

**DEBEVOISE & PLIMPTON LLP**

M. Natasha Labovitz (admitted *pro hac vice*)  
Erica S. Weisgerber (admitted *pro hac vice*)  
Elie J. Worenklein  
Shefit Koboci (admitted *pro hac vice*)  
66 Hudson Boulevard  
New York, NY 10001  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
nlabovitz@debevoise.com  
eweisgerber@debevoise.com  
eworenklein@debevoise.com  
skoboci@debevoise.com

*Co-Counsel to the Debtor and Debtor in Possession*

**COLE SCHOTZ P.C.**

Michael D. Sirota  
Warren A. Usatine  
Felice R. Yudkin  
Ryan T. Jareck  
Court Plaza North, 25 Main Street  
Hackensack, NJ 07601  
Telephone: (201) 489-3000  
Facsimile: (201) 489-1536  
msirota@coleschotz.com  
wusatine@coleschotz.com  
fyudkin@coleschotz.com  
rjareck@coleschotz.com

*Co-Counsel to the Debtor and Debtor in Possession*

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

In re:

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

Debtor.

Chapter 11

Case No. 24-22548 (CMG)

**REPLY TO LIMITED OBJECTION OF BML PROPERTIES, LTD. TO DEBTOR'S  
MOTION FOR ENTRY OF AN ORDER EXTENDING THE EXCLUSIVE PERIODS  
FOR FILING A CHAPTER 11 PLAN AND SOLICITING ACCEPTANCE THEREOF**

The above-captioned debtor and debtor in possession, CCA Construction, Inc. (“CCA” or the “**Debtor**”), respectfully submits the following reply (the “**Reply**”)<sup>2</sup> to the *Limited Objection of BML Properties, Ltd. to Debtor’s Motion for Entry of an Order Extending the Exclusive Periods*

<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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the *Debtor’s Motion for Entry of an Order Extending the Exclusive Periods for Filing a Chapter 11 Plan and Soliciting Acceptance Thereof* (the “**Exclusivity Motion**”) [Docket No. 265].



*for Filing a Chapter 11 Plan and Soliciting Acceptance Thereof* (the “**Limited Objection**”), filed on May 15, 2025, by BML Properties, Ltd. (“**BMLP**”) [Docket No. 308]:

**Preliminary Statement**

1. Regrettably, CCA is compelled to remind BMLP of the basic and well-established objectives and policies that underpin chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”). The Supreme Court “has long recognized that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.” *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *In re CTE 1 LLC*, 2024 WL 2349620 at \*8 (Bankr. D.N.J. May 21, 2024) (citing same). The primary method to achieve this policy objective is confirmation of a chapter 11 plan, which preserves a debtor’s business and maximizes value for the benefit of all stakeholders. Accordingly, courts encourage debtors to utilize their exclusive periods to propose a chapter 11 plan in a timely manner to rehabilitate their businesses. *Continental Casualty Co. v. Burns & Roe Enters. (In re Burns & Roe Enters.)*, No. 00-41610 (RG), 2005 WL 6289213, at \*4 (D.N.J. Nov. 2, 2005).

2. Consistent with the scorched-earth tactics BMLP has pursued since the Petition Date, BMLP’s Limited Objection seeks outlandish relief in contravention of the well-established objectives of chapter 11. BMLP’s objection makes clear that it believes CCA’s right to propose a plan should be exclusive in name only, and seeks to preclude the relief contemplated by section 1121 of the Bankruptcy Code, which is to give a debtor time to develop and propose a chapter 11 plan without interference from those who may oppose the debtor’s efforts to reorganize. The Limited Objection, together with BMLP’s proposed examiner scope filed concurrently therewith, reaffirm that the only part of the chapter 11 process BMLP is willing to respect is its own asserted right to nearly unlimited discovery in order to enhance its litigation position in ongoing and future

non-bankruptcy litigation outside of the purview of this Court. BMLP's continued efforts to hijack this chapter 11 case and turn it into a mere vehicle for BMLP's open-ended discovery should not be tolerated.

