the "Motion to Quash").²

3. Annexed hereto as Exhibit A is a true and correct copy of the Supreme Court of the State of New York Judgment in favor of BMLP and against CCA and two non-debtor affiliates, CSCEC (Bahamas), Ltd. and CCA Bahamas, Ltd. dated October 31, 2024.

4. Annexed hereto as Exhibit B is a true and correct copy of *BML Properties, Ltd. 's Amended First Requests for Production of Documents from CSCEC Holding Company, Inc. Pursuant to Federal Rules of Civil Procedure 26 and 34* served on January 13, 2025.

5. Annexed hereto as Exhibit C is a true and correct copy of the *Subpoena for Rule 2004 Examination* BMLP served on CSCEC Holding dated January 13, 2022.

6. Annexed hereto as Exhibit D is a true and correct copy of referenced excerpts of the *Transcript of Telephone Conference before the Honorable Christine M. Gravelle* on January 17, 2025.

7. Annexed hereto as Exhibit E is a true and correct copy of the *Transcript of Telephone Conference before the Honorable Christine M. Gravelle* on January 22, 2025.

8. Annexed hereto as Exhibit F is a true and correct copy of the January 22 Letter from BMLP to the Honorable Christine M. Gravelle dated January 22, 2025.

9. On January 13, 2025, the Debtors, CSCEC Holding, and BMLP held a meet-and-confer call with respect to the Initial DIP Document Requests. BMLP's counsel acknowledged that some of its document requests were not relevant to the DIP Motion and were more appropriate for Rule 2004 discovery, but declined to specify which requests they believed were relevant to the DIP Motion. It became clear in this initial meet-and-confer session and in a following email exchange that a key dispute among the parties would relate to BMLP's desire to use any materials produced in chapter 11 discovery for unrelated purposes in connection with the Baha Mar Litigation and any related proceedings.

² Capitalized terms used in this Certification but not defined herein shall have the meanings given to them in the Motion to Quash.

10. Later that day, BMLP served its *Amended First Requests for Production of Documents from CSCEC Holding Company, Inc.* in connection with the DIP Motion on January 13, 2025. (*See* Ex. B.)

11. In connection with the ongoing discovery discussions between the Debtors, BMLP, and CSCEC Holding, the Debtor circulated a proposed protective order providing that discovery materials “shall be used solely in connection with these chapter 11 cases (including any adversary proceeding or contested matter in these chapter 11 cases) and not for any other legal, business, commercial, competitive, personal, or other purpose.” BMLP objected to the “use restriction” language, insisting instead on a much broader provision that would allow BMLP to use discovery in any other proceeding, including its enforcement efforts against the Non-Debtor Baha Mar Defendants.

12. Despite CSCEC Holding being represented by counsel in this case, BMLP served the Rule 2004 Subpoena on CSCEC Holding through its registered agent, Corporation Services Company, on January 15, 2025. (*See* Ex. C.) The Rule 2004 Subpoena is dated January 13, 2025, but BMLP made no attempt to inform counsel to CSCEC Holding about the subpoena, or to ask counsel to accept service. Nor did BMLP provide notice of the Rule 2004 Subpoena to any parties in the case prior to or simultaneously with its service, or even mention it at all. CSCEC Holding’s counsel only became aware of the Rule 2004 Subpoena on January 22, 2025.

13. Following service of CSCEC Holding’s written responses and objections to the DIP Document Requests, CSCEC Holding and BMLP (along with the Debtor) attended a second meet-and-confer session on January 16, 2025 to discuss various outstanding discovery disputes. During that meeting, counsel for BMLP stated that it would hold off on certain requests for purposes of DIP Motion discovery, but represented BMLP would likely make those requests under Rule 2004. Counsel neglected to mention that the Rule 2004 Subpoena *had already been served*.

14. On January 17, 2025, the Court held a discovery conference to discuss, among other items, entry of the proposed protective order. BMLP’s counter proposed language and its express statements on the record made clear that it sought to use documents produced in discovery in

connection with its efforts to enforce the Baha Mar Litigation NY Judgment against parties other than the Debtor and outside of the chapter 11 case: “MR. THEISEN: We’re not saying there should be no restrictions. We are agreeing to limit our use of any documents to *proceedings that are directly related to enforcing our rights arising out of that New York Judgment*.” (See Ex. D at 19:1–7 (emphasis added).) The Court rejected this position and required that BMLP seek Court approval prior to using protective order materials in connection with any proceeding in furtherance of enforcing, executing, or otherwise satisfying the Baha Mar Judgment and/or BMLP’s creditor rights. BMLP made no mention of the Rule 2004 Subpoena during the January 17 chambers conference.

15. During the January 17th conference, the parties also discussed other contested discovery in connection with the DIP Motion, including BMLP’s request for board minutes. While discussing that request, counsel for BMLP stated, “I’m not saying that those things aren’t proper under Rule 2004. But with this, and you know, we would reserve rights there.” (*Id.* at 31:8–10). Yet again, no mention of the fact that the Rule 2004 Subpoena had been served two days earlier. Despite having served the Rule 2004 Subpoena already on CSCEC Holding’s registered agent on January 15, 2025, BMLP’s counsel did not even mention the existence of the subpoena to the Court, instead stating BMLP would “reserve rights” regarding Rule 2004 discovery.

16. The parties once again met and conferred with respect to the DIP Document Requests on January 21, 2025. Although counsel for BMLP mentioned several times that rights would be reserved for Rule 2004 discovery, counsel once again failed to mention that Rule 2004 discovery had already been served on CSCEC Holding’s agent nearly a week prior.

17. In preparation for a second discovery conference with the Court regarding the DIP Document Requests, counsel for BMLP sent a letter to the Court attaching email communications between CSCEC and BMLP (the “January 22 BMLP Letter”) that identified the remaining areas of dispute between the parties. (See Ex. F.) The January 22 BMLP Letter represents that BMLP would “reserve its rights” on requests including those covering CSCEC’s organizational chart, shared services expenses, employee information (including census, activities disclosure, benefits,

and reimbursements), information technology system information, and outstanding debts owed by the Debtor. No mention of the Rule 2004 Subpoena.

18. On January 22, 2025, the Court held a second discovery conference in order to address the outstanding disputes between BMLP and CSCEC Holding with respect to the DIP Document Requests. Counsel for BMLP once again, disingenuously reserved rights with respect to future discovery: “They’ve agreed, CSCEC has agreed to certain concessions and we’ve asked for, we’ve agreed to walk away from certain requests or rather, you know reserve rights for a later date and without prejudice even though it’s not a hundred percent of what we think might be appropriate at the moment.” (Ex. E at 5:19-24). BMLP again made no mention of the Rule 2004 Subpoena served a week prior.

19. Later that day, counsel for CSCEC Holding first became aware of the Rule 2004 Subpoena.

20. BMLP has repeatedly referenced the NY Judgment in connection with the discovery it has sought in this case, forcing the parties to seek Court intervention regarding the protective order because BMLP demanded the unfettered ability to use documents produced in this case in connection with the NY Judgment and related proceedings. (*See* Ex. D at 19:1–7.)

21. I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge, information and belief, and I understand that I am subject to punishment if any of the foregoing statements made by me are willfully false.

Dated: January 29, 2025

LOWENSTEIN SANDLER LLP

/s/ Michael A. Kaplan

Michael A. Kaplan, Esq.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

BML PROPERTIES LTD.,

Plaintiff,

Index No. 657550/2017
(Andrew S. Borrok, J.S.C.)

v.

CHINA CONSTRUCTION AMERICA, INC., NOW
KNOWN AS CCA CONSTRUCTION INC., CSCEC
BAHAMAS, LTD., CCA BAHAMAS LTD., and
DOES 1-10,

JUDGMENT

Defendants.

-----X

CSCEC (BAHAMAS), LTD.,

Defendant/Counterclaim-
Plaintiff,

v.

BML PROPERTIES LTD.,

Plaintiff/Counterclaim-
Defendant.

-----X

Plaintiff BML Properties Ltd. ("Plaintiff" or "BMLP"), having commenced this action on December 26, 2017, in the Commercial Division of the Supreme Court of New York, New York County against Defendants China Construction America, Inc., now known as CCA Construction, Inc., CSCEC Bahamas, Ltd., and CCA Bahamas Ltd. (collectively "Defendants" or "CCA") by filing a Summons and Complaint ("Complaint") (NYSCEF No. 1); and CCA having filed an Answer to BMLP's Complaint on May 13, 2019 (NYSCEF No. 161).

This matter having been tried in a bench-trial over a two-week period beginning on August 1, 2024 and ending on August 15, 2024; and BMLP, having appeared by its attorneys, Susman Godfrey LLP and Dorf Nelson & Zauderer LLP, and Defendants, having appeared by their

attorneys, Debevoise & Plimpton LLP; and this Court having heard the testimony and received evidence and after due deliberation thereon, issued a Decision After Trial, dated October 18, 2024 and entered in the office of the Clerk of the Supreme Court, New York County, on October 21, 2024 (NYSCEF No. 755), ordering and adjudging that BMLP is entitled to judgment against all Defendants, jointly and severally, in the amount of \$845,000,000, exclusive of interest, and attorneys' fees, costs and disbursements; and that Defendants' counterclaims are dismissed. Pursuant to CPLR 5001, 5002 and 5004, prejudgment interest at nine percent (9%) per annum simple interest shall be calculated for the following periods based on the following amounts: (1) for the period of May 1, 2014 through March 31, 2015, applied to BMLP's initial \$830 million out-of-pocket investment; and (2) for the period April 1, 2015 through the date of judgment for the entire \$845 million amount.

IT IS HEREBY ADJUDGED that Judgment is entered in favor of Plaintiff BML Properties, Ltd. with an address at Ocean Centre, Montagu Foreshore, East Bay Street, P. O. Box SS-19084, Nassau, New Providence, The Bahamas, and jointly and severally against Defendants CCA Construction, Inc., with an address at 445 South Street, Suite 310, Morristown, NJ 07960; CSCEC Bahamas, Ltd., with a last known address at Caves Corporate Centre, Building A Blake Road and West Bay Street, 1st Flr. P.O. Box N-3944, Nassau, Bahamas, c/o CCA Construction Inc., 445 South Street, Suite 310, Morristown, NJ 07960; and CCA Bahamas Ltd., with a last known address at Caves Corporate Centre, Building A Blake Road and West Bay Street, 1st Flr. P.O. Box N-3944, Nassau, Bahamas, c/o CCA Construction Inc., 445 South Street, Suite 310, Morristown, NJ 07960, in a sum of \$845,000,000, with prejudgment interest at the rate of nine percent (9%) per annum on the sum of \$830 million for the period from May 1, 2014 through March 31, 2015 in the amount of \$ 68,560,273.97; and at the rate of nine percent (9%) per

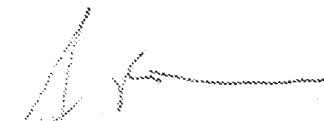
annum on the sum of \$845 million for the period from April 1, 2015 through the date hereof in the amount of \$ 729,038,219.18, so that the amount of the judgment in favor of Plaintiff BMLP and against Defendants, jointly and severally, with interest, is for a total sum of \$ 1,642,598,493.15, and Plaintiff BMLP shall have judgment and immediate execution on the judgment therefor.

IT IS HEREBY ADJUDGED that interest accrue as of the date of this judgment on the total sum of \$ 1,642,598,493.15 at the rate of 9% pursuant to CPLR 5003 and 5004.

IT IS HEREBY ADJUDGED that Defendants' counterclaims against Plaintiff are dismissed in their entirety.

Plaintiff waives costs. The Clerk is directed to enter judgment accordingly.

Judgment signed this 26th day of October, 2024


Hon. Andrew Borrok, J.S.C.
HON. ANDREW BORROK
J.S.C.




Clerk

657550/2017

Judgment
Attorney for Judgment Creditor

SUSMAN GODFREY, LLP
One Manhattan West
50th Floor
New York, NY 10001
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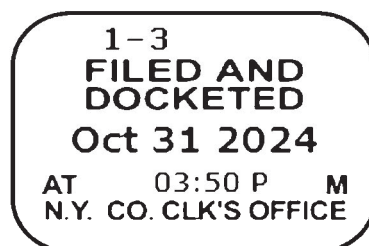


EXHIBIT B

GIBBONS P.C.

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Counsel for BML Properties, Ltd.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:	(Hon. Christine M. Gravelle)
CCA Construction, Inc., ¹	Chapter 11
Debtor.	Case No. 24-22548 (CMG)

**BML PROPERTIES, LTD.’S *AMENDED* FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS FROM CSCEC HOLDING COMPANY, INC. PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 26 AND 34**

PLEASE TAKE NOTICE that the *Debtor’s Motion for Entry of Interim and Final Order* (i) *Authorizing the Debtor to Obtain Postpetition Financing*; (II) *Granting Liens and Superpriority Administrative Expense Claims*; (III) *Modifying the Automatic Stay*; and (IV) *Granting Related Relief* [ECF No. 4] (the “DIP Motion”) is a contested matter pursuant to Federal Rule of Bankruptcy Procedure 9014 (the “Bankruptcy Rules”); and

PLEASE TAKE FURTHER NOTICE that, pursuant to Federal Rules of Civil Procedure 26 and 34, made applicable to this proceeding by Bankruptcy Rules 7026, 7034 and 9014, BML

¹ The last four digits of CCA’s federal tax identification number are 4862. CCA’s service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

Properties, Ltd. (“BML Properties”), by and through undersigned counsel, hereby demands that CSCEC Holding Company, Inc. produce and/or make available for inspection the documents and things described on Exhibit A hereto to the offices of Gibbons P.C., One Gateway Center, Newark, New Jersey 07102, no later than **5:00 p.m. (ET) on January 16, 2025**.

January 13, 2025
Newark, New Jersey

/s/ Brett S. Theisen
Robert K. Malone, Esq.
Brett S. Theisen, Esq.
Kyle P. McEvilly, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Telephone: (973) 596-4500
Email: rmalone@gibbonslaw.com
btheisen@gibbonslaw.com
kmcevilly@gibbonslaw.com

Counsel for BML Properties, Ltd.

EXHIBIT A

DEFINITIONS

1. “**Blum Declaration**” means the *Declaration of Evan Blum in Support of First Day Pleadings and Debtor in Possession Financing* filed in this action.

2. “**Communication**” means any transmittal of information in the form of facts, ideas, inquiries, or otherwise. A document request for communications calls for production of correspondence, faxes, electronic mail, all attachments and enclosures thereto, computer tapes, discs, telephone tape recordings, recordings of any other type in any medium of written or oral communications (including but not limited to text or other SMS messages sent over cellular networks and messages sent over the Internet using applications such as WhatsApp, Signal, iMessage, Facebook Messenger, Twitter (via direct message), Slack, Google Chat, or the like), phone logs, message logs, and notes and memoranda of, or referring or relating to, written or oral communications.

3. “**Concerning**” means directly or indirectly, in whole or in part, constituting, evidencing, recording, reflecting, substantiating, describing, summarizing, identifying, or referring or relating to in any way.

4. “**CSCEC**” means China State Construction Engineering Corporation Limited or CSCEC, Ltd.

