

COLE SCHOTZ P.C.

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

Co-Counsel to the Debtor and Debtor in Possession

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

In re:

CCA Construction, Inc.,¹

Debtor.

Chapter 11

Case No. 24-22548 (CMG)

**SUPPLEMENTAL NOTICE OF FILING OF THE REPORT OF THE SPECIAL
COMMITTEE OF INDEPENDENT DIRECTORS OF CCA CONSTRUCTION, INC.**

PLEASE TAKE NOTICE that, on June 2, 2025, the Court entered the *Order Approving Examiner's Scope and Budget for Investigation* [Docket No. 351] (the “**Scope and Budget Order**”).

PLEASE TAKE FURTHER NOTICE that the Paragraph 2 of the Scope and Budget Order requires, *inter alia*, the Special Committee (as defined therein) to file a copy of the report of its conclusions on the case docket.

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is CCA Construction, Inc. (4862). The Debtor's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.



2422548251006000000000004

PLEASE TAKE FURTHER NOTICE that, on July 31, 2025, the Debtor filed a sealed copy of the *Report of the Special Committee of Independent Directors of CCA Construction, Inc.*, dated July 31, 2025.

PLEASE TAKE FURTHER NOTICE that, attached hereto as **Exhibit A**, is a copy of the *Report of the Special Committee of Independent Directors of CCA Construction, Inc.*, dated July 31, 2025, which includes the proposed agreed and disputed redactions referenced in the letter at Docket No. 499.

Dated: October 6, 2025

Respectfully submitted,

By: /s/ Michael D. Sirota
COLE SCHOTZ P.C.
Michael D. Sirota
Warren A. Usatine
Felice R. Yudkin
Ryan T. Jareck
25 Main Street
Hackensack, NJ, 07601
(201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
rjareck@coleschotz.com

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

Exhibit A

COLE SCHOTZ P.C.

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

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

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

In re:

CCA Construction, Inc.,¹

Debtor.

Chapter 11

Case No. 24-22548 (CMG)

**REPORT OF THE SPECIAL COMMITTEE OF INDEPENDENT
DIRECTORS OF CCA CONSTRUCTION, INC.**

This Report is labeled “Confidential.” The basis for confidential treatment includes, but is not limited to, the fact that this Report contains materials subject to the *Confidentiality Stipulation and Protective Order* dated January 22, 2025 [Docket No. 86].

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

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY	1
III. BACKGROUND	12
A. PROCEDURAL HISTORY.....	12
B. FORMATION AND AUTHORITY OF THE SPECIAL COMMITTEE.....	13
C. THE INVESTIGATION	14
1. Scope of Investigation.....	14
2. Document Collection and Review and Information Requests.....	16
3. Interviews of Relevant Witnesses.....	19
4. Scope of BDO’s Analysis	20
D. STATUTE OF LIMITATIONS AND “LOOK BACK” PERIODS.....	21
1. Recharacterization, Equitable Subordination, and Substantive Consolidation	21
2. Fraudulent Transfers	21
3. Breach of Fiduciary Duty Claims	22
4. Breach of Contract and Book Account Claims.....	22
E. COORDINATION WITH EXAMINER.....	23
IV. KEY FACTUAL FINDINGS.....	24
A. HISTORY OF CCA.....	24
1. Organizational Structure	24
2. Officers and Directors.....	26
B. BAHA MAR LITIGATION.....	28

C.	THE PREPETITION SHARED SERVICE AGREEMENTS.....	31
D.	INTERCOMPANY LOANS AND TRANSFERS.....	33
1.	Summary of Intercompany Balances as of the Petition Date	33
2.	Intercompany Funding From CSCEC Holding to CCA	34
3.	Transfers Between CCA and the Shared Services Members.....	36
4.	Transactions between CSCEC Holding, the Shared Services Members, and Other Non-Debtor Loan Recipients	39
5.	Summary of the CSCEC Holding Cash and Non-Cash Transactions.....	43
E.	AUDITS	44
F.	EXECUTIVE COMPENSATION.....	45
1.	Director and Officer Compensation.....	45
2.	Expense Reimbursements	46
G.	SOLVENCY ASSESSMENT	47
1.	Solvency Assessment for CCA.....	47
2.	Solvency Assessment for the Shared Services Members	47
V.	LEGAL ANALYSIS	49
A.	RECHARACTERIZATION.....	49
1.	Relevant Facts.....	50
2.	Analysis of Recharacterization Factors	50
3.	Summary of Recharacterization Factors.....	57
4.	Conclusion	58
B.	EQUITABLE SUBORDINATION.....	58
C.	PIERCING THE CORPORATE VEIL TO IMPOSE ALTER EGO LIABILITY ON CSCEC HOLDING	59
1.	Single Economic Entity	60

2.	Injustice or Unfairness	69
3.	Conclusion	71
D.	CONSTRUCTIVE FRAUDULENT TRANSFER.....	72
1.	Relevant Law	72
2.	Analysis.....	73
3.	Conclusion	75
E.	PREFERENCES	76
1.	Relevant Law	76
2.	Analysis.....	76
3.	Conclusion	77
F.	BREACH OF FIDUCIARY DUTY CLAIMS.....	78
1.	Relevant Law	78
2.	Analysis.....	82
3.	Conclusion	84
G.	BREACH OF CONTRACT AND ACCOUNT STATED CLAIMS	85
1.	Breach of Contract Claim	85
2.	Account Stated Claims.....	85
3.	Conclusion	87
H.	SUBSTANTIVE CONSOLIDATION.....	88
1.	Relevant Law	88
2.	Analysis.....	91
3.	Conclusion	94

APPENDICES

Appendix A – Organizational Chart

Appendix B – BDO Presentation – CCA Intercompany Cash Transactions Summary

Appendix C – BDO Presentation – CCA Cash and Non Cash Summary

Appendix D – BDO Presentation – CCA Shared Services Allocation - 2021

Appendix E – BDO Presentation – CCA Shared Services Allocation - 2022

Appendix F – BDO Presentation – CCA Shared Services Allocation - 2023

Appendix G – BDO Presentation – CCA Shared Services Allocation - 2024

Appendix H – BDO Presentation – CCA Director and Officer Compensation & CCA Bonus Plans

Appendix I – BDO Presentation – CCA [REDACTED] Expense Reimbursement Analysis

Appendix J – BDO Presentation – CCA and CSCEC Holding Interest Analysis

Appendix K – BDO Presentation – CCA Debt to Equity Conversion Analysis

Appendix L – BDO Presentation – CSCEC Holding Cash and Non Cash Summary

Appendix M – BDO Presentation – CSCEC Holding Payments to Plaza

Appendix N – BDO Presentation – CSCEC Holding Due To / Due From Analysis

Appendix O – BDO Presentation – CSCEC Holding Payments to ADP Analysis

Appendix P – BDO Presentation – CCA - Solvency Analysis

Appendix Q – BDO Presentation – CCA Subsidiaries - Solvency Analysis

Appendix R – BDO Presentation – CCA Affiliates - Solvency Analysis

Appendix S – June 5, 2025 letter to Cole Schotz from counsel to BMLP

Appendix T – July 31, 2025 letter to counsel to BMLP from Cole Schotz

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re 1438 Meridian Place, N. W., Inc.</i> , 15 B.R. 89 (Bankr. D.D.C. 1981)	90
<i>Alexander v. Compton (In re Bonham)</i> , 229 F.3d 750 (9th Cir. 2000)	90
<i>In re Allserve Sys. Corp.</i> , 379 B.R. 69 (Bankr. D.N.J. 2007)	59
<i>In re Alternate Fuels, Inc.</i> , 789 F.3d 1139 (10th Cir. 2015)	54
<i>In re Am. Int'l Grp., Inc.</i> , 965 A.2d 763 (Del. Ch. 2009) <i>aff'd sub nom., Teachers' Ret. Sys. of Louisiana</i> <i>v. PricewaterhouseCoopers LLP</i> , 11 A.3d 228 (Del. 2011)	22
<i>In re AMC Invs., LLC</i> , 637 B.R. 43 (Bankr. D. Del. 2022), <i>aff'd</i> , 656 B.R. 95 (D. Del. 2024)	22
<i>Americas Mining Corp. v. Theriault</i> , 51 A.3d 1213 (Del. 2012)	80
<i>In re Appleseed's Intermediate Holdings, LLC</i> , 470 B.R. 289 (D. Del. 2012)	73
<i>In re Autobacs Strauss, Inc.</i> , 473 B.R. 525 (Bankr. D. Del. 2012)	51, 52, 55, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70
<i>In re AutoStyle Plastics, Inc.</i> , 269 F.3d 726 (6th Cir. 2001)	49, 50, 51, 52, 53, 54, 55
<i>Bergen Plastic Surgery v. Aetna Life Ins. Co.</i> , No. CV22227SDWJSA, 2023 WL 3452633 (D.N.J. May 15, 2023)	86
<i>In re BH S & B Holdings LLC</i> , 420 B.R. 112 (Bankr. S.D.N.Y. 2009) <i>aff'd as modified</i> , 807 F. Supp. 2d 199 (S.D.N.Y. 2011)	61, 62, 63, 64, 68, 70
<i>Blair v. Infineon Techs. AG</i> , 720 F. Supp. 2d 462 (D. Del. 2010)	69

<i>Brehm v. Eisner</i> , 746 A.2d 244 (Del. 2000)	81, 82
<i>In re Broadstripe, LLC</i> , 444 B.R. 51 (Bankr. D. Del. 2012)	52, 53, 55
<i>In re Caremark Int'l Deriv. Litig.</i> , 698 A.2d 959 (Del. Ch. 1996).....	79
<i>In re Caribbean Auto Mart of St. Croix, Inc.</i> , No. 13-10003 (MFW), 2021 WL 2419986 (Bankr. D.V.I. June 11, 2021)	88, 90, 91, 92, 93
<i>CBS Corp. v. Nat'l Amusements, Inc.</i> , 2018 WL 2263385 (Del. Ch. May 17, 2018).....	2
<i>In re CCA Construction, Inc.</i> , Case No. 24-22548 (CMG).....	1
<i>In re Cold Harbor Assocs., L.P.</i> , 204 B.R. 904 (Bankr. E.D. Va. 1997).....	55
<i>Commerce Bank of Kansas City, N.A. v. Achtenberg</i> , 1993 WL 476510 (W.D. Mo. Nov. 10, 1993).....	74
<i>In re Concepts Am., Inc.</i> , No. 14 B 34232, 2018 WL 2085615 (Bankr. N.D. Ill. May 3, 2018).....	90
<i>Continuing Creditors' Comm. of Star Telecommunications, Inc. v. Edgecomb</i> , 385 F. Supp. 2d 449 (D. Del. 2004).....	80
<i>In re Crabtree</i> , 39 B.R. 718 (Bankr. E.D. Tenn. 1984)	90
<i>In re Cred Inc.</i> , 650 B.R. 803 (Bankr. D. Del. 2023), <i>aff'd</i> , 658 B.R. 783 (D. Del. 2024)	78
<i>In re Decurtis Holdings LLC</i> , 2023 WL 5274925 (Bankr. D. Del. Aug. 14, 2023)	54
<i>In re Dornier Aviation (N. Am.), Inc.</i> , 453 F.3d 225 (4th Cir. 2006)	54, 56
<i>In re Emoral, Inc.</i> , 740 F.3d 875 (3d Cir. 2014).....	60
<i>In re Exide Techs., Inc.</i> , 299 B.R. 732 (Bankr. D. Del. 2003)	53

<i>Fagin v. Gilmartin</i> , 432 F.3d 276 (3d Cir. 2005).....	59
<i>Firefighters’ Pension Sys. of the City of Kansas City, Missouri Tr. v. Presidio, Inc.</i> , 251 A.3d 212 (Del. Ch. 2021).....	80
<i>Fletcher v. Atex</i> , 68 F.3d 1451 (2d Cir. 1995).....	60
<i>Forman v. Kelly Cap. LLC (In re Nat’l Serv. Indus.)</i> , 2015 Bankr. LEXIS 2029 (Bankr. D. Del. June 19, 2015)	22
<i>In re Foxmeyer Corp.</i> , 290 B.R. 229 (Bankr. D. Del. 2003)	70
<i>In re Friedman’s Inc.</i> , 452 B.R. 512 (Bankr. D. Del. 2011)	51, 55, 56
<i>In re Fruehauf Trailer Corp.</i> , 444 F.3d 203 (3d Cir. 2006).....	72
<i>In re Fun Bowl Vacations, Inc.</i> , 666 B.R. 867 (Bankr. S.D.N.Y. 2025).....	73
<i>In re G-I Holdings, Inc.</i> , 313 B.R. 612 (Bankr. D.N.J. 2004)	21
<i>Goldfarb v. Solimine</i> , 245 N.J. 326, 245 A.3d 570 (2021).....	85
<i>Harrison v. Soroof Int’l, Inc.</i> , 320 F. Supp. 3d 602 (D. Del. 2018).....	70
<i>In re HH Liquidation, LLC</i> , 590 B.R. 211 (Bankr. D. Del. 2018)	49, 53, 54, 88, 89, 90
<i>In re Hillsborough Holdings Corp.</i> , 166 B.R. 461 (Bankr. M.D. Fla. 1994) <i>aff’d</i> , 176 B.R. (M.D. Fla. 1994)	70
<i>In re Howland</i> , 674 F. App’x 482 (6th Cir. 2017)	90
<i>In re Hydrogen, L.L.C.</i> , 431 B.R. 337 (Bankr. S.D.N.Y. 2010).....	58, 59

<i>Irwin & Leighton v. W.M. Anderson Co.,</i> 532 A.2d 983 (Del. Ch. 1987).....	60
<i>Jacobs v. Altorelli (In re Dewey & LeBoeuf LLP),</i> 518 B.R. 766 (Bankr. S.D.N.Y. 2014).....	73
<i>In re Kilroy,</i> 357 B.R. 411 (Bankr. S.D. Tex. 2006)	66
<i>Lassman v. Cameron Constr. LLC (In re Cameron Constr. & Roofing Co., Inc.),</i> 565 B.R. 1 (Bankr. D. Mass. 2016)	90
<i>In re Le Cafe Creme, Ltd.,</i> 244 B.R. 221 (Bankr. S.D.N.Y. 2000).....	59
<i>In re Liberty Brands, LLC,</i> 2014 WL 4792053 (Bankr. D. Del. Sep. 25, 2014)	49
<i>In re Lisanti Foods Inc.,</i> 241 F. App'x 1 (3d Cir. 2007)	89
<i>In re Mack Indus.,</i> 2020 WL 6708874 (Bankr. N.D. Ill. Nov. 16, 2020).....	74
<i>In re Macrophage, Inc.,</i> 2007 WL 708926 (D.N.J. Mar. 2, 2007).....	92
<i>Marnari S.p.A. v. Keehan,</i> 900 F. Supp. 2d 377 (D. Del. 2012).....	59
<i>In re Maui Indus. Loan & Fin. Co.,</i> 454 B.R. 133 (Bankr. D. Haw. 2011)	21
<i>In Re Maxus Energy Corp.,</i> 571 B.R. 650 (Bankr. D. Del. 2017)	81
<i>In re Maxus Energy Corp.,</i> 641 B.R. 467 (Bankr. D. Del. 2022)	71
<i>In re McDonald's Corporation S'holder Deriv. Litig,</i> 289 A.3d 343 (Del. Ch. 2023).....	79
<i>McRitchie v. Zuckerberg,</i> 315 A.3d 518 (Del. Ch. 2024).....	22
<i>In re Mihranian,</i> 937 F.3d 1214 (9th Cir. 2019)	90

<i>Miller v. Fallas (In re J&M Sales, Inc.),</i> 2022 WL 532721 (Bankr. D. Del. February 22, 2022).....	21
<i>Matter of Mobile Steel Co.,</i> 563 F.2d 692 (5th Cir. 1977)	58
<i>In re Moll Indus., Inc.,</i> 454 B.R. 574 (Bankr. D. Del. 2011)	65, 67, 70
<i>Morse Operations, Inc. v. Robins Le-Cocq, Inc. (In re Lease-A-Fleet, Inc.),</i> 141 B.R. 869 (Bankr. E.D. Pa. 1992)	90, 93
<i>In re Morton’s Restaurant Grp., Inc. S’holders Litig.,</i> 74 A.3d 656 (Del. Ch. 2013).....	83
<i>NetJets Aviation, Inc. v. LHC Commc’ns, LLC,</i> 537 F.3d 168 (2d Cir. 2008).....	70
<i>In re Optim Energy, LLC,</i> 2014 WL 1924908 (Bankr. D. Del. May 13, 2014).....	54
<i>OptimisCorp v. Waite,</i> 2015 WL 5147038 (Del. Ch. Aug. 26, 2015)	81
<i>In re Opus East, LLC,</i> 5208 B.R. 30 (Bankr. D. Del. 2015)	60, 61, 62, 63, 66, 67, 68, 71
<i>Oshiver v. Levin, Fishbein, Sedran & Berman,</i> 38 F.3d 1380 (3d Cir. 1994).....	22
<i>In re Our Alchemy, LLC,</i> 2019 WL 4447535 (Bankr. D. Del. Sept. 16, 2019)	49, 50, 52, 56
<i>In re Owens Corning,</i> 419 F.3d 195 (3d Cir. 2005), <i>amended</i> (3d Cir. 2005), <i>cert. denied</i> 126 S. Ct. 1910 (2006).....	88, 89, 90, 92
<i>Pauley Petroleum Inc. v. Cont’l Oil Co.,</i> 239 A.2d 629 (Del. 1968)	59
<i>In re Pearlman,</i> 462 B.R. 849 (Bankr. M.D. Fla. 2012)	90
<i>Pearson v. Component Tech. Corp.,</i> 247 F.3d 471 (3d Cir. 2001).....	60

<i>Periera v. Farace</i> , 413 F.3d 330 (2d Cir. 2005).....	81
<i>In re Pitt Penn Holding Co., Inc.</i> , 2012 WL 204095 (Bankr. D. Del. Jan. 24, 2012).....	21
<i>In re Plassein Int’l Corp.</i> , 405 B.R. 402 (Bankr. D. Del. 2009), <i>aff’d</i> , 428 B.R. 64 (D. Del. 2010).....	72
<i>R2 Invs., LDC v. World Access, Inc. (In re World Access, Inc.)</i> , 301 B.R. 217 (Bankr. N.D. Ill. 2003)	93
<i>In re Renegade Holdings, Inc.</i> , 457 B.R. 441 (Bankr. M.D.N.C. 2011).....	74
<i>In re RoomStores of Phoenix, L.L.C.</i> , 2020 WL 211399 (Bankr. D. Ariz. Jan. 10, 2020).....	54
<i>In re S B Bldg. Assocs. Ltd. P’ship</i> , 621 B.R. 330 (Bankr. D.N.J. 2020)	92
<i>Stone v. Ritter</i> , 911 A.2d 362 (Del. 2006)	79
<i>In re SubMicron Sys. Corp.</i> , 432 F.3d 448 (3d Cir. 2006).....	49, 56, 57
<i>Tomczak v. Morton Thiokol, Inc.</i> , 1990 WL 42607 (Del. Ch. Apr. 5, 1990).....	78
<i>In re Tops Holding II Corp.</i> , 646 B.R. 617 (Bankr. S.D.N.Y. 2022).....	21
<i>In re Trados Inc. S’holder Litig.</i> , 2009 WL 2225958 (Del. Ch. July 24, 2009).....	79
<i>Trenwick Am. Litig. Tr. v. Ernst & Young, LLP</i> , 906 A.2d 168 (Del. Ch. 2006).....	81
<i>Trevino v. Merscorp, Inc.</i> , 583 F. Supp. 2d 521 (D. Del. 2008).....	61, 63, 68
<i>Trilogy Portfolio Co., LLC v. Brookfield Real Est. Fin. Partners, LLC</i> , 2012 WL 120201 (Del. Ch. Jan. 13, 2012).....	2

<i>Trs. Of Nat. Elevator Indus. Pension v. Lutyk</i> , 140 F. Supp. 2d 447 (E.D. Pa. 2001), <i>aff'd sub nom. Trs. of Nat'l. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk</i> , 332 F.3d 199 (3d Cir. 2003)	65, 66
<i>Trs. of Nat'l. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk</i> , 332 F.3d 188 (3d Cir. 2003).....	61, 67
<i>In re U.S. Med., Inc.</i> , 531 F.3d 1272 (10th Cir. 2008)	73
<i>United States v. Bestfoods</i> , 524 U.S. 51 (1998).....	64
<i>United States v. Golden Acres, Inc.</i> , 702 F. Supp. 1097 (D. Del. 1988).....	65, 66, 70
<i>United States. v. Noland</i> , 517 U.S. 535 (1996).....	58
<i>United States v. Pisani</i> , 646 F.2d 83 (3d Cir. 1981).....	70
<i>United States v. State St. Bank & Tr. Co.</i> , 520 B.R. 29 (Bankr. D. Del. 2014)	49, 51
<i>In re USDigital, Inc.</i> , 443 B.R. 22 (Bankr. D. Del. 2011)	72, 78, 79
<i>In re W.J. Bradley Mortg. Cap., LLC</i> , 598 B.R. 150 (Bankr. D. Del. 2019)	78
<i>In re Walt Disney Co. Deriv. Litig.</i> , 906 A.2d 27 (Del. 2006)	83
<i>In re Walt Disney Co. Derivative Litig.</i> , 907 A.2d. 693 (Del. Ch. 2005), <i>aff'd</i> , 906 A.2d 27 (Del. 2006).....	78
<i>In re Waterford Wedgwood USA, Inc.</i> , 500 B.R. 371 (Bankr. S.D.N.Y. 2013).....	72
<i>In re Winstar Commc'ns, Inc.</i> , 554 F.3d 382 (3d Cir. 2009).....	58
Statutes	
8 Del. C. § 102(b)(7).....	83

8 Del. C. § 141(e).....	80
10 Del. C. § 8106	22
13 Del. C. § 1309	21
11 U.S.C. § 101(2)(A).....	56
11 U.S.C. § 101(31)(E).....	56
11 U.S.C. § 101(54)	72
11 U.S.C. § 510(c)	3, 58
11 U.S.C. § 544(b)	21
11 U.S.C. § 547.....	7, 8, 76, 77
11 U.S.C. § 548.....	21, 72, 73, 74
26 U.S.C. § 6502(a)	21
N.J.S.A. 2A:14-1.....	22

Other Authorities

9C Am. Jur. 2d Bankruptcy § 2211 (2d ed. 2016).....	74
Sinking Fund, Black’s Law Dictionary (11th ed. 2019).....	55

DEFINED TERMS

2020 Audit: CCA's fiscal year ended December 31, 2020 audited financial statements

2021 Audit: CCA's fiscal year ended December 31, 2021 audited financial statements

ADP: Automatic Data Processing, Inc.

Baha Mar Decision: Decision of the Supreme Court of New York after trial dated October 18, 2024 [657550/2017, NYSCEF No. 755]

Baha Mar Judgment: The \$1,642,598,493.15 judgment issued by the Supreme Court of New York and entered on October 31, 2024, against CCA and two non-debtor affiliates, CSCEC (Bahamas) Ltd. and CCA Bahamas, Ltd., and in favor of BMLP

Baha Mar Litigation: On December 26, 2017, BMLP asserted claims against CCA, CSCECB, and CCAB for breach of contract and fraud relating to the construction of the Baha Mar resort complex in the Bahamas [Index No. 657550/2017]

Bankruptcy Code: Chapter 11 of title 11 of the United States Code

Bankruptcy Court: The United States Bankruptcy Court for the District of New Jersey

BDO: BDO Consulting Group, LLC

BML: Baha Mar, Ltd.

BMLP: BML Properties, Ltd.

[REDACTED]

Board: The board of directors of CCA Construction, Inc.

CCA International: CCA South America, Inc. n/k/a CCA International Group, Inc.

CCA or the Debtor or the Company: CCA Construction, Inc.

CCAB: CCA Bahamas, Ltd.

CCASC: China Construction America of South Carolina, Inc.

Chapter 11 Case: The bankruptcy case filed by CCA Construction, Inc. on December 22, 2024 in the United States Bankruptcy Court for the District of New Jersey

China Construction America: CSCEC Holding, CCA, China Construction America of South Carolina, Inc., Plaza Group Holdings LLC, CCA Civil, Inc. and Strategic Capital (Beijing) Consulting Co., Ltd. and their subsidiaries

Civil: CCA Civil, Inc.

Cole Schotz: Cole Schotz, P.C.

CSCEC Holding: CSCEC Holding Company, Inc.

CSCEC Ltd.: China State Construction Engineering Corp., Ltd.

CSCECB: CSCEC (Bahamas) Ltd.

D&Os: CCA Construction, Inc.’s directors and officers

Debevoise: Debevoise & Plimpton, LLP

Defendants: CCA Construction, Inc., CSCEC (Bahamas) Ltd. and CCA Bahamas, Ltd.

Direct Allocations: Shared service expenses directly allocated to the Shared Services Members

Duane Morris: Duane Morris LLP

Examiner: Todd Harrison of McDermott, Will & Emery LLP

First Department Decision: Decision of the New York Appellate Division, First Department on April 8, 2025 affirming the Baha Mar Judgment [Case No. 2024-06623, NYSCEF No. 40]

First Department: New York Appellate Division, First Department

[REDACTED]

General Ledger Allocation Transactions: Each allocated “due from” that appears on the Shared Services Members’ general ledger

Holding Loans: Loans from CSCEC Holding to CCA

Indirect Allocations: Shared service expenses allocated at year end to the Shared Services Members

Investigation Work Plan: Plan developed by Cole Schotz and approved by Elizabeth Abrams for the Investigation on or about March 25, 2025

Investigation: The Independent Investigation of the Special Committee of Independent Directors of CCA Construction, Inc.

Investors Agreement: The Investors Agreement between BML Properties, Ltd. and BML Properties, Ltd.

IRS: Internal Revenue Service

[REDACTED]

Non-Debtor Affiliates: Affiliates of CCA Construction, Inc. as identified in the organizational chart annexed hereto as Appendix A

Non-Debtor Loans: Loans from CSCEC Holding to CCASC, Plaza, Civil, SRE, Morristown Southgate LLC, CCA Unibuy, LLC, CCA Westchester, Inc., CCA Newport, Inc., CCA International Group, Inc., and CSCEC (Bahamas), Ltd.

Non-Debtor Subsidiaries: China Construction America of South Carolina, Inc., Plaza Group Holdings LLC, CCA Civil, Inc. and Strategic Capital (Beijing) Consulting Co., Ltd. and their subsidiaries

NYS Court: Supreme Court of New York, New York County

OA System: A proprietary online application by which various requests for approval were submitted by Company personnel

Other Non-Debtor Loan Recipients: Morristown Southgate LLC, CCA Westchester, Inc., and CCA Newport, Inc.

Petition Date: December 22, 2024

Plaza: Plaza Group Holdings LLC

Potential Dividends: Cash payments [REDACTED] during the Relevant Period

Prong 1: Prong 1 under *Owens Corning* provides that the party seeking substantive consolidation can prove that, prepetition, the subject entities disregarded separateness so significantly that their creditors relied on the breakdown of entity borders and treated them as one legal entity

Prong 2: Prong 2 under *Owens Corning* provides the party seeking substantive consolidation can prove that, postpetition, the subject entities' assets and liabilities are so scrambled that separating them would be prohibitive and hurt all creditors

Relevant Period: December 22, 2020 through December 22, 2024

Report: The Report of the Special Committee of Independent Directors of CCA Construction, Inc.

SC Beijing: Strategic Capital (Beijing) Consulting Co., Ltd.

Scope and Budget Order: *Order Approving the Examiner's Scope and Budget for Investigation* [Docket No. 351]

Shared Services Members: Non-Debtor Subsidiaries: Plaza Group Holdings LLC and CCA Civil, Inc. as well as Non-Debtor Affiliates: CCA South America, Inc. n/k/a CCA International Group, Inc., Strategic Capital, LLC, and CCA Unibuy, LLC along with their subsidiaries

Shared Services Program: Program in which costs are allocated among the Shared Services Members to compensate CCA for the shared services it provides

Solvency Tests: The Balance Sheet test, the Cash Flow test, and the Reasonable Capital test

Special Committee: The Special Committee of Independent Directors of CCA Construction, Inc.

SSAs or Shared Services Agreements: Agreements to provide shared services to Shared Services Members

SSC or Shared Services Center: CCA Construction, Inc.'s function as a shared services provider pursuant to certain shared services agreement, which provided operational support services including Communications, Accounting, Information Technology, Insurance, Human Resources, Legal, and other General Administration services

Strategic Capital: Strategic Capital, LLC

SRE: Strategic Real Estate, LLC

Tower: D&O Insurance Policy Tower

Unibuy: CCA Unibuy, LLC

Year End Trial Balances: Trial balance information for each year end from 2021-2024

I. INTRODUCTION

This report (“Report”) provides a detailed summary of the independent investigation (the “Investigation”) by the Special Committee of Independent Directors of CCA Construction, Inc. (the “Special Committee”) of claims that could potentially be pursued on behalf of the estate of CCA Construction, Inc. (“CCA,” the “Debtor,” or the “Company”), including, but not limited to, claims against: (i) the Debtor’s officers and directors; (ii) CSCEC Holding Company, Inc., the Debtor’s direct parent and debtor-in-possession lender (“CSCEC Holding”); and (iii) subsidiaries and other affiliated entities.²

As set forth in the *Order Approving the Examiner’s Scope and Budget for Investigation* (the “Scope and Budget Order”) [Docket No. 351], the deadline for the Special Committee to complete its investigation is forty-five (45) days following entry of the Scope and Budget Order, which deadline was subsequently extended by agreement of the parties to July 31, 2025.³

II. EXECUTIVE SUMMARY⁴

The purpose of the Investigation was to identify potential claims and causes of action that belong to the Debtor’s estate and to evaluate the merits of each such claim. The Investigation and the resulting Report are intended to assist all stakeholders in their evaluation of potential estate assets and facilitate the various restructuring options and alternatives available to the Debtor in the Chapter 11 Case. The Special Committee reserves its right to amend or supplement the findings and conclusions in this Report as additional facts come to light or additional information is obtained.

Based on the substantial documents and information reviewed, together with numerous discussions and interviews with the Debtor’s advisors and current and former Company personnel, the Special Committee has identified and analyzed the following potential estate claims:

1. **Recharacterization** of loans from CSCEC Holding to the Debtor to fund the Debtor’s Shared Services Program as equity. The successful prosecution of recharacterization claims would subordinate CSCEC Holding’s purported insider unsecured debt to the claims of unsecured creditors.
2. **Equitable subordination** of the loans from CSCEC Holding to the Company to the claims of unsecured creditors.
3. **Piercing the corporate veil** between CSCEC Holding and the Debtor to impose alter ego liability on CSCEC Holding. A successful claim to pierce the corporate veil would allow the estate to impose liability on CSCEC Holding for the Debtor’s obligations.