3. Among other problems with BMLP's position, it seeks to tie progress on the plan to the investigation of the Court-appointed examiner (the "**Examiner**"), even though the Third Circuit has explained that appointment of an examiner should not delay or undermine a debtor's efforts to reorganize its business and progress a chapter 11 case. *In re FTX*, 91 F.4th 148, 156 (3d Cir. 2024) ("to the extent the mandatory nature of subsection 1104(c)(2) encourages parties in interest to invoke an investigation to tactically delay proceedings, the bankruptcy court has the discretion to continue with the confirmation process without receiving the examiner's findings or public report."). BMLP proposes no reason – including its broken-record misrepresentations about findings of fraud – why the facts here distinguish this case from *FTX*. In fact, contrary to BMLP's tactics, this Court has made clear that the parties should be focused on progressing the chapter 11 case. *See* May 5, 2025 Hr'g Tr. at 20:12–13. BMLP's attempt to thwart forward progress should be rejected.

4. BMLP's proposal is little more than an attempt to convert the examiner into a *de facto* trustee, even though BMLP well knows that it has not formally sought such an appointment and would be extremely unlikely to obtain one if it tried. CCA, acting under the direction of its management team and independent director and with the advice of experienced professionals, has complied with all the requirements of chapter 11. This Court has already found, after extensive discovery and testimony, that CCA's independent director is truly independent and was reasonably appointed. *See* Feb. 13, 2025, Hr'g. Tr. 213:01-7. BMLP has not sought to appeal or challenge that finding. Moreover, CCA has made appropriate progress in this chapter 11 case, including

filing its schedules of assets and liabilities and statements of financial affairs, securing Court approval of the retention of its professionals, obtaining approval of its DIP financing, and cooperating with the examiner appointment process in accordance with the Court's order. Belying BMLP's unceasing allegations, CCA has conducted itself as a responsible chapter 11 debtor.

5. It is telling that BMLP seems to have an ever-shifting position on how CCA should move this case forward, appearing to change its positions whenever convenient. Whereas BMLP previously complained that the Special Committee had not started an investigation of causes of action earlier in the chapter 11 case, now BMLP harshly criticizes the Special Committee and its professionals for commencing that very same investigation. *Compare Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner* [Docket No. 88] at ¶ 33, with *Limited Objection* at ¶¶ 99-108. Whereas BMLP previously complained (without any basis or evidence) that CCA was seeking to inappropriately slow the case down and thwart the Examiner by pursuing its legitimate appellate rights, BMLP now seeks to bring the plan process to an effective halt pending the conclusion of the Examiner's investigation. *Compare* May 5, 2025 Hr'g Tr. at 17:16–18, with *Limited Objection* at ¶ 18. And whereas BMLP has previously been happy to use the chapter 11 process to compel massive discovery from CCA and third parties at CCA's expense, it now criticizes CCA's case as a “blatant abuse” of chapter 11. *See* *Limited Objection* at ¶ 14. BMLP's inconsistencies discredit and undermine its feigned concerns about the proper pace of this case and its insinuations about CCA's motives in pursuing the course of action it has chosen.

6. Finally, BMLP has yet again tried to use the chapter 11 case to improperly relitigate or misinterpret the Baha Mar Litigation, create unfounded doubt in CCA's current management team, cast improper aspersions on the independent director, and repeat complaints that have already been proved false. BMLP appears unconstrained by the facts, repeatedly raising baseless

and false accusations. This repeat pattern of behavior continues to expose BMLP's willingness to go to any lengths, and make any convenient allegations, however untrue, in pursuit of its litigation goals against non-debtors.

7. Accordingly, for the reasons set forth in the Exclusivity Motion, CCA should be permitted to extend its Exclusive Periods so it may progress this case as expeditiously as possible to reduce costs, limit the ongoing overhang created by the chapter 11 case on CCA's operating subsidiaries, and enable CCA to emerge from chapter 11 as soon as reasonably possible after BMLP's claim is finally determined by the New York courts. Exclusivity Motion at ¶¶ 29-40. To be clear, while CCA intends to progress this chapter 11 case and maximize value for the benefit of all stakeholders, it will fully cooperate with the Examiner's investigation once its scope has been fully determined. BMLP has not provided any reason that this case must stagnate rather than having the plan process and the Examiner's work proceed in parallel tracks consistent with the Third Circuit's guidance in *FTX*.

### **Background**

8. CCA filed for chapter 11 protection to maintain and maximize the value of its estate for the benefit of all its stakeholders in the face of the Baha Mar Judgment. The most recent Master Service List lists many creditors other than BMLP, and others may well emerge when a bar date is established. Docket No. 302. The current creditor roster does not include CCA's employees, who have a crucial stake in the company and likely would become creditors if a reorganization is not achieved, or CCA's affiliates with intercompany claims.

