Albert Alonzo

From:	Bruce Sampson <bsaf5@yahoo.com>
Sent:	Friday, September 18, 2020 2:27 PM
To:	Albert Alonzo; BRUCE SAMPSON
Subject:	Fw: Please post this quickly - HI Crush, Inc Et. Al. Case Number: 20-33495 Objection to the Plan's Disclosure Statement and to the Indemnification of Insiders
Attachments:	My Full Contact Information.docx

----- Forwarded Message -----
From: Bruce Sampson <bsaf5@yahoo.com>
To: BRUCE SAMPSON <bafs3@hotmail.com>; Albert_Alonzo@txs.uscourts.gov <albert_alonzo@txs.uscourts.gov>
Sent: Friday, September 18, 2020, 02:22:59 PM CDT
Subject: Please post this quickly - HI Crush, Inc Et. Al. Case Number: 20-33495 Objection to the Plan's Disclosure Statement and to the Indemnification of Insiders

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. 20-33495 (DRJ)
Debtors.	:	(Jointly Administered)
---	X	

OBJECTION TO THE PLAN'S DISCLOSURE STATEMENT, THE PLAN FOR THE JOINT PLAN OF REORGANIZATION FOR HI-CRUSH INC.

AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

AND THE INDEMNIFICATION OF INSIDERS

The articles of incorporation have an indemnification clause in them. The information below hopefully will be used to decide if the insider's indemnification claims should be given lower priority than all of the valid claims filed by unsecured creditors.

This objection to the plan's disclosure statement has been filed far later than was optimal because I was caught off guard by Hi-Crush, Inc's June 25, 2020 unexpected announcement that they expected to file for bankruptcy. This is because Hi-Crush never filed the required 8-k that was detailed enough to warn investors of their situation. I believe they intentionally did not warn investors about their bankruptcy so that investors would not be able to promptly prepare an objection to the disclosure statement.

The equity investors on June 24, 2020 were US based noninstitutional investors because they were not allowed to buy the bonds at any price since they were Reg 144a bonds (QIB) and Reg S bonds. Thus, they could not see that the bond holders had hired a bankruptcy attorney in or around March 2020. This is why there has not been more objections from equity investors who are being advised by lawyers who represent the equity investors. (This also appears to be a violation of Regulation FD).

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Management knew customers were losing interest courser northern white sand yet they purchased the Whitehall facility from the general partner in Q1 2017. The cost of Whitehall and the remaining 2% interest in our Augusta facility for $154,000 via 2019 10-K. Via the Q1 2017 earnings call CFO Fulton said:
"your available capacity doesn't matter if you cannot produce the mesh sizes the customer wants." ... "Putting all this together with the focus of our customers on fine mesh sand ..." "the coarse grade sands are still being sold at a discount certainly compared to the fine mesh sizes of sand"

CFO Fulton "it made more sense to shut down the Whitehall Plant that has more of a course-grade reserve compared to our other facilities."
Via the Oct 1 2018 interview https://www.oilandgas360.com/oil-gas-two-frac-sand-producers-idle-wisconsin-plants-whats-going-on/
Whitehall was one of HI Crush's higher cost facilities and thus idled during in Q2 of 2016 and resumed production in March 2017. No other companies were buying Northern White Sand plants at this time because the contracts that they could get were not powerful enough to justify it. However, Fairmount Santrol's plant and reserves in the Permian cost only $110 million and had far more reserves according to the Reuters article provided below and more capacity. (See the FY2018 10-Ks for both companies for these details.)

Management's purchase of Whitehall was a fraudulent transfer and it was a breach of their fiduciary duties, their duty of loyalty their duty of care and their duty to act in good faith.

Via the Q3 2018 earnings call:
"what is the board's view for the distribution going forward. And on that, again, our board has retained the right to make that declaration each quarter. But it was very intentional about setting the distribution at the $0.225 that we did this quarter, thinking that that was where it was sustainable over the coming quarters"

That would be one of the largest distributions being offered in the stock market. Not only was the distribution cut to zero later that quarter but 4 quarters later HI Crush it would be very hard for Hi Crush to be in compliance on their fixed charge coverage ratio on their undrawn ABL Credit Facility due to seasonality. The latter was partly due to voluntary over spending on growth cap ex projects. They then hired bankruptcy attorneys a little bit latter according to the disclosure statement. The fixed charge coverage ratio is one of the most common covenants in credit facilities. Did they deliberately violate it so that they could benefit a lot financially from the bankruptcy process?

