



INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS

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Via Email and Overnight Mail

Mr. Bruce Ciallella
Senior Vice President
New Jersey Economic Development Authority
36 West State Street
Trenton, New Jersey 08625

Dear Mr. Ciallella:

On behalf of Conner Strong & Buckelew Companies, LLC (“CSB”), I write in response to your letter, dated June 26, 2019, a copy of which is attached hereto as **Exhibit “A”** and made a part hereof. In that letter, the New Jersey Economic Development Authority (“EDA”) asks that CSB respond to certain allegations made by the Governor’s Task Force on the EDA’s Tax Incentives established pursuant to Executive Order No. 52 (“Task Force”) in its First Published Report, dated June 17, 2019 (“Report”), the relevant portions of which are attached hereto as **Exhibit “B”** and made a part hereof. Kindly accept this letter as CSB’s response to your letter and the Report.

INTRODUCTION

CSB is among America’s largest risk management, employee benefits and insurance consulting firms. CSB is an industry leader in providing high-risk businesses with comprehensive solutions to prevent losses, manage claims, and drive bottom line growth. Its employee benefits practice focuses on providing best-in-class benefits administration, health and wellness programs and strategic advisory services.

Founded in 1959, CSB has a team of over 400 employees in offices in New York, New Jersey, Pennsylvania, Delaware, Massachusetts, Georgia and Florida, serving clients throughout the United States and abroad. CSB has maintained dual headquarters in Philadelphia, Pennsylvania and Marlton, New Jersey for over ten (10) years. At the time CSB filed its application for tax credits pursuant to the Grow New Jersey Assistance Act, N.J.S.A. 34:1B-242

et. seq. (“Grow Program”), its existing leases for the dual headquarters were scheduled to expire in March 2019 and, as a result, CSB was planning to consolidate its headquarters in one location. A copy of those leases is attached hereto as **Exhibit “C”** and made a part hereof.

In furtherance of those headquarters consolidation efforts, CSB submitted an application to EDA on October 24, 2016 for tax credits under the Grow Program, **a date more than three years after the Grow Program was enacted**. A copy of the CSB application is attached hereto as **Exhibit “D”** and made a part hereof. Several months later, following extensive due diligence by EDA, CSB’s application was unanimously approved by the EDA Board at a meeting on March 24, 2017. A copy of the EDA Board resolution is attached hereto as **Exhibit “E”** and made a part hereof. Subsequently, and acting in reliance upon said EDA approval, CSB diligently proceeded with its project, including the execution of an EDA approval award letter, dated October 18, 2017, a copy of which is attached hereto as **Exhibit “F”** and made a part hereof (“Approval Letter”). To date, tens of millions of private, at risk dollars have been expended in furtherance thereof.

During this entire period, CSB has diligently complied with all requirements of the Grow Program, including prevailing wage, obtaining necessary approvals of the site and green building plans, and related matters. In addition, CSB has timely complied with the filing of interim project reports with EDA, as required by the Grow Program on September 22, 2017, March 23, 2018, September 24, 2018 and March 20, 2019. See **Exhibit “G”** attached hereto and made a part hereof. In fact, EDA has, as recently as April 3, 2019, issued its approval for certain project modifications. The CSB project is now nearing completion and the Approval Letter states that provided the progress information is submitted, EDA **will** forward an executable Incentive Agreement to the applicant. On June 25, 2018, CSB submitted the required progress information to EDA. Since that time, CSB’s representatives have continuously requested that EDA provide the Incentive Agreement. See **Exhibit “H”** attached hereto and made a part hereof. The failure of EDA to issue the Incentive Agreement is disturbing and raises significant questions as to whether EDA intends to honor its obligations.

More recently, in 2019 the Task Force was established by Governor Murphy’s Executive Order No. 52 (“EO”). The stated purpose of the EO was to “conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and [the Economic Redevelopment and Growth Grant program], including those identified in the State Comptroller’s performance audit to inform consideration regarding the planning, development and execution of any future iterations of these or similar tax incentive programs.” However, it is evident from the text of the Report, that its purpose is more than conducting a review of the Grow and ERG programs, but rather an all-out attack on the Grow Program, the benefits provided to projects located in Camden, and specific projects approved for Camden.

The EDA had approved tax credits for more than 300 projects from 2013 through the date on which the Report was issued. Interestingly, only 10% of those applications involved projects located in Camden. The overwhelming focus of the Task Force, however, has been almost singularly on Camden projects, while seemingly ignoring the hundreds of other projects approved by EDA. To the unbiased observer, rather than a system-wide review as the EO creating the Task Force would suggest, a targeted, politically motivated investigation with respect to CSB has quickly emerged. See **Exhibit “I”** attached hereto and made a part hereof.

The Report states that it has uncovered information that identified threshold issues that must be resolved, identified issues that have led to voluntary termination of awards, and has received testimony from employees of companies that have made material misrepresentations in their Grow Program applications. With the exception of one company, the Report does not identify any of those companies by name or provide the detailed information related to those companies in an effort to highlight the “deficiencies in the design, implementation and oversight” of the Grow Program. See Report, p. 6. Instead, it goes to great lengths to issue the preliminary Report¹ to identify how provisions of the Grow Program were drafted to provide incentives for companies to locate in Camden, and to identify information in specific applications for projects in Camden, including the application of CSB, which it erroneously concludes contains statements that were “dubious” and materially misleading without allowing the companies to respond to the allegations.

The Task Force reached those erroneous conclusions regarding CSB’s application, and published those findings, at the May 2, 2019 hearing and in the Report, incredibly without providing CSB the opportunity to respond or to provide the additional information and documentation that it claims the EDA should have obtained from CSB during the underwriting and review of CSB’s application.² If the EDA is guilty of a lack of due diligence in reviewing the CSB’s application by failing to ask questions as the Task Force claims – **a conclusion not supported by the record** – the Task Force must also be guilty of its own lack of due diligence and transparency in reaching its conclusions without allowing CSB to respond to the issues it has identified.

