

MCDERMOTT WILL & EMERY LLP

Darren Azman (admitted *pro hac vice*)
Kristin K. Going (admitted *pro hac vice*)
Deanna D. Boll (NJ Bar No. 031861998)
Nathaniel Allard (admitted *pro hac vice*)
One Vanderbilt Avenue
New York, New York 10017-3852
Telephone: (212) 547-5400
Facsimile: (212) 547-5444
dazman@mwe.com
kgoing@mwe.com
dboll@mwe.com
nallard@mwe.com

Proposed Counsel to the Examiner

**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 LIMITED STATEMENT IN RESPONSE TO DEBTOR'S
SUPPLEMENTAL BRIEF IN CONNECTION WITH THE SCOPE AND BUDGET OF
THE AUTHORIZED INVESTIGATION OF THE EXAMINER**



2422548250519000000000005

Todd Harrison, as Court-appointed Examiner (the “Examiner”) in the above-captioned Bankruptcy (the “Bankruptcy” or “Chapter 11 Case”) of CCA Construction, Inc. (the “Debtor” or “CCA”), respectfully submits this limited response (the “Response”) to correct the record with respect to certain inaccurate statements made in the *Debtor’s Supplemental Brief in Connection with the Scope and Budget of the Authorized Investigation of the Examiner* [Docket No. 307] (the “Debtor’s Brief”). In support of this Response, the Examiner is also relying on the *Declaration of Todd Harrison*, to be filed contemporaneously herewith.

1. Paragraph 19 of the Debtor’s Brief incorrectly states that Debtor’s counsel only became aware on May 9, 2025 that McDermott Will & Emery (“McDermott”) was acting as co-counsel with Gibbons P.C. (“Gibbons”) in an unrelated bankruptcy case, *In re Invitae Corp.*, Case No. 24-11362-MBK, Bankr. D. N.J. (“Invitae”), and further states that the failure of the Examiner, Todd Harrison, to disclose co-counsel relationships was somehow contradictory of the verified statement of the Examiner filed by the United States Trustee on April 29, 2025 [Docket No. 281].

2. Neither of those statements are accurate. First, Debtor’s counsel—including the specific Cole Schotz attorneys involved in this Chapter 11 Case—have long been aware that McDermott and Gibbons serve as co-counsel in the completely unrelated *Invitae* matter, as Cole Schotz is Debtors’ counsel to *Invitae*. Indeed, after the Examiner’s counsel wrote to Mr. Sirota regarding his statement that he only learned on May 9, 2025 of the McDermott/Gibbons co-counsel relationship, Mr. Sirota conceded: “Of course, Cole Schotz was generally aware that Gibbons and MWE served as co-counsel to Natera in the *Invitae* matter.”

3. Second, the allegation that a co-counsel relationship in a completely unrelated matter that the Examiner is in no way involved in would render the Examiner not disinterested

and unable to conduct an impartial investigation is incorrect and not consistent with practice. Co-counsel relationships are not disclosed in disclosure forms, nor are they required to be under Rule 2007.1 or Rule 2014. Indeed, they were not disclosed on either of the retention applications filed here by both sets of Debtor's counsel.

A. Debtor's Counsel Has Long Been Aware of the Co-Counsel Relationship Complained About.

4. As the Court is aware, Gibbons is counsel for a creditor in this case, BMLP ("Creditor"). Gibbons is also co-counsel with McDermott (specifically, local counsel) on behalf of Natera Inc. in *Invitae*, including in an adversary proceeding. *Natera Inc. v. Invitae Corporation, et al.*, Adv. Pro. No. 25-01015 (MBK) ("Natera"). This was known to Debtor's counsel – and to its lead counsel in this Chapter 11 Case: Michael Sirota, Warren Usatine, and Felice Yudkin.

5. Cole Schotz P.C. ("Cole Schotz"), and specifically Michael Sirota, Warren Usatine and Felice Yudkin, are co-counsel for the Debtors in *Invitae*. As co-counsel for the *Invitae* Debtors, Cole Schotz, and specifically Michael Sirota, Warren Usatine, and Felice Yudkin, have been receiving filings on behalf of Natera from McDermott/Gibbons since April 2024.