5. “**CSCEC Affiliate**” means CSCEC and all of its affiliates, subsidiaries, branches, predecessors, successors, assigns, managers, officers, directors, employees, agents, attorneys and any and all persons acting on behalf of any of them, as well as to any entity under its direction or control.

6. “**Debtor**” means CCA Construction Inc. along with any of its branches, predecessors, successors, assigns, managers, officers, directors, employees, agents, attorneys and any and all

persons acting on behalf of any of them, as well as to any subsidiary or affiliate under its direction or control and/or from which it has the right or the practical ability to obtain information, records or documents of any kind.

7. **“DIP Motion”** means the *Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* filed in this action.

8. **“Document(s)”** includes, without limitation, all drafts; communications; correspondence; memoranda; records; reports; books; reports and/or summaries of conversations or interviews; diaries; graphs; charts; diagrams; tables; photographs; recordings; tapes; microfilms; minutes; summaries, reports and records of meetings or conferences; records and reports of consultants; press releases; stenographic, handwritten or other notes; checks, front and back; check vouchers, check stubs or receipts; wire transfer requests, approvals, orders and confirmations; tape data sheets or data processing cards or discs or any other written, printed, typewritten or otherwise recorded matter, however produced, reproduced, whether or not now in existence; any paper or writing including files, contracts, correspondence, telegrams, agreements, letters, notes, manuals, forms, brochures, drawings, and other data or data compilation of any sort, stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form; and electronically stored information, including without limitation any information that is generated, received, processed and recorded by computers and other electronic devices including without limitation any voicemails or other audio files, any video files and images and any text messages; internal or external web sites; output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets,

database files, charts, graphs, outlines, electronic mail, instant messages, and all miscellaneous media on which they reside and regardless whether said electronic data exists in an active file, an archive file, a deleted file, or file fragment; and activity listings of electronic mail receipts and/or transmittals; and any and all items stored on computer memories, flash drives, hard disks, floppy disks, CD-ROM, DVD, magnetic tape, microfiche, or on any other media for digital data storage or transmittal such as but not limited to any mobile device, or personal digital assistant. A draft or non-identical copy of any document, whether due to the addition of marginalia or other change, is a separate document within the meaning of this term. Where the electronic and hard copy versions of any document are separate documents per this definition, both the electronic and hard copy versions should be produced.

9. **“Electronically Stored Information” (“ESI”)** includes without limitation:

- (1) information that is generated, received, processed and recorded by computers and other electronic devices including without limitation voicemail;
- (2) internal or external web sites;
- (3) output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets, database files, charts, graphs, outlines, electronic mail, instant messenger programs, bulletin board programs, operating systems, source code, PRF files, PRC files, batch files, ASCII files, and all miscellaneous media on which they reside and regardless whether said electronic data exists in an active file, an archive file, a deleted file, or file fragment;
- (4) activity listings of electronic mail receipts and/or transmittals;

(5) and any and all items stored on computer memories, flash drives, hard disks, floppy disks, CD-ROM, DVD, magnetic tape, microfiche, or on any other media for digital data storage or transmittal such as but not limited to smartphone or personal digital assistant (Palm Pilot, Blackberry, iPhone, iPad, or similar device) and file folder tabs, or containers and labels appended to, or relating to, any physical storage device associated with each original or copy of all documents requested herein.

10. **“Person”** refers to, means, and includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

11. **“Relating to”** means and includes arising from, mentioning, discussing, summarizing, comprising, constituting, describing, reflecting, containing, including, referring to, depicting, connected with, embodying, evidencing, concerning, reporting or involving an act, occurrence, event, transaction, fact, thing, person or course of dealing.

12. **“You”** and **“Your”** shall mean CSCEC Holding Company, Inc. and all of its subsidiaries, branches, predecessors, successors, assigns, managers, officers, directors, employees, agents, attorneys and any and all persons acting on behalf of any of them, as well as to any entity under its direction or control and/or from which it has the right or the practical ability to obtain information, records or documents of any kind.

INSTRUCTIONS

1. This subpoena requires the production of all responsive Documents and Communications located anywhere in the world in Your possession, custody, or control, or available to You, Your employees, members, partners, accountants, agents, attorneys, auditors, or

other Persons acting on Your behalf or under any direction or control of Your agents or representatives.

2. The relevant time period for these requests is from December 22, 2023 through and including the date on which You produce Documents responsive to this subpoena.

3. These requests for production are continuing in nature, so that further and more complete and supplemental responses must be provided if You obtain further, more complete, or new information or Documents.

4. Each Document request shall be construed as being inclusive rather than exclusive. Thus, words importing the singular shall include the plural; words importing the plural shall include the singular; words importing one gender shall include both genders; the words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the Document requests inclusive; the word “all” means “any and all” and the word “any” means “any and all.”

5. All Documents and Communications produced pursuant to this subpoena are to be produced as they are kept in the usual course.

6. If a Document or Communication is redacted or not produced on the ground that it is privileged and therefore not subject to disclosure, the following information must be supplied for each Document:

- (1) The nature of the privilege being claimed;
- (2) The type of Document;
- (3) General subject matter of the Document;
- (4) The date of the Document; and
- (5) other such information that is sufficient to identify the Document, including where appropriate, the author(s) of the Document, the

addressee(s) of the Document, the identity of any Person who had an opportunity to review such Document and, where not apparent, the relationship of the author and the addressee to each other.

7. Each Document or Communication requested herein shall be produced in its entirety without deletion, redaction, or excisions, except as qualified by Instruction 6, regardless of whether You consider the entire Document relevant or responsive to this subpoena. If You have redacted any portion of the Document, stamp the word “REDACTED” beside the redacted information on each page of the Document which You have redacted. Any redactions to Documents produced should be identified on a privilege log in accordance with Instruction 6.

8. If any portion of any Document or Communication is responsive to any request in this subpoena, the entire Document or Communication is to be produced.

9. All Documents and Communications are to be produced in the form and in the same order within each file in which they existed prior to production, and the file folders, boxes, or other containers or bindings in which such Documents are found are to be produced intact, including the title, labels, or other descriptions of each such folder, box, or other binding container.

10. All Documents and Communications which cannot legibly be copied must be produced in their original forms.

11. Non-identical copies of Documents, drafts, or copies with annotations, or marks of marginalia shall be treated and produced as separate copies.

12. All responsive ESI that is maintained in the usual course in electronic format shall be produced in its native format along with the software necessary to interpret such files if such software is not readily available, with the metadata normally contained within such Documents, and the necessary load files. If such metadata is not available, each Document shall be

accompanied by a listing of all file properties concerning such Document, including, but not limited to, all information concerning the date(s) the Document was last accessed, created, modified, or distributed, and the author(s) and recipient(s) of the Document.

13. If any of these Document requests cannot be responded to in full, You are to produce Documents, Communications, and answers to the extent possible, specifying the reason for Your inability to produce further Documents or answers, and stating what knowledge, information, or belief You have concerning the unproduced or unanswered portion.

14. Any capitalized terms not defined herein shall have the meaning set forth in the DIP Motion.

15. BMLP reserves the right to supplement these Document Requests and to serve further requests for further discovery under all applicable rules.

DOCUMENT REQUESTS

1. A current organizational chart showing ownership of all entities owned in whole or in part by CSCEC, including ownership percentages.

2. A current employee organizational chart, for all CSCEC Affiliates, showing (a) employee names and titles, and (b) direct and indirect reporting obligations for each employee (including, if applicable, reporting obligations between or to persons employed or affiliated with different CSCEC Affiliates).

3. Audited financial statements for the financial year 2017 through the present for You and for all CSCEC Affiliates, as well as Your and all CSCEC Affiliates' 2025 budgets and three-year projections.

4. Unaudited financial statements for You and all CSCEC Affiliates for any years for which audited financial statements are not available. For the most recent completed fiscal period,

if audited financial statements are not yet available, annual and quarterly unaudited/internal financial statements for You and all CSCEC Affiliates. For the current fiscal period, year-to-date internal financial statements for You and all CSCEC Affiliates.

5. Documents sufficient to show the current project pipeline for each of Your operating subsidiaries, including current projects, projects awarded, outstanding bids, and prospective bids on expected future projects.

6. All board minutes, board consents/resolutions, and shareholder resolutions of You and all CSCEC Affiliates.

7. Documents sufficient to show all related party transactions by You and all CSCEC Affiliates, including transactions between You and Debtor, from the financial year 2017 to the present.

8. Documents sufficient to show sales of assets by and between You and Debtor and all CSCEC Affiliates with a value greater than US \$2 million from the financial year 2017 to the present.

9. All Documents and Communications concerning the development of the 12-month DIP budget, including the assumptions and detailed breakdown for the disbursement line items similar to the 13-Week Cash Flow.

10. All Documents and Communications concerning the development of the rolling 13-Week Cash Flow and any subsequent rolling 13-week budget, including documents sufficient to show all the disbursement line items in the 13-Week Cash Flow projections, including Debtor's payroll (broken down by employee and including employee function description), health insurance, visa fees and other expenses (broken down by employee), IT, employee reimbursement, other office expenses, Beijing subsidiary funding, and professional expenses.

11. Documents sufficient to show the allocation of amounts by expense line item to subsidiary and affiliated companies provided under the Shared Services Program.

12. All valuations or appraisals concerning Your investments in Your subsidiaries.

13. Current active employee census for You and all CSCEC Affiliates, including information regarding employee title, department, employee function description, salary, annual bonus, start date, employee type, full-time/part-time, visa status, visa-related annual legal fees.

14. Documents sufficient to show the breakdown of the percentage of time spent by Your employees on activities for Debtor compared to activities for all CSCEC Affiliates over the past three years.

15. Documents sufficient to show Your current employee benefits programs in place, with annual costs by program.

16. Documents sufficient to show Your current IT systems, including vendor, functions, and annual costs.

17. Documents sufficient to show Your insurance programs, including annual costs.

18. Documents sufficient to show the main components (by categories) of Your employee reimbursements.

19. Materials used in connection with attempts to secure a bond to stay enforcement of the New York judgment.

20. All Documents and Communications concerning BDO's engagement with representatives of potential funding sources to confirm whether there was any market interest in providing postpetition financing, including (i) the "teaser" materials and non-disclosure agreement that was provided to potential lenders, (ii) copies of all executed non-disclosure agreements with

potential lenders, and (iii) all materials provided to potential lenders under a non-disclosure agreement, including but not limited to any management presentations and any dataroom index.

21. Documents sufficient to show all insurance policies (including director and officer insurance policies) under which You or Your officers, directors, and/or employees are covered beneficiaries.

22. All Documents and Communications concerning the marketing process to obtain postpetition financing conducted by BDO at the direction of the Special Committee to determine whether other potential third-party funding sources might exist that would provide comparable or more favorable terms, including documents sufficient to show (i) all potential financing sources that BDO considered, (ii) all parties that BDO contacted, (iii) all parties that entered into non-disclosure agreements, (iv) a timeline of the marketing process, and (v) any reasons that any party declined to enter into a non-disclosure agreement or to provide financing.

23. Documents sufficient to show contingent liabilities of You, Debtor, and all CSCEC Affiliates, including surety bonds (including issuer and terms), all litigation, and other contingent liabilities.

24. All Documents and Communications concerning BDO's and/or Elizabeth Abrams' conclusion(s) that Debtor requires a loan commitment of US \$40 million, including all financial and forecasts prepared by management of You or Debtor, management of any CSCEC Affiliate, and/or BDO.

25. All Documents and Communications concerning Your commitment to provide US \$20 million of unsecured financing directly to non-Debtor subsidiaries, including documents and communications concerning (i) Your negotiation with Debtor or any CSCEC Affiliates, (ii) CSCEC Holding's historical intercompany loans to non-Debtor subsidiaries, (iii) the statement in

Paragraph 23 of the Blum Declaration that “[t]hese loans ...will stabilize the non-debtor operations of the CCA Group, improving value and reducing claims against the Non-Debtor Subsidiaries, all of which will benefit CCA and its stakeholders,” and (iv) all budgets, forecasts, and/or other financial information containing information regarding the use of such loans by non-Debtor subsidiaries.

26. All Documents and Communications concerning the reasons that the US \$20 million commitment from You to non-Debtor subsidiaries is in addition to the US \$40 million DIP Commitments.

27. All Documents and Communications concerning the statement in Paragraph 16 of the Blum Declaration that the available liquidity under the DIP Facility “will powerfully signal to key stakeholders that CCA will be able to operate”, including Documents and Communications concerning: (i) the sureties who issue bonds for existing and new projects and whose bonds are required to obtain new business, (ii) the customers who carefully consider the liquidity and financial condition of contractors as a factor in deciding which one to engage, (iii) the subcontractors who, if faced with the risk of nonpayment, might not continue to work on behalf of any CSCEC Affiliate; and (iv) the vendors who provide goods and services that may be withheld if the risk of nonpayment persists.

28. All Documents and Communications concerning (i) the formation of the Special Committee, (ii) the appointment of Elizabeth Abrams as the Special Committee’s sole member (including the selection process for Ms. Abrams and the parties involved in that process), (iii) the Special Committee’s negotiation of DIP financing with potential lenders, (iv) the Special Committee’s evaluation and approval of the DIP, (v) the specific advisors who advised her in connection with the DIP.

29. All Documents and Communications concerning Elizabeth Abrams' and/or the Special Committee's investigation into or due diligence concerning potential claims that You have or may have against Debtor and/or CSCEC Affiliates.

30. All Documents and Communications concerning BDO's identification of You as a potential source of financing, including documents and communications concerning Your (i) prior history of providing financing to Debtor, (ii) "obvious interest, as the sole equity holder of CCA, in preserving CCA's value," *see* Blum Decl. ¶ 18, and (iii) indication of potential willingness to finance Debtor's restructuring.

31. All information reviewed and assembled by BDO regarding the terms and conditions under which comparable Chapter 11 debtors have obtained debtor in possession financing that were used to formulate and benchmark proposals by You and/or any potential third party lender.

32.

33. All Documents and Communications concerning the negotiation of the terms and conditions of the debtor in possession financing between You and Debtor and any CSCEC Affiliate, including Communications with Debtor's counsel, Debevoise & Plimpton LLP and Cole Schotz P.C.

34. All Documents and Communications concerning any indication of interest, term sheet, proposal, or any other binding or non-binding offer made by You and/or any potential third party lender.

35. All Documents and Communications concerning the Shared Services Program, including (i) copies of all Shared Services Agreements, (ii) documents sufficient to show cost savings associated with the Shared Services Program, (iii) documents sufficient to show the

allocation mechanism used to reimburse Debtor for costs under the Shared Services Program, and

(iv) all records of Debtor's Intercompany Transactions.

36. Your general ledger.

37. The same financial reporting that Debtor is required to provide to You under the DIP Motion.

38. For each week from the date hereof onward, a weekly report of all postpetition cash transfers made by You to Debtor and any CSCEC Affiliates.