The lengths to which the Task Force has gone to slander the companies identified in the Report are evident in its attempt to re-write provisions of the law that require jobs for projects outside Camden to be “at risk” of leaving the state to apply to projects in Camden as well. To achieve its end, the Task Force:

- ignores the plain language of the law;
- attempts to substitute the discussions of the proposed law among staffers for the actual legislative history;
- ignores contemporaneous legislative statements of the Senate Committee that wrote the provisions; and
- ignores specific New Jersey case law that clearly resolved the constitutional issue raised in the Report.

Furthermore, the questions raised in the Report are based on the false premise that CSB had “committed” to locate in Camden well before the EDA voted to approve the award of tax credits to CSB. This premise is based on the Task Force’s reading of press statements that – **on their face** – do not say what the Task Force claims they say, and actions identified by the Task Force that do not support the conclusions it reached. As set forth in detail below, CSB did not

¹ The Report states that this is a “first report” to advise the Governor of its initial findings and that the investigation is ongoing. See Executive Summary of Report and p. 74.

² Why issue a preliminary Report that alleges fraud without first allowing those that it accuses of fraud an opportunity to respond to the specific allegations? The Task Force has left it to the EDA to ask the questions that the Task Force failed to ask before it issued the Report. This “shoot first; ask questions later approach” reveals the true intent of the Report.

commit to move the Camden before the application was approved. It would have been reckless and financially irresponsible to undertake a project of this complexity and move to Camden without the tax credits.

For all of the reasons set forth below, the award of tax credits to CSB by the EDA was, and remains to this date, proper and appropriate. The self-serving conclusions of the Task Force set forth in the Report are nothing more than a poor and fatally flawed attempt by a non-licensed New York attorney to use a publicly funded inquiry to seek revenge against a political opponent of the Governor.

THE REPORT MISSTATES THE LAW

The Report attempts to re-write the New Jersey Economic Opportunity Act of 2013, L. 2013, c. 161 (“2013 Act”), by providing an interpretation of the law’s requirements for projects in Camden that is contrary to the plain language of the statute. Report at 24-29. The Task Force concludes that “tax credits for a project relocating to Camden, like incentives for projects relocating to elsewhere, are available only if the company is considering a potential out of state location.” See Report, p. 26. The Task Force takes this position even though the plain language of the statute says otherwise, and EDA itself has never read the statute as requiring an applicant for a project in Camden to prove the jobs were at risk in order to be eligible for an award of tax credits.

The Report’s conclusion is simply incorrect. The Task Force’s analysis ignores relevant statutory text and legislative history, and ignores legal precedent and misapplies other case law, to reach a conclusion designed to support its false and pre-determined narrative.

The Grow Program was first enacted into law on January 5, 2012. See L. 2011, c. 149 (“2012 Act”). The stated purpose of the 2012 Act was: “to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State.” L. 2011, c. 149, § 3 (N.J.S.A. 34:1B-244). Under the 2012 Act, an applicant seeking Grow NJ tax credits must demonstrate that

“the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State . . . [and] the award of tax credits will be a material factor in the business’s decision to create or retain the minimum number of full-time jobs for eligibility under the program.” Ibid.

“To assist the authority in determining whether a proposed capital investment will yield a net positive benefit,” the applicant’s chief executive officer (“CEO”) was required to submit a certification stating: (1) “that any existing jobs are at risk of leaving the State”; (2) “that any projected creation of new full-time jobs would not occur but for the provision of the tax credits under the program;” and (3) that the applicant’s CEO “has reviewed the application and that the representations are accurate.” Ibid. (emphasis added). Furthermore: “[b]ased on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority’s board, the business’s assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.” Ibid. There was no distinction in the 2012 Act for

“Garden State Growth Zones” because the concept of Garden State Growth Zones was not contained in the 2012 Act.

On January 14, 2013, the New Jersey Legislature introduced the first proposed amendments to the 2012 Act. See Assembly Bill No. 3680 (introduced Jan. 14, 2013). The concept of a Garden State Growth Zone was first introduced into the legislation in the amendments proposed by the Senate Budget and Appropriations Committee on June 24, 2013. As explained in the official statement at that time, “[t]he GSGZ [Garden State Growth Zone] program is a new area designation for the cities of Camden, Passaic, Paterson, and Trenton. The bill provides incentives to increase ERG and GROW award amounts for projects within GSGZs.” Sen. Budget and App. Committee Statement to A. 3680 (First Reprint) (June 25, 2013) (“Committee Statement”) at 8. On June 27, 2013, the Assembly concurred with the Senate amendments and made additional amendments on the floor. The Senate approved the Assembly amendments on August 19, 2013. The Governor issued a conditional veto and both houses concurred with the conditions of the veto. The 2013 Act was signed into law on September 18, 2013.

As amended by the 2013 Act, the Grow Program’s eligibility criteria retained the requirement that the CEO of the applicant company submit a certification stating: (1) that existing full-time jobs are “at risk” of leaving the state or being eliminated; (2) that the creation or retention of jobs would not occur “but for” the award of tax credits; and (3) that the information submitted with the application is truthful. **However**, unlike the 2012 Act, the 2013 Act created a separate requirement for projects in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c.43 (C.52:27BBB-1 et al.) (“MRERA”).

