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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re: CCA Construction, Inc.,[1] Debtor.	(Hon. Christine M. Gravelle) Chapter 11 Case No. 24-22548-CMG **Related Dkt. Nos.: 88, 120, 211**

BML PROPERTIES, LTD.'S SUPPLEMENTAL BRIEF
IN SUPPORT OF THE APPOINTMENT OF EXAMINER

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

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BML Properties, Ltd. ("BMLP"), by and through its undersigned counsel, respectfully submits this supplemental brief (this "Supplemental Brief") to address the appropriate scope and budget of the Examiner's (as defined herein) investigation in accordance with this Court's *Order Granting the Appointment of an* Examiner, Dkt. 211 (the "Examiner Order"), and in further support of the *Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner*, Dkt. 88 (the "Examiner Motion"), and in further response to (i) *Debtor's Objection to Motion of BML Properties, Ltd. for Entry of An Order Appointing an Examiner*, Dkt. 120 (the "CCA Objection"), filed by CCA Construction, Inc. (the "Debtor" or "CCA"), and (ii) *CSCEC Holding Company, Inc.'s Statement with Respect to the Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner*, Dkt. 118 (the "CSCEC Holding Objection"), filed by CSCEC Holding Company, Inc. ("CSCEC Holding"). In support of this Supplemental Brief, BMLP submits the Declaration of Brett Theisen (the "May 15 Theisen Declaration"). BMLP respectfully requests that the Court enter the proposed order attached hereto as **Exhibit A** and respectfully represents as follows:

PRELIMINARY STATEMENT

1. This Chapter 11 case presents myriad serious and complex issues that warrant a thorough, independent investigation by the Examiner to protect the interests of non-insiders, the Court, and the public at large. As the estate's largest creditor, with an enforceable judgment of now over $1.7 billion, BMLP shares the Debtor's professed goal of a prompt, value-maximizing resolution of this Chapter 11 case. But before CCA can move forward with any Chapter 11 plan—which would require BMLP's consent to be confirmable—BMLP, the estate's other general unsecured creditors, and this Court needs transparency.

2. CCA has a proven history of fraud, misconduct, and abuse of the corporate form dating back over a decade, as found after an 11-day trial by a New York court and set forth in a 74-

page post-trial decision that was unanimously affirmed on appeal. While CCA is seeking further review by the New York Court of Appeals, the trial court's factual findings about CCA's misconduct in connection with a multi-billion-dollar luxury resort development in the Bahamas (the "Baha Mar Project") are now effectively final.[2] Those factual findings show grave misconduct and non-credible trial testimony by CCA and its co-defendants, who "used their various different entities that they ran without regard to corporate form and to further the scheme"—which included at least four (4) instances of fraud—"by co[m]mingling their financial and corporate obligations and rights."[3] Now, the limited discovery obtained to date in this Chapter 11 case has uncovered evidence indicating that the fraud and misconduct that led to BMLP's judgment has continued, as China State Construction Engineering Corporation Ltd. ("CSCEC"), CCA's ultimate parent based in China, and its affiliates (together, the "CSCEC Group") have continued their abuse of the corporate form. CCA thus likely has substantial claims against CSCEC Holding and others for veil piercing, equitable subordination, recharacterization, and fraudulent transfer, among others.

3. CSCEC is one of the world's largest construction firms, and CCA is its longest standing and most prestigious subsidiary in the Western Hemisphere. Owned and controlled by the Chinese government, CSCEC undertakes, along with its subsidiaries, numerous ongoing construction projects in the United States, Panama, and throughout the world. While CCA claims to be one of more than 75 entities comprising the CSCEC Group, it is curiously the *only* debtor in this Chapter 11 case. And though liable for a judgment of now more than $1.7 billion, CCA now

[2] *See* N.Y. Const. Art. IV § 3(a) ("jurisdiction of the court of appeals shall be limited to the review of questions of law except" in certain circumstances inapplicable here); *Thoreson v. Penthouse Int'l, Ltd*., 80 N.Y.2d 490, 495 (1992) (findings of fact, particularly those based on witness credibility, are entitled to great deference and should not be disturbed absent a showing that no fair interpretation of the evidence could support them).
[3] Dkt. 54-1 (the "New York Decision") at 5.

claims to be a mere "holding company that does not itself generate sufficient operating cash flow"[4] but that instead depends [redacted].[5]

4. These "operations" appear limited to paying the expenses, through a shared services program, of non-Debtor affiliates, which *owe CCA nearly $100 million as of the Petition Date*.[6] Despite already being in financial distress, CCA inexplicably assumed responsibility for this shared services program from CSCEC Holding in 2021—four (4) years after BMLP commenced the New York action.[7] But CCA apparently serves this role in name only. CCA mostly distributes cash that CSCEC Holding continues to provide despite CCA's deepening insolvency,[8] but in other instances CSCEC Holding appears to do the work itself. It has [redacted] and made [redacted] distributions to (and received distributions from) [redacted].[10]

5. Unsurprisingly, given that CSCEC Holding has kept CCA severely undercapitalized, CCA relies on [redacted].[11] [redacted].[12] As a result of the credit support of CSCEC

[4] Dkt. 4 ¶ 22.
[5] Dkt. 129, Ex. 9 at CCA-BK0000150 [redacted].
[6] Dkt. 99 at 25 (Schedule A/B 77) (listing $96,488,382.21 in "[c]urrent value of debtor's interest").
[7] Dkt. 129, Ex. 29 [redacted]; Dkt. 11 (the "Wei Declaration") ¶ 8.
[8] Dkt. 130 ¶¶ 7–8; Dkt. 129, Ex. 51 [redacted].
[9] May 15 Theisen Declaration, Ex. 11 [redacted] spreadsheet produced by Deutsche Bank) [redacted].
[10] May 15 Theisen Declaration, Ex. 12 (excerpted from [redacted] spreadsheet produced by Bank of America) [redacted]; May 15 Theisen Declaration, Ex. 13 (excerpted from same spreadsheet) [redacted]; May 15 Theisen Declaration, Ex. 14 (excerpted from same spreadsheet) [redacted].
[11] *See, e.g.*, May 15 Theisen Declaration, Ex. 18 [redacted]; May 15 Theisen Declaration, Ex. 22 [redacted].
[12] May 15 Theisen Declaration, Ex. 22 at CCA-BK0018444 [redacted].

and CSCEC Holding, CCA has been obtaining [redacted].[13]

6. Instead of replacing management after the Baha Mar fraud became known, Mr. Ning Yuan ("Mr. Yuan"), CCA's former CEO, continued to lead CCA until shortly before the Petition Date, and he remains [redacted].[14] Despite evidence in the New York action that CCA's corporate officers had misappropriated funds for personal use, Mr. Yuan continued using a CSCEC Group credit card for [redacted] of personal purchases for [redacted], although the ultimate source of funds for payments in respect of those purchases has not yet been determined.[15]

7. And, instead of accepting responsibility for their conduct in connection with the Baha Mar Project, Mr. Yuan and other CCA witnesses repeatedly gave non-credible testimony in a trial that took place just last summer.[16] For example, CCA's witnesses testified at trial that $54 million went to pay subcontractors of the Baha Mar Project, but contemporaneous documentary evidence proved (as the New York trial court found) that this was false and the funds had instead been diverted to purchase a competing hotel project.[17] CCA also diverted resources to enrich other entities in the CSCEC Group—namely its projects in Panama—but CCA's witnesses gave contradictory, non-credible testimony on this as well.[18]

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[13] *See e.g.*, May 15 Theisen Declaration, Ex. 28 at CCA-BK0018725 [redacted]; May 15 Theisen Declaration, Ex. 25 at CCA-BK0018563 [redacted].
[14] May 15 Theisen Declaration, Ex. 8 (February 3, 2025 deposition of Ms. Abrams (as defined herein)) (the "Abrams Dep. Tr.") at 61:20–62:22; Dkt. 129, Ex. 32 [redacted].
[15] May 15 Theisen Declaration, Ex. 15 (excerpted from [redacted] produced by American Express).
[16] New York Decision ¶ 12.
[17] New York Decision ¶ 51.
[18] New York Decision ¶¶ 76–84.

8. In this proceeding, CCA seeks to avoid transparency at all costs, both in substance and in process. It first opposed the appointment of an examiner outright, despite binding Third Circuit precedent requiring that one be appointed in this case. Now, it asks the Court to limit the Examiner's scope and budget so drastically as to make it a nullity in the hopes that it can get through this Chapter 11 case without outside scrutiny.

9. As the most recent part of its campaign, CCA and its affiliates have commenced an insider-directed, self-serving investigation. Until recently, CCA concealed even the existence of this investigation from BMLP, despite numerous prior inquiries about such an investigation from the outset of the case. For instance, Ms. Elizabeth Abrams ("Ms. Abrams"), the sole member of CCA's special committee of independent directors (the "Special Committee"), represented to BMLP in mid-February 2025 that [redacted].[19]

10. But just a few weeks later, the Special Committee began an investigation, relying not on newly retained independent counsel but on CCA's own bankruptcy counsel, Debevoise & Plimpton LLP ("Debevoise") and Cole Schotz P.C. ("Cole Schotz"). These firms, while otherwise well-qualified, are contractually and ethically accountable solely to CCA's management, all of whom also hold roles with CSCEC Holding and other non-Debtor affiliates. Debevoise, for its part, is beholden to its clients, including CCA's alter egos, and not to the estate as a whole, and as a result it refuses to accept the New York trial court's well-reasoned and thoroughly cited 74-page decision establishing CCA's misconduct and liability, even after the New York appellate court's unanimous affirmance. Debevoise has been CCA's lead counsel in the New York trial, in the New York appeal process, and now in the bankruptcy proceedings, where "at all times" Cole Schotz

[19] Abrams Dep. Tr. at 10:20–11:3; 65:25–66:5.

must "coordinate with" them.[20] Indeed, Cole Schotz signed the joinder to the motion to quash BMLP's Rule 2004 subpoenas for discovery from the very same affiliates who should be the subject of the Special Committee investigation it purports to lead.[21] CCA's bankruptcy counsel cannot plausibly conduct an independent inquiry under these circumstances.