EXHIBIT C

UNITED STATES BANKRUPTCY COURT

for the District of New Jersey

In re CCA Construction, Inc.
Debtor

Case No. 24-22548-CMG

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: CSCEC Holding Company Inc., c/o Corporation Services Company, 251 Little Falls Dr., Wilmington, DE 19808

(Name of person to whom the subpoena is directed)

☐ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE	DATE AND TIME

The examination will be recorded by this method:

☒ **Production:** You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached Exhibit A.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: January 13, 2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Brett S. Theisen

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
BML Properties, Ltd., who issues or requests this subpoena, are:

Brett S. Theisen, Gibbons P.C., One Gateway Center, Newark, NJ 07102-5310, btheisen@gibbonslaw.com, 212-613-2065

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Date Served:

1/15/2025

Time Served:

12:38

Server:

SP 12507162

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause; considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

Rule 2004 Subpoena to Affiliate

DEFINITIONS

1. “**Asset**” shall refer to anything having any value, including, without limitation:

- (1) cash and cash equivalents, stocks, bonds, treasury bills, certificates of deposit, annuities, and any other debt security, equity security, or other financial instrument;
- (2) checking, savings, brokerage, and money-market accounts;
- (3) personal property, including, without limitation, vehicles, furnishings, art, and collectibles;
- (4) real property and any structures permanently affixed to such property;
- (5) business inventory;
- (6) cryptocurrency and other digital assets;
- (7) deposit accounts;
- (8) escrow accounts;
- (9) tax credits, returns, or refunds;
- (10) intellectual property rights, goodwill, and other intangible assets; and
- (11) debts, claims, causes of action, accounts receivable, interests in construction projects, construction licenses, building permits, and other things of value to which the Debtor has a legal claim of right and which are in the possession, custody, or control of, or may be brought against, one or more third parties.

2. “**Communication**” means any transmittal of information in the form of facts, ideas, inquiries, or otherwise. A document request for communications calls for production of correspondence, faxes, electronic mail, all attachments and enclosures thereto, computer tapes,

discs, telephone tape recordings, recordings of any other type in any medium of written or oral communications (including but not limited to text or other SMS messages sent over cellular networks and messages sent over the Internet using applications such as WhatsApp, Signal, iMessage, Facebook Messenger, Twitter (via direct message), Slack, Google Chat, or the like), phone logs, message logs, and notes and memoranda of, or referring or relating to, written or oral communications.

3. **“Concerning”** means directly or indirectly, in whole or in part, constituting, evidencing, recording, reflecting, substantiating, describing, summarizing, identifying, or referring or relating to in any way.

4. **“CSCEC Affiliate”** means China State Construction Engineering Corporation Limited (also known as CSCEC, Ltd.) and all of its affiliates, subsidiaries, branches, predecessors, successors, assigns, managers, officers, directors, employees, agents, attorneys and any and all persons acting on behalf of any of them, as well as to any entity under its direction or control.

5. **“Debtor”** means CCA Construction, Inc.

6. **“Document(s)”** includes, without limitation, all drafts; communications; correspondence; memoranda; records; reports; books; reports and/or summaries of conversations or interviews; diaries; graphs; charts; diagrams; tables; photographs; recordings; tapes; microfilms; minutes; summaries, reports and records of meetings or conferences; records and reports of consultants; press releases; stenographic, handwritten or other notes; checks, front and back; check vouchers, check stubs or receipts; wire transfer requests, approvals, orders and confirmations; tape data sheets or data processing cards or discs or any other written, printed, typewritten or otherwise recorded matter, however produced, reproduced, whether or not now in existence; any paper or writing including files, contracts, correspondence, telegrams, agreements,

letters, notes, manuals, forms, brochures, drawings, and other data or data compilation of any sort, stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form; and electronically stored information, including without limitation any information that is generated, received, processed and recorded by computers and other electronic devices including without limitation any voicemails or other audio files, any video files and images and any text messages; internal or external web sites; output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets, database files, charts, graphs, outlines, electronic mail, instant messages, and all miscellaneous media on which they reside and regardless whether said electronic data exists in an active file, an archive file, a deleted file, or file fragment; and activity listings of electronic mail receipts and/or transmittals; and any and all items stored on computer memories, flash drives, hard disks, floppy disks, CD-ROM, DVD, magnetic tape, microfiche, or on any other media for digital data storage or transmittal such as but not limited to any mobile device, or personal digital assistant. A draft or non-identical copy of any document, whether due to the addition of marginalia or other change, is a separate document within the meaning of this term. Where the electronic and hard copy versions of any document are separate documents per this definition, both the electronic and hard copy versions should be produced.

1. **“Electronically Stored Information” (“ESI”)** includes without limitation:
 - (1) information that is generated, received, processed and recorded by computers and other electronic devices including without limitation voicemail;
 - (2) internal or external web sites;

- (3) output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets, database files, charts, graphs, outlines, electronic mail, instant messenger programs, bulletin board programs, operating systems, source code, PRF files, PRC files, batch files, ASCII files, and all miscellaneous media on which they reside and regardless whether said electronic data exists in an active file, an archive file, a deleted file, or file fragment;
- (4) activity listings of electronic mail receipts and/or transmittals;
- (5) and any and all items stored on computer memories, flash drives, hard disks, floppy disks, CD-ROM, DVD, magnetic tape, microfiche, or on any other media for digital data storage or transmittal such as but not limited to smartphone or personal digital assistant (Palm Pilot, Blackberry, iPhone, iPad, or similar device) and file folder tabs, or containers and labels appended to, or relating to, any physical storage device associated with each original or copy of all documents requested herein.

2. **“Person”** refers to, means, and includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

3. **“Relating to”** means and includes arising from, mentioning, discussing, summarizing, comprising, constituting, describing, reflecting, containing, including, referring to, depicting, connected with, embodying, evidencing, concerning, reporting or involving an act, occurrence, event, transaction, fact, thing, person or course of dealing.

4. **“Related Companies”** shall refer to any of or all the following companies, corporations, or entities (including any alternate spellings or translations):

- (1) 2 Shore Drive North, LLC
- (2) 3rd Track Constructors
- (3) 537 Greenwich JV Mezz LLC
- (4) 537 Greenwich New JV LLC
- (5) 537 Greenwich Owner LLC
- (6) 75 Park Lane, LLC
- (7) CCACP.MCM CONSORCIO
- (8) CCASA Civil Mexico S.A.
- (9) CCASA DR, S.A.S.
- (10) CCA 99 Hudson LLC
- (11) CCA Acquisitions LLC
- (12) CCA Bahamas Ltd.
- (13) CCA Building LLC
- (14) CCA Building Panama S.A.
- (15) CCA Canada Holdings, Inc.
- (16) CCA Civil Bahamas, Ltd.
- (17) CCA Civil Colombia S.A.S.
- (18) CCA Civil – Daidone Electric
- (19) CCA Civil – Halmar International, LLC
- (20) CCA Civil, Inc.
- (21) CCA Civil Panama S.A.
- (22) CCA Civil – Plaza Construction JV, LLC
- (23) CCA Construction International Inc

- (24) CCA Development, LLC
- (25) CCA Development Panama S.A.
- (26) CCA Green B SA
- (27) CCA Institute, Inc.
- (28) CCA International Group, Inc.
- (29) CCA Jamaica Development Group Limited
- (30) CCA MCM Consorcio
- (31) CCA Newport, Inc.
- (32) CCA Panama Corp.
- (33) CCA Peru Construction S.A.C.
- (34) CCA South America, Inc.
- (35) CCA Southeast, Inc.
- (36) CCA UniBuy, LLC
- (37) CCA Westchester Inc.
- (38) China Construction America of South Carolina, Inc.
- (39) China State Construction Engineering Corporation Limited (CSCEC) [中国建筑集团有限公司]
- (40) China State Construction Engineering Corporation Panama S.A. (SEM)
- (41) China Overseas America, Inc.
- (42) Colonial Hospitality Management Ltd.
- (43) Consorcio CCA-COCIGE
- (44) CSCEC Bahamas, Ltd.

- (45) CSCEC Capital (Hong Kong) Limited
- (46) CSCEC Electronic Engineering Co., Ltd.
- (47) CSCEC Holding Company, Inc.
- (48) CSCEC, Ltd. [中国建筑股份有限公司]
- (49) CSCEC Panama, S.A.
- (50) Dao Panama Development S.A.
- (51) Dynasty Capital Group, LLC
- (52) Greenwich Charlton Owner LLC
- (53) Hudson North, LLC
- (54) Hudson Park Investors, LLC
- (55) KM/Plaza (FL Joint Venture)
- (56) Lakeview Houston, LLC
- (57) Morristown Southgate, LLC
- (58) Newworld Development, Inc.
- (59) Newworld One Bay Street, Limited
- (60) OFICINA T1000-OFICINA 54A, S.A.
- (61) Park Lane Development, LLC
- (62) Park Shore Investors LLC
- (63) Perfect Luck Assets Limited
- (64) Plaza CM Services, LLC
- (65) Plaza Construction Arizona, LLC
- (66) Plaza Construction California Corp
- (67) Plaza Construction California LLC

- (68) Plaza Construction California L.P.
- (69) Plaza Construction DC, LLC
- (70) Plaza Construction Group Florida LLC
- (71) Plaza Construction Hawaii LLC
- (72) Plaza Construction Holding Company LLC
- (73) Plaza Construction LLC
- (74) Plaza Construction Louisiana LLC
- (75) Plaza Construction Nevada LLC
- (76) Plaza Construction Texas LLC
- (77) Plaza Contracting Company LLC
- (78) Plaza CW LLC
- (79) Plaza FL Contracting, LLC
- (80) Plaza Group Holdings, LLC
- (81) Plaza Schiavone (Joint Venture)
- (82) Plaza/Time Square Joint Venture
- (83) POINTE Hospitality Management Ltd.
- (84) SC EB-5 Management LLC
- (85) Shore Drive North Development, LLC
- (86) SRE Development, LLC
- (87) Strategic Capital (Beijing) Consulting Co., Ltd.
- (88) Strategic Capital, LLC
- (89) Strategic EB-5 LLC
- (90) Strategic Greenwich Equity, LLC

- (91) Strategic Greenwich, LLC
- (92) Strategic Greenwich Mezz Lender, LLC
- (93) Strategic Hudson South, LLC
- (94) Strategic Hudson Towers, LLC
- (95) Strategic Hudson North, LLC
- (96) Strategic Infrastructure, LLC
- (97) Strategic Park Shore, LLC
- (98) Strategic Property Holding, Limited
- (99) Strategic Real Estate, LLC
- (100) Yonkers Waterfront Properties, LLC

7. **“Related Persons”** shall refer to any of or all the following persons:

- (1) Allen Jude Manabat
- (2) Bing WEN
- (3) Daniel LIU
- (4) David WANG
- (5) Gang SHAO
- (6) Genguo JU
- (7) Jason McAnarney
- (8) Jichào XU
- (9) Luming (Laurence) GAO
- (10) Meisheng (Mason) GAO
- (11) Ning YUAN
- (12) Pei TANG

- (13) Pengfei YU
- (14) Tiger WU
- (15) Xingdi PENG
- (16) Xuexuan ZHENG
- (17) Yan WEI
- (18) Yongming LI
- (19) Yuling LIU
- (20) Yutian Phinney

8. **“Lending Agreements”** shall refer to any credit that has been extended to you.

9. **“You”** and **“Your”** shall mean the person to whom the subpoena is directed, as stated on the subpoena enclosing this Exhibit A, along with any of its branches, predecessors, successors, assigns, managers, officers, directors, employees, agents, attorneys and any and all persons acting on behalf of any of them, as well as to any subsidiary or affiliate under its direction or control and/or from which it has the right or the practical ability to obtain information, records or documents of any kind.

INSTRUCTIONS

1. All Documents and Communications requested herein shall be produced for inspection and copying within fifteen (15) days of receipt of this subpoena at the offices of Gibbons P.C, One Gateway Center, Newark, New Jersey, 07102-5310, Attn: Brett S. Theisen (btheisen@gibbonslaw.com).

2. This subpoena requires the production of all responsive Documents and Communications located anywhere in the world in Your possession, custody, or control, or available to You, Your employees, members, partners, accountants, agents, attorneys, auditors, or

other Persons acting on Your behalf or under any direction or control of Your agents or representatives.

3. The relevant time period for these requests is from May 1, 2014 through and including the date on which You produce Documents responsive to this subpoena.

4. These requests to produce are to be regarded as continuing in nature, so that further and more complete and supplemental responses must be provided if You obtain further, more complete, or new information or Documents.

5. Each Document request shall be construed as being inclusive rather than exclusive. Thus, words importing the singular shall include the plural; words importing the plural shall include the singular; words importing one gender shall include both genders; the words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the Document requests inclusive; the word “all” means “any and all” and the word “any” means “any and all.”

6. All Documents and Communications produced pursuant to this subpoena are to be produced as they are kept in the usual course.

7. If a Document or Communication is redacted or not produced on the ground that it is privileged and therefore not subject to disclosure, the following information must be supplied for each Document:

- (1) The nature of the privilege being claimed;
- (2) The type of Document;
- (3) General subject matter of the Document;
- (4) The date of the Document; and
- (5) other such information that is sufficient to identify the Document, including where appropriate, the author(s) of the Document, the

addressee(s) of the Document, the identity of any Person who had an opportunity to review such Document and, where not apparent, the relationship of the author and the addressee to each other.

8. Each Document or Communication requested herein shall be produced in its entirety without deletion, redaction, or excisions, except as qualified by Instruction 6, regardless of whether You consider the entire Document relevant or responsive to this subpoena. If You have redacted any portion of the Document, stamp the word "REDACTED" beside the redacted information on each page of the Document which You have redacted. Any redactions to Documents produced should be identified on a privilege log in accordance with Instruction 6.

9. If any portion of any Document or Communication is responsive to any request in this subpoena, the entire Document or Communication is to be produced.

10. All Documents and Communications are to be produced in the form and in the same order within each file in which they existed prior to production, and the file folders, boxes, or other containers or bindings in which such Documents are found are to be produced intact, including the title, labels, or other descriptions of each such folder, box, or other binding container.

11. All Documents and Communications which cannot legibly be copied must be produced in their original forms.

12. Non-identical copies of Documents, drafts, or copies with annotations, or marks of marginalia shall be treated and produced as separate copies.

13. All responsive ESI that is maintained in the usual course in electronic format shall be produced in its native format along with the software necessary to interpret such files if such software is not readily available, with the metadata normally contained within such Documents, and the necessary load files. If such metadata is not available, each Document shall be

accompanied by a listing of all file properties concerning such Document, including, but not limited to, all information concerning the date(s) the Document was last accessed, created, modified, or distributed, and the author(s) and recipient(s) of the Document.

14. If any of these Document requests cannot be responded to in full, You are to produce Documents and Communications to the extent possible, specifying the reason for Your inability to produce further Documents, and stating what knowledge, information, or belief You have concerning the unproduced portion.

DOCUMENT REQUESTS

1. All Documents concerning transfers, distributions, or any other payments made by You to the Debtor, whether directly or through an intermediary, with a value of greater than approximately US \$10,000.

2. All Documents concerning transfers, distributions, or any other payments made by the Debtor to You or Your directors, officers, executives, or employees, whether directly or through an intermediary, with a value of greater than approximately US \$10,000.

3. All Documents concerning transfers, distributions, or any other payments made by You to any Related Persons or Related Companies, whether directly or through an intermediary, with a value of greater than approximately US \$10,000.

4. All Documents concerning transfers, distributions, or any other payments made by any Related Companies to You or Your directors, officers, executives, or employees, whether directly or through an intermediary, with a value of greater than approximately US \$10,000.

5. All Documents concerning the allocation of assets, liabilities, property, and/or commercial opportunities among the Debtor and/or the Related Companies.