² For the avoidance of doubt, this Report does not analyze any direct claims individual creditors may possess (which could not be prosecuted in a derivative manner) against any party.

³ Unless specified otherwise, all citations to documents filed on the bankruptcy court’s docket are in reference to the CCA bankruptcy case, *In re CCA Construction, Inc.*, Case No. 24-22548 (CMG).

⁴ Capitalized terms used in herein shall have the meanings ascribed to such terms elsewhere in this Report.

4. **Avoidance of constructively fraudulent and preferential transfers** made by the Debtor, including transfers made to CSCEC Holding, as constructive fraudulent and/or preferential transfers, and those made in connection with CCA's Shared Service Agreements. Successful constructive fraudulent and preferential transfer claims would allow the Debtor's estate to recover the value of the avoided transfer(s) for the benefit of creditors.
5. **Breach of fiduciary duty** by the Debtor's directors and/or officers, including with respect to the Shared Services Agreements between the Debtor and its subsidiaries and payment of executive compensation. Successful breach of fiduciary duty claims would allow the estate to recover the amount of any damages caused by such breaches.
6. **Breach of contract or book account claims** against the Shared Services Members to recover amounts paid by the Debtor on their behalf and allocated to the Shared Services Members.
7. **Substantive consolidation** of the Debtor with CSCEC Holding. A successful claim for substantive consolidation would bring CSCEC Holding into the Debtor's bankruptcy case and pool the assets and liabilities of both the Debtor and CSCEC Holding for the benefit of their combined creditors.

Our analysis of these potential claims is summarized below:

<u>Claim:</u>	<u>Synopsis:</u>
Recharacterization (See <i>infra</i>, pp. 49-58)	There appears to be a colorable claim⁵ that the loans from CSCEC Holding to CCA in the amount of approximately \$125 million as of the Petition Date (<i>i.e.</i>, the Holding Loans) should be recharacterized as equity infusions under applicable Third Circuit law. Weighing in favor of recharacterization are the [REDACTED]

⁵ A claim is colorable unless it is frivolous or so lacking in merit that it is impossible for the plaintiff to succeed. *Trilogy Portfolio Co., LLC v. Brookfield Real Est. Fin. Partners, LLC*, 2012 WL 120201 at *5 (Del. Ch. Jan. 13, 2012); *CBS Corp. v. Nat'l Amusements, Inc.*, 2018 WL 2263385, at *3 (Del. Ch. May 17, 2018).

	Weighing against recharacterization are the facts that the Holding Loans were meticulously recorded on CCA's and CSCEC Holding's books and records as "due tos" and "due froms." Moreover, CCA's 2020 Audit and 2021 Audit reflected the Holding Loans as liabilities of CCA. The Holding Loans were not subordinated to other unsecured claims, nor were they used to acquire capital assets. Several factors in the recharacterization analysis are also mixed and do not substantially weigh in favor of or against recharacterizing the Holding Loans as equity. [REDACTED] [REDACTED] The rationale for this arrangement appears to be that the sole purpose of the Holding Loans was to fund CCA's Shared Services Program, which was implemented for the sole benefit of the Shared Services Members. Other mixed factors include CCA's historical undercapitalization due to costs and expenses that remain unallocated to Shared Services Members, the fact that CSCEC Holding controls CCA through its sole ownership, and the parties' overall intent. <u>Conclusion.</u> As noted above, there appears to be a colorable claim to recharacterize the Holding Loans as equity infusions. Notwithstanding this conclusion, as applied to the facts here, the factors that courts apply to determine whether debt should be recharacterized do not weigh heavily in favor of or against a recharacterization claim. Thus, the ultimate success or viability of such a claim appears to be a close call.
Equitable Subordination (See <i>infra</i>, pp. 58-59)	The Debtor may also have a colorable claim to equitably subordinate CSCEC Holding's unsecured claims against the Debtor of approximately \$125 million to those of general unsecured creditors. If a court were to find that the Debtor has a claim against CSCEC Holding to recover the Potential Dividends as fraudulent transfers, or that a veil-piercing claim against CSCEC Holding could be sustained, the Debtor may be able to meet the requisite standard necessary to support a claim for equitable subordination under section 510(c) of the Bankruptcy Code and Third Circuit law. <u>Conclusion.</u> The colorability and viability of an equitable subordination claim are a close call, given that its success turns on whether the claims to recover the Potential Dividends as fraudulent

	transfers and the Debtor’s veil-piercing claim against CSCEC Holding are successful, which, as explained below, is far from clear.
Piercing the Corporate Veil to Impose Alter Ego Liability on CSCEC Holding (See <i>infra</i>, pp. 59-71)	Although persuading a court applying Delaware law to disregard the corporate form is a difficult task, the Investigation revealed arguments both in support of and against piercing the corporate veil between CSCEC Holding and the Debtor. Courts apply a fact-intensive, two-part test to determine whether to pierce the veil and impose alter ego liability: (A) whether the parent and subsidiary acted as a single economic unit; and (B) whether there exists an overall element of injustice or unfairness. With respect to the first prong, courts analyze seven non-dispositive factors: (1) gross undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) insolvency of the debtor corporation; (5) siphoning of the corporation’s funds by the dominant stockholder; (6) absence of corporate records; and (7) whether the corporation is merely a façade. To adequately plead that the parent and subsidiary are a single economic entity, a plaintiff must allege some combination of the above seven factors. With respect to the second prong, the injustice element can be defined as having three subfactors: (1) intentional (2) misuse or abuse of the corporate form (3) that does not need to rise to the level of fraud. Within this framework, however, the inquiry becomes more amorphous. Some courts hold that the presence of the factors from the single economic entity test is stand-alone proof that the debtor’s shareholder has misused the corporate form. Other courts appear to hold plaintiffs to a higher standard, and look for allegations that, for example, “the corporation is a sham and exists for no other purpose than as a vehicle for fraud,” or of an “elaborate shell game.” More specifically, the Investigation uncovered evidence that suggests that four of the seven factors could support a finding that CSCEC Holding and the Debtor were a single economic entity: • First, it does not appear that the Debtor was established to defraud creditors, for any wrongful purpose, or that it was undercapitalized at formation—each of which would favor a finding against undercapitalization. If, however, a court takes into consideration the Debtor’s subsequent capitalization (<i>i.e.</i> the Debtor’s level of capitalization in recent years), it could conclude that CCA was undercapitalized;

- Second, the Debtor was presumed insolvent⁶ for purposes of the Investigation from 2021-2024 under both the Balance Sheet and Reasonable Capital tests;
- Third, certain facts can support an argument that the Debtor is a façade of CSCEC Holding, including, for example, that CCA did not have its own projects, generated minimal revenue, and relied on CSCEC Holding for funding to operate; CCA shared offices with CSCEC Holding; and CCA and CSCEC Holding shared management; and
- Fourth, [REDACTED] may give rise to a colorable claim that such payments were improper and, as such, may support a finding that CSCEC Holding and the Debtor were a single economic entity. The viability of such a claim, however, is far from clear given the significant counterarguments regarding the potential propriety of the [REDACTED].

For the foregoing reasons, a court may also conclude that there is a showing of injustice and unfairness that justifies imposition of alter ego liability on CSCEC Holding, even absent evidence that the Debtor was a sham or otherwise was a component in a “shell game.” Notwithstanding the foregoing, and as explained in greater detail herein, there are significant counterarguments and evidence to the above points that could pose considerable hurdles to the viability of a veil-piercing claim.

Notably, the Investigation did not uncover any evidence of any separate injustice or unfairness, other than the arguments that can be drawn in support of the factors for the single economic entity test. To the extent that a court requires more than a showing that the parent and subsidiary were a single economic entity to satisfy the injustice and unfairness prong, it is unlikely that CCA’s veil would be pierced.

Conclusion. There is a colorable claim for the Debtor’s estate to pierce the corporate veil and impose liability on CSCEC Holding. But, even if an alter ego claim could be adequately pleaded, the cost and length of time necessary to litigate such a fact-intensive claim, the reluctance of courts applying Delaware law to sustain veil-piercing claims, and

⁶ For the purposes of this Report only, certain presumptions are made regarding the solvency of relevant entities. As explained further, *infra* section IV.G, a full solvency analysis incorporating a line-by-line assessment of each entities’ assets and liabilities was not performed.

	the numerous facts that weigh against veil piercing, lend serious doubt to the ultimate viability of such a claim.
Constructive Fraudulent Transfer (See <i>infra</i>, pp. 72-76)	The Debtor may have colorable claims against CSCEC Holding to avoid and recover constructive fraudulent transfers made by the Debtor totaling approximately [REDACTED] during the four-year “look-back period” prior to the Petition Date. However, such avoidance claims hinge on whether the payments made by CCA to CSCEC Holding are deemed to be repayments of debt or dividends. While we concluded that there appears to be a colorable claim to recharacterize the Holding Loans as equity, the ultimate success of such a claim is not clear based on the facts uncovered to date. If the Holding Loans are recharacterized as equity infusions, then CCA’s “repayment” of those Holding Loans would be characterized as dividends for which the Debtor may not have received reasonably equivalent value at times when the Debtor was presumed to be insolvent for purposes of this Investigation. By contrast, if the Holding Loans are deemed to be true loans, then the repayment of the Holding Loans would likely constitute reasonably equivalent value (<i>i.e.</i>, extinguishment of a portion of the debt that CCA owed to CSCEC Holding). The Debtor is not likely to be able to establish a colorable claim to avoid the March 2021 assignment of the Shared Services Agreements from CSCEC Holding to the Debtor as a constructive fraudulent transfer. The evidence adduced during the Investigation revealed that the assignment did not require the Debtor to undertake any new obligations that it was not already performing. Thus, the Debtor is not likely to be able to establish that it failed to receive reasonably equivalent value for the assignment. To the extent that any funds were needed to execute its duties under the Shared Services Agreements, the Debtor received funds from CSCEC Holding. Finally, for the reasons stated below in the Breach of Fiduciary Duty analysis, the Debtor is unlikely to establish colorable claims to recover executive compensation and other payments made to its directors and officers (“<u>D&Os</u>”). Bonus amounts were paid pursuant to established policies that provided for non-discretionary incentive payments tied to the profitability of construction projects conducted by the Shared Services Members. Likewise, reimbursements for expenses incurred by the D&Os were made in accordance with policy and were substantiated through the submission of receipts. Although reimbursement of approximately \$150,000 of expenses was not sought in a timely manner, the expenses appear to have been for legitimate business purposes. In any event, the amounts at issue do not justify pursuing any potential claims related thereto.

	For the reasons discussed below, we did not conduct a full constructive fraudulent transfer analysis against the Shared Services Members. The Debtor's ability to recover payments it made on behalf of the Shared Services Members through a breach of contract or account stated claim is likely to be simpler and more successful than a constructive fraudulent transfer claim. Conclusion. The Debtor may have colorable claims to recover approximately [REDACTED] in Potential Dividends made to CSCEC Holding if a court were to recharacterize the Holding Loans as equity. However, the viability of a claim against CSCEC Holding may be an issue given that CSCEC Holding is [REDACTED] [REDACTED] In addition, the fraudulent transfer claim against CSCEC Holding turns on whether the recharacterization claim—the feasibility of which itself is a close call—is successful. The Debtor is not likely to establish a colorable claim to avoid the assignment of the Shared Services Agreements, executive compensation and other payments made to D&Os, or payments made on behalf of the Shared Services Members as constructive fraudulent transfers.
Preferences (See <i>infra</i>, pp. 76-78)	We also investigated whether the Debtor has any colorable claims to avoid and recover preferential transfers under section 547(b) of the Bankruptcy Code listed on the Debtor's Schedules of Assets and Liabilities. Payments to Insiders. Based upon our Investigation, the Debtor does not have colorable claims to recover as preferences approximately \$3 million paid to insiders as such payments were on account of salary and/or expense reimbursements and not bonuses. Payments Made Pursuant to Shared Services Program. The Debtor does not have colorable claims to recovery approximately \$2.6 million in payments made by CCA pursuant to the Shared Services Programs. Although we did not conduct a full contract-by-contract analysis to determine whether the transfers were on account of "antecedent debt," recipients of the funds have ordinary course of business defenses to any preference claims. Payments to Non-Debtor Subsidiaries, Non-Debtor Affiliates, and CSCEC Holding. Approximately \$6.6 million of cash payments were made to Non-Debtor Subsidiaries, Non-Debtor Affiliates, and CSCEC Holding during the preference period. Within that amount are approximately [REDACTED]

	[REDACTED] After analyzing each potential transfer, we concluded that the Debtor does not have any colorable claims to recover such amounts. As to the [REDACTED], there is an open question of whether such transfers were made on account of “antecedent debt” that is subject to a court’s determination of whether the Holding Loans were valid indebtedness or equity contributions. In either case, CSCEC Holding has a strong subsequent new value defense in light of its contribution of approximately [REDACTED]. The Debtor also does not have a colorable claim for the other amounts paid to [REDACTED] because such payments were made in the ordinary course of business. Conclusion. The Debtor does not have colorable claims to avoid and recover preferential transfers under section 547(b) of the Bankruptcy Code listed on the Debtor’s Schedules of Assets and Liabilities.
Breach of Fiduciary Duty (See <i>infra</i>, pp. 78-85)	We investigated whether the Debtor has any colorable claims for breach of fiduciary duty against the D&Os. Executive Compensation/Bonuses/Expense Reimbursement. We investigated the issue of executive compensation, including the payment of incentives and/or performance plans/bonuses, as well as policies relating to the reimbursement of Debtor-related expenses incurred by executives. We also investigated whether the executive compensation paid pursuant to the approved plans was appropriate or constituted breaches of duties by the Debtor’s directors. Our investigation revealed that the D&Os’ actions regarding executive compensation were consistent with their duties of good faith and loyalty. The directors appear to have made decisions and acted with respect to executive compensation based on the good faith belief that they would advance the best interests of the Debtor and its stakeholders. Payments made to executives between December 22, 2020 and December 22, 2024 were made in accordance with the written policies approved by the Debtor. Almost all the payments made were non-discretionary and/or were directly tied to the profitability of construction projects conducted by the Shared Services Members. Reimbursements for expenses incurred by the D&Os on behalf of the Debtor were generally made consistently with the Debtor’s policies and were supported by appropriate documentation. We discovered that several requests for reimbursement were made outside the

timeframe required by the Debtor's policies. However, the underlying expenses were deemed legitimate business expenses, and factors such as the COVID-19 pandemic may have contributed to their late submission. Moreover, the relatively small amounts at issue (*i.e.* \$150,000) do not warrant pursuing the collection of expense reimbursements that were paid in response to untimely requests.

Failure to secure the delivery of audited financial statements for the Non-Debtor Subsidiaries. We investigated the Debtor's engagement of outside audit firms to conduct audits of the Non-Debtor Subsidiaries' financial statements and to produce audited financial statements on their behalf.

Audit services were provided by the Debtor to the Non-Debtor Subsidiaries pursuant to the Shared Services Agreements. This included engaging outside auditors, managing their engagements, and providing them with documents and information. Accordingly, the Debtor was obligated to ensure that timely audits of the Non-Debtor Subsidiaries were completed. Directors, officers, and employees we interviewed have stated that the failure to deliver timely audit reports negatively impacted the Non-Debtor Subsidiaries' ability to conduct business.

[REDACTED]

The failure

[REDACTED]

[REDACTED] may support a colorable claim that the D&Os breached their fiduciary duties owed to the Debtor. However, as indicated, the converse argument may also have merit and may militate against pursuing claims related to the failure to produce audited financial statements.

Conclusion. We do not believe that a colorable claim exists concerning executive compensation and/or expense reimbursement. We believe there is a colorable claim for breach of fiduciary duty

	concerning the failure to pursue completion of audit reports on behalf of the Shared Services Members. However, the viability of such a claim is not clear because ascertaining whether or not the failure to pursue completion of the audit reports resulted in actual financial damage is difficult and, in fact, such failure may have even avoided certain negative outcomes. [REDACTED] We do not believe that a colorable claim exists with respect to the wire fraud [REDACTED]. Our Investigation revealed that proper steps were taken to mitigate the loss and the facts and circumstances that led to the loss do not rise to the level of a breach of fiduciary duty. Accordingly, we do not believe such a claim would be viable.
Breach of Contract / Account Stated Claim (See <i>infra</i>, pp. 85-87)	We investigated whether the Debtor has claims against the Shared Services Members for breach of contract or account stated under New Jersey law, made applicable pursuant to the SSAs. <u>Conclusion.</u> The Debtor has colorable claims against the Shared Services Members for breach of contract and accounts stated under New Jersey law for their failure to repay the amounts owed for shared services rendered by CCA, which are identified in CCA's and the Shared Services Members' books and records as "due tos" and "due froms." A breach of contract claim is ultimately going to be subject to a court's determination of whether or not a breach occurred, given that the SSAs do not provide a date specific by which the Shared Services Members were to reimburse CCA. In any case, certain of the breach of contract and accounts stated claims may not be viable because [REDACTED] [REDACTED]
Substantive Consolidation	A successful claim to substantively consolidate the Debtor and CSCEC Holding is unlikely to prevail under the applicable law and facts. Substantive consolidation of a <i>non</i>-debtor is extraordinarily rare

(See <i>infra</i>, pp. 88-94)	and subject to a very high burden. Moreover, because CSCEC Holding is not a debtor, its creditors would be harmed by the imposition of the Baha Mar Judgment. Specifically, there are two tests for substantive consolidation. Prong 1 requires a proponent to prove that, prior to bankruptcy, there was a “corporate disregard creating contractual expectations of creditors that they were dealing with debtors as one indistinguishable entity,” and that in their prepetition course of dealing, creditors <i>actually and reasonably</i> relied on the debtors’ supposed unity. Prong 2 requires a proponent to prove that, post-petition, the subject entities’ assets and liabilities were so scrambled that separating them would be prohibitive and harm all creditors. With respect to Prong 1, we have not uncovered any facts indicating that creditors believed they were dealing with one indistinguishable entity or that creditors actually and reasonably relied on Debtor and CSCEC Holding’s supposed unity. Many of the facts alleged in the Baha Mar Litigation to support the alter ego claims are insufficient to establish a claim for substantive consolidation here. Furthermore, BMLP is the Debtor’s largest creditor, and there is no evidence that BMLP relied on the supposed unity of interest between the Debtor and CSCEC Holding when it entered into a contract with CSCEC Bahamas, Ltd. (BMLP did not assert an alter ego, or any other, claim against CSCEC Holding in the Baha Mar Litigation). With respect to Prong 2, based upon an analysis of the Debtor’s and CSCEC Holding’s books and records, there is no evidence that the Debtor and CSCEC Holding’s assets and liabilities were scrambled; rather, they maintained separate books and records and recorded any intercompany transfers. Finally, there is evidence that the Debtor’s and CSCEC Holding’s creditors actually believed that they were dealing with separate, distinguishable entities. For example, the sureties required the Debtor to sign indemnity agreements for various bonds for projects. <u>Conclusion.</u> There is no colorable claim for substantive consolidation under Prong 1 (prepetition creditor reliance on lack of corporate separateness) or Prong 2 (postpetition difficulty to “untangle” assets and liabilities of the subject entities and harm to all creditors from doing so).
--------------------------------------	--

III. BACKGROUND

A. Procedural History

CCA's financial challenges began in 2015 and were caused by several factors outside of its control, including a broad retreat from, and policy changes negatively impacting, Chinese investment in U.S.-based construction projects. These business headwinds were further exacerbated by the 2017 commencement of the Baha Mar Litigation and the allegations made by BML Properties, Ltd. ("BMLP") therein, which undermined CCA's ability to win and execute new business.

CCA's financial difficulties reached a precipice as a result of the \$1,642,598,493.15 judgment entered in the Baha Mar Litigation (the "Baha Mar Judgment") (*see infra* section IV.B for further description of the Baha Mar Litigation). Thus, on October 21, 2024 (the day after the Baha Mar Judgment was issued), CCA engaged Elizabeth Abrams as an independent director of the Board. Following the appointment of Ms. Abrams, the Board and CCA's sole shareholder took action to create the Special Committee, of which Ms. Abrams is the sole member. The Special Committee was charged with, among other tasks, reviewing and evaluating the terms and conditions, and determining the advisability, of potential restructuring alternatives.⁷

In November 2023, CCA retained Debevoise & Plimpton, LLP ("Debevoise") in the Baha Mar Litigation. In October 2024, CCA expanded its retention of Debevoise and retained Cole Schotz, P.C. ("Cole Schotz") as co-counsel in a potential chapter 11 case to be filed. CCA also retained BDO Consulting Group, LLC ("BDO") as its financial advisor to, among other things, review CCA's financial reporting and assist CCA with chapter 11 compliance and procedures. Importantly, BDO assumed a lead role in seeking and evaluating options for CCA to obtain debtor-in-possession financing.

After CCA was unable to obtain a stay pending appeal of the Baha Mar Judgment, CCA filed a petition for relief (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on December 22, 2024 (the "Petition Date") in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court").

After the filing, the Debtor obtained relief from the stay to pursue the appeal of the Baha Mar Judgment to the New York Appellate Division, First Department, of the New York Supreme Court (the "First Department") [Docket No. 53]. On April 8, 2025, the First Department affirmed the Baha Mar Judgment in full (the "First Department Decision"). [Case No. 2024-06623, NYSCEF No. 40]. On May 5, 2025, the Debtor obtained relief from the automatic stay to file a petition for leave to appeal the First Department's decision to the New York State Court of Appeals [Docket No. 293]. That petition remains pending.

On January 23, 2025, BMLP moved for an order appointing a Chapter 11 Examiner [Docket No. 88]. On March 5, 2025, the Court approved the appointment of a Chapter 11

⁷ *See infra* section III.B for further details regarding Ms. Abrams's appointment and the commencement of the Investigation.

Examiner [Docket No. 211]. On May 7, 2025, the Court approved the Office of the U.S. Trustee's appointment of Todd Harrison as the Chapter 11 Examiner (the "Examiner") [Docket No. 296]. Following a hearing on May 22, 2025, on June 2, 2025, the Court entered the Scope and Budget Order [Docket No. 351].

B. Formation and Authority of the Special Committee

On October 21, 2024 – the first business day after the trial court issued an opinion in the Baha Mar Litigation – a special meeting of the Stockholder of CCA was held during which the Stockholder (*i.e.*, CSCEC Holding) determined it was in the best interest of CCA to appoint Ms. Abrams as an independent director. Pursuant to a Written Consent of the Sole Stockholder of CCA Construction, Inc. dated November 2, 2024, CSCEC Holding, as CCA's sole shareholder, created the Special Committee, of which Ms. Abrams is the sole member, to:

- (1) review and evaluate the process and procedures related to the review and evaluation of the Restructuring Alternatives by management and the Board; (2) review and evaluate the terms and conditions and determine the advisability of the Restructuring Alternatives; (3) assess whether one or more of the Restructuring Alternatives is advisable and is fair to, and in the best interests of, the Company and its stakeholders and recommend to the Board (x) whether the Board should approve one or more of the Restructuring Alternatives (including, without limitation, documents setting forth the terms thereof), and (y) what other action, if any, should be taken by the Company with respect to the Restructuring Alternatives (it being understood that the Board shall have final approval rights over the Restructuring Alternatives); (4) review, analyze, evaluate and monitor all proceedings and activities of the Company related to the Restructuring Alternatives, including oversight of management in connection therewith; (5) review any and all documents and other instruments to be used in connection with the Restructuring Alternatives, including any and all materials to be filed in connection with any chapter 11 proceedings commenced by the Company, if any; (6) if deemed necessary, retain any necessary or advisable legal, financial or other advisors in connection with the execution of the Special Committee's powers and the satisfaction of the Special Committee's obligations, including in order to obtain any necessary or desirable analyses or opinions from the legal, financial and other advisors of its choosing, including, without limitation, fairness opinions; (7) provide reports and/or recommendations to the Board in regard to such matters at such time as the Special Committee deems appropriate and consistent with its activities; (8) establish the methods for calling and attending meetings (including telephonic meetings) of the Special Committee; (9) respond to any communications, inquiries or proposals regarding one or more of the Restructuring Alternatives; and (10) take any other actions as the

Special Committee may deem to be necessary or appropriate with respect to the foregoing, all as may be determined by the Special Committee in its sole discretion — it being understood that (i) all decisions of the Special Committee shall be made with the unanimous consent of the members of the Special Committee, (ii) that any action that could be taken at a duly called meeting of the Special Committee can be taken by the unanimous written consent of the Special Committee and (iii) the Special Committee shall act for the benefit of the Company and its applicable stakeholders; provided, however, the Board shall retain the exclusive power to approve and authorize the Restructuring Alternatives. . . .

Prior to being appointed to the Special Committee, Ms. Abrams had not worked with CCA or its affiliates, Debevoise, Cole Schotz, or BDO. At the hearing on February 13, 2025, the Court found that the Special Committee is independent and was reasonably appointed. *See* Feb. 13, 2025, Hr’g. Tr. 213:01-7 (“I think I can find from what I’ve heard today that the appointment of Ms. Abrams was a reasonable appointment and that that doesn’t need to be examined. That she, she has been effectively and fairly appointed as an independent [director.]”). *See also* May 22, 2025 Hr’g. Tr. 63:8-16.

On or about March 13, 2025, the Special Committee authorized Cole Schotz to conduct the Investigation on behalf of the Special Committee (the “Investigation”), as discussed in detail below. On May 28, 2025, the Court entered an order authorizing the Special Committee’s retention of Duane Morris LLP (“Duane Morris”) as counsel to the Special Committee *nunc pro tunc* to April 9, 2025 [Docket No. 343] with respect to, among other things, oversight of the Investigation.

C. The Investigation

1. Scope of Investigation

Upon initiation of the Investigation⁸, Ms. Abrams approved the scope of the Investigation to include the following areas⁹:

1. Potential claims and causes of action relating to the historical relationship, including any conflicts of interest, misconduct, or mismanagement, between CCA,

⁸ Cole Schotz’s Investigation leadership team consisted of Steven L. Klepper, Jason Melzer, Daniel J. Harris, Krista L. Kulp, and Pekham Pal.

⁹ On May 17, 2025, Cole Schotz invited BMLP’s counsel to suggest topics they believe we should consider in the Investigation. On June 5, 2025, BMLP’s counsel responded with a letter identifying issues and topics to be investigated. (A copy of this letter is appended to the Report as Appendix S). We carefully considered each of the topics suggested by BMLP and addressed the vast majority of them in this Report. There were a handful of topics suggested by BMLP’s counsel that we did not address in the Report because those were not within the scope of the Investigation, irrelevant, related to post-petition allegations and/or were beyond the applicable statutes of limitation or look-back periods. We addressed our position with respect to these suggestions in a letter to BMLP’s counsel dated July 31, 2025. (A copy of this letter is appended to the Report as Appendix T).

China State Construction Engineering Corp., Ltd. (“CSCEC Ltd.”), CSCEC Holding, CCA’s non-Debtor operating subsidiaries (the “Non-Debtor Subsidiaries”), and CCA’s non-Debtor affiliates (the “Non-Debtor Affiliates”);

2. Potential claims and causes of action against current and former officers and directors, employees, and/or insiders of CCA, CSCEC Ltd., CSCEC Holding, their Non-Debtor Subsidiaries and the Non-Debtor Affiliates, including, but not limited to, fraudulent transfer, preferential transfer, breach of fiduciary duty, alter ego, veil piercing, recharacterization, equitable subordination, and other claims;
3. Potential claims and causes of action for fraudulent and preferential transfers against the Non-Debtor Affiliates and Non-Debtor Subsidiaries, including Plaza Group Holdings, LLC, CCA Civil Construction, Inc., China Construction America of South Carolina, Inc. and Strategic Capital (Beijing) Consulting Co., Ltd., arising from CCA’s Shared Services Program;
4. Investigation of the intercompany receivables totaling \$95,988,382.21 listed on Schedule A/B 77 at Docket No. 99 and the validity, enforceability, and collectability thereof;¹⁰
5. Potential claims and causes of action for pre-petition transfers or dissipation of assets;
6. Potential claims for destruction of documents or similar wrongdoing;
7. Potential claims against current and former officers, directors, employees and/or insiders with regard to executive compensation, including claims for breach of fiduciary duty, fraudulent transfer, and/or corporate waste; and
8. With the written approval of the Special Committee, any other claims and causes of action identified in the course of the Investigation.¹¹

Following Ms. Abrams’ approval of the initial scope of the Investigation, Cole Schotz developed a comprehensive work plan (the “Investigation Work Plan”). The Investigation Work Plan contemplated: (a) scoping interviews; (b) document collection and review; (c) witness interviews; and (d) presentation of findings and conclusions. Ms. Abrams approved the Investigation Work Plan on or about March 25, 2025. Thereafter, Cole Schotz met with Ms. Abrams and Mr. Bauer of Duane Morris (after he was retained) on a weekly basis concerning the status of the Investigation. Such meetings were documented by contemporaneous minutes, which Ms. Abrams approved.

¹⁰ Schedule A/B 77 includes an additional \$500,000 related to Liberty National membership fee.

¹¹ Ms. Abrams and Cole Schotz had the discretion to expand and/or modify the scope of the Investigation if warranted by the facts or issues discovered during the Investigation.

At the same time, BDO agreed to support Cole Schotz in any financial analysis necessary for the Investigation. As discussed below, BDO provided various analyses to support the Investigation and participated in each of the witness interviews.

At the outset of the Investigation, Cole Schotz interviewed key employees and executives at CCA and individuals from Debevoise to understand the corporate structure, key officers and directors, custodians, and the location of potentially relevant documents. Through those initial interviews, Cole Schotz: (i) obtained a better understanding of the general circumstances and facts surrounding each Investigation topic; (ii) identified individuals best positioned to provide relevant information; and (iii) established where relevant documents were located.

2. Document Collection and Review and Information Requests

Documents and information requested from CCA and CSCEC Holding during the course of the Investigation included, but was not limited to, the following:

1. Documents concerning the corporate structure of the Company, including organizational charts and documents reflecting ownership of Company stock.
2. Materials relating to the Board and its subcommittees, including meeting minutes, resolutions, reports, analyses, and presentations.
3. Documents concerning/reflecting the Company's financial condition, including tax returns, financial statements, budgets and forecasts; schedules reflecting payment of dividends; valuations, solvency reports, fairness opinions, or appraisals.
4. Documents concerning/reflecting payments to or transactions with officers, directors, affiliates, subsidiaries, equity holders or other related parties.
5. Documents concerning or relating to the Shared Services Program, including: (i) copies of all Shared Services Agreements, (ii) documents sufficient to show the allocation mechanism used to reimburse the Company for costs under the Shared Services Program, and (iii) all records of intercompany transactions.
6. Documents and communications with the Company's auditor(s).
7. Documents and agreements regarding director and officer compensation (*e.g.*, employment agreements, etc.).
8. Documents and agreements regarding bonus plans with employees.
9. Documents and agreements relating to any loans to the Company and/or the Company's lenders.
10. Documents and agreements relating to any loans by the Company and/or intercompany loans.

11. Any and all communications and documents, including but not limited to emails, board minutes, and board materials, relating to or discussing any actual or proposed conversion of debt to equity as between (i) CSCEC Holding and CCA, (ii) CCA and any of the Non-Debtor Subsidiaries and the Non-Debtor Affiliates, and (iii) CSCEC Holding and any of the Non-Debtor Subsidiaries and the Non-Debtor Affiliates, from Jan 1, 2014 to December 22, 2024;
12. Any and all communications and loan agreements or other writings evidencing any loans between CSCEC Holding and the Non-Debtor Subsidiaries and the Non-Debtor Affiliates and any repayment of such loans, from Jan 1, 2019 through December 22, 2024;
13. Any and all communications and documents reflecting the application (or non-application) of interest to any loans from (i) CSCEC Holding to CCA, (ii) CCA to any of the Non-Debtor Subsidiaries and the Non-Debtor Affiliates, and (iii) CSCEC Holding to any of the Non-Debtor Subsidiaries and the Non-Debtor Affiliates, from December 22, 2020 through December 22, 2024;
14. Any provisions or covenants in any CSCEC Holding loan documents that require CSCEC Holding to provide audited financial statements to lender;
15. Documents reflecting whether CSCEC Holding did its own audit in the years 2019, 2020, and 2021;
16. Copies of the 2020-2024 Shared Services Center budgets, including any board minutes and board resolutions at either the CSCEC Holding or CCA level regarding approval of those budgets;
17. Any documents or communications indicating: (i) when CSCEC Holding began charging interest on CCA's allocations to Shared Services Participants;¹² and (ii) the amount of all interest payments received by CSCEC Holding from 2021-2024;
18. Any agreements between CSCEC Holding and CCA for CSCEC Holding to collect interest on CCA's allocations to Shared Services Members;
19. All CSCEC Holding interest transaction worksheets that back up the General Ledger on a quarterly basis from 2021-2024 related to the following entities:

[REDACTED]

¹² The term "Shared Services Participants" refers to the defined phrase "Shared Services Members" as used in the Report.

20. Information on interest charges, or lack thereof, on loans from CSCEC Holding to Non-Debtor Subsidiaries and Non-Debtor Affiliates and on Non-Debtor Subsidiaries and Non-Debtor Affiliates “due tos” to CCA.

Cole Schotz worked with CCA, Debevoise, and BDO¹³ to obtain these documents. Cole Schotz reviewed and analyzed approximately 2,635 non-custodial documents provided by CCA during the Investigation.

In addition to the non-custodial document requests, Cole Schotz, through interviews and review of the non-custodial documents, identified ten (10) custodians as potentially having relevant documents. At CCA’s request, Cole Schotz prepared search terms to be applied to the custodians’ emails to identify potentially relevant documents.

Because certain custodians work for other affiliates, before producing documents to Cole Schotz, CCA ran a privilege screen using the names of any law firms that exclusively provided legal services to Non-Debtor Affiliates. The Special Committee also entered into a clawback agreement with the Non-Debtor Affiliates to address the inadvertent disclosure of privileged documents.

After applying the search terms and identifying the affiliate privileged documents, CCA turned over approximately 338,000 custodial documents to Cole Schotz (after deduplication).

We focused collection on the December 22, 2020 through December 22, 2024 time frame (the “Relevant Period”) because, as discussed below, breach of fiduciary duty claims have a three-year statute of limitations under Delaware law and constructive fraudulent transfer claims have a four-year “look back period” under applicable state and federal law. Breach of contract claims have a six-year statute of limitations under applicable New Jersey law so, for those claims, the Investigation went back six years. We also collected documents and financial analysis going back to 2014 to assess certain other claims discussed herein, including recharacterization of the Holding Loans, claims relating to expense reimbursement to directors and officers, and alter ego claims against CSCEC Holding.

Cole Schotz then crafted more targeted search terms and date ranges pertaining to the Investigation Topics to cull the approximately 338,000 documents for a targeted review. Cole Schotz conducted a “first level” review of approximately 53,328 documents and an appropriate second level review of various subsets of relevant documents.

¹³ As set forth in more detail below, BDO requested and received documents from CCA in connection with its workstreams, which it would then share with Cole Schotz.

3. Interviews of Relevant Witnesses

In addition to the document review, Cole Schotz¹⁴ also conducted interviews of the following witnesses:

- On May 14, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 6 hours.
- On May 15, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 4.5 hours.
- On May 16, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 5 hours.
- On May 19, 2025, Cole Schotz interviewed [REDACTED] who has no title at CCA, but reports to CCA's CFO and works in the SSC financing and accounting department, which lasted approximately 4.5 hours.
- On May 20, 2025 and May 21, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 1.75 hours in the aggregate.
- On May 21, 2025, June 5, 2025, and July 15, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 6 hours in the aggregate.
- On May 28, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 2.5 hours.
- On June 3, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 2 hours.
- On June 6, 2025, Cole Schotz interviewed [REDACTED] which lasted approximately 4.5 hours.
- On June 18 and 26, 2025, Cole Schotz interviewed [REDACTED] from CBIZ, CPAs P.C. ("CBIZ"), which lasted approximately 2.25 hours in the aggregate.
- On June 25, 2025, Cole Schotz interviewed [REDACTED] for approximately 30 minutes, solely to discuss document requests provided by Cole Schotz to CCA.¹⁵

¹⁴ Individuals from BDO were also present during the interviews.

¹⁵ Cole Schotz did not invite the Examiner to this interview as its scope was limited to document collection.

- On July 10, 2025, Cole Schotz interviewed [REDACTED], which lasted approximately 0.75 hours.

4. Scope of BDO's Analysis

BDO analyzed the following issues during the Investigation:

- Analysis of intercompany cash transactions, including transfers between CCA and CSCEC Holding and transfers between CCA and the Shared Services Members, *see* Appendices (“Apps.”) B & C;
- Analysis of CCA’s Direct and Indirect allocations to Shared Services Members, *see* Apps. D, E, F, & G;
- Analysis of executive compensation, including salary, bonuses, and expense reimbursement during the Relevant Period, as well as [REDACTED] expense reimbursements from 2014 to 2024 and analysis of allegations that the Debtor’s funds were used to pay for personal items, *see* Apps. H & I;
- Interest payments on CCA’s allocations to Shared Services Members, *see* App. J;
- Conversion of CCA’s debt to equity, *see* App. K;
- Flow of funds between CSCEC and Shared Services Members, *see* Apps. L, M, & N;
- Determination of whether there were any transfers from CCA to CSCEC Ltd;¹⁶
- Analysis of when the Shared Services Members paid “due tos” to CCA and analysis of when CCA paid “due tos” to CSCEC Holding, *see* App. B;
- Analysis of CSCEC Holding payments to ADP, *see* App. O; and
- Solvency assessment for CCA and the Shared Services Members, *see* Apps. P, Q & R.

¹⁶ CCA’s books and records did not contain any transfers from CCA to CSCEC Ltd.

D. Statute of Limitations and “Look Back” Periods

1. Recharacterization, Equitable Subordination, and Substantive Consolidation

We considered the applicable statute of limitations and “look back” periods for the potential claims analyzed during the Investigation. As the recharacterization, equitable subordination, and substantive consolidation are equitable or statutory remedies that the Bankruptcy Court may award, there is no statute of limitation for bringing such claims. The Debtor could bring any claims for recharacterization, equitable subordination, and substantive consolidation in connection with the chapter 11 process.

2. Fraudulent Transfers

Generally speaking, the lookback period for fraudulent transfer avoidance actions brought under section 548 of the Bankruptcy Code is two years (“The trustee may avoid any transfer . . . of an interest of the debtor in property . . . that was made or incurred on or within 2 years before the date of the filing of the petition,...”) and four years if the trustee employs Delaware state law through section 544(b) of the Bankruptcy Code and 13 Del. C. § 1309 (“A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought . . . within 4 years after the transfer was made or the obligation as incurred....”). At least one court in the District of Delaware has concluded that the two-year lookback period in section 548 is not subject to equitable tolling. *In re Pitt Penn Holding Co., Inc.*, 2012 WL 204095 (Bankr. D. Del. Jan. 24, 2012). *See also In re Maui Indus. Loan & Fin. Co.*, 454 B.R. 133 (Bankr. D. Haw. 2011).

Some courts have extended the lookback period for a trustee under section 544(b) by adopting a lookback period available to an unsecured creditor who could have avoided the transfer under applicable non-bankruptcy law. *See Miller v. Fallas (In re J&M Sales, Inc.)*, 2022 WL 532721 (Bankr. D. Del. February 22, 2022); *In re Tops Holding II Corp.*, 646 B.R. 617, 665 (Bankr. S.D.N.Y. 2022); *In re G-I Holdings, Inc.*, 313 B.R. 612, 646–47 (Bankr. D.N.J. 2004). The Investigation considered whether the Debtor could adopt the longer lookback period that may be available to governmental entities, including the Internal Revenue Service (the “IRS”) under 26 U.S.C. § 6502(a) (allowing for assessment of tax and collection by levy or proceeding in court within 10 years after assessment), to pursue fraudulent transfers. The IRS is not likely to hold an allowable claim against the Debtor. As of the date hereof, the IRS filed a single claim against the Debtor for interest accruing on “pension” taxes for tax periods 12/31/2019 and 12/31/2020 in the amount of \$6,156.68 and \$4,005.84, respectively. Other than this unsecured claim, which remains subject to review and reconciliation by CCA, there is no indication that the IRS could assess back taxes for any year. Notably, the IRS did not appear on the Debtor’s Official Form 204 attached to the Voluntary Petition [Docket No. 1]. As such, there is no basis to adopt a longer lookback period than what is available to the Debtor under section 548 of the Bankruptcy Code and Delaware state law.

3. Breach of Fiduciary Duty Claims

Generally speaking, Delaware law sets a three-year statute of limitations for breach of fiduciary duty claims under 10 Del. C. § 8106. However, “the statute of limitations [for a breach of fiduciary claim] will be tolled under the doctrine of fraudulent concealment if the plaintiff can prove: ‘an affirmative act of concealment by the defendant – an “actual artifice” that prevents a plaintiff from gaining knowledge of the facts or some misrepresentation that is intended to put the plaintiff off the trail of inquiry.’” *Forman v. Kelly Cap. LLC (In re Nat’l Serv. Indus.)*, 2015 Bankr. LEXIS 2029 (Bankr. D. Del. June 19, 2015) (cleaned up). In addition, courts applying Delaware law will employ equitable tolling following a breach of fiduciary duties where manifest justice would otherwise result. *See In re AMC Invs., LLC*, 637 B.R. 43, 64 (Bankr. D. Del. 2022), *aff’d*, 656 B.R. 95 (D. Del. 2024). “[T]he doctrine of equitable tolling stops the statute [of limitations] from running while a plaintiff has reasonably relied upon the competence and good faith of a fiduciary.” *In re Am. Int’l Grp., Inc.*, 965 A.2d 763, 813 (Del. Ch. 2009) *aff’d sub nom., Teachers’ Ret. Sys. of Louisiana v. PricewaterhouseCoopers LLP*, 11 A.3d 228 (Del. 2011). Delaware courts also may equitably toll the statute of limitations “where the plaintiff in some extraordinary way has been prevented from asserting his or her rights.” *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1387 (3d Cir. 1994) (internal citations omitted). If equitable tolling applies, “the statute of limitations is tolled until ... [p]laintiffs were objectively aware of the facts giving rise to the wrong, i.e., on inquiry notice.” *In re Am. Int’l Grp., Inc.*, 965 A.2d at 813 (citing *In re Dean Witter P’ship Litig.*, 1998 WL 442456 at *6 (Del. Ch. July 17, 1998)). A claim for breach of fiduciary duty is also subject to the “discovery rule,” which tolls the statute of limitations where the claim’s accrual date has passed, “(1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.” *Oshiver*, 38 F.3d at 1387 (citations omitted).

Generally speaking, directors owe fiduciary duties to the corporation and its stockholders. *McRitchie v. Zuckerberg*, 315 A.3d 518, 536-37 (Del. Ch. 2024) (“Thus, in the standard Delaware formulation, the directors’ fiduciary duties run to the corporation and its stockholders.”). Thus, CCA and its stockholders may assert breach of fiduciary duty claims against the D&Os. To support equitable tolling or the discovery rule, there would have to be some fraudulent concealment or active misleading by the D&Os that would prevent CCA (or its shareholders) from gaining knowledge of the facts. Applying those principles here, CSCEC Holding is the sole shareholder and the only party other than CCA that could assert a breach of fiduciary duty claim. Based upon our investigation to date, there is no basis to conclude that the D&Os concealed any facts from or actively misled CCA or its sole shareholder due to the substantial overlap in the D&Os of CSCEC Holding and CCA.

4. Breach of Contract and Book Account Claims

New Jersey law sets a six-year statute of limitations for breach of contract and book account claims under N.J.S.A. 2A:14-1.

E. Coordination with Examiner

As noted above, on May 7, 2025, the Court entered the *Order Approving the Appointment of a Chapter 11 Examiner by United States Trustee* [Docket No. 211] approving the appointment of the Examiner. On June 2, 2025, the Court entered the Scope and Budget Order and ordered that the Examiner's scope of investigation is as follows:

[A]n examination of the scope and process of the ongoing investigation (the "Special Committee Investigation") currently being undertaken by the special committee (the "Special Committee") of the Debtor's board of directors. During the Special Committee Investigation, the Examiner may provide (a) recommendations to the Special Committee and its advisors regarding: (i) the process, (ii) methodology, and (iii) breadth of the Special Committee Investigation, and/or (b) input or feedback to the Special Committee and its advisors regarding (i) potential topics of the Special Committee Investigation and (ii) potential claims to consider.

Scope and Budget Order ¶ 1. By the Scope and Budget Order, the Examiner must conclude his investigation by no later than forty-five (45) days from the date this Investigation is complete. *Id.* ¶ 3. The Scope and Budget Order also requires the Debtor to facilitate the Examiner's investigation as follows:

To facilitate the Examiner's Authorized Investigation, as soon as practicable following entry of this Order, the Debtor shall (i) provide the Examiner with all non-privileged interview notes from interviews conducted by the Special Committee prior to the date of this Order and (ii) coordinate with the Examiner on the scheduling of future interviews. The Debtor and/or the Special Committee shall also provide to the Examiner as soon as practicable following entry of this Order all non-privileged documents and information relied upon in the course of the Special Committee Investigation or such other information that the Examiner may reasonably request that the Examiner deems relevant to perform the Authorized Investigation.

Id. ¶ 6.

Consistent with the foregoing, Cole Schotz has coordinated the Investigation with the Examiner since his appointment. Specifically, Cole Schotz regularly communicated with the Examiner (or his counsel, McDermott, Will & Emery LLP) with respect to the Investigation and coordinated the Examiner's presence at interviews on May 28, 2025 [REDACTED] June 3, 2025 [REDACTED] June 5, 2025 [REDACTED] June 6, 2025 [REDACTED] June 18 and 26, 2025 [REDACTED] July 10, 2025 [REDACTED] and July 15, 2025 [REDACTED]. Prior to and during each interview, Cole Schotz gave the Examiner the opportunity to ask questions of the interviewee and asked the Examiner if there were additional areas of inquiry Cole Schotz

should cover. The Examiner also was provided with key documents and agreements and periodic updates on the status of the Investigation. A substantially final draft of this Report also was provided to the Examiner on July 25, 2025, to afford the Examiner the opportunity to provide input on the Report before its finalization. We received comments from the Examiner on July 28, 2025, which we carefully considered and incorporated into the Report where we deemed appropriate.

IV. KEY FACTUAL FINDINGS

A. History of CCA

CCA is an indirect subsidiary of CSCEC Ltd., a Chinese company that is traded on the Shanghai Stock Exchange (SSE) and is one of the world's largest investment and construction companies. CCA is headquartered in Morristown, New Jersey, and directs its subsidiaries to perform construction and project management services on large-scale projects primarily in the New York and New Jersey metropolitan areas.

CCA was incorporated on May 26, 1993, in the State of Delaware under the name China Construction America Inc. and was owned by China State Construction Engineering Corporation. It was formed to conduct construction-related business in the United States. Specifically, the Non-Debtor Subsidiaries started with a project in South Carolina for Haier Refrigerator Plumbing. In 2002, CCA began taking on projects on the East Coast in the building sector, and subsequently expanded into infrastructure works and construction. In 2005, CCA formed CCA Civil, Inc., which received its first infrastructure project with Farmers International. On January 27, 2005, CSCEC Holding was incorporated in Delaware as a holding company as part of CSCEC Ltd.'s plan for an IPO. Currently, CCA is a direct subsidiary of CSCEC Holding. Twelve years later, on July 31, 2017, CCA was renamed CCA Construction, Inc.

CSCEC Holding¹⁷, CCA, and the Non-Debtor Subsidiaries are discrete components of CSCEC Ltd.'s broader business, which is operated by more than 100 distinct entities located throughout the world, eight of which are publicly traded. Together, the group of affiliated entities comprises the largest construction company in the world, operating in more than 100 countries and regions globally, with a focus on investment, development, construction engineering, survey, and design.

1. Organizational Structure

CSCEC Holding, CCA, and the Non-Debtor Subsidiaries (collectively, "China Construction America") pursue business opportunities in the United States. These entities are often referred to by the trade name "China Construction America." Currently, the Non-Debtor Subsidiaries focus on construction activities primarily in the New York and New Jersey metropolitan area, Washington, D.C., the Carolinas, and Texas. CCA directs and provides shared

¹⁷ As evidenced by the organizational chart annexed hereto as Appendix A, CSCEC Holding owns, in addition to the Debtor (and the Non-Debtor Subsidiaries), numerous other entities, including CCA Newport, Inc., CCA Unibuy, LLC, CCA International Group, Inc., CCA Institute, Inc., Morristown Southgate LLC, and Strategic Capital, LLC along with each of their subsidiaries.

services support to its Non-Debtor Subsidiaries as they deliver projects in the civil, commercial, residential, and public building sectors. Historically, the Non-Debtor Subsidiaries' projects included hotels, office buildings, residential buildings, hospitals, transit stations, railroad extensions, and bridges.

The Non-Debtor Subsidiaries include:

- China Construction America of South Carolina, Inc. ("CCASC"): CCASC is organized under the laws of the State of South Carolina, and it has a long and established history of supporting residents and communities of South and North Carolina. Among other things, CCASC has worked on construction of nearly 20 educational facilities. In addition to its school construction, CCASC supports the vital need for the construction of other public facilities. Most recently, CCASC has been involved in the residential building sector, including one large new residential project referred to as "Overlook."
- Plaza Group Holdings LLC ("Plaza"): Plaza is organized under the laws of the State of Delaware and provides construction management and general contracting on urban development projects. Since Plaza was formed in 1986, it has evolved into a multi-faceted firm with a national presence in the construction industry. CCA acquired Plaza in 2014 from third party Fisher Brothers. Plaza is headquartered in New York and also conducts business in New Jersey and Washington, D.C.; it also formerly had operations in Florida, California, and other states. Currently, Plaza is working in the expanding market of office conversion, taking vacant office space and converting it into much-needed residential units. Since 2014, the majority of CCA's revenues have come from Plaza.
- CCA Civil, Inc. ("Civil"): Civil is organized under the laws of the State of Delaware and specializes in large-scale construction and maintenance of heavy infrastructure facilities, such as transportation and utility projects. For 20 years, Civil has been an integral part of the public infrastructure contracting industry in the New York and New Jersey metropolitan area, performing public infrastructure work worth hundreds of millions of dollars. Civil also has a history of being one of the region's major contractors in the reconstruction and improvement of bridges, facilitating transportation throughout the region. Currently, there are no active projects and it is in the process of marketing itself for new contracts.
- Strategic Capital (Beijing) Consulting Co., Ltd. ("SC Beijing"): SC Beijing is organized under the laws of China and provides administrative services to CCA. Specifically, SC Beijing maintains an administrative office in China that complies with specific regulatory requirements, among other things, to provide insurance and other benefits to employees of the Shared Services Center.

2. Officers and Directors

CCA is overseen by a board of directors (the “Board”) and officers. Below is a chart identifying the D&Os of CCA during the Relevant Period.¹⁸ The chart identifies where a D&O has another role at CSCEC Holding. As shown in the chart, there is substantial overlap between the D&Os of CCA and CSCEC Holding:

██████████	• ██████████ of CCA (12/20/2020-2/20/2024) • ██████████ of CSCEC Holding (12/7/2020-10/29/2024) • ██████████ of CCA (12/20/2020-2/20/2024) • ██████████ of CSCEC Holding (12/20/2020-10/29/2024)
██████████	• ██████████ of CCA (12/20/20-12/10/21); (5/31/24-current) • ██████████ of CSCEC Holding (12/7/2020-current) • ██████████ of CCA (12/20/2020-6/30/2022) • ██████████ CSCEC Holding (12/20/2020-current)
██████████	• ██████████ (12/20/2020-current) • ██████████ (5/31/2024-current) • ██████████ (12/20/2020-10/18/2022) • ██████████ (5/31/2024-current)
██████████	• ██████████ (12/20/2020– 5/30/2024) • ██████████ (12/20/2020-5/30/2024) • ██████████ (12/20/2020-8/3/2023) • ██████████ (12/20/2020-5/30/2024)
██████████	• ██████████ (12/10/21-5/30/2024) • ██████████ (12/20/2020-5/30/2024) • ██████████ (12/13/21-8/3/2023) • ██████████ (12/20/2020-5/30/2024)
██████████	• ██████████ (2/1/2024-current) • ██████████ (2/21/2024-current) • ██████████ (2/21/2024-current) • ██████████ (2/21/2024-current)
██████████	• ██████████ (12/10/21-4/6/2022)
██████████	• ██████████ (10/21/2024-current)
██████████	• ██████████ (7/1/2022-current) • ██████████ (7/1/2022-current)

¹⁸ Many of these individuals were in these positions prior December 20, 2020.

██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)
██████████	• ██████████ of CCA (10/19/2022-8/3/2023)

In addition to the individuals identified in the chart, CSCEC Holding also had several directors who are not affiliated with CCA, including, but not limited to: ██████████ (independent director), ██████████ (independent director),²⁰ ██████████ (independent director), ██████████ (independent director), and ██████████ (director and ██████████ CSCEC Holding).²¹

The Board held annual meetings between 2021 and 2024 and maintained formal meeting minutes, resolutions, and written consents for all decisions requiring CCA's approval. Until Ms. Abrams was appointed, CCA did not have any independent directors. During interviews, none of the directors interviewed could recall any conflicts of interest except with respect to the debtor-in-

¹⁹ ██████████ holds positions at CCA Civil, Inc. and KM/Plaza (a Florida joint venture). However, they do not hold positions at CSCEC Holding. ██████████ no longer hold any positions with any CCA related entities.

²⁰ ██████████ was an employee of Plaza, but he left in December 2020 and currently serves as an independent director for CSCEC Holding.

²¹ While ██████████ does not hold a position with CCA, he is paid through the Shared Services Center.

possession loan negotiations during which Jichao Xu conducted negotiations on behalf of CSCEC Holding.

B. Baha Mar Litigation

This Chapter 11 Case is a direct consequence of a judgment issued by the Supreme Court of New York (the “NYS Court”) and entered on October 31, 2024, against CCA and two non-debtor affiliates, CSCEC (Bahamas) Ltd. (“CSCECB”) and CCA Bahamas, Ltd.²² (“CCAB”), and in favor of BMLP.

On December 26, 2017, BMLP asserted claims against CCA, CSCECB, and CCAB (“Defendants”) for breach of contract and fraud relating to the construction of the Baha Mar resort complex in the Bahamas (the “Baha Mar Litigation”).²³ The litigation arose from the construction of the Baha Mar, a mega-resort complex in Nassau, The Bahamas between 2010 and 2017. Baha Mar’s owner was Baha Mar, Ltd. (“BML”). BML’s 100% controlling shareholder and daily manager was BMLP. CCA had no role in the project, but CCAB (an indirect affiliate of CCA) was BML’s construction manager. Another indirect affiliate, CSCECB, made a preferred minority investment in BML pursuant to an investor’s agreement (the “Investors Agreement”). The Investors Agreement was between BMLP and CSCECB. The Debtor was not party to the Investors Agreement.

Between January 2011 and March 2015, BML took on over \$2 billion in debt, causing its common equity to be underwater. By March 2015, BML had overspent its budget by hundreds of millions of dollars. Baha Mar failed to open on a planned interim March 27, 2015 partial completion date. CCAB had completed 97% of the construction as of that date. In June 2015, BML filed for bankruptcy in Delaware. In 2015, Bankruptcy Judge Kevin Carey dismissed BML’s filing, finding it was in BML’s best interest for its insolvency issues to be handled by the Bahamian courts. BML entered winding up proceedings in The Bahamas. In 2016, the Bahamian receivers sold BML’s assets to a third party and the Bahamian Supreme Court ordered the liquidation of BML; BMLP and CSCECB recovered nothing on their shares. On December 26, 2017, BMLP filed suit against CCA, CCAB, and CSCECB for breach of the Investors Agreement and fraud.

On October 20, 2024, after a trial, the NYS Court found in favor of BMLP on the breach of contract and fraud claims in the amount of \$845 million, which amount totaled \$1,642,598,493.15 (657550/2017, NYSCEF No. 764) after calculating pre-judgment interest. The trial court pierced the corporate veil²⁴ between CSCECB, CCAB, and CCA.

²² Both of which are Bahamian entities.

²³ *BML Properties Ltd. v. China Construction America, Inc., now known as CCA Construction, Inc. et al*, Index No. 657550/2017 (Sup. Ct. N.Y. County).

²⁴ The trial court relied upon New York’s standard for piercing the corporate veil notwithstanding the fact that CCA is a Delaware corporation and CSCECB and CCAB are Bahamian entities.

In its decision after trial dated October 18, 2024 (the “Baha Mar Decision”) (657550/2017, NYSCEF No. 755), the NYS Court found the following facts to support piercing the corporate veil:

The three Defendant entities were all subsidiaries of one parent company, CSCEC, Ltd.

There was substantial overlap between the officers and directors of the three Defendant entities.

Mr. Yuan was the President of CCA, Inc., the Chairman of CCAB, a Director of CSCECB, and the Chairman and President of CSCEC Holding Company, Inc. (tr. 894:8-14; tr. 883:20-884:4). He also signed documents as both the Chairman and President of CCAB and CSCECB (JX 66). Mr. Yuan testified that there was no officer senior to him of any of the Defendant entities (or of other CCA subsidiaries) in the entire hemisphere (tr. 886:1014). He testified further that, as to each Defendant entity, Mr. Wu, Mr. Wang, and Mr. Liu all reported to him (tr. 885:13-17). Requests from CCAB to the parent company CSCEC Ltd. had to go through Mr. Yuan (tr. 948:6-9).

Mr. Wu was an Executive Vice President of both CCA, Inc., and CCAB. Mr. Wu testified that the decision to appoint him as the CSCECB Board Member of BML was Mr. Yuan’s alone (tr. 1383:12-22).

Mr. Wang was a Vice President of both CCA, Inc. and CCAB.

Mr. Liu was a Senior Vice President of both CCA, Inc. and CCAB.

The Defendants consistently held themselves out as working on behalf of CCA or otherwise conflated and blurred beyond independent recognition their purportedly separate corporate existences.

Although CCAB was the Project Manager and General Contractor for the Project, the Defendants often used CCA, Inc. letterhead, emails, and signatures for Project related documents and communications (JX 597; JX 581; JX 624; JX 704; JX 718; JX 742; JX 559; JX 456). In one notable example, when BMLP asked CSCECB to contribute \$15 million to cure an equity shortfall (and when it made its equity contribution), Mr. Wu responded “on behalf of [CCA, Inc.] and in my capacity as the current representative of [CSCECB] to the Board of [BML],” and used CCA, Inc. letterhead (JX 688, JX 704). And, in that letter, Mr. Wu defends the conduct

of CCAB and requests that BML make an additional \$140 million payment to CCAB (JX 704). This obviously breached the Bests Interests Obligation but it also highlighted the manner in which Mr. Wu and others slipped from entity to entity as it suited their needs – regardless of whether the entity that they responded or made the request on behalf of was the right one or not.

Mr. Wu also testified that CCAB’s decision to purchase the Hilton was not made by CCAB, but by the parent company, CSCEC Ltd., as an “investment from the parent company” (tr. 1164:22-1165:4). In addition, CCA, Inc. marketed the Hilton as a project of CCA, Inc.’s, not CCAB’s (JX627.5; tr. 935:4-17; 936:15-21; 941:5-9). But CCA, Inc. did not buy it. CCAB did.

Mr. Yuan testified that, in effect, if Mr. Izmirlian needed any assistance from any of the three Defendants, he could speak with Mr. Yuan and Mr. Yuan would provide that assistance (tr. 965:9-15).

The Defendant entities also comingled their financial obligations. Most notably, in the Investors Agreement, CSCECB’s \$150 million investment in the Project took the form of a net off of future payments due to CCAB as Construction Manager (JX 25). The Defendants failed to show support for their counterargument that this \$150 million net off was in fact an owner’s contingency; never during the trial did the Defendants demonstrate that the \$90 million cash portion of this \$150 million purported investment by CSCECB was actually made.

For the entire time Mr. Wu worked on the Project, his salary was paid not by CCAB, but by yet another related entity, China Construction Americas of South Carolina (tr. 1146:31148:1).

Although CCAB retained Notarc (purportedly to do “consulting work” as to its Panama exploration, although it was completely unclear the connection Notarc had to anything other than Notarc’s principal’s father – Sir Baltron Bethel), Notarc was paid by yet another related entity, CCA Panama (JX 391; JX 933).

(657550/2017, NYSCEF No. 755, ¶¶ 167-75).

Based on these findings, the NYS Court concluded: (i) the Defendants shared ownership, officers, and directors; (ii) the Defendants shared offices and addresses; (iii) CCA, Inc., acting through Mr. Yuan, controlled CCAB and CSCECB; (iv) the Defendants commingled assets; (v) the Defendants paid or guaranteed obligations of one another; (vi) the Defendants were not treated as separate profit centers; (vii) the Defendants did not deal with one another at arm’s length; and

(viii) the Defendants otherwise conflated their corporate identities. (657550/2017, NYSCEF No. 755, ¶ 176). It further concluded that CCA (through Mr. Yuan), in particular, dominated the other entities and used that domination and commingling of assets and corporations to perpetrate a wrong on BMLP. *Id.* Accordingly, the NYS Court concluded that the Defendants operated as a single economic entity and that piercing the corporate veil was appropriate under New York law. *Id.*

C. The Prepetition Shared Service Agreements

In addition to being the sole owner of the Non-Debtor Subsidiaries, CCA also functions as the Shared Services Center (the “SSC” or “Shared Services Center”) for certain Non-Debtor Subsidiaries and Non-Debtor Affiliates. CCA plays a vital role by providing operational support services including Communications, Accounting, Information Technology, Insurance, Human Resources, Legal, and other General Administration services, all according to an established program in which costs are allocated among affiliate participants to compensate CCA for the services it provides (the “Shared Services Program”).