9. A key creditor constituency is CCA's surety providers. These surety providers have maintained an active interest in the case and CCA has been actively engaged with them throughout the case. BMLP is well aware of this constituency: BMLP served numerous subpoenas pursuant

to Bankruptcy Rule 2004 [Docket Nos. 100 and 111] on these surety providers and other parties including CCA's affiliates and numerous banking institutions.

10. In addition, CCA's primary assets – which would be a primary source of value for BMLP and other creditors in the event the Baha Mar Judgment is finally upheld – are its operating subsidiaries. These operating subsidiaries are distinct entities, each with its own creditors, operations, and contractual obligations. These counterparties also have a stake in this case that CCA must appropriately consider in its effort to maximize the overall value of its estate.

11. Contrary to BMLP's assertions, CCA has made and continues to make material progress in its chapter 11 case as set forth in the Exclusivity Motion. CCA has leveraged access to the DIP Facility to improve its liquidity position, minimize business disruption, and maintain the confidence of customers and vendors. CCA also secured relief from the automatic stay to prosecute a critical appeal in the Baha Mar Litigation, resolved contested discovery issues directed at CCA's affiliates, financial institutions and surety providers, supported the work of the Special Committee, and attended to numerous administrative matters.

12. Throughout the case, CCA has encouraged BMLP to reach out informally to CCA to resolve issues as they arise or to gather any appropriate non-privileged information. BMLP has refused. *See* May 5, 2025 Hr'g Tr. at 15:3–12. Instead, BMLP has served extensive Rule 2004 subpoenas, objected to DIP financing it conceded CCA needed, moved for an examiner, sought an extremely wide-ranging scope for said examiner's investigation, objected to CCA's plainly legitimate request for relief from the automatic stay to pursue its appellate rights, objected to the Special Committee's retention of its own counsel, and now seeks to obstruct CCA's efforts to move the case forward with a plan process.

13. Of particular note is BMLP's recent objection to CCA's request for stay relief, in which BMLP argued that CCA was seeking to improperly slow the case down. *See* May 5, 2025 Hr'g Tr. at 17:16–18 (“they’re going to use the existence of this further appeal to delay and thwart the examiner.”). The Court rejected this accusation. *Id.* at 20:5–9 (“I’m not sure I see that here.”). Now, less than two weeks later, BMLP has shifted gears and criticizes CCA for moving too quickly, now demanding that CCA “pause all such efforts” to develop a plan of reorganization unless and until BMLP consents and the Examiner completes a broad, duplicative investigation. Limited Objection at ¶ 1.

14. BMLP's about-face notwithstanding, CCA continues to press forward negotiating a plan that it is within its prerogative to negotiate.

### **Reply**

#### **I. CCA is Entitled to Progress a Plan of Reorganization**

15. The purpose of chapter 11 is to confirm a plan of reorganization. H.R. Rep. No. 595, 95th Cong., 2d Sess. 221 (1978). The Supreme Court in *Katchen* noted that “this Court has long recognized that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.” *Katchen v. Landy*, 382 U.S. at 328; *see Chemetron Cor. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995) (same). Chapter 11 is not intended to provide a vehicle for individual creditors to pursue agendas unrelated to the rehabilitation of the debtor or the preservation of the debtor's business. One creditor's dislike of a proposed plan is not grounds to curtail the debtor's exclusive right to negotiate a plan. *In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 134 (D.N.J. 1995).

16. Even when an examiner has been appointed, the plan development and confirmation process is meant to move forward. *In re FTX*, 91 F.4th at 156 (“to the extent the

mandatory nature of subsection 1104(c)(2) encourages parties in interest to invoke an investigation to tactically delay proceedings, the bankruptcy court has the discretion to continue with the confirmation process without receiving the examiner's findings or public report.”); *In re Spansion, Inc.*, 426 B.R. 114, 126 (Bankr. D. Del. 2010) (“Collier on Bankruptcy [notes] that [mandatory appointment of an examiner under 11 U.S.C. § 1104(c)(2)] ‘was not intended and should not be relied on to permit blatant interference with the chapter 11 case or the plan confirmation process.’”) (quoting 7–1104 Collier on Bankruptcy ¶ 1104.03[2] (2009)); *see also In re Loral Space & Commc’ns, Ltd.*, 2004 WL 2979785 at \*5 (S.D.N.Y. Dec. 23, 2004) (“Indeed, it is [the bankruptcy] court’s duty to fashion the role of an examiner to avoid substantial interference with the ongoing bankruptcy proceedings.”). The Court has rightfully highlighted the need to keep this case progressing even while the appointment of the examiner has been pending. May 5, 2025 Hr’g Tr. at 20:12–14 (“I do agree with you, Mr. Theisen, that the case needs to proceed.”).