The 2013 Act specifically states that “in satisfaction of the provisions of (1) [“at risk”] and (2) [“but for”] of this subsection,” the applicant in a Garden State Growth Zone that qualifies under MRERA “shall indicate that, the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under [MRERA].” Ibid. (emphasis added). At the time of the 2013 amendment, only Camden was qualified under MRERA. Thus, pursuant to the plain language of the amendments in the 2013 Act, applicants proposing a project in Camden did not need to demonstrate that jobs were “at risk” of leaving the state. Instead a company satisfied this requirement if the provision of tax credits was a “material factor” in their decision to make an investment and locate jobs in Camden. Notwithstanding the clear distinction set forth in the statute, the Report completely ignores the separate requirement for projects in Camden and says “[f]rom the Task Force’s perspective . . . that tax incentives for projects relocating to Camden, like tax incentives for projects relocating from elsewhere, are available only if the company is considering a potential out-of-state location.” See Report, p. 26. The Task Force’s perspective is false and has no grounding in fact. In a word, it is preposterous.

In addition to the “material factor” distinction for eligibility of Camden projects set forth above, the 2013 amendment also created a distinction for Camden when the EDA evaluates the net positive benefit of a proposed project. The 2013 Act states “when considering an application involving intra-State job transfers” the EDA is required to “independently verify and confirm . . . the business’s assertion that the jobs are at risk of leaving the State . . . **or**, with respect to projects located in [Camden], the business’s assertion that the provision of tax credits under the program is a material factor in the business’s decision to make a capital investment and locate in [Camden].”

N.J.S.A. 34:1B-244(d) (emphasis added). The provision related to Camden was added by the Senate Budget and Appropriations Committee as part of its amendments to create Garden State Growth Zones. The disjunctive language used in the statute thus sets up a clear distinction between non-Camden and Camden applicants. For non-Camden projects the EDA must verify that “jobs are at risk of leaving the State.” Ibid. For Camden projects, no such verification is required. Instead, they need only demonstrate that the credits are a “material factor” in their decision to invest in Camden. Ibid.

The Senate Budget and Appropriations Committee, which introduced the Garden State Growth Zone provisions, explained that it intended to “modify the net positive benefit calculation and tax credit allocation amount for a project to be located in a GSGZ; ... and add full-time jobs that were to be eliminated to the net positive benefit determination but exempt the determination for certain projects in a GSGZ in certain municipalities.” Committee Statement at 4 (emphasis added). Thus, if the applicant was considering moving to Camden, it was “exempt” from demonstrating that jobs were “at risk.” Instead, it had to demonstrate only that the tax incentive was a “material factor” to its decision to construct a project in Camden. This was recognized in the Governor’s Conditional Veto to First Reprint of A. 3680 (Sept. 9, 2013) (“Conditional Veto”) which explained that the bill “lower[s] program eligibility thresholds for New Jersey’s municipalities in the most need of economic development” (emphasis added)).

The Task Force ignores the plain language of the statute, the Committee Statement and the Conditional Veto to provide its contorted interpretation of the 2013 Act. The Report refers to emails between staffers and ignores case law to interpret a key provisions of the 2013 Act. The Report says there are two reasons why Camden applicants nevertheless needed to demonstrate that jobs were “at risk.” **Both reasons are incorrect.**

First, the Task Force says that because the polestar of statutory interpretation is “the furtherance of legislative intent,” and because the Grow Program was originally designed to “preserve” jobs that might otherwise leave the State, Camden applicants must therefore satisfy the “at risk” standard. Report at 26 (quoting N.J.S.A. 34:1B-244(a)). The statutory language quoted by the Task Force, however, was added in 2011, prior to the amendments in the 2013 Act. See Report, p. 26. The legislative history from the 2012 Act is irrelevant to the interpretation of the amendments in 2013. Additionally, the purpose of the Grow Program is “economic development” and the creation and retention of jobs. As noted, the 2013 amendments were explicitly designed to “exempt” Camden applicants from the “at risk” obligation and to encourage development of those municipalities in most need by lowering the eligibility threshold. Unlike the Task Force’s “perspective,” this interpretation is consistent with the plain language of the 2013 Act, the Committee Statement and the Conditional Veto.

The Task Force looks beyond the clear language of the statute to attempt to glean the legislative intent. In doing so, the Report substitutes email discussions among staffers in place of the contemporaneous Committee Statement. If the Task Force’s position is correct – for “projects relocating to Camden, like ... projects relocating elsewhere, are available only if the company is considering potential out-of-state location,” there would be no reason to include the “or, with respect to projects located in [Camden]” provision to the statute. The Task Force’s “perspective” tells us to ignore the “or, with respect to projects located in [Camden]” provision of the statute. Common sense tells us that could not have been the legislative intent.

Second, the Task Force says that the law must be construed to require a finding that the jobs are “at risk,” because a contrary interpretation would favor Camden above other municipalities and therefore render the 2013 Act constitutionally suspect “special legislation.” Report at 27-28. This argument fails because it is inconsistent with established legal precedent, and was rejected outright by the New Jersey Appellate Division. The MRERA was specifically designed to include only one municipality: Camden. It is by cross-reference to MRERA that the 2013 Act sets forth distinct standards for Camden applicants under the Grow Program. See, e.g., N.J.S.A. 34:1B-244(d). The New Jersey Appellate Division has already held that MRERA is not “special legislation,” even though it covers Camden alone. See Camden City Bd. Of Educ. V. McGreevey, 369 N.J. Super. 592, 607 (App. Div. 2004); id. At 606 (“As long as the enactment ‘on its face’ allows other municipalities to qualify, it is irrelevant whether the Legislature was concerned with the needs of only one municipality when it acted.”); See also Twp. Of Mahwah v. Bergen County Bd. of Taxation, 98 N.J. 268, 285 (1985) (“a statute is not special legislation merely because it addresses the needs of a particular municipality or serves a particular purpose”). The Report’s rationale in favor of its interpretation is thus incorrect.³ For the foregoing reasons, the Task Force’s conclusion that jobs for a project in Camden must be at risk to be eligible for tax credits under the Grow Program is clearly wrong.

