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*Counsel to BML Properties, Ltd.*

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

In re:

CCA Construction, Inc.,<sup>1</sup>

Debtor.

(Hon. Christine M. Gravelle)

Chapter 11

Case No. 24-22548-CMG

**LIMITED OBJECTION OF BML PROPERTIES, LTD. TO APPLICATION TO RETAIN  
DUANE MORRIS LLP AS COUNSEL TO SPECIAL COMMITTEE**

BML Properties, Ltd. (“BMLP”), by and through its undersigned counsel, respectfully submits this limited objection (the “Objection”) to the *Application for Retention of Professional Effective April 9, 2025* [Dkt. 0255] (the “Application”) seeking to retain Duane Morris LLP (“Duane Morris”) as counsel to the Special Committee (the “Special Committee”) of CCA Construction, Inc. (the “Debtor” or “CCA”), and respectfully states as follows:

<sup>1</sup> 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.



### **LIMITED OBJECTION**

1. The Special Committee seeks to retain counsel to, among other tasks, investigate estate causes of action, which is one of the purposes for which BMLP sought an examiner. The Court has already granted BMLP's motion for an examiner,<sup>2</sup> and now that the New York Appellate Division has affirmed BMLP's judgment against CCA, the United States Trustee's Office ("UST") has commenced the process of selecting and appointing one. BMLP agrees that an investigation is necessary—indeed, BMLP is the estate's largest creditor by orders of magnitude and would be the primary beneficiary of that investigation. But BMLP objects to the retention of Duane Morris for that purpose in light of the forthcoming examiner. The important work of an independent examiner cannot be substituted by, and estate resources should not be diverted to, a separate and duplicative investigation organized behind closed doors by CCA and its sole shareholder CSCEC Holding Company, Inc. ("CSCEC Holding").

2. The Application evidences a tactical decision to begin an investigation shortly before the examiner's appointment, and it seeks *nunc pro tunc* relief without any apparent need for exigency. Tellingly, the Application reveals that the Special Committee engaged Duane Morris on April 9, 2025, one (1) day after the New York Appellate Division **unanimously** upheld BMLP's \$1.6 billion fraud judgment against CCA. Application at 4-5. The affirmance of BMLP's judgment triggered a 21-day deadline for the UST to appoint an examiner (*i.e.*, by April 29, 2025). *See* Examiner Order at 2-3.

3. BMLP understands that the UST has been diligently interviewing several well-qualified examiner candidates and will appoint an examiner by the April 29 deadline. After the appointment, the Court will hold a hearing to determine the examiner's scope and budget. *Id.* at

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<sup>2</sup> *See Order Granting the Appointment of an Examiner* [Dkt. 0211] (the "Examiner Order").

3. Until that has occurred, the estate should not expend resources on its own investigation, and the Court should not permit Duane Morris to undertake any investigative activities or, to the extent it has already begun without Court approval, order the estate to cease any such activities and make clear that Duane Morris will not be compensated by the estate for any unauthorized work to date. Moreover, *nunc pro tunc* relief is not necessary or justified under these circumstances.<sup>3</sup>

4. Not unexpectedly, neither CCA nor the Special Committee consulted with BMLP regarding Duane Morris's retention or any investigation, despite CCA's representations to this Court that it is working in good faith with BMLP.<sup>4</sup> This is troubling because this Chapter 11 case is predominantly a two-party dispute between BMLP and CCA, and BMLP has both a significant interest in any investigation and a proven track record of ferreting out misconduct by CCA, as shown by the New York judgment for liability that CCA apparently still refuses to accept.

5. Moreover, the examiner's investigation cannot be substituted for that of an Independent Director. Indeed, in *FTX*, the Third Circuit rejected the debtors' attempts to resist an examiner because they had a "completely independent" CEO and multiple ongoing independent investigations were underway into pre-petition mismanagement. *See In re FTX Trading Ltd.*, 91 F.4th 148, 156 (3d Cir. 2024). The Court found these arguments "unpersuasive" because the examiner's investigation would differ in "several significant ways"—including because an examiner must be disinterested, ensuring that no party could "deem [] issues unworthy of outside investigation," and that the examiner must make their findings public. *Id.* at 156-157.

6. The need for a thorough independent investigation is underscored by facts uncovered since the commencement of this case, which strongly suggest that CCA's misconduct

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<sup>3</sup> See *Matter of Arkansas Co., Inc.*, 798 F.2d 645, 649 (3d Cir. 1986) ("*nunc pro tunc* approval should be limited to cases where extraordinary circumstances are present").