6. All audited financial statements for You during the relevant time period.

7. All unaudited financial statements for You for any years for which audited financial statements are not available. For the most recent completed fiscal period, if audited financial statements are not yet available, annual and quarterly unaudited/internal financial statements for You. For the current fiscal period, year-to-date internal financial statements for You.

8. All Documents concerning Your tax filings and tax returns during the relevant time period.

9. All board minutes, board consents/resolutions, and shareholder resolutions of You concerning the Debtor and/or the Related Companies during the relevant time period.

10. Documents sufficient to identify any related-party transactions by You with the Debtor, any Related Company, or any affiliates thereof during the relevant time period and a register of such transactions.

11. Documents sufficient to identify any position (whether formal or informal) that any director, officer, executive, or employee of You holds or previously held in the Debtor, any Related Company, or any affiliates thereof during the relevant time period.

12. All transfers directly or indirectly made by You to the Debtor, any Related Company, or any affiliates thereof in the relevant time period, including amounts, dates and identity of bank accounts.

13. All transfers that You directly or indirectly made to any trusts in the relevant time period.

14. All Documents and Communications concerning the ownership and management of You, including but not limited to:

- (1) Documents describing or identifying Your corporate structure and ownership (including ownership percentages);

- (2) Documents sufficient to identify all Your directors, executives, officers, managers, employees, and consultants or agents acting on Your behalf;
- (3) Documents sufficient to identify your office addresses, websites, telephone numbers, and other contact information;
- (4) Documents concerning the determination of dividends and/or distributions to your owners, shareholders, or members;
- (5) Documents concerning your evaluation of your capital needs;
- (6) Documents concerning your evaluation of your solvency;
- (7) All corporate books, including but not limited to schedules, forms, amendments, worksheets, and any Documents referring to any adjustments made in connection therewith; and
- (8) Transcripts or minutes of meetings of the board of directors, management, committees (including any committees of the Chinese Communist Party charged with Your supervision and to carry out the activities of the Party), or similar bodies.

15. All Documents and Communications concerning Your ownership and management of any CSCEC Affiliate, including but not limited to:

- (1) Documents describing or identifying the corporate structure and ownership (including ownership percentages) of any CSCEC Affiliates;
- (2) Documents sufficient to identify all any CSCEC Affiliate's directors, executives, officers, managers, employees, and consultants or agents acting on Your behalf;

- (3) Documents sufficient to identify any CSCEC Affiliate's office addresses, websites, telephone numbers, and other contact information;
- (4) Documents concerning the determination of any CSCEC Affiliate's dividends and/or distributions to your owners, shareholders, or members;
- (5) Documents concerning your evaluation of any CSCEC Affiliate's capital needs;
- (6) Documents concerning your evaluation of any CSCEC Affiliate's solvency;
- (7) All corporate books, including but not limited to schedules, forms, amendments, worksheets, and any Documents referring to any adjustments made in connection therewith; and
- (8) Transcripts or minutes of meetings of the board of directors, management, committees (including any committees of the Chinese Communist Party charged with the supervision of any CSCEC Affiliate and to carry out the activities of the Party), or similar bodies of any CSCEC Affiliate.

16. All Documents and Communications concerning any funds or property (other than funds or property that have a value of less than approximately US \$10,000) that You transferred to, received from, or hold for the benefit of the Debtor, any Related Company, or any affiliates thereof.

17. All Documents and Communications concerning Assets that the Debtor own, control, or have an interest in, whether individually, jointly, in trust, as custodian, as nominee, or in conjunction with any other Person.

18. All Documents and Communications concerning the source of any payments to You from any of the Debtor, the Related Companies, or the Related Persons, including without limitation, (a) direct deposits, ACH payments, online payments, or other payments, (b) checks or cancelled checks, and (c) Documents containing the numbers and holders of any accounts from which payments have been made to You.

19. All Documents and Communications from, to, carbon copying, or blind carbon copying any director, officer, employee, agent or any other person acting on behalf of the Debtor concerning any Assets in which the Debtor have or may have an interest, whether direct, indirect, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

20. All Documents and Communications concerning all loans or other debts made by or owed to the Debtor, any Related Company, or any affiliates thereof, whether individually, jointly, in trust, as custodian, as nominee, or in conjunction with any other person or persons.

21. All Documents and Communications concerning any Lending Agreements to which You are a party.

22. All Documents and Communications concerning any declared default or events of default by You under any Lending Agreements, including Documents sufficient to identify the circumstances of the default, any forbearances related thereto, and any additional security taken as a result.

23. All Documents and Communications concerning the grant of any security interest by You under any Lending Agreements.

24. All Documents and Communications concerning the use of proceeds of any Lending Agreements, including both the intended use of proceeds and the actual use of proceeds.

25. All Documents and Communications concerning all contracts and agreements between You and the Debtor, Related Companies, and/or Related Persons during the relevant time period.

26. All Documents and Communications concerning the value of all or any portion of Your Assets, equity, stock, or business (or of any subsidiary or subsidiaries thereof), including the equity value, enterprise value, asset value, liquidation value, or fair market value, or any other form or method of valuation of You (or of any subsidiary or subsidiaries thereof).

27. All forecasts, projections, estimates, or other analyses created by You relating to Your current or future performance, financial condition, or value, including without limitation (i) any projections of revenue, EBITDA, earnings, and cash flows, and all Documents and Communications concerning such forecasts, projections, estimates, or analyses; and (ii) any financial models prepared by You or at Your direction relating to Your own valuation.

28. All Documents and Communications concerning any analyses, reviews, assessments, interpretation, or discussion as to or regarding any actual or potential proposal to extend financing, credit, or loans to You.

29. All Documents and Communications pertaining to all statements of financial condition prepared or provided by, or relating to, any of the Debtor, any Related Company, or any affiliates thereof during the relevant time period, including but not limited to Your audited financial statements, including income statements, cash flow statements, and balance sheets.

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

x- - - - - x
IN THE MATTER OF: . Case No. 24-22548 (CMG)
. Chapter 11
. Trenton, New Jersey
CCA CONSTRUCTION .
. January 17, 2025
Debtor, .
- - - - - .

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE CHRISTINE M. GRAVELLE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DEBEVOISE & PLIMPTON
BY: ERICA S. WEISGERBER, ESQ.
M. NATASHA LABOVITZ, ESQ.
66 Hudson Boulevard
New York, NY 10001

For BML Properties: GIBBONS PC
BY: BRETT S. THEISEN, ESQ.
ROBERT MALONE, ESQ.
One Gateway Center
Newark, NJ 07102

For CSCEC Holding: LOWENSTEIN SANDLER
BY: MICHAEL KAPLAN, ESQ.
ANDREW BEHLMANN, ESQ.
NICOLE FULFREE, ESQ.
One Lowenstein Drive
Roseland, NJ 07068

ECRO Operator: Michael Brown

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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Colloquy

19

1 MR. THEISEN: -- I would just note before you do
2 that. We're not saying there should be no restrictions. We
3 are agreeing to limit our use of any documents to proceedings
4 that are directly related to enforcing our rights arising out
5 of that New York Judge. And of course, you know, as I said,
6 would agree to maintain all confidentiality in whatever
7 jurisdiction, you know, that may be.

8 THE COURT: Okay, why don't we get -- are you all
9 okay to get back on the phone at 11?

10 MR. THEISEN: Yes.

11 MS. WEISGERBER: Yes, Your Honor.

12 ATTORNEY: Yes, Your Honor.

13 THE COURT: Okay. We'll get back on at 11 then,
14 thanks very much.

15 (Recording paused @ 10:26:59)

16 (Recording resumed @ 11:00:07)

17 THE COURT: Hello again, it's Judge Gravelle. I
18 think we -- the operator on this call just told me we have 21
19 people on the line. So I think we're all back. Thanks for
20 your patience, you guys.

21 Where I stand on this, I think after looking through
22 everything, I went back and looked at Thrasio, read the
23 Debtor's letter, looked at a couple of the cases that you guys
24 cited. I'm going to go with the Debtor on this as far as the
25 use restriction. And I don't -- I would prefer, Mr. Theisen,

Colloquy

31

1 bankruptcy filing, not --

2 MR. THEISEN: Correct, correct.

3 THE COURT: You know, not to produce Board of
4 Directors meeting minutes for --

5 MR. THEISEN: Correct.

6 THE COURT: -- the rest of the operation.

7 MR. THEISEN: No, and we've acknowledged that on the
8 DIP. I'm not saying that those things aren't proper under Rule
9 2004. But with this, and you know, we would reserve rights
10 there. But we've acknowledged that and we've told them that
11 we're looking for things like, the appointment of the
12 independent director, the formation of the special committee,
13 which by the way those were formed at least --

14 THE COURT: Right. And I believe you're entitled --

15 MR. THEISEN: (indiscernible-override of
16 conversation)

17 THE COURT: I believe you're entitled to those. Yes.
18 I believe you're entitled to those.

19 MS. WEISGERBER: Your Honor, I'm just going to read
20 specifically what we said we would produce.

21 THE COURT: Okay.

22 MS. WEISGERBER: Board resolutions and shareholder
23 resolutions relating to the appointment of Elizabeth Abrams,
24 who is the independent director; the formation of the special
25 committee, the filing of this Chapter 11 case, and the entry

C E R T I F I C A T I O N

I, Patricia Poole, court approved transcriber, certify
that the foregoing is a correct transcript from the official
digital audio recording of the proceedings in the above-
entitled matter.

/S/PATRICIA POOLE

TRACY GRIBBEN TRANSCRIPTION, LLC January 22, 2025

DATE

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

x- - - - - x
IN THE MATTER OF: . Case No. 24-22548 (CMG)
 . Chapter 11
 . Trenton, New Jersey
CCA CONSTRUCTION .
 . January 22, 2025
Debtor, .
- - - - -

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE CHRISTINE M. GRAVELLE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DEBEVOISE & PLIMPTON
 BY: ERICA S. WEISGERBER, ESQ.
 66 Hudson Boulevard
 New York, NY 10001

For BML Properties: GIBBONS PC
BY: BRETT S. THEISEN, ESQ.
ROBERT MALONE, ESQ.
One Gateway Center
Newark, NJ 07102

For CSCEC Holding: LOWENSTEIN SANDLER
BY: MICHAEL KAPLAN, ESQ.
One Lowenstein Drive
Roseland, NJ 07068

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ORAL ARGUMENT (Discovery)

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Colloquy

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1 THE COURT: All right, so we're on the record again
2 and we're going to go, we'll go over the issues. I do, Mr.
3 Theisen, I have your letter and attached email so I have the
4 list of the issues that you wanted to go over. I'm assuming
5 it's going to be you and Mr. Kaplan?

6 MR. THEISEN: That's correct on our side, yes.

7 MR. KAPLAN: Correct on our side as well, Your Honor,
8 subject to any reference to the cash management order. I may
9 phone a friend.

10 THE COURT: Okay? All right, great, thanks. So Mr.
11 Theisen, you want to start us off?

12 MR. THEISEN: Yeah, I think the good news is here
13 that we've been having some discussions on this, you know
14 including within the last hour and so I think we've narrowed it
15 quite a bit.

16 THE COURT: Thank you very much.

17 MR. THEISEN: I thought Your Honor might appreciate
18 that. I didn't want to repeat the, you know line by line here
19 for an hour and a half like we had the other day but. I think,
20 you know the important thing I think it merits or warrants just
21 a little table setting on the question of why is CSCEC so
22 important to the creditors here, and I'm not going to, you know
23 belabor this but you know again, it's the only shareholder.
24 It's also the DIP lender but it's also, and this really hasn't
25 been talked about, it's, the intermediate holding company here

Colloquy

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1 between the debtor and its ultimate parent which is the Chinese
2 State owned entity, CSCEC.

3 This holding company is the, I guess the TOPCO
4 (phonetic) for all the group's operations in the America and
5 the debtor itself used to have a lot of considerable revenue in
6 that group. They now claim to rely entirely on intercompany
7 financing. They're saying it's nothing more than a back
8 office. But you know despite that characterization, they, you
9 know again sort of refer to it as almost effectively the
10 linchpin of the group's US operation.

11 So I think it is very important, Judge, that we
12 understand those connections with CSCEC, and between CSCEC and
13 the debtor and the nondebtor affiliates. I think that is the
14 key to understanding not only the debtor but the whole case.
15 And in turn, Judge, it's key to our analysis of the DIP, the
16 necessity, the terms of the proposed DIP and the cash
17 management motion.

18 You know this is not again a traditional bank lender.
19 It's a relationship that's much deeper. It's in some ways
20 absolute control over this debtor and so the relevant documents
21 one would expect would be much broader and they go back
22 considerably longer than you might otherwise expect on a
23 contested DIP.

24 I'm sure that time period goes back well before
25 Lowenstein got involved. I know they're just getting up to

Colloquy

5

1 speed and we understand that but again it was BMLP's judgment
2 that triggered this filing and that was the culmination of
3 seven years of litigation, several appeals and so it again
4 stands to reason that a DIP lender who was the debtor's sole
5 and controlling shareholder and whose business they say relies
6 on this debtor would have been involved in that planning for
7 bankruptcy and you know this ultimate strategy that we're
8 seeing play out now here I will say this now.

9 Having spoken with Mr. Kaplan, what we are hearing,
10 however, is that maybe that chain of control (phonetic) so to
11 speak didn't go through CSCEC but maybe it went around it or it
12 went, you know, went directly to the ultimate parent and that's
13 also something we have the right to know, Judge and will be
14 telling by the types of documents we get from CSCEC.

15 So that's all just table setting, but I think it's
16 important to note why and the relevance issues that are in play
17 here on a lot of these requests. Again, we've had a lot of,
18 we've had two productive discussions, one last night and one
19 just within the last hour. They've agreed, CSCEC has agreed to
20 certain concessions and we've asked for, we've agreed to walk
21 away from certain requests or rather, you know reserve rights
22 for a later date and without prejudice even though it's not a
23 hundred percent of what we think might be appropriate at the
24 moment. I think we've gotten to a point where on almost,
25 almost all the issues, based on Mr. Kaplan's representations

Colloquy

6

1 that we're at a place we can live with.

2 So rather than me going through those one by one, I
3 think it might actually be most efficient to turn it over to
4 Mr. Kaplan and let him inform Your Honor what he told me and
5 what they're prepared to do. You know and I can, you know
6 respond and confirm as necessary. I think there, you know
7 there are some issues that we, you know I just want to pin him
8 down on, on a few things but I do think that would probably be
9 the most efficient way forward here.

10 THE COURT: Okay. Mr. Kaplan, do you agree with the
11 way the table has been set? Where do you stand on it?

12 MR. KAPLAN: No.

13 THE COURT: I figured.

14 MR. KAPLAN: No, but Your Honor, we're here for a
15 discovery conference. I'm not big on table setting or themes
16 when it's time to litigate the table. We'll be there and I'll
17 litigate it, I promise you. I would rather just talk about
18 what we're here for which is discovery related to a contested
19 DIP and save the theatrics for, you know when it's time to come
20 in and do that. I'm happy to respond if you want me to but if
21 want me to cut to the chase, I'm not going to object.