The Task Force also argues, regardless of whether the jobs are required to be at risk to satisfy the material factor test discussed above, it is indisputable that the jobs must be at risk to be included in the net positive benefit analysis.⁴ See Report, p. 28. The rules adopted by the EDA in 2015 to implement the 2013 Act stated that “taxes paid directly or generated indirectly by new or retained employees” are included in the net positive benefit analysis. See N.J.A.C. 19:31-18.7(c); 44 N.J.R. 1784(c), at 1791 (effective January 20, 2015). That regulation was subsequently amended to state that “retained employees” in Camden “shall not be included” in the net positive benefit analysis “unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State.” Report at 29 n.74. CSB’s application was filed on October 24, 2016 and stated that the jobs were at risk of being relocated out of state. The amended regulation became effective on January 3, 2017 and applied to CSB’s application at the time it was approved on March 24, 2017. See 49 N.J.R. 134(a)

As a matter of law, the statute does not require a job for a project in Camden to be “at risk” to satisfy the material factor – eligibility – test. The regulations in effect at the time the CSB award was approved instead simply required a project in Camden to be “at risk” to be included in the net positive benefit analysis. Accordingly, CSB’s application stated that its New Jersey jobs were, in fact, at risk.

³ Perhaps an attorney licensed to practice law in the State of New Jersey would be aware of this precedent. As Senator Lesniak, the prime sponsor of the 2013 Act and a New Jersey Constitution expert, stated at the Task Force’s July 9, 2019 hearing, a claim that the 2013 Act included special legislation would go nowhere in court. He offered “a thousand to one odds” such a claim would fail.

⁴ It is not “indisputable” that the jobs must be at risk to satisfy the net benefit analysis test. For the same reasons set forth in this letter regarding “at risk” in relation to material factor, that requirement is inconsistent with the statute and the legislative history. Notwithstanding that point, it is indisputable that the regulations that applied at the time CSB’s application was approved required jobs to be at risk to be counted toward the net positive benefit analysis.

THE REPORT MISSTATES THE FACTS

The Report claims that CSB misrepresented the fact that existing New Jersey jobs were at risk of leaving the State even though it admits that the award to CSB would be unchanged if the jobs were not at risk. **“Based on recalculated net benefits analyses, the EDA concluded that CSB’s award would have stayed the same (\$86.2 million) . . .”** See Report, p. 64. The Report states “[i]ndeed . . . [CSB] . . . had publicly committed to moving to Camden on September 24, 2015 – thirteen months prior to their Grow NJ application[], which would seem to directly belie their claim that they were considering an out-of-state move.” See Report, pp 47-48. The focus of the Report’s attack on CSB relates to its contrived narrative that somehow CSB “committed” to move to Camden more than a year before it filed its application; and, that CSB did not “genuinely consider” the alternate location to Camden. Each premise of the Report is false and will be addressed separately below.

Commitment to Camden

The Report claims that the Task Force found clear deficiencies in the EDA’s evaluation of the potential out-of-state alternative submitted to support a claim that the applicant companies are at risk of leaving the state. See Report, p. 47. As an example of this “deficiency”, the Report refers to draft versions of the 2013 Act that included revisions from Parker McCay which, to the Task Force, raised a significant red flag. See Report at 47. The Report falsely concludes “[t]he Task Force remains skeptical that a company whose lobbyist had placed special provisions for its benefit in the tax incentive legislation would have a legitimate business plan to move jobs to a different state⁵. Indeed, three of these companies had publicly committed to moving to Camden on September 24, 2015 – thirteen months prior to the Grow applications, which would seem to directly belie their claim that they were considering an out-of-state move.” See Report, pp 47-48. Although the Report contains 79 pages - and 208 footnotes that cite to numerous statutes, regulations, testimony, applications, emails, and other documents that purportedly support its statements - it does not cite to one specific fact to support its conclusion that provisions included in the proposed legislation were for the benefit of CSB or anyone else. Instead, the Task Force claims that because the statute was amended by the Legislature to include the ability of a company moving to Camden to obtain tax credits equal to its capital investment – a provision that applies to all companies moving to Camden – that amendment was inserted for the specific benefit of CSB (as well as NFI, L.P. (“NFI”) and The Michaels Organization, L.P. (“Michaels”)). See Report, pp 47-48. **There are no facts** to support this conclusion. In fact, any company moving to Camden would be similarly eligible for the same tax credit benefits.

The Report also claims that CSB made statements “committing” to Camden a year prior to filing its application. See Report, pp. 55-57. The Report refers to a September 24, 2015 email from George Norcross, Executive Chairman of CSB, to Tim Lizura, President and Chief Operating Officer of EDA, which attached a press release announcing Liberty Property Trust’s (“LPT”) plan to acquire and develop property along the Camden waterfront. See Report, p. 56. The Report cites

⁵ CSB disputes the claim that its lobbyist placed special provisions in the 2013 act for its benefit. CSB did not retain any lobbyist to comment upon the 2013 Act or to discuss the drafts of the 2013 Act with any elected official, staff member, governmental agency, or anyone else. To state or suggest otherwise is blatantly false.

to part of the press release that states “local leaders who have committed to investing in the project either personally or through their firms” include the principals of CSB, Michaels and NFI. (Emphasis in original). See Report, p. 56. The Report also states Mr. Norcross attended the press conference announcing Liberty’s plans and gave an interview with NJTV. See Report, p. 56. Mr. Norcross was asked whether he was going to “put \$50 million into the project.” Mr. Norcross said “It’s absolutely true. I committed to do this when I was trying to persuade one of the biggest real estate concerns in the country to become part of this effort, and we all thought that was going to be a credible act, and we’re putting our money where our mouths are, and we’re looking forward to being a part of it.” (Emphasis in original). See Report, p. 56.