<sup>4</sup> See, e.g., *Debtor's Motion for an Order Extending the Exclusive Periods for Filing a Chapter 11 Plan and Soliciting Acceptance* [Dkt. 0265] (the "Exclusivity Motion") ¶ 38.

remains ongoing, even after the events that led to the New York judgment. That trial court found that the self-serving assertions of CCA's witnesses were not credible and were contradicted by the contemporaneous documents that BMLP fought CCA to obtain in discovery, all of which led to extensive findings of fraud, diversion of corporate assets, misuse of corporate assets for personal purposes, and repeated fraudulent statements. The limited discovery that BMLP has taken or attempted to take to date, and the limited responses received, are sufficient to reveal that:

- CCA inexplicably assumed obligations under shared services agreements from CSCEC Holding *after* the commencement of the New York litigation;
- CCA experienced deepening insolvency for the better part of the last decade while, at the same time, continuing to incur hundreds of millions in purported "loans" from CSCEC Holding that are undocumented and have rarely been repaid; and
- at least one high-ranking CCA executive potentially used corporate funds to make tens of thousands in personal purchases during the litigation and leading up to the Petition Date, as revealed in recent third-party productions.

7. What's more, CCA's own disclosures further raise numerous questions that need to be investigated, including:

- why CCA has incurred more than \$96 million of apparent outstanding intercompany debt to its subsidiaries and affiliates (which it scheduled under a line item for country club memberships) while it was most likely insolvent,<sup>5</sup>
- CCA's relationship to its sureties and the fact that the approximately \$700 million surety bond obligations<sup>6</sup> could be partially or wholly cross-collateralized and back-stopped by CSCEC Holding and CCA's ultimate parent in China through their indemnity agreements with the sureties (which was glossed over in CCA's initial filings but elicited through discovery),<sup>7</sup> and
- how CCA claims to be a holding company that does not know the value of its equity interests in subsidiaries and generates no cash flow.<sup>8</sup>

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<sup>5</sup> *Schedules of Assets and Liabilities and Statement for CCA Construction, Inc.* [Dkt. 99] at 13, 25 (Schedule A/B 77).

<sup>6</sup> *Declaration of Yan Wei, Chairman and Chief Executive Officer of the Debtor, in Support of Chapter 11 Petition* [Dkt. 11] ("Wei Declaration") ¶ 23.

<sup>7</sup> It is crucial for construction managers and providers, such as CCA and its subsidiaries and affiliates, to secure performance bonds and similar guarantees for their clients in order to win and perform construction projects. Wei Declaration ¶ 25.

<sup>8</sup> *Omnibus Objection of BML Properties, Ltd.* [Dkt. 128] ¶¶ 6, 15, 17.

8. Finally, BMLP lacks sufficient information to properly evaluate the Application. To date, the Debtor's lead bankruptcy counsel, Debevoise & Plimpton LLP, has not filed a single fee statement, despite being required to do so as a condition of being able to receive compensation under the Court's interim compensation procedure order,<sup>9</sup> and despite the Debtor's other professionals having done so. Without such information, neither BMLP, the Court, the UST, nor any other third parties know how much CCA has already incurred in professional fees in the four months between the Petition Date and the filing of this Objection, or what such fees were expended for. This lack of transparency is unusual and unacceptable for a case entering its fifth month, and it impedes the ability of the parties and the Court to fully evaluate the propriety of retaining Duane Morris.<sup>10</sup>

9. For these reasons, BMLP respectfully requests that the Court hold the Application in abeyance, or, alternatively, limit the scope of Duane Morris' retention to exclude any investigative activities, until both (i) the Court has determined the examiner's scope and budget, and (ii) the Debtor's professionals file all fee statements and applications under the interim compensation procedures order to the extent permitted to do so. To the extent Duane Morris has started any work concerning a potential investigation, it should cease doing so immediately to avoid unnecessary duplication and waste of estate resources. Finally, any authorized retention of Duane Morris should begin only on the date this Court enters an order regarding the same, and not *nunc pro tunc* to an earlier date.

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<sup>9</sup> *Administrative Fee Order Establishing Procedures for the Allowance and Payment of Interim Compensation and Reimbursement of Expenses of Professionals Retained by Order of this Court* [Dkt. 0178] at 4 ("Not later than the 25th day of the month following the month for which compensation is sought, each Professional seeking compensation under the Order must file and serve . . . a monthly fee and expense statement [on parties including] Debevoise & Plimpton LLP, as proposed co-counsel to CCA[.]").

<sup>10</sup> Further, it also impedes the Court's ability to determine the proper scope and budget for the examiner. A skeptical person might view this lack of public disclosure as an intentional decision to undermine arguments for a broad scope and a budget commensurate with such scope.

Dated: April 24, 2025  
Newark, New Jersey

**GIBBONS P.C.**

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