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

In re:

CCA Construction, Inc.,

Debtor.

(Hon. Christine M. Gravelle)

Chapter 11

Case No. 24-22548 (CMG)

**EXAMINER’S STATEMENT REGARDING PROPOSED SCOPE OF INVESTIGATION**

Todd Harrison, as Court-appointed Examiner (the “Examiner”) in the above-captioned Bankruptcy (the “Bankruptcy”) of CCA Construction, Inc. (the “Debtor” or “CCA”) respectfully submits this statement (the “Statement”) in accordance with the *Order Granting the Appointment of an Examiner* [Docket No. 211] (the “Examiner Appointment Order”) addressing the appropriate scope and budget for the Examiner’s investigation (the “Investigation”), and states as follows:

**PRELIMINARY STATEMENT**

1. Paragraph 4 of the Examiner Appointment Order contemplates that any party may submit supplemental briefing regarding the appropriate scope and budget for the Examiner’s



investigation. The Examiner believes that the Court may benefit from hearing the Examiner's views on scope and budget, as well as a brief description of the diligence the Examiner has conducted since his appointment.

2. Section 1106(a)(3) sets forth the duties of an examiner appointed in a Bankruptcy. The contemplated responsibilities include, unless otherwise ordered, an investigation of “the acts, conduct, assets, liabilities, and financial condition of the debtor” as well as the “operation of the debtor’s business.” *See* 11 U.S.C. § 1106(a)(3). An examiner is then obligated to file a statement identifying any “fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor” as well as any causes of action available to the estate. *See* 11 U.S.C. § 1106(a)(4). The investigatory mandate of an appointed examiner is further reinforced by Section 1104(c) which provides for the appointment of an examiner to “conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor...” *See* 11 U.S.C. § 1104(c).

3. As this Court is aware, the Bankruptcy was filed following judicial findings—now unanimously upheld on appeal—that the Debtor and two affiliated non-debtor entities, CSCEC Bahamas, Ltd. (“CSCECB”) and CCA Bahamas Ltd. (“CCAB”) (the “Bahamian Entities,” together with CCA, the “New York Defendants”), which were found to be operated as one entity after piercing of the corporate veil, committed fraud, breach of contract, and misappropriation of assets in connection with a multi-billion dollar resort construction project in the Bahamas (the “Project”). This resulted in an approximate \$1.6 billion judgment against the Debtor and in favor of its counter-party, BMP Limited (“BMLP”). *See BML Props. Ltd. V. China Constr. Am., Inc.*, Index No. 657550/2017 (Sup. Ct., NY County, Comm. Div.) (the “New York Action”).

4. While the Debtor continues to challenge these findings and has sought leave to further appeal the ruling of the Appellate Court in the New York Action, it seems readily apparent that the Bankruptcy would benefit from an independent evaluation of how the findings in the New York Action impact the Bankruptcy. Such an evaluation would seem to be particularly important here, where no committee of unsecured creditors has been appointed and both the Debtors and BMLP have acknowledged in pleadings that a successful conclusion of the Bankruptcy requires addressing the New York Action in some manner.

5. Further, it has come to the Examiner's attention that the Debtor's Special Committee intends to conduct an investigation regarding potential estate claims against third parties. While the Examiner takes no position on the Special Committee's investigation of claims against true unrelated third parties, it is not clear if the Special Committee intends to investigate claims and causes of action against the Debtor's current and former directors and officers and any other insiders or affiliates. Section 1106, in addition to setting out the duties of an examiner, empowers the Court to order the Debtor not to conduct an investigation. *See* 11 U.S.C. § 1106(b). In order to conserve resources and ensure a truly independent investigation is conducted, the Examiner proposes that it should conduct an investigation of the Debtors' officers, directors, management, and affiliates. The Examiner is the sole party in this Bankruptcy capable of conducting a disinterested investigation that can be relied upon by the Court and the Debtor's stakeholders.<sup>1</sup>

6. The Examiner has been reviewing background materials related to the New York Decision (as defined below), this Bankruptcy, and the Debtor and its affiliates more broadly, and

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<sup>1</sup> Alternatively, should the Court permit the Special Committee to conduct an investigation of the Debtor's directors, officers and insiders, then the Examiner would propose that it should have unfettered access to review and analyze the materials and conclusions relevant to that investigation, inclusive of any privileged materials.

has also had initial conversations with counsel for the Debtor and BMLP. And while the Examiner will withhold final judgment until the Investigation is complete, the Examiner has determined that there are specific topics that merit a thorough and independent investigation, as contemplated by the Bankruptcy Code and this Court's order. It is the Examiner's view, set out in greater detail below, that this Investigation should proceed in phases, with open communication between the Examiner, the parties, and the Court allowing for necessary adjustments as the Investigation proceeds.

## **BACKGROUND**

### **A. The Bankruptcy**

7. On December 22, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of New Jersey (the "Court"), commencing the Bankruptcy. The Debtor continues to operate and manage its business as a debtor in possession. No committee of unsecured creditors has been appointed, or is anticipated to be appointed, in the Bankruptcy.

8. On January 23, 2025, BMLP filed the *Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner* [Docket No. 88] (the "Examiner Motion"). On March 5, 2025 the Court entered an order [Docket No. 211] (the "Examiner Order") granting the Examiner Motion and directing the United States Trustee (the "U.S. Trustee") to appoint an examiner following the earlier of (i) twenty-one days after the Supreme Court of the State of New York Appellate Division – First Department (the "Appellate Court") affirmed the decision of the New York Court in the New York Action or upheld the New York Judgment; or (ii) June 1, 2025.

9. On April 10, 2025 the Debtor filed the *Notice of Decision by the Supreme Court of the State of New York, Appellate Division—First Department* [Docket No. 247].

10. On April 29, 2025, per the Examiner Order, the U.S. Trustee filed the *Notice of Appointment of Examiner* [Docket No. 280] and the *Application for Order Approving Appointment of Examiner* [Docket No. 281] seeking Court approval of the appointment of Todd Harrison as Examiner. The Court entered the *Order Approving the Appointment of a Chapter 11 Examiner by United States Trustee* [Docket No. 296] on May 7, 2025 and scheduled a conference to determine the scope and budget for the Investigation on May 22, 2025.

11. Beginning immediately after the Examiner's appointment, the Examiner and his proposed counsel had meetings with the Debtor's counsel and counsel to BMLP in order to begin discussing the background facts of the Bankruptcy and the New York Action. The Examiner and his proposed counsel also began reviewing documents in both the New York Action and the Bankruptcy in preparation for the May 22<sup>nd</sup> hearing.

#### **B. The New York State Court Litigation**

12. On October 18, 2024, after an 11-day bench trial, the Supreme Court of the State of New York, New York County (the "New York Court") issued its decision and order in the New York Action [Docket No. 54-1] (the "New York Decision"), finding, among other things, "clear and convincing evidence" that the Debtor, operating together with CSCECB and CCAB, "committed at least four instances of fraud" (*see* New York Decision at 1), including by:

- i. Misrepresenting its ability achieve substantial completion of the Project by the agreed-upon date on several occasions, each of which "constitutes a separate act of fraud." *Id.* ¶¶ 107, 109;
- ii. Requesting \$54 million from BMLP to pay subcontractors, but instead using the funds to buy a competing property. *Id.* ¶ 110;
- iii. "Misappropriat[ing]" and "diver[ting]" Project funds, including for the "personal use of its officers[.]" which is "indicative of a fraudulent course of dealing[.]" *Id.* ¶¶ 111-113; and
- iv. Concealing from BMLP that CCA had insufficient manpower and resources to complete the Project on time. *Id.* ¶ 117.

13. The Debtor and the Bahamian Entities were subsidiaries of parent company CSCEC

Holding Company, Inc. (“CSCEC Holding”) (*id.* ¶ 167), whose ultimate parent entity is China State Construction Engineering Corp. Ltd (“CSCEC”). *See* Docket No. 11, Exhibit A (Organizational Structure).

14. The New York Decision states that the evidence at trial “firmly established” that the corporate veil should be pierced as against the Debtor and the Bahamian Entities who “conflated and blurred beyond independent recognition their purportedly separate corporate existences.” *See* New York Decision at 1 ¶ 169; *see also id.* ¶ 176 (finding that the Debtor and Bahamian Entities “operated as a single economic entity[,]” “commingled assets[,]” “paid or guaranteed obligations of one another[,]” “were not treated as separate profit centers[,]” and “did not deal with one another at arm’s length”).