11. Although Ms. Abrams has now finally sought to retain separate counsel, Duane Morris LLP ("Duane Morris"), she waited until nearly a month *after* CCA's bankruptcy counsel began working on the investigation to do so. And, notwithstanding the misleading representations in Duane Morris's retention application, *Duane Morris has not led the investigation.*[22] Thus, even if the Debtor's investigation could supplant that of the Examiner—and the Third Circuit has squarely held it cannot—the record already before the Court shows that the Special Committee's investigation has been tainted. For these reasons, the Special Committee's investigation should not limit or interfere with the scope of the Examiner's investigation.

12. CCA is not just another Chapter 11 debtor. It is controlled by the Chinese government and engages in major public construction projects throughout the United States and the Western Hemisphere, including through CSCEC Group affiliates in the Bahamas and Panama. Without an official committee of unsecured creditors, which would have had broad investigative power by statute, 11 U.S.C. § 1103(c), the Examiner is best suited to undertake an investigation to protect the interests of non-insiders and the public.

13. To ensure a fair bankruptcy process, the Examiner's budget should be commensurate with the gravity and complexity of the issues in this Chapter 11 case. CCA has access to a $40 million debtor-in-possession financing facility, giving it ample ability to fund such

[20] Dkt. 272, Ex. 1 (the "Cole Schotz Engagement Letter") at 2.
[21] Dkt. 182 at 3 (Debtor's Joinder to CSCEC Holding's Motion to Quash Subpoena issued by BMLP).
[22] Dkt. 295 (the "Second Stay Relief Motion Hearing Tr.") at 17:20–18:1 (undersigned counsel noting Cole Schotz leadership of the investigation, which Debtors did not dispute on the record).

an investigation, particularly because it does not have to pay for the fees and expenses of professionals retained by a creditors' committee. Even if this Court did not have a 74-page decision finding that the Debtor had abused the corporate form to defraud third parties, a bankruptcy filing with these facts would merit close scrutiny: BMLP is effectively the only substantial unsecured creditor in what is essentially a two-party dispute, where the Debtor claims to be deeply insolvent. The independent Examiner will play an essential role.

14. CCA's conduct thus far amounts to a blatant abuse of the Chapter 11 process by a foreign government-controlled entity. Allowing CCA to continue down this path of shirking its legal obligations to creditors under U.S. law, without transparency and without consequence, will significantly harm not only BMLP and the rest of the creditor body, but the public at large, the Chapter 11 system itself, and the rule of law.

PROPOSED SCOPE OF EXAMINATION

15. For the reasons set forth herein, the Examiner's mandate should include, and his budget should be sufficient to support, conducting an investigation and reporting on the following:

i. any claims that the Debtor's estate may possess and bring against third parties, including veil-piercing claims, fraudulent transfer, preferential transfer, and recharacterization, and equitable subordination claims against CSCEC Holding and the Debtor's affiliates in the CSCEC Group;

ii. any claims that the Debtor's estate may possess and bring against current and former directors and officers as related to any allegations of fraud, dishonesty, incompetence, misconduct, gross negligence, mismanagement, or irregularity in the management of the affairs of the Debtor, such as embezzlement, misappropriation, and breach of fiduciary duty claims;

iii. CCA's prepetition transfers and/or dissipation of assets, restructuring of corporate entities, and/or any other efforts to frustrate creditors;

iv. whether current members of the governing body of CCA, CCA's chief executive or chief financial officer, or members of the governing body who selected CCA's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of CCA, including, but not limited to, the findings of fraud in the New York Decision;

v. whether the Special Committee's investigation yielded any reliable conclusions, and if so what they are, taking into account its independence (or lack thereof), the thoroughness of its investigation, and the reasonableness of any conclusions regarding potential estate causes of action; and

vi. other such duties to be performed by an examiner set forth in Sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code.

16. A proposed form of order directing the Examiner to investigate and report on the foregoing is attached hereto as **Exhibit A**.

BACKGROUND

I. CCA and its alter egos defraud BMLP.

17. CCA was established in 1993 as a Delaware corporation named "China Construction America, Inc."[23] CCA's direct corporate parent is CSCEC Holding, another Delaware corporation, which is in turn owned by CSCEC. One of the largest construction companies in the world, CSCEC is publicly traded on the Shanghai Stock Exchange and is controlled and substantially owned by the Chinese government.[24] CCA's has an extensive network of affiliates, but its non-Debtor subsidiaries include Plaza Group Holdings LLC; CCA Civil, Inc.; China Construction America of South Carolina, Inc.; and Strategic Capital (Beijing) Consulting Co., Ltd. (the "Non-Debtor Subsidiaries").[25]

[23] Dkt. 129, Ex. 58 at CCA-BK0014068 [redacted].
[24] Abrams Dep. Tr. at 13:22–14:25.
[25] Wei Declaration ¶ 10; *see also id.*, Ex. A (CSCEC Group's current organizational chart).

18. In 2005, BMLP and its subsidiary Baha Mar Ltd. ("BML") initiated the Baha Mar Project.[26] The original partners dropped out due to the 2008 financial crisis. Enter CCA, who helped BMLP secure a loan in 2011 from the Chinese Export-Import Bank ("CEXIM") on the condition of using a Chinese contractor; specifically, CCA and its affiliates.[27] Over the course of the Baha Mar Project, BMLP's total equity in the Baha Mar Project was a contractually agreed amount of $830 million, with a later additional contribution of $15 million.[28]

19. As would eventually be proven at trial, CCA and its alter egos CSCEC Bahamas, Ltd. ("CSCECB") and CCA Bahamas Ltd. ("CCAB") perpetrated a scheme to defraud and loot assets from BMLP, its former business partner. Starting by at least 2014, CCA and its affiliates deliberately slowed construction, diverted critical manpower and resources to other competing projects, misused the Baha Mar Project's funds for CCA's executives' personal use, and concealed major project risks including its inability to meet the project completion deadline, which CCA knew would cause "disastrous" consequences.[29]

20. In particular, CCA and its alter egos diverted the Baha Mar Project's critical resources and personnel to establish and oversee *CCA's* office and business in Panama.[30] The trial court found that:

- Mr. David Liu ("Mr. Liu"), a CCA Senior Vice President who also held that role at CCAB, had a team "prepare for submitting bids on a certain 'Panama Metro 2' project" while concealing that they "were involved in coordinating bids for CCA projects in Panama."[31] That Senior Vice President, Mr. Liu, eventually admitted that he "was involved in setting up CCA's regional office in Panama" despite "first denying that he worked on CCA's projects in Panama."[32]

[26] New York Decision ¶¶ 28–29.
[27] *Id.* ¶¶ 30–39.
[28] *Id.* ¶¶ 33, 38.
[29] *Id.* ¶¶ 57, 87, 96, 111, 117, 131, 156.
[30] *Id.* ¶¶ 79–80.
[31] *Id.* ¶ 76.
[32] *Id.* ¶ 80.

- Mr. Tiger Wu ("Mr. Wu"), Executive Vice President of CCA who also held that role at CCAB, diverted his efforts to work on the Panama project at a critical stage when he should have been working on the Baha Mar Project.[33] Mr. Wu ordered CCAB's head scheduler to repeatedly "divert his efforts away from the [Baha Mar] Project" to CCA's Panama project.[34] The New York Decision found Mr. Wu's testimony "was also false."[35]

- Mr. David Wang ("Mr. Wang"), a CCA Vice President who also held that role at CCAB, promised to "work full-time on the [Baha Mar] Project."[36] In reality, he was "in charge of establishing CCA's business in Panama[,]" including helping "set up CCA's office in Panama and coordinate CCA bids on projects in Panama."[37]

21. The Debtor continues to dedicate significant resources to the CSCEC Group's business in Panama, despite it purportedly being a "totally different stream of the family tree."[38] At the hearing held on February 13, 2025, the "Second Day Hearing", Mr. Yan Wei ("Mr. Wei"), current Chairman and CEO of CCA, testified that Mr. Jichao Xu ("Mr. Xu") "now spend[s] most of his time in Panama."[39] But Mr. Xu is also [redacted][40]

22. Throughout the Baha Mar Project, CCA exercised complete domination of its affiliates. Among other things, CCA, CCAB, and CSCECB all "shared ownership, officers, and directors" as well as "offices and addresses."[41] CCA, through Mr. Yuan, "controlled CCAB and CSCECB."[42] Indeed, Mr. Yuan served as the President of CCA, the Chairman of CCAB, a Director of CSCECB, and the Chairman and President of CSCEC Holding.[43] CCA, CCAB, and CSCECB "commingled assets" and "paid or guaranteed obligations of one another."[44] They were "not

[33] New York Decision ¶ 77.
[34] *Id.* ¶¶ 6, 81.
[35] *Id.* ¶¶ 77, 168.
[36] *Id.* ¶ 79.
[37] *Id.*
[38] Dkt. 180 (the "Second Day Hearing Tr.") at 199:17–24.
[39] *Id.* at 166:18–24 [redacted].
[40] Dkt. 129, Ex. 32 [redacted].
[41] New York Decision ¶ 176.
[42] *Id.*
[43] *Id.* ¶ 168.
[44] *Id.* ¶ 176.

treated as separate profit centers," nor did they "deal with one another at arm's length."[45] In short, they "conflated their corporate identities."[46]

23. CCA and its alter egos failed to complete the Baha Mar Project by the March 27, 2015 deadline they committed to meet. At that point, they halted all work and demanded further payments from BMLP: what the New York Decision described as an "absolute sham and shakedown."[47] Meanwhile, CCA and its alter egos "actively worked to push BMLP out of the [Baha Mar] Project."[48]

24. CCA's and its alter egos' misconduct caused a severe liquidity crisis that foreseeably led to BML and affiliates filing for Chapter 11 bankruptcy in June 2015 in the United States Bankruptcy Court for the District of Delaware, which was eventually dismissed in favor a liquidation proceeding in the Bahamas initiated by the Bahamian government.[49] Ignoring BMLP's offer to "match the price" of any other offer to buy the Baha Mar Project's assets out of liquidation, the project was sold out of liquidation to a subsidiary of CEXIM, and then acquired by another Chinese entity, Chow Tai Fook.[50]

II. In the face of litigation that would return a $1.6 billion judgment, the CSCEC Group abuses the corporate form to try to judgment-proof CCA.