Finally, the Report refers to an article by Allison Steele in the *Philadelphia Inquirer* which states “based on an anonymous source that CSB was ‘considering moving its headquarters into the development’ and TMO and NFI were also ‘expected to join the project.’ ” See Report, p. 56, footnote 147. The Report would have the reader believe that the three companies, including CSB, had decided that they would invest hundreds of millions of dollars to build a new office building and move their headquarters to Camden regardless of whether they were awarded Grow NJ tax credits. This premise is absurd.

Significantly, the Report cites to no statement by any representative of CSB (or NFI or Michaels) who said that the companies have “committed” to move their headquarters to Camden. In the NJTV interview, Mr. Norcross said that he committed to put \$50 million “into the [LPT] project.” He was not asked, and he did not say, that CSB, or any of the other companies, had committed to moving their companies to Camden. See Michael Aron, *Christie Announces Historic \$700 Million Redevelopment Project in Camden*, NJTV NEWS, Sept. 24, 2015, <https://www.njtvonline.org/news/video/christie-announces-historic-700-million-redevelopment-project-in-camden/> (transcription from video).

The press release referred to in the Report was released by the City of Camden and LPT, **not CSB**. See Report, Exhibit 31. It identifies local leaders who have committed to investing in the project either “personally or through their firms” as George Norcross, John O’Donnell, Sid Brown and Chris Gibson. See Report, p. 56. The press release does not say their companies have committed to moving to Camden. The press release includes a quote from Bill Hankowsky of LPT who says, “[w]e have worked with a group of successful local business leaders over the last several months to shape this project” and “they will be investing in the various project components” as the final plans take shape. He does not say the “local leaders” have committed to locate their companies at the project. The press release contains quotes from Mr. Hankowsky, Robert A.M. Stern, Governor Christie, President Obama, Richard T. Smith, and Mayor Redd.

Significantly, the Report omits Christopher Gibson of Archer & Greiner from the list of local leaders identified in the press release as having committed to investing in the project. Apparently this is because it does not support the Task Force’s narrative that having attended the press conference and been identified in the press release means you have a binding commitment to move to Camden. The fact that Archer & Greiner did not move its headquarters to Camden proves that having attended the press conference and having been identified in the press release as

having “committed” to investing in the project did not mean that any of the leaders had committed to relocate their company’s headquarters to Camden.

The *Philadelphia Inquirer* article that is cited does not include a quote from a representative or an official statement of any of the three companies indicating they have committed to moving their companies to the project site. That article cites “an anonymous source” who said that CSB “was considering” moving its headquarters into the development and that Archer & Greiner, Michaels and NFI were also “expected” to join the project. It does not say that they had committed to doing so. See Report, p. 56, Footnote 147. Again, the fact that Archer & Greiner did not move to Camden is evidence that having been cited in the article is hardly proof to establish that the companies had in fact made a binding decision to locate in Camden. A citation in a newspaper article to a comment from an anonymous source cannot, by any reasonable measure, be said to be a commitment by any of the companies to locate in Camden.

On the date of the announcement, CSB President and Chief Executive Officer, Mike Tiagwad released a statement to CSB employees, a copy of which is attached hereto as **Exhibit “J”** and made a part hereof. The statement, referring to the plans disclosed by LPT earlier that day, says “George [Norcross] and his affiliates are expected to invest at least \$50 million in the project.” It further states that “[CSB] will now begin the process of determining whether to join with a number of national and regional companies in making this campus our corporate home.” Thus, the only actual statement from anyone at CSB at the time of the 2015 press conference says that CSB will “begin the process” of deciding whether or not to make Camden its corporate home. That is certainly not a commitment to Camden as suggested.

At the May 2, 2019 hearing, the Task Force asked Mr. Lizura about CSB’s alleged commitment to Camden in 2015. Mr. Lizura said that he viewed the comments in the press release and the press conference that the companies had “committed” to the Camden Waterfront development project only as a commitment to invest in the real estate project and that he was not aware of whether the companies had committed to relocate to Camden at any point before their applications were filed. Report, p. 58. In a footnote to its reference to Mr. Lizura’s statement, the Task Force says “[e]ven if CSB’s, TMO’s, and NFI’s only “commitment” was to invest in the real estate project, and not to relocate their offices there, as Mr. Lizura claims to have believed, it nonetheless is difficult to understand why a different understanding would not emerge once the companies filed their applications and indicated their intent to relocate there.” See Report, p. 58, footnote 153. Essentially, the Report says the fact that CSB had filed an application seeking Grow Program tax credits for the proposed Camden project is evidence that in fact CSB had committed to move to Camden at that time. **That statement is ridiculous.** If that were true, every applicant would be disqualified for tax credits under the program the minute they filed their application.

The Report also takes the position that the comments of others equaled a commitment by CSB. **This assertion is simply sophistry and demonstrates an intent to deceive.** The only way in which CSB could have a commitment was if it had a binding contract – with specific terms – to locate at the Camden site. The property where the CSB office is located was owned by the Camden Redevelopment Agency and the EDA at the time CSB filed its application. See Report, Exhibit 27. Camden Town Center, LLC (“CTC”) had a contract to acquire and develop the property and

LPT was under contract to purchase all of the membership interest in CTC. LPT – through CTC – did not acquire the property until December 2, 2016. See **Exhibit “K”**, a copy of which is attached hereto and made a part hereof. CSB’s application initially anticipated that LPT – through CTC - would sell the land on which the building was located to a partnership that would be formed consisting of the principals of CSB, NFI and Michaels (“Owner”), and that LPT would construct a build-to-suit office building that would be sold to Owner. See Report, Exhibit 27. LPT submitted a proposal for the sale of the land and construction of the building, the terms of which were incorporated into the application. At that time, there was no binding contract in effect for the purchase of the land or the construction of the building. In fact, the contract to acquire the land was not signed until June 8, 2017, two and a half months after the EDA award was approved. See **Exhibit “L”**, a copy of which is attached hereto and made a part hereof. Incidentally, the day after the application was filed John Muscella, Chief Financial Officer at CSB, sent an email to Mr. Lizura stating that CSB had not made a decision as to whether to locate in Camden and asking him how the information submitted with the application would be handled if CSB decided not to move forward with the project. See **Exhibit “M”**, a copy of which is attached hereto and made a part hereof.