15. On October 31, 2024, the New York Court entered judgment of \$1,642,598,493.15, plus interest, jointly and severally against the New York Defendants [Docket No. 88-2] (the “New York Judgment”). The next day, November 1, 2024, the New York Defendants filed an appeal of the New York Judgment with the Appellate Court. *See* Docket No. 14 ¶ 3 (Debtor’s description of procedural history for its appeal).

16. On April 8, 2025, the Appellate Court issued an opinion unanimously affirming the decision and judgment in the New York Action [Docket No. 247] (the “New York Appellate Decision”). Among other rulings, the Appellate Court determined that the “evidence in the record, which was largely un rebutted, shows that CCA Construction exercised complete domination of CCA Bahamas and CSCEC Bahamas, and that the domination was used to breach the investor agreement, defraud plaintiff, and cause the collapse of . . . [the Project], resulting in plaintiff’s injury.” New York Appellate Decision at 4.

### **C. The Debtor’s Proposed Investigation**

17. On April 17, 2025, the Debtor filed an *Application for Retention of Professional*

*Effective April 9, 2025* [Docket No. 255] (the “Duane Morris Retention Application”) seeking to retain Duane Morris LLP (“Duane Morris”) as attorney for Elizabeth Abrams, as the sole member of the Debtor’s special committee of independent directors (the “Special Committee”). The scope of retention included “investigation of potential claims or causes of action of the Debtor, if any, against third parties and related matters in the . . . [Bankruptcy] as the representation proceeds, at the direction of and with the approval of the Special Committee[.]” Docket No. 255 ¶ 4.

18. On April 24, 2025, BMLP filed a limited objection to the Duane Morris Retention Application [Docket No. 273]. CCA then filed a limited response to BMLP’s limited objections on May 5, 2025 [Docket No. 291].

19. On May 5, 2025, the Court held a pre-scheduled hearing on the Debtor’s *Motion for Relief from Automatic Stay Order Shortening Period for Notice* (the “May 5 Hearing”). The U.S. Trustee, the Debtor, and BMLP participated in the hearing. *See* Transcript of Telephonic Conference, May 5, 2025 (“May 5 Transcript” or “Tr.”). A true and correct copy of the transcript is annexed as **Exhibit 1**. Although a hearing on the retention of Duane Morris was scheduled for May 22, 2025, the parties nevertheless engaged in a limited discussion at the May 5 Hearing.

20. Specifically, at the May 5 Hearing, counsel for CCA informed the Court that “the Special Committee is pursuing an investigation of potential estate claims that has already commenced.” *Tr.* at 13:5-7. Counsel for BMLP informed the Court that they only “learned last week” that Ms. Elizabeth Abrams, the sole member of CCA’s Special Committee, had “started her own examination, investigation.” *Id.* at 17:20-25. Counsel for BMLP revealed, and counsel for CCA did not refute, that Debtor’s co-counsel Cole Schotz P.C.—and not Duane Morris—was conducting the investigation and had been doing so “for months already.” *Id.* at 17:24-18:1.

21. On May 7, 2025, the Examiner delivered a letter to Cole Schotz, expressing concern

about the independence of that investigation and requesting that the investigation be suspended for a limited time, in the interest of efficiency, pending the Court's ruling on the scope of the Examiner's Investigation. A copy of the letter is annexed hereto as **Exhibit 2**. In a letter on May 9, 2025, Cole Schotz rejected the Examiner's request and advised that it would continue with its previously unannounced investigation. A copy of the letter from Cole Schotz is annexed hereto as **Exhibit 3**.

**D. The Parties' Positions**

22. Based on the Examiner's review of documents to date, discussions with the Debtor and BMLP, and monitoring of hearings in the Bankruptcy Court, it has become clear to the Examiner that the parties have very divergent views on: (1) the role of the Examiner; (2) the impact of the New York Decision; and (3) the path forward in the Bankruptcy. The Examiner is also aware that these two parties have been embroiled in litigation for over five years. Thus, it is not practical for the Examiner to launch an investigation into the matters that form the basis of the New York Action from scratch.

23. Therefore, the Examiner proposes to leverage the existing knowledge of the parties through the use of the adversarial system to conserve estate resources while conducting an effective Investigation as more fully set out below.

**PROPOSED SCOPE, WORK PLAN AND BUDGET FOR INVESTIGATION**

**A. The Examiner's Activities to Date**

24. Following his appointment, the Examiner has conducted a review of the Bankruptcy docket, the dockets for the New York Action, and other relevant background materials. The Examiner received and reviewed limited informal productions of documents from counsel to the Debtor on May 5 and May 15, 2025, and from counsel to BMLP on May 6 and May 7, 2025.

25. The Examiner has also met with counsel to the Debtor telephonically and via



videoconference multiple times to obtain background information about the Bankruptcy, the New York Action, and to discuss terms for sharing information. Following those conversations, and subject to an agreement among the parties concerning the Scope Order as set out below, the Examiner executed an acknowledgment and consent to the existing *Confidentiality Stipulation and Protective Order* [Docket No. 86] (the “Protective Order”).

26. The Examiner will maintain open lines of communication with all parties in interest in the Bankruptcy, including follow-up meetings with counsel for the Debtor and BMLP. Additional meetings are expected to be scheduled to permit the Examiner to identify and promptly gain access to all information needed to complete the reports.

**B. Scope**

27. The Examiner proposes that the Investigation proceed in two phases, each with their own scope. Phase I of the Investigation should include identifying any claims and causes of action that the Debtor’s estate may have arising from the New York Action and the evidence collected by the parties to date. Phase II of the Investigation should include identifying any claims and causes of action that the Debtor’s estate may have arising from any breaches by the Debtor’s directors and officers of their fiduciary duties to the Debtor.

28. The Examiner reserves all rights to seek further relief expanding the scope of the Investigation as necessary once further information is revealed.

**C. Work Plan**

i. *Phase I: Investigation of Claims and Causes of Action Arising from New York Action*

29. It is not lost on the Examiner that many of the issues relevant to the Investigation have been investigated, researched, and analyzed by the parties in the course of their extensive litigation. It is the Examiner’s view that the most efficient method of proceeding is to rely upon the adversarial process and capitalize on the work already performed by the parties to date.

30. To that end, the Examiner intends on initially requesting that the parties provide documentary evidence, legal analyses, and financial analyses related to the subjects of the Investigation. Once those materials have been reviewed, the Examiner will request briefing from the parties setting out their respective positions complete with documentary support. The Examiner envisions that these briefs will be shared amongst the parties, after which the Examiner will request a second round of briefing in reply.

31. The Examiner does not intend to be bound by the materials submitted by the parties, and fully intends on completing an independent investigation. The Examiner will supplement the materials contemplated above with document review and interviews (or depositions) as necessary. Leveraging the parties' existing knowledge through the use of the adversarial process will allow the Examiner to conserve resources and quickly identify which issues have not yet received sufficient investigation.

32. Following the conclusion of the Examiner's Phase I Investigation the Examiner will issue a report addressing the existence of any causes of action of the Debtor's estate related to the issues within the scope of the Investigation (the "Phase I Report"). The Phase I Report may identify matters as to which further investigation may be necessary, and the Examiner reserves all rights to request relief from the Court to pursue investigation of such matters following the issuance of the Phase I Report.

ii. *Phase II: Investigation of Claims and Causes of Action Arising from Breaches of Fiduciary Duties*

33. Phase II of the Investigation should consist of the Examiner collecting and reviewing documents as well as conducting witness interviews germane to the Phase II Investigation scope.<sup>2</sup>

34. Following the conclusion of the Examiner's Phase II Investigation the Examiner will issue a report addressing the existence of any causes of action of the Debtor's estate related to the issues within the scope of the Phase II Investigation (the "Phase II Report" and, together with the Phase I Report, the "Reports"). The Phase II Report may identify matters as to which further investigation may be necessary, and the Examiner reserves all rights to request relief from the Court to pursue investigation of such matters following the issuance of the Phase II Report.

