

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

----- X
In re: : Chapter 11
: :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33496 (DRJ)
: :
Debtors. : (Jointly Administered)
: :
----- X

**DEBTORS' PRELIMINARY OBJECTION, SOLELY FOR PURPOSES OF THE
RIGHTS OFFERING, TO CLAIMS FILED BY CCA FINANCIAL LLC**

This is an objection to your claim. This objection asks the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

A hearing has been set on this matter on September 23, 2020 at 2:00 p.m. (CT). You may participate in the hearing by audio/video connection.

Audio communication will be by use of the Court's regular dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting Code "JudgeJones" in the GoToMeeting app or click the link on Judge Jones's home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select "Bankruptcy Court" from the top menu. Select "Judges' Procedures," then "View Home

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



Page” for Judge Jones. Under “Electronic Appearance” select “Click here to submit Electronic Appearance.” Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) respectfully submit this preliminary objection (the “**Objection**”) to the general unsecured claims (the “**Claims**”) asserted by CCA Financial LLC (“**Claimant**”) against Debtors Pronghorn Logistics, LLC (“**Pronghorn**”) and Hi-Crush Inc., solely for purposes of determining Claimant’s eligibility to participate in the Rights Offering (as defined below), and state as follows:

BACKGROUND

A. The Chapter 11 Cases

1. On July 12, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions commencing cases for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) [Docket No. 24], which is fully incorporated herein by reference.

2. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

3. On July 13, 2020, the Court entered the *Order (I) Establishing (A) Bar Dates and (B) Related Procedures for Filing Proofs of Claim, (II) Approving the Form and Manner of Notice Thereof and (III) Granting Related Relief* [Docket No. 88], establishing August 16, 2020 as the general bar date for filing proofs of claim in the Chapter 11 Cases.

4. On August 4, 2020, the Court entered the *Order Authorizing the Debtors to (I) Reject Certain Executory Contracts and Unexpired Leases Effective as of the Dates Specified in the Motion and (II) Abandon Certain Remaining Personal Property in Connection Therewith* [Docket No. 210] (the “**Omnibus Rejection Order**”) authorizing the Debtors’ rejection of that certain Master Lease Agreement No. 2723 and Equipment Schedule No. 001, dated as of April 10, 2019, between Summit Funding Group, Inc.² and Debtor Pronghorn, and all amendments, supplements, and modifications thereto (collectively, the “**Master Lease**”).³

B. The Rights Offering Procedures

5. On August 14, 2020, the Court entered the *Order (I) Approving Adequacy of Disclosure Statement, (II) Scheduling Hearing on Confirmation of Plan, (III) Establishing Deadline to Object to Plan and Form of Notice Thereof, (IV) Approving (A) Solicitation Procedures, (B) Forms of Ballots and Notices of Non-Voting and Limited Voting Status, and (C) Rights Offering Materials, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Cure Notice, and (VI) Granting Related Relief* [Docket No. 288] (the “**Disclosure Statement Order**”), whereby the Court approved, among other things, (i) the commencement of the rights offering (the “**Rights Offering**”) contemplated under the Debtors’ plan of reorganization⁴, and (ii) the Rights Offering Procedures, the form of Rights Exercise Form,

² Pursuant to the Notice of Acknowledgement and Assignment, dated April 10, 2019, Summit Funding Group, Inc. assigned the Master Lease to CCA Financial, LLC.

³ The Omnibus Rejection Order expressly provides that nothing therein “shall prejudice the rights of the Debtors to argue (and the Counterparties to raise objection thereto) that any of the Rejected Contracts and Leases were terminated prior to the Petition Date” See Omnibus Rejection Order, ¶ 10.

⁴ A copy of the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the “**Plan**”) is filed at Docket No. 289. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan.

and the form of AI Questionnaire (each, as defined in the Disclosure Statement Order). A copy of the Rights Offering Procedures is attached as Exhibit E to the Plan.