25. On December 12, 2017, BMLP commenced an action in the Supreme Court of the State of New York, New York County (the "New York Trial Court") against CCA, CSCEC, and CCAB (together, the "New York Defendants") styled *BML Properties Ltd. v. China Construction America, Inc.*, Index No. 657550/2017 (N.Y. Sup. Ct., N.Y. Cnty.) (the "New York Action"),

[45] New York Decision ¶ 176.
[46] *Id*.
[47] *Id*. ¶¶ 49, 139.
[48] *Id*. ¶ 157.
[49] *Id*. ¶¶ 139–157.
[50] *Id*. ¶¶ 148–49.

alleging fraud, breach of contract, and other causes of action in connection with the failed Baha Mar Project.

26. As BMLP prepared its lawsuit against China Construction America, Inc., the Debtor changed its name to "CCA Construction, Inc." on August 10, 2017.[51] Just two (2) months later, the Debtors' old legal name became a trade name for CSCEC Holding: "China Construction America (CCA)."[52] In so doing, the CSCEC Group continued conflating and blurring corporate identities, as it had in the Baha Mar Project where CCAB often used "CCA" letterhead, emails, and signatures for Baha Mar Project-related documents and communications.[53]

27. As far back as 2018, CSCEC Holding provided shared services to its direct and indirect subsidiaries.[54] [redacted], even though (unlike CSCEC Holding) CCA had no direct or indirect economic interest in most of the CSCEC Group affiliates.[55] [redacted][56]

28. As the shared services provider, CCA supposedly provides the Non-Debtor Subsidiaries and other affiliates with financial services, IT support, legal advice, and other support

[51] Dkt. 129, Ex. 58 at CCA-BK0014068 [redacted].
[52] Dkt. 129, Ex. 1 (press release stating that "'China Construction America (CCA)' has been adopted as the trade name for CSCEC Holding Company, Inc. as a part of an integrated branding effort effective as of August 10, 2017."), *available at* https://www.chinaconstruction.us/press-releases/cca-officially-adopts-china-construction-america-cca-as-trade-name/ (October 19, 2017).
[53] New York Decision ¶ 170.
[54] *See, e.g.*, Dkt. 129, Ex. 31 [redacted] *id.*, Ex. 43 at CCA-BK0008961 [redacted].
[55] Dkt. 129, Ex. 29 [redacted]; Dkt. 129, Ex. 8 at CCA-BK0000109 [redacted].
[56] Dkt. 129, Ex. 30 [redacted].

in exchange for a services fee.[57] The shared services are supposedly funded by CCA and provided through a CCA department called the "Shared Services Center" (hereinafter, the "Shared Services Center"), which is operated by certain employees designated and paid by CCA and by third party providers.[58] Up until 2023, however, CSCEC Holding made payments directly to ADP in respect of payroll obligations.[59]

29. But what about CCA's actual construction business? CCA has held itself out for decades as a construction company, including on its website, which describes CCA as "one of the world's largest investment and construction groups." [60] In the press release regarding this Chapter 11 case, CCA says it is "an accomplished contractor" that "provides services . . . for public and private clients."[61] Even on the Chapter 11 petition itself, CCA classifies itself as a "Nonresidential Building Construction" company.[62]

30. Since 2017, that construction business has declined substantially, which CCA claims is due to reduced contracts from Chinese firms in the U.S. market driven by geopolitical tensions and China's investment policy changes.[63] [redacted]

[57] Dkt. 129, Ex. 43 at CCA-BK0008961 [redacted]; *see, e.g.*, Dkt. 129, Ex. 31 [redacted].
[58] Dkt. 129, Ex. 32 [redacted].
[59] May 15 Theisen Declaration, Ex. 11 [redacted] spreadsheet produced by Deutsche Bank) [redacted].
[60] May 15 Theisen Declaration, Ex. 5 China Construction America 'About Us – Overview' page, *available at* https://www.chinaconstruction.us/about-us/overview/.
[61] May 15 Theisen Declaration, Ex. 2 at 2 (press release titled "CCA Construction, Inc. Takes Strategic Actions to Address Wrongful New York State Court Decision and Protect Interests of all Stakeholders"), *available at* https://www.chinaconstruction.us/press-releases/cca-construction-inc-takes-strategic-actions-to-address-wrongful-new-york-state-court-decision-and-protect-interests-of-all-stakeholders/ (December 22, 2024).
[62] Dkt. 1 at 2.
[63] Wei Declaration ¶ 20.

31. So, in this Chapter 11 proceeding, CCA now describes itself as "a holding company that does not itself generate sufficient operating cash flow in the ordinary course of business."[65]

32. How then did CCA continue operating during the pendency of the New York litigation, as it slid into insolvency? [66] That is to say: CCA relied on CSCEC Holding for liquidity to operate the [67] CSCEC Holding has presumably faced the exact same geopolitical tensions and investment policy changes that CCA blames for the decline in its business, but CSCEC Holding has somehow consistently funded CCA without interruption.

33. The CSCEC Group tries to characterize CCA's intercompany equity financing as debt, but these purported loans have [68] In fact, [69]. And, unsurprisingly,

[64] Dkt. 129, Ex. 13 at CCA-BK0000327–28, 0332 ; Dkt. 129, Ex. 43 at CCA-BK0008972 .
[65] Dkt. 4 ¶ 22 (Debtor's motion for authorization to obtain postpetition financing).
[66] Dkt. 129, Ex. 9 at CCA-BK0000150 .
[67] Dkt. 4 ¶ 17; Dkt. 99-1 at 2 (Statement of Financial Affairs for CCA) (listing "[G]ross revenue from business" as $106,675.58 in 2024 through the December 22, 2024 Petition Date; $270,727.00 in 2023; and $96,845.00 in 2022).
[68] Dkt. 129, Ex. 52 .
[69] May 15 Theisen Declaration, Ex. 9 (February 4, 2025 deposition of Evan Blum) (the "Blum Dep. Tr.") at 122:22–124:5.

[redacted][70] Tellingly, CSCEC Holding [redacted] [71]

34. In the subsequent years, [redacted] [72] Meanwhile, [redacted] [73] Similarly, and despite claims that the Non-Debtor Subsidiaries rely on CCA for funding, [redacted] [75]

[70] Dkt. 129, Ex. 9 at CCA-BK0000159 [redacted] *id.*, Ex. 6 at CCA-BK0000019 [redacted].
[71] *Id.*, Ex. 7 at CCA-BK0000039, [redacted]
[72] *Id.*, Ex. 10 at CCA-BK0000195 [redacted]
[73] *See supra* n.10.
[74] *See supra* n.10.
[75] *See supra* n.10.

36. Given its financial condition, CCA unsurprisingly relies on the creditworthiness of its affiliates to obtain surety bonds. [redacted][78] According to CCA's First Day declarations, it owed approximately $700 million under these surety obligations which are related to various construction projects of CCA's Non-Debtor Subsidiaries.[79] Since then, CCA amended its disclosure to clarify that it was a co-obligor, and discovery has revealed that [redacted][80]

[76] Dkt. 130 ¶¶ 7–8; Dkt. 129, Ex. 51 [redacted]
[77] May 15 Theisen Declaration, Ex. 18 at CCA-BK0018402 [redacted] y 15 Theisen Declaration, Ex. 20 at CCA-BK0018426–28 May 15 Theisen Declaration, Ex. 21 at CCA-BK18435–36 [redacted]
[78] *See e.g.*, May 15 Theisen Declaration, Ex. 23 at CCA-BK0018510 [redacted]; and May 15 Theisen Declaration, Ex. 22 [redacted].
[79] Wei Declaration ¶ 23.
[80] Dkt. 234 (Amended Schedules of Assets and Liabilities for CCA) at 9.