**D. Budget**

35. The Examiner believes it is extremely difficult to estimate the time and cost of the Investigation before the scope is established and before he has the ability to truly begin the Investigation. Thus, the Examiner proposes regular status conferences with the Court to keep the Court apprised of the progress and costs.<sup>3</sup>

36. The Examiner and the professionals will endeavor to work efficiently and expeditiously to complete the Investigation within any budget ordered by the Court. But given the

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<sup>2</sup> Should the Court permit the Debtor to conduct its own investigation of these breach of fiduciary duty claims and causes of action, then the Phase II Investigation should primarily consist of a review and analysis of the sufficiency of that investigation. The Examiner would further conduct supplemental fact discovery as necessary through document collection and review as well as interviews. Prior Examiner orders have instructed the Examiner to analyze the sufficiency and independence of other investigations not conducted by the Examiner. For example, the Court in *In re: Silvergate Capital Corporation, et al.*, ordered the Examiner to investigate the independence and adequacy of the Special Investigation Committee's investigation and the reasonableness of its conclusions. Case No. 24-12158-KBO, *Order Directing the Appointment of an Examiner*, dated December 20, 2024 [Docket No. 402]. Here, however, unlike in *Silvergate*, the Debtor's investigation is only at its incipient stage. It would be a waste of estate resources to have two parallel investigations running with the expectation that the Examiner will then also review the adequacy of the Debtor's investigation.

<sup>3</sup> The Examiner also proposes to engage a financial advisory firm. Retention applications for these professionals will be filed with the Court.

as yet unknown volume or complexity of information subject to the Investigation, the level of witness cooperation, and other matters pertinent to the Investigation, the Examiner respectfully reserves the right to seek further modifications to the proposed budget by order of the Court after notice and an opportunity for parties-in-interest to be heard.

**E. The Work Plan is Warranted**

37. “The duties of an examiner are set forth in 11 U.S.C. § 1106(a)(3) and (4), which provide that an examiner shall . . . investigate ‘the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;’ and then ‘file a statement of any investigation,’ which must include any fact ‘pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate.’” *In re FTX Trading Ltd.*, 91 F.4th 148, 156 n.8 (3d Cir. 2024).

38. An appropriate Investigation in this case must be independent and comprehensive. The Debtor has judicial findings entered against it in which the Debtor and its affiliates have been found to have committed serious and damaging unlawful acts and to have significantly commingled its affairs with its affiliates. The Debtor has further sought and obtained financing from an affiliated entity. *See 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. 174].

39. The Debtor is locked in conflict on several fronts with its major creditor, BMLP. Absent the Examiner, there is no neutral party to provide an independent assessment to the Court, or other parties in interest, due to the absence of a committee of unsecured creditors. The facts here require an Investigation as set out in the Examiner’s proposed work plan to best serve the public

interest, the Debtor's estate, the integrity of the chapter 11 process, and all other stakeholders.

### **THE SCOPE ORDER**

40. The Examiner Order indicates that the scope and budget of the Investigation will be set forth in a subsequent order of the Court (such order, the "Scope Order"). It is the Examiner's view that the provisions set forth below in **Exhibit A** should be included in the Scope Order.

#### **A. Examiner Not Subject To Discovery**

41. The Examiner respectfully requests the Court require that the Scope Order provide that the materials reviewed by the Examiner and any drafts of the reports shall not be subject to discovery in the Bankruptcy; nor shall the Examiner be subject to examination in connection with the Investigation or the preparation of the reports in the Bankruptcy.

42. A Court-appointed examiner "performs his duties at the request of the court, for the benefit of the debtor, its creditors and shareholders and not to 'fuel the litigation fires of third party litigants.'" *In re New Century TRS Holdings, Inc.*, 407 B.R. 558, 566 (Bankr. D. Del. 2009) (quoting *In re Baldwin United Corp.*, 46 B.R. 314, 316 (Bankr. S.D. Ohio 1985)). Thus, absent extraordinary circumstances, an examiner's files should remain confidential. *See In re Baldwin United Corp.*, 46 B.R. at 317; *New Century TRS Holdings*, 407 B.R. at 566-567 (absent extraordinary circumstances, examiner file[s] should remain confidential and protected from disclosure); *In re FiberMark, Inc.*, 330 B.R. 480, 505 (Bankr. D. Vt. 2005) (examiner materials not filed publicly remain confidential).

43. Moreover, any public interest in the Investigation lies in the actual reports and the conclusions set forth therein, not in the underlying investigative documents. *See Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank. & Trust Co. of Chi. (In re Ionosphere Clubs)*, 156 B.R. 414, 435 (S.D.N.Y. 1993) (affirming bankruptcy court's denial of request for examination records; the "public interest is in the Report and the Examiner's conclusions, not in the Record [sic] upon the

conclusions are based.”). It would be inequitable for the Examiner to be burdened with the costs of potentially onerous discovery requests.

**B. Examiner Cooperation; No Privilege Waiver**

44. The Examiner further respectfully requests the Court require that the Scope Order include provisions requiring the Debtor, the DIP Lender, and BMLP to cooperate with the Investigation and produce documents and other information to the Examiner. Relatedly, the Scope Order should also provide that the disclosure of documents and other information to the Examiner will not constitute a waiver of privilege over such documents and information.

45. For the Examiner to carry out the statutory duties under section 1106(b) of the Bankruptcy Code, the Examiner must receive full disclosure from the parties in possession of relevant information, particularly where, as here, the Examiner will be relying upon the parties to disclose otherwise sensitive information and analysis. As such, mandating cooperation and providing that a party would not be waiving an applicable privilege by producing requested documents and analysis to the Examiner will enable the Examiner to conduct a thorough, timely and efficient Investigation and is in the best interests of the Debtor, the Debtor’s creditors and the estate. *See Order (I)(A) Establishing the Scope, Cost, Degree, and Duration of the Examination and (B) Granting Related Relief; and (II) Permitting the Filing of Certain Information Regarding Potential Parties in Interest Under Seal, In re FTX Trading LTD., et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Mar. 20, 2024).

**C. The Examiner Reports**

46. In connection with the Examiner’s execution of the acknowledgment and consent to the Protective Order the parties engaged in discussions regarding the use of information subject to the Protective Order in the Reports. The parties agreed, as a condition to the Examiner joining in the Protective Order, and subject to approval of the Court, to include language in the Scope

Order providing for a mechanism by which the Reports could be filed and any information subject to the Protective Order therein could be appropriately addressed. The proposed language contemplates that: (i) the Reports would initially be filed under seal in its entirety; (ii) the parties to the Protective Order, the U.S. Trustee, and the Court would receive unsealed copies upon the initial filing; (iii) the parties to the Protective Order would then confer regarding what information, if any, needed to be redacted from the Reports; (iv) the Court would ultimately approve any redactions whether agreed to by the parties or otherwise; and (v) if necessary, a redacted version of the Reports would be filed, pending Court approval, or if no redactions are necessary, an unredacted version of the Reports would be filed. That language is set out in **Exhibit A** and the Examiner respectfully requests that the Court require its inclusion in the Scope Order.

#### **RESERVATION OF RIGHTS**

47. The Examiner respectfully reserves the right to amend the scope, work plan and budget set forth herein and the direction of the Investigation as it progresses. While the Examiner has made a good faith effort to set forth an appropriate work plan, the Examiner has yet to begin the Investigation in earnest and cannot account for information that is presently unavailable but may become available during the Investigation. Accordingly, the Examiner expects that it may be necessary for the Examiner to seek modifications to the scope and budget. In the event such a necessity arises, the Examiner will seek approval of such modification(s) by order of the Court, after notice and an opportunity for parties-in-interest to be heard.

Dated: May 15, 2025  
New York, New York

**MCDERMOTT WILL & EMERY LLP**

/s/ Deanna D. Boll

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**Exhibit A**

**Scope Order Provisions**

1. The Debtor, the DIP Lender, and BMLP shall fully cooperate with the Examiner in the performance of any of the Examiner's duties and the Investigation and shall use their respective best efforts to coordinate with the Examiner to facilitate cooperation with and avoid unnecessary duplication of effort in conducting the Investigation.
2. The Debtor, the DIP Lender, and BMLP (collectively, the "Producing Parties") shall provide to the Examiner all non-privileged documents and information within their possession, custody or control that the Examiner deems relevant to perform the Investigation. If the Examiner seeks the disclosure of documents or information as to which the Producing Parties assert a claim of privilege, or otherwise object to disclosing, including on the basis that the request is beyond the scope of the Investigation, and the Examiner and the Producing Parties cannot resolve whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution. For the avoidance of doubt (a) nothing in this Order shall be deemed to require any party to waive any applicable privilege and (b) the disclosure of documents or information to the Examiner shall neither constitute nor be deemed a waiver by the disclosing party of, as applicable, work-product, attorney-client, or other privilege or the confidential nature of such documents or information.
3. The materials reviewed by the Examiner and any drafts of the Examiner's reports shall not be subject to discovery in the Bankruptcy; nor shall the Examiner be subject to examination in the Bankruptcy.
4. This Order is without prejudice to the Examiner's right to amend the scope and work plan for the Investigation as it progresses; provided that, to the extent the Examiner seeks to

materially modify the scope or work plan, or to modify the budget, for the Investigation as approved herein, the Examiner will seek approval of any such modification(s) by further order of the Court, after notice and an opportunity for parties-in-interest to be heard.