Although that Q3 2018 earnings call's forward-looking statement is protected by the Safe Harbor act, analysts likely thought it was made in bad faith so that the General Partners IDRs could be bought out at a high price in the 2018-11-15 S-3 SEC filing. Being realistic, those incentive distribution rights ("IDRs") did not deserve to get bought out at the price they were no matter the list of governance positives. More units were issued so that the IDRs could be bought out causing dilution. The institutions that were following Hi Crush generally downgraded HI Crush to a sell during that time period and Hi Crush's unit price dropped below its FY2016 low. Lots of new frac sand plants had been or were being built in the Permian. Rather than reducing their debt levels between June 30, 2018 and Dec 31, 2018 Hi Crush's debt increased from $327,833,000 to $626,591,000. Via the Q2 2018 earnings call the Credit Suisse analyst said "now, we're going into another slowdown. We've already had pressure pumping companies, some of your clients, acknowledge that they're idling some crews because of slowdowns in the Marcellus, the Northeast."

Via the Q3 2018 earnings call:

Barclay's analyst J. David Anderson:
"Okay. It just – I just struggle with kind of how the optics look here. I mean, you said the very first thing, the reason for the C-Corp was to broaden your investor base. So, you're basically kind of pitching to institutional investors here. But at a time when the sand market's under heavy pressure, your stock price has come down considerably, the GP is essentially getting paid out pretty well here. I just have a hard time seeing how this is in the best interest of unitholders who are getting heavily diluted here? I guess this is not a question, it's just sort of a statement on my opinion, just the optics aren't great here... it just doesn't feel right."
CEO Rasmus:

"I think that is your opinion. I think that's looking at it myopically, focused on just the IDRs as you mentioned in the preamble of your question, and I think that there are many other factors at play and that were taken into consideration and that benefit the unitholders."

Via Feb. 6, 2019 Earnings call "we conservatively expect to generate more than $100 million in annual EBITDA from our Kermit facilities. This is before any contribution from our logistics services." This appeared to be a statement about their fixed price contracts because." Via the Feb 2019 10-k:
"Our contracts for sand sourced from our Kermit facilities are generally fixed price for the life of the contract"
Via the Jan 7 2019 SEC filing The Partnership announced the completion in December of construction at its second Kermit production facility. ... We expect the Kermit complex to ramp quickly to reach its combined annual nameplate capacity of 6.0 million tons in March, supported by contracts with operators for approximately 85% of its capacity. ... While certain discussions are ongoing, we conservatively expect more than $100 million in EBITDA annually solely from frac sand sales from our Kermit complex, before any added contribution of our logistics services. (The latter statement was worded in a way that it implied that the $100 million in EBITDA would last for more than one year.)
Our second Kermit facility construction is on track and due to be completed by the end of 2018. The 3 million tons per year of additional in-basin capacity is currently 75% contracted via the Q3 2018 Call.

The latter is largely a statement of a fact because the Permian contracts are fixed price take or pay contracts via the 10-Ks.

Hi Crush's last mile logistics business was generating more than $24 million in annualized EBITDA in Nov 2019. (This is because their last mile logistics business was generating more than $24 million in EBITDA via their Feb 2019 earnings call and
via the Nov 2019 earnings call: "have you seen returns on capital deployed in the last mile shrinking, if so by how much?"
CFO Fulton "I don't think that we've seen the returns shrink at all. As Alan had mentioned earlier, the pricing has held pretty well there, and we don't believe that we're really competing on price for last mile. It's competing on that value-add.")

For the full year 2019, Hi Crush's adjusted EBITDA totaled $67.4 mil via their Q4 2019 earnings call.

It became clear in the June 25, 2020 SEC filing that Hi-Crush obtained nothing of value that would enable it to survive a prolonged downturn in exchange for the contacts that would generate $100 million in EBITDA. It had closed its Blair plant and Permian basin located Kermit 2 plant. It became clear Hi Crush's management is more loyal to their customers then to their shareholders even if this results in Hi Crush going bankrupt. That behavior is a is a breach of their fiduciary duties, their duty of loyalty their duty of care and their duty to act in good faith. Since Hi Crush's management will likely remain in place under the reorganized version of the company after the current shareholders have been whipped out, maintaining a good relationship with their customers was management's top priority. Old equity interests will not benefit from the good relationship with their customers.