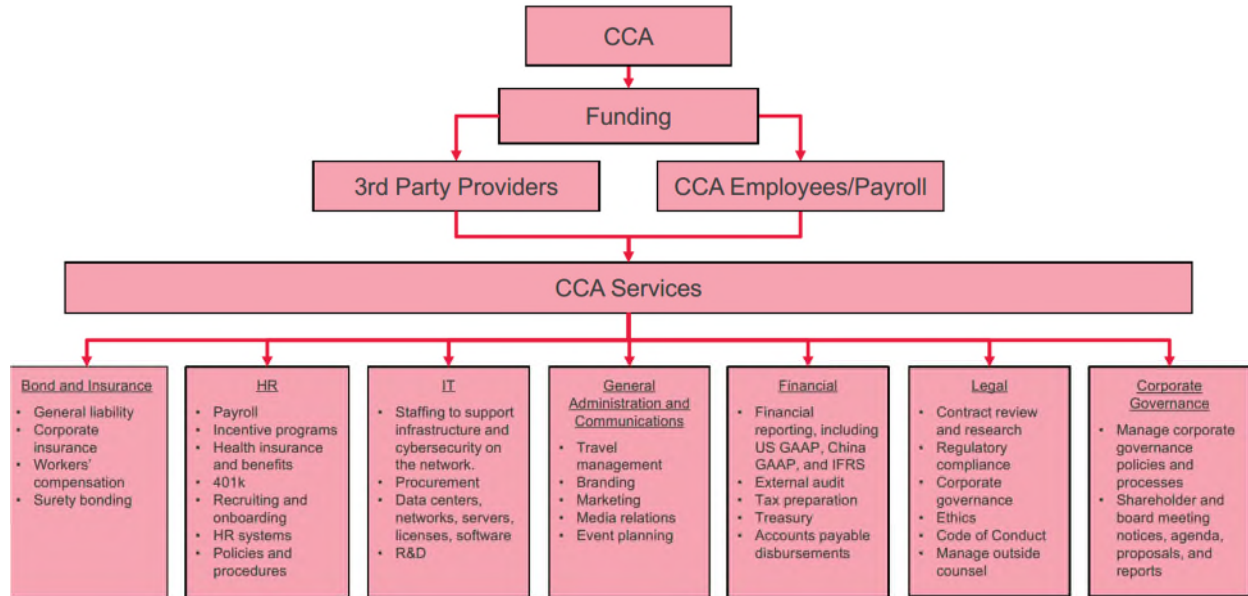
CSCEC Holding originally conceived of the idea of the SSC in 2016 to maximize resources and efficiencies. In 2018, CSCEC Holding entered into shared services agreements (the “SSAs” or “Shared Services Agreements”) with Non-Debtor Subsidiaries: Plaza and Civil as well as Non-Debtor Affiliates: CCA South America, Inc. n/k/a CCA International Group, Inc.²⁵ (“CCA International”), Strategic Capital, LLC (“Strategic Capital”), and CCA Unibuy, LLC (“Unibuy”) along with their subsidiaries (collectively, “Shared Services Members”).²⁶

As shown in the chart below, pursuant to the SSAs, CSCEC Holding agreed to provide the Shared Services Members (and their subsidiaries) with services related to Corporate Governance, Legal, Financial, General Administration and Communications, IT, Human Resources, and Bond and Insurance. The SSAs provide that all SSC services will be “provided through China Construction America Shared Services Center (“CCASSC”).” Furthermore, CSCEC Holding “may delegate the performance of any of the SSC Services to its subsidiary(ies) or affiliate(s), and/or third-party service provider(s).”

²⁵ CCA’s shared service relationship with its subsidiary, CCASC, is governed by the agreement with CCA International. CCASC was previously managed by CCA South America, Inc. (now known as CCA International).

²⁶ In addition, SC Beijing provides certain services to CCA pursuant to an Enterprise Consulting Services Agreement. CCA’s fees to SC Beijing are allocated to other entities.

CCA Shared Services Overview



With respect to the fees, the SSAs provide:

The CCA Shared Services Center services fee (the “Services Fee”) will initially be part of the CSCEC Holding corporate overhead allocation assigned to each CCA Member until such time as an alternative charge-back methodology is developed. Additionally, CCA Member shall reimburse CSCEC Holding for any costs and expenses it incurs in connection with or arising out of the provision of the SSC Services, including but not limited to, payments to third-party vendors and service providers.

The SSAs do not provide for the charging of interest in connection with the reimbursements. At all relevant times, pursuant to the express delegation rights under the SSAs, CSCEC Holding delegated the performance of the SSAs to CCA because the employees performing these functions were CCA employees [REDACTED]

The SSAs provide “This Agreement and the rights and liabilities of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of New Jersey.”

On March 5, 2021, the respective boards of directors of CSCEC Holding and CCA approved the assignment of all existing SSAs to CCA. The purpose of the assignment was to ensure

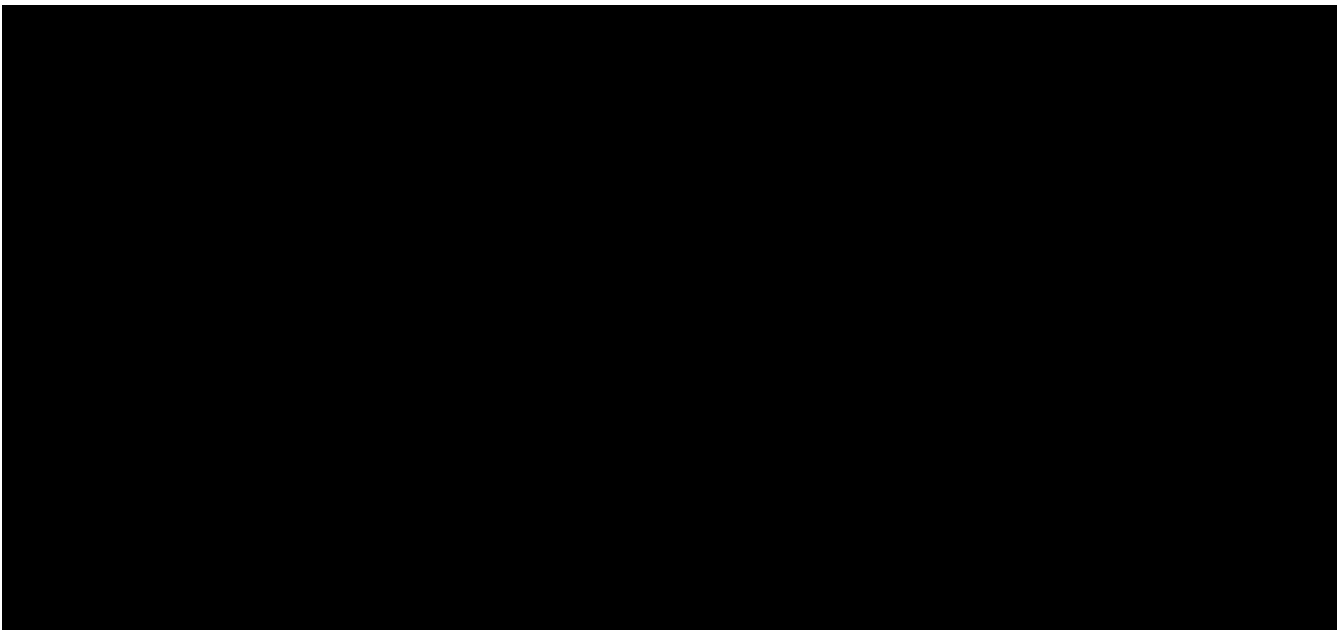
that the documentation conformed to how the SSC was actually operating. There was no consideration paid by either party for the assignment. CCA did not take on any new obligations that it had not already been performing as delegee under the SSAs. We have been advised that the assignment did not functionally affect how the SSC operated. After the assignment, CCA registered a trade name called “ProShare Services” but does not appear to have used this trade name in practice. According to CCA’s audited financial statements through 2021 (the latest date available), CCA was wholly dependent on CSCEC Holding to fund the SSC.

CSCEC’s U.S.-based entities utilize a system known as the “OA System,” which is a proprietary online application by which various requests for approval were submitted by Company personnel. The OA system was used by CCA for its SSC functions (Corporate Governance, Legal, Financial (including intercompany loans), General Administration and Communications, IT, Human Resources, and Bond and Insurance). Typically, an employee would make a specific request on the “OA System,” which would then be reviewed and analyzed. The Board approved the adoption of the Authorization Systems and Internal Workflows for CCA which identified which specific actions required approval by specific SSC department and approval through the OA System.

D. Intercompany Loans and Transfers

1. Summary of Intercompany Balances as of the Petition Date

Set forth below is a chart prepared from CCA’s books and records, showing the intercompany balances of CCA’s “due tos”²⁷ and “due froms” as of the Petition Date, including amounts due to CSCEC Holding:



²⁷ The terms “due to” and “due from” are used by the Debtor, the Shared Services Members, CSCEC Holding, and the Non-Debtor Affiliates in their general ledgers to describe the intercompany payables and receivables.

2. Intercompany Funding From CSCEC Holding to CCA

As of the Petition Date, CCA's Schedules of Assets and Liabilities reflected a non-priority unsecured claim for "Intercompany Funding" in the amount of \$124,804,769 that was not marked as contingent, unliquidated, or disputed. This amount reflects the net amount owed to CSCEC Holding related to cash and non-cash transactions²⁸ over time, which are described herein in sections 2(a) and 2(b). Beginning on December 22, 2020, such Intercompany Funding totaled [REDACTED], which increased by [REDACTED] during the Relevant Period accounting for the \$124,804,769 net owed to CSCEC Holding on the Petition Date. See Apps. L & N.

(a) The Holding Loans

Historically, CSCEC Holding has from time to time provided loans to CCA to support its shared services functions [REDACTED] (the "Holding Loans"). During the Relevant Period, CCA's financial statements indicate that CSCEC Holding provided CCA with approximately [REDACTED] in cash: [REDACTED] between December 22, 2020 and December 31, 2020, [REDACTED] in 2021, [REDACTED] in 2022, [REDACTED] in 2023, and [REDACTED] between January 1, 2024 and the Petition Date.²⁹ See Apps. B & N.

Evidence adduced during the Investigation confirmed that there was no formal documentation to support the Holding Loans. According to one former employee, there was no formal documentation for the Holding Loans because CCA was merely a "shell company" or a "pass-through entity." Nevertheless, the Holding Loans were noted as "due tos" and "due froms" that appear on both CSCEC Holding's and CCA's financial records. To this end, CCA's 2020 Audit and 2021 Audit treated the amounts CCA (and the Non-Debtor Subsidiaries that were consolidated with CCA for purposes of these audits) owed to CSCEC Holding as "liabilities" and reflected such amounts on a separate line-item for amounts that were "Due to Parent." Company personnel also consistently referred to the amounts transferred from CSCEC Holding to CCA as "loans" and stated that CCA intended to pay back the Holding Loans as funds became available and financial circumstances permitted.

From a process perspective, the SSC's finance function would monitor CCA's cash balances and identify a funding need for CCA based upon its anticipated shared service obligations. CCA would then use its "OA" workflow approval system to request funding from CSCEC Holding. As part of the investigation, we searched the OA workflow approval requests for all amounts provided by CSCEC Holding to CCA during the Relevant Period. None of the approval requests we located made any specific reference to whether the Holding Loans were loans or equity infusions, nor did the OA requests include any documentation, interest calculations, or repayment terms. CSCEC Holding's Chairman, who also is CCA's Chief Executive Officer and

²⁸ As used herein, "non-cash" transactions generally refer to allocations of shared service or other expenses, unless otherwise stated.

²⁹ [REDACTED]

President, would approve the funding requests on behalf of CSCEC Holding, through the OA system.

(b) Transfers on Account of the Holding Loans

CCA's books and records also reflect cash payments from CCA to CSCEC Holding totaling [REDACTED] during the Relevant Period (the "Potential Dividends"). Specifically, CCA paid CSCEC Holding [REDACTED]

[REDACTED] In most instances,

[REDACTED] For example,

[REDACTED] See Apps. B & N.

In addition to the [REDACTED] million cash transferred to repay the Holding Loans, there were [REDACTED] of non-cash transactions during the Relevant Period that reduced the "due to" CSCEC Holding from CCA by such amount. See Apps. B & L. The [REDACTED] reduction is primarily due to [REDACTED] of reclassifications of amounts owed by CCA to CSCEC Holding to amounts owed by Non-Debtor Subsidiaries and Non-Debtor Affiliates to CSCEC Holding and [REDACTED] of tax-related payments paid by CCA and allocated to CSCEC Holding, which was partially offset by [REDACTED] of bonus-related payments paid by CSCEC Holding directly to ADP and allocated to CCA which then reallocated the amounts to Non-Debtor Subsidiaries and Non-Debtor Affiliates.

As a result, the total transfers – cash and non-cash – from CCA to CSCEC Holding during the Relevant Period was approximately [REDACTED] which reduced the "due from" owed by CCA to CSCEC Holding and the "due to" on CCA's books and records.

(c) Summary of the Transfers Between CCA and CSCEC Holding

In sum, during the Relevant Period, CSCEC Holding made cash transfers to CCA in the amount of approximately [REDACTED]. During the Relevant Period, CCA transferred to CSCEC Holding approximately [REDACTED] in cash and non-cash transactions. The net balance under the Holding Loans (due from CCA to CSCEC Holding) increased by approximately [REDACTED] during the Relevant Period. As of the Petition Date, the balance of the Holding Loans was approximately \$125 million. See Apps. B, L, & N.

Set forth below is a chart showing the cash and non-cash transactions between CCA and CSCEC Holding during the Relevant Period:

CSCEC Holding - CCA Cash and Non-Cash Transactions

3. Transfers Between CCA and the Shared Services Members

(a) Allocations of Costs to the Shared Services Members

CCA provides shared services to the Shared Services Members pursuant to the SSAs. During the year, shared service expenses are either directly allocated to the Shared Services Members (“Direct Allocations”) or remain as CCA Unallocated Expenses until year end (“Indirect Allocations”). See Apps. D, E, F, & G.

In conducting our analysis of the allocations, we reviewed numerous documents provided by CCA for the Relevant Period³⁰ related to shared service expense allocations made by CCA to the Shared Services Members. We reviewed each Shared Services Member’s SSA. We reviewed each allocated “due from” the Shared Services Members’ general ledger transactions (“General Ledger Allocation Transactions”) to determine the allocations made by CCA throughout the year to the Shared Services Members. Each General Ledger Allocation Transaction had an identifying vendor name, vendor code, invoice number and allocated entity. CCA provided a mapping of vendor name and vendor code to expense type such as payroll related, insurance, IT and office expenses. We summarized each General Ledger Allocation Transaction into expense type categories and compared year-over-year Direct Allocation amounts and allocation methodology. We also received trial balance information for each year end from 2021-2024 (“Year End Trial Balances”). We reconciled all General Ledger Allocation Transactions to the Year End Trial Balances. We received and analyzed year-end allocation worksheets and reconciled them to such Year End Trial Balances and general ledger transactions.

During the Relevant Period, both Direct Allocations and Indirect Allocations were consistent with CCA’s current practice and the services provided by CCA were related to the SSAs. All General Ledger Allocation Transactions were consistent with the SSAs. The entities involved in the General Ledger Allocation Transactions during the Relevant Period are Shared Services Members or their subsidiaries. CCA both directly and indirectly allocated such payroll and third party invoices to the Shared Services Members.

³⁰Because the Indirect Allocations are made at year end, we did not include the Indirect Allocation at the end of 2020 (for expenses outside the Relevant Period), but we did include the indirect allocation at the end of 2024 (for expenses inside the Relevant Period).

Direct Allocations were made in CCA's books and records at the time CCA paid third-party vendor invoices and employee payroll. The Direct Allocation methodology is typically determined by invoice related specifically to certain Shared Services Members and by payroll where certain employees are working directly with Shared Services Members on projects. CCA paid payroll and third-party vendors directly and did not pay the Shared Services Members for such expenses.³¹ Therefore, in the ordinary course of business, CCA allocated expenses paid directly by CCA for payroll and third-party invoices on behalf of the Shared Services Members as amounts owed to CCA. By analyzing the General Ledger Allocation Transactions and identifying adjustments and reclassifications of amounts owed to CCA between the Shared Services Members, it is clear that Direct Allocations were adjusted and reviewed periodically.

The year-end Indirect Allocation methodology was consistent throughout the time period and supported by detailed year-end allocation worksheets. The year-end Indirect Allocation methodology consists of (i) CCA payroll allocations (that had not been directly allocated during the year) based on headcount of the Shared Services Members and (ii) third-party Indirect Allocations (that had not been directly allocated during the year) determined by each CCA shared service department head based on time spent throughout the year working on behalf of the Shared Services Members. After Direct Allocations and Indirect Allocations were applied, CCA retained certain expenses that remain unallocated. These unallocated expenses were not owed from the Shared Services Members to CCA.

Once the shared service expenses were allocated, CCA marked the allocated amounts owed by the Shared Services Members in CCA's books and records as "due from" accounting entries. The Shared Services Members then made a concurrent "due to" accounting entry in their books and records that they owe CCA that amount of money. When the Shared Services Members made payments to CCA, the "due to" and "due from" entries were updated contemporaneously in the respective entity's books and records.

While the SSAs do not provide a specific time period to reimburse CCA for the Shared Services, we have been advised by Company personnel that Direct Allocations were supposed to

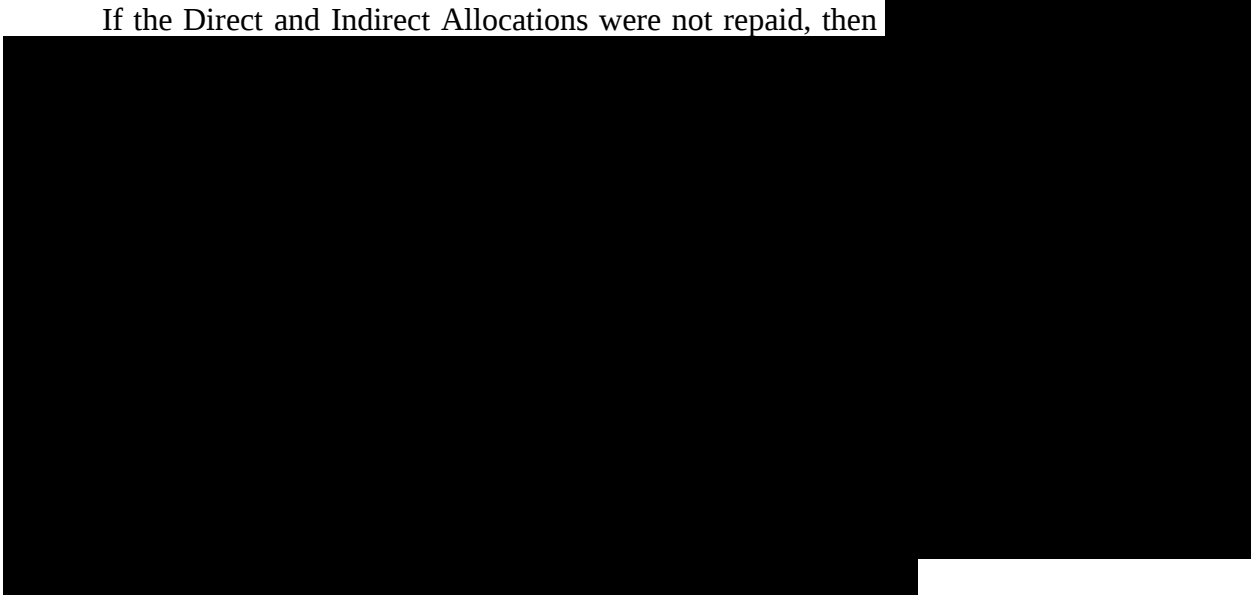
³¹ We investigated why CSCEC Holding made certain direct payments to its payroll provider Automatic Data Processing, Inc. ("ADP") for payroll despite that function belonging to CCA under the SSAs. [REDACTED]

[REDACTED]

[REDACTED]

be repaid on a quarterly basis and Indirect Allocations were supposed to be repaid at the end of the first quarter of the following year.

If the Direct and Indirect Allocations were not repaid, then



Notwithstanding



CCA personnel were not able to provide any information concerning when CSCEC Holding started charging interest to the Shared Services Members or the total amount of interest charged on any particular loan. CCA personnel were also unable to locate any documents to support the basis for CSCEC Holding's charging of interest or any formal or informal documentation indicating an agreement by CSCEC Holding to collect interest on CCA's Direct Allocations and Indirect Allocations to the Shared Services Members.

(b) Cash Transactions and Non-Cash Allocations to and from the Shared Services Members and CCA

We also reviewed documents provided by CCA related to CCA's cash and non-cash transactions to and from the Shared Services Members by reviewing CCA's general ledger and identifying all cash and non-cash transactions made between January 1, 2021 and December 22, 2024. We identified all transactions between CCA and the Shared Services Members that were generally recorded in CCA's books and records as reflected in the "due to" or "due from" affiliates' and subsidiaries' accounts. In addition, certain cash transactions were recorded as CCA's expenses, such as payments for rent and SC Beijing quarterly contractual fees.

During the Relevant Period, non-cash transactions from CCA to the Shared Services Members totaled \$57 million, primarily related to (i) \$69 million of allocations from CCA to the Shared Services Members, partially offset by (ii) \$12 million reclassifications of amounts owed by Shared Services Members to CCA to amounts owed by Shared Services Members to CSCEC Holding. See App. C.

During the Relevant Period, cash transactions related to the “due from” balances from CCA to the Shared Services Members totaled \$15 million [REDACTED]

² See Apps. B & C.

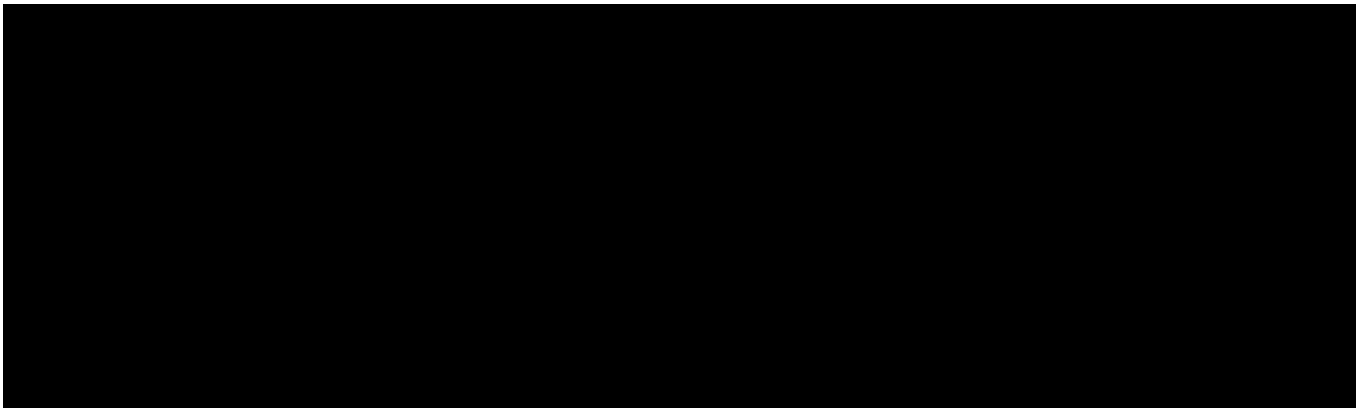
During the Relevant Period, [REDACTED]

See id.

The net cash from the Shared Services Members to CCA was \$21 million as it related to the “due from” balance.

(c) Summary of Transfers Between CCA and Shared Services Members

As of December 31, 2020, the amount “due from” the Shared Services Members to CCA totaled \$62 million. By the Petition Date, CCA’s “due from” the Shared Services Members had increased by \$36 million to \$98 million. The increase of \$57 million in non-cash transactions “due to” CCA was partially offset by the \$21 million of net cash received by CCA from the Shared Services Members. *See* Apps. B & C. The following chart reflects the transactions between CCA and the Shared Services Members:



4. Transactions between CSCEC Holding, the Shared Services Members, and Other Non-Debtor Loan Recipients

(a) Loans From CSCEC Holding to Shared Services Members and Other Non-Debtor Loan Recipients

In the ordinary course of business, CSCEC Holding has from time to time provided intercompany loans directly to certain subsidiaries and affiliates to support their operations. According to CSCEC Holding’s books and records, CSCEC Holding has made loans to each of

the Shared Services Members and to the Other Non-Debtor Loan Recipients (collectively, the “Non-Debtor Loans”).

Some of the Non-Debtor Loans between CSCEC Holding and Plaza, and CSCEC Holding and [REDACTED], were documented by Intra-Group Loan Agreements that appear to be a [REDACTED] We did not receive intercompany loan agreements for all Non-Debtor Loans.

[REDACTED]

[REDACTED]

On August 27, 2024, CCA issued on behalf of CSCEC Holding an “Announcement of Intra-group Loan Guidelines” to “improve and standardize” the intra-group loan management process of CSCEC Holding for all loans retroactive to April 1, 2024. There was no standard policy in place prior to the issuance of this policy in August 2024. The policy was intended to cover all loans from CSCEC Holding to its subsidiaries to support their operational needs. Notwithstanding a reference in the policy that it be used for “all subsidiaries,” the policy was not applied to the Holding Loans, as the loans contemplated by the policy related solely to loans made to the operating entities and not to CCA. In this regard, one interviewee stated that there were no such loan agreements because CCA was a “passthrough” entity or a “department” of CSCEC Holding. CCA personnel also confirmed that the purpose of the policy was to better manage CSCEC Holding’s intercompany loan process.

The policy described two types of “intra-group loans” as follows:

- Special Fund Loan (SFL) refers to loans initiated by CCA subsidiaries for specific operational matters. The funds must be

used exclusively for the designated purpose and cannot be diverted for other uses. The loan amount will be determined on a case-by-case basis according to the specific matter.

- Working Capital Loan (WCL) refers to loans to address the shortage of working capital in CCA subsidiaries' operations. The loan amount will be determined based on the annual funding needs of the subsidiary and will be adjusted every six months. In principle, the total amount of working capital loans shall not exceed \$3 million USD and must be repaid by the end of the year.

The policy further states that "Accounting & Finance (A&F) SSC will formulate the SFL and WCL interest rates based on current market rates and [CSCEC Holding's] financing costs."

To obtain a loan from CSCEC Holding, employees or executives from the applicable subsidiary would contact CCA's Chief Financial Officer (who also served as Chief Financial Officer of CSCEC Holding) to request additional liquidity. The Chief Financial Officer would then investigate whether there was a need for funds and request additional information if necessary. The Chief Financial Officer would then determine whether CSCEC Holding had sufficient funds to extend the loan and would then ask the subsidiary to prepare a loan proposal and provide an explanation for the request for CSCEC Holding review. If approved by the Chief Executive Officer of CSCEC Holding, the SSC would prepare the loan documentation that, in some circumstances, was reviewed by the SSC's legal team.

(b) CSCEC Holding Cash and Non-Cash Transactions to and from the Shared Services Members and Other Non-Debtor Loan Recipients

We reviewed documents during the Relevant Period related to [REDACTED]

During the Relevant Period, [REDACTED]

See App. L.

During the Relevant Period, [REDACTED]

See Apps. L & N.

(c) **Summary of Transfers Between** [REDACTED]

During the Relevant Period, [REDACTED]

(d) **CSCEC Holding Transfers** [REDACTED]

We also investigated [REDACTED]

. We investigated

this allegation and, [REDACTED]

[REDACTED]
See App. M.

5. Summary of [REDACTED]

Set forth below is a chart prepared from CSCEC Holding's books and records, [REDACTED]

[REDACTED]

See also App. L.

The Investigation did not reveal any transfers from CCA that were not reasonably supported or explained nor did the Investigation reveal any dissipation of CCA's assets, except as noted in this Report.

E. Audits

We investigated CCA's engagement of outside audit firms to conduct audits of the Non-Debtor Subsidiaries' financial statements and to produce audited financial statements on their behalf. Prior to 2022, CCA and CSCEC each received audits consolidated at the CCA and CSCEC Holding levels, respectively, which were completed by [REDACTED]. In 2022, [REDACTED] which subsequently assumed the engagement.

Subsequently, [REDACTED] 2024, prior to the completion of the 2022 audit. No audit reports have been completed for the years 2022-2024. CBIZ has expressed that the primary reason it has been unable to complete the audits for 2022 is the failure of CCA, CSCEC Holding and the Non-Debtor Subsidiaries to provide all the information and documents requested by the auditors.

Some of CCA's representatives challenged that assertion during interviews and placed the blame for the delay at least in part on the audit firms; however, others have admitted that there has been some delay because of internal turnover. CCA's representatives stated that the audits for 2020 and 2021 were performed on a consolidated basis at the CSCEC Holding level, though audits were conducted at the CCA level during those years. For 2022, CCA was not to receive a separate audit. This was, according to CCA's representatives, because CSCEC Holding was party to financing documents that required CSCEC Holding to provide its lenders with annual audited financial statements and CCA's audit "was not that important to them" and that "no one used the CCA level's financials." In addition, bonding companies relied on CSCEC Holding's financials. To save on audit fees, audits were not completed for a majority of the Non-Debtor Subsidiaries.

CCA's representatives stated that audit reports were historically delivered late due to the complexities of the business. CCA hired a deputy CFO and controller in 2018. By 2021 the issuance of timely reports was "almost back to normal." However, "the world changed after the pandemic," and turnover of employees became a growing problem, which in turn caused the delay in the audits. [REDACTED]

CCA's representatives differed as to whether the failure to secure audit reports from 2022 forward had a negative impact on CCA's operations. Some stated that it caused some difficulty in obtaining bonds necessary for construction work, while others did not believe it caused any problems for CCA. Construction work may have slowed for reasons unrelated to the audit reports.

[REDACTED] replaced CohnReznick LLP with Friedman because Friedman quoted a substantially lower price for the same work.

F. Executive Compensation³⁴

1. Director and Officer Compensation

As part of the investigation into the compensation to D&Os, we reviewed various documents provided by CCA during the Relevant Period related to payments made to the D&Os. We reviewed the dates that each individual held a particular D&O title. We reviewed: (i) the D&Os' bi-weekly payroll payments; (ii) the D&Os' bonus payments and bonus plan documents (including incentive policies related to business development and project profitability, bonus amount approvals and project specific bonus calculations); and (iii) the D&Os' expense reimbursements (including expense reimbursement policies and procedures).³⁵ As to item (i), we did not conduct a full market analysis of CCA's compensation structure as such an analysis would have been prohibitively expensive and time-consuming under the circumstances, but note that during the Relevant Period no D&O at CCA received a salary exceeding [REDACTED] in a given year.

During the Relevant Period, the D&Os' salaries were paid on a bi-weekly basis and were included with CCA payroll to all CCA employees. We analyzed and reviewed all the D&Os' payroll for the Relevant Period, regardless of the dates that a particular individual served as a director or officer; CCA paid the D&Os for the time they were employed, regardless of whether an individual held a director or officer title. Payroll payments to the D&Os were made in the normal course and we did not note any unusual payroll payments.

[REDACTED]
[REDACTED] In general, the business development and project-specific incentive bonus payments were consistent with CCA's bonus plan policies and calculations. We reviewed the bonus plan approval documents and concluded that bonuses were approved by the appropriate designated D&O for each specific bonus plan. In cases where the D&Os were paid for project-specific bonus plans, such bonus amounts were allocated to the appropriate subsidiary or affiliate. Certain of the D&O bonus payments were paid over time and some payments for various plans were grouped together into a single payment. Specifically, we tracked all payments and reconciled each payment to the specific bonus plan. We reviewed backup project specific calculations by individual which tied to the total bonus payments for each project. We also reviewed the bonus payments to CCA's non-D&O employees and concluded that they were paid in accordance with the bonus plans and policies.

We also investigated the [REDACTED]
[REDACTED] for the period 2018-2023. Between 2018 and 2020, CSCEC Holding paid approximately [REDACTED] to CCA employees that were allocated to [REDACTED]
[REDACTED]

³⁴ See App. H.

³⁵ None of the directors received a separate director fee with the exception of Ms. Abrams.

[REDACTED]

The Investigation did not reveal any facts that would lead to a conclusion that the bonuses paid to CCA employees between 2018 and 2020 were excessive or unwarranted. As a result, we determined that there is no viable claim to recover the bonuses paid between 2018 and 2020 because any claim to claw back those bonus payments is beyond the applicable statute of limitations and look-back period.

The written policies concerning bonus and incentive plans evidence that the payments made in accordance with the policies were non-discretionary in nature and/or were tied to the profitability of construction projects. Even given the non-discretionary nature of the policies, there were instances of bonus payments not being made, such as related to 2023 and 2024 business development and project-specific incentives. Conversely, there was no evidence uncovered to suggest that bonus or incentive payments were made in excess of CCA's written policies.

2. Expense Reimbursements

During the Relevant Period, CCA reimbursed D&O expenses for documented business expenses. Specifically, we analyzed and reviewed detailed expense reimbursements of amounts over \$10,000, which often represented the grouping of multiple expense reports into a particular reimbursement payment. There were examples of reimbursements that did not adhere to CCA's policy and procedures, where such reimbursements related to expenses incurred years prior to the reimbursement payment. However, the necessary approvals were obtained and documented in such circumstances prior to the payment of such expense reimbursements. All expense reimbursement payments were recorded in CCA's books and records in the appropriate expense classification.

We reviewed various documents provided by CCA relating to [REDACTED] expense reimbursements for the time period 2014-2024. For each payment, CCA provided reimbursement detail including the nature of the reimbursement, which primarily consisted of travel, hotel and meals. We analyzed all of the expense reimbursements made by CCA to [REDACTED] during the Relevant Period. Additionally, we reviewed the underlying receipts and internal approvals of the larger expense reimbursements, which typically included expenses incurred on various dates that were grouped together into a particular reimbursement payment. We were also provided with [REDACTED] personal Business American Express card statements from 2014-2024. We analyzed each American Express statement, identified the bank account used to pay each statement and cross-referenced charges on the statement with expense reimbursements made by CCA to [REDACTED]. See App. I.

During the time period 2014-2024, CCA reimbursed [REDACTED] for reasonable and documented business expenses. From the documents provided, there was no indication that CCA reimbursed [REDACTED] for any non-business-related expenses. CCA's management confirmed that, prior to 2014, [REDACTED] opened a personal Business American Express card to increase his credit limit and that CCA is not a party to the personal Business American Express credit card. In

addition, all the payments made to [REDACTED] personal Business American Express card were made from [REDACTED] personal bank account. The bank and bank account number on record that remitted the payments to American Express was not a CCA bank account. Although there were some reimbursed business expenses that [REDACTED] paid on [REDACTED] personal American Express card, such reimbursements were appropriately documented. *See id.*

G. Solvency Assessment

1. Solvency Assessment for CCA³⁶

In conducting a solvency analysis, there are three standard solvency tests: the Balance Sheet test, the Cash Flow test, and the Reasonable Capital test (the “Solvency Tests”). We analyzed CCA’s financial health as of FYE 2021, FYE 2022 and FYE 2023, using two standard solvency tests: the Balance Sheet test and the Reasonable Capital test.³⁷ A full solvency analysis, which typically includes an assessment of fair market value of each line item, was not performed because such an analysis would have been prohibitively expensive and time-consuming under the circumstances. However, the results below are indicative of our initial solvency assessment.

CCA failed the Balance Sheet test as of FYE 2021, FYE 2022 and FYE 2023, with liabilities exceeding assets by over \$6 million at a minimum and increasing each year of our analysis. This liability amount would increase significantly if the \$845 million contingent liability from the Baha Mar lawsuit were taken into consideration. Additionally, CCA failed the Reasonable Capital test as of FYE 2021, FYE 2022 and FYE 2023. Despite CSCEC Holding consistently financing CCA’s operating needs, if the \$845 million contingent liability from the Baha Mar Litigation were incorporated into this analysis (even at a discounted basis), then CCA would lack adequate capital to operate. Therefore, for purposes of this Report, we presumed CCA is insolvent as of FYE 2021, FYE 2022 and FYE 2023.

Finally, for the same reasons discussed above, we presume CCA is insolvent at all times in FYE 2024. Prior to entry of the Baha Mar Judgment on October 20, 2024, CCA failed both the Balance Sheet test and the Reasonable Capital test. Following entry of the Baha Mar Judgment, CCA’s liabilities far exceeded the value of its assets.

2. Solvency Assessment for the Shared Services Members³⁸

The solvency assessment conducted for the Non-Debtor Subsidiaries (Plaza, Civil, and CCASC) analyzed each of their financial health as of March 31, 2025, under all three Solvency Tests. The solvency assessment conducted for the Non-Debtor Affiliates (CCA International, SRE, and Unibuy) analyzed each of their financial health as of March 31, 2025, using two standard

³⁶ *See App. P.*

³⁷ A full Cash Flow test requires a review and analysis of forward-looking cash flow projections. BDO did not apply the Cash Flow test because CCA historically did not prepare future cash flow projections. BDO also did not conduct a solvency assessment for the period December 22, 2020 through December 31, 2020.

³⁸ *See Apps. Q & R.*

solvency tests: the Balance Sheet test and the Reasonable Capital test.³⁹ A full solvency analysis was not performed but the results below are indicative of our initial solvency assessment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁹ A full Cash Flow test requires a review and analysis of forward-looking cash flow projections. BDO did not apply the Cash Flow test because CCA International, Strategic Capital, and Unibuy historically did not prepare future cash flow projections.

⁴⁰ [REDACTED]

V. LEGAL ANALYSIS

A. Recharacterization

Recharacterization is a doctrine applicable in bankruptcy that treats an investment as a capital contribution, despite being styled as a loan. This doctrine is “grounded in bankruptcy courts’ equitable authority to ensure that substance will not give way to form, that technical considerations will not prevent substantial justice from being done.” *United States v. State St. Bank & Tr. Co.*, 520 B.R. 29, 66 (Bankr. D. Del. 2014) (internal quotations and citations omitted). The determinative inquiry in a recharacterization analysis “is the intent of the parties as it existed at the time of the transaction.” *In re SubMicron Sys. Corp.*, 432 F.3d 448, 457 (3d Cir. 2006). The Third Circuit has stated that courts must perform a holistic analysis of the facts and circumstances to determine whether “the party infusing funds does so as a banker (the party expects to be repaid with interest no matter the borrower’s fortunes; therefore, the funds are debt) or as an investor (the funds infused are repaid based on the borrower’s fortunes; hence, they are equity).” *Id.* at 456. Intent of the parties can be inferred from: (i) the parties’ contracts; (ii) the actions of the parties; and (iii) the economic realities of the surrounding circumstances. *Id.*

Courts in the Third Circuit and elsewhere commonly consider a list of factors first promulgated in *In re AutoStyle Plastics, Inc.*, 269 F.3d 726 (6th Cir. 2001), in which the Sixth Circuit adopted an eleven-factor test to determine whether an investment was debt or equity in the context of recharacterization. *See, e.g., In re HH Liquidation, LLC*, 590 B.R. 211, 290 (Bankr. D. Del. 2018) (relying, in part, on the *AutoStyle* factors in determining whether an investment was debt or equity). The eleven *AutoStyle* factors include the following: (1) the names given to the instruments, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation’s ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments. *AutoStyle*, 269 F.3d at 750 (citing *Roth Steel Tube Co. v. Comm’r*, 800 F.2d 635, 630 (6th Cir. 1986)). Some courts have considered additional factors, such as whether the underlying documents granted the lender voting rights and whether the lender was an insider. *See, e.g., In re Liberty Brands, LLC*, 2014 WL 4792053, at *3 (Bankr. D. Del. Sep. 25, 2014) (citing *In re Friedman’s Inc.*, 452 B.R. 512, 519 (Bankr. D. Del. 2011)) (considering, *inter alia*, voting rights in the underlying transaction as part of its recharacterization analysis); *In re Our Alchemy, LLC*, 2019 WL 4447535, at *10 (Bankr. D. Del. Sept. 16, 2019) (stating that insider status of lender is relevant, but not dispositive, in a recharacterization analysis).

We examined the facts and circumstances surrounding each of the Holding Loans to determine whether they should be recharacterized as equity contributions rather than *bona fide* loans.

1. Relevant Facts

Historically, CSCEC Holding made the Holding Loans to CCA in the ordinary course of business to support the SSC and the operations of the Shared Services Members. As of the Petition Date, the balance of the Holding Loans was \$124,804,769.44.

CCA booked the Holding Loans in its books and records as a payable representing a “due to” CSCEC Holding. In this regard, CCA’s fiscal year ended December 31, 2020 audited financial statements (the “2020 Audit”) and the year ended December 31, 2021 audited financial statements (the “2021 Audit”) classify the “Due to Parent” described above as a liability.

2. Analysis of Recharacterization Factors

To determine whether the Holding Loans should be recharacterized as equity, we examined each of the 14 factors commonly considered by courts in the Third Circuit.

(a) The Names Given to the Instruments Evidencing the Indebtedness

The absence of instruments of indebtedness favors characterizing a transaction as equity, rather than a loan. *AutoStyle*, 269 F.3d at 750. If the pertinent documents are not named as debt instruments, then it “is a strong indication that the advances were capital contributions and not loans.” *Our Alchemy*, 2019 WL 4447535, at *7 (citations omitted).

Applying this factor, there are no loan instruments evidencing the Holding Loans. Company personnel consistently confirmed the absence of loan documentation to support the Holding Loans, and we were unable to locate any in CCA’s document production or in CCA’s “OA” approval system. While there was no loan documentation for the Holding Loans, CCA recorded the Holding Loans as a “due to” CSCEC Holding on CCA’s books, and [REDACTED]

Also relevant is the fact that [REDACTED]

This factor weighs in favor of characterizing the Holding Loans as equity.

(b) The Presence or Absence of a Fixed Maturity Date and Schedule of Payments

“The absence of a fixed maturity date and a fixed obligation to repay is an indication that the advances were capital contributions and not loans.” *AutoStyle*, 269 F.3d at 750.

Applying this factor, there was no fixed maturity date for the Holding Loans, nor was there a schedule of payments for the repayment of the Holding Loans. Company personnel consistently confirmed the absence of a fixed maturity date or a schedule of payments, and we did not locate any information concerning a maturity date or a schedule of payments in CCA’s document productions or CCA’s “OA” approval system.

This factor weighs in favor of characterizing the Holding Loans as equity.

(c) The Presence or Absence of a Fixed Rate of Interest

“The absence [of a fixed rate of interest and interest payments] is a strong indication the investment was a capital contribution, rather than a loan.” *Friedman’s*, 452 B.R. at 521.

Applying this factor, [REDACTED]

[REDACTED] See App. J.

This factor in the recharacterization analysis with regard to the Holding Loans is mixed.

(d) Whether Repayment Depended on Success of Business

“If the expectation of repayment depends solely on the success of the borrower’s business, the transaction has the appearance of a capital contribution.” *AutoStyle*, 269 F.3d at 751. The loan or credit agreement does not need a specific provision tying repayment to the success of the business. Rather, the court must look to the “underlying economic reality” and “general tie” between loan repayment and borrower success. *In re Autobacs Strauss, Inc.*, 473 B.R. 525, 555 (Bankr. D. Del. 2012); *see also State St. Bank & Tr. Co.*, 520 B.R. at 76 (citing *Liberty Brands*, 2014 WL 4792053) (“[A]ll extensions of credit depend on a company’s success, and that risk alone -- without more -- does not indicate that they are capital contributions.”).

Applying this factor, Company personnel reported that repayments to CSCEC Holding on account of the “due tos” built up through the Holding Loans were only made when funds were available at CCA and when CCA’s cash flow permitted such repayments. Supporting this assertion, repayments of the Holding Loans during the Relevant Period were sporadic and occurred on irregular intervals. For example, in 2021, CCA made two transfers to CSCEC Holding in January in the amount of [REDACTED] and another one in June in the amount of [REDACTED]. In 2023,

CCA made transfers to CSCEC Holding in April in the amount of [REDACTED] in August in the amount of [REDACTED], and in December in the amount of [REDACTED]. In 2024, CCA made transfers to CSCEC Holding in January in the amount of [REDACTED], in February in the amount of [REDACTED], in March in the amount of [REDACTED], in October in the amount of [REDACTED], and in December in the amount of [REDACTED]. Those payments aggregated approximately [REDACTED]. Further to this point, approximately [REDACTED] was transferred from CCA to CSCEC Holding on two dates on December 20 and 21, 2023. The funds CCA used to make those payments on those dates were received by CCA from [REDACTED] on the same dates in an aggregate amount of approximately [REDACTED]. See Apps. B & N.

Moreover, CCA could only generate cash from two sources – the Holding Loans and cash repayments from the Shared Services Members on account of their “due tos” to CCA. Company personnel confirmed that the Shared Services Members would only pay their “due tos” when they had sufficient cash to do so. Thus, it can be reasonably inferred that CSCEC Holding’s expectation of repayment from CCA depended on the success of the Shared Services Members.

This factor weighs in favor of characterizing the Holding Loans as equity.

(e) The Adequacy or Inadequacy of Capitalization

“Thin or inadequate capitalization is strong evidence that the advances are capital contributions rather than loans.” *AutoStyle*, 269 F.3d at 751. Capitalization is assessed both at initial capitalization and subsequent transactions. *Autobacs*, 473 B.R. at 576. The Delaware Bankruptcy Court has found that if repayments are solely dependent upon the borrower’s future profits or earnings, then the advances are likely capital contributions. *Our Alchemy*, 2019 WL 4447535, at *7 (emphasis added). The substantive inquiry is whether the payment was an equity injection to prop up a struggling subsidiary. *Autobacs*, 473 B.R. at 576. Moreover, if the company’s condition raises substantial concerns about its ability to continue as a going concern, then an inadequate capitalization finding is appropriate. *In re Broadstripe, LLC*, 444 B.R. 51, 97 (Bankr. D. Del. 2012).

CCA has historically been fully reliant on funding from CSCEC Holding to satisfy its shared service obligations and liabilities. The 2020 Audit and 2021 Audit indicate that CCA had cumulative equity deficits of approximately \$7.4 million and \$10.0 million, respectively. The 2020 Audit and 2021 Audit also note that the “Company is dependent on its Parent to fund and finance all its operations and meet its contractual and operating obligations in the normal course of business” and that CCA “expects to meet its future cash requirements through a combination of cash generated from operations, existing cash balances and support from its Parent.” On CSCEC Holding’s commitment to fund CCA, the audit report continues: “The Parent has assured the Company that it is committed to fund operations as evidenced by availability under its credit facility.” The 2020 Audit and 2021 Audit go on to state that “[m]anagement believes that it has the ability to manage through this period and has taken appropriate steps to improve contract profitability which would enable the Company to generate future positive cash flows from operations.” Thus, it is reasonable to infer that, although CCA sustained losses, CSCEC Holding’s commitment to fund CCA may mitigate any potential undercapitalization.

By contrast, CCA's historical practice of allocating expenses favors the conclusion that CCA has historically been undercapitalized. As part of its regular operations, CCA allocated certain of its costs and expenses to the Shared Services Members on a direct and indirect basis. As described above, certain expenses paid by CCA that were incurred in the ordinary course of business, however, were and remain unallocated to the Shared Services Members on CCA's general ledger. For example, during the Relevant Period, CCA had unallocated costs and expenses of \$7,391,860, \$6,056,566, \$4,876,032, and \$6,616,088, respectively. *See* D, E, F, & G. These unallocated costs and expenses typically included costs and expenses that could not be attributed to any Shared Services Member. As these costs and expenses were and remain unallocated, there was no way for CCA to be repaid for such costs and expenses except, with respect to the Non-Debtor Subsidiaries, via the payment of dividends from the Non-Debtor Subsidiaries to their parent, CCA.

This factor in the recharacterization analysis with regard to the Holding Loans is mixed.

(f) Identity of Interest Between Creditor and Stockholder

Under this factor, "[i]f stockholders make advances in proportion to their respective stock ownership, an equity contribution is indicated." *See Broadstripe*, 444 B.R. at 97 (citations omitted); *see also In re Exide Techs., Inc.*, 299 B.R. 732, 741 (Bankr. D. Del. 2003) (holding that this factor favored debt because "the advances were made not by stockholders, and not in proportion to respective stock ownership."). Where there is an indirect ownership relationship between lender and borrower, this factor is "mixed." *HH Liquidation*, 590 B.R. at 293 ("[T]his factor is mixed: a narrow interpretation of the factor favors debt (since PropCo Entities owned no stock in the OpCo Entities), but a broader interpretation could potentially favor a characterization of equity (due to common, indirect ownership).").

CSCEC Holding is the direct and sole owner of CCA and made cash and non-cash advances to CCA on demand, as necessary, and as requested. Given the ownership structure, there is an identity of interest between CSCEC Holding and CCA.

This factor weighs in favor of characterizing the Holding Loans as equity.

(g) The Security, if Any, for the Advances

"The absence of a security for an advance is a strong indication that the advances were capital contributions rather than loans." *AutoStyle*, 269 F.3d at 752.

The Holding Loans were unsecured and not subject to any liens on any of CCA's assets. Company personnel consistently confirmed that the Holding Loans were not secured by any collateral, and we did not locate any documents in the Debtor's document productions indicating that the Holding Loans were associated with any liens and security interests.

This factor weighs in favor of characterizing the Holding Loans as equity.

(h) Ability to Obtain Financing from Outside Institutions

If there is evidence that a borrower obtained or was offered outside financing, this factor would weigh against recharacterization of debt to an equity contribution. *Id.* If there is no such evidence, the relevant inquiry is whether a reasonable creditor would have provided financing on similar terms. *Id.* (“[T]he fact that no reasonable creditor would have acted in the same manner is strong evidence that the advances were capital contributions rather than loans.”). However, where the lending at issue could reasonably be characterized as rescue financing, a court is unlikely to recharacterize debt as equity. See *In re Dornier Aviation (N. Am.), Inc.*, 453 F.3d 225, 234 (4th Cir. 2006) (“In many cases, an insider will be the only party willing to make a loan to a struggling business, and recharacterization should not be used to discourage good-faith loans.”); *In re Alternate Fuels, Inc.*, 789 F.3d 1139, 1152 (10th Cir. 2015) (“[P]lacing too heavy an emphasis on undercapitalization in our recharacterization analysis would create an unhealthy deterrent effect, causing business owners to fear that, should their rescue efforts fail, a court will too quickly refuse to treat their cash infusions as loans.” (citation omitted)).

It is unlikely that an outside institution would have provided funding to CCA without a guaranty from CSCEC Holding, given CCA’s undercapitalization and lack of meaningful assets. Company personnel confirmed that CCA never sought, nor received offers, for third-party financing to fund operations. Moreover, CCA conducted a marketing process in connection with CCA’s efforts to obtain debtor-in-possession financing. No third party offered CCA a firm commitment for debtor-in-possession financing, and ultimately CCA obtained a secured loan from CSCEC Holding.

This factor weighs in favor of characterizing the Holding Loans as equity.

(i) Subordination of Claims to Outside Creditors

“Subordination of advances to claims of *all* other creditors indicates that the advances were capital contributions and not loans.” *AutoStyle*, 269 F.3d at 752 (emphasis added). Where a creditor’s claims are subordinated to some, but not all, other claims, courts commonly find that this favors a characterization of debt, but not as strongly as if there were no subordination. Compare *AutoStyle*, 269 F.3d at 752 (holding that lack of agreement by lender to subordinate debt to all other creditors was “strongly indicative of debt,” but fact that lender agreed to subordinate claims to certain other secured creditors was “a slight indication of equity” and thus factor weighed slightly in favor of finding of debt), *In re RoomStores of Phoenix, L.L.C.*, 2020 WL 211399, at *8 (Bankr. D. Ariz. Jan. 10, 2020) (finding that factor weighed in favor of debt where insider loans were subordinated only to existing secured bank debt and “not to the trade vendors or other creditor of the [debtor.]”), *HH Liquidation*, 590 B.R. at 295 (“[This] factor does not look at whether the PropCo Loan is subordinated to the senior, secured creditor. It looks at whether the PropCo Loan is subordinated to all other creditors.”), *In re Optim Energy, LLC*, 2014 WL 1924908, at *9 (Bankr. D. Del. May 13, 2014) (holding that subordination of secured reimbursement guaranty claim until first-lien creditor was paid in full, but not to the claims of other creditors, was “typical in the Court’s experience” and indicative of a debt transaction), with *In re Decurtis Holdings LLC*, 2023 WL 5274925, at *9 (Bankr. D. Del. Aug. 14, 2023) (holding that subordination of secured claims, regardless of extent of subordination, weighed in favor of

characterizing advances as equity); *Broadstripe*, 444 B.R. at 101 (fact that advances secured by second liens were “most subordinate tier of claims, except for unsecured claims” weighed in favor of equity).

The Holding Loans were not subordinated to the interests of any other party. The 2020 Audit and 2021 Audit each classify amounts owed to CSCEC Holding as “Due to Parent” on CCA’s balance sheets in the amount of approximately \$62.2 million and \$75.9 million, respectively. Other than *de minimis* accounts payable and accrued expenses, CCA did not have any other liabilities to which the “due tos” were subordinated.

This factor weighs in favor of characterizing the Holding Loans as debt.

(j) Extent to Which the Advances Were Used to Acquire Capital Assets

Use of advances to meet the daily operating needs of the corporation, rather than to purchase capital assets, is indicative of *bona fide* indebtedness. *AutoStyle*, 269 F.3d at 752. Conversely, the use of advances to acquire capital assets may indicate that the advances had the nature of a capital contribution. See *In re Cold Harbor Assocs., L.P.*, 204 B.R. 904, 918 (Bankr. E.D. Va. 1997).

Company personnel advised that the Holding Loans were used to support the business operations of the Shared Services Members and the Shared Services Program. There is no indication that the funds were used to acquire capital assets.

This factor weighs in favor of characterizing the Holding Loans as debt.

(k) Presence or Absence of a Sinking Fund

A sinking fund is “[a] fund consisting of regular deposits that are accumulated with interest to pay off a long-term corporate or public debt.” Sinking Fund, Black’s Law Dictionary (11th ed. 2019). “Failure to establish a sinking fund for repayment is evidence that advances are capital contributions rather than loans.” *Cold Harbor*, 204 B.R. at 918 (citing *Roth Steel Tube*, 800 F.2d at 632)).

CCA did not establish a sinking fund for repayment of the Holding Loans.

This factor weighs in favor of characterizing the Holding Loans as equity.

(l) Presence or Absence of Voting Rights

Recent recharacterization decisions in Delaware have held “[t]he presence of voting rights would favor recharacterizing debt as equity.” *Autobacs*, 473 B.R. at 581; see also *Friedman’s*, 452 B.R. at 523-24. Courts have made clear that the relevant inquiry when analyzing this factor is whether the “loan” agreement itself grants any voting rights in the borrower. See *Autobacs*, 473 B.R. at 581 (finding that this factor weighs against recharacterization when the loan agreements

themselves did not grant voting rights in the borrower); *Friedman's*, 452 B.R. at 523-24 (finding that this factor favored a debt characterization when the complaint did not allege that the loan documents themselves granted lenders the right to vote).

CSCEC Holding did not obtain any voting rights in connection with its financial support for CCA through the Holding Loans. However, CSCEC Holding owns 100% of the direct equity of CCA and therefore has all of the voting rights of CCA as set forth in CCA's Bylaws.

This factor in the recharacterization analysis with regard to the Holding Loans is mixed.

(m) Insider Status

Insider status may indicate that an investment in a borrower is a capital contribution rather than a loan. *Our Alchemy*, 2019 WL 4447535, at *10 (citing *Dornier Aviation (N. Am.), Incorporated*), 453 F.3d 225). The Bankruptcy Code defines an insider as, *inter alia*, an affiliate or insider of an affiliate. See 11 U.S.C. § 101(31)(E). The Bankruptcy Code also defines an affiliate as any "entity that directly or indirectly owns" a debtor. See 11 U.S.C. § 101(2)(A).

Here, CSCEC Holding is the sole owner and equity holder of CCA and is therefore an insider of the Debtor.

This factor weighs in favor of characterizing the Holding Loans as equity.

(n) Intent of the Parties

"[T]he overarching inquiry in a recharacterization case is the intent of the parties at the time of the transaction, determined not by applying any specific factor, but through a common sense evaluation of the facts and circumstances surrounding a transaction." *Friedman's*, 452 B.R. at 518 (quoting *In re Radnor Holdings Corp.*, 353 B.R. 820, 838–839 (Bankr. D. Del. 2006)). Intent of the parties can be inferred from (i) the parties' contracts; (ii) the actions of the parties; and (iii) the economic realities of the surrounding circumstances. *SubMicron*, 423 3d. at 455–56.

Documents and information reviewed during the Investigation indicate that CCA treated the Holding Loans as indebtedness. Company personnel consistently stated that CCA intended to repay CSCEC Holding on account of the Holding Loans and did so on several occasions during the Relevant Period. In addition, CCA recorded the Holding Loans as "due tos" on its balance sheet and liabilities in the 2020 Audit and 2021 Audit.

At the same time, the actions of CCA and CSCEC Holding and the economic realities of the surrounding circumstances suggest that the Holding Loans were equity. Company personnel reported that CCA requested Holding Loans on an "as needed" basis. There was no formal request or funding process that is typical in a lender-borrower arrangement. Rather, CCA's finance department would determine that it required funds to meet its shared service obligations and then initiate a request that CSCEC Holding provide it with funds through the OA system. The Chairman of CSCEC Holding, who is also the Chief Executive Officer of CCA, would review and approve the request. CSCEC Holding's intent can also be inferred from the fact that it never demanded repayment of the Holding Loans and only received repayments totaling \$13,929,892 during the

Relevant Period. Notably, however, between 2014 and 2018, approximately \$151.6 million of “due tos” CSCEC Holding from CCA were converted to equity. [REDACTED]

Even after these conversions, CSCEC Holding continued to loan funds to CCA, which suggests that CSCEC Holding made the Holding Loans without a reasonable expectation of repayment. In sum, both CSCEC Holding and CCA appear to have treated the Holding Loans as financial contributions to support CCA’s Shared Services Program for the Shared Services Members, not a *bona fide* loan representing valid indebtedness. See Apps. B & N.

This factor in the recharacterization analysis with regard to the Holding Loans is **mixed**.

3. Summary of Recharacterization Factors

While courts have made clear that a recharacterization analysis is not a mathematical or tallying exercise of the preceding factors, nearly all recharacterization decisions view the “scorecard” as an important consideration to determining the overall intent of the parties.

Factors	Application
1. Names Given to Instruments	Equity
2. Fixed Maturity Date	Equity
3. Fixed Rate of Interest	Mixed
4. Repayment Based on Success	Equity
5. Adequacy of Capitalization	Mixed
6. Identity of Interest	Equity
7. Security for the Advances	Equity
8. Ability to Obtain Outside Financing	Equity
9. Subordination to Claims of Outside Creditors	Debt
10. Use of Advances for Capital Assets	Debt
11. Presence of Sinking Fund	Equity
12. Presence of Voting Rights	Mixed
13. Insider Status	Equity
14. Intent of the Parties	Mixed

As courts recognize that “[n]o mechanistic scorecard suffices” for purposes of recharacterization analyses, we reviewed the above factors holistically to discern the intent of the parties as it existed at the time of the transactions.” *SubMicron*, 423 3d. at 456.

4. Conclusion

For the foregoing reasons, there appears to be a colorable claim that the Holding Loans should be recharacterized as equity infusions under applicable Third Circuit law. As outlined above, some factors weigh in favor of debt, some weigh in favor of equity, and others are mixed. Given the foregoing, while there may be a colorable claim to recharacterize the Holding Loans as equity, the ultimate success of such a claim appears to be a close call based on the facts outlined above and the information obtained during the Investigation. In any event, any litigation seeking to recharacterize the Holding Loans will require substantial discovery, time, and expense.

B. Equitable Subordination

Equitable subordination is the process by which a claim is subordinated in priority as a result of inequitable conduct on the part of the claimholder. The seminal case setting forth the standard for equitable subordination pursuant to section 510(c) of the Bankruptcy Code is the Fifth Circuit's decision in *Matter of Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977) (declining to grant equitable subordination in absence of evidence of undercapitalization or breach of fiduciary duty by debtor's organizers); *see also United States v. Noland*, 517 U.S. 535, 538 (1996) (describing the *Mobile Steel* opinion as "influential"); *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 411 (3d Cir. 2009) (same).⁴² In *Mobile Steel*, the court established three requirements to subordinate a claim:

1. The claimant must have engaged in inequitable conduct;
2. The misconduct must have injured creditors or conferred an unfair advantage on the claimant; and
3. Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code.

Mobile Steel, 563 F.2d at 699-700 (citations omitted).

In an equitable subordination analysis, the conduct of insiders is given greater scrutiny than that of non-insiders. *In re Hydrogen, L.L.C.*, 431 B.R. 337, 361 (Bankr. S.D.N.Y. 2010). Insider claims have been equitably subordinated in cases involving: "(1) fraud, illegality, breach of

⁴² Section 510(c) of the Bankruptcy Code states in pertinent part:

(c) [T]he court may—

- (1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or
- (2) order that any lien securing such a subordinated claim be transferred to the estate.