After the application was submitted, it became clear to Owner that it would be unable to come to an agreement with LPT for the construction of the building. Owner decided to evaluate whether it could construct the buildings without LPT. It had an architect and construction manager provide proposals to design and construct the building. On February 17, 2017, CSB (and NFI and Michaels) submitted an update to the project which incorporated the new design and proposal from Joseph Jingoli and Sons, Inc. to construct the building. See **Exhibit “N”**, a copy of which is attached hereto and made a part hereof. The updated project was reviewed by the EDA underwriter, EDA senior leadership, the Attorney General’s Office, and the EDA Board Incentives Committee, and moved to the EDA Board for approval on March 24, 2017.

The Report’s claim that CSB committed to move to Camden before its application was filed is completely false. It refers to statements made by others when LPT announced its project. However, LPT had not acquired the land at that time. In fact, LPT did not acquire the land on which the CSB project is located until a year later on December 2, 2016. Owner did not sign the contract to purchase the project site from LPT **until two months after** the EDA approved the tax credit award. Additionally, after CSB had submitted its application, it informed EDA that it had not yet decided whether to move forward in Camden, and it modified the project because it could not reach an agreement for the construction of the Camden building with LPT. As a result, it was impossible for CSB to have committed to locate its headquarters at the Camden waterfront at the time the application was filed, let alone at the time of the LPT press conference in 2015.

Alternate Location

The Report claims that the Task Force has “discovered evidence appearing to indicate that [CSB] did not genuinely consider Philadelphia as an alternate location to Camden.”⁶ See Report, p. 61. In support of this allegation, it refers to the alternate location identified in CSB’s application at 1601 Market Street, Philadelphia; the dates of the proposals submitted for that location; the change in the amount of floor area identified by the Landlord as available in the proposals; and emails among CSB representatives, and representatives of NFI, Michaels, and CBRE. See Report, pp 58-64. The Task Force assertions in this regard are, as clearly demonstrated below, complete nonsense.

CSB is a national company with \$2.5 billion in premium revenue and clients in all 50 states and abroad. It has offices in New York, Pennsylvania, Delaware, Massachusetts, Florida, and New Jersey. At the time it filed its application, it had dual headquarters with 98 employees located in Philadelphia, Pennsylvania and 174 employees located in Marlton, New Jersey. See Report, Exhibit 27. It leased the space at which both headquarters were located and those leases were scheduled to expire in March 2019. Because the leases for each headquarters office were scheduled to expire in the same month, CSB intended to consolidate the two headquarters offices into one, and was evaluating where to locate the new headquarters.

For several reasons, CSB’s discussions related to the location of its consolidated headquarters focused on locations in Camden and Philadelphia. At the time of the discussions, more than one-third of the company’s headquarters employees were located at the Philadelphia office. See CSB Application attached to the Report as Exhibit 27. Approximately 15% of the overall headquarters employees lived in Philadelphia – including the company’s Chief Executive Officer, Michael Tiagwad - and a total of 40% lived in Pennsylvania. Center City Philadelphia has the greatest aggregation of intellectual talent necessary for a national organization to attract high caliber labor. There are five major universities, and seven other four-year colleges or universities located within the city limits, as well as numerous other nationally recognized universities and colleges located just outside the City. It has a mass transit system that fully integrates Center City with surrounding communities in Pennsylvania. It is widely recognized nationally and internationally as the center of the commercial and business market in the region, with a tremendous variety of housing within walking distance of Center City. The Camden location is located on the waterfront, adjacent to the Benjamin Franklin Bridge. CSB did not pursue any other locations in New Jersey, as the Philadelphia employees would not want to travel to suburban New Jersey. So, in the simplest terms, the choices were Camden or Philadelphia. No other alternatives were relevant.

The regulations in effect at the time CSB’s application was approved required CSB jobs to be “at risk” to be counted in the net benefit analysis. The CSB application states that the New Jersey jobs are at risk of leaving the state. See Report, Exhibit 27. The alternate location that CSB identified as being considered was 95,378 square feet of space at 1601 Market Street, Philadelphia,

⁶ The CSB application clearly delineated the employees who would potentially relocate and those New Jersey employees who would remain in their existing offices in Toms River and Parsippany. See CSB application in Exhibit “D”.

Pennsylvania. See Report, Exhibit 27. CSB submitted a proposal from the landlord at the Philadelphia property dated August 29, 2016 identifying 95,378 square feet of space on floors 3-7 and 57,967 square feet on floors 11-12 of that building that would be available to lease after December 1, 2016 and providing the proposed financial terms for that space. See Report, Exhibit 34. CSB submitted a Cost Benefit Analysis (“CBA”) on the EDA form with its application, a copy of which is attached hereto as **Exhibit “O”** and made a part hereof. The CBA compares the proposed Camden location to the 95,378 square feet of space located on floors 3-7 at 1601 Market Street.

The Report claims that subsequent changes in the Philadelphia proposal “differed significantly” from the initial proposal suggesting that such changes “cast doubt” on the availability of the site. See Report, pp. 59 and 63. The Report refers to an updated proposal from the landlord for the 1601 Market Street property dated December 1, 2016, which removed floors 11-12 that were previously available and identified space on the 13th floor as available. See Report, Exhibit 39. However, that proposal identified the same 95,378 square feet that CSB identified in its application as being available. In fact, CSB never changed the alternate location or the amount of floor area it had proposed to lease at 1601 Market Street at any time during the application process. The fact that the landlord had to update its proposal because space it identified as being available, floors 11-12, was no longer available, is not evidence of misrepresentation or fraud. Rather, it is evidence that CSB was providing EDA with the most current information in its possession related to the alternate location. The real estate market is constantly in motion and the fact that an inventory of rental properties changes frequently should come as a surprise to no one. The Report’s inference that CSB changed its alternate site, or misrepresented the risk that the New Jersey jobs would be relocated out of state, based on the updated proposal from the landlord, is blatantly false. CSB never changed the alternate location identified in its application or the amount of space to which it proposed to relocate.

The Report further states the Task Force discovered “evidence” appearing to indicate that the three companies did not “genuinely consider” Philadelphia as an alternate location to Camden. Page 61. The Report says CSB, NFI and Michaels collaborated to obtain proposals in Philadelphia which it claims raised “clear red flags” that “should have caused EDA personnel to question the statements that the companies were considering relocating out of state.” See Report, p. 63.

To buttress this illusion, the Report strings together phrases from several different emails to create the false narrative that the companies did not actually consider moving out of state. See Report, pp. 61-63. Task Force uses partial quotes to infer a false pretense. However, it appears from the full text of the emails that the actual conversations discuss the companies moving to those locations. To illustrate this point, Exhibit 45 to the Report is a series of emails between Steve Grabell, Chief Financial Officer at NFI, Michael Landsburg, Vice President of Real Estate at NFI, and Troy Adams, Real Estate Manager at NFI, and CBRE. The first email (8/22/16) is from CBRE to Mr. Grabell and Mr. Landsburg identifying two sites in Allentown, Pennsylvania. The next email (8/24/16) is from CBRE to Mr. Adams referring to the first email and informing him that the Crown Cork and Seal building is for sale and providing information about that property. Next is an email (8/25/16 at 9:32 am) from CBRE to Mr. Grabell and Mr. Adams about submitting an RFP to 1500 Spring Garden. Mr. Adams responds (8/25/16 at 9:40 am) stating “We are most

interested in Allentown due to fact that it is the lowest occupancy cost and incentives. Get proposal for 1500 Spring Garden. After seeing Crown Cork site the building likely could fit all of the partners in a nice campus setting. I will discuss internally.” Mr. Grabell forwards to Mr. Adams and Joe Purcell, CFO at Michaels (8/26/16 at 6:31 am) with copies to Mr. Muscella, and others, indicating he asked CBRE to get a proposal for 1500 Spring Garden, stating “[i]t checks all the boxes and will be very convenient for our workforce. Since it has availability for us and also one of our additional potential partners in Camden, Ken [Zirk of CBRE] has identified an additional possibility for 95,000 sf at 1601 Market as well which another partner could use . . . [i]f Ken can arrange a visit . . . can someone attend?” Mr. Muscella emails Mr. Grabell (8/26/16) indicating he can be available for a site visit to 1601 Market. In fact Mr. Muscella visited 1601 Market Street on August 26, 2016.

When the entire email chain contained in Exhibit 45 is reviewed, it is clear that the three companies are evaluating alternatives to the Camden location. One representative of NFI initially indicates that it is most interested in Allentown “due to fact that it is the lowest occupancy cost and incentives” and says that the Crown Cork building could fit all partners in one campus. Another representative states that NFI is interested in 1500 Spring Garden Street because “[i]t checks all the boxes and will be very convenient for our workforce.” NFI also informs CSB of the availability of space at 1601 Market Street that may be available. This email chain is clear and demonstrative evidence of a discussion among the parties to the Camden proposal of alternate locations and a recognition that each company has different needs. **The language in the full email chain** – and not just one clause quoted by the Report – unequivocally supports the fact that the companies were actually evaluating sites and considering what would work for their companies and employees. There is no evidence of fraud as outrageously suggested by the Task Force.

The Report refers to an email between CBRE and the owner of 1601 Market Street pointing to part of the statement in the chain. See Report, Exhibit 46. The Report states that the broker said CSB “didn’t get the tax breaks they were seeking” but it ignores the fact that he also said “the deal apparently got too expensive.” The Report implies this is evidence of fraud on the part of CSB. In fact, it is no such thing. CSB was trying to simply identify its options. Camden was obviously an option as CSB had filed its Grow NJ application and, after it received its award, decided to proceed with that project. However, Philadelphia was also an option. In order to properly evaluate that option, CSB had to know whether there was adequate space available in Philadelphia, and how much that space would cost.

No rational company would ever commit to a project of that magnitude without evaluating the cost of that project in relation to other alternatives. In CSB’s case, the cost of undertaking the project in Camden was significantly higher than the cost leasing Class A space in Philadelphia. CSB is paying \$62/sf of the actual office space and its share of all common space, over 10 years to lease in Camden. The lease proposal for comparable space in Philadelphia was for the office space only at \$25.95/sf. See Report, Exhibit 39. The cost per foot in Camden is more than double the cost in Philadelphia. The Report would have you believe that CSB was going to move to Camden regardless of whether it received tax credits. Without tax credits, no financially prudent company would choose this Camden project over the Philadelphia location given the costs of the

two alternatives. The EDA staff and Board clearly recognized these important facts when approving the CSB application.