37. Today, the CSCEC Group's corporate separateness continues to blur. Mr. Xu, who has roles as at both CSCEC Holding and CCA, testified that he is [redacted][81]

38. Meanwhile, CCA and its Non-Debtor Subsidiaries remain involved in numerous high-value public construction projects, such as schools and railroads in New York. For instance, the Debtor recently produced [redacted]

39. Public records further confirm that CCA's Non-Debtor Subsidiaries remain involved in other major construction projects throughout the United States. For example, Strategic Capital is the developer for an ongoing residential housing project at 101 Grove Street in Jersey

[81] May 15 Theisen Declaration, Ex. 10 (February 5, 2025 deposition of Mr. Xu) (the "Xu Dep. Tr.") at 15:12–23; 20:17–20.
[82] May 15 Theisen Declaration, Ex. 24 [redacted]
[83] May 15 Theisen Declaration, Ex. 26 [redacted].
[84] May 15 Theisen Declaration, Ex. 25 [redacted].
[85] [redacted]

City, New Jersey.[86] Plaza Construction LLC is also building a manufacturing facility in Sidney, Ohio.[87]

III. CCA is found liable for fraud and veil piercing and prepares to file for Chapter 11.

40. The New York Action culminated in an 11-day bench trial in August of 2024. Following the trial, but before a decision, the CSCEC Group started making specific arrangements for a bankruptcy filing. Among those arrangements, Cole Schotz sent an engagement letter on October 14, 2024 to the General Counsel of "China Construction America," the trade name of CSCEC Holding, regarding a "potential Chapter 11 case to be filed" on behalf of CCA in this District.[88] Mr. James McMahon, Esq. ("Mr. McMahon"), the General Counsel of both the DIP lender CSCEC Holding and the Debtor CCA, marked up the signature line to that letter in pen, specifying that, when he signed it on October 18, 2024, he did so on behalf of "CCA Construction, Inc. and *affiliates*."[89] Of course, "affiliates" would necessarily include both the DIP Lender CSCEC Holding and many other non-debtor entities as well. Per that engagement letter, Cole Schotz committed that CCA's pre-petition litigation counsel in its dispute with BMLP would run the show: **Cole Schotz agreed that it "at all times will coordinate with D&P [*i.e.*, Debevoise] to achieve a favorable outcome on a cost-effective basis."**[90] To be clear, Cole Schotz was *not*

[86] May 15 Theisen Declaration, Ex. 3 (press release entitled "Strategic Capital and Plaza Construction Commemorate 'Topping Out' At One Grove Street in Jersey City"), *available at* https://www.plazaconstruction.com/news/press/strategic-capital-and-plaza-construction-commemorate-topping-out-at-one-grove-street-in-jersey-city-1/ (July 27, 2022).
[87] May 15 Theisen Declaration, Ex. 4 (article entitled "SEMCORP Project Taking Shape in Sidney With Groundwork, Road Improvements"), *available at* https://www.bizjournals.com/dayton/news/2023/03/14/semcorp-update-sidney-spotlight.html (Mar. 14, 2023).
[88] Dkt. 95 at 52.
[89] *Id*. at 54 (emphasis added).
[90] *Id*. at 53.

retained by any special committee or independent director (as there were none at this time), and CCA itself "may terminate [Cole Schotz's] representation at any time . . . ."[91]

41. On October 18, 2024, the trial court issued its 74-page decision, finding CCA and its affiliated non-debtor co-defendants, CCAB and CSCEB, jointly and severally liable.[92] The New York Decision highlights that CCA's liability arose from a scheme perpetrated with affiliates (really, its alter egos) to defraud and loot assets from BMLP, its former business partner, in connection with the Baha Mar Project.

42. The trial court made specific findings that CCA and its affiliates: promised completion dates to BMLP that were "just phony;" [93] engaged in an "absolute sham and shakedown" of BML to induce BML to release $54 million of funds so that they could use those same funds to purchase a competing hotel;[94] engaged in a "massive misappropriation of funds" including "[u]ncontradicted evidence that [CCA's and its alter egos'] corporate officers misappropriated project funds for personal use;"[95] engaged in a "fraudulent course of dealing and disrespect for the observation of corporate formalities;"[96] and engaged in "active concealment of critical information" and provided "simply false assurances" to BMLP.[97]

43. CCA now tries to distance its role from the fraud and misconduct that led to the collapse of the Baha Mar Project, but the New York Decision expressly rejected these arguments. The New York decision found that CCA "(through its boss Mr. Yuan), in particular, dominated the other entities and . . . used that domination and commingling of assets and corporations to

[91] *Id*. at 57.
[92] *See* New York Decision at 74.
[93] *Id*. ¶ 103.
[94] *Id*. ¶ 49.
[95] *Id*. ¶¶ 111, 156.
[96] *Id*. ¶ 113.
[97] *Id*. ¶ 131.

perpetrate a wrong on BMLP"[98] and that "Messrs. Yuan, Wu, Daniel Liu, and David Wang also used their various different entities that they ran without regard to corporate form and to further the scheme by co[m]mingling their financial and corporate obligations and rights."[99] The New York Decision thus rejected the illusory distinctions between CCA, CCAB, and CSCECB and entered judgment.

44. Nor does the New York Decision limit its findings to what happened in 2015, as it also makes numerous credibility findings about CSCEC Group witnesses that testified at trial less than a year ago, in August 2024. The New York Decision expressly concluded that CCA's witnesses gave "non-credible" testimony that contradicted contemporaneous documents and earlier deposition testimony[100] (a practice that seems to have continued post-petition). CCA's witnesses repeatedly testified at trial that $54 million went to pay subcontractors of the Baha Mar Project, but contemporaneous documentary evidence proved (as the New York Court found) that this was false and the funds had instead been diverted to purchase a competing hotel project.[101] CCA also diverted resources to enrich other entities in the CSCEC Group—namely its projects in Panama—and CCA's witnesses gave contradictory, non-credible testimony on this as well.[102]

45. The trial court also made numerous findings about credibility, including that CSCEC Group's witnesses' testimony that they had not committed to a firm opening date for the Baha Mar Project was "simply not credible" and "inconsistent with the contemporaneous communications and facts presented at trial."[103] As another example, the trial court found that Mr.

[98] *Id*. ¶ 176.
[99] *New York Decision* at 5.
[100] *Id*. ¶ 12.
[101] *Id.* ¶ 51.
[102] *Id.* ¶¶ 76–84.
[103] Id. ¶¶ 59–61 & n.12.

Wu's testimony that he "was not involved in the Panama project" was "also false."[104] He attended multiple meetings on the prospective Panama project, yet when asked if taking time away from the Baha Mar Project to attend Panama related meetings was in the best interests of BML, "Mr. Wu avoided the question, saying only '[i]t is a different project[.]'"[105]

46. Despite CCA's assertion that the New York Decision addressed events that "end[ed] in 2015" and "none of the evidence at trial concerned any conduct by the defendants, including Debtor, since then,"[106] that is belied by the trial court's finding that CCA's witnesses continued to make misrepresentations throughout trial.

47. Following the New York Decision, the New York court entered judgment for $1.6 billion in favor of BMLP and against CCA, CCAB, and CSCECB on October 31, 2024. That judgment provided that "BMLP shall have judgment and *immediate execution* on the judgment therefor."[107] CCA and its alter egos applied for a stay of enforcement pending appeal, which was denied on December 19, 2024 after a short interim stay to allow briefing on that motion.

IV. CCA appoints a single independent director who, without independent counsel, approves an insider DIP loan from CSCEC Holding.

48. On October 21, 2024, just three (3) days after the New York Decision but *years* after BMLP raised serious allegations of fraud in its complaint in the New York Action, CCA, on the recommendation of Debevoise, engaged Ms. Abrams as an independent director.[108] Following Ms. Abrams's appointment, CCA's Board created the Special Committee, with its sole member being Ms. Abrams.[109]

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[104] *Id.* ¶ 77.
[105] New York Decision ¶ 77.
[106] CCA Objection ¶ 56 (emphasis omitted).
[107] Dkt No. 54-2 at 4 ("New York Judgment") (emphasis added).
[108] Wei Declaration ¶ 15.
[109] Wei Declaration ¶ 16.

49. As CCA prepared for a bankruptcy filing, Ms. Abrams (and her Special Committee of one) [redacted] [110] Despite the substantial evidence of potential claims against CCA's affiliates, directors, and officers, Ms. Abrams [redacted] [111] She agreed that [redacted] [112] In written testimony for the February 13, 2025 Second Day Hearing, Ms. Abrams stated unequivocally that [redacted] [113]

50. Ms. Abrams's role focused on arranging CCA's debtor-in-possession financing because CCA's Chairman Mr. Wei had a conflict due to his role at CSCEC Holding, and he supposedly recused himself.[114] Mr. Wei nonetheless [redacted] [115] Ms. Abrams's counterpart for these negotiations [redacted] [116]

[110] Abrams Dep. Tr. at 10:20–11:3; 65:25–66:5.
[111] Abrams Dep. Tr. at 10:13–11:3.
[112] Abrams Dep. Tr. at 64:1–8, 65:25, 66:1–5; Second Day Hearing Tr. at 70:5–17.
[113] Dkt. 159 ¶ 23.
[114] Wei Declaration ¶ 17.
[115] Dkt. 129, Ex. 20 at CCA-BK0001927 [redacted] *id.*, Ex. 38 [redacted]; *id.*, Ex. 57 at CCA-BK0013397 [redacted].
[116] *Id.*, Ex. 59 at CCA-BK0014214 [redacted]; Xu Dep. Tr. at 63:1–12.