5. Notwithstanding any provision to the contrary in this Order or the *Confidentiality Stipulation and Protective Order* [Docket No. 86], the following procedures are authorized with respect to the filing of any report or reports by the Examiner (each, an “Examiner Report”):

- a. Any Examiner Report shall initially be filed under seal in its entirety without the need for a sealing motion. Each unredacted Examiner Report shall be provided or otherwise made available to the Court, counsel to the Debtor, counsel to BMLP, counsel to the DIP Lender, and the U.S. Trustee. The foregoing parties shall receive each unredacted Examiner Report solely for the purpose of allowing the Examiner, the Debtor, BMLP, the DIP Lender and the U.S. Trustee (each a “Party” and collectively the “Parties”) to discuss any potential redactions necessary to protect confidential or highly confidential information.
- b. To the extent the Parties do not seek to redact any portion of an Examiner Report, then the Examiner shall file a fully unredacted version of such Examiner Report so that it is publicly available on the docket on or before seven days from the initial filing of such Examiner Report. If the Parties do seek to redact portions of an Examiner Report, and no Party objects to the proposed redactions, then on or before seven days from the initial filing of the applicable Examiner Report, (i) the Examiner shall file the Examiner Report so that it is publicly available on the docket reflecting the agreed-upon redactions and (ii) the Parties shall file a sealing motion seeking approval of such redactions. If the Parties are unable to reach agreement on any proposed redactions by seven days from the initial filing of an Examiner Report, then seven days from the initial filing of such Examiner Report, (i) the Examiner shall file the Examiner Report so that it is publicly available on the docket reflecting agreed-upon redactions in addition to all disputed redactions and (ii) the Parties shall file a sealing motion or motions seeking Court approval of the agreed-upon redactions and Court resolution on the disputed redactions. The redactions shall remain under seal until the application is resolved. For the avoidance of doubt, the disclosure of the unredacted version of an Examiner Report to the Parties for purposes of identifying potential redactions shall neither constitute nor be deemed a waiver by any Party of, as applicable, work-product protection, attorney-client privilege, or any other applicable privilege or protection.
- c. The proposed redactions shall be approved upon (i) the agreement of the Parties approved by Court order or (ii) a Court ruling, memorialized by a Court order as to

what material (if any) should be redacted from the applicable Examiner Report. If the Court's order does not approve all of the redactions reflected in an Examiner Report filed seven days from the initial filing of such Examiner Report, then within three business days of entry of the Court's order, the Examiner shall file on the public docket a copy of the Examiner Report reflecting only the Court-approved redactions. The Examiner, the Debtor, BMLP, and the DIP Lender shall thereafter maintain the confidentiality of the unredacted version of such Examiner Report. The U.S. Trustee shall not disclose the redacted parts of the applicable Examiner Report (if any) consistent with 11 U.S.C. §107(c).

**Exhibit 1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

x- - - - - x Case No. 24-22548 (CMG)  
IN THE MATTER OF: . Chapter 11  
CCA CONSTRUCTION . Trenton, New Jersey  
Debtor, . May 5, 2025  
- - - - - .

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

APPEARANCES:

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1 THE COURT: Good morning, everyone, can you hear me?

2 ATTORNEY: Yes, good morning, Your Honor.

3 ATTORNEY: Yes.

4 THE COURT: Okay. Excellent. This is CAA's, the  
5 Debtor's motion, for relief from stay to pursue the appeal in  
6 the State Court in New York. This is case number 24-22548.  
7 Let's start with appearances. I see, who is on the for the  
8 Debtor today?

9 MS. WEISGERBER: Good morning, Your Honor, Erica  
10 Weisgerber from Debevoise for the Debtor, along with my  
11 colleagues Natasha Labovitz, Mark Goodman, and Molly Maass.

12 THE COURT: Good morning, everybody.

13 ATTORNEY: Good morning.

14 MR. USATINE: Good morning, Your Honor, Warren  
15 Usatine, Cole Schotz, also for the Debtor.

16 THE COURT: Great, thank you. All right, Mr.  
17 Theisen.

18 MR. THEISEN: Good morning, Your Honor, Brett Theisen  
19 of Gibbons, P.C., for BML Properties, Limited. And I see my  
20 colleagues, Robert Malone, Christopher Anton and Kyle McEvilly  
21 on the line.

22 THE COURT: All right, thank you. And Mr. D'Auria,  
23 United States Trustee.

24 MR. D'AURIA: Good morning, Your Honor, Peter D'Auria  
25 from the United States Trustee's Office. Thank you.



1 THE COURT: Good morning. Anyone else? All right.  
2 Let's get -- who is making the argument for the Debtor here?

3 MS. WEISGERBER: Good morning, Your Honor.

4 THE COURT: Ms. Weisgerber?

5 MS. WEISGERBER: Yes.

6 THE COURT: Okay, go ahead.

7 MS. WEISGERBER: Thank you, Your Honor. As the Court  
8 is aware, the Debtor seeks limited relief from the automatic  
9 stay here to pursue its appeal of the erroneous summary  
10 judgment ruling from the New York Appellate Court, which  
11 affirmed the \$1.6 billion judgment against CCA in the Baha Mar  
12 litigation. Specifically what we're seeking here is  
13 authorization to join the nondebtor defendants in the same  
14 litigation, in seeking to leave to appeal the Appellate Court's  
15 ruling to the New York Court of Appeals. And if that motion for  
16 leave to appeal is accepted, we're seeking the Court's  
17 authorization to pursue that appeal in the Court of Appeals.

18 We respectfully submit that cause to lift the  
19 automatic stay exists here for three principal reasons. First,  
20 failure to grant this relief would effectively turn the New  
21 York trial court's \$1.6 billion judgment into a final judgment  
22 against CCA, without its ability to exercise its right of full  
23 appeal.

24 Second, the standard for relief requires only that  
25 CCA show a slight likelihood of success on the merits. And

1 while CCA submits that it has much more than a slight chance of  
2 success, indeed we have a substantial one, BMLP cannot  
3 seriously contend that CCA fails to meet this relatively low  
4 standard.

5 And third, and most critically, which I'll spend the  
6 most time on, neither the Estate nor BMLP will be meaningfully  
7 prejudiced if CCA pursues this appeal. And in fact, the appeal  
8 may benefit the Estate.

9 So first, my first point is that failure to grant the  
10 relief requested would effectively turn the Baha Mar  
11 litigation's \$1.6 billion judgment into a final judgment. As  
12 this Court is aware, complete judicial resolution of BMLP's  
13 claims in the Baha Mar litigation are critical to reaching a  
14 fair outcome for this Chapter 11 case. And is in the interest  
15 of all stakeholders.

16 It's hard to imagine a more compelling scenario  
17 warranting the Court's use of its wide discretion to lift the  
18 automatic stay. We provided in our papers examples of courts  
19 that have granted similar relief to the automatic stay to allow  
20 Debtors to pursue State Court appeals, including the MIG case,  
21 the Allen Hill case and others. And the same factors that this  
22 Court considered previously in permitting the stay to be lifted  
23 for CCA to pursue its appeal to the Appellate Division, warrant  
24 lifting the stay here for leave to appeal to the Court of  
25 Appeals.

1           And there's no basis to cut off CCA's right to seek  
2     leave at this stage, particularly given the staggering size of  
3     this judgment, it's imperative that CCA obtain the thorough and  
4     full review of the judgment to which it's entitled under New  
5     York procedure.

6           BMLP wants this Court to essentially compel the  
7     premature liquidation of the claim against the Debtor, rather  
8     than allowing the Debtor to avail itself of this right to  
9     appeal the judgment. This would abrogate CCA's rights to the  
10    detriment of CCA and its stakeholders.

11          BMLP also appears to argue that because the Court of  
12    Appeals' decision whether to accept the appeal is  
13    discretionary, that that is a reason to deny this motion to  
14    lift the stay. But that's really besides the point. All  
15    litigants, including CCA, have the right to seek leave to  
16    appeal an Appellate decision from the Appellate Division. Just  
17    because the Court of Appeals exercises judgment and discretion  
18    in determining whether to allow that appeal and to hear further  
19    -- to provide further review of the case, does not mean that  
20    this Court should preclude CCA from exercising its right to  
21    seek leave.

22          Second, the standard for relief requires only that  
23    CCA show a slight likelihood of success on the merits, which we  
24    believe CCA has readily done.

25          First and foremost, the Appellate Division itself did

1 not meaningful engage with the issues here. Despite a two week  
2 long trial involving over a dozen witnesses, nearly 40 hours of  
3 testimony, hundreds of exhibits and a 74 page trial decision,  
4 and almost 200 pages of briefing, the Appellate Division's  
5 ruling on several complex legal issues was just four pages  
6 long. And did not address virtually all of the legal issues  
7 raised on appeal in a substantive way.

8 A closer look at those issues makes clear and further  
9 underscores CCA's likelihood of success. We made several  
10 previously submissions to this Court about the merits of the  
11 case. We have submitted the first day declaration of Yan Wei  
12 which addressed the merits of the Baha Mar litigation. And our  
13 appellate briefs were submitted at docket numbers 122 and 153,  
14 which unpack the merits of these issues, so I won't dwell too  
15 long on it, but I'll provide just a couple of brief examples.

16 As just the first example of a critical issue  
17 warranting the Court of Appeals review, 97 percent of BMLP's  
18 claimed damages for fraud are for recovery of a value of an  
19 investment that BMLP made in 2011. But they're seeking those  
20 damages based on alleged fraud that they contend occurred in  
21 2014. New York Law is clear that a plaintiff cannot obtain  
22 damages for an investment in 2011 based on alleged fraud that  
23 postdates that investment by three years.

24 As one other example of particular note for CCA,  
25 there are only three sentences of the Appellate Court's

1 decision address CCA's liability under BMLP's veil piercing  
2 theory. And it does so in contravention of black letter law in  
3 two ways. First, for reasons discussed in our appellate brief,  
4 Bahamian Law should have been applied on the veil piercing  
5 claim. And Bahamian Law only allows veil piercing if a party  
6 creates a shell entity to deliberately evade enforcement of an  
7 already existing legal obligation.

8 Now this Court is well familiar with CCA's purpose  
9 and the services that it provides. It's not a shell entity.  
10 And there was never any finding to that effect that it was in  
11 the lower court.

12 Separately however, even under New York Law, which  
13 the Court did apply, there cannot be veil piercing unless the  
14 plaintiff shows that the fraud at issue was connected to the  
15 defendant's use of the corporate form. Here there was never  
16 ever any finding of fact that suggested that CCA's structure  
17 was used to the detriment of BMLP.

18 And for the record, although BMLP's objection says  
19 that the Court found CCA liable both independently for fraud  
20 and liable through piercing the corporate veil, that's  
21 incorrect. Page 45 of the trial court's decision and page 3 of  
22 the Appellate Division's ruling, made clear that direct  
23 liability was limited to CCA Bahamas, and that there was not a  
24 direct liability finding for CCA.

25 Although BMLP contends that the Court of Appeals is

1 unlikely to grant leave to appeal, we believe that several  
2 aspects of the lower court's ruling make this case a strong  
3 candidate for it.

4           The Court of Appeals reviews judgments and issues  
5 that are novel, are of public importance, conflict with prior  
6 Court of Appeals' decisions, or that involve a conflict among  
7 departments of the Appellate Division. Here the judgment  
8 actually satisfies all four of those criteria, even though only  
9 one of those criteria is required for the Court to grant leave.  
10 Our appellate briefs explain who the courts below created  
11 counterintuitive new law on several elements of BMLP's claims.  
12 And how the ruling conflicts with prior Court of Appeals  
13 decisions, and other Appellate Division decisions.

14           But quite notably, the judgment is of public  
15 importance. The \$1.6 billion judgment is one of the largest  
16 commercial judgments in New York State's history. And the  
17 (indiscernible-audio skip) restructuring of a fundamental  
18 relationship between a project owner and a contractor, has  
19 implications for construction projects large and small.

20           But turning to my third point and perhaps most  
21 importantly for us today, neither the Estate nor BMLP will be  
22 prejudiced if CCA's motion here is granted. Indeed, CCA's  
23 Estate stands to benefit from CCA's ability to pursue the  
24 appeal. The appeal as I mentioned before, the appeal will  
25 facilitate a final resolution of the Estate's largest claim,

1 providing clarity on the path to resolve this Chapter 11,  
2 regardless of how it's determined. And CCA's co-defendants,  
3 CCA Bahamas and CSEC Bahamas, not CCA, will bear the fees and  
4 costs of pursuing the appeal. So the Estate will not be  
5 burdened with any fees or costs of the pursuit of the appeal.

6 Separately, CCA's ability to pursue the appeal will  
7 not unnecessarily delay progress of this Chapter 11 case. CCA  
8 plans to continue advancing this case while simultaneously  
9 pursuing the appeal. We intend to work constructively with  
10 BMLP towards a Chapter 11 plan, with a flexible parallel path  
11 structure that will address a variety of outcomes of the  
12 appeal. And the Special Committee has been planning to reach  
13 to BMLP to begin to discuss and involve BMLP in that plan  
14 process.

15 If CCA's request for leave to appeal is denied, then  
16 the judgment will be final in only a few months' time. And  
17 progress will still have been made in this case in the  
18 meantime.

19 In fact, CCA's Estate would be harmed by the  
20 inability to further pursue the appeal because a denial of the  
21 motion to lift the stay would crystalize the \$1.6 billion  
22 judgment against the Estate that would dominate the claims pool  
23 when we submit that there is good basis for that judgment to be  
24 reversed.

25 BMLP will not suffer any additional prejudice or

1 hardship as a result of the appeal for at least three  
2 additional reasons. BMLP will have to defend itself against  
3 the appeal regardless because CCA's co-defendants will be  
4 pursuing it. So that is to extra work for BMLP or burden.  
5 In addition, BMLP's claims need to be fully and finally  
6 resolved for purpose of this bankruptcy regardless.

7 Here just the New York State Courts are the ones  
8 determining the allowability and liquidated amount, if any, of  
9 BMLP's claim as opposed to this Court doing so. It's entirely  
10 appropriate for BMLP to participate in State Court litigation  
11 through final judgment to resolve adjudication of its claims in  
12 this case.

13 And finally, BMLP's objection only offers speculation  
14 of prejudice, but offers no other basis or evidence in support  
15 of this claim that it might suffer some sort of prejudice in  
16 other jurisdictions or as a result of CCA allegedly attempting  
17 to render itself judgment proof.

18 Just to address a couple of final arguments that are  
19 raised by BMLP in its papers. They spend quite a bit of time  
20 arguing that CCA will use the pending appeal as a basis to  
21 resist the examiner's investigation. They offer absolutely no  
22 basis for that. That suggestion is not well taken. And the  
23 accusation is demonstrably false. CCA has every intention to  
24 cooperate fully and expeditiously with the examiner's  
25 investigation. We've already had a cordial initial meeting with



1 the examiner. And are in the process of providing the examiner  
2 with an initial set of documents relating to CCA in the case,  
3 even before the examiner's agreement is fully determined by  
4 this Court.

5 At the same time, the Special Committee is pursuing  
6 an investigation of potential Estate claims that has already  
7 commenced. And it will proceed on pace, notwithstanding the  
8 appeal. CCA is also actively cooperating with that  
9 investigation.

10 BMLP's papers also claim that this is a two party  
11 dispute, citing to a bunch of cases relating to motions to  
12 dismiss bankruptcies for bad faith filings, as opposed to cases  
13 about lifting a stay. This certainly is not a two party  
14 dispute, Your Honor. CCA has several other unsecured  
15 creditors, including, but certainly not limited to CCA  
16 affiliates with intercompany claims. In addition there are  
17 other stakeholders in this case, including CCA's employees and  
18 the creditors of its subsidiaries that would also be harmed if  
19 CCA were liquidated.

20 And as BMLP itself well knows CCA has potential  
21 obligations to surety providers related to multiple different  
22 projects of CCA's affiliates. And those sureties are closely  
23 interested in the outcome of this case. This is by no means a  
24 two party dispute.

25 Very lastly, just for clarity of the record, I wanted

1 to address one other statement in BMLP's objection. BMLP  
2 objects to, its objection incorrectly suggests that former CCA  
3 executive potentially used corporate funds to make personal  
4 purchases. This is flatly incorrect. And we filed a pleading  
5 on this this morning at docket 291. Because BMLP also raised  
6 this suggestion in their objection to the Duane Morris  
7 retention application.

8 The basis for BMLP's statement is a document produced  
9 by American Express in response to one of BMLP's very broad  
10 Rule 2004 subpoenas. Specifically AmEx produced records  
11 relating to a credit card belonging to a former CCA executive,  
12 including statements of charges to the credit card and records  
13 of monthly payments on that account. Those payments were from  
14 that individual's personal bank account, not that of any CCA  
15 corporate bank account.

16 If BMLP had reached out to counsel for CCA before its  
17 filing, we would have promptly confirmed to BMLP that the  
18 credit card was used for personal charges and the payments were  
19 made from individual's personal account.

20 Finally, just to finish where I started, the right to  
21 appeal is a fundamental right that is worth of this Court's  
22 protection. And simply allowing CCA leave to seek appeal will  
23 not slow the bankruptcy process over the next three to four  
24 months. It will not prejudice any of the creditors and it will  
25 protect the Estate. Thank you, Your Honor.

1 THE COURT: Thank you, Ms. Weisgerber. Mr. Malone or  
2 Mr. Thiesen.

3 MR. THEISEN: Thank you, Your Honor. I feel a little  
4 bit like I'm living in an alternate world listening to that.  
5 It's pure speculation about what might be found by the Court of  
6 Appeals. It's a lot of rewriting the history of this case. And  
7 you know, I love every time I hear just pick up the phone and  
8 ask us and we'll tell you everything you want to know. You  
9 know, I may not have been doing this as long as Mr. Malone or  
10 some other people, but I know enough to know that that's not  
11 how it works. They're not just going to give us the keys to  
12 their strategy when I call.

13 Look, let me say again, Judge, just a few things.  
14 I'm not going to belabor the point here. The judgment is  
15 final. The trial court entered final judgment. Okay. It was  
16 then affirmed unanimously by a panel of four Judges. When that  
17 happened, respectfully, Judge, the dynamics in this case  
18 shifted. Okay.

19 We've said from the beginning that they're playing  
20 with our money. That's now very, very true. More than it was.  
21 And despite all this you just heard from Ms. Weisgerber, about  
22 the issues on appeal and the great chances of success, that's  
23 just complete untethered from reality. It really is. I almost  
24 can't believe I'm hearing it and that they continue to say it  
25 with a straight face, Judge.

1 I urge Your Honor to watch the video clip which we  
2 put in our objection of the appellate panel. There is no way  
3 anyone can watch that clip and come away believing that there  
4 was a lack of interest or a lack of engagement, or an  
5 understanding of the issues by those four Judges on that panel.  
6 It's clear as day that they have a grasp of the record, the  
7 evidence, every single issue that Ms. Weisgerber raised that  
8 you know she says they got it wrong, they didn't gloss over  
9 those things. They talked about those issues.

10 I just watched it again this morning, they talked  
11 about each one of those things at length. And the questions  
12 were engaged questions. They were considered, they were  
13 rejected. Okay.

14 To say that the judgment is not liquidated or there's  
15 some hope from appeal, it's honestly crazy, it really is. You  
16 know, we cited the statistics in our paper. Historically less  
17 than four percent of motions for leave are granted. We think  
18 it's again even lower here. They didn't raise any issues on  
19 the merits, that merit appellate review in their paper. Ms.  
20 Weisgerber ran through them now. To suggest that, you know, a  
21 breach of contract claim among two private parties raises novel  
22 issues of public importance. That's just, that's not true.  
23 That's not how the Court of Appeals will look at that.

24 And of course, even if they did grant a Hail Mary  
25 motion for leave, they've got to rebut the 74 pages of trial

1 decision. And the unanimous consideration from the Appellate  
2 Division on all the issues. It's just, the odds of success  
3 here, it's near zero. It's not even slight.

4 And because of that, if they were really acting as a  
5 fiduciary to their Estate they'd give up this appeal and they'd  
6 work with BMLP towards an end game. But they don't want to do  
7 that.

8 And that's my second point, Judge. CCA can't do  
9 anything here without our consent. They can't confirm a plan  
10 without us. And they say they're exploring these alternative  
11 strategies, again that's the first time I've heard of it. Maybe  
12 I should have just called Ms. Labovitz and she would have told  
13 us everything she wants to do. But respectfully, I don't think  
14 that's the case.

15 What they're doing here, Judge, instead of being  
16 productive, as I -- they're throwing up a Hail Mary and then  
17 they're going to use the existence of this further appeal to  
18 delay and thwart the examiner. She says there's no evidence of  
19 this. And they take exception to that. Well, come on guys. We  
20 all know what's going on. We know now, we learned last week  
21 that they've actually started the independent -- independent  
22 director has started her own examination, investigation, to  
23 compete with the examiner. She hasn't hired her own counsel  
24 though to do that. Duane Morris is not going to do that. We  
25 learned that Cole Schotz has been doing that, for months

1 already.

2 So another example of hiding the ball. And that's  
3 really here, Judge, where the prejudice to the Estate comes  
4 into play. And it's why you should take pause here in granting  
5 this stay relief that otherwise you probably would grant in  
6 most cases.

7 They're going to spend our money fighting  
8 transparency and causing delay. It's delaying the inevitable.  
9 It was a unanimous, again unanimous -- I can't say it enough.  
10 I urge you to watch the video of the oral argument before you  
11 decide this motion.

12 THE COURT: But Mr. Theisen, what about the argument  
13 that CCA is not paying for this? Not paying for the appeal.

14 MR. THEISEN: They are not paying for the costs of  
15 the appeal directly from the Estate, that much is true. But  
16 what they're going to do, Judge, is they're going to spend that  
17 money on the Cole Schotz investigation, and they'll spend  
18 millions and millions of dollars trying to thwart what the  
19 examiner is trying to do here, and that's where the prejudice  
20 comes into play. And they will use this pending appeal, no  
21 matter how low the odds, again I think they're near zero, they  
22 will use it to justify the spend of that money and that's the  
23 prejudice.

24 THE COURT: Understood. All right, thank you, Mr.  
25 Theisen. I'm sorry, I don't mean to cut you off. Do you have

1 more that you wanted to -- more points that you wanted to make?

2 MR. THEISEN: Well, the only other points I was going  
3 to make was that just, and this is in our papers, but it's the  
4 last section. To the extent Your Honor is inclined to grant  
5 this, then I think there needs to be some safeguards put in  
6 place. And we've listed three of those in our objection. CCA  
7 should not spend any resources on a plan process that doesn't  
8 fully involve BMLP. They should not oppose or seek to restrict  
9 the examiner based on an argument that the appeal is pending.

10 And this stay relief should be limited to filing the  
11 motion for leave, and then if granted, of course they can't  
12 brief the appeal to the Court of Appeals. If the motion for  
13 leave is denied, I don't know if they intend to seek  
14 reconsideration or any other procedural steps. I frankly, as I  
15 sit here, I don't know all that might be available to them, I'm  
16 not a New York appellate specialist. But they should not be  
17 permitted that second bite at the apple if the leave -- the  
18 motion for leave is denied. That's it.

19 THE COURT: Okay, thank you. Mr. D'Auria.

20 MR. THEISEN: Thank you, Judge.

21 MR. D'AURIA: Mr. D'Auria, do you have anything to  
22 add here?

23 MR. D'AURIA: Good morning, Your Honor, for the  
24 record, Pete D'Auria from the United States Trustee's Office.  
25 No, not with regard to the stay relief motion, Your Honor.

1 THE COURT: Okay. Thank you. Ms. Weisgerber, anything  
2 further?

3 MS. WEISGERBER: No, Your Honor. Unless you have  
4 any questions for us.

5 THE COURT: I don't. It seems to me a couple of the  
6 points that were made about the Debtor trying to delay this, or  
7 using the ability to appeal to object to an examiner moving  
8 forward. I'm not sure I see that here. I'm going to grant the  
9 motion for relief from stay. I'm not the one to decide whether  
10 this is a proper judgment or an improper judgment. Right, I  
11 mean that's, I'm leaving that to the New York State Court.

12 I do agree with you, Mr. Thiesen, that the case needs  
13 to proceed. And it seems to me the case is proceeding, at  
14 least from my perspective. Obviously I have a 32,000 foot  
15 view, you've guys are the ones who are involved every day in  
16 this. But we have -- the examiner's already been appointed. I  
17 know, I'm hoping, I'd like to know if you're not, the parties  
18 are working on what the limits or guidelines are going to be  
19 for the investigation that the examiner is going to conduct.

20 I know we have a motion to appoint counsel for the  
21 independent director, I think on the same day as the examiner  
22 hearing. So and the way I read the motion for relief from stay  
23 filed by the Debtor, is that they are moving forward with the  
24 case. And if they're not I would need, Mr. Thiesen, more direct  
25 evidence as to what the blocks are here. Because as far as



1 delay, I look at that as my job to prevent delay. And I don't  
2 see here how granting stay relief is going to delay the case  
3 any further. I think it's going to give the Debtor the ability  
4 to -- the ability to exercise the rights it has under New York  
5 Appellate Law.

6 And I think that's all we need to do today. Right?  
7 Stay relief granted. And let's move forward with the case.  
8 CCA attorneys, I'm taking you at your word that you're working  
9 with the, your largest creditor and you've got some ideas about  
10 putting together a plan, and alternative plan, so that there  
11 won't be any delay to the administration of this case.

12 And with that, if no one else has any other comments,  
13 I think we're set. And we'll talk again on the 22nd of May,  
14 if not before.

15 MR. THEISEN: Just a housekeeping, Judge. I heard  
16 you say that the examiner's scope and budget hearing is going  
17 to be on the 22nd on the omnibus day. I think we were all  
18 agreeing on that with briefing would then be due on the 15th?  
19 But I just wanted to make sure we're -- I don't know that  
20 that's on the docket for that hearing date.

21 THE COURT: Oh I thought it was. We'll double --

22 MR. THEISEN: If it is I apologize, Judge.

23 (Court and Clerk confer)

24 THE COURT: All right, so that, yes, Mike Tedesco is  
25 just telling me doesn't see it on the, the hearing on the

1 docket. So we'll put it on there as long as that's okay with  
2 everybody. You guys are all set for the 22nd of May.

3 MS. WEISGERBER: Yes, Your Honor.

4 THE COURT: Okay, it will be on the docket then.  
5 Thanks for bringing that up, Mr. Thiesen.

6 MR. THEISEN: Thanks, Judge.

7 MS. WEISGERBER: Thank you, Your Honor.

8 THE COURT: Okay, thank you.

9 \* \* \* \* \*

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

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

15

16

17 /S/PATRICIA POOLE

18

19 TRACY GRIBBEN TRANSCRIPTION, LLC May 6, 2025

20 DATE

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**Exhibit 2**



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May 7, 2025

Steven L. Klepper, Cole Schotz  
Via Email ([SKlepper@ColeSchotz.com](mailto:SKlepper@ColeSchotz.com))

In re: CCA Construction, Inc., Case No. 24-22548 (CMG)

Dear Steve:

Thank you again for speaking with me on the phone today.

As the recently appointed Examiner in the CCA bankruptcy case, it is important that, among other things, I ensure the Debtor's assets are not unnecessarily dissipated.

As I get up to speed on this matter, I have come to understand over the past few days that Cole Schotz has recently been retained by the Debtor to represent the Special Committee (consisting of one member, Elizabeth Abrams) to conduct a very broad investigation of virtually any matter which may be related to the recent bankruptcy filing.

In addition, I understand that the Special Committee itself has retained Duane Morris to advise Ms. Abrams. With all due respect to you and your team, I am concerned about both the utility and the independence (perceived and otherwise) of an investigation being conducted by counsel to the Debtor, not to mention the expense of hiring two separate law firms – one to conduct the investigation, and one to oversee that investigation.

As I am sure you are aware, there are judicial findings of fraud and misappropriation of assets against the Debtor in the recently-concluded New York state court litigation. Given this unique history for a bankruptcy case, it is extremely unlikely that the creditors in the bankruptcy, the United States Trustee, or the Bankruptcy Court would be satisfied that an investigation conducted by Debtor's counsel would be seen as either independent or satisfactory.

Therefore, an investigation conducted by counsel chosen and retained by the Debtor would appear to be a waste of estate resources, especially given that an independent Examiner has now been appointed. It seems only logical that the Examiner is the proper party to conduct a truly thorough, impartial, and independent investigation which will be accepted by all parties, which I expect to be borne out at the May 22nd hearing with respect to the Examiner's scope and budget.

In re: CCA Construction, Inc., Case No. 24-22548 (CMG)  
Page 2

Therefore, I request that the Debtor and Cole Schotz suspend their investigation(s), at least until the Court makes a decision on the scope and budget of the Examiner's investigation. I would appreciate your response by 5:00 p.m. ET this Friday, May 9<sup>th</sup>.

Sincerely,

/s/ Todd Harrison  
Todd Harrison  
Examiner

**Exhibit 3**

Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, NJ 07602-0800  
201.489.3000 201.489.1536 fax



Michael D. Sirota  
Member  
Admitted in NJ and NY

Reply to New Jersey Office  
Writer's Direct Line: 201.525.6262  
Writer's Direct Fax: 201.678.6262  
Writer's E-Mail: msirota@coleschotz.com

—  
New York

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Delaware

—  
Maryland

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Texas

—  
Florida

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Washington, DC

May 9, 2025

**VIA EMAIL ONLY**

tdharrison@mwe.com

Todd Harrison

McDermott Will & Emery LLP

One Vanderbilt Avenue

New York, New York 10017-3852

Re: ***In re CCA Construction, Inc.*, Case No. 24-22548 (CMG) – Response Letter  
Regarding Special Committee Investigation**

Dear Mr. Harrison:

As you know, Cole Schotz, P.C. (“Cole Schotz”) represents CCA Construction, Inc. (the “Debtor”) in its chapter 11 cases pending in the Bankruptcy Court for the District of New Jersey. This letter is in response to your letter dated May 7, 2025, which requested that the Debtor and Cole Schotz “suspend their investigation(s)” based upon the unfounded position that, among other things, “an investigation conducted by counsel chosen and retained by the Debtor would appear to be a waste of estate resources.” After conferring with the Debtor’s special committee of independent directors (the “Special Committee”), the Debtor, through the Special Committee, rejects your request and has advised Cole Schotz that it should continue to move forward with the independent investigation.

As you know, we received a letter from counsel to BML Properties, Ltd. (“BMLP”) making the same request of the Debtor and Cole Schotz. The Special Committee similarly rejected BMLP’s request for the reasons discussed in the response letter attached as Exhibit A hereto (the “BMLP Response Letter”). The points raised in the BMLP Response Letter concerning the independent nature of the investigation are incorporated herein.

Importantly, we also must correct the statement in your letter that “there are judicial findings of fraud and misappropriation of assets against the Debtor in the recently-concluded New York state court litigation.” This is inaccurate. Neither the New York state trial court nor the Appellate Division made any finding that CCA engaged in any fraud, as a review of those courts’ rulings makes plain. The Debtor’s liability was predicated on an alter ego and veil-piercing theory of liability. During our May 2, 2025, introductory call Debevoise offered to schedule a call with you regarding the trial court’s decision and the litigation history, and we suggest that such a call be scheduled promptly.

coleschotz.com

 COLE SCHOTZ P.C.

Todd Harrison  
May 9, 2025  
Page 2

We also note that the position in your letter that you are charged with “ensur[ing] the Debtor’s assets are not unnecessarily dissipated” due to the ongoing investigation presumes that the scope of the Examiner’s investigation has been Court-ordered. As you are aware, the scope of the Examiner’s responsibilities remains subject to further negotiation and, if necessary, adjudication by the Bankruptcy Court on May 22, 2025. Given that the Examiner’s scope remains an open point, the issues you raise in the Letter are premature. In the meantime, the Special Committee will continue to advance the case, consistent with the Bankruptcy Court’s understanding and instruction at the recent May 5, 2025, hearing.<sup>1</sup>

Very truly yours,

COLE SCHOTZ P.C.

*/s/ Michael D. Sirota*

Michael D. Sirota  
Member

cc: Warren Usatine, Esq.  
Felice Yudkin, Esq.  
Steven Klepper, Esq.  
M. Natasha Labovitz, Esq.  
Kristin K. Going, Esq.  
Darren Azman, Esq.  
Nathaniel Allard, Esq.  
Morris S. Bauer, Esq.

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<sup>1</sup> See, e.g., Transcript regarding Hearing Held 5/05/2025 at 21:7.



 COLE SCHOTZ P.C.