11 U.S.C. § 510(c).

fiduciary duties; (2) undercapitalization; and (3) claimant's use of the debtor as a mere instrumentality or alter ego." *In re Le Cafe Creme, Ltd.*, 244 B.R. 221, 235 (Bankr. S.D.N.Y. 2000) (citations omitted). Undercapitalization of the debtor alone, however, absent misconduct by the insider, is typically considered insufficient to justify equitable subordination of an insider's debt claim. *Id.*; see also *Hydrogen*, 431 B.R. at 362 ("An adequately alleged claim for equitable subordination requires well-pled allegations of 'suspicious, inequitable conduct' beyond mere undercapitalization." (citation omitted)).

Generally, evidence that would support fraudulent transfer claims, breach of fiduciary duty claims, and veil piercing/alter ego claims may be supportive of an equitable subordination claim to the extent evidence of misconduct is also present. In light of the conclusions below that the Debtor may have a colorable claim against CSCEC Holding to recover the Potential Dividends as fraudulent transfers, the Debtor may also have a colorable claim to equitably subordinate all unsecured claims held by CSCEC Holding against the Debtor to those of general unsecured creditors. In addition, there may also be a basis to equitably subordinate CSCEC Holding's claims against the Debtor if a court were to determine that the Debtor has a valid veil-piercing claim against CSCEC Holding. The viability of this claim is a close call, given that its success turns on whether the following claims succeed: (1) Debtor's claim against CSCEC Holding to recover the Potential Dividends as fraudulent transfers, and (2) Debtor's veil-piercing claim against CSCEC Holding.

C. Piercing the Corporate Veil to Impose Alter Ego Liability on CSCEC Holding

As a bedrock principle of American corporate law, an entity's shareholder is not responsible for the debts of the entity. One exception to this general rule is an equitable remedy applied by courts that allows a claimant to "pierce the corporate veil" of an otherwise-protected entity. Courts institute this remedy upon a showing (1) that the entity and its shareholder are a "single economic entity" and (2) of a fraud or "something like it." Upon a proper showing, a court will disregard the distinction between a corporation and its owner and treat the parent corporation or owning shareholder as the sole party in a particular transaction. When instituting this remedy, a court will require a corporation's owner to answer for debts incurred under the corporation's name.

Under Delaware law,⁴³ courts may only pierce the corporate veil "in the interest of justice," i.e., when matters of fraud are involved or where equitable considerations require it. *Pauley Petroleum Inc. v. Cont'l Oil Co.*, 239 A.2d 629, 633 (Del. 1968). Delaware is widely regarded as one of the most difficult states in which to bring this type of claim, as the remedy is only appropriate in *exceptional circumstances* where courts find fraud or injustice in a defendant's use of the corporate form. *Marnari S.p.A. v. Keehan*, 900 F. Supp. 2d 377, 392 (D. Del. 2012). See also *Fletcher v. Atex*, 68 F.3d 1451, 1458 (2d Cir. 1995) (citing *Harco Nat'l. Ins. Co. v. Green*

⁴³ To determine which state law applies, courts typically apply the choice of law rules of the forum state. *In re Allserve Sys. Corp.*, 379 B.R. 69, 79 (Bankr. D.N.J. 2007). "Under New Jersey's choice-of-law rules, the law of the state of incorporation governs internal corporate affairs." *Fagin v. Gilmartin*, 432 F.3d 276, 282 (3d Cir. 2005) (citations omitted). Here, that is Delaware.

Farms, Inc., 1989 WL 110537, at *4 (Del. Ch. Sept. 19, 1989) (“A plaintiff seeking to persuade a Delaware court to disregard the corporate structure faces ‘a difficult task.’”).

An owner’s use of the corporate form to perpetrate a fraud is “the paradigm instance” of imposing liability on a corporation’s owner. *Irwin & Leighton v. W.M. Anderson Co.*, 532 A.2d 983, 987 (Del. Ch. 1987). Actual fraud, however, is not the only instance in which courts will pierce the corporate veil. Delaware courts of equity are willing to pierce the corporate veil for “conduct short of the active intent to deceive required to establish fraud[.]” *Id.* If a corporation’s owners have ignored the “corporateness” of the entity and treated it as their “instrumentality,” courts will be less inclined to regard the corporation as an effective limitation on liability. *Id.* “A subsidiary is an alter ego or instrumentality of a parent entity when the separate corporate identities . . . are a fiction and . . . the subsidiary is, in fact, being operated as a department of the parent.” *Autobacs*, 473 B.R. at 555 (internal quotations and citation omitted).

Given that the Investigation uncovered no evidence of *actual* fraud by CCA, the Report focuses the inquiry on the instrumentality theory or, as it is better known, the alter ego theory of liability.⁴⁴

Alter ego theory is a subset of general corporate veil-piercing doctrine with two main elements: (i) the debtor and the entity the claimant seeks to hold responsible operated as a single economic entity (ii) which resulted in an overall element of injustice or unfairness. *In re Opus East, LLC*, 5208 B.R. 30, 57 (Bankr. D. Del. 2015). Delaware law requires a plaintiff to prove each element under an elevated burden of proof which is “if not a clear and convincing evidence standard, at least somewhat greater than merely a preponderance of the evidence standard.” *Id.* (citing *In re Foxmeyer Corp.*, 290 B.R. 229, 237 (Bankr. D. Del. 2003)). This elevated burden of proof highlights the difficulty of succeeding on this type of claim under Delaware law. The Third Circuit has described the burden as “notoriously difficult for plaintiffs to meet,” noting that “courts have refused to pierce the veil even when subsidiary corporations use the trade name of the parent, accept administrative support from the parent, and have a significant economic relationship with the parent.” *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 485 (3d Cir. 2001).

Upon the Debtor’s filing for bankruptcy, all claims to pierce the corporate veil became property of the Debtor’s estate. *In re Emoral, Inc.*, 740 F.3d 875, 879 (3d Cir. 2014).

1. Single Economic Entity

Determining whether two entities operated as a single economic entity is a fact-intensive inquiry. A bankruptcy court will examine whether:

- the debtor was undercapitalized;
- the debtor was insolvent;

⁴⁴ The NYS Court did not find that CCA committed any fraud. The NYS Court concluded that “BMLP Proved by Clear and Convincing Evidence that CCAB [not CCA] Committed At Least four [sic] Instances of Fraud.” (Baha Mar Decision at 45) (emphasis added); *id.* ¶¶ 100-33. Similarly, the First Department concluded that CCAB, not CCA, took actions that support a finding of fraud. (First Department Decision at 3-4).

- corporate formalities were not observed;
- corporate records existed;
- dividends were paid;
- the dominant stockholder siphoned funds from the Debtor; and
- the debtor was a façade for the operations of its stockholder.

Opus East, 528 B.R. at 58 (citing *United States v. Pisani*, 646 F.2d 83, 88 (3d Cir. 1981) (identifying these factors to “fashion a federal rule” for when to pierce the corporate veil))). These factors are not exhaustive, no single factor is dispositive, and some combination is required to pierce the corporate veil. *Autobacs*, 473 B.R. at 556.

(a) Undercapitalization

(i) Relevant Law

“[T]he inquiry into corporate capitalization is most relevant for the inference it provides into whether the corporation was established to defraud its creditors or other improper purpose such as avoiding the risks known to be attendant to a type of business.” *Opus East*, 528 B.R. at 59 (quotation omitted); *Trevino v. Merscorp, Inc.*, 583 F. Supp. 2d 521, 530 (D. Del. 2008) (heavily weighing plaintiffs’ concession that entity was created for a legitimate purpose in finding that parties did not operate as a single economic entity).

“When determining whether a subsidiary was adequately capitalized, courts focus on the initial capitalization: whether a corporate entity was or was not set up for financial failure.” *In re BH S & B Holdings LLC*, 420 B.R. 112, 136 (Bankr. S.D.N.Y. 2009) *aff’d as modified*, 807 F. Supp. 2d 199 (S.D.N.Y. 2011) (cleaned up) (declining to reach the question of whether debtor was undercapitalized because complaint did not adequately support a finding that the debtor was established as a sham entity). *See also Trs. of Nat’l. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 197 (3d Cir. 2003).

However, putting aside the reason for which the entity was created, subsequent undercapitalization may indicate some inequitable conduct, such as gross mismanagement or self-interest. *Lutyk*, 332 F.3d at 198.

In assessing subsequent undercapitalization, courts may consider whether a debtor has “unreasonably small capital,” or in other words, whether debtor “cannot generate enough cash flow to sustain operations at the time of the transfer or obligation.” *Autobacs*, 473 B.R. at 552–53 (cleaned up). Further, a court may examine whether the debtor had ability to access capital other than from its parent, whereby a lack of ability to obtain funds from sources other than the parent may indicate undercapitalization. *Id.* at 553 (granting discovery on undercapitalization where “all [debtor] could do was ask [parent] for operational funding for [debtor] with hopes that ‘Mama’ would provide”).

The corporate veil can only be pierced as early as the initial date of undercapitalization. *Opus East*, 528 B.R. at 59.

(ii) Analysis

The Investigation did not uncover any evidence that CCA was established to defraud its creditors or for any other wrongful purpose. Indeed, CCA's employees consistently explained that CCA was formed and incorporated in 1993 to conduct construction-related business in the United States. Specifically, CCA started with a project in South Carolina for Haier Refrigerator Plumbing. For some courts, the undercapitalization inquiry ends here. *See, e.g., BH S & B Holdings LLC*, 420 B.R. at 136 (declining to reach the question of whether debtor was undercapitalized because complaint did not adequately support a finding that the debtor was established as a sham entity). Accordingly, that CCA was established with a legitimate business purpose provides a strong argument against finding that CCA and CSCEC Holding are a single economic entity.

If a court chooses to look at subsequent capitalization in conducting a veil-piercing analysis, there are arguments weighing both for and against veil-piercing because CSCEC Holding funded almost all of CCA's operations. On the one hand, in examining subsequent capitalization, courts can consider whether a debtor has "unreasonably small capital" or, in other words, that a debtor "cannot generate enough cash flow to sustain operations at the time of the transfer or obligation." *Autobacs*, 473 B.R. at 552–53 (cleaned up). This weighs against finding that CCA and CSCEC Holding are a single economic entity because the Investigation did not uncover evidence that CCA was unable to generate enough cash flow at the time of any specific transfer or obligation. This is especially the case given that both the 2020 Audit and 2021 Audit stated that "The Parent [Holding] has assured the Company that is it committed to fund operations as evidenced by availability under its credit facility." *See BH S & B Holdings LLC*, 420 B.R. at 137 (allegations did not support disregarding the corporate form where complaint admitted that entity had "cash on hand" and "sufficient funds to operate for at least a few months, unless "more unusual facts or circumstances" were also alleged). These facts weigh against a finding of cause to pierce the corporate veil.

On the other hand, a court may also examine whether the Debtor had the ability to access capital other than from its parent, and a lack of ability to obtain funds from sources other than the parent can indicate undercapitalization. *Autobacs*, 473 B.R. at 553 (granting discovery on undercapitalization where "all [debtor] could do was ask [parent] for operational funding for [debtor] with hopes that 'Mama' would provide"). The 2020 and 2021 Audits noted that the "Company is dependent on its Parent to fund and finance all its operations and meet its contractual and operating obligations in the normal course of business" and that CCA "expects to meet its future cash requirements through a combination of cash generated from operations, existing cash balances and support from its Parent." This fact weighs in favor of a finding of cause to pierce the corporate veil.

Finally, a court might also consider certain other facts or arguments to conclude CCA was undercapitalized. First, CCA's 2020 Audit and 2021 Audit indicate that CCA had total deficits of approximately \$7.4 million and \$10.0 million, respectively, during the prior year. Second, CCA's historical practice of leaving certain expenses unallocated on its general ledger arguably withheld capitalization from CCA as CCA could not be repaid for such costs and expenses. Third, an argument can be made that had CCA—[REDACTED] charged interest on the

allocations CCA made to Shared Services Members, CCA could have obtained additional capital in the form of interest payments from the Shared Services Members. These facts and arguments weigh in favor of a finding of piercing the corporate veil.

Accordingly, although there are arguments both in favor of and against undercapitalization, this Report conservatively concludes that a colorable claim may exist that CCA was undercapitalized.

(b) Insolvency

(i) Relevant Law

Courts examine whether an entity was insolvent using any of the standard insolvency tests: the balance sheet test, the inadequate capital, and the cash flow tests. *Opus East*, 528 B.R. at 50. A veil can only be pierced as early as the date of insolvency. *Id.* at 59.

(ii) Analysis

CCA is presumed to be insolvent for purposes of this Investigation during the Relevant Period. The solvency assessment described herein indicates that CCA failed both the Balance Sheet test and Reasonable Capital test as of FYE 2021, FYE 2022, FYE 2023, and FYE 2024. *See* App. P.

Importantly, however, courts are clear that the presence of undercapitalization and insolvency alone are not enough to find that parent and subsidiary operated as a single economic entity. *Opus East*, 528 B.R. at 59 (finding that entities not operated as single economic entity despite the fact that the debtor was insolvent for five months before bankruptcy filing); *Trevino*, 583 F. Supp. 2d at 529-30 (plaintiffs failed to allege sufficient facts to support finding of single economic entity where plaintiffs' only allegation on this point was undercapitalization); *BH S & B Holdings, LLC*, 420 B.R. at 136 (undercapitalization is rarely sufficient to pierce the corporate veil because otherwise "the veil of every insolvent subsidiary or failed start-up corporation could be pierced" (citation omitted)).

Thus, we examined the remaining factors to determine whether CCA and CSCEC Holding could be deemed to be a single economic entity.

(c) Failure to Observe Corporate Formalities

(i) Relevant Law

Examples of corporate formalities include dividend payments, maintenance of corporate records, and proper functioning of officers and directors. *BH S & B Holdings LLC*, 420 B.R. at 134.

"It is well-established that wholly-owned subsidiaries may share officers, directors and employees with their parent, without requiring the court to infer that the subsidiary is a mere instrumentality for the parent and without requiring the court to conclude that those officers and

directors were not functioning properly.” *BH S & B Holdings LLC*, 420 B.R. at 138; *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) (“[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary’s acts.”).

Notably, the parent’s retention of decision-making authority also is insufficient to pierce the corporate veil because “courts generally presume that the directors are wearing their ‘subsidiary hats’ and not their ‘parent hats’ when acting for the subsidiary . . . it cannot be enough to establish liability here that dual officers and directors made policy decisions and supervised activities at the facility.” *BH S & B Holdings LLC*, 420 B.R. at 138 (quoting *Bestfoods*, 524 U.S. at 69-70).

(ii) Analysis

The Investigation did not uncover facts to suggest that CCA and CSCEC Holding failed to observe corporate formalities. First, whether the Court recharacterizes the Holding Loans as equity or not (*see* discussion *supra* section V.A), CCA’s loan repayments (or dividends, if they are recharacterized) to CSCEC Holding indicate corporate formalities were observed. *See BH S & B Holdings LLC*, 420 B.R. at 134 (“Examples of ‘corporate formalities’ include ‘whether dividends were paid. . . .’”) (quoting *United States v. Golden Acres, Inc.*, 702 F. Supp. 1097, 1104 (D. Del. 1988)). Second, although CCA and CSCEC Holding share D&Os, that does not necessarily indicate any sort of improper functioning. *See id.* at 138; *Bestfoods*, 524 U.S. at 69. Indeed, “courts generally presume that the directors are wearing their ‘subsidiary hats’ and not their ‘parent hats’ when acting for the subsidiary.” *BH S & B Holdings LLC*, 420 B.R. at 138 (quoting *Bestfoods*, 524 U.S. at 69-70).

By comparison, in *Autobacs*, the following formalities were found to not have been observed: (1) decisions were made in Japan, communicated to the individual defendants, who then implemented them at the debtor level without observing corporate formalities; (2) loan agreements were not circulated to the debtor’s full board; (3) debtor did not have board meetings; (4) debtor board did not take votes, pass resolutions, or maintain minutes; (5) debtor’s directors of accounting and financing were excluded from funding decisions; and (6) individual defendants concealed material strategic, financial, and operational decisions from debtor’s directors and did not share monthly cash management budget with debtor directors.

Here, the Investigation did not uncover any parallel facts that would support a finding that corporate formalities were not observed. For instance, unlike in *Autobacs*, the Investigation found that decisions were made, as relevant, at the CCA or CSCEC Holding levels; CCA had board meetings, took votes, passed resolutions, and maintained minutes; and CCA’s CFO participated in funding decisions. Moreover, the Investigation did not uncover any suggestion that any material strategic, financial, and operational decisions or budgets were concealed from any CCA directors.

Accordingly, it is likely a court would find that corporate formalities were observed.

(d) Existence of Corporate Records

Failure to hold board meetings, failure to maintain board minutes, or other corporate records, and failure to pass board resolutions may all be indicia that this factor is not met. *Autobacs*, 473 B.R. at 558.

Here, the Investigation did not uncover any evidence of such failures. Indeed, the Investigation uncovered that the Board held annual meetings during the Relevant Period and maintained formal meeting minutes, resolutions, and written consents for all decisions requiring CCA's approval.

(e) Payment of Dividends

(i) Relevant Law

Failure to pay dividends is indicative of a corporation and its "alter ego" operating as a single economic entity. *In re Moll Indus., Inc.*, 454 B.R. 574, 589 (Bankr. D. Del. 2011); *Trs. Of Nat. Elevator Indus. Pension v. Lutyk*, 140 F. Supp. 2d 447, 459 (E.D. Pa. 2001), *aff'd sub nom. Trs. of Nat'l. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 199 (3d Cir. 2003) ("the non-payment of dividends is usually a factor favoring piercing of the corporate veil"). Courts rationalize this position by characterizing dividend payments as part of a normal parent-subsidiary relationship. *Golden Acres*, 702 F. Supp. at 1106 (absence of dividends is evidence that a corporation is not operating its subsidiary as a "viable corporation, trying to maximize profits, pay off debt and distribute excess earnings through dividends").

(ii) Analysis

How a court looks at this factor depends on whether the Holding Loans are recharacterized as equity. If the Holding Loans are recharacterized as equity, CCA's loan repayments would be recoverable from CSCEC Holding as dividends. If recharacterized, an argument could be made that CCA paid dividends to CSCEC Holding consistent with the corporate structure. The payment of dividends weighs against a finding that CCA and CSCEC Holding operated as a single economic unit because courts usually point to the *non*-payment of dividends as an indicator that two entities operated as a single entity.

However, if the court opts not to recharacterize the Holding Loans as equity, one could argue that CCA did not make dividend payments to CSCEC Holding with such *non*-payment weighing in favor of a finding of a single economic entity. But, even then, the *non*-payment of dividends may weigh against a finding of a single economic entity because the non-payment may indicate that the parent did not siphon funds, as discussed below. *Lutyk*, 140 F. Supp. 2d at 459.

Given that there is a colorable claim to recharacterize the Holding Loans as equity contributions, which would render the payments from CCA to CSCEC Holding as dividends, we conclude that this factor weighs against a finding that CCA and CSCEC Holding are a single economic unit.

(f) Siphoning of the Corporation's Funds By the Dominant Stockholder

(i) Relevant Law

Both the payment of dividends and the siphoning of funds center on a transfer of funds from the subsidiary to the parent. The crucial difference between payment of dividends in the normal course of business and siphoning is the impropriety inherent in siphoning. As one court has put it, “[s]iphoning suggests the improper taking of funds that the owner was not legally entitled to receive.” *Autobacs*, 473 B.R. at 557 (quotation omitted).

The ubiquitous example of impropriety in this context is the personal use of company funds. *See, e.g., Golden Acres*, 702 F. Supp. at 1106 (defendants siphoned funds from corporation by emptying corporate account into personal accounts); *In re Kilroy*, 357 B.R. 411, 421 (Bankr. S.D. Tex. 2006) (using corporate accounts as personal accounts classified as siphoning).

Outside of personal use of company funds, any transfer of funds from the subsidiary to the parent may be considered siphoning. The court in *Autobacs* explained:

The question is not what [the defendants] put in the company, but when they took it out. If the infusions were, in fact, loans, then the insider was siphoning cash by requiring payments to be made under his loan at a time when the company was insolvent. If the infusions were, in fact, capital contributions, it is worse. The controlling insider was making dividends to itself at a time when the company was insolvent.

Autobacs, 473 B.R. at 557-58. *See also Lutyk*, 140 F. Supp. 2d at 458 (“[T]he repayment of loans from shareholders or other diversion of corporate assets at a time when the company’s finances are troubled may strongly indicate siphoning.”). Ultimately, the transfer of funds—whether by dividend payment or loan repayment—when a subsidiary is insolvent can be classified as siphoning insofar as the insolvency renders the payment improper.

Still, simply identifying an improper transfer of funds may not suffice. For instance, the allegations of siphoning in *Autobacs* were buttressed by additional allegations, including (i) when purchasing the entity within separate insolvency proceedings, the parent caused the subsidiary to forego \$55 million in equity and instead saddled the company with \$40 million in debt, and (ii) the parent required a \$10.6 million “loan prepayment” nine months before the subsidiary filed for bankruptcy. *Autobacs*, 473 B.R. at 558.

Comparatively, the court in *Opus East* rejected that a subsidiary, its parent, and the parent’s parent trust operated as a “single economic entity” in part because the upstreaming of 77.5% of net profits to parent entities under a mandatory distribution policy did not qualify as “siphoning funds.” *Opus East*, 528 B.R. at 59. The court found that regular payment of dividends was insufficient evidence on this point, particularly when the debtor subsidiary only made dividend payments while it was profitable and did not jeopardize its ability to run its business. *Id.*

Moreover, where the debtor receives an actual benefit for a service or debt paid, such payment is not considered a siphoning of assets away from the debtors to avoid creditors. *Opus East*, 528 B.R. at 64; *Moll Indus.*, 454 B.R. at 590–91 (dismissing piercing corporate veil claim and finding that parent directing subsidiary to pay secured debt or buy a new facility was not “siphoning”).

(ii) Analysis

As an initial matter, the Investigation did not uncover any evidence that there was any improper personal use of Company funds. There are arguments, however, that repayment of the Holding Loans were made during times of financial distress and, as such, may be considered improper. For instance, CCA’s 2020 Audit and 2021 Audit indicate that CCA had cumulative equity deficits of approximately \$7.4 million and \$10.0 million, respectively. Nevertheless, during the Relevant Period, CCA repaid approximately [REDACTED] of Holding Loans to CSCEC Holding. Specifically, CCA paid CSCEC Holding [REDACTED] 1 in 2021, [REDACTED] in 2023, and [REDACTED] in 2024. See Apps. B & N. Moreover, even if the Holding Loans are recharacterized as equity, rendering the loan repayments as dividends, at least one court has found that *either* loan repayments or dividends from a subsidiary when the subsidiary was insolvent could be classified as improper. *Autobacs*, 473 B.R. at 558-59. These arguments weigh in favor of a finding that the funds paid by CCA to CSCEC Holding (*i.e.* approximately [REDACTED] at times when CCA was presumably insolvent, were improper.

At the same time, there are several counterarguments that weigh against finding that CCA’s payments to CSCEC Holding were improper. First, if a debtor received any actual benefit for the debt paid, the loan payment would not be considered a siphoning of assets away from the debtor to avoid creditors. *Opus East*, 528 B.R. at 64; *Moll Indus.*, 454 B.R. at 590–91 (dismissing piercing corporate veil claim and finding that parent directing subsidiary to pay secured debt or buy a new facility was not “siphoning”). Here, to the extent it is found that the payments from CCA to CSCEC Holding were debt repayments, CCA arguably received a benefit from making those payments to CSCEC Holding because such payments decreased its overall liability to CSCEC Holding. Second, CCA did not have significant creditors other than CSCEC Holding until entry of Baha Mar Judgment on October 31, 2024. As of the Petition Date, other than BMLP, CCA had twenty-seven (27) creditors holding approximately \$1.3 million in claims. As of the date hereof, the remaining balance on such claims total approximately \$200,000.⁴⁵ Thus, the payments to CSCEC Holding prior to entry of judgment may not be considered improper as there were no other significant creditors from whom CCA was diverting the funds. See *Lutyk*, 332 F.3d at 198 (“insolvency makes American’s paying off of the ‘shareholder loans’ to Lutyk, to the detriment of other creditors, highly suspect”). These arguments weigh against a finding that CCA and CSCEC Holding are a single economic entity.

⁴⁵ This amount does not include potential surety or other unliquidated claims, which were either scheduled as undetermined or are currently unknown.

Accordingly, while there are arguments both in support of and against a conclusion that the payments from CCA to CSCEC Holding were improper, this Report concludes that there may be a colorable claim of impropriety, thereby potentially subjecting CCA to veil piercing.

(g) Mere Façade

(i) Relevant Law

A subsidiary will not be considered a “mere façade” of its parent if formed for a legitimate business purpose. *See Opus East*, 528 B.R. at 59-64. When an entity is established for a legitimate business purpose and factors other than undercapitalization are not present, the court cannot then make a finding that the entities operated singularly. *Trevino*, 583 F. Supp. 2d at 530. *See also BH S & B Holdings LLC*, 420 B.R. at 136 (establishing entity for legitimate business purpose vitiates against alter ego finding, even if undercapitalized).

In addition, courts have held that the subsidiary is likely acting independently and not as a mere façade where the parent and subsidiary are separately incorporated, operate in a decentralized fashion, and have their own management, financing, and departments. *Opus East*, 528 B.R. at 60. By contrast, “[w]hen a parent corporation exercises significant control over a subsidiary’s operations and finances, an inference may arise that Defendants created a façade.” *Autobacs*, 473 B.R. at 558. Ultimately, whether or not a subsidiary is a façade of its parent is a fact-intensive question.

For instance, in *Opus East*, the court found that the subsidiary debtor was not a mere façade, considering the following as persuasive: (1) banks, vendors, and other business partners of the debtor were never told or mislead into believing that they were doing business with any legal entity called “The Opus Group of Companies” or the “Opus Group”; (2) the subsidiary and relevant parent entities were separately incorporated and “operated in a decentralized fashion in which each operating company had its own management, financing, and financial-reporting department”; (3) the subsidiary’s executive team ran the subsidiary; (4) and the subsidiary’s officers understood the companies were separate and that the debtor was their employer; (5) the subsidiary’s president and CEO “made decisions on his own and managed and operated the company as if it was his own money”; (6) the subsidiary “successfully completed a significant portfolio of projects, generating over a billion dollars in revenue and increasing equity to \$75 million”; (7) the subsidiary’s primary source of capital was from its own operations; (8) the subsidiary obtained its own financing from banks to operate its business; (9) the subsidiary borrowed from related entities to assist with cash flow and these loans were evidenced by demand notes with terms similar to other lenders’ terms; (10) these loans were properly recorded on books and records of the subsidiary; (11) the subsidiary decided when to repay loans and made payments only when it had excess cash; (12) the subsidiary had its own offices and did not share them with any of the parent entities; and (13) the parents and subsidiary never did business under each other’s names. *Opus East*, 528 B.R. at 60-62.

Comparatively, the court in *Autobacs* found that the subsidiary was a “corporate façade” because: (1) the parent used its own financial statements when others inquired about the subsidiary’s credit, (2) the parent described the subsidiary as its financial responsibility, (3) two subsidiary directors unrelated to the parent were denied access to pertinent information and

excluded from decision-making; (4) the subsidiary was prevented by parent-related directors from negotiating outside funding using subsidiary assets, forcing the subsidiary to file bankruptcy, and causing the subsidiary a detriment and a tax benefit to parent; (5) a parent employee dictated the implementation of a new product line to the subsidiary; (6) parent-related directors excluded the subsidiary's directors of accounting and finance from all material financial decision-making; and (7) parent used its own cash to manipulate the subsidiary's audit, infusing the subsidiary with cash to avoid a going-concern qualification, and then transferring the cash back to the parent under the guise of a "loan prepayment." *Autobacs*, 474 B.R. at 558-59.

(ii) Analysis

Here, the Investigation uncovered facts that could support a finding either way on the question of whether CCA was a mere façade of CSCEC Holding. Supporting the contention that CCA was a mere façade are the following findings: (1) certain interviewees stated that CCA was a "passthrough" entity or a "department" of CSCEC Holding; (2) certain interviewees explained that CSCEC Holding provides CCA with money so that the operation can run, and that the money used to run the SSC is not CCA's money, but CSCEC Holding's; (3) CCA has been described as being CSCEC Holding's financial responsibility in the 2020 and 2021 Audits; (4) CCA did not have its own projects, generated minimal revenue, and relied on CSCEC Holding for funding to operate; (5) CCA did not obtain funding from banks or other third-party sources; (6) CCA shared offices with CSCEC Holding; (7) CSCEC Holding has done business under the "CCA" name; and (8) the same individuals that manage CCA also manage CSCEC Holding.

However, the following findings provide a significant counterargument that CCA was not a mere façade of CSCEC Holding: (1) CCA was not formed as a shell or instrumentality of CSCEC Holding and it existed and operated for many years before CSCEC Holding was incorporated; (2) CCA and CSCEC Holding are separately incorporated; (3) CCA employees understood the companies were separate and that CCA was their employer; (4) Holding Loans were consistently and properly recorded on CCA's books and records; (5) there is no indication that CCA directors were denied access to any information or prevented from making decisions in CCA's interest; and (6) CSCEC Holding did not impede CCA from attempting to secure better terms for its DIP financing.

Accordingly, although arguments could be drawn in support of either outcome, the Report conservatively concludes that there may exist a colorable claim that CCA was a mere façade of CSCEC Holding.

2. Injustice or Unfairness

(a) Relevant Law

The second prong of a veil-piercing claim requires demonstrating an overall element of fraud or injustice. *Blair v. Infineon Techs. AG*, 720 F. Supp. 2d 462, 473 (D. Del. 2010) ("The fraud or injustice that must be demonstrated in order to pierce a corporate veil must 'be found in the defendants' use of the corporate form.'" (citation modified)). Although a claimant does not need to prove fraud or that the corporation was a "sham" in all instances, "something like fraud"

is required. *See Moll Indus.*, 454 B.R. at 591 (“The second prong of this test does not require allegations of fraud or a sham corporation to pierce the corporate veil.”); *Foxmeyer*, 290 B.R. at 236 (“The Court, upon review of the relevant case authorities, concludes that fraud or a sham, strictly speaking, need not be shown to justify the piercing of a corporate veil under Delaware law.”).

Homing in on “something like fraud,” a plaintiff must more specifically show that the corporation’s shareholder misused or abused the corporate form. *Gulf Fleet Holdings*, 491 B.R. at 790. Moreover, courts require that this misuse or abuse be intentional. In *Foxmeyer*, the court held that if the parent corporation demonstrated intent, by virtue of its conduct, to mislead a subsidiary’s creditors into assuming that the parent would account for the subsidiary’s debts, that could provide the requisite element of unfairness. 290 B.R. at 240-41; *see also In re Hillsborough Holdings Corp.*, 166 B.R. 461, 470 (Bankr. M.D. Fla. 1994) (under Delaware caselaw, piercing the corporate veil requires intentional misconduct), *aff’d*, 176 B.R. (M.D. Fla. 1994).

Based on the foregoing, the injustice element can be further defined as having three subfactors – (1) intentional (2) misuse or abuse of the corporate form (3) that does not need to rise to the level of fraud. Within this framework, however, it becomes a more amorphous inquiry. Some courts hold that the presence of the factors from the single economic entity test is stand-alone proof that the debtor’s shareholder has misused the corporate form. *See Gulf Fleet Holdings*, 491 B.R. at 790 (using subsidiary as a mere façade can constitute intentional misuse of corporate form); *Golden Acres*, 702 F. Supp. at 1106 (“As the *Pisani* court noted, the presence of a number of [the single economic entity] factors may be itself be sufficient evidence of injustice or unfairness.”).

Indeed, “nothing prevents a court, in determining whether there is sufficient evidence of fraud or unfairness, from taking into account relevant evidence that is also pertinent to the question of whether the two entities in question functioned as one.” *NetJets Aviation, Inc. v. LHC Commc’ns, LLC*, 537 F.3d 168, 183 (2d Cir. 2008) (applying Delaware law and vacating summary judgment ruling where district court failed to consider “overlap in the proof as to unity of ownership and the proof of unfairness”). “In other words, a plaintiff making an alter ego claim can argue that the very same factual allegations it uses to show a lack of corporate separateness (by which the parent corporation used a subsidiary for its own purposes) demonstrate why it would also be an injustice for the parent to absolve itself from liability as to the plaintiff’s claim against the subsidiary.” *Harrison v. Soroof Int’l, Inc.*, 320 F. Supp. 3d 602, 620 (D. Del. 2018).

Other courts, however, appear to hold plaintiffs to a higher standard, and look for allegations that, for example, “the corporation is a sham and exists for no other purpose than as a vehicle for fraud,” or of an enterprise’s employment of an “elaborate shell game” in business operations. *BH S & B Holdings LLC*, 420 B.R. at 134 (applying Delaware law).

Bankruptcy courts applying Delaware law sometimes consider the same allegations or evidence in assessing both prongs, but at other times will consider additional or separate allegations in analyzing the second prong. For example, in *Autobacs*, the court considered the same allegations adequate to plead both prongs one and two for piercing the corporate veil. 473 B.R. at 559. *See also In re Moll Indus., Inc.*, 454 B.R. at 591 (considering same facts for proof of

unified ownership and proof of unfairness and concluding neither prong had been met); *In re Maxus Energy Corp.*, 641 B.R. 467, 555 (Bankr. D. Del. 2022) (considering same facts for proof of unified ownership and proof of unfairness and concluding both prongs had been met). In other instances, courts have considered different allegations or evidence in analysis of each prong. See, e.g., *Opus East*, 528 B.R. at 65 (in analyzing the second prong, considering an argument not assessed for prong 1 that the parent entities “failed to bail the Debtor out of its financial troubles...in 2008” and concluding no injustice had been alleged).

(b) Analysis

Here, a court may also find the requisite injustice and unfairness without a stronger evidentiary showing that the Debtor was a sham or otherwise simply used in a shell game.

CCA’s ability to establish a colorable claim to pierce the corporate veil will turn on whether a court applies the higher standard for the injustice or unfairness prong (that is, the second prong) and requires some showing that the Debtor was a sham or otherwise used in a shell game, or if it simply relies on the factors it assessed for the “single economic entity” determination (the first prong) to find that there was an injustice or unfairness. If it applies the former standard, a court is not likely to find a colorable claim to pierce the corporate veil because the Investigation did not uncover any evidence of any separate injustice or unfairness.⁴⁶

If, however, a court were to find that CCA and CSCEC Holding are a single economic unit, it may conclude that an injustice or unfairness occurred simply based on the facts supporting the “single economic unit” finding and thus conclude a colorable alter ego claim has been pleaded. Notably, while there may be a colorable alter ego claim based on the facts adduced during the Investigation, the ultimate success of such a claim is very much in doubt given the multiple factors mentioned above that weigh against such a claim, the reluctance of Delaware courts to pierce a corporate veil, and the high burden applied by Delaware court to evaluate such a claim.

3. Conclusion

Based on above, there is a colorable claim for the Debtor’s estate to pierce the corporate veil and impose liability on CSCEC Holding. However, as explained in detail above, given the numerous significant counterarguments and facts supporting the opposite conclusion—that CCA and CSCEC Holding are not a single economic unit and that there is no independent injustice or unfairness—the viability of such a claim is very much in doubt. Finally, even if an alter ego claim could be adequately pleaded, the cost and length of time necessary to litigate such a fact-intensive claim, as well as courts’ reluctance to sustain veil-piercing claims, cast serious doubt on the viability of such a claim.

⁴⁶ As noted above, *supra* note 444, the NYS Court did not find that CCA committed any fraud. Thus, there is no fraud finding in the Baha Mar Litigation that can pointed to as a separate injustice or unfairness necessary for this analysis.

D. Constructive Fraudulent Transfer

1. Relevant Law

Section 548(a)(1)(B) of the Bankruptcy Code provides trustees with the power to avoid any transfer of an interest of the debtor made on or within two years before the Petition Date if the debtor (i) received less than a reasonably equivalent value in exchange for such transfer; and (ii) the debtor was insolvent on the date of such transfer. As explained in greater detail below, the proponent will bear the burden of proving that:

- (1) the Transfers were of funds owned by the Debtor and, therefore, were of an interest of such Debtor in property;
- (2) the Debtor was insolvent at the time of the Transfers; and
- (3) the Debtor did not receive reasonably equivalent value in exchange for the Transfers.

(a) Transfer of an Interest of the Debtor

For purposes of section 548(a) of the Bankruptcy Code, a “transfer” is defined broadly as “each mode, direct or indirect, absolute or conditional, voluntary or involuntary” that the debtor parts with property or an interest in property. 11 U.S.C. § 101(54). Accordingly, a fraudulent transfer is not limited to a monetary payment made by the debtor, and can instead consist of, among other things, (i) the debtor’s entry into an agreement or contract, (ii) the transfer or assignment of the debtor’s rights, or (iii) the grant or perfection of a security interest in the debtor’s assets.

(b) Reasonably Equivalent Value

In determining whether a debtor received reasonably equivalent value in exchange for a transfer or obligation, it must first be determined whether it received *any* value. *See* 11 U.S.C. § 548(a)(1)(B)(i). The Bankruptcy Code defines “value” to mean “property, or the satisfaction or securing of a present or antecedent debt of the debtor.” 11 U.S.C. § 548(d)(2).

The Bankruptcy Code, however, does not define “reasonably equivalent.” The Third Circuit has noted, “a party receives reasonably equivalent value for what it gives up if it gets ‘roughly the value it gave.’” *In re USDigital, Inc.*, 443 B.R. 22, 38–39 (Bankr. D. Del. 2011) (quoting *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 631 (3d Cir. 2007)). To determine whether a debtor received “reasonably equivalent value,” courts generally look to the totality of the circumstances surrounding the transfer in question. *See In re Plassein Int’l Corp.*, 405 B.R. 402, 411–12 (Bankr. D. Del. 2009), *aff’d*, 428 B.R. 64 (D. Del. 2010); *accord In re Waterford Wedgwood USA, Inc.*, 500 B.R. 371, 381 (Bankr. S.D.N.Y. 2013). In conducting this factual analysis, a court looks at (1) the “fair market value” of the benefit received as a result of the transfer, (2) “the existence of an arm’s-length relationship between the debtor and the transferee,” and (3) the transferee’s good faith. *In re Fruehauf Trailer Corp.*, 444 F.3d 203, 213 (3d Cir. 2006) (citing *In re R.M.L., Inc.*, 92 F.3d 139, 148–49, 153 (3d Cir. 1996)).

In considering whether a transaction was conducted at arm's length, courts consider (i) whether the parties attended to the kinds of formalities one would expect to see in dealings between third parties at arm's length, (ii) whether the parties were sensitive to potential conflicts, and (iii) whether the party controlled, sought to control, or exercised any undue influence on the debtor. *See, In re U.S. Med., Inc.*, 531 F.3d 1272, 1274 (10th Cir. 2008).

(c) Solvency

To avoid a transfer under section 548(a)(1)(B) of the Bankruptcy Code, it must be proven that the debtor was either (a) insolvent on the date that the transfer was made or became insolvent as a result of the transfer; or (b) about to engage in a business or transaction for which any remaining property remaining with the debtor was an unreasonably small capital; or (c) intended or believed that the debtor would incur debts beyond the debtor's ability to pay.

As set forth above, we presume CCA is insolvent as it failed both the Balance Sheet test and the Reasonable Capital test as of FYE 2021, FYE 2022, FYE 2023, and FYE 2024.

2. Analysis

(a) Transfers from CCA to CSCEC Holding

The Investigation considered whether the Debtor could pursue a claim to recover the payments CCA made to CSCEC Holding during the Relevant Period as constructive fraudulent transfers. As discussed above, CCA made the Potential Dividends to CSCEC Holding totaling [REDACTED] See Apps. B & N.

Courts have held that “distributions to equity holders on account of their equity holdings are not made in exchange for ‘reasonably equivalent value’.” *In re Fun Bowl Vacations, Inc.*, 666 B.R. 867, 878 (Bankr. S.D.N.Y. 2025); *accord Jacobs v. Altorelli (In re Dewey & LeBoeuf LLP)*, 518 B.R. 766, 789 (Bankr. S.D.N.Y. 2014) (“Equity distributions are not ordinarily considered transfers made on account of antecedent debt, and in turn, are not considered to be made in exchange for ‘reasonably equivalent value.’”); *In re Appleseed's Intermediate Holdings, LLC*, 470 B.R. 289, 300-01 (D. Del. 2012) (denying motion to dismiss fraudulent transfer claim in which defendants argued that voluntary disbursed dividends constitutes reasonably equivalent value). As one court explained:

An owner's rights to receive returns are features of equity ownership that are junior to the rights of creditors. If the business had been solvent then Ms. Serafis might have been entitled to dividend payments with respect to her equity position, but by definition dividend payments are payments that are made in respect of equity investments; they are not made in exchange for property or in payment of antecedent debts, and therefore they are not made in exchange for “fair consideration” or reasonably equivalent value.”

Fun Bowl Vacations, 666 B.R. at 878.

Assuming, *arguendo*, that the Debtor was insolvent as discussed above, the Debtor may be able to state a colorable claim that the Potential Dividends were constructive fraudulent conveyances under section 548 of the Bankruptcy Code and applicable Delaware law. Having determined that there may be a colorable claim to recharacterize the Holding Loans as equity contributions, CCA may be able to argue that it failed to receive reasonably equivalent value for the Potential Dividends. On the other hand, if a court does not recharacterize the Holding Loans as equity and maintains them as indebtedness, the payment of the Potential Dividends would not be a constructive fraudulent transfer as the Debtor would have received reasonably equivalent value for the payments in the form of a reduction of indebtedness. See *In re Mack Indus.*, 2020 WL 6708874, at *4 (Bankr. N.D. Ill. Nov. 16, 2020) (stating that “[m]any courts have held that a reduction in debt owed by a debtor is reasonably equivalent value” and collecting cases).⁴⁷

(b) Transfers Made on Behalf of the Shared Services Members in Exchange for “Due Tos”

Our Investigation considered whether the transfers made during the Relevant Period on behalf of the Shared Services Members that were not reimbursed could be constructive fraudulent transfers. These transfers total approximately \$36 million. See Apps. B & C. While such transfers may be fraudulent transfers if the applicable standards are met, this Report does not conduct a full analysis here because there is no dispute that there are “due tos” and “due froms” on CCA’s books and records and the Shared Services Members’ books and records, and CCA and the Shared Services Members acknowledged the intercompany liabilities. A strong argument can be made that CCA received “reasonably equivalent value” for the transfers it made on behalf of such entities because, in making such payments, CCA allocated the payment to the Shared Services Members and received a “due from” such entities in return. In addition, as the direct owner of the Non-Debtor Subsidiaries, CCA enhanced the value of such entities in making the transfers on their behalf.

On the other hand, an argument can be made that CCA failed to receive “reasonably equivalent value” for transfers it made on behalf of [REDACTED] – if it is determined that those entities were insolvent at the time the transfers were made. Courts have recognized that “[a] corporate debtor transferring property for consideration to its subsidiary presumptively receives reasonably equivalent value since the subsidiary is an asset of the debtor, and what benefits the asset will ordinarily accrue to the benefit of the owner, unless the subsidiary is insolvent, in which case the effect of the transaction is merely to diminish the parent’s net worth.” 9C Am. Jur. 2d Bankruptcy § 2211 (2d ed. 2016) (citing cases) (emphasis added). See also *In re Renegade Holdings, Inc.*, 457 B.R. 441, 445 (Bankr. M.D.N.C. 2011) (holding that because amended complaint alleged that subsidiary was insolvent when parent guaranteed one of subsidiary’s debts, “the presumption of indirect benefit does not arise”); *Commerce Bank of*

⁴⁷ It also bears noting that CSCEC Holding, in its capacity as DIP Lender, has full recourse to all proceeds of “Avoidance Actions” under the *Final Order (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* [Docket No. 174] ¶ 3(e). To the extent that the Debtor succeeds in returning proceeds to the estate on account of a constructive fraudulent transfer claim against CSCEC Holding, CSCEC Holding may use such proceeds to satisfy its “DIP Obligations.”

Kansas City, N.A. v. Achtenberg, 1993 WL 476510, at *4 (W.D. Mo. Nov. 10, 1993) (“The stipulated evidence is that KBDC was insolvent at the time of the transaction and the loan did not make it more solvent. Thus, the net worth of the guarantor debtors was diminished by the obligation, and the innocent creditors of the debtors were in fact harmed by the transfer.”). Nevertheless, even if CCA failed to receive “reasonably equivalent value” for the transfers it made on behalf of [REDACTED]

(c) Assignment of the SSAs

Our Investigation also considered whether CCA failed to receive “reasonably equivalent value” for CSCEC Holding’s assignment of the SSAs to CCA in March 2021 such that the transaction could be avoided as a constructive fraudulent transfer. CCA acknowledged that it received no “consideration” or any cash in connection with the assignment. However, during the interviews, we learned that the reason for the assignment was to formalize the already existing Shared Services Program. As of March 2021, CCA was already operating as the SSC as a due to the delegation of responsibilities from CSCEC Holding under the SSAs. Therefore, CCA did not take on any new obligations or liabilities when the SSAs were assigned to CCA in March 2021.

(d) Executive Compensation

For the reasons stated below in the “Breach of Fiduciary Duty” analysis (*see infra* section V.F), the Debtor is not likely to establish colorable fraudulent transfer claims to recover executive compensation and other payments made to the D&Os. These amounts were paid pursuant to established policies that provided for non-discretionary incentive payments and/or were tied to the profitability of construction projects conducted by the Non-Debtor Subsidiaries and the Non-Debtor Affiliates. Likewise, reimbursements for expenses incurred by the D&Os were made pursuant to policy and were substantiated through the submission of receipts. Although not all submissions of expenses were made timely, they appear to have been for legitimate business expenses and, in any event, the amounts at issue do not justify the pursuit of any potential claims relating thereto. *See App. H.*

3. Conclusion

Based on above, the Debtor may be able to plead a colorable fraudulent transfer claim to avoid the approximately [REDACTED] paid to CSCEC Holding during the Relevant Period if a court determines that the Holding Loans were equity contributions rendering such payments dividends. However, the viability of a constructive fraudulent transfer claim against CSCEC Holding is a close call for two reasons. First, the viability of a claim against CSCEC Holding is uncertain given that CSCEC Holding is a non-operational holding company whose assets consist primarily of its interest in various subsidiaries. Second, a fraudulent transfer claim against CSCEC Holding is conditioned upon a successful recharacterization claim. As discussed above, the ultimate success or viability of a recharacterization claim is a close call.

The Debtor is not likely to be able to assert a colorable fraudulent transfer claim for transfers it made on behalf of the Shared Services Members in exchange for “due tos,” the assignment of the SSAs in 2021, or executive compensation to D&Os.

E. Preferences

1. Relevant Law

Transfers from a debtor can be avoided as preferences, regardless of the debtor’s motive or intent, if all of the following requirements are met: (1) the transfer was of the debtor’s interest in property; (2) the transfer benefits a creditor; (3) the transfer is on account of an antecedent debt; (4) the debtor is insolvent at the time of the transfer; (5) the transfer occurs within 90 days of the petition date (period increases to one year if the transfer was made to an insider of the debtor); and (6) the creditor receives more than it would in a Chapter 7 liquidation had the transfer not been made. 11 U.S.C. § 547(b). All six of these elements must be satisfied for a preference avoidance action to succeed, and these elements can be highly fact-intensive and difficult to prove.

Section 547(b) of the Bankruptcy Code also requires the Debtor to perform “reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably known affirmative defenses” before pursuing an action to avoid the transfers as a preference. *Id.* Section 547(c) of the Bankruptcy Code details defenses to preference avoidance actions, such as if the debtor’s transfer was made in exchange for new value, if the debtor’s transfer was made in the ordinary course of business, or if the creditor gave new value to the debtor subsequent to the avoidable transfer. *See* 11 U.S.C. § 547(c)(1), (c)(2), and (c)(4).

We examined the transfers made within the ninety days prior to the Petition Date in the Debtor’s Schedules of Assets and Liabilities (Attachment 3) and did not identify any transfers that would be recoverable under section 547 of the Bankruptcy Code.

We also reviewed Attachment 4 of the Schedules of Assets and Liabilities and identified three categories of transfers that we investigated as possible preferences: (a) transfers to the D&Os for payroll and expense reimbursement in the aggregate amount of approximately \$3 million; (b) transfers made for the benefit of the Shared Services Members pursuant to the SSAs in the aggregate amount of approximately \$2.6 million; and (c) transfers made to Non-Debtor Subsidiaries, Non-Debtor Affiliates, and CSCEC Holding in the aggregate amount of approximately \$6.6 million, comprised of [REDACTED]

2. Analysis

(a) Executive Compensation and Reimbursement

As to the [REDACTED] paid to D&Os within one-year prior to the Petition Date, all such payments were for salary and expense reimbursement. The Debtor did not make any bonus payments to any insiders during the one-year preference period. As a result, the transfers to the D&Os listed on Attachment 4 were not on account of an “antecedent debt” required under section

547(b) and were made in the ordinary course of business. As a result, the Debtor does not have a colorable claim against the D&Os for amounts they received during the preference period.

(b) Transfers Made for the Benefit of Shared Services Members Pursuant to the SSAs

We also examined whether the transfers made for the benefit of the Shared Services Members within ninety days of the Petition Date are recoverable as preferences. Whether or not the transfers would qualify as preferences will depend, in part, on whether CCA entered into contracts directly with the vendors such that a payment made on account of such contracts constituted payment of an “antecedent debt” as required under section 547(b). In any event, the transfers made for the benefit of the Shared Services Members within ninety days of the Petition Date were all made in the ordinary course of business. As a result, the Debtor does not have colorable preference claims against those entities that received transfers from the Debtor on behalf of the Shared Services Members.

(c) Transfers to Non-Debtor Subsidiaries, Non-Debtor Affiliates, and CSCEC Holding

We also examined whether the transfers made by CCA to Non-Debtor Subsidiaries, Non-Debtor Affiliates, and CSCEC Holding in the aggregate amount of approximately \$6.6 million, comprised of approximately [REDACTED] are recoverable as preferences under section 547(b) of the Bankruptcy Code.

In order to pursue a claim against CSCEC Holding to recover the approximately \$2.4 million paid during the one-year prior to the Petition Date, the Debtor must first establish that the payments were on account of an “antecedent debt” and not repayments of equity contributions. Given that the question of whether the Holding Loans were valid indebtedness or equity contributions is a close call, it is uncertain whether the Debtor will be able to establish that the payment was on account of an “antecedent debt” as required by section 547(b) of the Bankruptcy Code. In any case, CSCEC Holding has a strong subsequent new value defense because it provided CCA with approximately [REDACTED] of capital within the year prior to the Petition Date. CSCEC Holding may also be able to assert a valid ordinary course of business defense.

With regard to all payments to [REDACTED] we determined that such payments were made in the ordinary course of business according to CCA’s historical business practice and not likely to result in a successful preference claim under section 547(b) of the Bankruptcy Code.

3. Conclusion

CCA does not have any colorable preference claims to avoid transfers it made within the ninety days or one-year prior to the Petition Date identified on its Schedules of Assets and

Liabilities. Moreover, given the amounts at issue and the cost of litigation, any preference claim (if ultimately pursued) may not provide a benefit to the Debtor's estate.

F. Breach of Fiduciary Duty Claims

1. Relevant Law

Under Delaware law, directors and officers of a corporation have a triad of fiduciary duties to uphold: the duties of care, loyalty, and good faith. The duty of care is the duty to act on an informed basis. Directors and officers must: (a) use the amount of care that an ordinarily careful and prudent person would use in similar circumstances; and (b) consider all material information reasonably available in making business decisions. *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). Deficiencies in the directors' or officers' process are actionable only if the directors' actions are grossly negligent. *Id.* The analysis looks at the decision-making process and not the outcome of said decision, and a breach will be found upon a showing of gross negligence.

The precise behavior constituting gross negligence varies depending on context, but gross negligence "generally requires that officers, directors, and managers fail to inform themselves fully and in a deliberate manner." *In re W.J. Bradley Mortg. Cap., LLC*, 598 B.R. 150, 163 (Bankr. D. Del. 2019). Gross negligence has been defined as a "reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason." *Tomczak v. Morton Thiokol, Inc.*, 1990 WL 42607, at *12 (Del. Ch. Apr. 5, 1990) (citation modified).

(a) Duties of Loyalty and Good Faith

The duty of loyalty requires directors, officers, and controlling managers to act in good faith and in a manner they reasonably believe to be in the best interests of the company. A breach of the duty of loyalty requires facts showing a self-interested transaction occurred that was unfair to the corporation or its shareholders. To establish a breach of the fiduciary duty of loyalty, a challenger must show that the defendants either (1) stood on both sides of the transaction and dictated its terms in a self-dealing way, or (2) received in the transaction a personal benefit that was not enjoyed by the shareholders generally." *In re Cred Inc.*, 650 B.R. 803, 830 (Bankr. D. Del. 2023), *aff'd*, 658 B.R. 783 (D. Del. 2024).

The duty of good faith is a "subsidiary element" of the "fundamental duty of loyalty." *USDigital, Inc.*, 443 B.R. at 41. The Delaware Supreme Court has recognized three non-exclusive categories of conduct indicative of a failure to act in good faith, namely, when a director:

- (1) "intentionally acts with a purpose other than that of advancing the best interests of the corporation."
- (2) "acts with the intent to violate applicable positive law";
or

(3) “intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his [or her] duties.”

Id. (quoting *Walt Disney*, 906 A.2d at 67).

Thus, for example, preferring the interests of insiders at the expense of other creditors could give rise to a claim for a breach of the fiduciary duty of loyalty.

(b) Duty of Oversight

The duty of oversight refers to a director’s obligation to supervise and monitor corporate operations and governance. Directors must ensure that the company complies with applicable laws, adheres to ethical standards, and maintains sound management practices. This duty requires ongoing engagement and vigilance to prevent misconduct, mismanagement, or financial misstatements that could harm the corporation and its shareholders. Pursuant to Delaware law, directors have a duty of oversight, which requires them to “exercise a good faith judgment that the corporation’s information and reporting system is in concept and design adequate to assure the board that appropriate information will come to its attention in a timely manner as a matter of ordinary operations.” *In re Caremark Int’l Deriv. Litig.*, 698 A.2d 959, 970 (Del. Ch. 1996).

Caremark claims arise when directors fail to establish adequate monitoring systems, resulting in regulatory violations or corporate misconduct. To succeed in such claims, plaintiffs must demonstrate that the directors were deliberately indifferent or reckless in their oversight responsibilities, neglecting essential oversight duties or ignoring red flags that should have prompted action. *Caremark* claims emphasize the importance of proactive governance and diligent supervision to prevent harm and ensure accountability. Recent cases have extended the duty of oversight to officers as well as directors. *See In re McDonald’s Corporation S’holder Deriv. Litig.*, 289 A.3d 343, 358 (Del. Ch. 2023).

Historically, *Caremark* claims have been exceedingly difficult to prevail on and are often dismissed at the pleading stage. *See, e.g., Stone v. Ritter*, 911 A.2d 362, 372 (Del. 2006) (“[A] claim that directors are subject to personal liability for employee failures is possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.” (internal quotation marks omitted)). To overcome a motion to dismiss, a plaintiff must plead facts under which it is reasonably conceivable to infer that the board acted in bad faith by (1) utterly failing to implement any reporting or information systems or controls; or (2) having implemented such a system or controls, consciously failing to monitor or oversee their operations, including ignoring “red flags.” *See McDonald’s*, 289 A.3d at 376.

(c) Business Judgment Rule

Directors and officers enjoy the presumption of the business judgment rule, which is a standard of review that “reflects and promotes the role of the board of directors as the proper body to manage the business and affairs of the corporation.” *In re Trados Inc. S’holder Litig.*, 2009 WL 2225958, at *6 (Del. Ch. July 24, 2009). The business judgment rule operates as a presumption

“that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation's best interest.” *Continuing Creditors’ Comm. of Star Telecommunications, Inc. v. Edgecomb*, 385 F. Supp. 2d 449, 462 (D. Del. 2004).

Unless one of its elements is rebutted, the court merely looks to see whether the business decision made was rational in the sense of being one logical approach to advancing the corporation’s objectives. Thus, “in the absence of facts showing self-dealing or improper motive, a corporate officer or director is not legally responsible to the corporation for losses that may be suffered as a result of a decision that an officer made or that directors authorized in good faith.” *Id.* at 458. “Only when a decision lacks any rationally conceivable basis will a court infer bad faith and a breach of duty.” *Firefighters’ Pension Sys. of the City of Kansas City, Missouri Tr. v. Presidio, Inc.*, 251 A.3d 212, 249 (Del. Ch. 2021).

(d) Entire Fairness Standard

The presumption afforded by the business judgment rule may be overcome if facts show that the director or officer lacked disinterestedness or independence. The lack of independence is commonly shown where a fiduciary was on both sides of a transaction or received a benefit not received by the stakeholders, thereby putting the fiduciary’s self-interest first (*i.e.* self-dealing).

If the business judgment rule is rebutted with respect to a particular transaction, the court will apply a more onerous standard of review, such as the “entire fairness” review to determine whether there has been a breach of fiduciary duty. The entire fairness standard shifts the burden to directors and officers to prove that the decision or transaction was both procedurally and substantively fair, *i.e.*, it was both fair dealing and fair price. *See Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1239 (Del. 2012).

(e) Statutory Safe Harbor

Delaware corporate directors are further shielded from breach of fiduciary duty liability pursuant to 8 Del. C. § 141(e), which provides: a member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member’s duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation’s officers or employees, or committees of the board of directors, or any other person as to matters the member reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation. The Delaware statutory analysis is objective (*i.e.*, based upon a reasonableness standard) and requires that, in making business decisions, directors consider all material information reasonably available, and the directors’ decision-making process is actionable only if grossly negligent.

A challenger may overcome this statutory protection by showing, for example, that:

- (a) the directors did not, in fact, rely on the expert;
- (b) their reliance was not in good faith;

- (c) they did not reasonably believe that the expert's advice was within the expert's professional competence;
- (d) the expert was not selected with reasonable care by or on behalf of the corporation, and the faulty selection process was attributable to the directors;
- (e) the subject matter that was material and reasonably available was so obvious that the board's failure to consider it was grossly negligent regardless of the advice or lack of advice; or
- (f) the decision of the board was so unconscionable as to constitute waste or fraud.

Brehm v. Eisner, 746 A.2d 244, 262 (Del. 2000); *OptimisCorp v. Waite*, 2015 WL 5147038, at *69 n.564 (Del. Ch. Aug. 26, 2015).

(f) Waiver of Duties

Director liability for breaches of the duty of care is uncommon given that most states, including Delaware, permit corporations to include a provision in their certificates of incorporation exculpating their directors from monetary liability for duty of care violations. *See, e.g., Periera v. Farace*, 413 F.3d 330, 342 (2d Cir. 2005) (holding exculpatory provision in Delaware corporation's charter precludes bankruptcy trustee from bringing action against directors for breach of duty of care).

Here, the certificate of incorporation for CCA includes such an exculpatory provision. Consequently, the directors of CCA are insulated from liability with respect to claims for breach of the fiduciary duty of care. However, CCA's directors are not exculpated for breaches of the duty of loyalty (including breaches resulting from a conflict of interest), acts or omissions committed in bad faith, acts or omissions involving intentional misconduct or a knowing violation of law, for any transactions in which the director received an improper personal benefit, or for liabilities for the payment of unlawful dividends or unlawful stock purchase or redemption.

Furthermore, CCA's officers are not insulated under the entity's governance documents from liability for duty of care violations. Accordingly, we assumed the duty of care applicable to officers was not waived for the purposes of this investigation.

(g) Fiduciary Duties Owed by Parent to Wholly-Owned Subsidiaries

Generally speaking, under Delaware law, parents do not owe wholly-owned subsidiaries fiduciary duties. *See Trenwick Am. Litig. Tr. v. Ernst & Young, LLP*, 906 A.2d 168, 173 (Del. Ch. 2006). However, notwithstanding this general rule, under Delaware law, "a parent is found to owe fiduciary duties to its subsidiary in the context of a subsidiary's insolvency." *In Re Maxus Energy Corp.*, 571 B.R. 650, 659 (Bankr. D. Del. 2017). Thus, when analyzing potential claims for breaches of fiduciary duty, we considered the duties owed either by or to CCA in the context of a parent-subsidiary relationship when the conditions necessary for such duties to arise were present.

2. Analysis

(a) Executive Compensation/Bonuses/Expense Reimbursement

The decision and actions of the D&Os regarding executive compensation plans should be reviewed under a business judgment standard. *Brehm*, 746 A.2d at 264 n.29 (a board of directors' business decisions will not be disturbed if they can be attributed to any rational business purpose in upholding the board's approval of a large severance package for the corporation's former president). We have not found any facts to suggest the business judgment rule should not apply.

Our Investigation revealed that the Board and CCA executive officers' actions were consistent with their duties of good faith, loyalty, and oversight. The Board appears to have made decisions and taken actions upon the good faith belief that they would advance the best interests of CCA and all its stakeholders. It also appears that CCA's officers and directors acted in an informed manner and on what they believed were the best interests of CCA. As confirmed by statements made by those whom we have interviewed, bonus and incentive payments were made in accordance with CCA's written policies, were non-discretionary in nature, and tied to the profitability of construction projects being undertaken by CCA's subsidiaries. Our Investigation revealed no evidence to suggest that excessive bonus or incentive payments were made contrary to the financial performance of CCA or its subsidiaries.

Similarly, we find no factual basis to support a claim that the D&Os breached their fiduciary duties of care. CCA's records concerning the disbursement of bonus and incentive payments indicate they were made consistent with CCA's policies and that those policies were developed on an informed basis and with the intent to benefit CCA and its subsidiaries.

We also investigated potential claims against D&Os that could potentially have arisen from the relationship between CCA, CSCEC Ltd., CSCEC Holding, the Non-Debtor Subsidiaries, and the Non-Debtor Affiliates. While there did exist overlap in terms of the D&Os serving in such capacities for more than one of these entities, we did not uncover any evidence of specific conflicts of interest arising during the timeframe investigated which implicated the entities' directors and/or officers and that resulted in any damage to CCA. We also did not uncover any instances of misconduct and/or mismanagement concerning or relating to the relationship between these entities, nor any evidence of improper destruction of documents.

Our Investigation has confirmed that expense reimbursements were made upon the submission of receipts confirming that the expenses were legitimate business expenses incurred on behalf of CCA. Any decisions to deviate from CCA's written policies concerning the timeframe in which expenses must be submitted for reimbursement were made in good faith and in the honest belief that their actions were in CCA's best interest and therefore are entitled to presumption provided by the business judgment rule. Accordingly, it is our conclusion that no colorable claim exists with respect to the reimbursement of business expenses made to the D&Os. Our Investigation also did not uncover any evidence to support claims against the D&Os of CSCEC Ltd. and CSCEC Holding including, but not limited to, breaches of fiduciary duty.

(b) Failure to secure the delivery of audited financial statements for the Debtor's subsidiaries.

Audit services were provided by the Debtor to the Shared Services Members pursuant to the SSAs. Such services included engaging outside auditors, managing the engagements, and providing documents and information to the auditors. Accordingly, the Debtor was obligated to ensure that timely audits of its subsidiaries were completed. Interviewees have stated that the failure to deliver timely audit reports negatively impacted the Debtor's subsidiaries' ability to conduct business.

[REDACTED]

The failure

[REDACTED] viewed together, may support a colorable claim that the D&Os breached their duty of care owed to the Debtor. However, as indicated, the converse argument may also have merit and may militate against pursuing claims related to the failure to produce audited financial statements. In addition, if [REDACTED] successfully pursued claims for breach of fiduciary arising from CCA's failure to pursue timely audits, then CCA may in turn have claims against its D&Os for damages incurred as a result of those claims.

In addition to the potentially competing consequences arising from the failure to secure timely audit reports, it is our conclusion that quantifying any damages that may or may not have resulted from the lack of possessing audited financial statements would be an extremely difficult proposition. It is undisputed that during the applicable timeframe, CCA was facing several headwinds relating to its business including a broad retreat from, and policy changes negatively impacting, Chinese investment in U.S.-based construction projects (and which were exacerbated by the \$13,929,892). This further weighs against the likelihood of successfully bringing a claim relating to the failure of CCA to secure timely audit reports.

Finally, the exculpatory clause contained in CCA's Certificate of Incorporation waives any claim against CCA's directors resulting from a breach of their duty of care.⁴⁸ Failing to secure timely audit reports would not support a claim for breach of duty of loyalty and we have not

⁴⁸ Section 102(b)(7) of the Delaware General Corporation Law authorizes Delaware corporations, by a provision in the certificate of incorporation, to exculpate their directors from monetary damage liability for a breach of the duty of care. Such exculpatory provisions afford significant protection to directors of Delaware corporations and are regularly held as enforceable. See, e.g., *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 65 (Del. 2006); see also *In re Morton's Restaurant Grp., Inc. S'holders Litig.*, 74 A.3d 656, 664 (Del. Ch. 2013).

discovered any evidence to suggest that the failure to secure timely audit reports was an act of bad faith or otherwise involved intentional misconduct or knowing violations of law.

(c) Anonymous Letter Regarding Wire Fraud

On June 10, 2025, the Examiner sent Cole Schotz an anonymous letter dated June 4, 2025 to the Examiner alerting the Examiner [REDACTED] approximately \$2 million. The anonymous whistleblower alleged that this fraud may not have been adequately disclosed in the Debtor's financial statements, bankruptcy filings, or auditor reports.

The allegations raised in the anonymous letter were already known to CCA and Cole Schotz. Nevertheless, upon receipt of the letter, we further investigated the allegations. [REDACTED]

[REDACTED] e do not believe there is any breach of any fiduciary duty by CCA's D&Os relating to the allegations in the anonymous letter.

(d) D&O Insurance Policies

In connection with analyzing claims arising from potential breaches of fiduciary duty, we reviewed certain insurance documents to determine if D&O insurance policies issued to CSCEC Holding are available to address claims that may be asserted against the D&Os.

We were provided a number of insurance policy documents to review all identifying CSCEC Holding as the named insured. As to D&O coverage, there is an insurance tower (the "Tower") consisting of [REDACTED]

3. Conclusion

Based on above, we do not believe that a colorable claim exists concerning executive compensation and/or expense reimbursement. We believe there may be a colorable claim for breach of fiduciary duty concerning the failure to pursue completion of audit reports on behalf of the Shared Services Members. However, we did not find any evidence supporting the viability of such a claim because ascertaining whether or not the failure to pursue completion of the audit reports resulted in actual damages remains extremely problematic and, in fact, such failure may have even avoided certain negative outcomes. Similarly, we do not believe that a colorable claim

exists with respect to the wire fraud that resulted in a \$2 million loss. Our investigation revealed that the proper steps were taken to mitigate the loss and the facts and circumstances that led to the loss do not rise to the level of a breach of fiduciary duty. Accordingly, we do not believe such a claim would be viable.

G. Breach of Contract and Account Stated Claims

1. Breach of Contract Claim

The SSAs provide “This Agreement and the rights and liabilities of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of New Jersey.” As such, any breach of contract claims will be analyzed under New Jersey law.

To prevail on a claim of breach of contract, “[o]ur law imposes on a plaintiff the burden to prove four elements: first, that ‘the parties entered into a contract containing certain terms’; second, that ‘plaintiffs did what the contract required them to do’; third, that ‘defendants did not do what the contract required them to do,’ defined as a ‘breach of the contract’; and fourth, that ‘defendants’ breach, or failure to do what the contract required, caused a loss to the plaintiffs.’” *Goldfarb v. Solimine*, 245 N.J. 326, 338–39, 245 A.3d 570, 577 (2021) (quoting *Globe Motor Co. v. Igdalev*, 225 N.J. 469, 482, 139 A.3d 57 (2016) (alterations omitted)).

Here, there are contracts between CCA and each of the Shared Services Members for the shared services. Pursuant to the SSAs, the Shared Services Members are required to reimburse CCA for “for any costs and expenses it incurs in connection with or arising out of the provision of the SSC Services, including but not limited to, payments to third-party vendors and service providers.” It is undisputed that CCA performed under the SSAs and provided shared services and paid third parties for such services. The Shared Services Members acknowledge that such services were rendered on their behalf through allocations identified as “due tos” CCA on their books and records. During interviews, we learned that it was expected that Direct Allocations would be repaid on a quarterly basis and Indirect Allocations (which are allocated at year-end) to be repaid at the end of the first quarter of the following year. As of May 31, 2025, CCA was owed \$29,249,082 from the Non-Debtor Subsidiaries and \$72,893,554 from the other Shared Services Members. The amounts due and owing to CCA are identified in both CCA’s and the Shared Services Members’ book and records as “due tos” and “due froms.” The Shared Services Members’ failure to pay the valid and recorded amounts owed to CCA may be a breach of the SSAs. However, because the SSAs do not provide a specific date by which the Shared Services Members are required to reimburse CCA, CCA should consider sending a default notice to the Shared Services Members confirming that they are in default of their obligations under the SSAs.

2. Account Stated Claims

In the alternative, the Debtor could also assert an account stated claim against each of the entities identified on the Debtor’s Schedule A/B 77 in the aggregate amount of \$95,988,328.21. A summary of the outstanding balances on CCA’s books and records is set forth *supra* in section IV.D.1. To pursue an account stated claim, CCA is likely to pursue claims against the applicable entity for whom CCA maintains the consolidated books and records.

The entity and balances that CCA may pursue are listed below:

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - o [REDACTED]
 - o [REDACTED]
 - o [REDACTED]
- [REDACTED]
 - o [REDACTED]
 - o [REDACTED]
- [REDACTED]
- [REDACTED]

In New Jersey, account stated claims require proof of the following elements: “(1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due.” *Bergen Plastic Surgery v. Aetna Life Ins. Co.*, No. CV22227SDWJSA, 2023 WL 3452633, at *4 (D.N.J. May 15, 2023) (citing 29 Williston on Contracts § 73:56 (4th ed.)). “In some circumstances, silence on behalf of the debtor can result in acquiescence to the sum due if the debtor does not respond for a reasonably long period of time.” *Id.* (citing *Asco Power Techs., L.P. v. Pepco Techs., L.L.C.*, No. 03-1942 (GEB) 2006 U.S. Dist. LEXIS 76368, *22 (D.N.J. Oct. 20, 2006) (citation omitted)). A debtor’s partial payment of an invoice may also constitute an implied admission of indebtedness for the balance. *Id.* (citations omitted).

Based upon the Investigation to date, CCA likely has an account stated claim against the Shared Services Members under New Jersey law as the Shared Services Members likely impliedly agreed to pay the amounts due. With regard to the recording of “due tos” and “due froms” on CCA’s and the Shared Services Members’ books and records, CCA’s internal procedures provided that CCA should send billings with supporting documentation to the Shared Services Members reflecting the amounts of their allocations. The procedures also stated that CCA should then “initiate [an] intercompany OA seeking approval” of the allocations, but that the Shared Services Members “should record the billings to the corresponding ‘due to/from’ account at the time of receipt, no matter the OAs approved or not.” The procedures go on to state that the “OA sender should track the approval status, answer any questions approvers may have, and make adjusted billings if needed in the following periods,” and “[o]n a quarterly basis, reporting entities [should] distribute IC reconciliation lead-sheets to [the business divisions], and the [business divisions] should reconcile with their records and report back to the reporting companies the balances.”

Supporting this process, Company personnel interviewed in connection with the Investigation stated that, in the past few years, CCA would send on a monthly basis the details of CCA's allocations to the Shared Services Members both through the Company's OA system and on an "Intercompany Billing Statements" provided to the relevant personnel with the Shared Services Members. We reviewed several OA reports and Intercompany Billing Statements provided by CCA dated between July 2023 and December 2024, along with related correspondence between CCA and the Shared Services Members. On occasion, representatives from the Shared Services Members would ask CCA questions about the allocations, seek supporting documentation for the allocations, or suggest adjustments or reallocation of expenses to other Shared Services Members. CCA would then make the suggested revisions and circulate an updated statement to the Shared Services Members reflecting agreed changes. Once the amount was agreed, the Company would initiate through the OA system an "Inter-Company Transfer Form" confirming the amount owed by the Shared Service Member and scheduling a wire transfer from the Shared Service Member to CCA.

As further evidence that the Shared Services Members agreed to pay the "due froms" on their books and records, the "due tos" on CCA's books and records and the "due froms" the Shared Services Members are contained on the consolidated balance sheets as of 12/31/24 for each applicable entity. Other than normal reallocations or readjustments made at the request of the Shared Services Members, we did not uncover any evidence that the Shared Services Members ever formally or informally objected to inclusion of the "due tos" that currently sit on the Shared Services Members' books and records on their respective balance sheets. Given the foregoing, CCA has a colorable claim against the Shared Services Members for account stated under New Jersey law.

3. Conclusion

CCA has a colorable breach of contract claim under New Jersey law against each of the Shared Services Members due to unpaid allocations. However, a breach of contract claim is ultimately going to be subject to a court's determination of whether or not a breach occurred, given that the SSAs do not provide a date specific by which the Shared Services Members were to reimburse CCA. Moreover, a breach may not have occurred absent issuance of a default notice. CCA has colorable account stated claims against the Shared Services Members under New Jersey law.

As detailed above, however, breach of contract and account stated claims against

and

Breach of contract and account stated claims against Unibuy for

may be viable

of contract and account stated claims against CCASC and Strategic Capital

Breach

, respectively, are viable.

H. Substantive Consolidation

While no creditors have raised substantive consolidation as a potential claim or remedy, in light of BMLP's statements with respect to alter ego, the Special Committee has also considered whether there is a valid claim for substantive consolidation of the Debtor with CSCEC Holding.⁴⁹

1. Relevant Law

Under the equitable remedy of substantive consolidation, a bankruptcy court may combine the assets and liabilities of an entity which is affiliated with or related to the debtor into the debtor's estate—essentially, multiple entities are collapsed into one. Such remedy can, in certain circumstances, improve creditor recoveries by adding solvent companies to the sources of recovery.

“The effect of substantive consolidation is to merge all assets and liabilities of individual entities into a single survivor such that ‘claims of creditors against separate debtors morph [into] claims against the consolidated survivor.’” *In re Caribbean Auto Mart of St. Croix, Inc.*, No. 13-10003 (MFW), 2021 WL 2419986, at *3 (Bankr. D.V.I. June 11, 2021) (citing *In re Owens Corning*, 419 F.3d 195, 205 (3d Cir. 2005), *amended* (3d Cir. 2005), *cert. denied* 126 S. Ct. 1910 (2006)).

The Third Circuit established the test for substantive consolidation in *Owens Corning*, 419 F.3d 195. The Owens Corning test is significantly different than the tests in other circuits. The Third Circuit pointedly rejected the Second Circuit test which utilizes a checklist akin to the alter ego tests because it “often results in rote following of a form containing factors where courts tally up and spit out a score without an eye on the principles that give the rationale for substantive consolidation (and why, as a result, it should so seldom be in play).” *Id.* at 210. Under *Owens Corning*, the party seeking substantive consolidation must prove either that: (i) prepetition, the subject entities disregarded separateness so significantly that their creditors relied on the breakdown of entity borders and treated them as one legal entity (“Prong 1”); or (ii) postpetition the subject entities’ assets and liabilities are so scrambled that separating them would be prohibitive and hurt all creditors (“Prong 2”). *Id.* at 211 (internal quotations and citations omitted).

To establish a *prima facie* case under Prong 1, the proponent must prove the following two elements: first, that, prior to the bankruptcy, there was a “corporate disregard creating contractual expectations of creditors that they were dealing with debtors as one indistinguishable entity,” and second, that in their prepetition course of dealing, creditors *actually and reasonably* relied on the debtors’ supposed unity. *Id.* at 212 (citation omitted). The second element “has dual requirements: the moving party must not only prove actual reliance, but also that such reliance was ‘reasonable.’ Simple ignorance of the debtors’ corporate structure does not satisfy this test.” *In re HH Liquidation, LLC*, 590 B.R. 211, 258 (Bankr. D. Del. 2018) (citing *Owens Corning*, 419

⁴⁹ We did not consider substantive consolidation with respect to: (i) CSCEC, Ltd. because this Court lacks jurisdiction over foreign corporations; and (ii) the Non-Debtor Subsidiaries because they are wholly owned by CCA and would not provide any additional recoveries to CCA’s creditors.

F.3d at 212).⁵⁰ There is no requirement to prove intent to deceive. Instead, actions that caused creditors to wrongfully perceive multiple entities as one may justify substantive consolidation “regardless whether those actions were intentional or inadvertent.” *Owens Corning*, 419 F.3d at 211 n.19. “The Owens Corning court announced a hard and fast rule that substantive consolidation was never allowed where creditors were aware of and relied on the debtors’ corporate separateness.” *In re HH Liquidation, LLC*, 590 B.R. at 257 (citing *Owens Corning*, 419 F.3d at 212 (holding that substantive consolidation is not available where creditors can prove “they are adversely affected and actually relied on debtors’ separate existence.”)).

Two years after deciding *Owens Corning*, the Third Circuit affirmed a bankruptcy court’s decision to substantively consolidate three bankruptcy estates in *In re Lisanti Foods Inc.*, 241 F. App’x 1, 2 (3d Cir. 2007). *Lisanti Foods* involved three affiliated debtors, each of which was a former wholesale distributor of Italian specialty food products. The bankruptcy court substantively consolidated the three debtors upon evidence of a substantial identity of interest among the entities:

- Each debtor had the same officers, directors, and shareholders;
- Each debtor conducted the same general business operations under very similar names;
- Intercompany transfers (including loans) were not properly documented;
- The debtors did not charge each other for all services which they rendered to one another;
- The debtors moved profits between and amongst themselves; and
- The witnesses in the case also testified that “for the purposes of . . . secured lending, the debtors were viewed as a single entity,” and that “the unsecured creditors likewise viewed the debtors as a single entity when extending credit terms.”

Id. In sum, the court found substantive consolidation appropriate under these circumstances because “creditors relied on the breakdown of entity borders and treated them as one legal entity.” *Id.* at 2–3.

It should be noted that, typically, the entities that are substantively consolidated are all debtors – *not* non-debtor affiliates. There is a split of authority regarding whether, under compelling circumstances, substantive consolidation of a debtor with a non-debtor is permissible. The Sixth and Ninth Circuits, as well as courts in several other Circuits, have held it is permissible,

⁵⁰ “There is a difference between mere ignorance of debtors’ corporate structure and ‘actual and reasonable reliance’ on the debtors’ supposed unity. The Third Circuit in *Owens Corning* did not rule that substantive consolidation is appropriate whenever debtors fail to publicize their corporate structure. Privately held companies rarely, if ever, issue public announcements about their corporate legal structure; and any argument would change substantive consolidation from a ‘rare’ and ‘extreme’ remedy to one that would be available in many bankruptcies. *Owens Corning*, 419 F.3d at 211. Instead, the *Owens Corning* court set a standard of actual and reasonable reliance. *See id.* at 212.

while certain courts in the Seventh and Eleventh Circuits have held that it is prohibited. *See, e.g., In re Howland*, 674 F. App'x 482, 488 (6th Cir. 2017) (substantive consolidation of non-debtors is permissible in the Sixth Circuit); *In re Mihranian*, 937 F.3d 1214, 1216 (9th Cir. 2019) (substantive consolidation of non-debtors is not prohibited in the Ninth Circuit); *Lassman v. Cameron Constr. LLC (In re Cameron Constr. & Roofing Co., Inc.)*, 565 B.R. 1, 6–11 (Bankr. D. Mass. 2016) (collecting cases within the First Circuit in which substantive consolidation of non-debtors was approved); *Morse Operations, Inc. v. Robins Le-Cocq, Inc. (In re Lease-A-Fleet, Inc.)*, 141 B.R. 869, 872, 876 (Bankr. E.D. Pa. 1992) (finding substantive consolidation of non-debtors is not prohibited, but “caution must be multiplied exponentially in a situation where a consolidation of a debtor’s case with a non-debtor is attempted.”). *But see In re Concepts Am., Inc.*, No. 14 B 34232, 2018 WL 2085615, at *6 (Bankr. N.D. Ill. May 3, 2018) (Illinois bankruptcy court holding the “Seventh Circuit would not allow substantive consolidation of a bankruptcy debtor with entities that are not under the protection of the Bankruptcy Code.”); *In re Pearlman*, 462 B.R. 849, 854 (Bankr. M.D. Fla. 2012) (“Bankruptcy courts cannot and should not simply drag unwilling entities that never chose to file bankruptcy into a bankruptcy forum simply because it is expedient and will help one party or another.”).

The Third Circuit has not issued a controlling decision on substantive consolidation of debtors and non-debtors. In *In re HH Liquidation, LLC*, a 2017 decision from the United States Bankruptcy Court for the District of Delaware, Judge Gross noted that *Owens Corning* does not prohibit substantive consolidation between debtor and non-debtor entities, stating that the “great weight of cases authorizes substantive consolidation of debtors and non-debtors[.]” 2017 WL 4457404, at *3 (Bankr. D. Del. Oct. 4, 2017). However, Judge Gross explained in a subsequent decision that “the burden on the [movant] in establishing a right to *this ‘extreme’ and ‘rare’ remedy* is ratcheted up even further when seeking consolidation of a non-debtor entity.” *HH Liquidation*, 590 B.R. at 259 (citing *Howland*, 674 F. App'x at 489) (emphasis added).

In the rare instances that courts ordered substantive consolidation of debtors with non-debtors, the entities were essentially indistinguishable. *See, e.g., In re 1438 Meridian Place, N. W., Inc.*, 15 B.R. 89, 93 (Bankr. D.D.C. 1981) (consolidating debtor and non-debtor corporations due to absence of corporate records, failure to observe corporate formalities, and all entities were controlled and managed by one individual through one checking account); *In re Crabtree*, 39 B.R. 718, 724 (Bankr. E.D. Tenn. 1984) (consolidating corporate debtors and non-debtors due to absence of corporate records, failure to observe corporate formalities, and the non-debtor corporation was “merely a façade”); *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 767 (9th Cir. 2000) (consolidating debtor and non-debtor corporations where there were no clear demarcations between the entities’ affairs and significant commingling of the entities’ names, assets, and management).

In *In re Caribbean Auto Mart of St. Croix, Inc.*, 13-10003 (MFW), 2021 WL 2419986, at *7 (Bankr. D.V.I. June 11, 2021), a group of unsecured creditors filed an adversary proceeding seeking substantive consolidation and to pierce the corporate veil. The bankruptcy court dismissed the alter ego claim but allowed the substantive consolidation claim to proceed. On summary judgment, the Bankruptcy Court denied summary judgment on substantive consolidation and granted summary judgment to the debtor’s parent dismissing the substantive consolidation claim. The Bankruptcy Court made clear that “courts have set a high burden for granting substantive

consolidation of a debtor with non-debtors, inter alia, to avoid the circumvention of the strict standards for filing involuntary petitions or harm to creditors of a non-debtor.” *Id.* at *3. The Bankruptcy Court found that the plaintiffs failed to prove that the debtor and the non-debtor parent ignored their corporate separateness. The court found that (i) intercompany company transfers were accounted for and that board resolutions authorizing the issuance of promissory notes on some of the outstanding transfers existed; and (ii) that having the same officers and directors at each entity and having shared services does not justify substantive consolidation. *Id.* at *5-7. The court also found that the plaintiff-creditors failed to establish reliance that was actual and reasonable. *Id.* at *10. The court stated: “actual reliance for substantive consolidation purposes merely requires a demonstration that the Plaintiff relied on the unity of the Debtor and CAG in becoming a creditor.” *Id.* Moreover, even if actual reliance is shown, the plaintiffs needed to show that reliance was reasonable which they failed to do because other creditors relied on the separateness of the entities. *Id.* at *7. The Court concluded that “**substantive consolidation of a debtor with a non-debtor should be used sparingly and has a higher burden of proof than debtor-to-debtor consolidation.**” *Id.* at *11.

2. Analysis

To assert a colorable claim to substantively consolidate CSCEC Holding with CCA, the proponent would need to satisfy Prong 1 (prepetition creditor reliance on lack of corporate separateness) or Prong 2 (postpetition difficulty to “untangle” assets and liabilities of the subject entities and harm to all creditors from doing so).

(a) Prong 1

To satisfy Prong 1, the weight of evidence supplied by the creditor would need to support (i) the view that, by and large, creditors believed they were dealing with CCA and CSCEC Holding as one indistinguishable entity, and (ii) creditors actually and reasonably relied on that unity in transacting with CCA.

(i) Reliance

The only likely creditor to seek substantive consolidation in this chapter 11 case would be BMLP, the largest unsecured creditor. However, BMLP likely would not be able to prove that it actually and reasonably relied on the supposed unity in transacting with CCA and CSCEC Holding. As stated by the Court in *Caribbean Auto Mart*: “what is relevant are the activities of the Debtor and [parent company] on which the Plaintiff actually relied at the time they entered into their relationship with the Debtor, which occurred pre-petition.” 2021 WL 2419986, at *8.

We have not uncovered any evidence that BMLP actually relied on the supposed unity between CCA and CSCEC Holding. At the outset, BMLP never transacted any business with CCA or CSCEC Holding. In the Baha Mar Judgment, the NYS Court notes that BMLP did not assert claims against CCA or CSCEC Holding for breach of contract. (Case No. 2024-06623, NYSCEF No. 11, p. 2) (“Defendant CCA Construction, Inc. was an affiliate of the other defendants; it was not a party to any of the project agreements but was nonetheless involved and had overlapping officers and executives, including one Taizhong Wu, who was an executive of CCA Construction

and CCA Bahamas and was appointed to Baha Mar's board on behalf of CSCEC Bahamas."). In the Joint Proposed Questions for the NYS Court, BMLP only asserted that CSCECB breached the Investors Agreement. [Index No. 657550/2017, NYSCEF No. 735]. In the Baha Mar Judgment, the NYS Court also found that CSCECB entered into the Amended and Restated Investors Agreement with BMLP. (Baha Mar Judgment, ¶¶ 62-99). On the contrary, there was no allegation that CCA entered into any agreement with BMLP and it was only after the NYS Court entered a judgment on October 18, 2024 against CCA piercing the corporate veil that a "relationship" between CCA and BMLP arose.⁵¹

Moreover, while BMLP has argued that CCA's name change in 2017 and CSCEC Holding's adoption of the tradename "China Construction America" in 2017, is evidence of the lack of corporate separateness between CCA and CSCEC Holding, these actions occurred years after BMLP entered into the Investor Agreement with CSCECB on January 13, 2011 and three years after BMLP's asserted fraud by CCAB. Thus, there is simply no basis for BMLP to argue that it actually relied on any putative unity of CCA and CSCEC Holding. Finally, BMLP was aware of the separate corporate existence between CCA and CSCEC Holding because the Baha Mar Judgment makes clear that the three defendants were all subsidiaries of CSCEC Holding. However, BMLP never sought to add CSCEC Holding to the Baha Mar Litigation or sought to pierce the corporate veil in that action.

Even if BMLP could prove actual reliance, it would not be able to demonstrate that the reliance was reasonable. "Substantive consolidation is not appropriate where only one creditor relied on a belief that the corporations were unified, if several other creditors relied on the fact that the entities were separate. Other creditors' reliance on separateness demonstrates that the lone proponent's reliance on corporate sameness is unreasonable." *Caribbean Auto Mart*, 2021 WL 2419986 at *10 (comparing *In re Macrophage, Inc.*, 2007 WL 708926, at *6 (D.N.J. Mar. 2, 2007) (affirming denial of substantive consolidation where only one creditor considered the entities as one) with *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. 330, 371 (Bankr. D.N.J. 2020) (granting substantive consolidation where virtually all parties treated the entities as unified)). Here, the information reviewed during the Investigation confirms that creditors believed CCA was a separate entity from CSCEC Holding. For example, CCA executed indemnity agreements with several different sureties including AIG, Crum & Forster, Zurich, Swiss Re, and Euler Hermes for surety bonds for several projects.

Thus, the sureties did not believe that CCA was unified with CSCEC Holding and treated it as separate entity with respect to the indemnification. To the extent BMLP could argue actual reliance, any such reliance would be unreasonable. Thus, it is unlikely that any claimant – particularly BMLP – would be able to prove actual or reasonable reliance, which is a necessary element of Prong 1 of the *Owens Corning* Test.

⁵¹ While BMLP asserted a fraud claim against CCA, the Baha Mar Judgment found that "CCAB Committed At Least Four Instances of Fraud", and did not identify any particular fraudulent misrepresentations by CCA. (See Baha Mar Decision, ¶¶ 100-33; *supra* note 4).

(ii) Corporate Separateness

Similarly, a claimant would also have a difficult time establishing that creditors believed they were dealing with CCA and CSCEC Holding as one indistinguishable entity. Many of the allegations as to the lack of corporate separateness that BMLP has raised in the Chapter 11 Case have been found by other courts to be insufficient for substantive consolidation. For example:

- *R2 Invs., LDC v. World Access, Inc. (In re World Access, Inc.)*, 301 B.R. 217, 276 (Bankr. N.D. Ill. 2003) (denying substantive consolidation despite (i) inter-company transfers and claims, (ii) incorporation of the subsidiary by the parent, (iii) consolidated financial statements, administrative functions, and insurance, and (iv) common ownership, management, directors and officers, because these facts are typical of most affiliated corporations and do not demonstrate that vendors dealt with the entities as a single unit);
- *Lease-A-Fleet, Inc.*, 141 B.R. at 876, 878 (denying substantive consolidation despite overlapping directors, shared office space, intercompany loans without documentation, and the disregard of formalities when sharing services); and
- *Caribbean Auto Mart of St. Croix, Inc.*, 2021 WL 2419986, at *7 (denying substantive consolidation of non-debtors despite similar trade names, overlapping officers and directors, and shared services).

While CCA and CSCEC Holding had overlapping officers and directors, used similar trade names, and consolidated certain shared services, those facts are insufficient to justify substantive consolidation. In fact, the shared services were accurately allocated amongst CCA and the Shared Services Members, CCA conducted its own board meetings, issued its own board minutes and resolutions, documented its inter-company loans via book entries, and maintained its own bank accounts and books and records. *Id.* at *6-7. CCA was not formed as a shell or instrumentality of CSCEC Holding and it existed and operated for many years before CSCEC Holding was incorporated.

For these reasons, it is unlikely a proponent would be able to meet the extraordinarily high bar to substantively consolidate CCA and non-debtor CSCEC Holding.

(b) Prong 2

To substantively consolidate CCA and CSCEC Holding under Prong 2, the weight of the evidence must support the view that CCA and CSCEC Holding's assets and liabilities are so scrambled that separating them would be prohibitive and hurt all creditors. The evidentiary burden is significantly heightened in this context given CSCEC Holding's status as a non-debtor.

The evidence does not support consolidation under Prong 2 for the following reasons:

- CCA and CSCEC Holding did not commingle assets;

- CCA was not indebted under CSCEC Holding's secured debt facilities;⁵²
- CCA and CSCEC Holding maintained separate bank accounts;
- CCA and CSCEC Holding did not keep joint books and records;
- Shared services are governed by the SSAs pursuant to which each party was reimbursed and/or allocated expenses on their books and records;
- CCA and CSCEC Holding appear to have properly documented intercompany transactions; and
- There is no evidence that CCA's and CSCEC Holding's assets and liabilities were comingled, let alone so intertwined that they could not be untangled.

In sum, it is unlikely a claimant would be able to meet the extraordinarily high bar to substantively consolidate CCA and non-debtor CSCEC Holding.

3. Conclusion

Based on above, there is no colorable claim for substantive consolidation under Prong 1 (prepetition creditor reliance on lack of corporate separateness) or Prong 2 (postpetition difficulty to "untangle" assets and liabilities of the subject entities and harm to all creditors from doing so).

52