EDA APPLICATION REVIEW PROCESS

Contrary to the Task Force assertions, the CSB application underwent a lengthy and laborious process of evaluation with many checks and balances. This process was identified by David Lawyer at the May 2, 2019 hearing and is summarized in the Report. It starts with a review of the application by the EDA Business Development Officer (“BDO”). The BDO performs the initial review of the application to ensure that all required documentation has been submitted. See Report, p. 33. After the BDO consults with the Project Manager and Managing Director the application is submitted to the Underwriting group. See Report, p. 33. The underwriter performs an analysis of the information provided to determine whether the application meets all program requirements. See Report, p. 33. The underwriter conducts due diligence and communicates with the applicants to address any follow-up questions that may arise, reviews the cost benefit analysis and conducts the net positive benefit analysis. See Report, p. 33-34. The underwriter prepares a project summary that is presented at Project Review Meetings with EDA Senior Leadership and a member of the Attorney General’s Office, at which time any issues or concerns related to the application are identified. See Report, p. 34. The underwriter will follow up with the applicant to obtain information to address those concerns. See Report, p. 34. Once approved at the Project Review meeting, the underwriter presents the application at a meeting of the Incentives Committee of the EDA Board, EDA Leadership and a member of the Attorney General’s Office (Elizabeth Renaud/Gabriel Chacon). See p. 53 of Transcript of May 2, 2019 Hearing, attached hereto as **Exhibit “P”** and made a part hereof. Once approved by the Incentives Committee, it is presented to the EDA Board for consideration.

CSB filed its application on October 24, 2016, **three (3) years after the Grow Program was enacted**. The underwriting and EDA review continued **for five (5) months**, from October 24, 2016 through March 16, 2017. During this period, EDA questioned the number of jobs and whether they were at risk of leaving the state. The initial review of CSB’s jobs related to whether they were at risk and the number of licensed professionals at the Marlton, New Jersey location. EDA took the position that licensed professionals, including insurance professionals, are not at risk of leaving the state because they are licensed to work in New Jersey, unless the licensed professionals do not require a license to perform their job function (i.e. general counsel, chief executive officer, chief financial officer, human relations professionals, etc.) CSB had to identify the number of unlicensed employees as well as the number of professionals whose job function did not require a license. As a result of this extensive due diligence process, EDA determined that only 69 of the 157 then existing jobs in Marlton were at risk of leaving the state. See Report, Exhibit 42.⁷

⁷ CSB has always maintained that all Marlton jobs were at risk of leaving the State, including the licensed professionals. The majority of the licensed professionals maintained licenses in many states, including Pennsylvania and New Jersey. The licensed professionals are not required to be located in New Jersey in order to do business in New Jersey. Moving them from Marlton to Philadelphia would have been no different than moving the Philadelphia licensed professionals to Camden as was done when the building was completed and ready for occupancy in June

The EDA underwriter also asked numerous questions related to the alternate location seeking documentation and information about the size of the proposed lease area, the costs, and updated proposals. The CSB application went through a thorough underwriting process which satisfied the underwriter, EDA Leadership, the Attorney General's Office, the Incentives Committee and the EDA Board that it met all of the criteria applicable to a tax credit applicant and that it qualified for tax credits.⁸

CSB TAX CREDIT AWARD WAS, AND REMAINS, PROPER AND APPROPRIATE

CSB maintains – and the record is compelling in support – that EDA acted appropriately in awarding the tax credits in 2017. The record is thorough in this regard and CSB has continuously complied with all Grow Program requirements up to and including this date, and acted in reliance upon those EDA approvals and Approval Letter in pursuing its project and investing tens of millions of dollars in furtherance of its project. **The Task Force Report does nothing to credibly refute that compelling record.**

In fact, the Report contains numerous misstatements of law and misstatements of fact to support its inference that CSB has defrauded the EDA and the State of New Jersey. There is nothing that the Task Force has identified wherein CSB said it “committed” to locating its headquarters office in Camden or that the jobs were not at risk. CSB clearly demonstrated it had the financial and operational ability and means to relocate in Philadelphia; frankly, a move that is common for many companies in Southern New Jersey. See **Exhibit “R”**, attached hereto and made a part hereof.

Moreover, without tax credits no reasonable company would locate in Camden at that high cost. The project cost \$62 a square foot over 10 years to locate in Camden. As the Philadelphia proposal shows, the market rate of rent in Philadelphia at the time CSB made its application was \$24-26 per square foot. The cost benefit analysis provided to EDA clearly showed the significant difference in the cost to build in Camden versus the cost to lease comparable space in Philadelphia. There is no question that CSB would not have moved to Camden but for the tax credits. The other intangibles with respect to site selection, are all clearly found in Philadelphia. The claim that CSB “committed” to Camden and the implication that they would have built in Camden without tax credits is ludicrous. It would have been financially irresponsible to do so.

Significantly, CSB has also exceeded what it had promised the EDA when it was awarded its tax credits. CSB estimates that approximately \$87 million has or will be invested in its new headquarters when completed.⁹ It has moved over 302 Grow-eligible jobs into its new Camden

2019. As a result of the EDA's excluding 88 licensed professionals from the net benefit calculation, the actual net benefit to the state is much greater than calculated by the EDA.

⁸ In 20017-20018, the U.S. Attorney's Office reviewed the entire CSB tax credit application and file. Based on a review of the applicable law and evidence during that investigation, the U.S. Attorney concluded that no further action was warranted and the matter was closed. See **Exhibit “Q”** attached hereto and made a part hereof.

⁹ The original project submitted to EDA included a helipad on the roof of the building. The project was subsequently modified to reduce the overall cost and to eliminate the helipad from consideration by the EDA. The project summary was revised to remove the helipad. (See Project Description attached as Exhibit “N”). Accordingly, when CSB certifies its costs and project completion to EDA, it will not include any costs related to the installation of the helistop

Mr. Bruce Ciallella
July 16, 2019
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headquarters, and it actively recruiting to fill another 18 Grow eligible positions, for a total of 52 more than the 268 it had promised the EDA. CSB has more than upheld its side of the bargain.

CSB thanks the EDA for the opportunity to set the record straight. We look forward to meeting with your representatives as soon as possible to discuss any other questions or comments that may arise.

Very truly yours,



Heather A. Steinmiller, Esquire

atop the building. The helipad was constructed with private funds and will not be a part of the Grow Program award. CSB, along with the other occupants, have authorized first responders (Cooper/police/fire/EMS) to utilize the helistop without cost as and when needed for emergencies.