6. Listed on those McDermott/Gibbons filings in the *Invitae*/Natera case are some of the same Gibbons counsel (*i.e.*, Robert Malone) and McDermott counsel (*i.e.*, Darren Azman and Deanna Boll) that are counsel/proposed counsel in this Chapter 11 Case. McDermott filed its Notice of Appearance in this Chapter 11 Case on May 1, 2025 [Docket No. 282], which conspicuously listed both Darren Azman and Deanna Boll as McDermott attorneys as proposed counsel to the Examiner.

7. Among other things, McDermott and Gibbons (as co-counsel) were listed on the front page of *Natera Inc. 's Objection to the Proposed Sale Transaction* that was filed on April 1, 2024 [Docket Number 262 in the Main *Invitae* Case],¹ and Michael Sirota, Warren Usatine and Felice Yudkin of Cole Schotz were listed in paragraph 46 of that objection as receiving notice of the filing. Moreover, as lead co-counsel for *Invitae*, Cole Schotz received all additional filings McDermott/Gibbons made on behalf of *Natera* in *Invitae/Natera*. Additionally, McDermott/Gibbons on behalf of *Natera Inc.* filed an adversary complaint against *Invitae* in January 2025, and filed a certificate of service listing: Michael Sirota, Warren Usatine and Felice Yudkin of Cole Schotz as recipients of service [Adv. Docket No. 7]. Further, on February 21, 2025, Cole Schotz itself filed a *Motion to Dismiss Natera's Adversary Complaint*, which was signed and filed by Mr. Sirota [Adv. Docket No. 8].

8. In all, Cole Schotz and Mr. Sirota received or made numerous filings in the *Invitae* main bankruptcy case and the *Natera* adversary proceeding to or from McDermott and Gibbons, acting as McDermott's co-counsel to *Natera Inc.*

9. Notwithstanding all the knowledge described above, Mr. Sirota of Cole Schotz did not raise any issue concerning McDermott's co-counsel role with Gibbons in *Invitae* until *after* the Examiner in this case sent its May 7, 2025 letter, which asked Cole Schotz to temporarily suspend its investigation until the May 22, 2025 hearing [Ex. B to Debtor's Brief]. Several days later, on May 13, 2025, Mr. Sirota wrote to the United States Trustee, stating that he received "obnoxious" letters from both the Examiner and Gibbons, and then proceeded, for the first time, to complain about the McDermott/Gibbons co-counsel relationship [Ex. E to Debtor's Brief].

¹ The Examiner is not attaching the *Invitae* documents referenced herein as they are somewhat voluminous and readily accessible, but will provide copies upon request.

10. In an email on May 18, 2025, Mr. Sirota told the Examiner's counsel that "the overlap of lawyers involved in [*Invitae*] and this case became clear during the week of May 5th in correspondence to Judge Kaplan's Chambers, at which point we immediately raised the issue with the U.S. Trustee." As detailed above, such statement is inaccurate and misleading at best, given Cole Schotz (and Mr. Sirota) have known about the McDermott/Gibbons co-counsel relationship complained about since well before the Examiner's appointment and became aware that the Examiner was being represented by the same McDermott lawyers that were co-counsel to Gibbons no later than May 1, 2025. Despite this knowledge, Debtor's counsel did not raise the issue with the United States Trustee in the period prior to the Court's approval of the Examiner. Rather, Debtor's counsel raised it for the first time on May 13, 2025, after receiving the Examiner's May 7, 2025 letter.

B. Debtor's Counsel's Complaint About a Co-Counsel Role in an Unrelated Matter is Unavailing.

11. The implication that McDermott and Gibbons serving as co-counsel on another completely unrelated bankruptcy case (that the Examiner personally did not even know about until Cole Schotz raised its concern with the United States Trustee) would impact the Examiner or his investigation in this Bankruptcy is unfounded – and it is particularly non-sensical when considering that Debtor's co-counsel, Cole Schotz, is currently co-counsel with McDermott itself on four active bankruptcy matters.