Todd Harrison  
May 9, 2025  
Page 3

**Exhibit A**

**Response Letter to BML Properties, Ltd.**

Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, NJ 07602-0800  
201.489.3000 201.489.1536 fax



Michael D. Sirota  
Member  
Admitted in NJ and NY

Reply to New Jersey Office  
Writer's Direct Line: 201.525.6262  
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New York  
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Delaware  
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Maryland  
—  
Texas  
—  
Florida  
—  
Washington, DC

May 9, 2025

**VIA EMAIL ONLY**

btheisen@gibbonslaw.com

Brett S. Theisen

Gibbons P.C.

One Gateway Center

Newark, New Jersey 07101-5310

Re: ***In re CCA Construction, Inc.*, Case No. 24-22548 (CMG) – Response Letter  
Regarding Special Committee Investigation**

Dear Mr. Theisen:

As you know, Cole Schotz, P.C. (“Cole Schotz”) represents CCA Construction, Inc. (the “Debtor”) in its chapter 11 cases pending in the Bankruptcy Court for the District of New Jersey. This letter is in response to your letter dated May 7, 2025 (the “Letter”) wherein you – on behalf of BML Properties, Ltd. (“BMLP”) – requested that Cole Schotz “immediately cease all . . . investigative activities.” After conferring with the Debtor’s special committee of independent directors (the “Special Committee”), the Debtor, through the Special Committee, rejects your request and has advised Cole Schotz that it should continue to move forward with the independent investigation.

More substantively, the Letter asserts – without evidence – that the independent investigation should be halted due to allegations of “obvious conflicts of interest and lack of independence.” Contrary to your position, the investigation being conducted by the Special Committee and M. Elizabeth Abrams as the Special Committee’s disinterested independent director (the “Independent Director”) is free from any conflict of interest or lack of independence. The Letter fails to identify any conflict or bias on the part of the Special Committee and the Independent Director, nor is there any. The independence of the investigation is further reinforced by the fact that the Debtor has retained disinterested counsel – Cole Schotz – to conduct the investigation on the Debtor’s behalf. Cole Schotz had no prepetition relationship or involvement with the Debtor or the Debtor’s non-Debtor affiliates or subsidiaries, with the exception of limited work relating to preparation of the chapter 11 case. As you are aware, it is customary and appropriate for a disinterested counsel to investigate potential third-party claims and causes of action for a debtor-in-possession on a post-petition basis, and Cole Schotz’s familiarity with the Debtor from the case to date will allow such investigation to be conducted in an efficient manner.

 COLE SCHOTZ P.C.

Brett Theisen  
May 9, 2025  
Page 2

The Special Committee also recently retained Duane Morris LLP as counsel to advise on all matters within the Special Committee's authority, including oversight of the independent investigation and coordination with Cole Schotz.

In light of your failure to identify the "obvious conflicts of interest and a lack of independence," the Special Committee has determined that continuing its investigation is consistent with its fiduciary duties. Cole Schotz has been authorized and directed to continue to the independent investigation and intends to do so.

Very truly yours,

COLE SCHOTZ P.C.

*/s/ Michael D. Sirota*

Michael D. Sirota  
Member

cc: Warren Usatine, Esq.  
Felice Yudkin, Esq.  
M. Natasha Labovitz, Esq.  
Todd Harrison, Esq., in his capacity as Court-appointed Examiner  
Kristin K. Going, Esq.  
Deanna Boll, Esq.  
Office of the United States Trustee (Attn: Fran Steele, Esq. and Peter D'Auria, Esq.)  
Robert K. Malone, Esq.  
Morris S. Bauer, Esq.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

MCDERMOTT WILL & EMERY LLP  
Darren Azman (pro hac vice pending)  
Kristin Going (pro hac vice pending)  
Deanna D. Boll (NJ Bar No. 031861998)  
Nathaniel Allard (pro hac vice pending)  
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New York, New York 10017-3852  
Telephone: (212) 547-5400  
dazman@mwe.com; kgoing@mwe.com  
dboll@mwe.com; nallard@mwe.com

In Re: *Proposed Counsel to the Examiner*

CCA Construction, Inc.,

Debtor.

Case No.: 24-22548-CMG

Chapter: 11

Adv. No.: \_\_\_\_\_

Hearing Date: 5/22/2025 @ 11 a.m.

Judge: Christine M. Gravelle

**CERTIFICATION OF SERVICE**

1. I, Deanna D. Boll :

☒ represent Todd Harrison, Examiner in this matter.

☐ am the secretary/paralegal for \_\_\_\_\_, who represents  
\_\_\_\_\_ in this matter.

☐ am the \_\_\_\_\_ in this case and am representing myself.

2. On May 15, 2025, I sent a copy of the following pleadings and/or documents to  
the parties listed in the attached lists.

Examiner's Statement Regarding Proposed Scope of Investigation

3. I certify under penalty of perjury that the above documents were sent using the mode of service  
indicated.

Date: May 15, 2025

/s/ Deanna D. Boll

Signature

Certificate of Service  
 Parties Served by ECF or E-mail

Description	Creditor Name	Creditor Notice Name	Email Address	Method
Top 20 Creditor	American International Companies	Lanlan Chen	Lanlan.chen@wtw.com	E-mail
Top 20 Creditor	BML Properties, Ltd	Dorf Nelson & Zauderer LLP	Mzauderer@dorflaw.com	E-mail
Top 20 Creditor	BML Properties, Ltd	Susman Godfrey LLP	bcarmody@susmangodfrey.com; Jbuchdahl@susmangodfrey.com	E-mail
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		Michael D. Sirota, Warren A. Usatine, Felice R. Yudkin, Ryan T. Jareck	msirota@coleschotz.com; wusatine@coleschotz.com; fyudkin@coleschotz.com; rjareck@coleschotz.com	ECF E-mail ECF E-mail
Local Counsel for the Debtor	Cole Schotz P.C.			
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Counsel for the Debtor	Debevoise & Plimpton LLP			
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		Robert K. Malone, Brett S. Theisen, Kyle P. McEvilly, and Christopher P. Anton	rmalone@gibbonslaw.com; btheisen@gibbonslaw.com; kmceilly@gibbonslaw.com; cantan@gibbonslaw.com	ECF ECF ECF E-mail
Counsel for BML Properties, Ltd.	Gibbons P.C.			
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			Fran.B.Steele@usdoj.gov; Peter.J.DAuria@usdoj.gov;	ECF E-mail
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Top 20 Creditor	Quill Corporation		orders@quill.com	E-mail
			bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov	E-mail E-mail
SEC Regional Office	Securities & Exchange Commission	NY Regional Office		
SEC Regional Office	Securities & Exchange Commission	PA Regional Office	philadelphia@sec.gov	E-mail
Top 20 Creditor	Socotec Advisory LLC		advisorybilling@socotec.us	E-mail
	Special Committee of Independent Directors	Morris S. Bauer	MSBauer@duanemorris.com	ECF
Top 20 Creditor	Squire Patton Boggs		michael.curto@squirepb.com	E-mail
Top 20 Creditor	Swiss Re Corporate Solutions	Lanlan Chen	Lanlan.chen@wtw.com	E-mail
		Courtney M. Brown and Michael L. Schein	mschein@vedderprice.com; cmbrown@vedderprice.com	E-mail ECF
Counsel to Korcomptenz Inc	Vedder Price P.C.			

## Certificate of Service Page 3 of 3

Parties Served by U.S. Mail

Description	CreditorName	Creditor Notice Name	Address1	Address2	Address3	City	State	Zip
Top 20 Creditor	Analysis Group, Inc.		111 Hunting Avenue	14th Floor		Boston	MA	02199
Debtor	CCA Construction, Inc.		445 South Street, Suite 310			Morristown	NJ	07960
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St			Philadelphia	PA	19104
New Jersey Attorney General Office	New Jersey Attorney General Office	Division of Law	Richard J. Hughes Justice Complex	25 Market St	PO Box 112	Trenton	NJ	08625-0112
New Jersey Division of Taxation	New Jersey Division of Taxation	Compliance and Enforcement - Bankruptcy Unit	3 John Fitch Way, 5th Fl	PO Box 245		Trenton	NJ	08695-0245
Top 20 Creditor	Quench USA, Inc.		630 Allendale Road, Suite 200			King of Prussia	PA	19406
Top 20 Creditor	Thomas Reuters	Alyssa Risch	PO Box 6292			Carol Stream	IL	60197
US Attorney for District of New Jersey	US Attorney for District of New Jersey	Philip R. Sellinger	970 Broad Street, 7th Floor			Newark	NJ	07102
Top 20 Creditor	USI Insurance Services	Amy Silverman	180 Park Avenue, 1st Floor			Florham Park	NJ	07932