Hi Crush's competitor Covia seamed to have a similar strategy via Covia's Q4 2018 earnings call: "we continue to believe that those contracts -- even while fixed or indexed -- you need to help your customers to be competitive, and so, we believe that market-based contracts provide the most flexibility and align ourselves with the customers the best." However, (Bankrupt) Covia announced their strategy of being incredibly loyal to their customers at the expense of their shareholders. Hi Crush tried to keep their intentions of being more loyal to their customers than their shareholders (even if that meant bankruptcy) secret.

Shareholder orientated management teams such as those at competitors US Silica or Smart Sand will have a hard time getting contracts because companies will prefer to make contracts with Rasmus who will take his company into bankruptcy over and over again by being more loyal to the customers than the shareholders.

The following companies did far better job of warning investors than Hi-Crush about their upcoming bankruptcy: California Resources, McDermott, RTW Retailwinds, Stage Stores, Valaris, Seadrill, Pacific

Drilling, J. C. Penney, Carbo Ceramics, Akorn, GNC, Chesapeake, Covia, Extraction Oil & Gas, Centric Brands, Rose, Ultra Petroleum and Lilis Energy.
I have included a copy of the Reuters article entitled "How a Texas shale supplier's founders made fortunes as the firm failed" at the end of this submittal." That article can easily be found by searching the internet.

Respectfully submitted,

By: /s/ Bruce Sampson
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Hi Crush, Inc Stakeholder

How a Texas shale supplier's founders made fortunes as the firm failed

Liz Hampton

Reuters August 13, 2020

FILE PHOTO: Drilling rigs operate at sunset in Midland

More

By Liz Hampton

(Reuters) - On July 7, the board of directors at Texas fracking sand supplier Hi-Crush granted nearly $3 million in bonuses to four top executives, including $1.35 million for CEO and founder Robert Rasmus.

Five days later, the company declared bankruptcy.

The payout marked the latest in a series of board decisions that allowed the oilfield supplier's top executives and founders to rake in tens of millions of dollars as shareholders saw the stock price plummet to pennies.

The three-member independent board has since 2013 included two people with close ties to Rasmus: John Kevin Poorman, a former next-door neighbor in Illinois, according to deed records; and John Affleck-Graves, who until 2019 was the chief financial officer of the University of Notre Dame, Rasmus' alma mater and a recipient of his donations.

Rasmus gave an undisclosed amount of money for a new 4,000-square-foot entertainment facility - dubbed the Rasmus Family Club – that opened in 2017 at Notre Dame stadium, where its storied football team plays. At same the time, Affleck-Graves served as the university's chief financial officer – and, as a Hi-Crush director, was signing off on deals that put millions of dollars in Rasmus' pocket.

Since 2014, the board has approved $640 million in company purchases of three sand mines and other assets in which Rasmus and his two co-founders each held a 12.78% stake, according to regulatory filings. The sales grossed the founders a combined $245.5 million, a windfall that came at the expense of other shareholders.

Many investors would view Rasmus' donation to Notre Dame as creating a conflict of interest with a board member who also served as the university's CFO and could have benefitted from an associate's major donation to the school, said Charles Elson, Director of the University of Delaware's Weinberg Center for Corporate Governance.

Notre Dame declined to comment on the Rasmus donation. A university spokesman, Paul Browne, said in a statement that Affleck-Graves integrity is "beyond reproach." Affleck-Graves did not respond to requests for comment.

Rasmus did not comment on the sand-mine transactions, his relationships with board members, or the pre-bankruptcy executive bonuses. He said in a written statement the firm's board has always complied with "appropriate guidance, process, good corporate governance and practices, and securities and legal regulations."

Reuters contacted all Hi-Crush officials, founders and directors named in this story. None responded.

The founders' windfall from the sand-mine deals, which has not been previously reported, reflects lax corporate governance in the oil patch that has raised investors' risk, said Ed Hirs, a veteran oil industry manager and an energy fellow at the University of Houston.

Many investors have fled the U.S. oil-and-gas sector amid poor returns and governance concerns, pushing the industry to less than 3% of the S&P 500 index from more than 16% in 2008.

Hi-Crush has been one of the leading providers of sand for the Texas boom in fracking, a drilling method that involves blasting sand and water into shale rock to release oil. It is also one of more than 50 U.S. companies in the oil and gas industry that have declared bankruptcy amid the coronavirus pandemic, which wrecked fuel demand, according to law firm Haynes and Boone.

But the firm's downfall also stems from poor oversight by directors who prioritized the interests of executives over shareholders, a common problem in the U.S. shale sector, said Michael Boyd, of investment adviser Energy Income Authority.

"Mom and pop retirees don't consider the ramifications of poor corporate governance," he said. "They've made some poor investment decisions in this space, whether it be Hi-Crush or others."