17. Accordingly, CCA should continue to move the plan process forward, in line with the core objective of the Bankruptcy Code. Doing so will limit the overhang created by the chapter 11 case on CCA’s operating subsidiaries, limit the expense of the chapter 11 case, and enable CCA to emerge from chapter 11 as quickly as possible. BMLP has not provided any reason why CCA cannot continue to develop and propose a plan in parallel with the Examiner’s investigation, nor any basis to depart from the basic chapter 11 framework.

18. The Examiner’s presence does not change the conclusion. As noted, courts have repeatedly emphasized that examiners should not interfere with plan development or confirmation. BMLP cites no authority to the contrary. Instead, the relief BMLP seeks is plainly contrary to the purpose of Bankruptcy Code. Despite claiming to not object to CCA’s extension of its Exclusive Periods, BMLP in fact seeks to deny CCA that right by conditioning the proposal of any plan on the



completion of the Examiner's investigation or on BMLP's consent. Such a central role for an examiner is also contrary to section 1104; granting the Examiner such a role in this case risks inappropriately converting him into a de facto trustee.

19. When combining the Limited Objection with BMLP's proposed wide-ranging Examiner investigation scope, it is clear that BMLP simply wants to extend the chapter 11 case for the purpose of obtaining discovery, and perhaps to harm CCA's operations and ability to reorganize. This is BMLP's repeated strategy.

20. For the avoidance of any doubt, CCA reiterates that it will fully cooperate with the Examiner's investigation, once the scope of that work is fully determined, in parallel path with the plan process.

## **II. BMLP's Limited Objections, if Granted, Would Cause the Case to Stagnate**

21. Were the Court to grant BMLP's demands, the case would stagnate for the period of the examiner's investigation, if not for longer. This is particularly problematic where BMLP has proposed an extremely wide-ranging investigation that would likely take several months, or longer. *See BML Properties, Ltd.'s Supplemental Brief in Support of the Appointment of Examiner* at ¶ 15 [Docket No. 309]. Such a delay in the chapter 11 process would extend the shadow over the operating businesses of CCA's subsidiaries and likely decrease the value of the estate available to satisfy the claims of all stakeholders, including BMLP. The delay would also risk extending the case beyond the maturity of the current DIP financing, which would leave CCA unable to pay for the scope of the Examiner's investigation as proposed by BMLP or for a plan process afterward. In light of these facts, CCA's desire to move the case along as quickly as possible is fully in line with its business judgment as a debtor in possession. The underlying rationale for BMLP's proposed delay is to shift the cost of third-party discovery from BMLP onto the estate and its other

creditors, as the Court recognized earlier. Feb. 13, 2025 Hr’g Tr. at 215:11-13. (“So why should your discovery though, why should the post judgment discovery in this bankruptcy be paid for by the debtor? [...] And there are other creditors here.”).

22. Indeed, the Court’s concerns for other creditors are well-founded. The Bankruptcy Code requires that CCA take into account all of the estate’s stakeholders in determining the proper course of the case, and not simply follow the demands of specific creditors. *See In re Geriatrics Nursing Home*, 187 B.R. at 134 (“[the court] cannot conclude, based on reasoning of the Bankruptcy cases treating of ‘cause’ under 11 U.S.C. § 1121(d) . . . that the fact that one creditor constituency is not happy with the debtor’s plan constitutes cause to undermine the debtor’s chances of winning final confirmation of its plan during the exclusivity period.”). CCA has done just that in seeking to move this chapter 11 case forward, and the Court should accordingly reject BMLP’s attempt at delay.

### **III. This Is a Complex Case Which Requires Additional Time to Develop a Plan of Reorganization**

23. BMLP claims this is a two-party dispute and therefore not a complex case which requires extended exclusive periods. Limited Objection at ¶ 15. Both assertions are wrong. First, as noted during the May 5, 2025, hearing, and as further described in paragraphs 8-10 above, this is not a two-party dispute.

24. The fact that no other creditors have sought to speak at any court hearings in this case is not evidence to the contrary, despite BMLP’s assertions. Limited Objection at ¶ 6. Several creditors have engaged with CCA informally to address their concerns about the chapter 11 case and the impact on CCA’s operations. The fact that these creditors have not taken BMLP’s expensive, adversarial and litigious approach to asserting their rights does not mean they lack a material interest

in the outcome of the chapter 11 case. Holding otherwise would only encourage dissipating estate assets on professional fees, as BMLP's approach has done.

25. In addition, the pendency of the appeal of the Baha Mar Judgment itself makes this case complex. Until the appeal is finalized, CCA must, as an estate fiduciary, develop a plan that accounts for two radically different outcomes and associated creditor landscapes. Developing one plan takes time. Developing two takes even more.

26. Furthermore, resolving the claims related to the Shared Services Program is not nearly as simple as BMLP suggests in its Limited Objection. BMLP suggests that "CSCEC Holding could simply take over CCA's [shared services] functions directly." Limited Objection at ¶ 16. This statement severely underestimates the complexity (and lack of authority) in such an undertaking and, ironically, demonstrates *BMLP's* lack of respect for corporate separateness.

#### **IV. BMLP Continues to Misrepresent the Record**

27. Finally, CCA is obliged to yet again correct misleading statements by BMLP in *BML Properties, Ltd.'s Supplemental Brief in Support of the Appointment of an Examiner* ("**BMLP Examiner Brief**") [Docket No. 309], which BMLP has incorporated by reference into its Limited Objection. Limited Objection at ¶ 13.

28. First, BMLP makes certain claims regarding Mr. Ning Yuan's employment status with CCA. BMLP Examiner Brief at ¶ 6. Mr. Yuan is semi-retired and not an executive of CCA. Accordingly, he has not been paid a salary since July of 2024; CCA has made only some modest reimbursements to him since then. These facts are fully disclosed in CCA's schedules filed on the docket to which BMLP has had ready access. *Schedule of Assets and Liabilities and Statement of Financial Affairs for CCA Construction, Inc.* at p. 32 [Docket No. 99].

29. Second, BMLP continues to misleadingly insinuate that Mr. Yuan has been using a CSCEC Group credit card for personal purchases. BMLP Examiner Brief at ¶ 6. BMLP tries to disclaim such an insinuation by claiming that “ultimate source of funds for payments in respect of those purchases has not yet been determined.” *Id.* This too is false. The ultimate source of funds for these payments is clear: Mr. Yuan paid for these purchases himself in his personal capacity. CCA has already clarified this point on the public docket. *Limited Response to Limited Objection of BML Properties, Ltd. to Application to Retain Duane Morris LLP as Counsel to Special Committee* at ¶¶ 4-5 [Docket No. 291].

30. Finally, BMLP claims that Debevoise & Plimpton LLP is conducting the Special Committee’s investigation. BMLP Examiner Brief at ¶ 10. This is also completely incorrect. The Special Committee is relying solely on Cole Schotz P.C. and Duane Morris LLP to conduct its investigation. *Reply of Special Committee of Independent Directors to Limited Objection of BML Properties, Ltd. to Application to Retain Duane Morris LLP as Counsel to the Special Committee Effective April 9, 2025* at ¶ 3 [Docket No. 320].

### **Conclusion**

31. For the reasons set forth herein, the Debtor respectfully requests that the Court (i) enter the Order and (ii) grant such other and further relief as is just and proper.

*[Remainder of page intentionally left blank]*

Dated: May 19, 2025

*/s/ Michael D. Sirota*

---

**COLE SCHOTZ P.C.**

Michael D. Sirota  
Warren A. Usatine  
Ryan T. Jareck  
Felice R. Yudkin  
Court Plaza North, 25 Main Street  
Hackensack, NJ 07601  
Telephone: (201) 489-3000  
Facsimile: (201) 489-1536  
msirota@coleschotz.com  
wusatine@coleschotz.com  
fyudkin@coleschotz.com  
rjareck@coleschotz.com

-and-

**DEBEVOISE & PLIMPTON LLP**

M. Natasha Labovitz (admitted *pro hac vice*)  
Erica S. Weisgerber (admitted *pro hac vice*)  
Elie J. Worenklein  
Shefit Koboci (admitted *pro hac vice*)  
66 Hudson Boulevard  
New York, NY 10001  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
nlabovitz@debevoise.com  
eweisgerber@debevoise.com  
eworenklein@debevoise.com  
skoboci@debevoise.com

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