22 THE COURT: Up to you, my friend.

23 MR. KAPLAN: I will cut to the chase then, Your
24 Honor.

25 THE COURT: Okay.

Colloquy

7

1 MR. KAPLAN: This is a contested DIP, Your Honor,
2 that's all this is. It's one that we do, you know, all the
3 time. Your Honor probably sees more. But let me just get to
4 the heart of it. We have collected from, we have already
5 collected because we're not sitting back waiting or trying to
6 delay, the email box from the principal custodian of CSCEC
7 Holdings, a gentleman named Jingtao Zu (phonetic) and we have
8 that ingested into Lowenstein's relativity platform.

9 So some of the dates that Mr. Theisen was referring
10 to, I want to share them with the Court so you understand.
11 Lowenstein was not retained in this case until the end of
12 October. The exact date is slipping me. I think it's
13 somewhere around October 25th, but it's in that range, Your
14 Honor. I don't want to, I don't want anyone to try to got you
15 or quote "pin me down later". I'm giving you my best
16 recollection of the date right here.

17 In advance of our, you know various meet and confers,
18 which Your Honor was our, you know the way we thought this
19 should be, you know further resolved, we ran certain terms in
20 Mr. Zu's email in advance of this. Now, this is not the search
21 term process we're proposing by any means. But for instance,
22 we ran the term bankruptcy and the first email with the word
23 bankruptcy didn't appear until on or about October 21st, I
24 believe.

25 The first email with Debevoise, obviously the

Colloquy

8

1 debtor's counsel isn't until October 25th. And so it seems to
2 me, Your Honor, that the sort of gating over arching issue of
3 all this discovery is the time period dispute here wherein we
4 have said we'll look back to September 1st for email, you know
5 when we run our email searches. We'll put the timeframe of
6 October 1st.

7 We don't see any reason to go back to May. We're
8 unmoved by the fact that the debtor has brought her obligations
9 and the DIP lender but if you want us to go back in advance
10 even though we don't think you're going to see anything before
11 the earliest being the end of October, we'll do it. And our
12 general view, Your Honor, is that email search is going to
13 encompass search terms that relate to all of these issues in
14 terms of the DIP negotiation and it seems that we're really
15 just in disagreement about very few separate categories. I
16 don't know, Mr. Theisen, if that's what you wanted me to say
17 but that's, I think that's what we spoke about before.

18 THE COURT: Well, --

19 MR. THEISEN: Yeah, let me --

20 THE COURT: Go ahead, Mr. Theisen.

21 MR. THEISEN: Well, I was going to say that is what
22 we spoke about. We are prepared, Judge, to live with the
23 September 1 date without prejudice obviously to our ability to
24 go back further depending upon what we see. The sticking point
25 though I think is going to be on the custodian and the search

Colloquy

9

1 terms because in our view, running a single custodian as
2 they're proposing to do is not sufficient. Mr. Kaplan has
3 offered that we can propose additional custodians and we intend
4 to take him up on that offer. I would just note that it's a
5 little difficult for us to do that because they refuse to
6 produce an employee census so we don't know, you know who's
7 sitting where and who's hats are overlapping but we will
8 endeavor to give him some names. You know the most obvious one
9 is Yan Wei, who is also the debtor's CEO and holds an officer
10 title at CSCEC.

11 Just because he has recused himself from the DIP
12 doesn't mean they don't have to search and produce his emails
13 and there may be others. So that's one point. The other thing
14 we would ask for, and I haven't, --

15 MR. KAPLAN: Can we just respond to that point, point
16 by point? I can try to remember both --

17 MR. THEISEN: Sure, no, go ahead.

18 MR. KAPLAN: I mean Judge, again, as you just heard,
19 he's also the debtor's CEO. We're not aware of any other
20 custodians for CSCEC Holdings. So we didn't just say oh, we're
21 just going to do one. We're just not aware of any others and
22 again, this is, this isn't 2004. This is contested discovery
23 narrowly targeted to the issues before Your Honor. I forget
24 the date, maybe February 14th or so we're coming to do this.

25 If there are emails related to the DIP beyond what we

Colloquy

10

1 have produced that BMLP finds from either the debtor's
2 production or ours, and has other names, and we are the
3 appropriate custodian of those emails, we're going to search
4 them. But I don't think it's appropriate to just cast
5 dispersions on collecting one email, one custodian's email when
6 it's not like we did it just for the sake of doing one. It's
7 the only person we're aware of.

8 THE COURT: When you say --

9 MR. KAPLAN: And that's not different than the way we
10 do discovery in any other case.

11 THE COURT: When you say custodian, what does the
12 custodian, is the custodian in charge of collecting every
13 single email in the company?

14 MR. KAPLAN: Oh, no, Your Honor, it's that person's
15 entire email box. So email custodians we went in and collected
16 Mr. Zu's email box with an exported his entire box. That's
17 generally how the eDiscovery collections work. You ID email,
18 you identify email recipients and they are custodians. And so
19 to the extent there are other, let's call them recipients of
20 emails from CSCEC Holdings, who had information related to us,
21 to this which would be a bit of news to us, but again we're
22 ramping up, we're pretty close, we would collect their email
23 boxes and do the same and then duplicate and otherwise.

24 For instance, Your Honor, if there are, if there's a
25 to and a from on an email and six CC's, you're going to capture

Colloquy

11

1 that email from, you know from the person's email box. So the
2 collection of other people's emails is really I guess to see if
3 there's other emails outside of that. But again, it seems to
4 me that we're just getting a little far afield of what we're
5 trying to get to, which is the debtor has put forward evidence
6 of a DIP. They put forward evidence of the DIP and we're
7 taking discovery related to the DIP.

8 And so that's why we've collected the custodian that
9 we believe on behalf of CSCEC Holdings made the decisions
10 related to the DIP.

11 THE COURT: And that's --

12 MR. THEISEN: I would just note -- cash management as
13 well, Your Honor, is part of the discovery, it's not just the
14 DIP.

15 THE COURT: Right. So you're saying that if Mr. Wei,
16 Mr. Wei's emails will show up if he was a sender or a recipient
17 to the custodian.

18 MR. KAPLAN: Yes, Your Honor.

19 THE COURT: To the person you've chosen.

20 MR. KAPLAN: Also, it should also show if in the
21 course of his normal email discovery retention, which
22 obviously, you know we have, you know we've advised on, he is a
23 CC or otherwise, it should be in his box also.

24 THE COURT: All right. What's the problem then, Mr.
25 Theisen, with starting, getting going with that and you take a

Colloquy

12

1 look?

2 MR. THEISEN: Well, number one, he has offered that
3 we could suggest additional custodians and so if that offer is
4 being revoked, then I do have a problem with that.

5 MR. KAPLAN: And the offer is not being revoked. If
6 you have, someone can quote me or pin me or whatever, the offer
7 is not being revoked.

8 MR. THEISEN: Okay.

9 MR. KAPLAN: We're happy to evaluate.

10 MR. THEISEN: You know, Judge, it's very simple.
11 It's sort of screams credulity to believe that every single
12 discussion about the bankruptcy or the DIP ran through one
13 single person.

14 THE COURT: Agreed. So I'm not sure why you need me
15 for this if you can list the people that you want to hearing
16 from?

17 MR. THEISEN: Yeah, I don't think we do, Judge. I
18 don't think we do. I think we can move on from that point. I
19 thought it was agreed that we could suggest additional
20 custodians and that they would, they would accept those. I
21 mean we're not going to give them 55 names but there maybe a
22 couple that we think are appropriate.

23 THE COURT: Okay.

24 MR. KAPLAN: Right. And Your Honor, I just want to
25 be crystal clear on this point which is we're happy to look at

Colloquy

13

1 any names. And to the extent that CSCEC Holdings is the
2 custodian of record of those particular emails, we're happy to
3 do it and I'm happy to, you know BMLP if we're not. But I'm
4 not going, but I just want to be clear that we're not being
5 obligated to produce stuff that we're not, it's not in our
6 possession, custody and control which is the standard.

7 MR. THEISEN: Yeah, no, and I'm not asking for that.
8 We're talking about CSCEC employees or officers or people, you
9 know that would be on their email server.

10 MR. KAPLAN: Got it.

11 MR. THEISEN: Let me go to the next point then that
12 was discussed which was search terms. I think, you know, again
13 it's also going to be important that we have the correct terms.
14 Mr. Kaplan offered, as I noted in my letter, to allow us to
15 propose some terms. We intend to do that. But the one thing
16 he and I had not talked about, only came to, you know came up
17 after we spoke today was I think there's a need for
18 multilingual searches here. I don't know how they propose to
19 handle that if a lot of the communication is only in Chinese,
20 as opposed to English, they need to make sure that those are
21 covered, so you know if you're searching for example bankruptcy
22 as Mr. Kaplan said, and he said the first time that appears is
23 in October, well, I don't know if that encompasses the Chinese
24 word for bankruptcy or even what that word or concept might be.
25 So if that's something, you know they have the obligation to

Colloquy

14

1 figure that out.

2 THE COURT: Right. I'm sure you don't have any
3 problem with that, Mr. Kaplan.

4 MR. KAPLAN: No. Again, my only problem is that
5 we're having this discussion for the first time in front of
6 you, Your Honor, but that's --

7 THE COURT: Well, it seem --

8 MR. KAPLAN: -- that's not an issue.

9 THE COURT: Yes, it just seems common sense to me
10 that if you're looking for documents from a company that has a
11 lot of Chinese speakers in it, that you're not just going to
12 use an English word.

13 MR. KAPLAN: I agree with that, Your Honor. That
14 would be a little too cute by half.

15 THE COURT: Okay.

16 MR. THEISEN: I'm happy to hear that, Your Honor. So
17 I think, look, the methods that I received from Mr. Kaplan,
18 he'll correct me if I'm misquoting him, was that if you look at
19 our letter and what we sent, we only had disagreement on the
20 highlighted issues and what he told me, number one, let me
21 start with the Board materials. They've agreed to expand the
22 search for Board materials back to May 1, 2024 which is, you
23 know agreeable with us.

24 As to the others, I heard Mr. Kaplan to say that
25 their position and I think carving out the audited financials,

Colloquy

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1 he may want to talk with that separately, but what I heard him
2 tell me earlier was you know essentially notwithstanding his
3 objections, if responsive materials are captured by their
4 search terms, that we'll get it. And you know, so again, my
5 understanding of what he was saying to us was look, you know if
6 you're looking for marketing materials on the DIP or you're
7 looking for, you know discussions with BDO or these things, you
8 know if we run a search term for instance BDO, you're going to
9 get whatever we have regardless of whether we've interposed an
10 objection to a certain request that it might be responded to.

11 That's what I heard him to say. That's, we're happy
12 to hear that. We don't have any issue with that. But I just
13 wanted to pin that down and make sure I understood his
14 position.

15 MR. KAPLAN: Yeah. If I may, Your Honor?

16 THE COURT: You may.

17 MR. KAPLAN: Thank you. I would say, you know BMLP
18 is 94 percent of the way there. I think what I said with
19 respect to all these categories, these financial, audited
20 financials being certainly different is, is that, you know if
21 in the context of the discussions related to the DIP, there
22 were emails back and forth with BDO, they're going to get them
23 because we think those are subsumed by other requests that we
24 didn't object to. If there's a conversation with Elizabeth
25 Abrams related to her investigation of us, in the context in

Colloquy

16

1 negotiating the DIP, we're going to give it to them because
2 again, we view that as part of the DIP negotiation. I think
3 that's true across the board. I don't remember all the other
4 examples that Mr. Theisen said there but again, if in the
5 context of the discussions of the DIP between CSCEC Holdings
6 and the debtor, these issues came up, we believe that's
7 encompassed by other requests that are out there.

8 So I just want to make sure that, you know, it's, the
9 terms, you know we're not, we aren't agreeing to go far afield
10 of the DIP, but we are agreeing that in the context of the
11 conversations of the DIP these other issues arose, they would
12 be responsive and they're going to get them. Certainly, that's
13 related, you know DIP marketing materials we see that as, you
14 know a nonissue. If the investigation came up in the DIP
15 context, that's not an issue. If, really any of these topics,
16 Your Honor, it's true of that.

17 And just so that I can confirm it, I did say that we
18 would look for Board materials back in May, you know to the
19 extent they mentioned, you know the DIP we're happy to do it.
20 But, so I think that's, I just want to make sure we're all in
21 agreement there because that's what we're focused on is the DIP
22 and the cash management and the other issues that are being
23 contested now.

24 MR. THEISEN: Yeah, Judge, that's how it was conveyed
25 to me. I don't disagree with, it's a good recitation of that.

Colloquy

17

1 MR. KAPLAN: Okay, good.

2 MR. THEISEN: I think, obviously it's all in, it's
3 all in their interpretation of what is related to the DIP but
4 you know, at least based on those representations and you know
5 and our relationship with counsel, would take them at their
6 word that they're going to produce responsive documents,
7 reserving our rights obviously to come back at this point.

8 THE COURT: Okay. Sounds like you guys are getting
9 along great.

10 MR. THEISEN: We're all holding hands, Judge.

11 THE COURT: Yes, good.

12 MR. THEISEN: Let's talk about the audited
13 financials. There are two, there are two requests, the audited
14 financials and then it's number 10 on my letter request 25 and
15 26 which go to the unsecured funding commitment which we don't
16 seem to have an agreement on. Look, the audited or unaudited
17 financials we, we initially requested those back in 2017. We
18 told CSCEC last night we would agree to only the most recent
19 financials. We do think they're relevant to the ability, the
20 willingness, the historical financing of ED affiliates and the
21 debtor on unsecured terms, very loose terms, I think. I'm not
22 sure that they were even written loan documents.

23 And so we think those are directly relevant here to
24 the DIP necessity issue and really very, very little if any
25 burden to the production.

Colloquy

18

1 THE COURT: Mr. Kaplan?

2 MR. KAPLAN: Your Honor, again burden is not the sort
3 of issue. It doesn't relate to a matter that's being contested
4 and what I said to counsel earlier was, is to the extent that
5 the debtors asked for our audited or unaudited financials, and
6 they received them, they're going to, BMLP is going to get
7 them, it's going to be captured. If they didn't ask for them,
8 well, that's evidence that BMLP may want to present to Your
9 Honor as to why the debtor is or isn't doing what they're
10 supposed to do.

11 But again, I have to focus, I would like to try to
12 focus us on the fact of this is the debtor's DIP motion on what
13 evidence they are putting forward. If the debtor is not
14 relying on our audited or unaudited financials, you know like
15 evidence of our ability to make this DIP, then I don't know why
16 it's relevant now. I mean that goes to our point here which is
17 it's not a matter of really burden or lack of burden. It
18 simply goes to the fact of if the debtor asked for it and they
19 got it, BMLP is going to get it. If the debtor didn't ask for
20 it, then certainly the deposition BMLP is going to ask whomever
21 why didn't you ask for them? Or did you ask for them and they
22 said no, or I can't begin to sort of fathom all of the, you
23 know different iterations of the discovery. But the reality
24 here is, is Judge, it seems to me we're looking to put on
25 evidence that is outside the scope of the evidence that the

Colloquy

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1 debtor is asking you to consider in approving this DIP. That's
2 our view of it.