QUESTIONABLE STOCK PURCHASES

Hi-Crush shares have fallen from more than $70 in 2014 to become nearly worthless amid heavy competition. In June 2019, Rasmus and two other executives - Chief Operating Officer Michael Oehlert, and then-Chief Financial Officer Laura Fulton - reaped a gain by purchasing company shares just days before the company announced market-moving news. Company filings show the executives bought about $300,000 in company stock, with Rasmus buying more than half that amount. Days later, Hi-Crush announced a share-buyback plan that boosted the stock by 50%.

Securities laws bar executives from trading company shares if they know of a pending announcement likely to affect the stock price. Rasmus told Reuters that he and the other executives had not been aware of the buyback plan. The purchases, he said, did not constitute insider trading because they were made a day before the board agreed to the buyback.

Jacob Frenkel - a former SEC Enforcement lawyer who is currently Securities Enforcement Practice Chair for law firm Dickinson Wright – said it was unlikely that the executives had no advanced notice of the buyback.

"Board agendas and cash-flow analyses at a New York Stock Exchange-listed company do not show up the morning of the board meeting along with bagels and danishes," he said.

Reuters was not able to independently confirm when the executives learned of the pending stock buyback.

EXECUTIVE WINDFALLS ON SAND-MINE SALES

Hi-Crush was founded in 2010 and went public in 2012 as a master limited partnership - a two-tiered structure that included a general partnership to manage day-to-day operations and a limited partnership of investors providing capital.

Between 2014 and 2017, the general partnership sold three sand mines for hundreds of millions of dollars to the limited partnership over a period when the market for Wisconsin sand was in decline. Rasmus and two other Hi-Crush founders, Jefferies Alston and James Whipkey, grossed tens of millions of dollars from the transactions because each of them held a 12.78% stake in the general partnership, according to SEC filings.

The publicly traded limited partnership - which included all stock investors - was left with mines that are now worth a fraction of the sale prices. All the sales were approved by the company's three directors, who are elected by the general partners, including Rasmus and the other founders.

In April 2014, Hi-Crush's general partner sold a Wisconsin sand mine to its limited partner for $224.25 million, according to SEC filings - grossing about $30 million each for Rasmus, Alston and Whipkey. In 2015, the mine was idled for about a year because of weak market conditions. Hi-Crush's general partner sold two more Wisconsin mines to its limited partner over the next two years for a total of more than $300 million. Hi-Crush in 2019 reported more than $215 million in writedowns on two of its mines as the market tanked.

By late 2018, the limited partner bought out the general partner entirely in a $96 million deal that ended Hi-Crush's MLP structure. Under the deal, the three founders were awarded about $12.3 million of newly issued Hi-Crush shares, company filings show.

The deal drew criticism from some corporate analysts who said it weakened share value for stockholders by diluting the stock. Hi-Crush shares had been trading at more than $16 in July 2018, before the deal, but ended the year at around $3.50.

STEEP PREMIUM

While Hi-Crush was shifting Wisconsin sand mines facing declining demand to its limited partners, its board in 2017 approved a $275 million purchase of 1,226 acres in the west Texas town of Kermit. The move was part of an industry rush to find sand mines closer to the oil patch to lower transportation costs, but it ultimately failed to pay off for investors or reverse the company's declining fortunes.

Hi-Crush paid an extraordinary premium for the land at a time when larger properties in the region were selling for less than half that amount, according to a Reuters review of four other deals. The seller - Permian Basin Sand Company, an entity affiliated with Platte River Equity - had acquired the same parcel roughly two months earlier for $12 million, according to a deed, before flipping it to Hi-Crush for more than 20 times that amount.

One of the private equity company's managers was Mark Brown, who is on the board of a Notre Dame student investment management program with Hi-Crush director Affleck-Graves. Brown said he had no relationship with Affleck-Graves and declined to comment on the sand-mine sale.

The land offered some benefits to Hi-Crush. It had guaranteed income through a sand supply contract with a major shale producer, and the company at the time touted the deal by saying it made the company the first local fracking sand producer in West Texas.

But larger properties, and their plants, went for far less. Fairmount Santrol's land and mining facility in the same town, for example, had about three times as many sand reserves, more than twice the acreage, and a similar planned production rate, but its 40-year lease and production facility was priced at $110 million the same year.

(Reporting by Liz Hampton; Editing by Richard Valdmanis and Brian Thevenot)

That is the end of the Reuters article.

Respectfully submitted,

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Hi Crush, Inc Stakeholder