12. The focus on co-counsel relationships is also misguided. Co-counsel relationships are not the type of "connections" that must be disclosed under Rules 2007.1 or 2014. In fact, McDermott's conflict database does not include or track the law firms who are co-counsel to firm clients and/or who are counsel or co-counsel to the adverse parties or our clients on the

matters therein. Indeed, it would be unmanageable, impracticable, and unnecessary to track or report this information.

13. Debtor's counsel themselves seem to implicitly accept this point as neither have identified any bankruptcy case where a professional has identified co-counsel in another unrelated case as a "connection" for purposes of Rule 2007.1 or Rule 2014. And, unsurprisingly, neither of the Debtor's two sets of counsel, Debevoise & Plimpton LLP and Cole Schotz, identified co-counsel relationships in their respective retention applications in this Chapter 11 Case. [Dockets No. 95, 98]. Further, as far as one can tell from their descriptions of their conflicts procedures, neither of those firms track co-counsel relationships in their databases nor run co-counsel as part of their conflicts check process.

14. Nonetheless, after the issue of co-counsel relationships was raised by Cole Schotz, the United States Trustee requested McDermott to provide supplemental information, specifically, whether McDermott is co-counsel in any pending bankruptcy case with any of (1) Cole Schotz P.C., (2) Gibbons P.C., or (3) Debevoise & Plimpton LLP as of the date hereof, and, to the extent applicable, whether Todd Harrison has performed any work for or billed any time to such matter.

15. In accordance with the United States Trustee's request, McDermott performed a targeted search of co-counsel in active bankruptcy matters. And, on May 15, 2025, Todd Harrison filed a Declaration responsive to the United States Trustee's request [Docket No. 306] (the "May 15 Declaration"), which supplementally disclosed four active bankruptcy matters in which McDermott is co-counsel with Debtor's co-counsel, Cole Schotz, and one active bankruptcy matter (*i.e.*, the *Invitae/Natera* matter) in which McDermott is co-counsel with

Creditor's counsel, Gibbons. As disclosed in the May 15 Declaration, Todd Harrison has not performed any work for or billed any time to any of such matters.

16. After reviewing Paragraph 19 of the Debtor's Brief, the Examiner's counsel emailed Mr. Sirota and requested the Debtor withdraw the inaccurate statements in Paragraph 19. However, when Mr. Sirota responded that he would not withdraw the statements, the Examiner felt compelled to file this Response to correct the record.

17. Mr. Sirota continues to insist that the Examiner should disclose conversations he had with Creditor's counsel before the Examiner sent the May 7, 2025 letter which Mr. Sirota considered to be so "obnoxious." It should go without saying that parties are not entitled to discovery regarding whom the Examiner is speaking with or the contents of those conversations. The Examiner notes, however, that since his appointment, the Examiner has spoken to both Debtor's and Creditor's counsel and has been solicitous of their views regarding the investigation and its proper scope. That is not "collusion," as Debtor's Brief wrongly suggests. Rather, it is the very nature of a truly impartial and independent Examiner process.

18. As reflected in the Harrison Declaration filed contemporaneously herewith, the Examiner acted at all times in good faith in executing his verified statement, was unaware of the co-counsel relationship complained of by Debtor's counsel, is not involved in that matter, and his independence is in no way impacted by it.

Dated: May 19, 2025
New York, New York

MCDERMOTT WILL & EMERY LLP

/s/ Deanna D. Boll

Darren Azman (admitted *pro hac vice*)
Kristin K. Going (admitted *pro hac vice*)
Deanna D. Boll (N.J. Bar No. 031861998)
Nathaniel Allard (admitted *pro hac vice*)
One Vanderbilt Avenue
New York, New York 10017-3852

Telephone: 212-547-5400
Facsimile: 212-547-5444
Email: dazman@mwe.com
kgoing@mwe.com
dboll@mwe.com
nallard@mwe.com

Proposed Counsel to the Examiner

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 (admitted pro hac vice)
Kristin Going (admitted pro hac vice)
Deanna D. Boll (NJ Bar No. 031861998)
Nathaniel Allard (admitted pro hac vice)
One Vanderbilt Avenue
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 19, 2025, I sent a copy of the following pleadings and/or documents to
the parties listed in the attached lists.

Examiner's Limited Statement in Response to Debtor's Supplemental Brief in Connection with
the Scope and Budget of the Authorized Investigation of the Examiner

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

Date: May 19, 2025

/s/ Deanna D. Boll

Signature

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
Counsel for Plaza Construction Group Florida, LLC	Carlton Fields P.A.	Julia E. Duffy	jduffy@carltonfields.com	ECF
Debtor	CCA Construction, Inc.	Michael T. Hensley	mhensley@carltonfields.com	ECF
Debtor	CCA Construction, Inc.	c/o BDO USA, P.C.	JSchwarz@bdo-ba.com	E-mail
	Certain Non-Debtor Affiliates of CCA Construction, Inc.	Shella Borovinskaya	sborovinskaya@ycst.com	ECF
		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.			
Top 20 Creditor	Counsel Press, Inc.		bwhite@counselpress.com	E-mail
Top 20 Creditor	Crum & Forster A Fairfax Company	Lanlan Chen	Lanlan.chen@wtw.com	E-mail
Top 20 Creditor	CSC		natasha.evans@cscglobal.com	E-mail
		M. Natasha Labovitz, Sidney P. Levinson, Elie J. Worenklein, Rory B. Heller	nlabovitz@debevoise.com; slevinson@debevoise.com; eworenklein@debevoise.com; rbheller@debevoise.com	E-mail E-mail E-mail E-mail
Counsel for the Debtor	Debevoise & Plimpton LLP			
Top 20 Creditor	Euler Hermes North America Insurance Company	Lanlan Chen	Lanlan.chen@wtw.com	E-mail
Top 20 Creditor	FTI Consulting, Inc.		kern.nandan@fticonsulting.com	E-mail
		Robert K. Malone, Brett S. Theisen, Kyle P. McEvilly, and Christopher P. Anton	rmalone@gibbonslaw.com; btheisen@gibbonslaw.com; kmceilly@gibbonslaw.com; canton@gibbonslaw.com	ECF ECF ECF E-mail
Counsel for BML Properties, Ltd.	Gibbons P.C.			
Top 20 Creditor	Graphite Engineering LTD.	Baycourt Law Chambers	cfrancis@baycourtlaw.com	E-mail
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov	E-mail
Top 20 Creditor	Kelly Mac Interiorscapes Inc.		tammi@kellymacplants.com	E-mail
		Andrew Behlmann, Nicole Fulfree and Michael A. Kaplan	abehlmann@lowenstein.com; nfulfree@lowenstein.com; mkaplan@lowenstein.com	ECF ECF ECF
Counsel to the DIP Lender / CSCEC Holding Company, Inc.	Lowenstein Sandler LLP			
Counsel to the DIP Lender / CSCEC Holding Company, Inc.	Lowenstein Sandler LLP	Jeffrey L. Cohen	jcohen@lowenstein.com	E-mail
Top 20 Creditor	LYTTC, Inc.		judyhugh12@gmail.com	E-mail
			tthompson@pdtlegal.com; mlewis@pdtlegal.com; rgraham@pdtlegal.com	E-mail E-mail E-mail
Top 20 Creditor	Marina Pointe East Developer, LLC	Paskert Diver Thompson		
			Fran.B.Steele@usdoj.gov; Peter.J.DAuria@usdoj.gov; Savanna.Bierne1@usdoj.gov	ECF E-mail ECF
U.S. Trustee for the District of New Jersey	Office of the United States Trustee for the District of New Jersey	Fran B. Steele, Peter J. DAuria and Savanna J. Bierne	USTPRegion03.NE.ECF@usdoj.gov	ECF
Top 20 Creditor	Pillsbury Winthrop Shaw	Pittman LLP	geoffrey.sant@pillsburylaw.com	E-mail
Top 20 Creditor	Quench USA, Inc.		collections@quenchonline.com	E-mail
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