6. The Rights Offering Procedures provide, in pertinent part, that each holder of an Eligible Claim (as defined below) as of September 4, 2020 (the “**Rights Offering Record Date**”) that is an Accredited Investor (each such holder, a “**Rights Offering Participant**”) will be entitled to purchase such Rights Offering Participant’s *pro rata* share of the new secured convertible notes to be issued by the Reorganized Debtors on the Effective Date (the “**New Secured Convertible Notes**”).

7. With respect to General Unsecured Claims, the Rights Offering Procedures provide, in pertinent part, that an “Eligible Claim” is any General Unsecured Claim that is “Allowed” (as defined in the Rights Offering Procedures). Such terms is defined as follows in the Rights Offering Procedures:

“Allowed” means, *solely for purposes of these Rights Offering Procedures*, with respect to any Claims (or any portion thereof), as of any date of determination, (a) a Claim that is evidenced by a Proof of Claim filed by the applicable Claims Bar Date in accordance with the Claims Bar Date Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely filed; or (c) a Claim that is allowed pursuant to the Plan or a Final Order of the Bankruptcy Court as of such date; provided that with respect to a Claim described in clauses (a) and (b) above (except any Claim previously allowed pursuant to the DIP Orders), such Claim shall be considered “Allowed” as of such date of determination only to the extent that, with respect to such Claim, no objection to allowance or priority or request for estimation thereof has been interposed on or prior to such date, or such an objection is so interposed and the Claim has been allowed by Final Order of the Bankruptcy Court as of such date; provided further that, solely for purposes of these Rights Offering Procedures, any objection to allowance or priority or request for estimation of a Claim must be filed by no later than the Rights Offering Record Date (which is September 4, 2020).

See Rights Offering Procedures, § 1.

8. The Rights Offering Procedures further provide that, if the Eligible General Unsecured Claim of a Rights Offering Participant is not an Allowed General Unsecured Claim on

the date that is one business day after the Confirmation Hearing (a “**Rights Offering Forfeiture Event**”), then (i) such Rights Offering Participant’s rights that were issued on account of such Eligible General Unsecured Claim shall be deemed terminated, (ii) such Rights Offering Participant shall not be permitted to participate in the Rights Offering with respect to such rights, and (iii) any exercise of such rights by such Rights Offering Participant prior to the date of the occurrence of such Rights Forfeiture Event shall be deemed void, irrevocably rescinded and of no further force or effect. *See* Rights Offering Procedures, § 6.

9. On August 20, 2020, the Debtors’ caused to be mailed to each holder of an Eligible General Unsecured Claim an AI Questionnaire. *See* Certificate of Service, § 4(f) [Docket No. 328]. The Debtors expect to commence the Rights Offering in accordance with the Rights Offering Procedures on September 9, 2020.

C. The Proofs of Claim

10. The Claims asserted by Claimant relate to the rejection of the Master Lease. Claimant filed two proofs of claim: (i) proof of claim number 146, filed on August 5, 2020, asserting a General Unsecured Claim against Debtor Pronghorn in the amount of \$2,868,547 and (ii) proof of claim number 352, filed on August 12, 2020, asserting a General Unsecured Claim against Debtor Hi-Crush Inc. in the amount of \$2,868,547 (together, the “**Proofs of Claim**”). Claimant asserts, through Proof of Claim No. 146, rejection damages for (a) unpaid future rent under the Master Lease in the amount of \$1,658,046.55 (the “**Future Rent Claim**”) and (b) the fair market value of certain allegedly unreturned equipment in the amount of \$1,210,500.00 (the “**Unreturned Equipment Claim**”). *See* Proof of Claim No. 146. Claimant further asserts that Hi-Crush Inc. guaranteed such amounts under that certain Limited Guaranty, dated as of April 10, 2019 between Hi-Crush Inc., Pronghorn, and Summit Funding Group, Inc. and, therefore, Hi-

Crush Inc. is likewise liable to Claimant in the amount of \$2,868,547. *See* Proof of Claim No. 352.

PRELIMINARY OBJECTION

A. Preliminary Objection Solely for Purposes of the Rights Offering

11. As discussed above, the Debtors are required to object to the Proofs of Claim by no later than September 4, 2020 pursuant to the Rights Offering Procedures in order to determine the proper eligibility of the Claimant to participate in the Rights Offering.

