

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

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In re: : Chapter 11
: :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
: :
Debtors. : (Jointly Administered)
: :
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**DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) REJECT UNEXPIRED OFFICE
SUBLEASE EFFECTIVE AS OF DECEMBER 31, 2020 AND (II) ABANDON
CERTAIN REMAINING PERSONAL PROPERTY IN CONNECTION THEREWITH**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

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.



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) respectfully state the following in support of this motion (the “**Motion**”):

RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order (the “**Order**”), substantially in the form attached hereto, authorizing the Debtors to:

- (a) reject that certain Sublease Agreement, dated as of October 19, 2017, by and between BHP Billiton Petroleum (Deepwater) Inc., a Delaware Corporation (the “**Sublessor**”) and Debtor Hi-Crush Services LLC, including any agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents related to thereto (the “**Office Sublease**”), effective as of December 31, 2020 (the “**Rejection Effective Date**”); and
- (b) abandon certain remaining personal property in connection therewith.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. § 157, and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 362, 365(a), and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 7008-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

4. On July 12, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11**”).

Cases”). 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**”), filed on the Petition Date.

5. On August 15, 2020, the Debtors filed their *Joint Plan of Reorganization for Hi-Crush Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 289] (as may be amended, modified, or supplemented, the “**Plan**”). On September 23, 2020, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Plan of Reorganization for Hi-Crush Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 420] (the “**Confirmation Order**”).

6. 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.

THE REJECTED SUBLEASE

7. In connection to the Chapter 11 Cases, the Debtors have undertaken an analysis of certain of their executory contracts and unexpired leases. As a result of this ongoing analysis, the Debtors determined, in their business judgment, that the Office Sublease is burdensome to the Debtors’ estates and should be rejected. The Office Sublease covers certain premises in the building located at 1330 Post Oak Boulevard, Houston, Texas 77056 (the “**Subleased Office Space**”) and currently serves as the Debtors’ headquarters. Four Oaks Place Operating, LP (“**Landlord**”) serves as the landlord pursuant to that certain Sixth Amendment to Lease Agreement, dated as of January 16, 2013, by and between Landlord and Sublessor. The Office

Sublease terminates on March 31, 2025 or such time as it is otherwise terminated on its terms (the “**Sublease Expiration Date**”).

8. The Debtors have determined that it is in the best interests of their estates to move their headquarters to a different location and thus no longer have a use for the Subleased Office Space. The Debtors currently pay approximately \$60,000 per month in rent and other charges, subject to annual increases, and estimate that rejection of the Office Sublease would relieve the Debtors and their estates of approximately \$3 million in liabilities that would have otherwise accrued between the Rejection Effective Date and the Sublease Expiration Date. While the Debtors have attempted to renegotiate the terms of the Office Sublease with the Sublessor, the Debtors have been unable to reach any such agreement with the Sublessor as of the date hereof. As such, the Debtors seek authority to reject the Office Sublease effective as the Rejection Effective Date.

9. The Debtors anticipate that the Effective Date (as defined in the Plan) will occur prior to the deadline to object to the relief requested herein. The relief requested by this Motion is in accordance with Article VI of the Plan and any claims that may arise if the relief requested herein is granted would be adjudicated in accordance with and subject to the terms and provisions of the Plan.

ABANDONMENT OF REMAINING PROPERTY

10. The Debtors are currently in the process of evaluating the personal property in the Subleased Office Space and their future needs. While the Debtors have yet to determine the exact nature of the Abandoned Property, the relief requested herein is sought out of an abundance of caution as the Debtors have preliminarily determined in their reasonable business judgment that the costs associated with the continued storage of certain inventory and personal property or other

remaining assets, which may include de minimis office equipment and/or furnishings (collectively, the “**Abandoned Property**”), located or stored at or in the Subleased Office Space under the Office Sublease could exceed any projected proceeds that would be realized from the sale thereof, or may have low prospects for resale. Thus, storage and removal costs associated with the Abandoned Property could impose a financial burden on the Debtors’ estates that would provide little to no value in return. Accordingly, the Debtors request that the Court authorize, but not direct, the Debtors to abandon the Abandoned Property in connection with the Debtors’ rejection of the Office Sublease for the benefit of their estates and creditors.

BASIS FOR RELIEF

A. Rejection of the Office Sublease Is an Appropriate Exercise of the Debtors’ Business Judgment

11. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)); *see also In re Orion Pictures Corp.*, 4 F. 3d 1095, 1098 (2d Cir. 1993) (noting that the purpose of rejection of executory contracts is to permit the debtor in possession to renounce title to and abandon burdensome property).

12. A debtor’s rejection of an executory contract or unexpired lease is ordinarily governed by the “business judgment” standard. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1989) (“It is well established that ‘the question of whether a lease should be rejected . . . is one of business judgment.’”) (quoting *Grp. Of Institutional Inv’rs v. Chi., M., St. P & P.R. Co.*, 318 U.S. 523, 550 (1943)); *see also In re Tex. Sheet Metals, Inc.*, 90 B.R.

260, 264 (Bankr. S.D. Tex. 1988) (“The traditional business judgment standard governs the rejection of ordinary executory contracts.”). The business judgment standard requires a court to approve a debtor’s business decision unless that decision is the product of “bad faith, whim, or caprice.” See *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (citing *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849-50 (Bankr. W.D. Pa. 1987)).

13. In applying the business judgment standard, courts have held that rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the estate. See *In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009) (“Courts apply the ‘business judgment test,’ which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment.”); see also *Orion Pictures*, 4 F.3d at 1098-99 (stating that section 365 of the Bankruptcy Code permits a debtor in possession, subject to court approval, to decide which executory contracts would be beneficial to reject). Thus, upon finding that a debtor exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and other parties in interest, a court should approve the rejection under section 365(a) of the Bankruptcy Code. See *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

14. The Debtors believe that rejection of the Office Sublease is well within the Debtors’ business judgment and is in the best interest of their estates. Absent rejection, the Office Sublease imposes ongoing obligations on the Debtors and their estates that constitute an unnecessary drain on the Debtors’ resources without sufficient corresponding benefits associated therewith. The rejection of the Office Sublease will relieve the Debtors of these unnecessary obligations and, thus,

it is in the best interests of their creditors and other parties in interest. Accordingly, the Debtors seek to reject the Office Sublease effective as of the Rejection Effective Date.

B. Abandonment of Remaining Personal Property Is Authorized Pursuant to Section 554(a) of the Bankruptcy Code

15. The Debtors derive authority to abandon the Abandoned Property from section 554(a) of the Bankruptcy Code, which provides that, “after notice and a hearing, the trustee may abandon any property that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The decision to abandon property rests within the business judgment of the debtor. See *In re Beach Dev., L.P.*, No. 03-80223-G3-7, 2010 WL 3155255, at *4 (Bankr. S.D. Tex. Aug. 10, 2010) (affording deference to the business judgment of the trustee in abandoning property of the estate). The right to abandon property is virtually unfettered, unless (i) abandonment of the property will contravene laws designed to protect public health and safety or (ii) abandonment of the property poses an imminent threat to the public’s welfare. See *In re Midlantic Nat’l Bank*, 474 U.S. 494, 501 (1986); see also *In re Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986) (recognizing that the Supreme Court in *Midlantic* recognized only a “limited exception” to the debtor’s abandonment power). Neither of these limitations is relevant under the facts and circumstances presented here.

16. Here, although the Debtors believe that they will remove all of their material owned personal property assets located or stored at the Leased Office Space, certain immaterial assets may remain at such facilities. The Debtors submit that such Abandoned Property is inconsequential to their estates and/or the cost of removal or storage of such property exceeds its value and would be burdensome to the Debtors’ estates. Therefore, to the extent that any Abandoned Property remains at the Leased Premises, and in an abundance of caution, the Debtors

seek authority to abandon such assets as of the Rejection Effective Date. For the foregoing reasons, the abandonment of the Abandoned Property should be approved by the Court.

RESERVATION OF RIGHTS

17. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Office Sublease); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

18. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson Thatcher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**") (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP, counsel to the agents under the Debtors' postpetition term loan facilities; (vii) the Sublessor and the Landlord; (viii) the United States Attorney's Office for the Southern District of Texas; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the

state attorneys general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

19. A copy of this Motion is available on (i) the Court's website: www.txs.uscourts.gov, and (ii) the website maintained by the Debtors' Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at www.kccllc.net/hicrush.

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WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: October 8, 2020
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II
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Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on October 8, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II

**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	

ORDER AUTHORIZING THE DEBTORS TO (I) REJECT UNEXPIRED OFFICE SUBLEASE EFFECTIVE AS OF DECEMBER 31, 2020 AND (II) ABANDON CERTAIN REMAINING PERSONAL PROPERTY IN CONNECTION THEREWITH

[Relates to Motion at Docket No. ____]

Upon the motion (the “**Motion**”)² of the Debtors for an Order (i) that certain Sublease Agreement, dated as of October 19, 2020, by and between BHP Billiton Petroleum (Deepwater) Inc., a Delaware Corporation (the “**Sublessor**”) and Debtor Hi-Crush Services LLC, including any agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents related to thereto (the “**Office Sublease**”), effective as of December 31, 2020, all as more fully described in the Motion; and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

ORDERED THAT:

1. The Debtors are authorized to reject the Office Sublease, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of December 31, 2020.

2. The Debtors are authorized to abandon the Abandoned Property, and the Sublessor and Landlord may dispose of the Abandoned Property on and after December 31, 2020 in their sole and absolute discretion without further notice to or the approval from the Debtors or any third party.

3. Third parties, including but not limited to third parties party to the Office Sublease, shall not impede or interfere in any manner with the removal by the Sublessor and Landlord of their equipment or other property based on any claims, financial or otherwise, against the Debtors whether arising prepetition or postpetition.

4. Nothing in this Order shall prejudice the rights of the Sublessor with respect to any claim for damages arising from the rejection of the Office Sublease and with respect to any objection by the Debtors thereto.

5. Any claims based on the rejection of the Office Sublease shall be filed in accordance with the bar date for filing proofs of claims, set forth in 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] and are to be adjudicated in accordance with and subject to the terms and provisions of the Plan.

6. Nothing herein shall prejudice the rights of the Debtors to argue that the Office Sublease was terminated prior to December 31, 2020 or that any claim for damages arising from the rejection of the Office Sublease is limited to the remedies available under any applicable termination provision of such contract or lease, as applicable, or that any such claim is an obligation of a third party and not that of the Debtors or their estates.

7. Nothing in the Motion or this Order shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; or (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Office Sublease); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6004(a).

9. Notwithstanding Bankruptcy Rule 6004(h) to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

10. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

11. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE