

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

In re: § Chapter 11
HI-CRUSH INC., *et al.*,¹ §
§ Case No. 20-33495 (DRJ)
§
Debtors. § (Jointly Administered)

**LIMITED OBJECTION OF C.K. INDUSTRIES, INC. TO DEBTORS’ FIRST OMNIBUS
MOTION FOR ENTRY OF AN 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
[Relates to Motion at Docket No. 20]**

C.K. Industries, Inc. (“C.K. Industries”) files this Limited Objection (the “Limited Objection”) to the First Omnibus Motion for Entry of an 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. 20] (the “Motion”), and in support of the Limited Objection, respectfully states as follows:

I. RELEVANT BACKGROUND

1. On July 12, 2020 (the “Petition Date”), each of the above-captioned debtors (collectively, the “Debtors”) filed a voluntary petition for relief under chapter 11 of title 11 of the

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.



United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

2. Prior to the Petition Date, one of the Debtors, D & I Silica, LLC, and C.K. Industries entered into a Railcar Lease Agreement on February 5, 2013, with a subsequent amendment thereto on March 23, 2017 (collectively, the “Lease”). Under the terms of the Lease, C.K. Industries provides railcars to the Debtors in exchange with corresponding payment. The Debtors use the railcars subject to the Lease in the ordinary course of their business to transport silica sand products.

3. On July 13, 2020, the Debtors filed their Motion proposing to reject the Lease as of the date that the Debtors have removed their personal property from the railcars (the “Rejection Date”).

4. C.K. Industries does not oppose the rejection of the Lease. However, it does oppose the proposed Rejection Date and files this Limited Objection based on the following reasons.

II. LIMITED OBJECTION

5. Bankruptcy Code § 365(a) provides that a trustee or a debtor-in-possession may, subject to bankruptcy-court approval, assume or reject any executory contract or unexpired lease. 11 U.S.C. § 365(a) (2020). This provision allows a debtor’s estate to keep beneficial contracts and leases while ridding itself of burdensome ones. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993); *University Med. Ctr. v. Sullivan (In re University Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992); *In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379 (7th Cir. 1983).

6. The Debtors' Motion proposes to reject the Lease as of the date the property is removed from the leased premises. Here, the Rejection Date would thus occur on the date that the silica sand is removed from the railcars.

7. Currently, C.K. Industries leases approximately 28 railcars to the Debtors pursuant to the terms of the Lease. Upon information and belief, approximately half of the railcars are located within the Debtor's possession and the remaining railcars are in circulation under the Debtors' control. None of the leased railcars are under the control and/or possession of C.K. Industries.

8. Although the Rejection Date is proposed to occur upon removal of the personal property, it is unknown as to when and how C.K. Industries would regain possession of the railcars and what would happen to the railcars in the interim. Apparently, the Debtors are proposing that these railcars would remain in circulation and/or in their possession, while C.K. Industries would be required to facilitate the return of these railcars. During this time period, the Debtors will potentially benefit from the usage of the railcars as they would still be under their control and/or in their possession. However, in the event a benefit is received by the Debtors post-rejection, any related claim of C.K. Industries would, arguably, no longer be entitled to administrative priority due to the proposed Rejection Date, which may effectively bar any such claim. C.K. Industries files this Limited Objection simply seeking to preserve its rights in connection with the assertion of an administrative expense claim.

9. C.K. Industries does not object to the rejection of the Lease, and asserts only that the effective date of rejection for the Lease should occur on the later of (i) the entry of an order granting the Motion; or (ii) turnover of the railcars in a condition in conformity with the terms of the Lease. C.K. Industries asserts that such modification of the Rejection Date will ensure that its interests are protected.

10. Alternatively, C.K. Industries proposes that the Order include a reservation of rights providing that the Rejection Date and entry of the Order in no way prejudices C.K. Industries' rights with respect to any and all pre- and/or post-petition claims it may have against the Debtors and any related characterization of such claims. This reservation of rights will preserve any and all claims C.K. Industries may have against the Debtors.

III. CONCLUSION

WHEREFORE, C.K. Industries requests that this Court (i) enter an order consistent with this Limited Objection; (ii) establish the effective date of rejection as of the later of (a) entry of the Order granting this Motion, or (b) turnover of the railcars in a condition in conformity with the terms of the Lease; or alternatively, (iii) require the Debtors to include the proposed reservation of rights proposed herein; and (iv) grant C.K. Industries such other and further relief as is appropriate.

Dated: August 3, 2020

Respectfully submitted,

/s/ Katherine T. Hopkins

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Counsel for C.K. Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Limited Objection to be served on August 3, 2020, upon the parties receiving ECF notification in these bankruptcy cases.

/s/ Katherine T. Hopkins

Katherine T. Hopkins