12. Accordingly, in compliance with the Rights Offering Procedures, the Debtors have filed this Objection solely for purposes of determining the Allowed amount of Claimant's General Unsecured Claim for purposes of the Rights Offering. The Debtors reserve all rights to object to the allowance of such claims for purposes of the Plan and any distributions thereunder in accordance with the claims objection deadlines set forth in the Plan.

13. The Debtors are still in the process of analyzing the Proofs of Claim and reconciling the amounts asserted therein with the amounts reflected in the Debtors' books and records. Upon preliminary review, however, the Debtors believe that the Unreturned Equipment Claim should be disallowed in its entirety and at least part of the Future Rent Claim should be disallowed as well.

14. With respect to the Unreturned Equipment Claim, the Debtors object because the Debtors have in fact been holding the equipment in question for Claimant's benefit in order to facilitate a possible sale of such equipment. The Debtors understand that Claimant has found a buyer for the majority of the equipment that the Debtors have been storing and that Claimant anticipates being able to sell or re-let the remainder of the equipment in the near future. Accordingly, the Debtors submit that the Unreturned Equipment Claim should be disallowed because: (a) the equipment is not in fact "unreturned"; rather, the Debtors have been storing it for Claimant's benefit and working cooperatively with Claimant's agent to assist with the sale, and

(b) once sold, the proceeds of the unreturned equipment will represent its fair market value and satisfy the Unreturned Equipment Claim in full in cash.

15. The Debtors submit that the Future Rent Claim should be disallowed, at least in part, for similar reasons. The sale or re-letting of the equipment will mitigate all or a portion of Claimant's rejection damages for future rent. Given that the sales are still pending, however, the Debtors are unable at this stage to assess the amount of the damages that will be mitigated.

16. In addition, the Claims set forth in each of the Proofs of Claim stem from the same alleged liability. Proof of Claim No. 146 was filed against Pronghorn as the lessee under the Master Lease and Proof of Claim No. 352 was filed against Hi-Crush Inc. as a guarantor of Pronghorn's obligations (making it duplicative of Proof of Claim No. 146). To the extent any portion of the Claims are Allowed for purposes of the Rights Offering, such amount should be Allowed only once and Claimant should not be granted rights to participate in the Rights Offering with respect to Claims against both Pronghorn and Hi-Crush Inc.

17. For the avoidance of doubt, the Debtors do not concede that they are liable to Claimant for any amounts under the Master Lease or otherwise. Nevertheless, the Debtors intend to work cooperatively with Claimant prior to the Confirmation Hearing to reach a resolution with respect to allowance of Claimant's Claims solely for purposes of the Rights Offering.

B. Reservation of Rights

18. By this Objection, the Debtors object to the Claims asserted in the Proofs of Claim and request that the Claims be disallowed solely for purposes of the Rights Offering. The Debtors reserve all rights with respect to allowance of the Claims for purposes of the Plan and any distributions to be made thereunder.

19. As set forth above, the Debtors intend to work cooperatively with Claimant to reach a consensual resolution with respect to the allowance of its Claims solely for purposes of the Rights

Offering. If the Debtors and Claimant are unable to reach a consensual resolution, the Debtors request that the Court schedule a status conference to take place at the Confirmation Hearing, at which time the Debtors will seek to establish appropriate procedures for resolving the Claims solely for purposes of the Rights Offering.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, for the reasons set forth in the Objection, the Debtors respectfully request that the Court disallow the Claims asserted in the Proofs of Claim solely for purposes of the Rights Offering only or, in the alternative, schedule a status conference for September 23, 2020 at 2:00 p.m. (CT) to address the resolution of the Proofs of Claim.