3 MR. THEISEN: Judge, I think it's important to
4 remember, and I don't know why the debtor would ask for those
5 financials. I think CSCEC would have considered those as the
6 controlling shareholder of the debtor. It would have
7 considered its own financial condition in looking at whether it
8 was willing or not willing to extend the DIP on an unsecured
9 basis. And this ties directly into the DIP proposed uses which
10 is again primarily for nondebtor affiliates, the money is going
11 to be washed. I don't mean that pejoratively. It's going to
12 run through the debtor and then it's going to go out to the end
13 users of those funds who are nondebtors.

14 And so the question really here is if this proposed
15 DIP lender is willing to put \$20 million on an unsecured basis
16 in the hands of those ultimate end users, and it has been
17 willing to fund both the debtor and those end users on that
18 basis for years, what is the need for the \$40 million secured
19 DIP loan to what they themselves acknowledge is a back office
20 entity, an entity, Judge, that really doesn't have any
21 collateral for the DIP other than equity interest and
22 subsidiary, what, it brings us to, you know the fundamental
23 question. What's the need for this DIP if they could just
24 route this money on an unsecured basis or whatever straight to
25 the entity that actually have revenues and collateral.

Colloquy

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1 MR. KAPLAN: Your Honor, I certainly look forward to
2 that issue being litigated in front of you between the debtor
3 and BMLP but I'm not sure why we would look at our own
4 financial statements to determine if we can make the loan. We,
5 we only represent CSCEC Holdings, right. We don't represent
6 the ultimate parent as Brett has sort of, excuse me, Mr.
7 Theisen, apologies for the lack of decorum there, Mr. Theisen
8 has referenced.

9 So we're not CSCEC, that's the ultimate parent in
10 China, just CSCEC Holdings. I'm not sure, the DIP here, Your
11 Honor, that's being presented to you again, by the debtor is a
12 secured DIP. There's going to be, I'm sure that, you know, one
13 of the requests asked for, you know whether or not there was a
14 consideration for an unsecured DIP, and I'm sure those will be
15 captured or already have been captured by the searches.

16 But why we would look at our own financial statement
17 in order to determine whether or not we could make this loan
18 and why it's on a secured basis, that's not, you're not going
19 to find that on the audited versus unaudited financial
20 statements. You're going to find that in the communications to
21 the extent they exist amongst the parties. We're just the DIP
22 lender. That is our role here. And so I'm just, again what
23 other than, you know our ability to fund this DIP which I don't
24 think anyone seems to disagree with that we can do, we didn't
25 look at our own financial statements and share that analysis

Colloquy

21

1 with the debtor. That's, and to the extent we did, you're
2 going to capture that in the email search.

3 MR. THEISEN: Well, it's all tied together, Judge,
4 the financials are together with the communications and the
5 consideration, historical, you know practices but, and this
6 goes beyond just the DIP also. Let's not forget. It goes to
7 the cash management and how those funds are going to be used
8 and where they're going to be used. Our big concern, Judge, is
9 they're going to be ultimately flow outside of even your
10 jurisdiction or maybe out of the country.

11 THE COURT: Okay. So I think I'm missing something
12 here. You're asking for audited and unaudited financial
13 statements which Mr. Kaplan is saying they either have produced
14 or they will produce.

15 MR. KAPLAN: I'm sorry, Your Honor, I said that --

16 THE COURT: Go ahead.

17 MR. KAPLAN: Apologize. I said in the extent that
18 they were exchanged between us and the debtor and the context
19 of the DIP negotiations, they'll be produced. But if they
20 weren't, I just want to be clear, we weren't agreeing to
21 produce those.

22 THE COURT: Well, and Mr. Theisen, the documents that
23 you're trying to get, I'm not sure what they would be but is it
24 so that it will give you a better understanding of where
25 historically money from CSCEC flowed to the debtor and the

Colloquy

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1 debtor's affiliates or subsidiaries?

2 MR. THEISEN: That's part of it. Yes, that's part of
3 it, Your Honor, and it's also, it also goes to testing the
4 willingness of or the ability of the DIP lender to make this an
5 unsecured DIP.

6 THE COURT: Well, isn't the whole, all right, I mean
7 it just seems to me that the argument there was, yes, we
8 always, our practice has always been to give them a lot of
9 money unsecured because it's part of the business practice but
10 not when there's a multi-billion dollar judgment against the
11 company that has put them into bankruptcy.

12 MR. THEISEN: Well, our question, and that's a fair
13 point. Our question there would then be if all you're doing is
14 lending money to the debtor on a secured basis so that it could
15 then flow back out to nondebtors and in conjunction with that
16 40 million you're also committing to 20 million unsecured
17 financing directly to those non-debtors why do we need a DIP at
18 all? We don't think we do.

19 THE COURT: Well, but doesn't that answer come out in
20 a deposition, that would explain to you the way the corporate
21 structure, the financing structure operates?

22 MR. THEISEN: It may, Judge, but I don't see, I don't
23 see how you can say that the financials are not relevant and
24 we're not entitled to see that to prepare for that deposition.

25 THE COURT: Okay. No, I'm not saying that but maybe

Colloquy

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1 I'm not understanding what is that you think is going to show
2 you. You want documents, you're saying that the financial
3 statements, the audited and unaudited will show you the history
4 of the flow of cash between all of these entities.

5 MR. THEISEN: We think it would, yes.

6 THE COURT: Okay. So that makes sense to me. I
7 think it should be produced.

8 MR. KAPLAN: Judge, we would ask for that one to be
9 sent, you know your order has to produce that, that be deemed
10 highly confidential subject to the protective order because we
11 have grave concerns about BMLP sharing that with, you know
12 non-bankruptcy counsel and we --

13 THE COURT: Yes, no, that's, it's definitely
14 protected that information.

15 MR. KAPLAN: Okay.

16 MR. THEISEN: So then the only other issue remaining
17 I think, Judge, is the requests for information relating to the
18 DIP lender's commitment to provide that 20 million in unsecured
19 financing. It's request number 25 and sorry, 25 and 26. I
20 would note that Your Honor ordered BCA to produce that
21 information.

22 THE COURT: Right.

23 MR. THEISEN: You know again it's relevant and should
24 be produced here for all the same reasons that the financials
25 ought to be produced, goes to the cash management, goes to the

Colloquy

24

1 necessity of the DIP, goes to their ability and willingness to
2 do historically one way and now saying we have to run this on a
3 secured loan through the DIP lender or through the debtor
4 rather.

5 MR. KAPLAN: Your Honor, simply because the debtor
6 was ordered to produce something, doesn't make it relevant to
7 the DIP lender. I mean it shouldn't be of a shock to anyone
8 that it doesn't, it's not the same burden for the debtor versus
9 the DIP lender here and we're specifically talking about loans
10 to nondebtors. What the debtor does or does not do with its
11 cash, Your Honor, is something that the Court is, I'm sure
12 going to examine and I'm sure BMLP is going to raise for you
13 every which way under the sun. But that's not the DIP lender.

14 And loans between the DIP lender and nondebtor
15 affiliates, which are separate companies on every which way you
16 look at this equation, Your Honor, these are separate
17 companies. If the debtor considered that as part of the DIP
18 and that was part of the negotiations and the communications
19 they're going to get them. Your Honor also, apparently ordered
20 the debtor to produce this stuff. But why we are also required
21 to now produce the source documents and the negotiations and
22 the back and forth on these things, to the extent they exist,
23 it's not relevant. It is not a piece of the DIP. The DIP is a
24 \$40 million secured DIP. That's the money that's going to the
25 debtor. Money going to nondebtor affiliates, simply saying

Colloquy

25

1 it's relevant doesn't make it so.

2 THE COURT: Yes, I think --

3 MR. THEISEN: Judge, given --

4 THE COURT: -- maybe explain to me a little bit more
5 about that, Mr. Theisen, the initial DIP financing that was
6 approved in the interim order is one thing and then we're
7 looking at, I think it's, is it a total of 40 million interim
8 and final?

9 MR. KAPLAN: Up to forty.

10 MR. THEISEN: Yeah, up to forty million and then
11 they've got a companion commitment which they make a big deal
12 of in the cash management and the DIP of this additional \$20
13 million unsecured that's going to the nondebtor affiliates and
14 we're entitled to understand more about that. Why did they
15 decide to do that? Why is it 20 million? Why does the DIP
16 have to be forty? What were the budgets? What were the
17 forecasts that went into that? What were the negotiations over
18 that number with the debtor?

19 THE COURT: And a lot of that --

20 MR. KAPLAN: Your Honor?

21 THE COURT: Go ahead.

22 MR. KAPLAN: Your Honor, the they there except for
23 the little switch at the end there, it's not, the debtor's
24 decision about how they spend the cash or the \$40 million DIP
25 is the debtor's decision, right. That's all subject to it.

Colloquy

26

1 But this is, we did not make a big deal of anything. You don't
2 have a filing, Your Honor. The big deal I think is in the,
3 someone I'm sure will correct me if I'm wrong, it's in the Blum
4 declaration that they're referring to. That's not submitted by
5 the DIP lender, Your Honor. That's submitted by the debtor.

6 So we keep interchanging the they and the this and
7 the that but it's not the DIP lender. It's the debtor, Your
8 Honor, and you ordered the debtor to produce this stuff.

9 MS. WEISGERBER: Your Honor, this is Erica Weisgerber
10 on behalf of the debtor. Just for clarity of the record, we
11 had agreed to produce certain materials relating to that. I do
12 not believe that that was the topic of discussion on Friday.
13 I'm not sure it's accurate that you made any order with respect
14 to that request.

15 THE COURT: Thank you --

16 MR. KAPLAN: That is my imprecision. Ms. Weisgerber,
17 I did not mean to imply that you won or lost an issue. I was
18 using Mr., I think I was referring to the, I think what I heard
19 from opposing counsel.

20 MS. WEISGERBER: No problem.

21 THE COURT: Well, thanks, no, I appreciate that, I
22 appreciate you saying that because I wasn't remembering this on
23 Friday, or at least if I did remember it --

24 MR. THEISEN: Your Honor, this is --

25 THE COURT: -- I didn't understand it at the time so

Colloquy

27

1 if you can --

2 MR. THEISEN: Your Honor, this is Mr. Theisen. I
3 think I was, I was lumping that in with your order on the prior
4 loans, the intercompany loans because they're somewhat at least
5 in my mind a related issue.

6 THE COURT: Yes, and my initial reaction to that is
7 take what you're getting now and if that shows that you need
8 more information about the debtor's reasons for all this and
9 you think you can get it through the DIP lender, let me know as
10 soon as you come up with that and we'll decide what to do then.

11 MR. THEISEN: Okay, Your Honor. I think that takes
12 me to the end of our issues list.

13 THE COURT: Okay.

14 MR. THEISEN: Unless Mr. Malone is also on the line
15 if I left something out, he'll correct me.

16 THE COURT: Yes, anything else, Mr. Malone? Okay.
17 And Mr. Kaplan, any other questions or comments?

18 MR. KAPLAN: No, Your Honor. I think we're ready to
19 get, to receive the search terms, you know and begin to work
20 through the process and we expect to do so expeditiously. As I
21 said, we're ready, we have the stuff in our database ready for
22 searching so, and we would not burden the Court with anything
23 else. We look forward, we'll come back, we'll try to meet and
24 confer on any issues that may arise and not burden the Court
25 and hope to see you in February.

1 THE COURT: Okay. I appreciate that. Good luck with
2 all of this.

3 MR. KAPLAN: Thank you, Your Honor.

4 THE COURT: Thank you, everybody.

5 * * * * *

6 C E R T I F I C A T I O N

7 I, Tracy Gribben, court approved transcriber, certify
8 that the foregoing is a correct transcript from the official
9 digital audio recording of the proceedings in the above-
10 entitled matter.

11

12

13 /S/TRACY GRIBBEN

14

15 TRACY GRIBBEN TRANSCRIPTION, LLC January 24, 2025

16 DATE

17

18

19

20

21

22

23

24

25

EXHIBIT F



BRETT S. THEISEN
Director

Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Direct: (212) 613-2065 Fax: (212) 554-9697
btheisen@gibbonslaw.com

January 22, 2025

Via Electronic Mail

Honorable Christine M. Gravelle
United States Bankruptcy Court
for the District of New Jersey
Clarkson S. Fisher U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
Email: chambers_of_cmg@njb.uscourts.gov

Re: In re CCA Construction, Inc., Case No. 24-22548

Dear Judge Gravelle:

On behalf of BML Properties, Ltd. ("BMLP"), the largest creditor in the above-captioned chapter 11 case, we write in advance of the discovery conference scheduled with Your Honor for January 22, 2025 at 1:30 p.m. concerning discovery BMLP's seeks from the proposed DIP Lender, CSCEC Holding Company, Inc. ("CSCEC Holding").

Attached hereto, please find the following documents, which shall serve to identify the remaining areas of dispute and assist Your Honor in resolving the same—

- Exhibit 1 – Email correspondence from Brett S. Theisen to counsel for CSCEC Holding dated January 22, 2025, regarding the parties' meet & confer held January 21, 2025 (identifying the parties' areas of dispute);
- Exhibit 2 – CSCEC Holding's responses and objections to BMLP's document requests.

We thank the Court for its courtesies and assistance with respect to this matter.

Respectfully submitted,

/s/ Brett S. Theisen

Brett S. Theisen
Director

GIBBONS P.C.

January 22, 2025

Page 2

cc: Robert K. Malone (rmalone@gibbonslaw.com)
Christopher P. Anton (canton@gibbonslaw.com)
Kyle P. McEvilly (kmcevilly@gibbonslaw.com)
Natasha Labovitz (nlabovitz@debevoise.com)
Sidney P. Levinson (slevinson@debevoise.com)
Erica Weisgerber (eweisgerber@debevoise.com)
Mark P. Goodman (mpgoodman@debevoise.com)
Morgan A. Davis (mdavis@debevoise.com)
Elie J. Worenklein (eworenklein@debevoise.com)
Molly Baltimore Maass (mbmaass@debevoise.com)
Michael Sirota (MSirota@coleschotz.com)
Warren Usatine (wusatine@coleschotz.com)
Felice Yudkin (fyudkin@coleschotz.com)
Jeffrey L. Cohen (JCohen@lowenstein.com)
Andrew D. Behlmann (ABehlmann@lowenstein.com)
Michael A. Kaplan (MKaplan@lowenstein.com)
Nicole M. Fulfree (nfulfree@lowenstein.com)
Mikayla R. Berliner (MBerliner@lowenstein.com)

EXHIBIT 1

McEvilly, Kyle P.

From: Theisen, Brett S.
Sent: Wednesday, January 22, 2025 9:22 AM
To: Kaplan, Michael A.; Behlmann, Andrew D.; Fulfree, Nicole M.; Berliner, Mikayla R.; Cohen, Jeffrey L.
Cc: Malone, Robert K.; Anton, Christopher P.; McEvilly, Kyle P.
Subject: RE: CCA - CSCEC Holding Discovery

Dear Lowenstein team,

We write to memorialize our meet and confer call last night. As you know, our general position is that CSCEC Holding should agree to the same scope of production as CCA. We have endeavored to narrow our requests even further than we had already done ahead of last Friday's conference, and again after our call last night. Following our call, here is where we believe things currently stand with respect to BMLP's discovery directed to CSCEC Holding—

General Objections

1. **Time Limitation:** Court ordered CCA to produce relevant documents dating back to May 1, 2024, and we requested that CSCEC Holdings agree to the same. CSCEC Holdings has not agreed, but has offered to go back to September 2024.
2. **Relevance of Affiliates:** Court directed CCA to start by producing their own documents, without prejudice to BMLP to come back and seek additional documents from other affiliated entities. CSCEC Holdings has agreed to do the same.

Specific Requests

Initially, CSCEC agreed to provide only the following:

1. #6 (board materials, only to the extent they deem relevant to the DIP).
2. #9 and #10 (preparation of budget and projections)
3. #24 (conclusion that 40m is the right size)
4. #28 (the formation of the special committee – implying that they were involved!),
5. #30 (identification of CSCEC Holding as source of funding)
6. #33 (negotiations over DIP)
7. #34 (indication of interest on DIP)

We discussed the following additional Requests (if not highlighted, BMLP is reserving its rights at this time):

1. **#1 (org chart)** – We requested that CSCEC produce its Org Chart, which is relevant and necessary to understand the Debtor's general ledger and the Cash Management motion. CSCEC Holdings has not agreed to produce. **BMLP will reserve its rights on this request.**
2. **#3 and #4 (audited and unaudited financials)** - We requested that CSCEC produce these, at least its most recent financials, which are relevant to its ability or willingness to provide unsecured financing and/or finance the affiliates directly. CSCEC Holdings agreed to take our narrowed request under consideration. **BMLP intends to raise this issue with the Court, absent a resolution before the hearing this afternoon.**
3. **#5 (project pipeline)** – We requested that CSCEC produce these materials, which are relevant to the necessity of the DIP, and because if DIP funds will be going out to Affiliates, BMLP has a right to know which of those Affiliates, if any, may have revenues coming in (which would also be relevant to the DIP lender). CSCEC Holdings has not agreed to produce. **BMLP will reserve its rights on this request.**

4. **#6 (board materials)** – In addition to DIP-related materials which CSCEC initially agreed to produce, we also requested that CSCEC produce all board materials relating to the topics that the Court directed CCA to produce: the appointment of Elizabeth Abrams, the formation of the Special Committee, and the filing of the Chapter 11 Case. We expressed our view that this does not impose any additional burden, since you will already need to review all board materials to locate anything DIP-related. CSCEC Holdings has not agreed to produce board materials other than those that are, in its view, “DIP-related.” **BMLP intends to raise this issue with the Court.**
5. **#11 (detail on shared services expenses)** – CSCEC objected that this is not related to the DIP; however, it is directly relevant to cash management, and we requested that it be produced, particularly on the basis that it will allow BMLP to test the completeness of CCA’s production. CSCEC Holdings has not agreed to produce. **BMLP will reserve its rights on this request.**
6. **#13, #14, #15, and #18 (employee census, activities disclosure, benefits, and reimbursement)** – We requested that CSCEC produce these, because it would show if CCA employees are also employed by CSCEC and the overlap. It also goes to the necessity of a DIP (e.g., is CSCEC lending to CCA to pay its own employees or other expenses?). This will also allow BMLP to test the completeness of the CCA production. CSCEC Holdings has not agreed to produce. **BMLP will reserve its rights on these requests.**
7. **#16 (IT system info)** – Again, this goes to whether the DIP will be used to pay CSCEC expenses. It also would demonstrate CSCEC’s control over related entities’ documents and information. Moreover, since CCA only agreed to provide a “summary of IT related costs under Shared Services Program”, this information will again allow BMLP to test the completeness of the CCA production. CSCEC Holdings has not agreed to produce. **BMLP will reserve its rights on this request.**
8. **#20 (materials concerning BDO’s discussions with potential lenders)** – CSCEC objected to this request on the basis that it “did not engage BDO.” We asked for clarity, since this request asked a different question, specifically for documents and communications “concerning BDO’s engagement with representatives of potential funding sources” – which would include CSCEC – and specifically for teaser materials, NDAs, and other materials provided to CSCEC such as management presentations or a dataroom index. In other words, we are seeking materials relating to BDO’s negotiation of the DIP with CSCEC, including the initial outreach. This would also cover any correspondence, if any, with CSCEC about other potential lenders. CSCEC Holdings agreed to take our clarified request under consideration. **BMLP intends to raise this issue with the Court, absent a resolution.**
9. **#22 and #24 (DIP Marketing materials and forecasts)** – We requested that CSCEC produce these materials, which will show whether and to what extent CSCEC was involved and/or directed the process. CSCEC Holdings agreed to take our clarified request under consideration. **BMLP intends to raise this issue with the Court, absent a resolution.**
10. **#25 and #26 (CSCEC \$20 million unsecured commitment to non-debtor affiliates)** - We requested that CSCEC produce these materials, which are relevant to necessity of the DIP, and CSCEC (as opposed to CCA) is uniquely able to produce. CSCEC Holdings has not agreed to produce. However, we discussed with you the possibility that CSCEC might consider a narrowed and/or restated request. **We are discussing this with our client and internally, but will likely raise this issue with the Court, absent a resolution.**
11. **Investigation into Claims (Request #29)** - We requested that CSCEC produce these materials, which the Court ordered to be produced by CCA. CSCEC Holdings has not agreed to produce. **BMLP intends to raise this issue with the Court, absent a resolution.**
12. **Debts owed by CCA to CSCEC (Request #30)** - We requested that CSCEC produce these materials, which the Court ordered to be produced by CCA. This will also allow BMLP to test the completeness of the CCA production. CSCEC Holdings has not agreed to produce. We agreed that we would reserve our rights to renew the request depending on the response we receive from CCA. **BMLP will reserve its rights on these requests.**
13. **#35 (shared services agreements and documents)** – We reserved our rights on this, but noted that to the extent CCA produces, then we don’t need it from CSCEC.

Last, Gibbons asked Lowenstein to provide us with the following information regarding CSCEC’s search process:

1. names of custodians searched
2. search terms applied
3. additional responsiveness criteria applied (if any)

You agreed to provide this information, as well as a “hit report” after the search terms are applied. You also invited BMLP to provide any specific search terms for their consideration.

We look forward to addressing the remaining issues with you, and if necessary, Judge Gravelle, later today.

Thanks.

BRETT S. THEISEN | Director
Vice Chair, Financial Restructuring & Creditors' Rights Group
t: 212-613-2065 | c: 917-524-5987 | f: 212-554-9697
btheisen@gibbonslaw.com | [bio](#)

Gibbons P.C. | One Pennsylvania Plaza | 45th Floor, Suite 4515 | New York, NY 10119
m: 212-613-2000 | f: 212-290-2018 | [office](#) | [map](#)



gibbonslaw.com | gibbonslawalert.com  

From: Kaplan, Michael A. <MKaplan@lowenstein.com>

Sent: Tuesday, January 21, 2025 1:45 PM

To: Theisen, Brett S. <BTheisen@gibbonslaw.com>; Behlmann, Andrew D. <ABehlmann@lowenstein.com>; Fulfree, Nicole M. <NFulfree@lowenstein.com>; Berliner, Mikayla R. <MBerliner@lowenstein.com>; Cohen, Jeffrey L. <JCohen@lowenstein.com>

Cc: Malone, Robert K. <RMalone@gibbonslaw.com>; Anton, Christopher P. <CAnton@gibbonslaw.com>; McEvilly, Kyle P. <KMcEvilly@gibbonslaw.com>

Subject: RE: CCA - CSCEC Holding Discovery

External Email: Use caution with links and attachments.

Brett:

We are certainly willing to meet and confer, and will consider your additional requests. I am not, however, familiar with what you mean by (c) on responsiveness criteria. Do you have some times in mind so we can poll our team?

Michael

Michael A. Kaplan
Partner
Lowenstein Sandler LLP

T: (973) 597-2302
M: (215) 740-5090

F: (973) 597-2303



From: Theisen, Brett S. <BTheisen@gibbonslaw.com>

Sent: Tuesday, January 21, 2025 1:41 PM

To: Kaplan, Michael A. <MKaplan@lowenstein.com>; Behlmann, Andrew D. <ABehlmann@lowenstein.com>; Fulfree, Nicole M. <NFulfree@lowenstein.com>; Berliner, Mikayla R. <MBerliner@lowenstein.com>; Cohen, Jeffrey L. <JCohen@lowenstein.com>

Cc: Malone, Robert K. <RMalone@gibbonslaw.com>; Anton, Christopher P. <CAnton@gibbonslaw.com>; McEvilly, Kyle P. <KMcEvilly@gibbonslaw.com>

Subject: CCA - CSCEC Holding Discovery

Michael and team –

Are you available today for a further meet & confer call? In light of the Court's various rulings last Friday, and with the finalization of the Protective Order today, we would like to try to resolve the remaining issues with CSCEC (without the need to return to Judge Gravelle), so that your client can begin its production.

In addition, can you please provide us with the following information regarding CSCEC's search process: (a) names of custodians searched, (b) search terms applied, and (c) the responsiveness criteria applied?

Thanks,
Brett

BRETT S. THEISEN | Director

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EXHIBIT 2

Jeffrey L. Cohen, Esq.
Andrew D. Behlmann, Esq.
Michael A. Kaplan, Esq.
Nicole M. Fulfree, Esq.

LOWENSTEIN SANDLER LLP

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Counsel to CSCEC Holding Company, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

CCA Construction, Inc.,¹

Debtor.

(Hon. Christine M. Gravelle)

Chapter 11

Case No. 24-22548 (CMG)

**CSCEC HOLDING COMPANY, INC.’S RESPONSES AND OBJECTIONS
TO BML PROPERTIES, LTD.’S AMENDED FIRST REQUESTS FOR
THE PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7026, 7034, and 9014 of the Federal Rules of Bankruptcy Procedure, CSCEC Holding Company, Inc. (“CSCEC Holding”), by and through its undersigned counsel, hereby responds and objects to the Amended First Request for the Production of Documents issued by BML Properties, Ltd. (“BMLP”) and dated January 13, 2025 (the “Document Requests”).

¹ The last four digits of CCA’s federal tax identification number are 4862. CCA’s service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

GENERAL OBJECTIONS

The following general objections set forth below, apply to and are incorporated by reference into, each response made herein, in addition to CSCEC Holding's specific responses and objections to the Document Requests.

1. CSCEC Holding objects to the Document Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, and/or any other applicable privilege or protection. CSCEC Holding hereby asserts all such applicable privileges, immunities, and protections. Inadvertent production of any privileged or protected documents will not operate as a waiver of any privilege, immunity, or protection with respect to the subject matter thereof or the information contained therein, and will not waive CSCEC Holding's right to object to the use of any such documents during litigation. The voluntary production of privileged or protected documents will not operate as a waiver of any privilege, immunity, or protection as to any other document.

2. CSCEC Holding objects to the Document Requests to the extent that they seek information that is neither relevant nor related to the subject matter of the *Motion for Entry of Interim and Final Order (i) Authorizing the Debtor to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* [ECF No. 4] (the "DIP Motion") filed by CCA Construction, Inc., the debtor in possession in the above-captioned chapter 11 case (the "Debtor").

3. CSCEC Holding objects to the Document Requests on the grounds that they are overbroad, unduly burdensome, vague, cumulative, and/or duplicative. Copying and pasting the identical requests that were served upon Debtor does not properly consider the limitations imposed by Federal Rule of Civil Procedure 26 and is inconsistent with signing counsel's obligations under Federal Rule of Civil Procedure 11.

4. CSCEC Holding objects to the Document Requests insofar as they attempt to impose obligations beyond those established by the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, this Court's individual rules and practices, and any other applicable statutes, regulations, rules and orders (collectively, the "Court Rules"). CSCEC Holding's responses to the Document Requests are prescribed by, and CSCEC Holding hereby responds in accordance with, the Court Rules.

5. CSCEC Holding objects to the Document Requests to the extent that they utilize words or phrases that (i) assume facts not established; (ii) constitute, form, imply, require or call for a legal conclusion; or (iii) incorporate a characterization based on a legal conclusion. CSCEC Holding further objects to the Document Requests to the extent that they contain incomplete, inaccurate or misleading descriptions or characterizations of facts, events and pleadings underlying or relating to this action. Any response or production of documents by CSCEC Holding does not constitute any agreement with, or acceptance of, any such assumptions, implications, conclusions, descriptions or characterizations.

6. CSCEC Holding objects to the Document Requests on the ground that the use of the phrase "all" without any limiting language, calls for a search that is overly broad, onerous, oppressive, unduly burdensome, and fails to reasonably identify the documents sought. CSCEC Holding will make a reasonable effort to locate responsive information that is within its possession, custody, or control. CSCEC Holding undertakes no further obligation notwithstanding any particular response below that it will produce responsive documents.

7. Any documents which CSCEC Holding produces in response to the Document Requests is produced without waiving any objections regarding the use of those documents in any subsequent proceeding or trial in this or any other action, including, but not limited to, objections based on relevance, privilege, or admissibility.

8. CSCEC Holding objects to the defined terms “CSCEC” and “CSCEC Affiliates.” CSCEC, as defined in the Document Requests, is a separate foreign entity, which is not represented by Lowenstein Sandler LLP in this matter, is not subject to the jurisdiction of this Court, and, upon information and belief, has not been properly served with any process (to the extent such service is even possible given the applicable international treaties). CSCEC Holding will produce responsive documents only insofar as they are in the possession, custody, or control of CSCEC Holding and will neither search for nor produce any documents that may be in the possession, custody, or control of CSCEC, any CSCEC Affiliates, or any other entity.

9. CSCEC Holding objects to the Document Requests insofar as they seek documents outside of CSCEC Holding’s possession, custody, or control.

10. CSCEC Holding’s agreement to produce non-privileged, responsive documents is not, and should not be construed as, an admission that responsive documents exist, or that CSCEC Holding is in possession, custody, or control of any such documents.

11. CSCEC Holding reserves the right to supplement or modify these objections and responses.

12. CSCEC Holding is willing to meet and confer with BMLP regarding these responses and objections following receipt of BMLP’s specific responses thereto in writing.

OBJECTIONS TO INSTRUCTIONS

1. CSCEC Holding objects to the Document Requests' instruction that CSCEC Holding produce "all responsive Documents or Communications . . . available to You, Your employees, members, partners, accountants, agents, attorneys, auditors, or other Persons acting on Your behalf or under any direction or control of Your agents or representatives." Pursuant to Federal Rule of Civil Procedure 34, CSCEC Holding will only produce responsive documents within its possession, custody, or control.

2. CSCEC Holding objects to the Document Requests' instruction that the "relevant time period for these requests is from December 22, 2023 through and including the date on which You produce Documents." In response to all Document Requests that do not contain a specific temporal limitation, CSCEC Holding will produce responsive documents only for the period October 1, 2024 to present. For each Document Request that specifies a different time period, CSCEC Holding's specific responses and objections with respect to such time period are set forth below.

3. CSCEC Holding objects to the Document Requests' instructions insofar as they refer to a "subpoena." The Document Requests are not a subpoena.

SPECIFIC OBJECTIONS AND RESPONSES

1. A current organizational chart showing ownership of all entities owned in whole or in part by CSCEC, including ownership percentages.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding the ownership of CSCEC, which is a separate foreign entity not within CSCEC Holding's control. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

2. A current employee organizational chart, for all CSCEC Affiliates, showing (a) employee names and titles, and (b) direct and indirect reporting obligations for each employee (including, if applicable, reporting obligations between or to persons employed or affiliated with different CSCEC Affiliates).

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

3. Audited financial statements for the financial year 2017 through the present for You and for all CSCEC Affiliates, as well as Your and all CSCEC Affiliates' 2025 budgets and three-year projections.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have within its possession, custody, or control financial statements or other responsive documents for CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objection, CSCEC Holding declines to search for or produce such documents in response to this Document Request.

4. Unaudited financial statements for You and all CSCEC Affiliates for any years for which audited financial statements are not available. For the most recent completed fiscal period, if audited financial statements are not yet available, annual and quarterly unaudited/internal financial statements for You and all CSCEC Affiliates. For the current fiscal period, year-to-date internal financial statements for You and all CSCEC Affiliates.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have within its possession, custody, or control financial statements or other responsive documents for CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Any documents responsive to this Document Request, to the

extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objection, CSCEC Holding declines to search for or produce such documents in response to this Document Request.

5. Documents sufficient to show the current project pipeline for each of Your operating subsidiaries, including current projects, projects awarded, outstanding bids, and prospective bids on expected future projects.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control relating to the operating subsidiaries, which are subsidiaries of the Debtor, not direct subsidiaries of CSCEC Holding. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

6. All board minutes, board consents/resolutions, and shareholder resolutions of You and all CSCEC Affiliates.

Response: CSCEC Holding objects to this Document Request as overly broad and irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding minutes, consents, or resolutions for CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Subject to the foregoing objections and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control solely to the extent relevant to the DIP Motion.

7. Documents sufficient to show all related party transactions by You and all CSCEC Affiliates, including transactions between You and Debtor, from the financial year 2017 to the present.

Response: CSCEC Holding declines to search for or produce documents in response to this Document Request given BMLP counsel's January 13, 2025 agreement to defer Document Request #7 to a future discovery request, and CSCEC Holding reserves all rights with respect to any such future request.

8. Documents sufficient to show sales of assets by and between You and Debtor and all CSCEC Affiliates with a value greater than US \$2 million from the financial year 2017 to the present.

Response: CSCEC Holding declines to search for or produce documents in response to this Document Request given BMLP counsel's January 13, 2025 agreement to defer Document Request #8 to a future discovery request, and CSCEC Holding reserves all rights with respect to any such future request.

9. All Documents and Communications concerning the development of the 12-month DIP budget, including the assumptions and detailed breakdown for the disbursement line items similar to the 13-Week Cash Flow.

Response: CSCEC Holding objects to this request to extent it calls for information that imposes a burden on CSCEC Holding that is not proportional to the needs of the case and fails to account for the parties' relative access to the relevant information. Subject to the foregoing objection and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

10. All Documents and Communications concerning the development of the rolling 13-Week Cash Flow and any subsequent rolling 13-week budget, including documents sufficient to show all the disbursement line items in the 13-Week Cash Flow projections, including Debtor's payroll (broken down by employee and including employee function description), health insurance, visa fees and other expenses (broken down by employee), IT, employee reimbursement, other office expenses, Beijing subsidiary funding, and professional expenses.

Response: CSCEC Holding objects to this request to extent it calls for information that imposes a burden on CSCEC Holding that is not proportional to the needs of the case and fails to account for the parties' relative access to the relevant information. Subject to the foregoing objection and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

11. Documents sufficient to show the allocation of amounts by expense line item to subsidiary and affiliated companies provided under the Shared Services Program.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request because the Debtor, not CSCEC Holding, has provided shared services to its affiliates since March 10, 2021, and because any funds advanced and used for shared services provided for the benefit of non-debtor affiliates that are not subsidiaries of the Debtor are not considered DIP borrowings. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

12. All valuations or appraisals concerning Your investments in Your subsidiaries.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

13. Current active employee census for You and all CSCEC Affiliates, including information regarding employee title, department, employee function description, salary, annual bonus, start date, employee type, full-time/part-time, visa status, visa-related annual legal fees.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion at issue. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding employee census for CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

14. Documents sufficient to show the breakdown of the percentage of time spent by Your employees on activities for Debtor compared to activities for all CSCEC Affiliates over the past three years.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding employee activities for CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

15. Documents sufficient to show Your current employee benefits programs in place, with annual costs by program.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

16. Documents sufficient to show Your current IT systems, including vendor, functions, and annual costs.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

17. Documents sufficient to show Your insurance programs, including annual costs.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

18. Documents sufficient to show the main components (by categories) of Your employee reimbursements.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

19. Materials used in connection with attempts to secure a bond to stay enforcement of the New York judgment.

Response: CSCEC Holding objects to this request on the basis that the “New York judgment” is not defined. Assuming the Document Requests are referring to the judgment entered by the New York Supreme Court in favor of BMLP on October 31, 2024, CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding is not a judgment debtor under the New York judgment and thus CSCEC Holding never sought a bond. Any documents responsive to this Document Request are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

20. All Documents and Communications concerning BDO's engagement with representatives of potential funding sources to confirm whether there was any market interest in providing postpetition financing, including (i) the "teaser" materials and non-disclosure agreement that was provided to potential lenders, (ii) copies of all executed non-disclosure agreements with potential lenders, and (iii) all materials provided to potential lenders under a non-disclosure agreement, including but not limited to any management presentations and any dataroom index.

Response: CSCEC Holding objects to this Document Request insofar as BDO was not engaged by CSCEC Holding and CSCEC Holding does not have responsive documents within its possession, custody, or control regarding BDO's engagement of potential funding sources. Any documents responsive to this Document Request are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

21. Documents sufficient to show all insurance policies (including director and officer insurance policies) under which You or Your officers, directors, and/or employees are covered beneficiaries.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

22. All Documents and Communications concerning the marketing process to obtain postpetition financing conducted by BDO at the direction of the Special Committee to determine whether other potential third-party funding sources might exist that would provide comparable or more favorable terms, including documents sufficient to show (i) all potential financing sources that BDO considered, (ii) all parties that BDO contacted, (iii) all parties that entered into nondisclosure agreements, (iv) a timeline of the marketing process, and (v) any reasons that any party declined to enter into a non-disclosure agreement or to provide financing.

Response: CSCEC Holding objects to this Document Request insofar as BDO was not retained by CSCEC Holding and CSCEC Holding does not have responsive documents within its possession, custody, or control regarding BDO's marketing or financing. Any

documents responsive to this Document Request are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

23. Documents sufficient to show contingent liabilities of You, Debtor, and all CSCEC Affiliates, including surety bonds (including issuer and terms), all litigation, and other contingent liabilities.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding the liabilities of the Debtor or the CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

24. All Documents and Communications concerning BDO's and/or Elizabeth Abrams' conclusion(s) that Debtor requires a loan commitment of US \$40 million, including all financial and forecasts prepared by management of You or Debtor, management of any CSCEC Affiliate, and/or BDO.

Response: CSCEC Holding objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control prepared by the Debtor or CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Any documents responsive to this Document Request are in the possession, custody and control of the Debtor. Subject to the foregoing objections and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

25. All Documents and Communications concerning Your commitment to provide US \$20 million of unsecured financing directly to non-Debtor subsidiaries, including documents and communications concerning (i) Your negotiation with Debtor or any CSCEC Affiliates, (ii) CSCEC Holding's historical intercompany loans to non-Debtor subsidiaries, (iii) the statement in

Paragraph 23 of the Blum Declaration that “[t]hese loans ... will stabilize the non-debtor operations of the CCA Group, improving value and reducing claims against the Non-Debtor Subsidiaries, all of which will benefit CCA and its stakeholders,” and (iv) all budgets, forecasts, and/or other financial information containing information regarding the use of such loans by non-Debtor subsidiaries.

Response: CSCEC Holding objects to subsections (i)–(iv) of this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to subsection (iii) of this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding the Blum Declaration outside of the filed Blum Declaration. Any documents responsive to subsection (iii) of this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

26. All Documents and Communications concerning the reasons that the US \$20 million commitment from You to non-Debtor subsidiaries is in addition to the US \$40 million DIP Commitments.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion, particularly where the Debtor is not seeking court approval of the non-debtor subsidiary funding facility and that facility has no connection to the DIP Motion. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

27. All Documents and Communications concerning the statement in Paragraph 16 of the Blum Declaration that the available liquidity under the DIP Facility “will powerfully signal to key stakeholders that CCA will be able to operate”, including Documents and Communications concerning: (i) the sureties who issue bonds for existing and new projects and whose bonds are required to obtain new business, (ii) the customers who carefully consider the liquidity and financial condition of contractors as a factor in deciding which one to engage, (iii) the subcontractors who, if faced with the risk of nonpayment, might not continue to work on behalf of

any CSCEC Affiliate; and (iv) the vendors who provide goods and services that may be withheld if the risk of nonpayment persists.

Response: CSCEC Holding objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding Debtor's witness Evan Blum or the Blum Declaration, other than the filed Blum Declaration. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. CSCEC Holding further objects to this Document Request as inherently speculative. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

28. All Documents and Communications concerning (i) the formation of the Special Committee, (ii) the appointment of Elizabeth Abrams as the Special Committee's sole member (including the selection process for Ms. Abrams and the parties involved in that process), (iii) the Special Committee's negotiation of DIP financing with potential lenders, (iv) the Special Committee's evaluation and approval of the DIP, (v) the specific advisors who advised her in connection with the DIP.

Response: CSCEC Holding objects to this request to extent it calls for information that imposes a burden on CSCEC Holding that is not proportional to the needs of the case and fails to account for the parties' relative access to the relevant information. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding Debtor's director Elizabeth Abrams or subsections (i), (ii), (iv), and (v). Documents responsive to this Document Request are in the possession, custody and control of the Debtor. As for subsection (iii), subject to the foregoing objections and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

29. All Documents and Communications concerning Elizabeth Abrams' and/or the Special Committee's investigation into or due diligence concerning potential claims that You have or may have against Debtor and/or CSCEC Affiliates.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding Debtor's director Elizabeth Abrams. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

30. All Documents and Communications concerning BDO's identification of You as a potential source of financing, including documents and communications concerning Your (i) prior history of providing financing to Debtor, (ii) "obvious interest, as the sole equity holder of CCA, in preserving CCA's value," *see* Blum Decl. ¶ 18, and (iii) indication of potential willingness to finance Debtor's restructuring.

Response: CSCEC Holding objects to this request to the extent it calls for information that imposes a burden on CSCEC Holding that is not proportional to the needs of the case and fails to account for the parties' relative access to the relevant information. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding Debtor's advisor BDO, Debtor's witness Evan Blum, or the Blum Declaration, other than the filed Blum Declaration. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. Subject to the foregoing objections and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

31. All information reviewed and assembled by BDO regarding the terms and conditions under which comparable Chapter 11 debtors have obtained debtor in possession financing that were used to formulate and benchmark proposals by You and/or any potential third party lender.

Response: CSCEC Holding objects to this Document Request insofar as CSCEC Holding did not retain BDO and does not have responsive documents within its possession, custody, or control regarding actions taken by Debtor's advisor BDO. Any documents responsive to this Document Request are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

32. *[This paragraph is blank in the Document Requests.]*

Response: CSCEC Holding declines to produce documents in response to this blank Document Request.

33. All Documents and Communications concerning the negotiation of the terms and conditions of the debtor in possession financing between You and Debtor and any CSCEC Affiliate, including Communications with Debtor's counsel, Debevoise & Plimpton LLP and Cole Schotz P.C.

Response: CSCEC Holding objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding CSCEC Affiliates, which are separate entities not within CSCEC Holding's control. Subject to the foregoing objection and General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

34. All Documents and Communications concerning any indication of interest, term sheet, proposal, or any other binding or non-binding offer made by You and/or any potential third party lender.

Response: Subject to the General Objections, and subject to entry of a Protective Order by the Court governing the production of confidential information, CSCEC Holding will conduct a reasonable search for, and produce if found, responsive non-privileged

documents within its possession, custody, or control that are not duplicative of documents being produced by the Debtor.

35. All Documents and Communications concerning the Shared Services Program, including (i) copies of all Shared Services Agreements, (ii) documents sufficient to show cost savings associated with the Shared Services Program, (iii) documents sufficient to show the allocation mechanism used to reimburse Debtor for costs under the Shared Services Program, and (iv) all records of Debtor's Intercompany Transactions.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion, as the Debtor, not CSCEC Holding, has provided shared services to its affiliates since March 10, 2021, and because any funds advanced and used for shared services provided for the benefit of non-debtor affiliates that are not subsidiaries of the Debtor are not considered DIP borrowings. CSCEC Holding further objects to this Document Request insofar as CSCEC Holding does not have responsive documents within its possession, custody, or control regarding the Debtor. Any documents responsive to this Document Request, to the extent it actually pertains to the DIP Motion, are in the possession, custody and control of the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

36. Your general ledger.

Response: CSCEC Holding objects to this Document Request as irrelevant to the DIP Motion. CSCEC Holding further objects to this Document Request as vague and overbroad. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

37. The same financial reporting that Debtor is required to provide to You under the DIP Motion.

Response: Any documents responsive to this Document Request, consisting of reports the Debtor is required to produce and provide to CSCEC Holding, are in the possession, custody and control of the Debtor. As such, any production thereof by CSCEC Holding would be entirely duplicative. In light of the foregoing objection and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

38. For each week from the date hereof onward, a weekly report of all postpetition cash transfers made by You to Debtor and any CSCEC Affiliates.

Response: CSCEC Holding objects to this Document Request as unnecessarily duplicative, as DIP reporting will cover advances made to the Debtor. CSCEC Holding further objects to this Document Request as irrelevant to the DIP Motion insofar as it pertains to CSCEC Affiliates that are not the Debtor. In light of the foregoing objections and General Objections, CSCEC Holding declines to search for or produce documents in response to this Document Request.

Dated: January 16, 2025

By: /s/ Michael A. Kaplan

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1

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Counsel to CSCEC Holding Company, Inc.

In re:

CCA Construction, Inc.,¹

Debtor.

Case No. 24-22548 (CMG)

Chapter 11

Judge: Christine M. Gravelle

**ORDER GRANTING CSCEC HOLDING COMPANY INC.'S MOTION TO QUASH
SUBPOENA ISSUED BY BML PROPERTIES, LTD.**

The relief set forth on the following page, numbered two (2), is hereby **ORDERED**.

¹ The last four digits of CCA's federal tax identification number are 4862. CCA's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

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Debtor: CCA Construction, Inc.

Case No.: 24-22548 (CMG)

Caption: *Order Granting CSCEC Holding Company Inc.'s Motion to Quash Subpoena Issued by BML Properties, Ltd.*

This matter comes before the Court on the motion (the “Motion”) of CSCEC Holding Company Inc. (“CSCEC”) to quash the Rule 2004 Subpoena² issued by BML Properties, Ltd. to CSCEC on January 13, 2025; and the Court, having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey entered on July 23, 1984, as amended on September 18, 2012 (Simandle, C.J.); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the dispute has been given and that no other or further notice is necessary; and upon the record herein and at the hearing held on the Motion; and the Court having determined that the relief provided for herein is in the best interests of the parties; and after due deliberation and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to Federal Rule 45(d)(3), made applicable hereto by Bankruptcy Rule 9016, and Local Rule 2004-1(d), the Rule 2004 Subpoena is hereby quashed.
3. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.