51. The conflicts in the DIP negotiations were not just limited to the leaders of the negotiations. The individuals who worked on the DIP negotiations, including [redacted] As a result, [redacted][117] The blurred lines [redacted][118]

52. On December 22, 2024, CCA commenced this Chapter 11 case, seeking approval of the insider DIP facility from CSCEC Holding. BMLP is listed as CCA's largest unsecured creditor with a claim that was then over $1.6 billion, while CCA listed total assets of less than $100 million.[119] No trustee has been appointed, no official committee of unsecured creditors has been formed, and CCA continues in possession of its property and manages its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

53. Meanwhile, on January 23, 2025, BMLP moved for entry of an order appointing an examiner to independently investigate estate claims that could significantly enhance creditor recoveries, to protect the interests of creditors and the public at large, and to provide stakeholders,

[117] Dkt. 128 ¶ 61. *See also*, *e.g.*, Dkt. 129, Ex. 35 at CCA-BK0004528 [redacted]; Dkt. 129, Ex. 23 [redacted] Dkt. 129, Ex. 17 at CCA-BK0001164–65 [redacted] Dkt. 129, Ex. 53

[118] Dkt. 129, Ex. 23 [redacted]

[119] Dkt. 99 at 2, 26–27.

the United States Trustee, and the Court with much needed transparency that the Debtor had resisted in this Chapter 11 case.[120]

54. CCA opposed the appointment of an examiner, arguing that the Special Committee could conduct any investigation.[121] In CCA's view, if any examiner were appointed, its role should be limited to a budget of $100,000 for three (3) weeks.[122] Put in context, the estate has spent more on Debevoise's retention application and its fee applications alone through the end of January ($131,836.95) than it proposes to allow for an examiner expressly requested by essentially the only unsecured creditor in this Chapter 11 case, with a liquidated claim that is now more than $1.7 billion, that is currently due and owing (and accruing interest) under the terms of the New York Judgment.[123]

55. Following the Second Day Hearing, the parties met and conferred and submitted an agreed upon order to address the appointment of an examiner. To conserve estate resources, an examiner would not be appointed until the earlier of either the New York Appellate Division affirming the New York Judgment or June 1, 2025.[124] After the appointment of the examiner, a Scope and Budget Hearing would be convened.[125] On March 5, 2025, this Court entered the Examiner Order agreed by the parties.

V. CCA begins a self-serving investigation behind closed doors more than a month before the Special Committee seeks to retain independent counsel.

56. On April 8, 2025, the New York Supreme Court, Appellate Division, First Department ("New York Appellate Division") unanimously affirmed the New York Judgment.[126]

[120] Examiner Motion ¶ 11.
[121] *See generally* CCA Objection.
[122] *Id.* ¶ 9.
[123] Dkt. 286 at 6.
[124] Examiner Order ¶ 2.
[125] *Id.* ¶ 4.
[126] Dkt. 247, Ex. 1 (the "Appellate Division Decision").

As the decision explained, there was "no basis to disturb the trial court's award" because, among other reasons: (i) the evidence adduced at trial "is sufficient to support a finding of fraud;" (ii) "the trial court properly awarded plaintiff the value of its investment" as damages; and (iii) "the trial court properly found that under New York law," which the trial court correctly applied, "defendants' corporate veils should be pierced."[127] Under the Examiner Order, the Examiner would be appointed within 21 days of that decision, or by April 29.

57. Shortly after the Appellate Division Decision, the Special Committee applied to retain independent counsel, Duane Morris, "with respect to the Special Committee's investigation of potential claims or causes of action of the Debtor, if any, against third parties and related matters in the Chapter 11 Case as the representation proceeds."[128] That application, filed on April 17, disclosed that the "initial outreach" to Duane Morris had occurred eight (8) days earlier, which is roughly contemporaneous with the Appellate Division's April 8 decision.[129]

58. On its face, the Duane Morris retention application aligned with Ms. Abrams's testimony: that [redacted] and that the need arose upon the unanimous affirmance by the New York Appellate Division.[130] The application to retain counsel to begin an investigation was also consistent with the discussions among the parties that the estate need not expend its resources while CCA's appeal as of right was pending in the New York Appellate Division.

[127] Appellate Division Decision at 2, 4.
[128] Dkt. 255 ¶ 4.
[129] *Id.* ¶ 11.
[130] Dkt. 159 ¶ 23.

59. On April 24, 2025, BMLP timely objected to the retention of Duane Morris on the basis that the Special Committee should not duplicate an investigation that should be undertaken by the Examiner, who would be appointed shortly.[131]

60. That same day, however, the Debtor's bankruptcy co-counsel, Cole Schotz, filed a fee statement revealing that they—not Duane Morris—had apparently started an investigation on or around March 4, 2025.[132] Cole Schotz began incurring these fees ***after*** CCA, BMLP, and the UST had agreed on the framework for appointing an examiner, yet CCA did not apprise BMLP or the Court (or, to BMLP's knowledge, the UST) at the time that it commenced this investigation.

61. When the undersigned counsel spoke to Cole Schotz on April 28, 2025 regarding the scope of Duane Morris's proposed retention, Cole Schotz stated for the first time that they—and *not* Duane Morris—are leading the Special Committee's investigation into potential estate causes of action. Not only does this contradict the Duane Morris retention application, which expressly states that it was retained with respect to that investigation, it is beyond the scope of Cole Schotz's retention application, which makes no reference to any investigation.[133]

62. Based on the limited information available to BMLP, Cole Schotz continues to follow its obligation to "at all times" coordinate with lead counsel for the Debtor, Debevoise, who appears throughout the time entries regarding the investigation in Cole Schotz's fee application.[134] That fee statement confirms that Cole Schotz continues to represent the Debtor—not the Special Committee—under the same engagement letter.[135] Further, not only was Cole Schotz retained under an engagement letter addressed to CSCEC Holding, as discussed above, but Cole Schotz led

[131] *See* Dkt. 273.
[132] Dkt. 272, Ex. B (the "March 2025 Cole Schotz Invoice") at 5.
[133] Dkt. 95.
[134] Cole Schotz Engagement Letter at 2; March 2025 Cole Schotz Invoice at 4–12.
[135] *See generally* Cole Schotz Engagement Letter.

the Debtor's support of CSCEC Holding's and other CSCEC Group affiliates' efforts to prevent BMLP from taking Rule 2004 discovery relevant to estate causes of action.[136]

63. On April 29, 2025, in accordance with the Examiner Order, the United States Trustee appointed Todd Harrison, Esq. ("Mr. Harrison"), former assistant U.S. Attorney and Deputy Chief for the U.S. Attorney's Office for the Eastern District of New York and a partner at McDermott, Will & Emery LLP, to be the examiner (the "Examiner").[137] The scope and budget for the Examiner's investigation will be determined at a hearing scheduled for May 22, 2025.

64. On May 5, 2025, the Court held a hearing and noted the expectation that the parties would meet and confer regarding the scope of the Examiner's investigation. BMLP asked to meet and confer on Wednesday, May 7, 2025, but were told that no substantive discussion could happen until the Special Committee met on Friday, May 9, 2025. The first availability that CCA's counsel offered to BMLP was at 9:00 a.m. on Mother's Day, May 11, 2025. Cole Schotz subsequently cancelled that call, and it was rescheduled for May 12, 2025.

65. When the parties met and conferred, the undersigned counsel asked CCA's counsel whether they had changed their view on the scope of the examiner, and CCA said no. Also on that call, the undersigned counsel asked about the status of the investigation, and CCA said that it was not complete. The call ended shortly and did not result in any agreement as to scope or budget.

66. Two days later, in an email that effectively concedes CCA had never previously engaged with BMLP about discussing a plan of reorganization, Cole Schotz wrote to the undersigned counsel: "As discussed on Monday, the Debtor is working to formulate a Chapter 11

[136] *See* Dkt. 182.
[137] *See* Dkt. 280.

plan. We would like to schedule a call to discuss this with you further."[138] This email came the day before BMLP's deadline to respond to the Debtor's exclusivity motion and to submit this brief.

ARGUMENT

I. CCA's fraud, misconduct, and abuse of the corporate form—which were proven at trial and continue today—favor a broad scope and budget for the Examiner to investigate estate causes of action.

67. Section 1104(c) of the Bankruptcy Code provides, in relevant part, that an Examiner shall be appointed to investigate "any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor." 11 U.S.C. § 1104(c).

68. The Court's order setting forth the Examiner's scope and budget should be guided by this provision. *See, e.g.*, *WM High Yield Fund v. O'Hanlon*, 964 F. Supp. 2d 368, 395 (E.D. Pa. 2013) (noting "[t]he primary function of an examiner is to investigate the debtor's actions, financial condition, as is appropriate under the particular circumstances of the case, including any allegations of fraud, dishonesty or gross mismanagement of the debtor by current or former management" (citations omitted)). Indeed, courts have acknowledged the need for an examiner where, as here, there are "allegations of corporate fraud or misconduct [that] are substantiated by credible evidence." *In re Keene Corp.*, 164 B.R. 844, 856 (Bankr. S.D.N.Y. 1994) (quoting *In re 1243 20th St., Inc.*, 6 B.R. 683, 686 (Bankr. D.D.C. 1980)).

69. For the reasons set forth below, the Examiner should investigate causes of action against CSCEC Holding, CSCEC Group affiliates, directors, and officers, as well as any other prepetition conduct undertaken to frustrate CCA's creditors.[139]

[138] May 15 Theisen Declaration, Ex. 1 ([redacted]).

[139] *See generally* Ex. A (Proposed Order Approving the Scope and Budget of the Examiner).

A. The New York Decision found fraud, dishonesty, and misconduct by CCA starting in 2014 through to the 2024 trial.

70. As discussed above, the New York Action was founded on precisely the sort of allegations described in Section 1104(c)—including fraud, dishonesty, misconduct, mismanagement, and irregularity—which on their own would be enough to support a broad scope for the Examiner. But those are no longer just allegations: they are judicial findings made by the New York Trial Court following a bench trial where CCA had a full and fair opportunity to be heard. The New York Decision made numerous factual findings as to misconduct by CCA, CCAB, and CSCECB, which substantiated BMLP's allegations and established that the CSCEC Group could not hide behind the corporate forms that they disregarded. Those factual findings were the basis for finding CCA jointly and severally liable for $1.6 billion, and the Appellate Division unanimously affirmed the New York Decision's factual findings and legal conclusions.

71. Even if CCA were to somehow prevail on its long-shot motion for permission to appeal, the New York Court of Appeals has said that findings of fact, particularly those based on witness credibility, are entitled to great deference and should not be disturbed absent a showing that no fair interpretation of the evidence could support them. *See Thoreson v. Penthouse Int'l, Ltd.*, 80 N.Y.2d 490, 495 (1992); N.Y. Const. Art. VI § 3(a) (providing jurisdiction of New York Court of Appeals is "limited to the review of questions of law," except for certain instances not applicable here). This means that the New York Decision's factual findings of fraud and misconduct in connection with the Baha Mar Project are now effectively final.

72. But the New York Decision also found that CCA's employees were dishonest much more recently, despite CCA's assertion that the events underlying the New York Decision "end[ed]

in 2015" and "none of the evidence at trial concerned *any* conduct by the defendants, including Debtor, since then."[140]

73. Less than a year ago, the CSCEC Group's employees took the stand in New York and, as the New York Trial Court found, repeatedly gave non-credible testimony, as discussed above.

74. Not only must any investigation account for CSCEC Group's history of fraud, but it must also account for CSCEC Group employees who fail to tell the truth. Mr. Harrison, a seasoned former federal prosecutor, is uniquely well-suited to this task and must be given the breadth of scope to follow the facts wherever they take him.

B. The CSCEC Group appears to have continued abusing the corporate form, including to attempt to render CCA judgment proof.

75. The New York Trial Court already pierced the corporate veil among CCA, CSCECB, and CCAB. Now, however, it is apparent that CSCEC Holding has also "dominated" CCA "and used that domination and commingling of assets and corporations to perpetrate" yet *another* "wrong on BMLP," this time by keeping CCA undercapitalized to render it unable to pay its debts.[141]

76. The New York Decision made numerous factual findings in support of veil piercing as between CCA, CCAB, and CSCECB, and there is significant evidence supporting those same factual findings as between CCA and CSCEC Holding. *See Mars Elecs. of N.Y., Inc. v. U.S.A. Direct, Inc.*, 28 F. Supp. 2d 91 (E.D.N.Y. 1998), *aff'd sub nom. Mars Elecs. of N.Y., Inc. v. Put*, No. 99-9488, 2000 WL 1843228 (2d Cir. 2000) (summary order) (veil piercing under New York law can be established by corporate owner's domination of its subsidiary to commit a fraud or other

[140] CCA Objection ¶ 56.
[141] New York Decision ¶ 176.

wrong); *OTR Assocs. v. IBC Servs., Inc.*, 353 N.J. Super. 48 (N.J. App. Div. 2002) (New Jersey law on veil piercing); *Kertesz v. Korn*, 698 F.3d 89 (2d Cir. 2012) (Delaware law on veil piercing).

77. For instance, the New York Court already found that Mr. Yuan served as both the President of CCA and the Chairman and President of CSCEC Holding.[142] As the most senior officer in the Western Hemisphere, he would channel all requests to CSCEC, who apparently made decisions for the CSCEC Group.[143] While Mr. Yuan's current role is unclear, it appears that the current Chairman and CEO of CCA, Mr. Wei, also serves concurrently as CEO and President of CSCEC Holding.[144] The Debtors seemingly acknowledge that, until the appointment of Ms. Abrams, all of CCA's other directors have been affiliated with CSCEC. To BMLP's knowledge, all of CCA's officers have likewise held roles with CSCEC Group affiliates. Moreover, the Debtor does not have an independent chief restructuring officer.

78. The Debtor's [redacted] acknowledges that the Debtor [redacted] such that its employees also [redacted] Among others, [redacted]

[142] *Id*. ¶ 168.
[143] *Id.*
[144] Wei Declaration ¶ 1; Second Day Hearing Tr. at 5:15–16; 159:11–12.
[145] Dkt. 129, Ex. 32 [redacted]
[146] Wei Declaration ¶ 14; May 15 Theisen Declaration, Ex. 19 at CCA-BK0018412 [redacted] claration, Ex. 21 at CCA-BK0018435–36 [redacted]
[148] Xu Dep. Tr. 21:2–3.

[redacted][152]

79. The problem with CCA's and CSCEC Holding's overlapping officers and employees crystallized in the negotiations of CCA's DIP financing. Despite counsel's efforts to create the appearance of separateness, discovery showed that CCA and CSCEC Holding were each ultimately relying on the same personnel. For example, [redacted] As a result, they would propose deal terms on behalf of CCA and then approve them on behalf of CSCEC Holding, creating a circular, self-serving process.[153] BMLP reserves all rights with respect to other continued assertions of privilege, which the Examiner will likely need to assess as well.

80. For his part, Mr. Xu was supposed to be CSCEC Holding's [redacted] for DIP negotiations, but he testified to [redacted]

[149] Dkt. 129, Ex. 32 at CCA-BK0003173 [redacted]
[150] May 15 Theisen Declaration, Ex. 16 at CCA-BK0005192 [redacted]
[151] Xu Dep. Tr. 21:16–22:14.
[152] Abrams Dep. Tr. 41:1–3; Dkt. 113 at 8 (engagement letter addressed to Mr. McMahon).
[153] Dkt. 128 ¶ 61; *see also, e.g.*, Dkt. 129, Ex. 35 at CCA-BK0004528 [redacted]; Dkt. 129, Ex. 23 at CCA-BK0002272 [redacted] Dkt. 129, Ex. 17 at CCA-BK0001164-65 [redacted]; Dkt. 129, Ex. 53 at CCA-BK0012717 [redacted]
[154] *See* Dkt. 129., Ex. 59 [redacted]; Xu Dep. Tr. 63:10-12; 63:1-6.

81. This is perhaps unsurprising given that [redacted] The Debtor and CSCEC Holding have both held themselves out as "CCA" and/or "China Construction America."[155] [redacted][157]

82. CCA has also historically commingled its finances with other members of the CSCEC Group, which has shuffled cash among affiliates while keeping CCA severely undercapitalized. [redacted] Despite the CSCEC Group's attempts to characterize CCA's intercompany financing as bona fide debt, these purported loans have [redacted][158]

83. Given CSCEC Group's efforts to keep CCA undercapitalized, [redacted]

[155] *See supra* ¶ 26 & n.53.
[156] *See e.g.*, May 15 Theisen Declaration, Ex. 17 [redacted]; May 15 Theisen Declaration, Ex. 30 [redacted]
[157] May 15 Theisen Declaration, Ex. 18 at CCA-BK0018402 [redacted]; May 15 Theisen Declaration, Ex. 20 at CCA-BK0018427 [redacted] May 15 Theisen Declaration, Ex. 21 at CCA-BK0018435–36 [redacted].
[158] Dkt. 129, Ex. 52 at CCA-BK0012490 [redacted]; Blum Dep. Tr. 123:8-16.

[redacted][159] Moreover, the Debtor [redacted][161]

84. CCA's and CSCEC Holding's operations are likewise not clearly delineated. [redacted][163]

85. These findings are based on BMLP's limited investigation to date, which BMLP largely paused based on CCA's representations that the estate would conserve its resources during the pendency of the appeal to the Appellate Division and before the appointment of the Examiner, which now appear to have been false. BMLP still has not received discovery from any of CCA's

[159] [redacted] May 15 Theisen Declaration, Ex. 18 [redacted]; May 15 Theisen Declaration, Ex. 19 [redacted]; May 15 Theisen Declaration, Ex. 20 [redacted] May 15 Theisen Declaration, Ex. 21 [redacted].

[160] May 15 Theisen Declaration, Ex. 22 [redacted]); May 15 Theisen Declaration, Ex. 29 ([redacted]; May 15 Theisen Declaration, Ex. 27 ([redacted]; May 15 Theisen Declaration, Ex. 23 ([redacted].

[161] May 15 Theisen Declaration, Ex. 22 at CCA-BK0018458 ([redacted]); May 15 Theisen Declaration, Ex. 29 at CCA-BK0018744 ([redacted]).

[162] May 15 Theisen Declaration, Ex. 11 [redacted] spreadsheet produced by Deutsche Bank) [redacted].

[163] May 15 Theisen Declaration, Ex. 12 [redacted] spreadsheet produced by Bank of America) [redacted]; Ex. 13 (same spreadsheet) [redacted] Ex. 14 (same spreadsheet) [redacted].

affiliates, nor has it received any discovery from CSCEC Holding or CCA except for the DIP discovery and limited discovery from CCA regarding its surety obligations. CCA has led the opposition to that discovery, including through Cole Schotz's opposition to BMLP's Rule 2004 discovery from CCA's affiliates.

86. In sum, there is substantial new evidence that CCA has been purposely kept undercapitalized for years during its litigation with BMLP, and that the corporate identities and finances of CCA and CSCEC Holding have been blurred and commingled. Together with the proven allegations that caused the New York Court to pierce CCA's corporate veil, there are significant issues here that the Examiner must investigate.[164]

C. The Examiner should investigate estate causes of action against affiliates, directors, officers, and other third parties.

87. Examiners are often empowered to investigate claims that probe the relationships between the Debtor and insiders. *See, e.g., In re St. Marie Clinic PA*, 2013, No. 10-70802, Adv. No. 12-07002, WL 5221055, at *1 (Bankr. S.D. Tex. Sept. 17, 2013) (noting that examiner was appointed to "investigate the Debtor's relationship, loans and other transactions with any non-debtor insider"); *In re Gilman Serv., Inc.*, 46 B.R. 322, 327-28 (Bankr. D. Mass. 1985) ("debtor's sale of assets to a related corporation before the commencement of the bankruptcy case warrants an investigation by an examiner where there are unanswered questions concerning the transaction and interrelationships of the parties involved") (citing cases); *see also* M. Bienenstock, Bankruptcy Reorganization 299 (1987) ("Often, appointment of an examiner is warranted when the debtor's transactions with affiliates should be investigated.").[165]

[164] These facts also support colorable veil piercing claims that BMLP may hold directly against CSCEC Holding and other affiliates in the CSCEC Group that are not property of CCA's estate.

[165] *See also In re Patton's Busy Bee Disposal Serv. Inc.*, 182 B.R. 681, 687 (Bankr. W.D.N.Y. 1995) (authorizing examiner to investigate and prosecute actions to recover avoidable transfers); M. Bienenstock, Bankruptcy Reorganization 299 (1987) ("Often, appointment of an examiner is warranted when the debtor's transactions with affiliates should be investigated.").

88. Courts similarly often grant examiners authority to investigate claims against directors and officers, including claims for breach of fiduciary duty. *See, e.g.*, Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c), *In re Samuels Jewelers, Inc.*, No. 18-11818 (KJC), 2018 WL 6265447 (Bankr. D. Del Nov. 1, 2018), D.I. 294 (appointing an examiner to investigate allegations of fraud against the Debtor and its current or former officers, directors, or representatives); *WM High Yield Fund v. O'Hanlon*, 964 F. Supp. 2d at 394 (noting examiner was appointed to investigate "potential claims of the Debtors against current and former directors and officers and others" as well as the Debtors' financial transactions and accounting practices, among other things).

89. Among other claims, the Examiner must be empowered to closely scrutinize CCA's current and former directors' and officers' use of corporate funds for personal use. Indeed, the New York Trial Court found "uncontradicted evidence that the Defendants' corporate officers misappropriated project funds for personal use" including spending Project funds on various personal goods such as scarves, golfing equipment, and cigars.[166] This course of dealing appears to have continued even after BMLP brought the New York Action. For instance, American Express produced bank statements in Rule 2004 discovery showing that the Debtor's former Chairman Mr. Yuan likely repeatedly used *a corporate card* for personal purposes, including [redacted][167] CCA claims—without providing evidence—that these were paid for by Mr. Yuan personally. But the American Express statements show [redacted]

[166] New York Decision ¶¶ 111–12.
[167] May 15 Theisen Declaration, Ex. 15 (excerpt from [redacted] produced by American Express) at 1–29.

[redacted] and further investigation is needed to determine whether these transactions were accounted for properly and whether any payments that Mr. Yuan made were reimbursed by CCA.[168]

90. In sum, the examiner must conduct a comprehensive investigation into estate causes of action against affiliates, directors, officers, and other third parties.

D. The Examiner should also investigate the continued roles of the individuals whose fraudulent conduct led to the New York Decision.

91. The Debtor, despite refusing to acknowledge the wrongdoing found in the New York Decision, also asks the Court to accept the fiction that its unacknowledged misconduct is somehow entirely in the past. But CCA's [redacted][169]

92. The Examiner should thus investigate whether any of the Debtor's current directors or its CEO or CFO participated in the Baha Mar fraud, or if any of *the directors who selected* the current CEO or CFO participated. *See* 11 U.S.C. § 1104(e) (providing that the United States Trustee "*shall* move for the appointment of a trustee under subsection (a)" if there are "reasonable grounds to suspect" fraudulent conduct by such individuals) (emphasis added).

II. A broad investigation is necessary under these circumstances.

93. Beyond the New York Decision's fraud findings and the significant allegations of continued misconduct, the circumstances of this Chapter 11 mandate that the Examiner be given a broad scope.

[168] Second Stay Relief Motion Hearing Tr. at 14:8–15.
[169] Dkt. 129, Ex. 32 [redacted]

A. The absence of a creditors' committee weighs in favor of a broad scope.

94. Critically, no creditors' committee has been appointed in this Chapter 11 case due to the lack of interest among the few other non-insider creditors, other than BMLP.[170] This is problematic because a creditors' committee "plays a pivotal role in the bankruptcy process" by ensuring "the unsecured creditors' views are heard and their interests are promoted and protected." *In re Refco Inc.*, 336 B.R. 187, 195 (Bankr. S.D.N.Y. 2006). Given its crucial role, it is beyond question that a creditors' committee "may investigate the debtor's assets and affairs." *Id.*

95. Since no creditors' committee has been appointed in this case, it is necessary that the Examiner be empowered to fill this void, including by investigating potential estate causes of action. Indeed, a "textbook case calling for the appointment of an examiner" is to determine whether the estate should pursue claims and causes of action involving the debtor's affiliates. *In re Keene Corp.*, 164 B.R. at 856 (citations omitted); *see also In re Brennan*, 187 B.R. 135 (Bankr. D.N.J. 1995), *rev'd on other grounds sub nom.*, *In re First Jersey Sec., Inc.*, 180 F.3d 504 (3d Cir. 1999) (holding that "investigation of corporate and individual debtors' relationships with each other and their affiliates was duty of creditors' committee and examiner, not debtor").

B. Given the Debtor's ongoing infrastructure projects, the public needs a thorough report.

96. CCA and its affiliates are engaged in extensive public works projects in the United States, and the public at large should have confidence that, if the Debtor emerges from bankruptcy, its misconduct has not been swept under the rug. The Examiner should thus not only identify estate causes of action but produce a report that sheds light on any fraud, misconduct, or other irregularities in the Debtor's operations.

[170] This underscores that this case is predominately a two-party dispute between CCA and its affiliates, on the one hand, and BMLP on the other.

97. As the Third Circuit has explained, Congress's goal of protecting the public interest is furthered by the appointment of an examiner and the requirement that they prepare a comprehensive public report. *In re FTX Trading Ltd.*, 91 F.4th 148, 157 (3d Cir. 2024). In the *FTX* Chapter 11 case, the debtors' collapse harmed investors throughout the world and created significant risks for the broader cryptocurrency industry. *Id.* The Third Circuit confirmed that examiners must be appointed in certain Chapter 11 cases, like this one, where they play an important public role in uncovering risks and providing transparency. *Id.* at 156–57. A thorough report in *FTX* allowed the Bankruptcy Court to consider the broader public interest when approving the reorganization plan, fostering accountability and investor awareness. *Id.* at 156.

98. Here, the Debtor and its subsidiaries are involved in numerous ongoing public or otherwise major construction projects—including public infrastructure, residential housing, and industrial parks in New Jersey, New York, Ohio, as discussed above. A thorough and transparent investigation led by the Examiner is clearly necessary to foster accountability, safeguard the public's trust, and prevent abuse of the bankruptcy process. This is essential to the Debtor's eventual reorganization, and it favors a broad scope of examination.

C. The Debtor's self-serving investigation cannot replace an Examiner's role under Third Circuit precedent.

99. As the Third Circuit emphasized in *FTX*, the investigation of an examiner is different than other investigations because the Bankruptcy Code requires that an examiner must be "disinterested." *Id.* The *FTX* court found that "this requirement of disinterest is particularly salient [] where issues of potential conflicts of interest arising from debtor's counsel serving as pre-petition advisors to [the Debtor] have been raised repeatedly." *Id*. at 157. The independence of a special committee's investigation may be called into question when the special committee relies on counsel that is loyal to the board and management. *See Kahn v. Tremont Corp.*, 694 A.2d

422, 429-30 (Del. 1997) (questioning independence where special committee relied on legal counsel retained by affiliate of controlling shareholder). And the independence and suitability of a special committee warrant closer examination when led by a single member. *See Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1138–39, 1145–46 (Del. Ch. 2006); *see also Boland v. Boland*, 31 A.3d 529, 556 (Md. 2011) (also citing cases noting that single member committees must be "beyond reproach"). The burden of proof is on the Debtor to establish the "independence, good faith and a reasonable investigation" of the special committee, "rather than presuming [its] independence, good faith and reasonableness." *Zapata Corp. v. Maldonado*, 430 A.2d 779, 788 (Del. 1981).

100. The perils of conflicted special committee investigations were recently exposed in *Silvergate*, where the Bankruptcy Court for the District of Delaware appointed an examiner to review a purportedly independent investigation. *See In re Silvergate Cap. Corp.* No. 24-12158 (KBO) (Bankr. D. Del. 2025) (hereinafter "*Silvergate*"). As the examiner there found, the committee's "retention of the Debtors' counsel resulted in an inevitable conflict of interest."[171] The examiner thus highlighted "the structural and practical limitations" of the investigation, "most notably the absence of independent counsel, as well as gaps in the analysis contained in the Report," in finding that the committee's "findings [were] not reasonable under these circumstances."[172]

101. Although the Special Committee has not produced a report here, there is already substantial evidence in the record calling its investigation into question.

[171] *See* May 15 Theisen Declaration, Ex. 7 at 5 (*Notice of Filing of Proposed Redacted Version of the Report of Stephanie Wickouski, As Examiner* ("Wickouski Examiner Report"), available at *Silvergate*, D.I. 434).
[172] May 15 Theisen Declaration, Ex. 7 at 5 (Wickouski Examiner Report).

102. *First*, Ms. Abrams's view of the dispute with BMLP has been tainted from the outset by Debevoise's biased advice. At her deposition, Ms. Abrams [redacted][173] When Ms. Abrams was [redacted] And Ms. Abrams was [redacted][175]

103. *Second*, the Special Committee's investigation contravenes [redacted][176]

104. However, less than three (3) weeks later, CCA's bankruptcy counsel, Cole Schotz, apparently began working on an investigation of potential estate claims on behalf of the Special Committee.[177] No one informed BMLP that it had done so, and to date no one has explained what had changed in those few weeks that made an investigation ripe. The only apparent explanation is that—after reaching an agreement to conserve estate resources by postponing the appointment

[173] Abrams Dep. Tr. 54:14–23 (emphasis added); 56:3–5.
[174] Abrams Dep. Tr. 57:10–19.
[175] Abrams Dep. Tr. 142:9–25; *id.* 143:1–2.
[176] Abrams Dep. Tr. 66:4–5; *id.* 11:1–3; Second Day Hearing Tr. 64:1–5.
[177] March 2025 Cole Schotz Invoice at 5.

of the Examiner until after a decision on CCA's appeal—the estate decided to expend estate resources anyway, namely by pursuing its own investigation to whitewash claims against affiliates. Indeed, Cole Schotz's work appears to have started contemporaneously with the agreement on the Examiner Order, evidencing a tactical decision to try to withhold information about the investigation from BMLP and to try to undermine the eventual Examiner's role.

105. *Third*, the Special Committee's investigation is being conducted by counsel retained by and accountable to the Debtor and its insider directors, not the Special Committee and Ms. Abrams. Debevoise, for its part, refuses to acknowledge CCA's past wrongdoing and is instead pursuing meritless appeals of the New York Decision. Nor is Cole Schotz able to conduct a disinterested investigation apart from Debevoise, having committed in its engagement letter to coordinate "at all times" with Debevoise.[178] Indeed, Debevoise and its lawyers appear throughout Cole Schotz's fee statements that describe the investigation and it is clear that they are not sitting passively on the sidelines (not that it would matter if they were).[179] Debevoise, conspicuously, has not filed fee statements for the corresponding period. Even those fee statements, however, may not provide clarity on Debevoise's role in the investigation, as it will not file fee statements for work undertaken on behalf of CCA's alter egos, whose interests Debevoise must also represent in any investigation.

106. Cole Schotz is fully aligned with the Debtor and its management here. Not only did Cole Schotz address its engagement letter to the trade name of CSCEC Holding, but it can be terminated by the Debtor (not the Special Committee), and it signed the joinder to the motion to quash BMLP's Rule 2004 subpoenas against CSCEC Holding and CSCEC Group affiliates—the

[178] Cole Schotz Engagement Letter at 2.
[179] March 2025 Cole Schotz Invoice at 5–10, 12.

entities who should be the targets of its investigation.[180] Just like in *Silvergate*, where the examiner concluded that Delaware bankruptcy counsel were conflicted even though they had only been retained shortly before the Chapter 11 filing, Cole Schotz's loyalty is similarly divided, particularly where (as in *Silvergate*) there is no separate engagement agreement with the Special Committee, no conflicts waiver, and no written consent to the dual representation.[181] In fact, this investigation is not even within the scope of Cole Schotz's engagement agreement.

107. The credibility of this investigation cannot be salvaged by the belated appointment of yet a third law firm, particularly now that it is clear that Duane Morris will not be leading the Special Committee's investigation.

108. While "a well-functioning, well-advised special litigation committee, whose fairness and objectivity cannot be reasonably questioned, can serve to assuage concern among stockholders that the company's litigation assets are being managed properly," the investigation here cannot be well-advised because its counsel is biased, and thus its fairness and objectivity are seriously in question. *See Wenske v. Blue Bell Creameries, Inc.*, 214 A.3d 958, 963 (Del. Ch. 2019) (internal quotation marks and citations omitted). CCA and the Special Committee made the decision not to ask for permission to conduct this investigation, instead choosing to commence it in secret and without consulting BMLP, so that it could try to rush to a self-serving conclusion and avoid any real scrutiny of the investigative process or its conclusions. The Court should reject this gamesmanship.

[180] Dkt. 182.
[181] *See* May 15 Theisen Declaration, Ex. 7 at 19 (Wickouski Examiner Report).

D. At a bare minimum, the Examiner must evaluate what, if any, aspects of the Debtor's investigation can be relied upon.

109. Even CCA acknowledged that an Examiner should consider the Special Committee's independence.[182] *See, e.g.*, Order Appointing an Examiner Pursuant to 11 U.S.C. § 1104(c) ¶ 2, *In re Purdue Pharma, L.P., et al.*, No. 19-23649-RDD (Bankr. S.D.N.Y. 2021), D.I. 3048 (directing Examiner to investigate whether special committee "acted independently and not under the direction or influence of the Sackler Families with respect to the Shareholder Settlement reflected in the [Plan]").

110. Here, the Examiner must now focus on the conduct of the Special Committee's investigation. The recently published examiner's report in *Silvergate* provides a helpful roadmap. There, the court ordered the examiner to undertake an investigation of the special committee's investigation, including the committee's "use and reliance on the Debtors' professionals," the "thoroughness" of the investigation, and the "reasonableness of its conclusion with respect to potential claims of the estates."[183]

111. Similarly, here, the Examiner's investigation must, at minimum, explore the extent of the Special Committee's engagement with and reliance on the Debtors' professionals, including any potential conflicts of interest or flawed procedures that could have compromised its objectivity, thoroughness, and impartiality. As part of that investigation, the Examiner should thoroughly investigate any applicable claims of privilege, including claims of privilege asserted during the investigation and any claims of privilege over the conduct of the investigation, including assertions of work-product protection.

[182] Dkt. 120 ¶¶ 7, 9.
[183] *See* May 15 Theisen Declaration, Ex. 6 ¶ 2 (*Order Directing the Appointment of an Examiner*), available at *Silvergate*, D.I. 402.

RESERVATION OF RIGHTS

112. Nothing contained herein shall be construed as an admission or concession that the claims investigated by the Special Committee or the Examiner are property of CCA's estate, nor shall anything prejudice or limit BMLP's ability to assert claims directly against CCA, CSCEC Holding or any other entity. BMLP reserves all rights to assert claims directly, whether in this Chapter 11 Case or any other court.

NOTICE

113. Notice of the redacted copy of the within Supplemental Brief has been provided to all parties by filing on the Court's electronic docket.

114. Copies of the unredacted within Supplemental Brief have been provided to: (a) Debevoise & Plimpton, LLP and Cole Schotz PC, co-counsel for the Debtor; (b) The Office of the United States Trustee for this Region; (c) Lowenstein Sandler LLP, counsel for CSCEC Holding and (d) McDermott, Will & Emery LLP, proposed counsel for Todd Harrison, Examiner, via electronic mail.

CONCLUSION

WHEREAS, BMLP respectfully requests that this Court enter an order substantially in the form attached as **Exhibit A** and consistent with the relief sought herein.

Dated: May 15, 2025
Newark, New Jersey

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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

ORDER APPROVING THE SCOPE AND BUDGET
OF THE EXAMINER AND AUTHORIZED INVESTIGATION

The relief set forth on the following pages, numbered two (2) through three (3), is hereby **ORDERED**.

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

Upon the *Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner* [Dkt. 88] (the "Motion"); the *Order Granting the Appointment of an Examiner* [Dkt. 211] (the "Examiner Appointment Order") and the *Order Approving the Appointment of a Chapter 11 Examiner* [Dkt. 296] (the "Examiner Approval Order");[2] and this Court having found that notice of the relief granted herein was appropriate under the circumstances and no other notice need be provided; and the Court having conducted the Scope and Budget Hearing on May 22, 2025; and the Court having considered all pleadings filed in connection with the Scope and Budget Hearing; and upon the record of the Scope and Budget Hearing; and it appearing that the proposed scope, cost, degree, and duration of the Authorized Investigation is appropriate; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED THAT:

1. The Authorized Investigation is **APPROVED** as set forth herein.

2. The Examiner's mandate should include, and its budget should be sufficient to support, conducting an investigation and reporting on the following (the "Authorized Investigation"):

   i. any claims that the Debtor's estate may possess and bring against third parties, including veil-piercing claims, fraudulent transfer, preferential transfer, and recharacterization and equitable subordination claims against CSCEC Holding and the Debtor's affiliates in the CSCEC Group;

[2] Capitalized terms used and not defined herein shall have the meanings ascribed to them in Motion, Examiner Appointment Order and Examiner Approval Order, as applicable.

ii. any claims that the Debtor's estate may possess and bring against current and former directors and officers as related to any allegations of fraud, dishonesty, incompetence, misconduct, gross negligence, mismanagement, or irregularity in the management of the affairs of the Debtor, such as embezzlement, misappropriation, and breach of fiduciary duty claims;

iii. CCA's prepetition transfers and/or dissipation of assets, restructuring of corporate entities, and/or any other efforts to frustrate creditors;

iv. whether current members of the governing body of CCA, CCA's chief executive or chief financial officer, or members of the governing body who selected CCA's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of CCA, including, but not limited to, the findings of fraud in the New York Decision;

v. whether the Special Committee's investigation yielded any reliable conclusions, and if so what they are, taking into account its independence (or lack thereof), the thoroughness of its investigation, and the reasonableness of any conclusions regarding potential estate causes of action; and

vi. other such duties to be performed by an examiner set forth in Sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code.

3. The Examiner may retain professionals (including his or her professional services firm, if applicable) if he or she determines that such retention is necessary to discharge his or her duties, with such retention to be subject to Court approval under standards equivalent to those set forth in 11 U.S.C. § 327. The Examiner and any professionals retained shall be compensated and reimbursed for their expenses upon application to the Court on notice to parties pursuant to 11 U.S.C. § 330. 5. The Examiner shall be authorized to issue subpoenas pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1, if appropriate, to obtain information necessary in connection with the Authorized Investigation.

4. The Examiner shall prepare and file a written report of his or her findings with respect to the Authorized Investigation (the "Report") pursuant to 11 U.S.C. §§ 1106(a)(4) and (b).

5. The Examiner shall be a "party in interest" under 11 U.S.C. § 1109(b) with respect to matters that are within the scope of the Authorized Investigations and shall be entitled to appear at hearings and be heard with respect to the Authorized Investigations.

6. Nothing in this Order shall impede the right of the United States Trustee or of any other party in interest to request any other lawful relief, including but not limited to the expansion or limitation of the scope of the Authorized Investigations.

7. Nothing herein shall be construed as a finding that the claims investigated by the Special Committee or the Examiner are property of CCA's estate, nor shall anything herein prejudice or limit any party's (including BMLP) ability to assert its direct claims against CCA, CSCEC Holding, or any other entity, whether in this Chapter 11 Case or any other court.