Signed: September 4, 2020
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)
Ashley L. Harper (TX Bar No. 24065272)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Tel: 713-220-4200
Fax: 713-220-4285
Email: taddavidson@HuntonAK.com
ashleyharper@HuntonAK.com

-and-

George A. Davis (admitted *pro hac vice*)
Keith A. Simon (admitted *pro hac vice*)
David A. Hammerman (admitted *pro hac vice*)
Annemarie V. Reilly (admitted *pro hac vice*)
Hugh K. Murtagh (admitted *pro hac vice*)
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Tel: 212-906-1200
Fax: 212-751-4864
Email: george.davis@lw.com
keith.simon@lw.com
david.hammerman@lw.com
annemarie.reilly@lw.com
hugh.murtagh@lw.com

Counsel for the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
In re:	:	Chapter 11
	:	
HI-CRUSH INC., <i>et al.</i> , ¹	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**DECLARATION OF MARK C. SKOLOS IN SUPPORT OF DEBTORS’
PRELIMINARY OBJECTION, SOLELY FOR PURPOSES OF THE
RIGHTS OFFERING, TO CLAIMS FILED BY CCA FINANCIAL, LLC**

I, Mark C. Skolos, hereby declare:

1. I am the General Counsel and Secretary of Hi-Crush Inc. and its direct and indirect subsidiaries (the “**Company**”). I am knowledgeable about and familiar with the Company’s businesses and financial affairs.

2. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my discussions with other employees of the Debtors and/or their advisors, and based upon my experience and knowledge related to the Debtors’ business operations and books and records. If called upon to testify, I would testify competently to the facts set forth herein.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

3. I am authorized to submit this Declaration on behalf of the Debtors. I am familiar with the *Debtors' Preliminary Objection, Solely for Purposes of the Rights Offering, to Claims Filed by CCA Financial, LLC* (the "**Objection**"), filed simultaneously with this Declaration.²

4. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. I reviewed the Objection, and can confirm that the Company and the Debtors' advisors have reviewed the Debtors' books and records, the Proofs of Claim filed by CCA Financial, LLC ("**Claimant**"), and the supporting documentation, and have determined that the Debtors dispute some or all of the amounts asserted in the Proofs of Claim for each of the reasons set forth in the Objection.

5. It is my understanding that, if the disputed portion of the Claims is not Disallowed (as defined in the Rights Offering Procedures) for purposes of the Rights Offering, Claimant may be entitled to exercise an unwarranted amount of claims for purposes of the Rights Offering. As such, I believe that disallowance of the disputed portion of the Claims for purposes of the Rights Offering is warranted.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing Declaration are true and correct to the best of my knowledge, information, and belief.

Dated: September 4, 2020

/s/ Mark C. Skolos

Mark C. Skolos
Hi-Crush Inc.

² Capitalized terms used but not defined in this declaration shall have the meaning ascribed to them in the Objection

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
In re:	:	Chapter 11
	:	
HI-CRUSH INC., <i>et al.</i> , ¹	:	Case No. 20-33496 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**ORDER SUSTAINING DEBTORS’ PRELIMINARY OBJECTION,
SOLELY FOR PURPOSES OF THE RIGHTS OFFERING,
TO CLAIMS FILED BY CCA FINANCIAL, LLC**

[Relates to Objection at Docket No. _____]

Upon the preliminary objection (the “Objection”)² of the Debtors seeking entry of an order (this “Order”) disallowing the Claims asserted in the Proofs of Claim solely for purposes of the Rights Offering only, all as more fully set forth in the Objection; and upon the Declaration of Mark C. Skolos in support of Debtors’ Objection; and the Court having jurisdiction to consider the Objection and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief sought in the Objection is in the best interests

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC , Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

of the Debtors, their estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED THAT:

1. The Claims asserted in the Proofs of Claim are disallowed solely for purposes of the Rights Offering only.

2. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (i) an admission as to the validity of any prepetition claim against a Debtor; (ii) a waiver of any party's right to dispute any prepetition claim on any grounds; (iii) a promise or requirement to pay any prepetition claim; (iv) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (v) a waiver of any the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vi) a waiver of any party's rights with respect to allowance of the Claims for purposes of the Plan and any distributions to be made thereunder.

3. The terms and conditions of this Order will be immediately effective and enforceable upon its entry.

4. The Debtors are authorized to take all steps necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Objection.

5. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE